

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2003
Chapters 118 — 254
First Extraordinary Session, 2003
Chapters 1 — 5
Constitutional Amendments, 2002
Third Extraordinary Session, 2002
Chapters 1 — 6

Volume II

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CHAPTER 118

(H. B. 3016 — By Delegates Beane, G. White, Paxton,
Mezzatesta and Stalnaker)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the confidentiality of adult protective service records; changing the current requirement that the adult protective service agency destroy the records in two years to thirty years.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, 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 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

- 1 (a) Except as otherwise provided in this section, all records
- 2 of the department, state and regional long-term care ombuds-
- 3 men, nursing home or facility administrators, the office of
- 4 health facility licensure and certification and all protective
- 5 services agencies concerning an adult or facility resident under
- 6 this article shall be confidential and shall not be released,
- 7 except in accordance with the provisions of section eleven of
- 8 this article.

9 (b) Unless the adult concerned is receiving adult protective
10 services or unless there are pending proceedings with regard to
11 the adult, the records maintained by the adult protective
12 services agency shall be destroyed thirty years following their
13 preparation. A circuit court or the supreme court of appeals may
14 subpoena such records, but shall, before permitting their use in
15 connection with any court proceeding, review the same for
16 relevancy and materiality to the issues in the proceeding, and
17 may issue such order to limit the examination and use of such
18 records or any part thereof, having due regard for the purposes
19 of this article and the requirements of the litigation as shall be
20 just.

CHAPTER 119

(Com. Sub. for H. B. 2675 — By Delegates Beane, Amores,
Campbell, Craig, Mahan, Michael and Webster)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven-d and seven-e; to amend article sixteen-b of said chapter by adding thereto two new sections, designated sections six-a and six-b; to amend article two, chapter nine of said code by adding thereto two new sections, designated sections twelve and twelve-a; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-h; to amend article sixteen of said chapter by adding thereto a new section, designated section three-r; to amend article twenty-four of said chapter by adding thereto a new section, designated section four-a; to

amend and reenact section six, article twenty-five of said chapter; to amend article twenty-five-a of said chapter by adding thereto a new section, designated section twenty-four-a; and to further amend said chapter by adding thereto a new article, designated article twenty-five-f, all relating to mandating coverage for certain clinical trials under public employees insurance, children's health program, medicaid program, accident and sickness insurance, groups accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, healthcare corporations and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections seven-d and seven-e; that article sixteen-b of said chapter be amended by adding thereto two new sections, designated sections six-a and six-b; that article two, chapter nine of said code be amended by adding thereto two new sections, designated sections twelve and twelve-a; that article fifteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section four-h; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-r; that article twenty-four of said chapter be amended by adding thereto a new section, designated section four-a; that section six, article twenty-five of said chapter be amended and reenacted; that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section twenty-four-a; and that said chapter be further amended by adding thereto a new article, designated article twenty-five-f, all to read as follows:

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 9. Human Services.**
- 33. Insurance.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

Article

16. West Virginia Public Employees Insurance Act.

16B. West Virginia Children's Health Program.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7d. Coverage for patient cost of clinical trials.

§5-16-7e. Definitions.

§5-16-7d. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and section seven-e of this
2 article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall
6 provide coverage for patient cost to a member in a clinical trial,
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on
10 cancer.

11 (d) The coverage under subsection (c) of this section is
12 required if:

13 (1)(A) The treatment is being provided or the studies are
14 being conducted in a Phase II, Phase III or Phase IV clinical
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III
17 or Phase IV clinical trial for any other life-threatening condition
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial
20 approved by:

21 (A) One of the national institutes of health;

22 (B) An NIH cooperative group or an NIH center;

23 (C) The FDA in the form of an investigational new drug
24 application or investigational device exemption;

25 (D) The federal department of veterans affairs; or

26 (E) An institutional review board of an institution in the
27 state which has a multiple project assurance contract approved
28 by the office of protection from research risks of the national
29 institutes of health;

30 (3) The facility and personnel providing the treatment are
31 capable of doing so by virtue of their experience, training and
32 volume of patients treated to maintain expertise;

33 (4) There is no clearly superior, noninvestigational treat-
34 ment alternative;

35 (5) The available clinical or preclinical data provide a
36 reasonable expectation that the treatment will be more effective
37 than the noninvestigational treatment alternative;

38 (6) The treatment is provided in this state: *Provided, That,*
39 if the treatment is provided outside of this state, the treatment
40 must be approved by the payor designated in subsection (a) of
41 this section;

42 (7) Reimbursement for treatment is subject to all
43 coinsurance, copayment and deductibles and is otherwise
44 subject to all restrictions and obligations of the health plan; and

45 (8) Reimbursement for treatment by an out of network or
46 noncontracting provider shall be reimbursed at a rate which is
47 no greater than that provided by an in network or contracting
48 provider. Coverage shall not be required if the out of network
49 or noncontracting provider will not accept this level of reim-
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend
54 the patent of any existing drug, to gain approval or coverage of
55 a metabolite of an existing drug, or to gain approval or coverage
56 relating to additional clinical indications for an existing drug;
57 or

58 (2) The purpose of the clinical trial is designed to keep a
59 generic version of a drug from becoming available on the
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or
62 coverage for a reformulated or repackaged version of an
63 existing drug.

64 (f) Any provider billing a third party payor for services or
65 products provided to a patient in a clinical trial shall provide
66 written notice to the payor that specifically identifies the
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the
69 contrary, coverage is not required for Phase I of any clinical
70 trial.

§5-16-7e. Definitions.

1 For purposes of section seven-d of this article:

2 (a) A “clinical trial” is a study that determines whether new
3 drugs, treatments or medical procedures are safe and effective
4 on humans. To determine the efficacy of experimental drugs,
5 treatments or procedures, a study is conducted in four phases
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or
8 a procedure is performed on, a larger group of people to further
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the
11 effectiveness of the drug, treatment or procedure, to monitor the
12 side effects, to compare commonly used treatments and to
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is
15 marketed, investigators continue testing to determine the effects
16 on various populations and to determine whether there are side
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of
19 facilities that collaborate on research projects and have an
20 established NIH-approved peer review program operating
21 within the group.

22 (c) “Cooperative group” includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has
30 a terminal condition or illness that according to current diagno-
31 sis has a high probability of death within two years, even with
32 treatment with an existing generally accepted treatment
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,
35 certificate holder or a covered dependent of a policyholder,
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract
38 between an institution and the federal department of health and
39 human services that defines the relationship of the institution to
40 the federal department of health and human services and sets
41 out the responsibilities of the institution and the procedures that
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically
45 necessary health care service that is incurred by a member as a
46 result of the treatment being provided pursuant to the protocols
47 of the clinical trial. Routine costs of a clinical trial include all
48 items or services that are otherwise generally available to
49 beneficiaries of the insurance policies. "Patient cost" does not
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may
53 be required to receive as a result of the treatment being pro-
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated
58 with the clinical trial including, but not limited to, services
59 furnished to satisfy data collection and analysis needs that are
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those
64 that reflect the natural history of the disease, or its progression,
65 and those that are unique in the experimental treatment. Costs
66 for the former are the responsibility of the payor as provided in
67 section two of this article, and costs for the later are the
68 responsibility of the sponsor. The sponsor shall hold harmless
69 any payor for any losses and injuries sustained by any member
70 as a result of his or her participation in the clinical trial.

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-6a. Coverage for patient cost of clinical trials.

§5-16B-6b. Definitions.

§5-16B-6a. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and section six-b of this
2 article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall
6 provide coverage for patient cost to a member in a clinical trial,
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on
10 cancer.

11 (d) The coverage under subsection (c) of this section is
12 required if:

13 (1)(A) The treatment is being provided or the studies are
14 being conducted in a Phase II, Phase III or Phase IV clinical
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III
17 or Phase IV clinical trial for any other life-threatening condition
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial
20 approved by:

21 (A) One of the national institutes of health;

22 (B) An NIH cooperative group or an NIH center;

23 (C) The FDA in the form of an investigational new drug
24 application or investigational device exemption;

25 (D) The federal department of veterans affairs; or

26 (E) An institutional review board of an institution in the
27 state which has a multiple project assurance contract approved
28 by the office of protection from research risks of the national
29 institutes of health;

30 (3) The facility and personnel providing the treatment are
31 capable of doing so by virtue of their experience, training and
32 volume of patients treated to maintain expertise;

33 (4) There is no clearly superior, noninvestigational treat-
34 ment alternative;

35 (5) The available clinical or preclinical data provide a
36 reasonable expectation that the treatment will be more effective
37 than the noninvestigational treatment alternative;

38 (6) The treatment is provided in this state: *Provided, That,*
39 if the treatment is provided outside of this state, the treatment
40 must be approved by the payor designated in subsection (a) of
41 this section;

42 (7) Reimbursement for treatment is subject to all
43 coinsurance, copayment and deductibles and is otherwise
44 subject to all restrictions and obligations of the health plan; and

45 (8) Reimbursement for treatment by an out of network or
46 noncontracting provider shall be reimbursed at a rate which is
47 no greater than that provided by an in network or contracting
48 provider. Coverage shall not be required if the out of network
49 or noncontracting provider will not accept this level of reim-
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend
54 the patent of any existing drug, to gain approval or coverage of
55 a metabolite of an existing drug, or to gain approval or coverage
56 relating to additional clinical indications for an existing drug;
57 or

58 (2) The purpose of the clinical trial is designed to keep a
59 generic version of a drug from becoming available on the
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or
62 coverage for a reformulated or repackaged version of an
63 existing drug.

64 (f) Any provider billing a third party payor for services or
65 products provided to a patient in a clinical trial shall provide
66 written notice to the payor that specifically identifies the
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the
69 contrary, coverage is not required for Phase I of any clinical
70 trial.

§5-16B-6b. Definitions.

1 For purposes of section six-a of this article:

2 (a) A “clinical trial” is a study that determines whether new
3 drugs, treatments or medical procedures are safe and effective
4 on humans. To determine the efficacy of experimental drugs,
5 treatments or procedures, a study is conducted in four phases
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or
8 a procedure is performed on, a larger group of people to further
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the
11 effectiveness of the drug, treatment or procedure, to monitor the
12 side effects, to compare commonly used treatments and to
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is
15 marketed, investigators continue testing to determine the effects
16 on various populations and to determine whether there are side
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of
19 facilities that collaborate on research projects and have an
20 established NIH-approved peer review program operating
21 within the group.

22 (c) "Cooperative group" includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has
30 a terminal condition or illness that according to current diagno-
31 sis has a high probability of death within two years, even with
32 treatment with an existing generally accepted treatment
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,
35 certificate holder or a covered dependent of a policyholder,
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract
38 between an institution and the federal department of health and
39 human services that defines the relationship of the institution to
40 the federal department of health and human services and sets
41 out the responsibilities of the institution and the procedures that
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically
45 necessary health care service that is incurred by a member as a
46 result of the treatment being provided pursuant to the protocols
47 of the clinical trial. Routine costs of a clinical trial include all
48 items or services that are otherwise generally available to

49 beneficiaries of the insurance policies. "Patient cost" does not
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may
53 be required to receive as a result of the treatment being pro-
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated
58 with the clinical trial including, but not limited to, services
59 furnished to satisfy data collection and analysis needs that are
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those
64 that reflect the natural history of the disease, or its progression,
65 and those that are unique in the experimental treatment. Costs
66 for the former are the responsibility of the payor as provided in
67 section two of this article, and costs for the later are the
68 responsibility of the sponsor. The sponsor shall hold harmless
69 any payor for any losses and injuries sustained by any member
70 as a result of his or her participation in the clinical trial.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SER- VICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-12. Coverage for patient cost for clinical trials.

§9-2-12a. Definitions.

§9-2-12. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and section twelve-a of
2 this article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall
6 provide coverage for patient cost to a member in a clinical trial,
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on
10 cancer.

11 (d) The coverage under subsection (c) of this section is
12 required if:

13 (1)(A) The treatment is being provided or the studies are
14 being conducted in a Phase II, Phase III or Phase IV clinical
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III
17 or Phase IV clinical trial for any other life-threatening condition
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial
20 approved by:

21 (A) One of the national institutes of health;

22 (B) An NIH cooperative group or an NIH center;

23 (C) The FDA in the form of an investigational new drug
24 application or investigational device exemption;

25 (D) The federal department of veterans affairs; or

26 (E) An institutional review board of an institution in the
27 state which has a multiple project assurance contract approved
28 by the office of protection from research risks of the national
29 institutes of health;

30 (3) The facility and personnel providing the treatment are
31 capable of doing so by virtue of their experience, training and
32 volume of patients treated to maintain expertise;

33 (4) There is no clearly superior, noninvestigational treat-
34 ment alternative;

35 (5) The available clinical or preclinical data provide a
36 reasonable expectation that the treatment will be more effective
37 than the noninvestigational treatment alternative;

38 (6) The treatment is provided in this state: *Provided, That,*
39 if the treatment is provided outside of this state, the treatment
40 must be approved by the payor designated in subsection (a) of
41 this section;

42 (7) Reimbursement for treatment is subject to all
43 coinsurance, copayment and deductibles and is otherwise
44 subject to all restrictions and obligations of the health plan; and

45 (8) Reimbursement for treatment by an out of network or
46 noncontracting provider shall be reimbursed at a rate which is
47 no greater than that provided by an in network or contracting
48 provider. Coverage shall not be required if the out of network
49 or noncontracting provider will not accept this level of reim-
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend
54 the patent of any existing drug, to gain approval or coverage of
55 a metabolite of an existing drug, or to gain approval or coverage
56 relating to additional clinical indications for an existing drug;
57 or

58 (2) The purpose of the clinical trial is designed to keep a
59 generic version of a drug from becoming available on the
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or
62 coverage for a reformulated or repackaged version of an
63 existing drug.

64 (f) Any provider billing a third party payor for services or
65 products provided to a patient in a clinical trial shall provide
66 written notice to the payor that specifically identifies the
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the
69 contrary, coverage is not required for Phase I of any clinical
70 trial.

§9-2-12a. Definitions.

1 For purposes of section twelve of this article:

2 (a) A “clinical trial” is a study that determines whether new
3 drugs, treatments or medical procedures are safe and effective
4 on humans. To determine the efficacy of experimental drugs,
5 treatments or procedures, a study is conducted in four phases
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or
8 a procedure is performed on, a larger group of people to further
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the
11 effectiveness of the drug, treatment or procedure, to monitor the
12 side effects, to compare commonly used treatments and to
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is
15 marketed, investigators continue testing to determine the effects
16 on various populations and to determine whether there are side
17 effects associated with long-term use.

18 (b) "Cooperative group" means a formal network of
19 facilities that collaborate on research projects and have an
20 established NIH-approved peer review program operating
21 within the group.

22 (c) "Cooperative group" includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has
30 a terminal condition or illness that according to current diagno-
31 sis has a high probability of death within two years, even with
32 treatment with an existing generally accepted treatment
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,
35 certificate holder or a covered dependent of a policyholder,
36 subscriber, insured or certificate holder.

37 (g) “Multiple project assurance contract” means a contract
38 between an institution and the federal department of health and
39 human services that defines the relationship of the institution to
40 the federal department of health and human services and sets
41 out the responsibilities of the institution and the procedures that
42 will be used by the institution to protect human subjects.

43 (h) “NIH” means the national institutes of health.

44 (i) “Patient cost” means the routine costs of a medically
45 necessary health care service that is incurred by a member as a
46 result of the treatment being provided pursuant to the protocols
47 of the clinical trial. Routine costs of a clinical trial include all
48 items or services that are otherwise generally available to
49 beneficiaries of the insurance policies. “Patient cost” does not
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may
53 be required to receive as a result of the treatment being pro-
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated
58 with the clinical trial including, but not limited to, services
59 furnished to satisfy data collection and analysis needs that are
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant’s
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those
64 that reflect the natural history of the disease, or its progression,
65 and those that are unique in the experimental treatment. Costs

66 for the former are the responsibility of the payor as provided in
67 section two of this article, and costs for the later are the
68 responsibility of the sponsor. The sponsor shall hold harmless
69 any payor for any losses and injuries sustained by any member
70 as a result of his or her participation in the clinical trial.

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental
Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
- 25F. Coverage for Patient Cost of Clinical Trials.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4h. Coverage for patient cost of clinical trials.

1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the individual
3 market regulated by this article.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3r. Coverage for patient cost of clinical trials.

1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the health
3 benefit plans regulated by this article.

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

§33-24-4a. Coverage for patient cost of clinical trials.

1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the insurance
3 regulated by this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-6. Supervision and regulation by insurance commissioner;
exemption from insurance laws.**

1 Corporations organized under this article are subject to
2 supervision and regulation of the insurance commissioner. The
3 corporations organized under this article, to the same extent
4 these provisions are applicable to insurers transacting similar
5 kinds of insurance and not inconsistent with the provisions of
6 this article, shall be governed by and be subject to the provi-
7 sions as hereinbelow indicated of the following articles of this
8 chapter: Article four (general provisions), except that section
9 sixteen of said article shall not be applicable thereto; article six-
10 c (guaranteed loss ratio); article seven (assets and liabilities);
11 article eight (investments); article ten (rehabilitation and
12 liquidation); section two-a, article fifteen (definitions); section
13 two-b, article fifteen (guaranteed issue); section two-d, article
14 fifteen (exception to guaranteed renewability); section two-e,
15 article fifteen (discontinuation of coverage); section two-f,
16 article fifteen (certification of creditable coverage); section
17 two-g, article fifteen (applicability); section four-e, article
18 fifteen (benefits for mothers and newborns); section fourteen,
19 article fifteen (individual accident and sickness insurance);
20 section sixteen, article fifteen (coverage of children); section
21 eighteen, article fifteen (equal treatment of state agency);
22 section nineteen, article fifteen (coordination of benefits with
23 medicaid); article fifteen-c (diabetes insurance); section three,
24 article sixteen (required policy provisions); section three-a,
25 article sixteen (mental health); section three-j, article sixteen
26 (benefits for mothers and newborns); section three-k, article
27 sixteen (preexisting condition exclusions); section three-l,

28 article sixteen (guaranteed renewability); section three-m,
29 article sixteen (creditable coverage); section three-n, article
30 sixteen (eligibility for enrollment); section eleven, article
31 sixteen (coverage of children); section thirteen, article sixteen
32 (equal treatment of state agency); section fourteen, article
33 sixteen (coordination of benefits with medicaid); section
34 sixteen, article sixteen (diabetes insurance); article sixteen-a
35 (group health insurance conversion); article sixteen-c (small
36 employer group policies); article sixteen-d (marketing and rate
37 practices for small employers); article twenty-five-f (coverage
38 for patient cost of clinical trials); article twenty-six-a (West
39 Virginia life and health insurance guaranty association act);
40 article twenty-seven (insurance holding company systems);
41 article thirty-three (annual audited financial report); article
42 thirty-four-a (standards and commissioner's authority for
43 companies deemed to be in hazardous financial condition);
44 article thirty-five (criminal sanctions for failure to report
45 impairment); article thirty-seven (managing general agents);
46 and article forty-one (privileges and immunity); and no other
47 provision of this chapter may apply to these corporations unless
48 specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24a. Coverage for patient cost of clinical trials.

1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the insurance
3 regulated by this article.

ARTICLE 25F. COVERAGE FOR PATIENT COST OF CLINICAL TRIALS.

§33-25F-1. Definitions.

§33-25F-2. Coverage applicable under this article.

§33-25F-1. Definitions.

1 For purposes of this article:

2 (a) A “clinical trial” is a study that determines whether new
3 drugs, treatments or medical procedures are safe and effective
4 on humans. To determine the efficacy of experimental drugs,
5 treatments or procedures, a study is conducted in four phases
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or
8 a procedure is performed on, a larger group of people to further
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the
11 effectiveness of the drug, treatment or procedure, to monitor the
12 side effects, to compare commonly used treatments and to
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is
15 marketed, investigators continue testing to determine the effects
16 on various populations and to determine whether there are side
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of
19 facilities that collaborate on research projects and have an
20 established NIH-approved peer review program operating
21 within the group.

22 (c) “Cooperative group” includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) “FDA” means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has
30 a terminal condition or illness that according to current diagno-
31 sis has a high probability of death within two years, even with
32 treatment with an existing generally accepted treatment
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,
35 certificate holder or a covered dependent of a policyholder,
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract
38 between an institution and the federal department of health and
39 human services that defines the relationship of the institution to
40 the federal department of health and human services and sets
41 out the responsibilities of the institution and the procedures that
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically
45 necessary health care service that is incurred by a member as a
46 result of the treatment being provided pursuant to the protocols
47 of the clinical trial. Routine costs of a clinical trial include all
48 items or services that are otherwise generally available to
49 beneficiaries of the insurance policies. "Patient cost" does not
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may
53 be required to receive as a result of the treatment being pro-
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated
58 with the clinical trial including, but not limited to, services
59 furnished to satisfy data collection and analysis needs that are
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those
64 that reflect the natural history of the disease, or its progression,
65 and those that are unique in the experimental treatment. Costs
66 for the former are the responsibility of the payor as provided in
67 section two of this article, and costs for the later are the
68 responsibility of the sponsor. The sponsor shall hold harmless
69 any payor for any losses and injuries sustained by any member
70 as a result of his or her participation in the clinical trial.

§33-25F-2. Coverage applicable under this article.

1 (a) This section applies to:

2 (1) Insurers and nonprofit health service plans that provide
3 hospital, medical, surgical or pharmaceutical benefits to
4 individuals or groups on an expense-incurred basis under a
5 health insurance policy or contract issued or delivered in the
6 state; and

7 (2) Health maintenance organizations that provide hospital,
8 medical, surgical or pharmaceutical benefits to individuals or
9 groups under contracts that are issued or delivered in the state.

10 (b) This section does not apply to a policy, plan or contract
11 paid for under Title XVIII of the Social Security Act.

12 (c) A policy, plan or contract subject to this section shall
13 provide coverage for patient cost to a member in a clinical trial,
14 as a result of:

15 (1) Treatment provided for a life-threatening condition; or

16 (2) Prevention of, early detection of or treatment studies on
17 cancer.

18 (d) The coverage under subsection (c) of this section is
19 required if:

20 (1)(A) The treatment is being provided or the studies are
21 being conducted in a Phase II, Phase III or Phase IV clinical
22 trial for cancer and has therapeutic intent; or

23 (B) The treatment is being provided in a Phase II, Phase III
24 or Phase IV clinical trial for any other life-threatening condition
25 and has therapeutic intent;

26 (2) The treatment is being provided in a clinical trial
27 approved by:

28 (A) One of the national institutes of health;

29 (B) An NIH cooperative group or an NIH center;

30 (C) The FDA in the form of an investigational new drug
31 application or investigational device exemption;

32 (D) The federal department of veterans affairs; or

33 (E) An institutional review board of an institution in the
34 state which has a multiple project assurance contract approved
35 by the office of protection from research risks of the national
36 institutes of health;

37 (3) The facility and personnel providing the treatment are
38 capable of doing so by virtue of their experience, training and
39 volume of patients treated to maintain expertise;

40 (4) There is no clearly superior, noninvestigational treat-
41 ment alternative;

42 (5) The available clinical or preclinical data provide a
43 reasonable expectation that the treatment will be more effective
44 than the noninvestigational treatment alternative;

45 (6) The treatment is provided in this state: *Provided*, That,
46 if the treatment is provided outside of this state, the treatment
47 must be approved by the payor designated in subsection (a) of
48 this section;

49 (7) Reimbursement for treatment is subject to all
50 coinsurance, copayment and deductibles and is otherwise
51 subject to all restrictions and obligations of the health plan; and

52 (8) Reimbursement for treatment by an out of network or
53 noncontracting provider shall be reimbursed at a rate which is
54 no greater than that provided by an in network or contracting
55 provider. Coverage shall not be required if the out of network
56 or noncontracting provider will not accept this level of reim-
57 bursement.

58 (e) Payment for patient costs for a clinical trial is not
59 required by the provisions of this section, if:

60 (1) The purpose of the clinical trial is designed to extend
61 the patent of any existing drug, to gain approval or coverage of
62 a metabolite of an existing drug, or to gain approval or coverage
63 relating to additional clinical indications for an existing drug;
64 or

65 (2) The purpose of the clinical trial is designed to keep a
66 generic version of a drug from becoming available on the
67 market; or

68 (3) The purpose of the clinical trial is to gain approval of or
69 coverage for a reformulated or repackaged version of an
70 existing drug.

71 (f) Any provider billing a third party payor for services or
72 products provided to a patient in a clinical trial shall provide
73 written notice to the payor that specifically identifies the
74 services as part of a clinical trial.

75 (g) Notwithstanding any provision in this section to the
76 contrary, coverage is not required for Phase I of any clinical
77 trial.

CHAPTER 120

(Com. Sub. for H. B. 2003 — By Delegate Amores)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, 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 fourteen; and to amend and reenact section sixteen, article twelve-a of said chapter, all relating to authorizing political subdivisions to establish and maintain self-insurance pools; authorizing the board of risk and insurance management to propose rules dealing with insurance programs; authorizing West Virginia insurance agents to establish and write policies for self-insurance programs and pools; and requiring the insurance commissioner to propose legislative rules relating to self-insurance programs and pools for political subdivisions.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 fourteen; and that section sixteen, article twelve-a of said chapter be amended and reenacted, all to read as follows:

Article

12. State Insurance.

12A. Governmental Tort Claims and Insurance Reform Act.

ARTICLE 12. STATE INSURANCE.

§29-12-14. Promulgation of rules.

1 The board of risk and insurance management is authorized
2 to propose rules for legislative approval, pursuant to the
3 provisions of article three, chapter twenty-nine-a of this code,
4 that are necessary to administer the powers and duties of the
5 board including, but not limited to, rules setting minimum
6 contract terms for entities participating in insurance programs
7 and mandatory waiting periods for reentry into insurance
8 programs for entities which have terminated coverage through
9 the board.

**ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE
REFORM ACT.**

**§29-12A-16. Procurement of liability insurance and self-
insurance.**

1 (a) A political subdivision may use public funds to secure
2 insurance with respect to its potential liability and that of its
3 employees for damages in civil actions for injury, death or loss
4 to persons or property allegedly caused by an act or omission of
5 the political subdivision or any of its employees, including
6 insurance coverage procured through the state board of risk and
7 insurance management. The insurance may be at the limits for
8 the circumstances, and subject to the terms and conditions that
9 are determined by the political subdivision in its discretion.

10 The insurance may be for the period that is set forth in
11 specifications for competitive bids or, when competitive
12 bidding is not required, for the period that is mutually agreed
13 upon by the political subdivision and insurance company. The
14 period does not have to be, but can be, limited to the fiscal
15 cycle under which the political subdivision is funded and
16 operates.

17 (b)(1) Regardless of whether a political subdivision
18 procures a policy or policies of liability insurance pursuant to
19 subsection (a) of this section or otherwise:

20 (A) Any political subdivision may establish and maintain
21 a self-insurance program relative to its potential liability and
22 that of its employees for damages in civil actions for injury,
23 death, or loss to persons or property allegedly caused by an act
24 or omission of the political subdivision or any of its employees;
25 or

26 (B) Any group of two or more political subdivisions may
27 establish and maintain a self-insurance pool relative to their
28 collective potential liability and that of their collective employ-
29 ees for damages in civil actions for injury, death or loss to
30 persons or property allegedly caused by an act or omission of
31 the political subdivision or any of its employees.

32 (2) If it so chooses, the political subdivision or group of
33 political subdivisions may contract with any person, any
34 licensed West Virginia insurance agent, other political subdivi-
35 sion, municipal association, county association or regional
36 council of governments for purposes of the administration of
37 the program or pool.

38 (c) Political subdivisions that have established self-insur-
39 ance programs relative to their potential liability and that of
40 their employees, as described in subdivision (A), subsection
41 (b)(1) of this section, may mutually agree that their self-

42 insurance programs may be jointly administered in a specified
43 manner.

44 (d) The purchase of liability insurance, or the establishment
45 and maintenance of a self-insurance program, by a political
46 subdivision does not constitute a waiver of any immunity it may
47 have pursuant to this article or any defense of the political
48 subdivision or its employees.

49 (e) The authorization for political subdivisions to secure
50 insurance and to establish and maintain self-insurance programs
51 and pools, as set out in subsections (a) and (b) in this section,
52 are in addition to any other authority to secure insurance or to
53 establish and maintain self-insurance that is granted pursuant to
54 this code or the constitution of this state, and they are not in
55 derogation of any other authorization.

56 (f) An insurance agent licensed in West Virginia is autho-
57 rized to establish or write policies for a self-insurance program
58 or pool for political subdivisions, pursuant to the provisions of
59 this section.

60 (g) The commissioner of insurance shall propose rules for
61 legislative approval, pursuant to the provisions of chapter
62 twenty-nine-a of this code, setting forth the criteria for estab-
63 lishing and maintaining self-insurance programs and pools for
64 political subdivisions.

CHAPTER 121

(H. B. 2764 — By Delegates H. White, Hrutkay
and R. M. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the subpoena power of the insurance commissioner; setting forth requirements for contents of subpoena; providing for subpoenas to be issued to persons and to corporations; providing that pendency of another action does not relieve a person's duty to respond to subpoena of the commissioner; and providing that evidence produced in response to subpoena and interrogatories are exempt from the disclosure requirements of the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-4. Authority to take depositions, subpoena witnesses, etc.

1 (a) For the purpose of any investigation or proceeding
2 under this chapter, the commissioner or any officer designated
3 by him or her may administer oaths and affirmations, subpoena
4 witnesses, compel their attendance, take evidence and require
5 the production of any books, papers, correspondences, memo-
6 randa, agreements or other documents or records which the
7 commissioner considers relevant or material to the inquiry. The
8 commissioner's authority to subpoena witnesses and documents
9 outside the state shall exist to the maximum extent permissible
10 under federal constitutional law.

11 (b) Subpoenas may be issued to any person and may require
12 that person, among other things, to:

13 (1) Testify under oath;

- 14 (2) Answer written interrogatories under oath;
- 15 (3) Produce documents and tangible things; and
- 16 (4) Permit inspection and copying of documents.
- 17 (c) Content of subpoena. A subpoena shall:
 - 18 (1) Describe generally the nature of the investigation;
 - 19 (2) If the subpoena requires testimony under oath, specify
20 the date, time and place for the taking of testimony;
 - 21 (3) If the subpoena requires answers to written interroga-
22 ries, contain a copy of the written interrogatories;
 - 23 (4) If the subpoena requires the production of tangible
24 things or documents:
 - 25 (A) Describe the things and documents to be produced with
26 reasonable specificity; and
 - 27 (B) Specify a date, time, and place at which the things and
28 documents are to be produced;
 - 29 (5) Notify the person to whom the subpoena is directed of
30 the obligation to supplement responses;
 - 31 (6) Advise the person to whom the subpoena is directed that
32 the person may be represented by counsel; and
 - 33 (7) Identify a member of the office of the insurance
34 commissioner who may be contacted in reference to the
35 subpoena.
- 36 (d) For subpoenas to corporations and other entities, the
37 following apply:

38 (1) A subpoena directed to a corporation, partnership or
39 other business entity that requires testimony under oath shall
40 describe with reasonable particularity the subject matter of the
41 testimony;

42 (2) An entity that receives a subpoena to answer written
43 interrogatories or to testify under oath shall designate one or
44 more of its officers, agents, employees or other authorized
45 persons familiar with the subject matter specified in the
46 subpoena to respond to the subpoena on its behalf;

47 (3) The persons designated by an entity to respond to a
48 subpoena on its behalf shall answer the interrogatories or testify
49 as to all matters known or reasonably available to the entity;
50 and

51 (4) A subpoena directed to an entity that requires testimony
52 under oath or answers to written interrogatories shall advise the
53 entity of its obligations under this section.

54 (e) Effect of other proceedings. The institution or pendency
55 of administrative or judicial proceedings against a person by the
56 commissioner does not relieve the person of his or her obligation
57 to respond to a subpoena issued under this section.

58 (f) Subpoenas for interrogatories and answers and requests
59 for production of documents or tangible things and answers
60 propounded and obtained under this section pursuant to an
61 investigation are exempted from disclosure under the provisions
62 of article one, chapter twenty-nine-b of this code, and are not
63 open to public inspection. The commissioner may not disclose
64 facts or information obtained from the investigation except as
65 the official duty of the commissioner requires.

66 (g) Nothing in this section prohibits the commissioner from
67 providing information or receiving information from any local,
68 state, federal or international law-enforcement authorities,

69 including any prosecuting authority; from complying with
70 subpoenas or other lawful process in criminal proceedings or
71 other action by the state; or from taking action as may other-
72 wise be provided in this article.

CHAPTER 122

(S. B. 400 — By Senators Minard, Jenkins and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and nineteen, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article seven of said chapter; and to amend and reenact section one, article thirty-nine of said chapter, all relating to authorizing limited disclosure of confidential information received by the insurance commissioner; making amendments regarding disclosure of confidential information by the insurance commissioner to federal banking agencies required by the federal Gramm-Leach-Bliley Act; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections nine and nineteen, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section nine, article seven of said chapter be amended and reenacted; and that section one, article thirty-nine of said chapter be amended and reenacted, all to read as follows:

Article

- 2. Insurance Commissioner.
- 7. Assets and Liabilities.
- 39. Disclosure of Material Transactions.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-19. Confidentiality of information.

**§33-2-9. Examination of insurers, agents, brokers and solicitors;
access to books, records, etc.**

1 (a) The purpose of this section is to provide an effective and
2 efficient system for examining the activities, operations,
3 financial condition and affairs of all persons transacting the
4 business of insurance in this state and all persons otherwise
5 subject to the jurisdiction of the commissioner. The provisions
6 of this section are intended to enable the commissioner to adopt
7 a flexible system of examinations which directs resources as
8 may be considered appropriate and necessary for the adminis-
9 tration of the insurance and insurance-related laws of this state.

10 (b) For purposes of this section, the following definitions
11 shall apply:

12 (1) "Commissioner" means the commissioner of insurance
13 of this state;

14 (2) "Company" or "insurance company" means any person
15 engaging in or proposing or attempting to engage in any
16 transaction or kind of insurance or surety business and any
17 person or group of persons who may otherwise be subject to the
18 administrative, regulatory or taxing authority of the commis-
19 sioner, including, but not limited to, any domestic or foreign
20 stock company, mutual company, mutual protective association,
21 farmers mutual fire companies, fraternal benefit society,
22 reciprocal or interinsurance exchange, nonprofit medical care

23 corporation, nonprofit health care corporation, nonprofit
24 hospital service association, nonprofit dental care corporation,
25 health maintenance organization, captive insurance company,
26 risk retention group or other insurer regardless of the type of
27 coverage written, benefits provided or guarantees made by
28 each;

29 (3) "Department" means the department of insurance of this
30 state; and

31 (4) "Examiners" means the commissioner of insurance or
32 any individual or firm having been authorized by the commis-
33 sioner to conduct an examination pursuant to this section,
34 including, but not limited to, the commissioner's deputies, other
35 employees, appointed examiners or other appointed individuals
36 or firms who are not employees of the department of insurance.

37 (c) The commissioner or his or her examiners may conduct
38 an examination under this section of any company as often as
39 the commissioner in his or her discretion considers appropriate.
40 The commissioner or his or her examiners shall at least once
41 every five years visit each domestic insurer and thoroughly
42 examine its financial condition and methods of doing business
43 and ascertain whether it has complied with all the laws and
44 regulations of this state. The commissioner may also examine
45 the affairs of any insurer applying for a license to transact any
46 insurance business in this state.

47 (d) The commissioner or his or her examiners shall, at a
48 minimum, conduct an examination of every foreign or alien
49 insurer licensed in this state not less frequently than once every
50 five years. The examination of an alien insurer may be limited
51 to its United States business: *Provided*, That in lieu of an
52 examination under this section of any foreign or alien insurer
53 licensed in this state, the commissioner may accept an examina-
54 tion report on the company as prepared by the insurance

55 department for the company's state of domicile or port-of-entry
56 state until the first day of January, one thousand nine hundred
57 ninety-four. Thereafter, the reports may only be accepted if:

58 (1) The insurance department was at the time of the
59 examination accredited under the national association of
60 insurance commissioners' financial regulation standards and
61 accreditation program; or

62 (2) The examination is performed under the supervision of
63 an accredited insurance department or with the participation of
64 one or more examiners who are employed by an accredited state
65 insurance department and who, after a review of the examina-
66 tion work papers and report, state under oath that the examina-
67 tion was performed in a manner consistent with the standards
68 and procedures required by their insurance department.

69 (e) In scheduling and determining the nature, scope and
70 frequency of examinations conducted pursuant to this section,
71 the commissioner may consider such matters as the results of
72 financial statement analyses and ratios, changes in management
73 or ownership, actuarial opinions, reports of independent
74 certified public accountants and other criteria as set forth in the
75 examiners' handbook adopted by the national association of
76 insurance commissioners and in effect when the commissioner
77 exercises discretion under this section.

78 (f) For purposes of completing an examination of any
79 company under this section, the commissioner may examine or
80 investigate any person, or the business of any person, insofar as
81 the examination or investigation is, in the sole discretion of the
82 commissioner, necessary or material to the examination of the
83 company.

84 (g) The commissioner may also cause to be examined, at
85 the times as he or she considers necessary, the books, records,
86 papers, documents, correspondence and methods of doing

87 business of any agent, broker, excess lines broker or solicitor
88 licensed by this state. For these purposes, the commissioner or
89 his or her examiners shall have free access to all books, records,
90 papers, documents and correspondence of all the agents,
91 brokers, excess lines brokers and solicitors wherever the books,
92 records, papers, documents and records are situate. The
93 commissioner may revoke the license of any agent, broker,
94 excess lines broker or solicitor who refuses to submit to the
95 examination.

96 (h) In addition to conducting an examination, the commis-
97 sioner or his or her examiners may, as the commissioner
98 considers necessary, analyze or review any phase of the
99 operations or methods of doing business of an insurer, agent,
100 broker, excess lines broker, solicitor or other individual or
101 corporation transacting or attempting to transact an insurance
102 business in the state of West Virginia. The commissioner may
103 use the full resources provided by this section in carrying out
104 these responsibilities, including any personnel and equipment
105 provided by this section as the commissioner considers neces-
106 sary.

107 (i) Examinations made pursuant to this section shall be
108 conducted in the following manner:

109 (1) Upon determining that an examination should be
110 conducted, the commissioner or his or her designee shall issue
111 an examination warrant appointing one or more examiners to
112 perform the examination and instructing them as to the scope of
113 the examination. The appointment of any examiners pursuant
114 to this section by the commissioner shall not be subject to the
115 requirements of article three, chapter five-a of this code, except
116 that the contracts and agreements shall be approved as to form
117 and conformity with applicable law by the attorney general. In
118 conducting the examination, the examiner shall observe those
119 guidelines and procedures set forth in the examiners' handbook

120 adopted by the national association of insurance commissioners.
121 The commissioner may also employ any other guidelines or
122 procedures as the commissioner may consider appropriate;

123 (2) Every company or person from whom information is
124 sought, its officers, directors and agents shall provide to the
125 examiners appointed under subdivision (1) of this subsection
126 timely, convenient and free access at all reasonable hours at its
127 offices to all books, records, accounts, papers, documents and
128 any or all computer or other recordings relating to the property,
129 assets, business and affairs of the company being examined.
130 The officers, directors, employees and agents of the company
131 or person shall facilitate the examination and aid in the exami-
132 nation so far as it is in their power to do so;

133 (3) The refusal of any company, by its officers, directors,
134 employees or agents, to submit to examination or to comply
135 with any reasonable written request of the examiners shall be
136 grounds for suspension, revocation, refusal or nonrenewal of
137 any license or authority held by the company to engage in an
138 insurance or other business subject to the commissioner's
139 jurisdiction. Any proceedings for suspension, revocation,
140 refusal or nonrenewal of any license or authority shall be
141 conducted pursuant to section eleven of this article;

142 (4) The commissioner or his or her examiners shall have the
143 power to issue subpoenas, to administer oaths and to examine
144 under oath any person as to any matter pertinent to the exami-
145 nation, analysis or review. The subpoenas shall be enforced
146 pursuant to the provisions of section six of this article;

147 (5) When making an examination, analysis or review under
148 this section, the commissioner may retain attorneys, appraisers,
149 independent actuaries, independent certified public accountants,
150 professionals or specialists with training or experience in
151 reinsurance, investments or information systems or other

152 professionals and specialists as examiners, the cost of which
153 shall be borne by the company which is the subject of the
154 examination, analysis or review or, in the commissioner's
155 discretion, paid from the commissioner's examination revolving
156 fund. The commissioner may recover costs paid from the
157 commissioner's examination revolving fund pursuant to this
158 subdivision from the company upon which the examination,
159 analysis or review is conducted unless the subject of the
160 examination, analysis or review is an individual described in
161 subdivision (2), subsection (q) of this section;

162 (6) Nothing contained in this section may be construed to
163 limit the commissioner's authority to terminate or suspend any
164 examination, analysis or review in order to pursue other legal
165 or regulatory action pursuant to the insurance laws of this state.
166 The commissioner or his or her examiners may at any time
167 testify and offer other proper evidence as to information
168 secured during the course of an examination, analysis or review
169 whether or not a written report of the examination has at that
170 time either been made, served or filed in the commissioner's
171 office;

172 (7) Nothing contained in this section may be construed to
173 limit the commissioner's authority to use and, if appropriate, to
174 make public any final or preliminary examination report, any
175 examiner or company workpapers or other documents or any
176 other information discovered or developed during the course of
177 any examination, analysis or review in the furtherance of any
178 legal or regulatory action which the commissioner may, in his
179 or her sole discretion, consider appropriate. An examination
180 report, when filed, shall be admissible in evidence in any action
181 or proceeding brought by the commissioner against an insur-
182 ance company, its officers or agents and shall be prima facie
183 evidence of the facts stated therein.

184 (j) Examination reports prepared pursuant to the provisions
185 of this section shall comply with the following requirements:

186 (1) All examination reports shall be comprised of only facts
187 appearing upon the books, records or other documents of the
188 company, its agents or other persons examined or as ascertained
189 from the testimony of its officers or agents or other persons
190 examined concerning its affairs and any conclusions and
191 recommendations the examiners find reasonably warranted
192 from the facts;

193 (2) No later than sixty days following completion of the
194 examination the examiner in charge shall file with the commis-
195 sioner a verified written report of examination under oath. Upon
196 receipt of the verified report, the commissioner shall transmit
197 the report to the company examined, together with a notice
198 which shall afford the company examined a reasonable opportu-
199 nity of not more than ten days to make a written submission or
200 rebuttal with respect to any matters contained in the examina-
201 tion report;

202 (3) Within thirty days of the end of the period allowed for
203 the receipt of written submissions or rebuttals the commissioner
204 shall fully consider and review the report, together with any
205 written submissions or rebuttals and any relevant portions of the
206 examiner's workpapers and enter an order:

207 (A) Adopting the examination report as filed or with
208 modification or corrections. If the examination report reveals
209 that the company is operating in violation of any law, rule or
210 prior order of the commissioner, the commissioner may order
211 the company to take any action the commissioner considers
212 necessary and appropriate to cure the violation; or

213 (B) Rejecting the examination report with directions to the
214 examiners to reopen the examination for purposes of obtaining

215 additional data, documentation or information and refiling
216 pursuant to subdivision (2) of this subsection; or

217 (C) Calling for an investigatory hearing with no less than
218 twenty days' notice to the company for purposes of obtaining
219 additional documentation, data, information and testimony;

220 (4) All orders entered pursuant to this subsection shall be
221 accompanied by findings and conclusions resulting from the
222 commissioner's consideration and review of the examination
223 report, relevant examiner workpapers and any written submis-
224 sions or rebuttals. Any order issued pursuant to paragraph (A),
225 subdivision (3) of this subsection shall be considered a final
226 administrative decision and may be appealed pursuant to
227 section fourteen of this article and shall be served upon the
228 company by certified mail, together with a copy of the adopted
229 examination report. Within thirty days of the issuance of the
230 adopted report the company shall file affidavits executed by
231 each of its directors stating under oath that they have received
232 a copy of the adopted report and related orders.

233 (k) Hearings conducted pursuant to this section shall be
234 subject to the following requirements:

235 (1) Any hearing conducted pursuant to this section by the
236 commissioner or the commissioner's authorized representative
237 shall be conducted as a nonadversarial confidential investiga-
238 tory proceeding as necessary for the resolution of any inconsis-
239 tencies, discrepancies or disputed issues apparent upon the face
240 of the filed examination report or raised by or as a result of the
241 commissioner's review of relevant workpapers or by the written
242 submission or rebuttal of the company. Within twenty days of
243 the conclusion of any hearing, the commissioner shall enter an
244 order pursuant to paragraph (A), subdivision (3), subsection (j)
245 of this section;

246 (2) The commissioner may not appoint an examiner as an
247 authorized representative to conduct the hearing. The hearing
248 shall proceed expeditiously with discovery by the company
249 limited to the examiner's workpapers which tend to substantiate
250 any assertions set forth in any written submission or rebuttal.
251 The commissioner or the commissioner's representative may
252 issue subpoenas for the attendance of any witnesses or the
253 production of any documents considered relevant to the
254 investigation whether under the control of the commissioner,
255 the company or other persons. The documents produced shall
256 be included in the record and testimony taken by the commis-
257 sioner or the commissioner's representative shall be under oath
258 and preserved for the record. Nothing contained in this section
259 shall require the commissioner to disclose any information or
260 records which would indicate or show the existence or content
261 of any investigation or activity of a criminal justice agency;

262 (3) The hearing shall proceed with the commissioner or the
263 commissioner's representative posing questions to the persons
264 subpoenaed. Thereafter, the company and the department may
265 present testimony relevant to the investigation. Cross-examina-
266 tion may be conducted only by the commissioner or the
267 commissioner's representative. The company and the commis-
268 sioner shall be permitted to make closing statements and may
269 be represented by counsel of their choice.

270 (l) Adoption of the examination report shall be subject to
271 the following requirements:

272 (1) Upon the adoption of the examination report under
273 paragraph (A), subdivision (3), subsection (j) of this section, the
274 commissioner may continue to hold the content of the examina-
275 tion report as private and confidential information for a period
276 of ninety days except to the extent provided in subdivision (6),
277 subsection (i) of this section. Thereafter, the commissioner may

278 open the report for public inspection so long as no court of
279 competent jurisdiction has stayed its publication;

280 (2) Nothing contained in this section may prevent or be
281 construed as prohibiting the commissioner from disclosing the
282 content of an examination report, preliminary examination
283 report or results or any matter relating thereto or the results of
284 any analysis or review to the insurance department of this or
285 any other state or country or to law-enforcement officials of this
286 or any other state or agency of the federal government at any
287 time, so long as the agency or office receiving the report or
288 matters relating thereto agrees in writing to hold it confidential
289 and in a manner consistent with this section;

290 (3) In the event the commissioner determines that regula-
291 tory action is appropriate as a result of any examination,
292 analysis or review, he or she may initiate any proceedings or
293 actions as provided by law;

294 (4) All working papers, recorded information, documents
295 and copies thereof produced by, obtained by or disclosed to the
296 commissioner or any other person in the course of an examina-
297 tion, analysis or review made under this section must be given
298 confidential treatment and are not subject to subpoena and may
299 not be made public by the commissioner or any other person,
300 except to the extent provided in subdivision (5), subsection (i)
301 of this section. Access may also be granted in accordance with
302 section nineteen of this article. The parties must agree in
303 writing prior to receiving the information to provide to it the
304 same confidential treatment as required by this section unless
305 the prior written consent of the company to which it pertains
306 has been obtained.

307 (m) The commissioner may require any examiner to furnish
308 a bond in such amount as the commissioner may determine to
309 be appropriate and the bond shall be approved, filed and

310 premium paid, with suitable proof submitted to the commis-
311 sioner, prior to commencement of employment by the commis-
312 sioner. No examiner may be appointed by the commissioner if
313 the examiner, either directly or indirectly, has a conflict of
314 interest or is affiliated with the management of or owns a
315 pecuniary interest in any person subject to examination under
316 this section. This section shall not be construed to automatically
317 preclude an examiner from being:

318 (1) A policyholder or claimant under an insurance policy;

319 (2) A grantor of a mortgage or similar instrument on the
320 examiner's residence to a regulated entity if done under
321 customary terms and in the ordinary course of business;

322 (3) An investment owner in shares of regulated diversified
323 investment companies; or

324 (4) A settlor or beneficiary of a "blind trust" into which any
325 otherwise impermissible holdings have been placed;

326 (5) Notwithstanding the requirements of this subsection, the
327 commissioner may retain, from time to time, on an individual
328 basis qualified actuaries, certified public accountants or other
329 similar individuals who are independently practicing their
330 professions even though these persons may, from time to time,
331 be similarly employed or retained by persons subject to
332 examination under this section.

333 (n) Personnel conducting examinations, analyses or reviews
334 of either a domestic, foreign or alien insurer shall be compen-
335 sated for each day worked at a rate set by the commissioner.
336 The personnel shall also be reimbursed for their travel and
337 living expenses at the rate set by the commissioner. Other
338 individuals who are not employees of the department of
339 insurance shall all be compensated for their work, travel and
340 living expenses at rates approved by the commissioner or as

341 otherwise provided by law. As used in this section, the costs of
342 an examination, analysis or review means:

343 (1) The entire compensation for each day worked by all
344 personnel, including those who are not employees of the
345 department of insurance, the conduct of the examination,
346 analysis or review calculated as hereinbefore provided;

347 (2) Travel and living expenses of all personnel, including
348 those who are not employees of the department of insurance,
349 directly engaged in the conduct of the examination, analysis or
350 review calculated at the rates as hereinbefore provided for;

351 (3) All other incidental expenses incurred by or on behalf
352 of the personnel in the conduct of any authorized examination,
353 analysis or review.

354 (o) All insurers subject to the provisions of this section
355 shall annually pay to the commissioner on or before the first
356 day of July, one thousand nine hundred ninety-one, and every
357 first day of July thereafter an examination assessment fee of
358 eight hundred dollars. Four hundred fifty dollars of this fee
359 shall be paid to the treasurer of the state to the credit of a
360 special revolving fund to be known as the "Commissioner's
361 Examination Revolving Fund" which is hereby established and
362 three hundred fifty dollars shall be paid to the treasurer of the
363 state. The commissioner may at his or her discretion, upon
364 notice to the insurers subject to this section, increase this
365 examination assessment fee or levy an additional examination
366 assessment fee of two hundred fifty dollars. In no event may the
367 total examination assessment fee, including any additional
368 examination assessment fee levied, exceed one thousand five
369 hundred dollars per insurer in any calendar year.

370 (p) The moneys collected by the commissioner from an
371 increase or additional examination assessment fee shall be paid
372 to the treasurer of the state to be credited to the commissioner's

373 examination revolving fund. Any funds expended or obligated
374 by the commissioner from the commissioner's examination
375 revolving fund may be expended or obligated solely for
376 defrayment of the costs of examinations, analyses or reviews of
377 the financial affairs and business practices of insurance
378 companies, agents, brokers, excess lines brokers, solicitors or
379 other individuals or corporations transacting or attempting to
380 transact an insurance business in this state made by the com-
381 missioner pursuant to this section or for the purchase of
382 equipment and supplies, travel, education and training for the
383 commissioner's deputies, other employees and appointed
384 examiners necessary for the commissioner to fulfill the statu-
385 tory obligations created by this section.

386 (q) The commissioner may require other individuals who
387 are not employees of the department of insurance who have
388 been appointed by the commissioner to conduct or participate
389 in the examination, analysis or review of insurers, agents,
390 brokers, excess lines brokers, solicitors or other individuals or
391 corporations transacting or attempting to transact an insurance
392 business in this state to:

393 (1) Bill and receive payments directly from the insurance
394 company being examined, analyzed or reviewed for their work,
395 travel and living expenses as previously provided for in this
396 section; or

397 (2) If an individual agent, broker or solicitor is being
398 examined, analyzed or reviewed, bill and receive payments
399 directly from the commissioner's examination revolving fund
400 for their work, travel and living expenses as previously pro-
401 vided for in this section. The commissioner may recover costs
402 paid from the commissioner's examination revolving fund
403 pursuant to this subdivision from the person upon whom the
404 examination, analysis or review is conducted.

405 (r) The commissioner and his or her examiners shall be
406 entitled to immunity to the following extent:

407 (1) No cause of action shall arise nor shall any liability be
408 imposed against the commissioner or his or her examiners for
409 any statements made or conduct performed in good faith while
410 carrying out the provisions of this section;

411 (2) No cause of action shall arise, nor shall any liability be
412 imposed, against any person for the act of communicating or
413 delivering information or data to the commissioner or his or her
414 examiners pursuant to an examination, analysis or review made
415 under this section if the act of communication or delivery was
416 performed in good faith and without fraudulent intent or the
417 intent to deceive;

418 (3) The commissioner or any examiner shall be entitled to
419 an award of attorney's fees and costs if he or she is the prevail-
420 ing party in a civil cause of action for libel, slander or any other
421 relevant tort arising out of activities in carrying out the provi-
422 sions of this section and the party bringing the action was not
423 substantially justified in doing so. For purposes of this section,
424 a proceeding is "substantially justified" if it had a reasonable
425 basis in law or fact at the time that it was initiated;

426 (4) This subsection does not abrogate or modify in any way
427 any constitutional immunity or common law or statutory
428 privilege or immunity heretofore enjoyed by any person
429 identified in subdivision (1) of this subsection.

§33-2-19. Confidentiality of information.

1 In order to assist the commissioner in the regulation of
2 insurers in this state, it is the duty of the commissioner to
3 maintain, as confidential, and to take all reasonable steps to
4 oppose any effort to secure disclosure of, any documents or
5 information received from the national association of insurance

6 commissioners, federal banking agencies or insurance depart-
7 ments of other states which is confidential in such other
8 jurisdictions. It is within the power of the commissioner to
9 share information, including otherwise confidential informa-
10 tion, with the national association of insurance commissioners,
11 the board of governors of the federal reserve system or other
12 appropriate federal banking agency or insurance departments of
13 other states: *Provided*, That such other jurisdictions agree to
14 maintain the same level of confidentiality as is available under
15 this statute and to take all reasonable steps to oppose any effort
16 to secure disclosure of the information. "Federal banking
17 agency" means the comptroller of the currency, the director of
18 the office of thrift supervision, the board of governors of the
19 federal reserve system or the federal deposit insurance corpora-
20 tion as set forth in section three of the federal deposit insurance
21 act.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law.

1 (a) *Title*. -- This section shall be known as the standard
2 valuation law.

3 (b) *Reserve valuation*. -- The commissioner shall annually
4 value, or cause to be valued, the reserve liabilities (hereinafter
5 called reserves) for all outstanding life insurance policies and
6 annuity and pure endowment contracts of every life insurance
7 company doing business in this state and may certify the
8 amount of any such reserves specifying the mortality table or
9 tables, rate or rates of interest and methods (net level premium
10 method or other) used in the calculation of such reserves. In
11 calculating such reserves, he or she may use group methods and
12 approximate averages for fractions of a year or otherwise. In
13 lieu of the valuation of the reserves herein required of any
14 foreign or alien company, he or she may accept any valuation
15 made, or caused to be made, by the insurance supervisory

16 official of any state or other jurisdiction when such valuation
17 complies with the minimum standard herein provided and if the
18 official of such state or jurisdiction accepts as sufficient and for
19 all valid legal purposes the certificate of valuation of the
20 commissioner when such certificate states the valuation to have
21 been made in a specified manner according to which the
22 aggregate reserves would be at least as large as if they had been
23 computed in the manner prescribed by the law of that state or
24 jurisdiction.

25 (c) *Actuarial opinion of reserves.* — This subsection shall
26 become operative on the first day of January, one thousand nine
27 hundred ninety-six.

28 (1) *General.* — Every life insurance company doing
29 business in this state shall annually submit the opinion of a
30 qualified actuary as to whether the reserves and related actuarial
31 items held in support of the policies and contracts specified by
32 the commissioner by regulation are computed appropriately, are
33 based on assumptions which satisfy contractual provisions, are
34 consistent with prior reported amounts and comply with
35 applicable laws of this state. The commissioner by regulation
36 shall define the specifics of this opinion and add any other item
37 considered to be necessary to its scope.

38 (2) *Actuarial analysis of reserves and assets supporting*
39 *such reserves.* —

40 (A) Every life insurance company, except as exempted by
41 or pursuant to regulation, shall also annually include in the
42 opinion required by subdivision (1) of this subsection an
43 opinion of the same qualified actuary as to whether the reserves
44 and related actuarial items held in support of the policies and
45 contracts specified by the commissioner by regulation, when
46 considered in light of the assets held by the company with
47 respect to the reserves and related actuarial items, including, but

48 not limited to, the investment earnings on the assets and the
49 considerations anticipated to be received and retained under the
50 policies and contracts, make adequate provision for the com-
51 pany's obligations under the policies and contracts, including,
52 but not limited to, the benefits under and expenses associated
53 with the policies and contracts.

54 (B) The commissioner may provide by regulation for a
55 transition period for establishing any higher reserves which the
56 qualified actuary may consider necessary in order to render the
57 opinion required by this subsection.

58 (3) *Requirement for opinion under subdivision (2).* — Each
59 opinion required by subdivision (2) of this subsection shall be
60 governed by the following provisions:

61 (A) A memorandum in form and substance acceptable to
62 the commissioner as specified by regulation shall be prepared
63 to support each actuarial opinion.

64 (B) If the insurance company fails to provide a supporting
65 memorandum at the request of the commissioner within a
66 period specified by regulation or the commissioner determines
67 that the supporting memorandum provided by the insurance
68 company fails to meet the standards prescribed by the regula-
69 tions or is otherwise unacceptable to the commissioner, the
70 commissioner may engage a qualified actuary at the expense of
71 the company to review the opinion and the basis for the opinion
72 and prepare such supporting memorandum as is required by the
73 commissioner.

74 (4) *Requirement for all opinions.* — Every opinion shall be
75 governed by the following provisions:

76 (A) The opinion shall be submitted with the annual state-
77 ment reflecting the valuation of such reserve liabilities for each

78 year ending on or after the thirty-first day of December, one
79 thousand nine hundred ninety-five.

80 (B) The opinion shall apply to all business in force,
81 including individual and group health insurance plans, in form
82 and substance acceptable to the commissioner as specified by
83 regulation.

84 (C) The opinion shall be based on standards adopted, from
85 time to time, by the actuarial standards board and on such
86 additional standards as the commissioner may by regulation
87 prescribe.

88 (D) In the case of an opinion required to be submitted by a
89 foreign or alien company, the commissioner may accept the
90 opinion filed by that company with the insurance supervisory
91 official of another state if the commissioner determines that the
92 opinion reasonably meets the requirements applicable to a
93 company domiciled in this state.

94 (E) For the purposes of this section, "qualified actuary"
95 means a member in good standing of the American academy of
96 actuaries who meets the requirements set forth in such regula-
97 tions.

98 (F) Except in cases of fraud or willful misconduct, the
99 qualified actuary shall not be liable for damages to any person
100 (other than the insurance company and the commissioner) for
101 any act, error, omission, decision or conduct with respect to the
102 actuary's opinion.

103 (G) Disciplinary action by the commissioner against the
104 company or the qualified actuary shall be defined in regulations
105 by the commissioner.

106 (H) Any memorandum in support of the opinion and any
107 other material provided by the company to the commissioner in

108 connection therewith shall be kept confidential by the commis-
109 sioner and shall not be made public and shall not be subject to
110 subpoena, other than for the purpose of defending an action
111 seeking damages from any person by reason of any action
112 required by this section or by regulations promulgated hereun-
113 der: *Provided*, That the memorandum or other material may
114 otherwise be released by the commissioner: (i) With the written
115 consent of the company; (ii) to the American academy of
116 actuaries upon request stating that the memorandum or other
117 material is required for the purpose of professional disciplinary
118 proceedings and setting forth procedures satisfactory to the
119 commissioner for preserving the confidentiality of the memo-
120 randum or other material; or (iii) in accordance with section
121 nineteen, article two of this chapter. Once any portion of the
122 confidential memorandum is cited by the company in its
123 marketing or is cited by the company before any governmental
124 agency other than a state insurance department or is released by
125 the company to the news media, all portions of the confidential
126 memorandum shall be no longer confidential.

127 (d) *Computation of minimum standards.* — Except as
128 otherwise provided in subsections (e), (f) and (m) of this
129 section, the minimum standard for the valuation of all such
130 policies and contracts issued prior to the effective date of this
131 section shall be that provided by the laws in effect immediately
132 prior to such date. Except as otherwise provided in subsections
133 (e), (f) and (m) of this section, the minimum standard for the
134 valuation of all such policies and contracts issued on or after the
135 effective date of this section shall be the commissioners reserve
136 valuation methods defined in subsections (g), (h), (k) and (m)
137 of this section, three and one-half percent interest or in the case
138 of life insurance policies and contracts, other than annuity and
139 pure endowment contracts, issued on or after the first day of
140 June, one thousand nine hundred seventy-four, four percent
141 interest for such policies issued prior to the sixth day of April,
142 one thousand nine hundred seventy-seven, five and one-half

143 percent interest for single premium life insurance policies and
144 four and one-half percent interest for all other such policies
145 issued on and after the sixth day of April, one thousand nine
146 hundred seventy-seven, and the following tables:

147 (1) For all ordinary policies of life insurance issued on the
148 standard basis, excluding any disability and accidental death
149 benefits in such policies: The commissioners 1941 standard
150 ordinary mortality table for such policies issued prior to the
151 operative date of subsection (4a), section thirty, article thirteen
152 of this chapter; the commissioners 1958 standard ordinary
153 mortality table for such policies issued on or after the operative
154 date of said subsection and prior to the operative date of
155 subsection (4c) of said section: *Provided*, That for any category
156 of such policies issued on female risks, all modified net
157 premiums and present values referred to in this section may be
158 calculated according to an age not more than six years younger
159 than the actual age of the insured; and for such policies issued
160 on or after the operative date of subsection (4c), section thirty,
161 article thirteen of this chapter: (i) The commissioners 1980
162 standard ordinary mortality table; or (ii) at the election of the
163 company for any one or more specified plans of life insurance,
164 the commissioners 1980 standard ordinary mortality table with
165 ten-year select mortality factors; or (iii) any ordinary mortality
166 table adopted after the year one thousand nine hundred eighty
167 by the national association of insurance commissioners that is
168 approved by regulation promulgated by the commissioner for
169 use in determining the minimum standard of valuation for such
170 policies.

171 (2) For all industrial life insurance policies issued on the
172 standard basis, excluding any disability and accidental death
173 benefits in such policies: The 1941 standard industrial mortality
174 table for such policies issued prior to the operative date of
175 subdivision (4), subsection (b), section thirty, article thirteen of
176 this chapter and for such policies issued on or after such

177 operative date, the commissioners 1961 standard industrial
178 mortality table or any industrial mortality table adopted after
179 the year one thousand nine hundred eighty by the national
180 association of insurance commissioners that is approved by
181 regulation promulgated by the commissioner for use in deter-
182 mining the minimum standard of valuation for such policies.

183 (3) For individual annuity and pure endowment contracts,
184 excluding any disability and accidental death benefits in such
185 policies: The 1937 standard annuity mortality table or, at the
186 option of the company, the annuity mortality table for 1949,
187 ultimate, or any modification of either of these tables approved
188 by the commissioner.

189 (4) For group annuity and pure endowment contracts,
190 excluding any disability and accidental death benefits in such
191 policies: The group annuity mortality table for 1951, any
192 modification of such table approved by the commissioner, or at
193 the option of the company, any of the tables or modifications of
194 tables specified for individual annuity and pure endowment
195 contracts.

196 (5) For total and permanent disability benefits in or
197 supplementary to ordinary policies or contracts: For policies or
198 contracts issued on or after the first day of January, one
199 thousand nine hundred sixty-six, the tables of period two
200 disablement rates and the 1930 to 1950 termination rates of the
201 1952 disability study of the society of actuaries, with due regard
202 to the type of benefit or any tables of disablement rates and
203 termination rates adopted after the year one thousand nine
204 hundred eighty by the national association of insurance com-
205 missioners that are approved by regulation promulgated by the
206 commissioner for use in determining the minimum standard of
207 valuation for such policies; for policies or contracts issued on
208 or after the first day of January, one thousand nine hundred
209 sixty-one, and prior to the first day of January, one thousand

210 nine hundred sixty-six, either such tables or, at the option of the
211 company, the Class (3) disability table (1926); and for policies
212 issued prior to the first day of January, one thousand nine
213 hundred sixty-one, the Class (3) disability table (1926).

214 Any such table shall, for active lives, be combined with a
215 mortality table permitted for calculating the reserves for life
216 insurance policies.

217 (6) For accidental death benefits in or supplementary to
218 policies issued on or after the first day of January, one thousand
219 nine hundred sixty-six, the 1959 accidental death benefits table
220 or any accidental death benefits table adopted after the year one
221 thousand nine hundred eighty by the national association of
222 insurance commissioners, that is approved by regulation
223 promulgated by the commissioner for use in determining the
224 minimum standard of valuation for such policies, for policies
225 issued on or after the first day of January, one thousand nine
226 hundred sixty-one, and prior to the first day of January, one
227 thousand nine hundred sixty-six, either such table or, at the
228 option of the company, the intercompany double indemnity
229 mortality table; and for policies issued prior to the first day of
230 January, one thousand nine hundred sixty-one, the
231 intercompany double indemnity mortality table. Either table
232 shall be combined with a mortality table for calculating the
233 reserves for life insurance policies.

234 (7) For group life insurance, life insurance issued on the
235 substandard basis and other special benefits: Such tables as may
236 be approved by the commissioner.

237 (e) *Computation of minimum standard for annuities.* —
238 Except as provided in subsection (f) of this section, the mini-
239 mum standard for the valuation of all individual annuity and
240 pure endowment contracts issued on or after the operative date
241 of this subsection, as defined herein, and for all annuities and

242 pure endowments purchased on or after such operative date
243 under group annuity and pure endowment contracts shall be the
244 commissioner's reserve valuation methods defined in subsec-
245 tions (g) and (h) of this section and the following tables and
246 interest rates:

247 (1) For individual annuity and pure endowment contracts
248 issued prior to the sixth day of April, one thousand nine
249 hundred seventy-seven, excluding any disability and accidental
250 death benefits in such contracts: The 1971 individual annuity
251 mortality table or any modification of this table approved by the
252 commissioner and six percent interest for single premium
253 immediate annuity contracts and four percent interest for all
254 other individual annuity and pure endowment contracts;

255 (2) For individual single premium immediate annuity
256 contracts issued on or after the sixth day of April, one thousand
257 nine hundred seventy-seven, excluding any disability and
258 accidental death benefits in such contracts: The 1971 individual
259 annuity mortality table or any individual annuity mortality table
260 adopted after the year one thousand nine hundred eighty by the
261 national association of insurance commissioners that is ap-
262 proved by regulation promulgated by the commissioner for use
263 in determining the minimum standard of valuation for such
264 contracts or any modification of these tables approved by the
265 commissioner and seven and one-half percent interest;

266 (3) For individual annuity and pure endowment contracts
267 issued on or after the sixth day of April, one thousand nine
268 hundred seventy-seven, other than single premium immediate
269 annuity contracts, excluding any disability and accidental death
270 benefits in such contracts: The 1971 individual annuity mortal-
271 ity table or any individual annuity mortality table adopted after
272 the year one thousand nine hundred eighty by the national
273 association of insurance commissioners that is approved by
274 regulation promulgated by the commissioner for use in deter-

275 mining the minimum standard of valuation for such contracts or
276 any modification of these tables approved by the commissioner
277 and five and one-half percent interest for single premium
278 deferred annuity and pure endowment contracts and four and
279 one-half percent interest for all other such individual annuity
280 and pure endowment contracts;

281 (4) For all annuities and pure endowments purchased prior
282 to the sixth day of April, one thousand nine hundred seventy-
283 seven, under group annuity and pure endowment contracts,
284 excluding any disability and accidental death benefits pur-
285 chased under such contracts: The 1971 group annuity mortality
286 table or any modification of this table approved by the commis-
287 sioner and six percent interest;

288 (5) For all annuities and pure endowments purchased on or
289 after the sixth day of April, one thousand nine hundred sev-
290 enty-seven, under group annuity and pure endowment contracts,
291 excluding any disability and accidental death benefits pur-
292 chased under such contracts: The 1971 group annuity mortality
293 table or any group annuity mortality table adopted after the year
294 one thousand nine hundred eighty by the national association of
295 insurance commissioners that is approved by regulation
296 promulgated by the commissioner for use in determining the
297 minimum standard of valuation for such annuities and pure
298 endowments or any modification of these tables approved by
299 the commissioner and seven and one-half percent interest.

300 After the third day of June, one thousand nine hundred
301 seventy-four, any company may file with the commissioner a
302 written notice of its election to comply with the provisions of
303 this subsection after a specified date before the first day of
304 January, one thousand nine hundred seventy-nine, which shall
305 be the operative date of this subsection for such company
306 provided, if a company makes no such election, the operative

307 date of this section for such company shall be the first day of
308 January, one thousand nine hundred seventy-nine.

309 (f) *Computation of minimum standard by calendar year of*
310 *issue.* —

311 (1) *Applicability of this section.* — The interest rates used
312 in determining the minimum standard for the valuation of:

313 (A) All life insurance policies issued in a particular
314 calendar year, on or after the operative date of subdivision (4),
315 subsection (c), section thirty, article thirteen of this chapter as
316 amended;

317 (B) All individual annuity and pure endowment contracts
318 issued in a particular calendar year on or after the first day of
319 January, one thousand nine hundred eighty-two;

320 (C) All annuities and pure endowments purchased in a
321 particular calendar year on or after the first day of January, one
322 thousand nine hundred eighty-two, under group annuity and
323 pure endowment contracts; and

324 (D) The net increase, if any, in a particular calendar year
325 after the first day of January, one thousand nine hundred
326 eighty-two, in amounts held under guaranteed interest contracts,
327 shall be the calendar year statutory valuation interest rates as
328 defined in this subsection.

329 (2) *Calendar year statutory valuation interest rates.* —

330 (A) The calendar year statutory valuation interest rates, I,
331 shall be determined as follows and the results rounded to the
332 nearer one quarter of one percent:

333 (i) For life insurance, $I = .03 + W(R1 -.03) + W/2(R2 -.09)$;

334 (ii) For single premium immediate annuities and for annuity
335 benefits involving life contingencies arising from other annu-
336 ities with cash settlement options and from guaranteed interest
337 contracts with cash settlement options, $I = .03 + W \times R$ (where R_1 is the lesser of R and $.09$, R_2 is the greater of R and
338 $.09$, R is the reference interest rate defined in this subsection
339 and W is the weighting factor defined in this section;

341 (iii) For other annuities with cash settlement options and
342 guaranteed interest contracts with cash settlement options,
343 valued on an issue year basis, except as stated in subparagraph
344 (ii) of this paragraph, the formula for life insurance stated in
345 subparagraph (i) of this paragraph shall apply to annuities and
346 guaranteed interest contracts with guarantee durations in excess
347 of ten years and the formula for single premium immediate
348 annuities stated in subparagraph (ii) of this paragraph shall
349 apply to annuities and guaranteed interest contracts with
350 guarantee duration of ten years or less;

351 (iv) For other annuities with no cash settlement options and
352 for guaranteed interest contracts with no cash settlement
353 options, the formula for single premium immediate annuities
354 stated in subparagraph (ii) of this paragraph shall apply;

355 (v) For other annuities with cash settlement options and
356 guaranteed interest contracts with cash settlement options,
357 valued on a change in fund basis, the formula for single
358 premium immediate annuities stated in subparagraph (ii) of this
359 paragraph shall apply.

360 (B) However, if the calendar year statutory valuation
361 interest rate for any life insurance policies issued in any
362 calendar year determined without reference to this sentence
363 differs from the corresponding actual rate for similar policies
364 issued in the immediately preceding calendar year by less than
365 one half of one percent, the calendar year statutory valuation

366 interest rate for such life insurance policies shall be equal to the
367 corresponding actual rate for the immediately preceding
368 calendar year. For purposes of applying the immediately
369 preceding sentence, the calendar year statutory valuation
370 interest rate for life insurance policies issued in a calendar year
371 shall be determined for the year one thousand nine hundred
372 eighty (using the reference interest rate defined for the year one
373 thousand nine hundred seventy-nine) and shall be determined
374 for each subsequent calendar year regardless of when subdivi-
375 sion (4), subsection (c), section thirty, article thirteen of this
376 chapter, as amended, becomes operative.

377 (3) *Weighting factors.* –

378 (A) The weighting factors referred to in the formulas stated
379 above are given in the following tables:

380 (i) Weighting Factors for Life Insurance:

381	Guarantee	
382	Duration	Weighting
383	(Years)	Factors
384	<hr/>	<hr/>
385	10 or less	.50
386	More than 10, but not more than 20	.45
387	More than 20	.35

388 For life insurance, the guarantee duration is the maximum
389 number of years the life insurance can remain in force on a
390 basis guaranteed in the policy or under options to convert to
391 plans of life insurance with premium rates or nonforfeiture
392 values or both which are guaranteed in the original policy;

393 (ii) Weighting factor for single premium immediate
394 annuities and for annuity benefits involving life contingencies
395 arising from other annuities with cash settlement options and
396 guaranteed interest contracts with cash settlement options: .80;

397 (iii) Weighting factors for other annuities and for guaran-
398 teed interest contracts, except as stated in subparagraph (ii) of
399 this paragraph, shall be as specified in clauses (I), (II) and (III)
400 of this subparagraph, according to the rules and definitions in
401 clauses (IV), (V) and (VI) of this subparagraph:

402 (I) For annuities and guaranteed interest contracts valued on
403 an issue year basis:

404	Guarantee	Weighting Factor		
405	Duration	for Plan Type		
406	(Years)	A	B	C
407	<hr/>	<hr/>		
408	5 or less:	.80	.60	.50
409	More than 5, but not more than 10:	.75	.60	.50
410	More than 10, but not more than 20:	.65	.50	.45
411	More than 20:	.45	.35	.35

412 (II) For annuities and guaranteed interest contracts valued
413 on a change in fund basis, the factors shown in subparagraph (i)
414 of this paragraph increased by:

415		Weighting Factor		
416		for Plan Type		
417		A	B	C1
418		<hr/>		
419		.15	.25	.05

420 (III) For annuities and guaranteed interest contracts valued
421 on an issue year basis (other than those with no cash settlement
422 options) which do not guarantee interest on considerations
423 received more than one year after issue or purchase and for
424 annuities and guaranteed interest contracts valued on a change
425 in fund basis which do not guarantee interest rates on consider-
426 ations received more than twelve months beyond the valuation
427 date, the factors shown in clause (I) of this subparagraph or
428 derived in clause (II) of this subparagraph increased by:

429	Weighting Factor for Plan Type		
430	A	B	C1
431	<hr/>		
432	.05	.05	.05

433 (IV) For other annuities with cash settlement options and
434 guaranteed interest contracts with cash settlement options, the
435 guarantee duration is the number of years for which the contract
436 guarantees interest rates in excess of the calendar year statutory
437 valuation interest rate for life insurance policies with guarantee
438 duration in excess of twenty years. For other annuities with no
439 cash settlement options and for guaranteed interest contracts
440 with no cash settlement options, the guaranteed duration is the
441 number of years from the date of issue or date of purchase to
442 the date annuity benefits are scheduled to commence.

443 (V) Plan type as used in the above tables is defined as
444 follows:

445 Plan Type A:

446 At any time policyholder may withdraw funds only: (1)
447 With an adjustment to reflect changes in interest rates or asset
448 values since receipt of the funds by the insurance company; or
449 (2) without such adjustment but in installments over five years

450 or more; or (3) as an immediate life annuity; or (4) no with-
451 drawal permitted;

452 Plan Type B:

453 Before expiration of the interest rate guarantee, policy-
454 holder may withdraw funds only: (1) With an adjustment to
455 reflect changes in interest rates or asset values since receipt of
456 the funds by the insurance company; or (2) without such
457 adjustment but in installments over five years or more; or (3) no
458 withdrawal permitted. At the end of interest rate guarantee,
459 funds may be withdrawn without such adjustment in a single
460 sum or installments over less than five years;

461 Plan Type C:

462 Policyholder may withdraw funds before expiration of
463 interest rate guarantee in a single sum or installments over less
464 than five years either: (1) Without adjustment to reflect changes
465 in interest rates or asset values since receipt of the funds by the
466 insurance company; or (2) subject only to a fixed surrender
467 charge stipulated in the contract as a percentage of the fund.

468 (VI) A company may elect to value guaranteed interest
469 contracts with cash settlement options and annuities with cash
470 settlement options on either an issue year basis or on a change
471 in fund basis. Guaranteed interest contracts with no cash
472 settlement options and other annuities with no cash settlement
473 options must be valued on an issue year basis. As used in this
474 section, an issue year basis of valuation refers to a valuation
475 basis under which the interest rate used to determine the
476 minimum valuation standard for the entire duration of the
477 annuity or guaranteed interest contract is the calendar year
478 valuation interest rate for the year of issue or year of purchase
479 of the annuity or guaranteed interest contract and the change in
480 fund basis of valuation refers to a valuation basis under which
481 the interest rate used to determine the minimum valuation

482 standard applicable to each change in the fund held under the
483 annuity or guaranteed interest contract is the calendar year
484 valuation interest rate for the year of the change in the fund.

485 (4) *Reference interest rate.* —

486 (A) Reference interest rate referred to in subparagraph (ii),
487 paragraph (A), subdivision (2) of this subsection shall be
488 defined as follows:

489 (i) For all life insurance, the lesser of the average over a
490 period of thirty-six months and the average over a period of
491 twelve months, ending on the thirtieth day of June of the
492 calendar year next preceding the year of issue, of the monthly
493 average of the composite yield on seasoned corporate bonds as
494 published by Moody's investors service, inc.

495 (ii) For single premium immediate annuities and for annuity
496 benefits involving life contingencies arising from other annu-
497 ities with cash settlement options and guaranteed interest
498 contracts with cash settlement options, the average over a
499 period of twelve months, ending on the thirtieth day of June of
500 the calendar year of issue or year of purchase, of the monthly
501 average of the composite yield on seasoned corporate bonds as
502 published by Moody's investors service, inc.

503 (iii) For other annuities with cash settlement options and
504 guaranteed interest contracts with cash settlement options,
505 valued on a year of issue basis, except as stated in subparagraph
506 (ii) of this paragraph, with guarantee duration in excess of ten
507 years, the lesser of the average over a period of thirty-six
508 months and the average over a period of twelve months, ending
509 on the thirtieth day of June of the calendar year of issue or
510 purchase, of the monthly average of the composite yield on
511 seasoned corporate bonds as published by Moody's investors
512 service, inc.

513 (iv) For other annuities with cash settlement options and
514 guaranteed interest contracts with cash settlement options,
515 valued on a year of issue basis, except as stated in subparagraph
516 (ii) of this paragraph, with guarantee duration of ten years or
517 less, the average over a period of twelve months, ending on the
518 thirtieth day of June of the calendar year of issue or purchase,
519 of the monthly average of the composite yield on seasoned
520 corporate bonds as published by Moody's investors service, inc.

521 (v) For other annuities with no cash settlement options and
522 for guaranteed interest contracts with no cash settlement
523 options, the average over a period of twelve months, ending on
524 the thirtieth day of June of the calendar year of issue or purchase,
525 of the monthly average of the composite yield on
526 seasoned corporate bonds as published by Moody's investors
527 service, inc.

528 (vi) For other annuities with cash settlement options and
529 guaranteed interest contracts with cash settlement options,
530 valued on a change in fund basis, except as stated in subparagraph
531 (ii) of this paragraph, the average over a period of twelve
532 months, ending on the thirtieth day of June of the calendar year
533 of the change in the fund, of the monthly average of the
534 composite yield on seasoned corporate bonds as published by
535 Moody's investors service, inc.

536 (5) *Alternative method for determining reference interest*
537 *rates. —*

538 In the event that the monthly average of the composite yield
539 on seasoned corporate bonds is no longer published by Moody's
540 investors service, inc., or in the event that the national association
541 of insurance commissioners determines that the monthly
542 average of the composite yield on seasoned corporate bonds as
543 published by Moody's investors service, inc., is no longer
544 appropriate for the determination of the reference interest rate,

545 then an alternative method for determination of the reference
546 interest rate, which is adopted by the national association of
547 insurance commissioners and approved by regulation promul-
548 gated by the commissioner, may be substituted.

549 (g) *Reserve valuation method.* — Life insurance and
550 endowment benefits.

551 Except as otherwise provided in subsections (h), (k) and
552 (m) of this section, reserves according to the commissioners
553 reserve valuation method for the life insurance and endowment
554 benefits of policies providing for a uniform amount of insur-
555 ance and requiring the payment of uniform premiums shall be
556 the excess, if any, of the present value, at the date of valuation,
557 of such future guaranteed benefits provided for by such
558 policies, over the then present value of any future modified net
559 premiums therefor. The modified net premiums for any such
560 policy shall be such uniform percentage of the respective
561 contract premiums for such benefits that the present value, at
562 the date of issue of the policy, of all such modified net premi-
563 ums shall be equal to the sum of the then present value of such
564 benefits provided for by the policy and the excess of subdivi-
565 sion (1) of this subsection over subdivision (2) of this subsec-
566 tion, as follows:

567 (1) A net level annual premium equal to the present value,
568 at the date of issue, of such benefits provided for after the first
569 policy year, divided by the present value, at the date of issue, of
570 an annuity of one per annum payable on the first and each
571 subsequent anniversary of such policy on which a premium
572 falls due: *Provided*, That such net level annual premium shall
573 not exceed the net level annual premium on the nineteen-year
574 premium whole life plan for insurance of the same amount at an
575 age one year higher than the age at issue of such policy.

576 (2) A net one-year term premium for such benefits provided
577 for in the first policy year: *Provided*, That for any life insurance
578 policy issued on or after the first day of January, one thousand
579 nine hundred eighty-five, for which the contract premium in the
580 first policy year exceeds that of the second year and for which
581 no comparable additional benefit is provided in the first year for
582 such excess and which provides an endowment benefit or a cash
583 surrender value or a combination thereof in an amount greater
584 than such excess premium, the reserve according to the com-
585 missioners' reserve valuation method as of any policy anniver-
586 sary occurring on or before the assumed ending date defined
587 herein as the first policy anniversary on which the sum of any
588 endowment benefit and any cash surrender value then available
589 is greater than such excess premium shall, except as otherwise
590 provided in subsection (k) of this section, be the greater of the
591 reserve as of such policy anniversary calculated as described in
592 the preceding paragraph and the reserve as of such policy
593 anniversary calculated as described in that paragraph, but with:
594 (i) The value defined in subdivision (1) of that paragraph being
595 reduced by fifteen percent of the amount of such excess first-
596 year premium; (ii) all present values of benefits and premiums
597 being determined without reference to premiums or benefits
598 provided for by the policy after the assumed ending date; (iii)
599 the policy being assumed to mature on such date as an endow-
600 ment; and (iv) the cash surrender value provided on such date
601 being considered as an endowment benefit. In making the above
602 comparison, the mortality and interest bases stated in subsec-
603 tions (d) and (f) of this section shall be used.

604 Reserves according to the commissioners' reserve valuation
605 method for: (i) Life insurance policies providing for a varying
606 amount of insurance or requiring the payment of varying
607 premiums; (ii) group annuity and pure endowment contracts
608 purchased under a retirement plan or plan of deferred compen-
609 sation, established or maintained by an employer (including a
610 partnership or sole proprietorship) or by an employee organiza-

611 tion, or by both, other than a plan providing individual retire-
612 ment accounts or individual retirement annuities under section
613 408 of the Internal Revenue Code (26 U. S. C. §408) as now or
614 hereafter amended; (iii) disability and accidental death benefits
615 in all policies and contracts; and (iv) all other benefits, except
616 life insurance and endowment benefits in life insurance policies
617 and benefits provided by all other annuity and pure endowment
618 contracts, shall be calculated by a method consistent with the
619 principles of the preceding paragraphs of this section.

620 (h) *Reserve valuation method.* — Annuity and pure endow-
621 ment benefits. This subsection shall apply to all annuity and
622 pure endowment contracts other than group annuity and pure
623 endowment contracts purchased under a retirement plan or plan
624 of deferred compensation established or maintained by an
625 employer (including a partnership or sole proprietorship) or by
626 an employee organization, or by both, other than a plan
627 providing individual retirement accounts or individual retire-
628 ment annuities under section 408 of the Internal Revenue Code
629 (26 U. S. C. §408) as now or hereafter amended.

630 Reserves according to the commissioners' annuity reserve
631 method for benefits under annuity or pure endowment con-
632 tracts, excluding any disability and accidental death benefits in
633 such contracts, shall be the greatest of the respective excesses
634 of the present values, at the date of valuation, of the future
635 guaranteed benefits, including guaranteed nonforfeiture
636 benefits, provided for by such contracts at the end of each
637 respective contract year over the present value, at the date of
638 valuation, of any future valuation considerations derived from
639 future gross considerations, required by the terms of such
640 contract, that become payable prior to the end of such respec-
641 tive contract year.

642 The future guaranteed benefits shall be determined by using
643 the mortality table, if any, and the interest rate, or rates,
644 specified in such contracts for determining guaranteed benefits.
645 The valuation considerations are the portions of the respective

gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) *Minimum reserves.* —

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) *Optional reserve calculation.* —

Reserves for all policies and contracts issued prior to the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher

676 than the corresponding rate or rates of interest used in calculat-
677 ing any nonforfeiture benefits provided therein.

678 Any such company which at any time shall have adopted
679 any standard of valuation producing greater aggregate reserves
680 than those calculated according to the minimum standard herein
681 provided may, with the approval of the commissioner, adopt
682 any lower standard of valuation, but not lower than the mini-
683 mum herein provided: *Provided*, That for the purposes of this
684 section, the holding of additional reserves previously deter-
685 mined by a qualified actuary to be necessary to render the
686 opinion required by subsection (c) of this section shall not be
687 considered to be the adoption of a higher standard of valuation.

688 (k) *Reserve calculation.* — Valuation net premium exceed-
689 ing the gross premium charged.

690 If in any contract year the gross premium charged by any
691 life insurance company on any policy or contract is less than the
692 valuation net premium for the policy or contract calculated by
693 the method used in calculating the reserve thereon but using the
694 minimum valuation standards of mortality and rate of interest,
695 the minimum reserve required for such policy or contract shall
696 be the greater of either the reserve calculated according to the
697 mortality table, rate of interest and method actually used for
698 such policy or contract or the reserve calculated by the method
699 actually used for such policy or contract but using the minimum
700 valuation standards of mortality and rate of interest and
701 replacing the valuation net premium by the actual gross
702 premium in each contract year for which the valuation net
703 premium exceeds the actual gross premium. The minimum
704 valuation standards of mortality and rate of interest referred to
705 in this section are those standards stated in subsections (d) and
706 (f) of this section: *Provided*, That for any life insurance policy
707 issued on or after the first day of January, one thousand nine
708 hundred eighty-five, for which the gross premium in the first

709 policy year exceeds that of the second year and for which no
710 comparable additional benefit is provided in the first year for
711 such excess and which provides an endowment benefit or a cash
712 surrender value or a combination thereof in an amount greater
713 than such excess premium, the foregoing provisions of this
714 subsection shall be applied as if the method actually used in
715 calculating the reserve for such policy were the method
716 described in subsection (g) of this section, ignoring the second
717 paragraph of said subsection.

718 The minimum reserve at each policy anniversary of such a
719 policy shall be the greater of the minimum reserve calculated in
720 accordance with said subsection, including the second para-
721 graph of that section, and the minimum reserve calculated in
722 accordance with this subsection.

723 (1) *Reserve calculation.* — Indeterminate premium plans.

724 In the case of any plan of life insurance which provides for
725 future premium determination, the amounts of which are to be
726 determined by the insurance company based on then estimates
727 of future experience, or in the case of any plan of life insurance
728 or annuity which is of such a nature that the minimum reserves
729 cannot be determined by the methods described in subsections
730 (g), (h) and (k) of this section, the reserves which are held under
731 any such plan must:

732 (1) Be appropriate in relation to the benefits and the pattern
733 of premiums for that plan; and

734 (2) Be computed by a method which is consistent with the
735 principles of this standard valuation law as determined by
736 regulations promulgated by the commissioner.

737 (m) *Minimum standards for health (disability, accident and*
738 *sickness) plans.* —

739 The commissioner shall promulgate a regulation containing
740 the minimum standards applicable to the valuation of health
741 (disability, sickness and accident) plans.

742 (n) The commissioner shall promulgate a rule on or before
743 the first day of November, one thousand nine hundred ninety-
744 five, prescribing the guidelines and standards for statements of
745 actuarial opinion which are to be submitted in accordance with
746 subsection (c) of this section and for memoranda in support
747 thereof; guidelines and standards for statements of actuarial
748 opinion which are to be submitted when a company is exempt
749 from subdivision (2) of said subsection of the standard valua-
750 tion law; and rules applicable to the appointment of an ap-
751 pointed actuary.

752 (o) *Effective date.* —

753 All acts and parts of acts inconsistent with the provision of
754 this section are hereby repealed as of the effective date of this
755 section. This section shall take effect the first day of January,
756 one thousand nine hundred ninety-six.

757 (p) *Modification of the standard valuation law for certain*
758 *types of contracts.* —

759 (1) The commissioner may, by rule, establish alternative
760 methods of calculating reserve liabilities, which methods shall
761 be used to calculate reserve liabilities for the types of policies,
762 annuities or other contracts identified in the rule: *Provided,*
763 That the method specified in the rule shall be one which, in the
764 opinion of the commissioner and in light of the methods applied
765 to such contracts by the insurance regulators of other states, is
766 appropriate to such contracts. This power shall be in addition to,
767 and in no way diminish, rule-making power granted to the
768 commissioner elsewhere in this code.

769 (2) The legislative rule filed in the state register on the
770 twentieth day of August, one thousand nine hundred ninety-six,
771 (valuation of life insurance policies, 114 CSR 49) is hereby
772 disapproved and is not authorized for promulgation: *Provided*,
773 That for purposes of determining the legal effects of the
774 aforementioned rule, this provision shall be considered to have
775 taken effect on the thirty-first day of December, one thousand
776 nine hundred ninety-seven. This disapproval shall in no way
777 limit the commissioner's power to promulgate in the future a
778 rule similar or identical to the rule here disapproved.

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.

§33-39-1. Report.

1 (a) Every insurer domiciled in this state shall file a report
2 with the commissioner disclosing material acquisitions and
3 dispositions of assets or material nonrenewals, cancellations or
4 revisions of ceded reinsurance programs unless the acquisitions
5 and dispositions of assets or material nonrenewals, cancella-
6 tions or revisions of ceded reinsurance programs have been
7 submitted to the commissioner for review, approval or informa-
8 tion purposes pursuant to other provisions of this chapter.

9 (b) The report required in subsection (a) of this section is
10 due within fifteen days after the end of the calendar month in
11 which any of the foregoing transactions occur.

12 (c) One complete copy of the report, including any exhibits
13 or other attachments filed as part thereof, shall be filed with:

14 (1) The insurance commissioner; and

15 (2) The national association of insurance commissioners.

16 (d) All reports obtained by or disclosed to the commissioner
17 pursuant to this article shall be given confidential treatment and

18 shall not be subject to subpoena and shall not be made public by
19 the commissioner, the national association of insurance
20 commissioners or any other person in accordance with section
21 nineteen, article two of this chapter without the prior written
22 consent of the insurer to which it pertains unless the commis-
23 sioner, after giving the insurer who would be affected thereby
24 notice and an opportunity to be heard, determines that the
25 interest of policyholders, shareholders or the public will be
26 served by the publication thereof, in which event the commis-
27 sioner may publish all or any part thereof in such manner as he
28 or she may consider appropriate.

CHAPTER 123

(Com. Sub. for H. B. 2556 — By Mr. Speaker, Mr. Kiss)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating to requiring the insurance commissioner to issue an annual communication to state and local governmental entities and nonprofit organizations to increase awareness of certain flood insurance issues.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.**§33-2-15a. Annual flood insurance communication to public entities by commissioner.**

1 (a) The commissioner shall annually issue a communication
2 to West Virginia state and local governmental entities and
3 nonprofit organizations which shall have the following objec-
4 tives:

5 (1) To make state and local governmental entities and
6 nonprofit organizations aware of the 1988 amendments to the
7 federal Robert T. Stafford Emergency Assistance and Disaster
8 Relief Act which impose penalties in the form of reductions in
9 Federal Emergency Management Agency (FEMA) disaster
10 relief funds on public entities who fail to purchase adequate
11 flood insurance on all property located in identified flood
12 hazard areas;

13 (2) To make state and local governmental entities and
14 nonprofit organizations generally aware of the magnitude of
15 risk exposure and potential financial loss that may result from
16 these penalties; and

17 (3) To make state and local governmental entities and
18 nonprofit organizations aware that low-cost, federally subsi-
19 dized flood insurance may be available through the National
20 Flood Insurance Program (NFIP).

21 (b) The commissioner may propose rules for legislative
22 approval in accordance with the provisions of article three,
23 chapter twenty-nine-a of this code to effectuate the provisions
24 of this section.

CHAPTER 124

(S. B. 358 — By Senators Minard, Jenkins, Minear and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to the redomestication of domestic insurance companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.

§33-5-27. Redomestication of stock and mutual insurers.

1 (a) A domestic insurer may, upon the approval of the
2 commissioner, transfer its domicile to any other state in which
3 it is admitted to transact the business of insurance and, upon
4 such transfer, shall cease to be a domestic insurer and shall be
5 admitted to this state if qualified as a foreign insurer. The
6 commissioner shall approve the proposed transfer unless he or
7 she determines the transfer is not in the best interest of the
8 policyholders of this state.

9 (b) The certificate of authority, agents' appointments and
10 licenses, rates and other items which the commissioner allows,

11 in his or her discretion, that are in existence at the time an
12 insurer licensed to transact the business of insurance in this
13 state transfers its corporate domicile to this or any other state by
14 merger, consolidation or any other lawful method shall continue
15 in full force and effect upon transfer if the insurer remains duly
16 qualified to transact the business of insurance in this state. All
17 outstanding policies of a transferring insurer shall remain in full
18 force and effect and need not be endorsed as to the new name
19 of the company or its new location unless so ordered by the
20 commissioner.

21 (c) A transferring insurer shall file new policy forms with
22 the commissioner on or before the effective date of the transfer,
23 but may use existing policy forms with appropriate endorse-
24 ments if allowed by, and under such conditions as approved by,
25 the commissioner. However, every transferring insurer shall
26 notify the commissioner of the details of the proposed transfer
27 and shall file promptly any resulting amendments to corporate
28 documents filed or required to be filed with the commissioner.

CHAPTER 125

(Com. Sub. for H. B. 2715 — By Delegates H. White, Hrutkay
and R. M. Thompson)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twelve-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonadmitted insurers and the regulation of surplus lines insurance; defining terms for implementation of the NAIC nonadmitted insurers model act; establish-

ing consistency among states; providing specific provisions from the model; liberalizing reciprocity for licensing nonresident surplus lines licensees; providing grounds upon which the commission may deny a nonadmitted insurer access to the state; providing for the regulation of surplus lines; enforcement; violations; penalties; service of process; and eliminating certain conflicting excess line related provisions.

Be it enacted by the Legislature of West Virginia:

That article twelve-c, 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 12C. SURPLUS LINE.

- §33-12C-1. Short title.
- §33-12C-2. Purpose - necessity for regulation.
- §33-12C-3. Definitions.
- §33-12C-4. Placement of insurance business.
- §33-12C-5. Surplus lines insurance.
- §33-12C-6. Withdrawal of eligibility as a surplus lines insurer.
- §33-12C-7. Surplus lines tax.
- §33-12C-8. Surplus lines licenses.
- §33-12C-9. Suspension, revocation or nonrenewal of surplus lines licensee's license.
- §33-12C-10. Actions against eligible surplus lines insurers transacting surplus lines business.
- §33-12C-11. Duty to file evidence of insurance and affidavits.
- §33-12C-12. Evidence of the insurance and subsequent changes to the insurance.
- §33-12C-13. Licensee's duty to notify insured.
- §33-12C-14. Effect of payment to surplus lines licensee.
- §33-12C-15. Surplus lines licensees may accept business from other producers.
- §33-12C-16. Records of surplus lines licensee.
- §33-12C-17. Reports - summary of exported business.
- §33-12C-18. Penalties.
- §33-12C-19. Violations.
- §33-12C-20. Service of process.
- §33-12C-21. Legal or administrative procedures.
- §33-12C-22. Enforcement.
- §33-12C-23. Suits by nonadmitted insurers.
- §33-12C-24. Countersignature requirements.

§33-12C-25. Fees.

§33-12C-26. Coverage must be place in solvent insurer.

§33-12C-27. Change of address.

§33-12C-28. Separability provisions.

§33-12C-29. Hearings.

§33-12C-1. Short title.

1 This article shall be known and may be cited as “The
2 Nonadmitted Insurance Act”.

§33-12C-2. Purpose - necessity for regulation.

1 This article shall be liberally construed and applied to
2 promote its underlying purposes which include:

3 (a) Protecting persons seeking insurance in this state;

4 (b) Permitting surplus lines insurance to be placed with
5 reputable and financially sound nonadmitted insurers and
6 exported from this state pursuant to this article;

7 (c) Establishing a system of regulation which will permit
8 orderly access to surplus lines insurance in this state and
9 encourage admitted insurers to provide new and innovative
10 types of insurance available to consumers in this state;

11 (d) Providing a system through which persons may pur-
12 chase insurance other than surplus lines insurance, from
13 nonadmitted insurers pursuant to this article;

14 (e) Protecting revenues of this state; and

15 (f) Providing a system pursuant to this article which
16 subjects nonadmitted insurance activities in this state to the
17 jurisdiction of the insurance commissioner and state and federal
18 courts in suits by or on behalf of the state.

§33-12C-3. Definitions.

1 As used in this article:

2 (a) “Admitted insurer” means an insurer licensed to do an
3 insurance business in this state.

4 (b) “Business entity” means a corporation, association,
5 partnership, limited liability company, or other legal entity.

6 (c) “Capital,” as used in the financial requirements of
7 section five of this article, means funds paid in for stock or
8 other evidence of ownership.

9 (d) “Commissioner” means the insurance commissioner of
10 West Virginia, or the commissioner’s deputies or staff, or the
11 commissioner, director or superintendent of insurance in any
12 other state.

13 (e) “Eligible surplus lines insurer” means a nonadmitted
14 insurer with which a surplus lines licensee may place surplus
15 lines insurance pursuant to section five of this article.

16 (f) “Export” means to place surplus lines insurance with a
17 nonadmitted insurer.

18 (g) “Foreign decree” means any decree or order in equity of
19 a court located in any United States jurisdiction, including a
20 federal court of the United States, against any person engaging
21 in the transaction of insurance in this state.

22 (h) “Individual” means any private or natural person as
23 distinguished from a partnership, corporation, limited liability
24 company or other legal entity.

25 (i) “Insurance” means any of the lines of authority in
26 section ten, article one of this chapter.

27 (j) "Insurance producer" means a person required to be
28 licensed under the laws of this state to sell, solicit or negotiate
29 insurance. Wherever the word "agent" appears in this chapter,
30 it shall mean an individual insurance producer.

31 (k) "Insurer" means any person, corporation, association,
32 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
33 insurance exchange syndicate, fraternal benefit society, and any
34 other legal entity engaged in the business of making contracts
35 of insurance under section two, article one of this chapter.

36 (l) "Kind of insurance" means one of the types of insurance
37 required to be reported in the annual statement which must be
38 filed with the commissioner by admitted insurers.

39 (m) "License" means a document issued by this state's
40 insurance commissioner authorizing an individual to act as a
41 surplus lines licensee for the lines of authority specified in the
42 document. The license itself does not create any authority,
43 actual, apparent or inherent, in the holder to represent or
44 commit an insurer.

45 (n) "Nonadmitted insurer" means an insurer not licensed to
46 do an insurance business in this state.

47 (o) "Person" means any natural person or other entity,
48 including, but not limited to, individuals, partnerships, associa-
49 tions, trusts or corporations.

50 (p) "Policy" or "contract" means any contract of insurance
51 including, but not limited to, annuities, indemnity, medical or
52 hospital service, workers' compensation, fidelity or suretyship.

53 (q) "Reciprocal state" means a state that has enacted
54 provisions substantially similar to:

55 (1) Section seven, subdivision (5) of subsection (b) of
56 section nine, subsection (j) of section sixteen, and subsection
57 (d) of section seventeen of this article; and

58 (2) The NAIC model allocation schedule and reporting
59 form.

60 (r) "Surplus," as used in the financial requirements of
61 section five of this article, means funds over and above liabili-
62 ties and capital of the company for the protection of policyhold-
63 ers.

64 (s) "Surplus lines insurance" means any property and
65 casualty insurance in this state on properties, risks or exposures,
66 located or to be performed in this state, permitted to be placed
67 through a surplus lines licensee with a nonadmitted insurer
68 eligible to accept such insurance, pursuant to section seven of
69 this article. Wherever the term "excess line" appears in this
70 chapter, it shall mean surplus lines insurance.

71 (t) "Surplus lines licensee" means an individual licensed
72 under section five of this article to place insurance on proper-
73 ties, risks or exposures located or to be performed in this state
74 with nonadmitted insurers eligible to accept such insurance.
75 Wherever the term "excess line broker" appears in this chapter,
76 it shall mean surplus lines licensee.

77 (u) "Transaction of insurance"

78 (1) For purposes of this article, any of the following acts in
79 this state effected by mail or otherwise by a nonadmitted
80 insurer or by any person acting with the actual or apparent
81 authority of the insurer, on behalf of the insurer, is deemed to
82 constitute the transaction of an insurance business in or from
83 this state:

84 (A) The making of or proposing to make, as an insurer, an
85 insurance contract;

86 (B) The making of or proposing to make, as guarantor or
87 surety, any contract of guaranty or suretyship as a vocation and
88 not merely incidental to any other legitimate business or
89 activity of the guarantor or surety;

90 (C) The taking or receiving of an application for insurance;

91 (D) The receiving or collection of any premium, commis-
92 sion, membership fees, assessments, dues or other consideration
93 for insurance or any part thereof;

94 (E) The issuance or delivery in this state of contracts of
95 insurance to residents of this state or to persons authorized to do
96 business in this state;

97 (F) The solicitation, negotiation, procurement or effectua-
98 tion of insurance or renewals thereof;

99 (G) The dissemination of information as to coverage or
100 rates, or forwarding of applications, or delivery of policies or
101 contracts, or inspection of risks, the fixing of rates or investiga-
102 tion or adjustment of claims or losses or the transaction of
103 matters subsequent to effectuation of the contract and arising
104 out of it, or any other manner of representing or assisting a
105 person or insurer in the transaction of risks with respect to
106 properties, risks or exposures located or to be performed in this
107 state;

108 (H) The transaction of any kind of insurance business
109 specifically recognized as transacting an insurance business
110 within the meaning of the statutes relating to insurance;

111 (I) The offering of insurance or the transacting of insurance
112 business; or

113 (J) Offering an agreement or contract which purports to
114 alter, amend or void coverage of an insurance contract.

115 (2) The provisions of this subsection shall not operate to
116 prohibit employees, officers, directors or partners of a commer-
117 cial insured from acting in the capacity of an insurance manager
118 or buyer in placing insurance on behalf of the employer,
119 provided that the person's compensation is not based on buying
120 insurance.

121 (3) The venue of an act committed by mail is at the point
122 where the matter transmitted by mail is delivered or issued for
123 delivery or takes effect.

124 (v) "Line of insurance" means coverage afforded under the
125 particular policy that is being placed.

126 (w) "Model allocation schedule and reporting form" means
127 the current version of the NAIC model allocation schedule and
128 reporting form for surplus lines insurers.

129 (x) "Wet marine and transportation insurance" means:

130 (1) Insurance upon vessels, crafts, hulls and other interests
131 in them or with relation to them;

132 (2) Insurance of marine builder's risks, marine war risks
133 and contracts of marine protection and indemnity insurance;

134 (3) Insurance of freight and disbursements pertaining to a
135 subject of insurance within the scope of this subsection; and

136 (4) Insurance of personal property and interests therein, in
137 the course of exportation from or importation into any country,
138 or in the course of transportation coastwise or on inland waters,
139 including transportation by land, water or air from point of
140 origin to final destination, in connection with any and all risks

141 or perils of navigation, transit or transportation, and while being
142 prepared for and while awaiting shipment, and during any
143 incidental delays, transshipment, or reshipment; provided,
144 however, that insurance of personal property and interests
145 therein shall not be considered wet marine and transportation
146 insurance if the property has:

147 (A) Been transported solely by land; or

148 (B) Reached its final destination as specified in the bill of
149 lading or other shipping document; or

150 (C) The insured no longer has an insurable interest in the
151 property.

§33-12C-4. Placement of insurance business.

1 (a) An insurer shall not engage in the transaction of
2 insurance unless authorized by a license in force pursuant to the
3 laws of this state, or exempted by this article or otherwise
4 exempted by the insurance laws of this state.

5 (b) A person shall not engage in a transaction of insurance
6 or shall in this state directly or indirectly act as agent for, or
7 otherwise represent or aid on behalf of another, a nonadmitted
8 insurer in the solicitation, negotiation, procurement or effectua-
9 tion of insurance, or renewals thereof, or forwarding of applica-
10 tions, or delivery of policies or contracts or inspection of risks,
11 or fixing of rates, or investigation or adjustment of claims or
12 losses, or collection or forwarding of premiums, or in any other
13 manner represent or assist the insurer in the transaction of
14 insurance.

15 (c) A person who represents or aids a nonadmitted insurer
16 in violation of this section shall be subject to the penalties set
17 forth in section eighteen of this article. No insurance contract
18 entered into in violation of this section shall preclude the

19 insured from enforcing his rights under the contract in accor-
20 dance with the terms and provisions of the contract of insurance
21 and the laws of this state, to the same degree those rights would
22 have been enforceable had the contract been lawfully procured.

23 (d) If the nonadmitted insurer fails to pay a claim or loss
24 within the provisions of the insurance contract and the laws of
25 this state, a person who assisted or in any manner aided directly
26 or indirectly in the procurement of the insurance contract, shall
27 be liable to the insured for the full amount under the provisions
28 of the insurance contract.

29 (e) This section shall not apply to a person, properly
30 licensed as an agent in this state who, for a fee and pursuant to
31 a written agreement, is engaged solely to offer to the insured
32 advice, counsel or opinion, or service with respect to the
33 benefits, advantages or disadvantages promised under any
34 proposed or in-force policy of insurance if the person does not,
35 directly or indirectly, participate in the solicitation, negotiation
36 or procurement of insurance on behalf of the insured;

37 (f) The insurance must be procured only through an
38 individual licensed surplus lines licensee;

39 (g) This section shall not apply to a person acting in
40 material compliance with the insurance laws of this state in the
41 placement of the types of insurance identified in subdivisions
42 (1), (2), (3) and (4) below:

43 (1) Surplus lines insurance as provided in section five of
44 this article. For the purposes of this subsection, a licensee shall
45 be deemed to be in material compliance with the insurance laws
46 of this state, unless the licensee committed a violation of
47 section five of this article that proximately caused loss to the
48 insured;

49 (2) Transactions for which a license to do business is not
50 required of an insurer under the insurance laws of this state;

51 (3) Reinsurance provided that, unless the commissioner
52 waives the requirements of this subsection:

53 (A) The assuming insurer is authorized to do an insurance
54 or reinsurance business by its domiciliary jurisdiction and is
55 authorized to write the type of reinsurance in its domiciliary
56 jurisdiction; and

57 (B) The assuming insurer satisfies all legal requirements for
58 such reinsurance in the state of domicile of the ceding insurer;

59 (4) The property and operation of railroads or aircraft
60 engaged in interstate or foreign commerce, wet marine and
61 transportation insurance;

62 (5) Transactions subsequent to issuance of a policy not
63 covering properties, risks or exposures located, or to be
64 performed in this state at the time of issuance, and lawfully
65 solicited, written or delivered outside this state.

§33-12C-5. Surplus lines insurance.

1 (a) Surplus lines insurance may be placed by a surplus lines
2 licensee if:

3 (1) Each insurer is an eligible surplus lines insurer; and

4 (2) Each insurer is authorized to write the type of insurance
5 in its domiciliary jurisdiction; and

6 (3) The full amount or line of insurance cannot be obtained
7 from insurers who are admitted to do business in this state. The
8 full amount or type of insurance may be procured from eligible
9 surplus lines insurers, provided that a diligent search is made by
10 the individual insurance producer among the insurers who are

11 admitted to transact and are actually writing the particular type
12 of insurance in this state if any are writing it; and

13 (4) All other requirements of this article are met.

14 (b) Subject to subdivision (3), subsection (a) of this section,
15 a surplus lines licensee may place any coverage with a
16 nonadmitted insurer eligible to accept the insurance, unless
17 specifically prohibited by the laws of this state.

18 (c) A surplus lines licensee shall not place coverage with a
19 nonadmitted insurer, unless, at the time of placement, the
20 surplus lines licensee has determined that the nonadmitted
21 insurer:

22 (1) Has established satisfactory evidence of good repute
23 and financial integrity; and

24 (2) Qualifies under one of the following paragraphs:

25 (A) Has capital and surplus or its equivalent under the laws
26 of its domiciliary jurisdiction which equals the greater of:

27 (i)(I) The minimum capital and surplus requirements under
28 the law of this state; or

29 (II) Fifteen million dollars;

30 (ii) The requirements of subparagraph (i), paragraph (A) of
31 this subdivision may be satisfied by an insurer's possessing less
32 than the minimum capital and surplus upon an affirmative
33 finding of acceptability by the commissioner. The finding shall
34 be based upon such factors as quality of management, capital
35 and surplus of any parent company, company underwriting
36 profit and investment income trends, market availability and
37 company record and reputation within the industry. In no event
38 shall the commissioner make an affirmative finding of accept-

39 ability when the nonadmitted insurer's capital and surplus is
40 less than four million five hundred thousand dollars; or

41 (B) In the case of an insurance exchange created by the
42 laws of a state other than this state:

43 (i) The syndicates of the exchange shall maintain under
44 terms acceptable to the commissioner capital and surplus, or its
45 equivalent under the laws of its domiciliary jurisdiction, of not
46 less than seventy-five million dollars in the aggregate; and

47 (ii) The exchange shall maintain under terms acceptable to
48 the commissioner not less than fifty percent of the policyholder
49 surplus of each syndicate in a custodial account accessible to
50 the exchange or its domiciliary commissioner in the event of
51 insolvency or impairment of the individual syndicate; and

52 (iii) In addition, each individual syndicate to be eligible to
53 accept surplus lines insurance placements from this state shall
54 meet either of the following requirements:

55 (I) For insurance exchanges which maintain funds in an
56 amount of not less than fifteen million dollars for the protection
57 of all exchange policyholders, the syndicate shall maintain
58 under terms acceptable to the commissioner minimum capital
59 and surplus, or its equivalent under the laws of the domiciliary
60 jurisdiction, of not less than five million dollars; or

61 (II) For insurance exchanges which do not maintain funds
62 in an amount of not less than fifteen million dollars for the
63 protection of all exchange policyholders, the syndicate shall
64 maintain under terms acceptable to the commissioner minimum
65 capital and surplus, or its equivalent under the laws of its
66 domiciliary jurisdiction, of not less than the minimum capital
67 and surplus requirements under the laws of its domiciliary
68 jurisdiction or fifteen million dollars, whichever is greater; or

69 (C) In the case of a Lloyd's plan or other similar group of
70 insurers, which consists of unincorporated individual insurers,
71 or a combination of both unincorporated and incorporated
72 insurers:

73 (i) The plan or group maintains a trust fund that shall
74 consist of a trustee account representing the group's liabilities
75 attributable to business written in the United States; and

76 (ii) In addition, the group shall establish and maintain in
77 trust a surplus in the amount of one hundred million dollars;
78 which shall be available for the benefit of United States surplus
79 lines policyholders of any member of the group.

80 (iii) The incorporated members of the group shall not be
81 engaged in any business other than underwriting as a member
82 of the group and shall be subject to the same level of solvency
83 regulation and control by the group's domiciliary regulator as
84 are the unincorporated members.

85 (iv) The trust funds shall be maintained in an irrevocable
86 trust account in the United States in a qualified financial
87 institution, consisting of cash, securities, letters of credit or
88 investments of substantially the same character and quality as
89 those which are eligible investments for the capital and statu-
90 tory reserves of admitted insurers to write like kinds of insur-
91 ance in this state and, in addition, the trust required by subpara-
92 graph (ii) of this subdivision shall satisfy the requirements of
93 the standard trust agreement required for listing with the
94 national association of insurance commissioners (NAIC)
95 international insurers department or any successor thereto; or

96 (D) In the case of a group of incorporated insurers under
97 common administration, which has continuously transacted an
98 insurance business outside the United States for at least three
99 years immediately prior to this time, and which submits to this

100 state's authority to examine its books and records and bears the
101 expense of the examination:

102 (i) The group shall maintain an aggregate policyholders'
103 surplus of ten billion dollars; and

104 (ii) The group shall maintain in trust a surplus in the
105 amount of ten billion dollars; which shall be available for the
106 benefit of United States surplus lines policyholders of any
107 member of the group; and

108 (iii) Each insurer shall individually maintain capital and
109 surplus of not less than twenty-five million dollars per com-
110 pany.

111 (iv) The trust funds shall satisfy the requirements of the
112 standard trust agreement requirement for listing with the NAIC
113 international insurers department or any successor thereto, and
114 shall be maintained in an irrevocable trust account in the United
115 States in a qualified financial institution, and shall consist of
116 cash, securities, letters of credit or investments of substantially
117 the same character and quality as those which are eligible
118 investments for the capital and statutory reserves of admitted
119 insurers to write like kinds of insurance in this state.

120 (v) Additionally, each member of the group shall make
121 available to the commissioner an annual certification of the
122 member's solvency by the member's domiciliary regulator and
123 its independent public accountant; or

124 (E) Except for an exchange or plan complying with
125 paragraph (B), (C) or (D) of this subdivision, an insurer not
126 domiciled in one of the United States or its territories shall
127 satisfy the capital and surplus requirements of paragraph (A),
128 subdivision (2), subsection (c) of this section and shall have in
129 force a trust fund of not less than the greater of:

130 (i) Five million four hundred thousand dollars; or

131 (ii) Thirty percent of the United States surplus lines gross
132 liabilities, excluding aviation, wet marine and transportation
133 insurance liabilities, not to exceed sixty million dollars, to be
134 determined annually on the basis of accounting practices and
135 procedures substantially equivalent to those promulgated by
136 this state, as of the thirty-first day of December next preceding
137 the date of determination, where:

138 (I) The liabilities are maintained in an irrevocable trust
139 account in the United States in a qualified financial institution,
140 on behalf of U.S. policyholders consisting of cash, securities,
141 letters of credit or other investments of substantially the same
142 character and quality as those which are eligible investments
143 pursuant to article eight of this chapter for the capital and
144 statutory reserves of admitted insurers to write like kinds of
145 insurance in this state. The trust fund, which shall be included
146 in any calculation of capital and surplus or its equivalent, shall
147 satisfy the requirements of the Standard Trust Agreement
148 required for listing with the NAIC international insurers
149 department or any successor thereto; and

150 (II) The insurer may request approval from the commis-
151 sioner to use the trust fund to pay valid surplus lines claims;
152 provided, however, that the balance of the trust fund is never
153 less than the greater of five million four hundred thousand
154 dollars or thirty percent of the insurer's current gross U.S.
155 surplus lines liabilities, excluding aviation, wet marine and
156 transportation insurance liabilities; and

157 (III) In calculating the trust fund amount required by this
158 subsection, credit shall be given for surplus lines deposits
159 separately required and maintained for a particular state or U.S.
160 territory, not to exceed the amount of the insurer's loss and loss
161 adjustment reserves in the particular state or territory;

162 (F) An insurer or group of insurers meeting the require-
163 ments to do a surplus lines business in this state at the effective
164 date of this law shall have two years from the date of enactment
165 to meet the requirements of paragraph (E) of this subdivision,
166 as follows:

167	Year	Trust Fund Requirement
168	Following	
169	Enactment	
170	1	15% of U.S. surplus lines liabilities, exclud-
171		ing aviation, wet marine and transportation
172		insurance, with a maximum of \$30,000,000
173	2	30% of U.S. surplus lines liabilities, exclud-
174		ing aviation, wet marine and transportation
175		insurance, with a maximum of \$60,000,000.

176 (G) The commissioner shall have the authority to adjust, in
177 response to inflation, the trust fund amounts required by
178 paragraph (E) of this subdivision.

179 (3) In addition to all of the other requirements of this
180 subsection, an insurer not domiciled in the United States or its
181 territories shall be listed on the NAIC's quarterly listing of alien
182 insurers. The commissioner may waive the requirement in this
183 subdivision or the requirements of subparagraph (ii), paragraph
184 (E), subdivision (2), subsection (c) of this section may be
185 satisfied by an insurer's possessing less than the trust fund
186 amount specified in subparagraph (ii), paragraph (E), subdivi-
187 sion (2), subsection (c) of this section upon an affirmative
188 finding of acceptability by the commissioner if the commis-
189 sioner is satisfied that the placement of insurance with the
190 insurer is necessary and will not be detrimental to the public
191 and the policyholder. In determining whether business may be

192 placed with the insurer, the commissioner may consider such
193 factors as:

194 (A) The interests of the public and policyholders;

195 (B) The length of time the insurer has been authorized in its
196 domiciliary jurisdiction and elsewhere;

197 (C) Unavailability of particular coverages from authorized
198 insurers or unauthorized insurers meeting the requirements of
199 this section;

200 (D) The size of the company as measured by its assets,
201 capital and surplus, reserves, premium writings, insurance in
202 force or other appropriate criteria;

203 (E) The kinds of business the company writes, its net
204 exposure and the extent to which the company's business is
205 diversified among several lines of insurance and geographic
206 locations; and

207 (F) The past and projected trend in the size of the com-
208 pany's capital and surplus considering such factors as premium
209 growth, operating history, loss and expense ratios, or other
210 appropriate criteria; and

211 (4) Has caused to be provided to the commissioner a copy
212 of its current annual statement certified by the insurer and an
213 actuarial opinion as to the adequacy of, and methodology used
214 to determine, the insurer's loss reserves. The statement shall be
215 provided at the same time it is provided to the insurer's
216 domicile, but in no event more than eight months after the close
217 of the period reported upon, and shall be certified as a true and
218 correct copy by an accounting or auditing firm licensed in the
219 jurisdiction of the insurer's domicile and certified by a senior
220 officer of the nonadmitted insurer as a true and correct copy of
221 the statement filed with the regulatory authority in the domicile

222 of the nonadmitted insurer. In the case of an insurance ex-
223 change qualifying under paragraph (B), subdivision (2) of this
224 subsection, the statement may be an aggregate combined
225 statement of all underwriting syndicates operating during the
226 period reported; and

227 (5) In addition to meeting the requirements in subdivisions
228 (1) to (4) of this subsection an insurer shall be an eligible
229 surplus lines insurer if it appears on the most recent list of
230 eligible surplus lines insurers published by the commissioner
231 from time to time but at least annually. Nothing in this subdivi-
232 sion shall require the commissioner to place or maintain the
233 name of any nonadmitted insurer on the list of eligible surplus
234 lines insurers.

235 (6) Notwithstanding subsection (a) of this section, only that
236 portion of any risk eligible for export for which the full amount
237 of coverage is not procurable from listed eligible surplus lines
238 insurers may be placed with any other nonadmitted insurer
239 which does not appear on the list of eligible surplus lines
240 insurers published by the commissioner pursuant to subdivision
241 (5) of this subsection but nonetheless meets the requirements
242 set forth in subdivisions (1) and (2), subsection (c) of this
243 section and any regulations of the commissioner. The surplus
244 lines licensee seeking to provide coverage through an unlisted
245 nonadmitted insurer shall make a filing specifying the amounts
246 and percentages of each risk to be placed, and naming the
247 nonadmitted insurers with which placement is intended. Within
248 thirty days after placing the coverage, the surplus lines licensee
249 shall also send written notice to the insured that the insurance,
250 or a portion thereof, has been placed with the nonadmitted
251 insurer.

252 (d) Insurance procured under this section shall be valid and
253 enforceable as to all parties.

§33-12C-6. Withdrawal of eligibility as a surplus lines insurer.

1 (a) The commissioner may declare a surplus lines insurer
2 ineligible if the commissioner has reason to believe that:

3 (1) Is in unsound financial condition or has acted in an
4 untrustworthy manner;

5 (2) No longer meets standards set forth in subsection (c) of
6 this section;

7 (3) Has willfully violated the laws of this state; or

8 (4) Does not conduct a proper claims practice;

9 (b) The commissioner shall promptly mail notice of all such
10 declarations to each surplus lines licensee.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums
2 charged by the insurer for the insurance, every person licensed
3 pursuant to section eight of this article shall collect and pay to
4 the commissioner a sum equal to four percent of the gross
5 premiums and gross fees charged, less any return premiums, for
6 surplus lines insurance provided by the licensee pursuant to the
7 license. Where the insurance covers properties, risks or expo-
8 sures located or to be performed both in and out of this state,
9 the sum payable shall be computed on that portion of the gross
10 premiums allocated to this state pursuant to subsection (g) of
11 this section less the amount of gross premiums allocated to this
12 state and returned to the insured due to cancellation of policy.
13 The tax on any portion of the premium unearned at termination
14 of insurance having been credited by the state to the licensee
15 shall be returned to the policyholder directly by the surplus
16 lines licensee or through the producing broker, if any.

17 (b) The individual insurance producer may not:

18 (1) Pay directly or indirectly the tax or any portion thereof,
19 either as an inducement to the policyholder to purchase the
20 insurance or for any other reason; or

21 (2) Rebate all or part of the tax or the surplus lines li-
22 censee's commission, either as an inducement to the policy-
23 holder to purchase the insurance or for any reason.

24 (c) The surplus lines licensee may charge the prospective
25 policyholder a fee for the cost of underwriting, issuing, process-
26 ing, inspecting, service or auditing the policy for placement
27 with the surplus line insurer if:

28 (1) The service is required by the surplus line insurer;

29 (2) The service is actually provided by the individual
30 insurance producer or the cost of the service is actually incurred
31 by the surplus lines licensee; and

32 (3) The provision or cost of the service is reasonable,
33 documented and verifiable.

34 (d) The surplus lines licensee shall make a clear and
35 conspicuous written disclosure to the policyholder of:

36 (1) The total amount of premium for the policy;

37 (2) Any fee charged;

38 (3) The total amount of any fee charged; and

39 (4) The total amount of tax on the premium and fee.

40 (e) The clear and conspicuous written disclosure required
41 by subdivision (4) of this subsection is subject to the record
42 maintenance requirements of section eight of this article.

43 (f) This tax is imposed for the purpose of providing
44 additional revenue for municipal policemen's and firemen's
45 pension and relief funds and additional revenue for volunteer
46 and part volunteer fire companies and departments. This tax is
47 required to be paid and remitted, on a calendar year basis and
48 in quarterly estimated installments due and payable on or before
49 the twenty-fifth day of the month succeeding the close of the
50 quarter in which they accrued, except for the fourth quarter, in
51 respect of which taxes shall be due and payable and final
52 computation of actual total liability for the prior calendar year
53 shall be made, less credit for the three quarterly estimated
54 payments prior made, and filed with the annual return to be
55 made on or before the first day of March of the succeeding
56 year. Provisions of this chapter relating to the levy, imposition
57 and collection of the regular premium tax are applicable to the
58 levy, imposition and collection of this tax to the extent that the
59 provisions are not in conflict with this section.

60 All taxes remitted to the commissioner pursuant to this
61 subsection shall be paid by him or her into a special account in
62 the state treasury, designated "municipal pensions and protec-
63 tion fund," and after appropriation by the Legislature, shall be
64 distributed in accordance with the provisions of subsection (c),
65 section fourteen-d, article three of this chapter. The surplus
66 lines licensee shall return to the policyholder the tax on any
67 unearned portion of the premium returned to the policyholder
68 because of cancellation of policy.

69 (g) If a surplus lines policy procured through a surplus lines
70 licensee covers properties, risks or exposures only partially
71 located or to be performed in this state, the tax due shall be
72 computed on the portions of the premiums which are attribut-
73 able to the properties, risks or exposures located or to be
74 performed in this state. In determining the amount of premiums
75 taxable in this state, all premiums written, procured or received
76 in this state shall be considered written on properties, risks or

77 exposures located or to be performed in this state, except
78 premiums which are properly allocated or apportioned and
79 reported as taxable premiums of a reciprocal state. In no event
80 shall the tax payable to this state be less than the tax due
81 pursuant to subsection (h) of this section; provided, however, in
82 the event that the amount of tax due under this provision is less
83 than fifty dollars in any jurisdiction, it shall be payable in the
84 jurisdiction in which the affidavit required in section eleven is
85 filed. The commissioner may, at least annually furnish to the
86 commissioner of a reciprocal state, as defined in subsection (q),
87 section three of this article, a copy of all filings reporting an
88 allocation of taxes as required by this subsection.

89 (h) In determining the amount of gross premiums taxable
90 in this state for a placement of surplus lines insurance covering
91 properties, risks or exposures only partially located or to be
92 performed in this state, the tax due shall be computed on the
93 portions of the premiums which are attributable to properties,
94 risks or exposures located or to be performed in this state and
95 which relates to the kinds of insurance being placed as deter-
96 mined by reference to the model allocation schedule and
97 reporting form.

98 (1) If a policy covers more than one classification:

99 (A) For any portion of the coverage identified by a classifi-
100 cation on the allocation schedule, the tax shall be computed by
101 using the allocation schedule for the corresponding portion of
102 the premium;

103 (B) For any portion of the coverage not identified by a
104 classification on the allocation schedule, the tax shall be
105 computed by using an alternative equitable method of allocation
106 for the property or risk;

107 (C) For any portion of the coverage where the premium is
108 indivisible, the tax shall be computed by using the method of

109 allocation which pertains to the classification describing the
110 predominant coverage.

111 (2) If the information provided by the surplus lines licensee
112 is insufficient to substantiate the method of allocation used by
113 the surplus lines licensee, or if the commissioner determines
114 that the licensee's method is incorrect, the commissioner shall
115 determine the equitable and appropriate amount of tax due to
116 this state as follows:

117 (A) By use of the allocation schedule where the risk is
118 appropriately identified in the schedule;

119 (B) Where the allocation schedule does not identify a
120 classification appropriate to the coverage, the commissioner
121 may give significant weight to documented evidence of the
122 underwriting bases and other criteria used by the insurer. The
123 commissioner may also consider other available information to
124 the extent sufficient and relevant, including the percentage of
125 the insured's physical assets in this state, the percentage of the
126 insured's sales in this state, the percentage of income or
127 resources derived from this state, and the amount of premium
128 tax paid to another jurisdiction for the policy.

129 (i) Collection of tax.

130 If the tax owed by a surplus lines licensee under this section
131 has been collected and is not paid within the time prescribed,
132 the same shall be recoverable in a suit brought by the commis-
133 sioner against the surplus lines licensee. The commissioner may
134 charge interest for any unpaid tax, fee, financial assessment or
135 penalty, or portion thereof: *Provided*, That interest may not be
136 charged on interest. Interest shall be calculated using the annual
137 rates which are established by the tax commissioner pursuant to
138 section seventeen-a of article ten, chapter eleven of this code,
139 and shall accrue daily.

§33-12C-8. Surplus lines licenses.

1 (a) A person shall not procure a contract of surplus lines
2 insurance with a nonadmitted insurer unless the person pos-
3 sesses a current surplus lines insurance license issued by the
4 commissioner.

5 (b) The commissioner may issue a surplus lines license to
6 a qualified holder of a current property and casualty individual
7 insurance producer's license but only when the individual
8 insurance producer has:

9 (1) Remitted the two hundred dollar annual fee to the
10 commissioner, of which all fees so collected are to be used for
11 the purposes set forth in section thirteen, article three of this
12 chapter;

13 (2) Submitted a completed license application on a form
14 supplied by the commissioner;

15 (3) Passed a qualifying examination approved by the
16 commissioner, except that all holders of a license prior to the
17 effective date of this article shall be deemed to have passed
18 such an examination; and

19 (4) If a resident, established and continues to maintain an
20 office in this state.

21 (c) If the commissioner determines that a surplus lines
22 licensee of another state is competent, trustworthy and meets
23 the licensing requirements of this state, the commissioner may,
24 in his or her discretion, issue a nonresident surplus lines license.
25 A license shall not be issued unless the prospective licensee
26 furnishes the commissioner with the name and address of a
27 resident of this state upon whom notices or orders of the
28 commissioner or process affecting the nonresident surplus lines
29 licensee may be served. The licensee shall promptly notify the

30 commissioner in writing of every change in its designated agent
31 for service of process, and the change shall not become effective
32 until acknowledged by the commissioner.

33 (d) Each surplus lines license shall expire at midnight on
34 the thirty-first day of May next following the date of issuance,
35 and an application for renewal shall be filed before the first day
36 of May of each year upon payment of the annual fee and
37 compliance with other provisions of this article. A surplus lines
38 licensee who fails to apply for renewal of the license before the
39 first day of May shall pay a penalty of one hundred dollars and
40 be subject to penalties provided by law before the license will
41 be renewed.

**§33-12C-9. Suspension, revocation or nonrenewal of surplus lines
licensee's license.**

1 (a) The commissioner may examine and investigate the
2 business affairs of every individual applying for or holding a
3 surplus lines insurance license to determine whether such
4 individual has been or is engaged in unfair or deceptive
5 practices in any state.

6 (b) The commissioner may place on probation, suspend,
7 revoke or refuse to issue or renew the license of a surplus lines
8 licensee or may levy a civil penalty in a sum not to exceed five
9 thousand dollars or any combination of actions after notice and
10 hearing pursuant to section thirteen, article two of this chapter
11 upon one or more of the following grounds:

12 (1) Removal of the resident surplus lines licensee's office
13 from this state;

14 (2) Removal of the resident surplus lines licensee's office
15 accounts and records from this state during the period during
16 which the accounts and records are required to be maintained
17 under section sixteen of this article;

18 (3) Closing of the surplus lines licensee's office for a period
19 of more than thirty business days, unless permission is granted
20 by the commissioner;

21 (4) Failure to make and file required reports;

22 (5) Failure to transmit required tax on surplus lines premi-
23 ums to this state or a reciprocal state to which a tax is owing;

24 (6) Violation of any provision of this article; or

25 (7) For any cause for which an insurance license could be
26 denied, revoked, suspended or renewal refused pursuant to
27 section twenty-four, article twelve of this chapter.

**§33-12C-10. Actions against eligible surplus lines insurers
transacting surplus lines business.**

1 (a) An eligible surplus lines insurer may be sued upon a
2 cause of action arising in this state under a surplus lines
3 insurance contract made by it or evidence of insurance issued
4 or delivered by the surplus lines licensee. A policy issued by the
5 eligible surplus lines insurer shall contain a provision stating
6 the substance of this section and designating the person to
7 whom the commissioner shall mail process.

8 (b) The remedies provided in this section are in addition to
9 any other methods provided by law for service of process upon
10 insurers.

§33-12C-11. Duty to file evidence of insurance and affidavits.

1 (a) On or before the first day of March, two thousand four,
2 and on or before the first day of March thereafter, each surplus
3 lines licensee shall file, on a form prescribed by the commis-
4 sioner, a report under oath, setting forth facts from which it may
5 be determined whether the requirements of section five of this

6 article have been met with respect to each surplus line policy
7 procured by the surplus lines licensee during the preceding
8 calendar year.

9 (b) The written report shall include, but not be limited to,
10 the following:

11 (1) The name and address of the insured;

12 (2) The identity of the insurer or insurers;

13 (3) A description of the subject and location of the risk and
14 the risk insured against;

15 (4) Return premium paid, if any;

16 (5) The amount of gross premium charged for the insur-
17 ance;

18 (6) The amount of the insurance;

19 (7) Such other pertinent information as the commissioner
20 may reasonably require; and

21 (8) An affidavit on a standardized form promulgated by the
22 commissioner, as to the diligent efforts to place the coverage
23 with admitted insurers and the results of that effort. The
24 affidavit shall be open to public inspection. The affidavit shall
25 affirm that the insured was expressly advised in writing prior to
26 placement of the insurance that:

27 (A) The surplus lines insurer with whom the insurance was
28 to be placed is not licensed in this state and is not subject to its
29 supervision; and

30 (B) In the event of the insolvency of the surplus lines
31 insurer, losses will not be paid by the state insurance guaranty
32 fund.

§33-12C-12. Evidence of the insurance and subsequent changes to the insurance.

1 (a) Upon placing surplus lines insurance, the surplus lines
2 licensee shall promptly deliver to the insured the policy, or if
3 the policy is not then available, a certificate as described in
4 subsection (d) of this section, cover note, binder or other
5 evidence of insurance. The certificate described in subsection
6 (d) of this section, cover note, binder or other evidence of
7 insurance shall be executed by the surplus lines licensee and
8 shall show the description and location of the subject of the
9 insurance, coverages including any material limitations other
10 than those in standard forms, a general description of the
11 coverages of the insurance, the premium and rate charged and
12 taxes to be collected from the insured, and the name and
13 address of the insured and surplus lines insurer or insurers and
14 proportion of the entire risk assumed by each, and the name of
15 the surplus lines licensee and the licensee's license number.

16 (b) A surplus lines licensee shall not issue or deliver any
17 evidence of insurance or purport to insure or represent that
18 insurance will be or has been written by any eligible surplus
19 lines insurer, or a nonadmitted insurer pursuant to subdivision
20 (4), subsection (c), section five of this article, unless the
21 licensee has authority from the insurer to cause the risk to be
22 insured, or has received information from the insurer in the
23 regular course of business that the insurance has been granted.

24 (c) If, after delivery of any evidence of insurance, there is
25 any change in the identity of the insurers, or the proportion of
26 the risk assumed by any insurer, or any other material change
27 in coverage as stated in the surplus lines licensee's original
28 evidence of insurance, or in any other material as to the
29 insurance coverage so evidenced, the surplus lines licensee
30 shall promptly issue and deliver to the insured or the original
31 producing individual insurance producer appropriate substitute

32 for, or endorsement of the original document, accurately
33 showing the current status of the coverage and the insurers
34 responsible for the coverage.

35 (d) As soon as reasonably possible after the placement of
36 the insurance, the surplus lines licensee shall deliver a copy of
37 the policy or, if not available, a certificate of insurance to the
38 insured to replace any evidence of insurance previously issued.
39 Each certificate or policy of insurance shall contain or have
40 attached a complete record of all policy insuring agreements,
41 conditions, exclusions, clauses, endorsements or any other
42 material facts that would regularly be included in the policy.

43 (e) A surplus lines licensee who fails to comply with the
44 requirements of this subsection shall be subject to the penalties
45 provided in this article.

46 (f) The surplus lines licensee shall give the following
47 consumer notice to every person applying for insurance with a
48 nonadmitted insurer. The notice shall be printed in sixteen-point
49 type on a separate document affixed to the application. The
50 applicant shall sign and date a copy of the notice to acknowl-
51 edge receiving it. The surplus lines licensee shall maintain the
52 signed notice in its file for a period of ten years from expiration
53 of the policy. The surplus lines licensee shall tender a copy of
54 the signed notice to the insured at the time of delivery of each
55 policy the licensee transacts with a nonadmitted insurer. The
56 copy shall be a separate document affixed to the policy.

57 "Notice: 1. An insurer that is not licensed in this state is
58 issuing the insurance policy that you have applied to purchase.
59 These companies are called "nonadmitted" or "surplus lines"
60 insurers. 2. The insurer is not subject to the financial solvency
61 regulation and enforcement that applies to licensed insurers in
62 this state. 3. These insurers generally do not participate in
63 insurance guaranty funds created by state law. These guaranty

64 funds will not pay your claims or protect your assets if the
65 insurer becomes insolvent and is unable to make payments as
66 promised. 4. Some states maintain lists of approved or eligible
67 surplus lines insurers and surplus lines brokers may use only
68 insurers on the lists. Some states issue orders that particular
69 surplus lines insurers cannot be used. 5. For additional informa-
70 tion about the above matters and about the insurer, you should
71 ask questions of your insurance agent or surplus lines licensee.
72 You may also contact your insurance commission consumer
73 help line.”

§33-12C-13. Licensee’s duty to notify insured.

1 (a) No contract of insurance placed by a surplus lines
2 licensee under this article shall be binding upon the insured and
3 no premium or fee charged shall be due and payable until the
4 surplus lines licensee shall have notified the insured in writing,
5 in a form acceptable to the commissioner, a copy of which shall
6 be maintained by the licensee with the records of the contract
7 and available for possible examination, that:

8 (1) The insurer with which the licensee places the insurance
9 is not licensed by this state and is not subject to its supervision;
10 and

11 (2) In the event of the insolvency of the surplus lines
12 insurer, losses will not be paid by the state insurance guaranty
13 fund.

14 (b) Nothing herein contained shall nullify any agreement by
15 any insurer to provide insurance.

§33-12C-14. Effect of payment to surplus lines licensee.

1 A payment of premium to a surplus lines licensee acting for
2 a person other than itself in procuring, continuing or renewing
3 any policy of insurance procured under this section shall be

- 4 deemed to be payment to the insurer, whatever conditions or
- 5 stipulations may be inserted in the policy or contract notwith-
- 6 standing.

§33-12C-15. Surplus lines licensees may accept business from other producers.

- 1 A surplus lines licensee may originate surplus lines
- 2 insurance or accept such insurance from any other individual
- 3 insurance producer duly licensed as to the kinds of insurance
- 4 involved, and the surplus lines licensee may compensate the
- 5 individual insurance producer for the business. The surplus
- 6 lines licensee shall have the right to receive from the insurer the
- 7 customary commission.

§33-12C-16. Records of surplus lines licensee.

- 1 (a) Each surplus lines licensee shall keep in this state a full
- 2 and true record of each surplus lines insurance contract placed
- 3 by or through the licensee, including a copy of the policy,
- 4 certificate, cover note or other evidence of insurance showing
- 5 each of the following items applicable:
 - 6 (1) Amount of the insurance, risks and perils insured;
 - 7 (2) Brief description of the property insured and its loca-
 - 8 tion;
 - 9 (3) Gross premium charged;
 - 10 (4) Any return premium paid;
 - 11 (5) Rate of premium charged upon the several items of
 - 12 property;
 - 13 (6) Effective date and terms of the contract;
 - 14 (7) Name and address of the insured;

15 (8) Name and address of the insurer;

16 (9) Amount of tax and other sums to be collected from the
17 insured;

18 (10) Allocation of taxes by state as referred to in subsection
19 (f) of this section; and

20 (11) Identity of the producing broker, any confirming
21 correspondence from the insurer or its representative, and the
22 application.

23 (b) The record of each contract shall be kept open at all
24 reasonable times to examination by the commissioner without
25 notice for a period not less than ten years following termination
26 of the contract. In lieu of maintaining offices in this state, each
27 nonresident surplus lines licensee shall make available to the
28 commissioner any and all records that the commissioner deems
29 necessary for examination.

§33-12C-17. Reports - summary of exported business.

1 (a) On or before the first day of May, two thousand four,
2 and on or before the first day of May thereafter, the end of the
3 month following each year, each surplus lines licensee shall file
4 with the commissioner, on forms prescribed by the commis-
5 sioner, a verified report in duplicate of all surplus lines insur-
6 ance transacted during the preceding period;

7 (b) The report shall show the following:

8 (1) Aggregate gross premiums written;

9 (2) Aggregate return premiums;

10 (3) Amount of aggregate tax remitted to this state; and

11 (4) Amount of aggregate tax due or remitted to each other
12 state for which an allocation is made pursuant to section seven
13 of this article.

§33-12C-18. Penalties.

1 (a) A person who in this state represents or aids a
2 nonadmitted insurer in violation of this article is guilty of a
3 misdemeanor and upon conviction thereof, may be fined not
4 more than ten thousand dollars per each act or sentenced to not
5 less than ten days nor more than one year, or both fined and
6 imprisoned.

7 (b) In addition to any other penalty provided herein or
8 otherwise provided by law, including any suspension, revoca-
9 tion or refusal to renew a license, any person, firm, association
10 or corporation violating any provision of this article shall be
11 liable to a civil penalty not exceeding ten thousand dollars for
12 the first offense, and not exceeding twenty thousand dollars for
13 each succeeding offense.

14 (c) The above penalties are not exclusive remedies.
15 Penalties may also be assessed under article eleven of this
16 chapter.

§33-12C-19. Violations.

1 Whenever the commissioner believes, from evidence
2 satisfactory to him or her, that a person is violating or about to
3 violate the provisions of this article, the commissioner may
4 cause a complaint to be filed in the circuit court of Kanawha
5 County for restitution and to enjoin and restrain the person from
6 continuing the violation or engaging in or doing any act in
7 furtherance thereof. The court shall have jurisdiction of the
8 proceeding and shall have the power to make and enter an order
9 of judgment awarding such preliminary or final injunctive relief
10 and restitution as in its judgment is proper.

§33-12C-20. Service of process.

1 (a) Any act of transacting insurance by an unauthorized
2 person or a nonadmitted insurer is equivalent to and shall
3 constitute an irrevocable appointment by the unauthorized
4 person or insurer, binding upon it, its executor or administrator,
5 or successor in interest of the secretary of state or his or her
6 successor in office, to be the true and lawful attorney of the
7 unauthorized person or insurer upon whom may be served all
8 lawful process in any action, suit or proceeding in any court by
9 the commissioner or by the state and upon whom may be served
10 any notice, order, pleading or process in any proceeding before
11 the commissioner and which arises out of transacting insurance
12 in this state by the unauthorized person or insurer. Any act of
13 transacting insurance in this state by a nonadmitted insurer shall
14 signify its acceptance of its agreement that any lawful process
15 in such court action, suit or proceeding and any notice, order,
16 pleading or process in such administrative proceeding before
17 the commissioner so served shall be of the same legal force and
18 validity as personal service of process in this state upon the
19 unauthorized person or insurer.

20 (b) Service of process in the action shall be made by
21 delivering to and leaving with the secretary of state, or some
22 person in apparent charge of the office, two copies thereof and
23 by payment to the secretary of state of the fee prescribed by
24 law. Service upon the secretary of state as attorney shall be
25 service upon the principal.

26 (c) The secretary of state shall forward by certified mail one
27 of the copies of the process or notice, order, pleading or process
28 in proceedings before the commissioner to the defendant in the
29 court proceeding or to whom the notice, order, pleading or
30 process in the administrative proceeding is addressed or
31 directed at its last known principal place of business and shall
32 keep a record of all process so served on the commissioner

33 which shall show the day and hour of service. Service is
34 sufficient, provided:

35 (1) Notice of service and a copy of the court process or the
36 notice, order, pleading or process in the administrative proceed-
37 ing are sent within fifteen days by certified mail by the plaintiff
38 or the plaintiff's attorney in the court proceeding or by the
39 commissioner in the administrative proceeding to the defendant
40 in the court proceeding or to whom the notice, order, pleading
41 or process in the administrative proceeding is addressed or
42 directed at the last known principal place of business of the
43 defendant in the court or administrative proceeding; and

44 (2) The defendant's receipt or receipts issued by the post
45 office with which the letter is registered, showing the name of
46 the sender of the letter and the name and address of the person
47 or insurer to whom the letter is addressed, and an affidavit of
48 the plaintiff or the plaintiff's attorney in a court proceeding or
49 of the commissioner in an administrative proceeding, showing
50 compliance are filed with the clerk of the court in which the
51 action, suit or proceeding is pending or with the commissioner
52 in administrative proceedings, on or before the date the defen-
53 dant in the court or administrative proceeding is required to
54 appear or respond, or within such further time as the court or
55 commissioner may allow.

56 (d) A plaintiff shall not be entitled to a judgment or a
57 determination by default in any court or administrative proceed-
58 ing in which court process or notice, order, pleading or process
59 in proceedings before the commissioner is served under this
60 section until the expiration of forty-five days from the date of
61 filing of the affidavit of compliance.

62 (e) Nothing in this section shall limit or affect the right to
63 serve any process, notice, order or demand upon any person or
64 insurer in any other manner now or hereafter permitted by law.

65 (f) Each nonadmitted insurer assuming insurance in this
66 state, or relative to property, risks or exposures located or to be
67 performed in this state, shall be deemed to have subjected itself
68 to this article.

69 (g) Notwithstanding conditions or stipulations in the policy
70 or contract, a nonadmitted insurer may be sued upon any cause
71 of action arising in this state, or relative to property, risks or
72 exposures located or to be performed in this state, under any
73 insurance contract made by it.

74 (h) Notwithstanding conditions or stipulations in the policy
75 or contract, a nonadmitted insurer subject to arbitration or other
76 alternative dispute resolution mechanism arising in this state or
77 relative to property, risks or exposures located or to be per-
78 formed in this state under an insurance contract made by it shall
79 conduct the arbitration or other alternative dispute resolution
80 mechanism in this state.

81 (i) A policy or contract issued by the nonadmitted insurer
82 or one which is otherwise valid and contains a condition or
83 provision not in compliance with the requirements of this article
84 is not thereby rendered invalid but shall be construed and
85 applied in accordance with the conditions and provisions which
86 would have applied had the policy or contract been issued or
87 delivered in full compliance with this article.

§33-12C-21. Legal or administrative procedures.

1 (a) Before any nonadmitted insurer files or causes to be
2 filed any pleading in any court action, suit or proceeding or in
3 any notice, order, pleading or process in an administrative
4 proceeding before the commissioner instituted against the
5 person or insurer, by services made as provided in this article,
6 the insurer shall either:

7 (1) File with the clerk of the court in which the action, suit
8 or proceeding is pending, or with the commissioner of insur-
9 ance in administrative proceedings before the commissioner a
10 bond with good and sufficient sureties, to be approved by the
11 clerk or commissioner in an amount to be fixed by the court or
12 commissioner sufficient to secure the payment of any final
13 judgment which may be rendered in the action or administrative
14 proceeding; or

15 (2) Procure a certificate of authority to transact the business
16 of insurance in this state. In considering the application of an
17 insurer for a certificate of authority, for the purposes of this
18 paragraph the commissioner need not assert the provisions of
19 section sixteen, article three of this chapter against the insurer
20 with respect to its application if the commissioner determines
21 that the company would otherwise comply with the require-
22 ments for a certificate of authority.

23 (b) The commissioner of insurance, in any administrative
24 proceeding in which service is made as provided in this article,
25 may in the commissioner's discretion, order such postponement
26 as may be necessary to afford the defendant reasonable oppor-
27 tunity to comply with the provisions of subsection (a) of this
28 section and to defend the action.

29 (c) Nothing in subsection (a) of this section shall be
30 construed to prevent a nonadmitted insurer from filing a motion
31 to quash a writ or to set aside service thereof made in the
32 manner provided in this article, on the ground that the
33 nonadmitted insurer has not done any of the acts enumerated in
34 the pleadings.

35 (d) Nothing in subsection (a) of this section shall apply to
36 placements of insurance which were lawful in the state in which
37 the placement took place and which were not unlawful place-
38 ments under the laws of this state. Without limiting the general-

ity of the foregoing, nothing in subsection (a) of this section shall apply to a placement made pursuant to section five of this article.

§33-12C-22. Enforcement.

(a) The commissioner shall have the authority to proceed in the courts of this state or any other United States jurisdiction to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) Filing and status of foreign decrees.

A copy of a foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree so filed has the same effect and shall be deemed a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(c) Notice of filing.

(1) At the time of the filing of the foreign decree, the plaintiff shall make and file with the clerk of the court an affidavit setting forth the name and last known post-office address of the defendant.

(2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the

27 docket. In addition, the plaintiff may mail a notice of the filing
28 of the foreign decree to the defendant and to the commissioner
29 of this state and may file proof of mailing with the clerk. Lack
30 of mailing notice of filing by the clerk shall not affect the
31 enforcement proceedings if proof of mailing by the plaintiff has
32 been filed.

33 (3) No execution or other process for enforcement of a
34 foreign decree filed hereunder may issue until thirty days after
35 the date the decree is filed.

36 (d) Stay of the foreign decree.

37 (1) If the defendant shows the circuit court that an appeal
38 from the foreign decree is pending or will be taken, or that a
39 stay of execution has been granted, the court shall stay enforce-
40 ment of the foreign decree until the appeal is concluded, the
41 time for appeal expires, or the stay of execution expires or is
42 vacated, upon proof that the defendant has furnished the
43 security for the satisfaction of the decree required by the state
44 in which it was rendered.

45 (2) If the defendant shows the circuit court any ground upon
46 which enforcement of a decree of any circuit court of this state
47 would be stayed, the court shall stay enforcement of the foreign
48 decree for an appropriate period, upon requiring the same
49 security for satisfaction of the decree which is required in this
50 state.

51 (e) It shall be the policy of this state that the insurance
52 commissioner shall cooperate with regulatory officials in other
53 United States jurisdictions to the greatest degree reasonably
54 practicable in enforcing lawfully issued orders of such other
55 officials subject to public policy and the insurance laws of the
56 state. Without limiting the generality of the foregoing, the
57 commissioner may enforce an order lawfully issued by other

58 officials provided the order does not violate the laws or public
59 policy of this state.

§33-12C-23. Suits by nonadmitted insurers.

1 A nonadmitted insurer may not commence or maintain an
2 action in law or equity, including arbitration or any other
3 dispute resolution mechanism, in this state to enforce any right
4 arising out of any insurance transaction except with respect to:

5 (a) Claims under policies lawfully written in this state;

6 (b) Liquidation of assets and liabilities of the insurer (other
7 than collection of new premium), resulting from its former
8 authorized operations in this state;

9 (c) Transactions subsequent to issuance of a policy not
10 covering domestic risks at the time of issuance, and lawfully
11 procured under the laws of the jurisdiction where the transac-
12 tion took place;

13 (d) Surplus lines insurance placed by a licensee under
14 authority of section eight of this article;

15 (e) Reinsurance placed under the authority of article thirty-
16 eight of this chapter;

17 (f) The continuation and servicing of life insurance, health
18 insurance policies or annuity contracts remaining in force as to
19 residents of this state where the formerly authorized insurer has
20 withdrawn from the state and is not transacting new insurance
21 in the state;

22 (g) Servicing of policies written by an admitted insurer in
23 a state to which the insured has moved but in which the
24 company does not have a certificate of authority until the term
25 expires;

26 (h) Claims under policies covering wet marine and trans-
27 portation insurance;

28 (i) Placements of insurance which were lawful in the
29 jurisdiction in which the transaction took place and which were
30 not unlawful placements under the laws of this state.

§33-12C-24. Countersignature requirements.

1 Surplus lines insurance shall be countersigned by a duly
2 licensed resident surplus lines licensee.

§33-12C-25. Fees.

1 The commissioner shall receive the following fees from
2 surplus lines licensees: For letters of certification, five dollars;
3 for letters of clearance, ten dollars; for duplicate license, five
4 dollars. All fees and moneys so collected shall be used for the
5 purposes set forth in section thirteen, article three of this
6 chapter.

§33-12C-26. Coverage must be placed in solvent insurer.

1 No surplus lines licensee may knowingly place any
2 coverage in an insolvent insurer.

§33-12C-27. Change of address.

1 A surplus lines licensee shall notify the commissioner of
2 any change in his or her mailing address within thirty days of
3 such change. The commissioner shall maintain the mailing
4 address of each surplus lines licensee on file. Failure to timely
5 inform the insurance commissioner of a change in legal name
6 or address may result in a penalty pursuant to section twenty-
7 four, article twelve of this chapter.

§33-12C-28. Separability provisions.

1 If any provisions of this article, or the application of the
2 provision to any person or circumstance, shall be held invalid,
3 the remainder of the article and the application of the provision
4 to persons or circumstances other than those as to which it is
5 held invalid, shall not be affected thereby.

§33-12C-29. Hearings.

1 (a) When conducting any hearing authorized by section
2 thirteen, article two of this chapter which concerns any surplus
3 lines licensee, the commissioner shall give notice of the hearing
4 and the matters to be determined therein to the surplus lines
5 licensee by certified mail, return receipt requested, sent to the
6 last address filed by a person or entity pursuant to section eight
7 of this article.

8 (b) If a surplus lines licensee fails to appear at the hearing,
9 the hearing may proceed, at which time the commissioner shall
10 establish that notice was sent to the person pursuant to this
11 section prior to the entry of any orders adverse to the interests
12 of a surplus lines licensee based upon the allegations against the
13 person which were set forth in the notice of hearing. Certified
14 copies of all orders entered by the commissioner shall be sent
15 to the person affected therein by certified mail, return receipt
16 requested, at the last address filed by a person with the commis-
17 sioner.

18 (c) A surplus lines licensee who fails to appear at a hearing
19 of which notice has been provided pursuant to this section, and
20 who has had an adverse order entered by the commissioner
21 against them as a result of their failure to so appear may, within
22 thirty calendar days of the entry of an adverse order, file with
23 the commissioner a written verified appeal with any relevant
24 documents attached thereto, which demonstrates good and

25 reasonable cause for the person's failure to appear, and may
26 request reconsideration of the matter and a new hearing. The
27 commissioner in his or her discretion, and upon a finding that
28 the surplus lines licensee has shown good and reasonable cause
29 for his or her failure to appear, shall issue an order that the
30 previous order be rescinded, that the matter be reconsidered,
31 and that a new hearing be set.

32 (d) Orders entered pursuant to this section are subject to the
33 judicial review provisions of section fourteen, article two of this
34 chapter.

CHAPTER 126

(S. B. 357 — By Senators Minard, Jenkins, Sharpe and Minear)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-a, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That section thirty-a, article thirteen, 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 13. LIFE INSURANCE.

§33-13-30a. Standard nonforfeiture law for individual deferred annuities.

1 (a) This section shall be known as the “Standard
2 Nonforfeiture Law for Individual Deferred Annuities”.

3 (b) This section may not apply to any reinsurance, group
4 annuity purchased under a retirement plan or plan of deferred
5 compensation established or maintained by an employer
6 (including a partnership or sole proprietorship) or by an
7 employee organization, or by both, other than a plan providing
8 individual retirement accounts or individual retirement annu-
9 ities under Section 408 of the Internal Revenue Code, as now or
10 hereafter amended, premium deposit fund, variable annuity,
11 investment annuity, immediate annuity, any deferred annuity
12 contract after annuity payments have commenced or reversion-
13 ary annuity, nor to any contract which shall be delivered outside
14 this state through an agent or other representative of the
15 company issuing the contract.

16 (c) In the case of contracts issued on or after the operative
17 date of this section as defined in subsection (l) of this section,
18 no contract of annuity, except as stated in subsection (b) of this
19 section, shall be delivered or issued for delivery in this state
20 unless it contains in substance the following provisions, or
21 corresponding provisions which, in the opinion of the commis-
22 sioner, are at least as favorable to the contract holder, upon
23 cessation of payment of considerations under the contract:

24 (1) That upon cessation of payment of considerations under
25 a contract, the company will grant a paid-up annuity benefit on
26 a plan stipulated in the contract of the value as is specified in
27 subsections (e), (f), (g), (h) and (j) of this section;

28 (2) If a contract provides for a lump sum settlement at
29 maturity or at any other time, that, upon surrender of the
30 contract at or prior to the commencement of any annuity
31 payments, the company will pay in lieu of any paid-up annuity
32 benefit a cash surrender benefit of the amount as is specified in

33 subsections (e), (f), (h) and (j) of this section. The company
34 shall reserve the right to defer the payment of the cash surren-
35 der benefit for a period of six months after demand therefor
36 with surrender of the contract;

37 (3) A statement of the mortality table, if any, and interest
38 rates used in calculating any minimum paid-up annuity, cash
39 surrender or death benefits that are guaranteed under the
40 contract, together with sufficient information to determine the
41 amounts of the benefits; and

42 (4) A statement that any paid-up annuity, cash surrender or
43 death benefits that may be available under the contract are not
44 less than the minimum benefits required by any statute of the
45 state in which the contract is delivered and an explanation of
46 the manner in which the benefits are altered by the existence of
47 any additional amounts credited by the company to the contract,
48 any indebtedness to the company on the contract or any prior
49 withdrawals from or partial surrenders of the contract.

50 Notwithstanding the requirements of this subsection, any
51 deferred annuity contract may provide that if no considerations
52 have been received under a contract for a period of two full
53 years and the portion of the paid-up annuity benefit at maturity
54 on the plan stipulated in the contract arising from consider-
55 ations paid prior to the period would be less than twenty dollars
56 monthly, the company may at its option terminate the contract
57 by payment in cash of the then present value of the portion of
58 the paid-up annuity benefit, calculated on the basis of the
59 mortality table, if any, and interest rate specified in the contract
60 for determining the paid-up annuity benefit and by the payment
61 shall be relieved of any further obligation under the contract.

62 (d) The minimum values as specified in subsections (e), (f),
63 (g), (h) and (j) of this section of any paid-up annuity, cash
64 surrender or death benefits available under an annuity contract

65 shall be based upon minimum nonforfeiture amounts as defined
66 in this section:

67 (1) With respect to contracts providing for flexible consid-
68 erations, the minimum nonforfeiture amount at any time at or
69 prior to the commencement of any annuity payments shall be
70 equal to an accumulation up to the time at a rate of interest of
71 three percent per annum of percentages of the net consider-
72 ations (as hereinafter defined) paid prior to the time, decreased
73 by the sum of:

74 (A) Any prior withdrawals from or partial surrenders of the
75 contract accumulated at a rate of interest of three percent per
76 annum; and

77 (B) The amount of any indebtedness to the company on the
78 contract, including interest due and accrued; and increased by
79 any existing additional amounts credited by the company to the
80 contract.

81 The net considerations for a given contract year used to
82 define the minimum nonforfeiture amount shall be an amount
83 not less than zero and shall be equal to the corresponding gross
84 considerations credited to the contract during that contract year
85 less than an annual contract charge of thirty dollars and less a
86 collection charge of one dollar and twenty-five cents per
87 consideration credited to the contract during that contract year.
88 The percentages of net considerations shall be sixty-five percent
89 of the net consideration for the first contract year and
90 eighty-seven and one-half percent of the net considerations for
91 the second and later contract years. Notwithstanding the
92 provisions of the preceding sentence, the percentage shall be
93 sixty-five percent of the portion of the total net consideration
94 for any renewal contract year which exceeds by not more than
95 two times the sum of those portions of the net considerations in

96 all prior contract years for which the percentage was sixty-five
97 percent.

98 Notwithstanding any other provision of this section, any
99 contract issued on or after the first day of July, two thousand
100 three, and before the first day of July, two thousand five, the
101 interest rate at which net considerations, prior withdrawals and
102 partial surrenders shall be accumulated for the purpose of
103 determining nonforfeiture amounts may not be less than one
104 and one-half percent per annum.

105 (2) With respect to contracts providing for fixed scheduled
106 considerations, minimum nonforfeiture amounts shall be
107 calculated on the assumption that considerations are paid
108 annually in advance and shall be defined as for contracts with
109 flexible considerations which are paid annually with two
110 exceptions:

111 (A) The portion of the net consideration for the first
112 contract year to be accumulated shall be the sum of sixty-five
113 percent of the net consideration for the first contract year plus
114 twenty-two and one-half percent of the excess of the net
115 consideration for the first contract year over the lesser of the net
116 considerations for the second and third contract years.

117 (B) The annual contract charge shall be the lesser of: (i)
118 Thirty dollars; or (ii) ten percent of the gross annual consider-
119 ation.

120 (3) With respect to contracts providing for a single consid-
121 eration, minimum nonforfeiture amounts shall be defined as for
122 contracts with flexible considerations except that the percentage
123 of net consideration used to determine the minimum
124 nonforfeiture amount shall be equal to ninety percent and the
125 net consideration shall be the gross consideration less a contract
126 charge of seventy-five dollars.

127 (e) Any paid-up annuity benefit available under a contract
128 shall be such that its present value on the date annuity payments
129 are to commence is at least equal to the minimum nonforfeiture
130 amount on that date. The present value shall be computed using
131 the mortality table, if any, and the interest rate specified in the
132 contract for determining the minimum paid-up annuity benefits
133 guaranteed in the contract.

134 (f) For contracts which provide cash surrender benefits, the
135 cash surrender benefits available prior to maturity shall not be
136 less than the present value as of the date of surrender of that
137 portion of the maturity value of the paid-up annuity benefit
138 which would be provided under the contract at maturity arising
139 from consideration paid prior to the time of cash surrender
140 reduced by the amount appropriate to reflect any prior with-
141 draws from or partial surrenders of the contract, the present
142 value being calculated on the basis of an interest rate not more
143 than one percent higher than the interest rate specified in the
144 contract for accumulating the net considerations to determine
145 the maturity value, decreased by the amount of any indebted-
146 ness to the company on the contract, including interest due and
147 accrued, and increased by any existing additional amounts
148 credited by the company to the contract. In no event shall any
149 cash surrender benefit be less than the minimum nonforfeiture
150 amount at that time. The death benefit under the contracts shall
151 be at least equal to the cash surrender benefit.

152 (g) For contracts which do not provide cash surrender
153 benefits, the present value of any paid-up annuity benefit
154 available as a nonforfeiture option at any time prior to maturity
155 shall not be less than the present value of that portion of the
156 maturity value of the paid-up annuity benefit provided under
157 the contract arising from considerations paid prior to the time
158 the contract is surrendered in exchange for, or changed to, a
159 deferred paid-up annuity, the present value being calculated for

160 the period prior to the maturity date on the basis of the interest
161 rate specified in the contract for accumulating the net consider-
162 ations to determine the maturity value and increased by any
163 existing additional amounts credited by the company to the
164 contract. For contracts which do not provide any death benefits
165 prior to the commencement of any annuity payments, the
166 present values shall be calculated on a basis of the interest rate
167 and the mortality table specified in the contract for determining
168 the maturity value of the paid-up annuity benefit. However, in
169 no event shall the present value of a paid-up annuity benefit be
170 less than the minimum nonforfeiture amount at that time.

171 (h) For the purpose of determining the benefits calculated
172 under subsections (f) and (g) of this section, in the case of
173 annuity contracts under which an election may be made to have
174 annuity payments commence at optional maturity dates, the
175 maturity date shall be deemed to be the latest date for which
176 election shall be permitted by the contract, but shall not be
177 deemed to be later than the anniversary of the contract next
178 following the annuitant's seventieth birthday or the tenth
179 anniversary of the contract, whichever is later.

180 (i) Any contract which does not provide cash surrender
181 benefits or does not provide death benefits at least equal to the
182 minimum nonforfeiture amount prior to the commencement of
183 any annuity payments shall include a statement in a prominent
184 place in the contract that the benefits are not provided.

185 (j) Any paid-up annuity, cash surrender or death benefits
186 available at any time, other than on the contract anniversary
187 under any contract with fixed scheduled considerations, shall be
188 calculated with allowance for the lapse of time and the payment
189 of any scheduled considerations beyond the beginning of the
190 contract year in which cessation of payment of considerations
191 under the contract occurs.

192 (k) For any contract which provides, within the same
193 contract by rider or supplemental contract provision, both
194 annuity benefits and life insurance benefits that are in excess of
195 the greater of cash surrender benefits or a return of the gross
196 considerations with interest, the minimum nonforfeiture
197 benefits shall be equal to the sum of the minimum nonforfeiture
198 benefits for the annuity portion and the minimum nonforfeiture
199 benefits, if any, for the life insurance portion computed as if
200 each portion were a separate contract. Notwithstanding the
201 provisions of subsections (e), (f), (g), (h) and (j) of this section,
202 additional benefits payable: (1) In the event of total and
203 permanent disability; (2) as reversionary annuity or deferred
204 reversionary annuity benefits; or (3) as other policy benefits
205 additional to life insurance, endowment and annuity benefits
206 and considerations for all the additional benefits shall be
207 disregarded in ascertaining the minimum nonforfeiture
208 amounts, paid-up annuity, cash surrender and death benefits
209 that may be required by this section. The inclusion of the
210 additional benefits shall not be required in any paid-up benefits
211 unless the additional benefits separately would require mini-
212 mum nonforfeiture amounts, paid-up annuity, cash surrender
213 and death benefits.

214 (l) After the effective date of this section, any company
215 may file with the commissioner a written notice of its election
216 to comply with the provisions of this section after a specified
217 date before the second anniversary of the effective date of this
218 section. After the filing of the notice, then upon the specified
219 date which shall be the operative date of this section for the
220 company, this section shall become operative with respect to
221 annuity contracts thereafter issued by the company. If a
222 company makes no election, the operative date of this section
223 for the company shall be the second anniversary of the effective
224 date of this section.

CHAPTER 127

(Com. Sub. for S. B. 56 — By Senator Chafin)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-q; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-h; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-f; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-g, all relating generally to group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations; and prohibiting certain contracts of insurance from requiring subscribers to obtain prescription drugs from a mail-order pharmacy in order to obtain benefits for drugs.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-q; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-h; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-f; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-g, all to read as follows:

Article

- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**§33-16-3q. Required use of mail-order pharmacy prohibited.**

1 (a) An insurer issuing group accident and sickness policies
2 in this state pursuant to the provisions of this article may not
3 require any person covered under a contract which provides
4 coverage for prescription drugs to obtain the prescription drugs
5 from a mail-order pharmacy in order to obtain benefits for the
6 drugs.

7 (b) An insurer may not violate the provisions of subsection
8 (a) of this section through the use of an agent or contractor or
9 through the action of an administrator of prescription drug
10 benefits.

11 (c) The insurance commissioner may propose rules for
12 legislative approval in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code to implement and
14 enforce the provisions of this section.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**§33-24-7h. Required use of mail-order pharmacy prohibited.**

1 (a) A corporation defined in section two of this article may
2 not require any person covered under a contract which provides
3 coverage for prescription drugs to obtain the prescription drugs
4 from a mail-order pharmacy in order to obtain benefits for the
5 drugs.

6 (b) A corporation may not violate the provisions of subsec-
7 tion (a) of this section through the use of an agent or contractor
8 or through the action of an administrator of prescription drug
9 benefits.

10 (c) The insurance commissioner may propose rules for
11 legislative approval in accordance with the provisions of article
12 three, chapter twenty-nine-a of this code to implement and
13 enforce the provisions of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8f. Required use of mail-order pharmacy prohibited.

1 (a) A health care corporation issuing a contract under the
2 provisions of this article may not require any person covered
3 under a contract which provides coverage for prescription drugs
4 to obtain the prescription drugs from a mail-order pharmacy in
5 order to obtain benefits for the drugs.

6 (b) A health care corporation may not violate the provisions
7 of subsection (a) of this section through the use of an agent or
8 contractor or through the action of an administrator of prescrip-
9 tion drug benefits.

10 (c) The insurance commissioner may propose rules for
11 legislative approval in accordance with the provisions of article
12 three, chapter twenty-nine-a of this code to implement and
13 enforce the provisions of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8g. Required use of mail-order pharmacy prohibited.

1 (a) A health maintenance organization issuing coverage in
2 this state pursuant to the provisions of this article may not
3 require any person covered under a contract which provides
4 coverage for prescription drugs to obtain the prescription drugs

5 from a mail-order pharmacy in order to obtain benefits for the
6 drugs.

7 (b) A health maintenance organization may not violate the
8 provisions of subsection (a) of this section through the use of an
9 agent or contractor or through the action of an administrator of
10 prescription drug benefits.

11 (c) The insurance commissioner may propose rules for
12 legislative approval in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code to implement and
14 enforce the provisions of this section.

CHAPTER 128

(S. B. 488 — By Senators Minard, Jenkins, Minear, Sharpe and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and twelve, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the contingent liability of members of farmers' mutual fire insurance companies; and limiting the amount of risk such companies may undertake.

Be it enacted by the Legislature of West Virginia:

That sections ten and twelve, article twenty-two, 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 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-10. Contingent liability of member.

§33-22-12. Limit of risk.

§33-22-10. Contingent liability of member.

1 The contingent liability of a member of such company may,
2 with the approval of the commissioner, be limited to one or
3 more times the annual premium as computed for the policy and
4 the company may issue a policy without contingent liability to
5 the member if at the time of issuance the net premium written
6 to surplus as to policyholders does not exceed four to one and
7 the company maintains unearned premium and other reserves
8 on the same basis as that required of domestic insurers transact-
9 ing like kinds of insurance. In the absence of such limitation of
10 contingent liability each member shall be liable for his or her
11 pro rata share of losses and expenses of the company, including
12 a reasonable contribution to a surplus fund.

§33-22-12. Limit of risk.

1 No such company shall insure any single risk comprising a
2 building and contents or other property so located as to be
3 subject to destruction by a single fire for a greater amount than
4 one thousand dollars until its insurance in force shall be as
5 much as five hundred thousand dollars, nor shall it then insure
6 any such risks for an amount greater than one fifth of one
7 percent of the net insurance in force under its policies or ten
8 percent of its surplus, whichever is greater, unless the risks
9 insured by the company in excess of the amounts above
10 stipulated are simultaneously covered by reinsurance.

11 Any company having received an extension of its license to
12 permit it to issue policies of insurance pursuant to subsection
13 (c), section eight of this article shall be subject to the provisions
14 of section sixteen, article four of this chapter.

CHAPTER 129

(S. B. 356 — By Senators Minard, Jenkins, Minear and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, two-a, three and seven, article twenty-seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance company holding systems and amendments required by the federal Gramm-Leach-Bliley Act; allowing insurance companies to acquire or be acquired by depository institutions; amending the period of time within which a public hearing and action thereon may be taken by the commissioner upon a statement filed by a person offering to acquire control of an insurance company; authorizing the commissioner to share confidential information gathered pursuant to said article with the board of governors of the federal reserve system or other appropriate federal banking agency; and making technical changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE COMPANY HOLDING SYSTEMS.

§33-27-2. Definitions.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the

commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

§33-27-7. Confidential treatment.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific
3 person is a person that, directly or indirectly through one or
4 more intermediaries, controls or is controlled by or is under
5 common control with the person specified.

6 (b) “Commissioner” means the insurance commissioner,
7 his or her deputies or the insurance department, as appropriate.

8 (c) “Control” (including the terms “controlling”, “con-
9 trolled by” and “under common control with”) means the
10 possession, direct or indirect, of the power to direct or cause the
11 direction of the management and policies of a person, whether
12 through the ownership of voting securities, by contract other
13 than a commercial contract for goods or nonmanagement
14 services or otherwise, unless the power is the result of an
15 official position with or corporate office held by the person.
16 Control shall be presumed to exist if any person, directly or
17 indirectly, owns, controls, holds with the power to vote or holds
18 proxies representing ten percent or more of the voting securities
19 of any other person or controls or appoints a majority of the
20 board of directors, voting members or similar governing body
21 of any other person. This presumption may be rebutted by a
22 showing made in the manner provided by subsection (l), section
23 four of this article that control does not exist in fact. The
24 commissioner may determine after furnishing all persons in
25 interest notice and opportunity to be heard and making specific
26 findings of fact to support the determination that control exists
27 in fact notwithstanding the absence of a presumption to that
28 effect.

29 (d) “Depository institution” means a bank or savings
30 association as those terms are defined in section three of the
31 federal deposit insurance act. The term “depository institution”
32 does not include an insurance company.

33 (e) “Insurance holding company system” consists of two or
34 more affiliated persons, one or more of which is an insurer.

35 (f) “Insurer” means any person or persons or corporation,
36 partnership or company authorized by the laws of this state to
37 transact the business of insurance in this state, except that it
38 shall not include agencies, authorities or instrumentalities of the
39 United States, its possessions and territories, the commonwealth
40 of Puerto Rico, the District of Columbia or a state or political
41 subdivision of a state.

42 (g) “Person” means an individual, a corporation, a partner-
43 ship, an association, a joint-stock company, a trust, an unincor-
44 porated organization, a depository institution or any other legal
45 entity or any combination of the foregoing acting in concert, but
46 does not include any securities broker performing no more than
47 the usual and customary broker’s function and holding less than
48 twenty percent of the voting securities of an insurance company
49 or of any person which controls an insurance company.

50 (h) A “security holder” of a specified person is one who
51 owns any security of such person, including common stock,
52 preferred stock, debt obligations and any other security convert-
53 ible into or evidencing the right to acquire any of the foregoing.

54 (i) A “subsidiary” of a specified person is an affiliate
55 controlled by such person directly or indirectly through one or
56 more intermediaries.

57 (j) “Voting security” includes any security convertible into
58 or evidencing a right to acquire a voting security.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

1 (a) Any domestic insurer, either by itself or in cooperation
2 with one or more persons, may organize or acquire one or more
3 subsidiaries engaged in the following kinds of business with the
4 commissioner's prior approval:

5 (1) Any kind of insurance business authorized by the
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any of
8 its parent's insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its own
10 account, that of its parent, any subsidiary of its parent or any
11 affiliate or subsidiary;

12 (4) Management of any investment company subject to or
13 registered pursuant to the Investment Company Act of 1940, as
14 amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered
16 pursuant to the Securities Exchange Act of 1934, as amended;

17 (6) Rendering investment advice to governments, govern-
18 ment agencies, corporations or other organizations or groups;

19 (7) Rendering other services related to the operations of an
20 insurance business, including, but not limited to, actuarial, loss
21 prevention, safety engineering, data processing, accounting,
22 claims, appraisal and collection services;

23 (8) Ownership and management of assets which the parent
24 corporation could itself own or manage;

25 (9) Acting as administrative agent for a governmental
26 instrumentality which is performing an insurance function;

27 (10) Financing of insurance premiums, agents and other
28 forms of consumer financing;

29 (11) Any other business activity determined by the commis-
30 sioner to be reasonably ancillary to an insurance business;

31 (12) Owning a corporation or corporations engaged or
32 organized to engage exclusively in one or more of the busi-
33 nesses specified in this section; and

34 (13) Organizing or acquiring one or more subsidiaries that
35 are depository institutions.

36 (b) In addition to investments in common stock, preferred
37 stock, debt obligations and other securities permitted under any
38 other provision of this chapter, a domestic insurer may also
39 with the commissioner's prior approval:

40 (1) Invest in common stock, preferred stock, debt obliga-
41 tions and other securities of one or more subsidiaries, amounts
42 which do not exceed the lesser of ten percent of such insurer's
43 assets or fifty percent of such insurer's surplus as regards
44 policyholders: *Provided*, That after such investments, the
45 insurer's surplus as regards policyholders will be reasonable in
46 relation to the insurer's outstanding liabilities and adequate to
47 its financial needs. In calculating the amount of such invest-
48 ments, investments in domestic or foreign insurance subsidiar-
49 ies shall be excluded and there shall be included:

50 (A) Total net moneys or other consideration expended and
51 obligations assumed in the acquisition or formation of a
52 subsidiary, including all organizational expenses and contribu-
53 tions to capital and surplus of such subsidiary whether or not

54 represented by the purchase of capital stock or issuance of other
55 securities; and

56 (B) All amounts expended in acquiring additional common
57 stock, preferred stock, debt obligations and other securities, and
58 all contributions to the capital or surplus, of a subsidiary
59 subsequent to its acquisition or formation;

60 (2) Invest any amount in common stock, preferred stock,
61 debt obligations and other securities of one or more subsidiaries
62 engaged or organized to engage exclusively in the ownership
63 and management of assets authorized as investments for the
64 insurer: *Provided*, That each such subsidiary agrees to limit its
65 investments in any asset so that such investments will not cause
66 the amount of the total investment of the insurer to exceed any
67 of the investment limitations specified in subdivision (1) of this
68 subsection or in article eight of this chapter applicable to the
69 insurer. For the purpose of this subdivision, "the total invest-
70 ment of the insurer" includes:

71 (A) Any direct investment by the insurer in an asset; and

72 (B) The insurer's proportionate share of any investment in
73 an asset by any subsidiary of the insurer which shall be calcu-
74 lated by multiplying the amount of the subsidiary's investment
75 by the percentage of the ownership of such subsidiary;

76 (3) With the approval of the commissioner invest any
77 greater amount in common stock, preferred stock, debt obliga-
78 tions or other securities of one or more subsidiaries: *Provided*,
79 That after such investment the insurer's surplus as regards
80 policyholders will be reasonable in relation to the insurer's
81 outstanding liabilities and adequate to its financial needs.

82 (c) Investments in common stock, preferred stock, debt
83 obligations or other securities of subsidiaries made pursuant to
84 subsection (b) of this section shall not be subject to any of the

85 otherwise applicable restrictions or prohibitions contained in
86 this chapter applicable to such investments of insurers except
87 section twenty-one, article eight of this chapter.

88 (d) Whether any investment pursuant to subsection (a) or
89 (b) of this section meets the applicable requirements thereof is
90 to be determined before such investment is made by calculating
91 the applicable investment limitations as though the investment
92 had already been made, taking into account the then outstanding
93 principal balance on all previous investments in debt obliga-
94 tions and the value of all previous investments in equity
95 securities as of the day they were made, net of any return of
96 capital invested, not including dividends.

97 (e) If an insurer ceases to control a subsidiary, it shall
98 dispose of any investment therein made pursuant to this section
99 within three years from the time of the cessation of control or
100 within such further time as the commissioner may prescribe,
101 unless at any time after such investment shall have been made
102 such investment shall have met the requirements for investment
103 under any other provision of this chapter and the insurer has
104 notified the commissioner thereof.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

1 (a) Any person other than the issuer shall not make a tender
2 offer for or a request or invitation for tenders of, or enter into
3 any agreement to exchange securities for, seek to acquire or
4 acquire, in the open market or otherwise, any voting security of
5 a domestic insurer if, after the consummation thereof, the
6 person would, directly or indirectly (or by conversion or by
7 exercise of any right to acquire) be in control of the insurer and
8 a person shall not enter into an agreement to merge with or

9 otherwise to acquire control of a domestic insurer or any person
10 controlling a domestic insurer unless at the time any such offer,
11 request or invitation is made or any such agreement is entered
12 into, or prior to the acquisition of such securities if no offer or
13 agreement is involved, the person has filed with the commis-
14 sioner and has sent to the insurer and, to the extent permitted by
15 applicable federal laws, rules and regulations, the insurer has
16 sent to its shareholders a statement containing the information
17 required by this section and the offer, request, invitation,
18 agreement or acquisition has been approved by the commis-
19 sioner in the manner hereinafter prescribed.

20 (b) For purposes of this section, a “domestic insurer”
21 includes any other person controlling a domestic insurer unless
22 the other person as determined by the commissioner is either
23 directly or through its affiliates primarily engaged in business
24 other than the business of insurance.

25 (c) The statement to be filed with the commissioner
26 hereunder shall be made under oath or affirmation and shall
27 contain the following information:

28 (1) The name and address of each person by whom or on
29 whose behalf the merger or other acquisition of control referred
30 to in subsection (a) of this section is to be effected (hereinafter
31 called “acquiring party”);

32 (2) If such person is an individual, his or her principal
33 occupation and all offices and positions held during the past
34 five years and any conviction of crimes other than minor traffic
35 violations during the past ten years;

36 (3) If such person is not an individual, a report of the nature
37 of its business operations during the past five years or for such
38 lesser period as the person and any predecessors thereof shall
39 have been in existence; an informative description of the
40 business intended to be done by the person and the person’s

41 subsidiaries; and a list of all individuals who are or who have
42 been selected to become directors or executive officers of the
43 person, or who perform or will perform functions appropriate
44 to those positions. The list shall include for each individual the
45 information required by subdivision (2) of this subsection;

46 (4) The source, nature and amount of the consideration used
47 or to be used in effecting the merger or other acquisition of
48 control, a description of any transaction wherein funds were or
49 are to be obtained for any such purpose, including any pledge
50 of the insurer's stock or the stock of any of its subsidiaries or
51 controlling affiliates, and the identity of persons furnishing such
52 consideration: *Provided*, That where a source of the consider-
53 ation is a loan made in the lender's ordinary course of business,
54 the identity of the lender shall remain confidential if the person
55 filing the statement so requests;

56 (5) Fully audited financial information as to the earnings
57 and financial condition of each acquiring party for the preced-
58 ing five fiscal years of each acquiring party (or for such lesser
59 period as each acquiring party and any predecessors thereof
60 shall have been in existence) and similar unaudited information
61 as of a date not earlier than ninety days prior to the filing of the
62 statement;

63 (6) Any plans or proposals which each acquiring party may
64 have to liquidate the insurer, to sell its assets or merge or
65 consolidate it with any person or to make any other material
66 change in its business or corporate structure or management;

67 (7) The number of shares of any security referred to in
68 subsection (a) of this section which each acquiring party
69 proposes to acquire and the terms of the offer, request, invita-
70 tion, agreement or acquisition referred to in said subsection and
71 a statement as to the method by which the fairness of the
72 proposal was arrived at;

73 (8) The amount of each class of any security referred to in
74 subsection (a) of this section which is beneficially owned or
75 concerning which there is a right to acquire beneficial owner-
76 ship by each acquiring party;

77 (9) A full description of any contracts, arrangements or
78 understanding with respect to any security referred to in
79 subsection (a) of this section in which any acquiring party is
80 involved, including, but not limited to, transfer of any of the
81 securities, joint ventures, loan or option arrangements, puts or
82 calls, guarantees of loans, guarantees against loss or guarantees
83 of profits, division of losses or profits or the giving or withhold-
84 ing of proxies. The description shall identify the persons with
85 whom such contracts, arrangements or understandings have
86 been entered into;

87 (10) A description of the purchase of any security referred
88 to in subsection (a) of this section during the twelve calendar
89 months preceding the filing of the statement by any acquiring
90 party, including the dates of purchase, names of the purchasers
91 and consideration paid or agreed to be paid therefor;

92 (11) A description of any recommendations to purchase any
93 security referred to in subsection (a) of this section made during
94 the twelve calendar months preceding the filing of the statement
95 by an acquiring party or by anyone based upon interviews or at
96 the suggestion of the acquiring party;

97 (12) Copies of all tender offers for, requests or invitations
98 for tenders of, exchange offers for and agreements to acquire or
99 exchange any securities referred to in subsection (a) of this
100 section and, if distributed, of additional soliciting material
101 relating thereto;

102 (13) The terms of any agreement, contract or understanding
103 made with any broker-dealer as to solicitation of securities
104 referred to in subsection (a) of this section for tender and the

105 amount of any fees, commissions or other compensation to be
106 paid to broker-dealers with regard thereto; and

107 (14) Any additional information as the commissioner may
108 by rule prescribe as necessary or appropriate for the protection
109 of policyholders and security holders of the insurer or in the
110 public interest.

111 (d) If the person required to file the statement referred to in
112 subsection (a) of this section is a partnership, limited partner-
113 ship, syndicate or other group, the commissioner may require
114 that the information called for by subdivisions (1) through (14),
115 inclusive, of this subsection shall be given with respect to each
116 partner of the partnership or limited partnership, each member
117 of the syndicate or group and each person who controls the
118 partner or member. If any partner, member or person is a
119 corporation or the person required to file the statement referred
120 to in subsection (a) of this section is a corporation, the commis-
121 sioner may require that the information called for by subdivi-
122 sions (1) through (14), inclusive, shall be given with respect to
123 the corporation and each person who is directly or indirectly the
124 beneficial owner of more than ten percent of the outstanding
125 voting securities of the corporation.

126 (e) If any material change occurs in the facts set forth in the
127 statement filed with the commissioner and sent to the insurer
128 pursuant to this section, an amendment setting forth such
129 change, together with copies of all documents and other
130 material relevant to such change, shall be filed with the
131 commissioner and sent to the insurer within two business days
132 after the person learns of the change. The insurer shall send the
133 amendment to its shareholders.

134 (f) If any offer, request, invitation, agreement or acquisition
135 referred to in subsection (a) of this section is proposed to be
136 made by means of a registration statement under the Securities

137 Act of 1933 or in circumstances requiring the disclosure of
138 similar information under the Securities Exchange Act of 1934
139 or under a state law requiring similar registration or disclosure,
140 the person required to file the statement referred to in said
141 subsection may utilize such documents in furnishing the
142 information called for by that statement.

143 (g) The commissioner shall approve any merger or other
144 acquisition of control referred to in subsection (a) of this
145 section unless, after a public hearing thereon, he or she finds
146 that any of the following conditions exists:

147 (1) After the change of control the domestic insurer referred
148 to in subsection (a) of this section would not be able to satisfy
149 the requirements for the issuance of a license to write the line
150 or lines of insurance for which it is presently authorized;

151 (2) The effect of the merger or other acquisition of control
152 would be substantially to lessen competition in insurance in this
153 state or tend to create a monopoly therein;

154 (3) The financial condition of any acquiring party is such as
155 might jeopardize the financial stability of the insurer or
156 prejudice the interest of its policyholders or the interests of any
157 remaining security holders who are unaffiliated with the
158 acquiring party;

159 (4) The terms of the offer, request, invitation, agreement or
160 acquisition referred to in subsection (a) of this section are unfair
161 and unreasonable to the security holders of the insurer;

162 (5) The plans or proposals which the acquiring party has to
163 liquidate the insurer, sell its assets or consolidate or merge it
164 with any person or to make any other material change in its
165 business or corporate structure or management are unfair and
166 unreasonable to policyholders of the insurer and not in the
167 public interest;

168 (6) The competence, experience and integrity of those
169 persons who would control the operation of the insurer are such
170 that it would not be in the interest of policyholders of the
171 insurer and of the public to permit the merger or other acqui-
172 sition of control; or

173 (7) The acquisition is likely to be hazardous or prejudicial
174 to the insurance-buying public.

175 (h) The public hearing required by this section shall be held
176 within forty days after the statement required by subsection (a)
177 of this section is filed, and at least fifteen days' notice thereof
178 shall be given by the commissioner to the person filing the
179 statement. Not less than seven days' notice of the public
180 hearing shall be given by the person filing the statement to the
181 insurer and to any other persons as may be designated by the
182 commissioner. The insurer shall give notice of the public
183 hearing to its security holders. The commissioner shall make a
184 determination within twenty days after the conclusion of the
185 hearing.

186 (i) The commissioner may retain at the acquiring person's
187 expense any attorneys, actuaries, accountants and other experts
188 not otherwise a part of the commissioner's staff as may be
189 reasonably necessary to assist the commissioner in reviewing
190 the proposed acquisition of control.

191 (j) To the extent permitted by applicable federal laws, rules
192 and regulations, all statements, amendments or other material
193 filed pursuant to the provisions of this section and all notices of
194 public hearings held pursuant to the provisions of this section
195 shall be mailed by the insurer to its shareholders within five
196 business days after the insurer has received such statements,
197 amendments, other material or notices. The expenses of mailing
198 shall be borne by the person making the filing. As security for
199 the payment of such expenses, such person shall file with the

200 commissioner an acceptable bond or other deposit in an amount
201 to be determined by the commissioner.

202 (k) The provisions of this section shall not apply to any
203 offer, request, invitation, agreement or acquisition which the
204 commissioner by order shall exempt therefrom as: (1) Not
205 having been made or entered into for the purpose of, and not
206 having the effect of, changing or influencing the control of a
207 domestic insurer; or (2) as otherwise not comprehended within
208 the purposes of this section.

209 (l) The following are violations of this section:

210 (1) The failure to file any statement, amendment or other
211 material required to be filed pursuant to subsection (a) or (b) of
212 this section; or

213 (2) The effectuation or any attempt to effectuate an acqui-
214 sition of control of, or merger with, a domestic insurer unless the
215 commissioner has given his or her approval thereto.

216 (m) The courts of this state are hereby vested with jurisdic-
217 tion over every person not resident, domiciled or authorized to
218 do business in this state who files a statement with the commis-
219 sioner under this section and over all actions involving such
220 person arising out of violations of this section and each such
221 person shall be deemed to have performed acts equivalent to
222 and constituting an appointment by the person of the secretary
223 of state to be his or her true and lawful attorney upon whom
224 may be served all lawful process in any action, suit or proceed-
225 ing arising out of violations of this section. Copies of all such
226 lawful process shall be served on the secretary of state and
227 transmitted by registered or certified mail by the secretary of
228 state to such person at his or her last known address.

§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 and to the board of
9 governors of the federal reserve system or other appropriate
10 federal banking agency in accordance with section nineteen,
11 article two of this chapter, without the prior written consent of
12 the insurer to which it pertains unless the commissioner, after
13 giving the insurer and its affiliates who would be affected
14 thereby notice and opportunity to be heard, determines that the
15 interests of policyholders, shareholders or the public will be
16 served by the publication thereof, in which event he or she may
17 publish all or any part thereof in any manner as he or she may
18 consider appropriate.

CHAPTER 130

(Com. Sub. for H. B. 2702 — By Delegates H. White,
Hrutkay and R. M. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elimination of fees levied on risk retention groups.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on Premiums Collected.

1 (a) Each risk retention group shall pay to the commissioner,
2 annually on the first day of March, a tax at the rate of two
3 percent of the taxable premiums on policies or contracts of
4 insurance covering property or risks in this state and on risk and
5 property situated elsewhere upon which no premium tax is
6 otherwise paid during the previous year. Each risk retention
7 group is also subject to the additional premium taxes levied by
8 sections fourteen-a and fourteen-d, article three of this chapter.

9 (b) The taxes provided for in this section constitute all taxes
10 collectible under the laws of this state from any risk retention
11 group, and no other premium tax or other taxes shall be levied
12 or collected from any risk retention group by the state or any
13 county, city or municipality within this state, except ad valorem
14 taxes. Each risk retention group shall be subject to the same
15 interests, additions, fines and penalties for nonpayment as are
16 generally applicable to insurers.

17 (c) To the extent that a risk retention group uses insurance
18 agents, each agent shall keep a complete and separate record of
19 all policies procured from each risk retention group. The record
20 shall be open to examination by the commissioner, as provided
21 in section nine, article two of this chapter. These records shall,
22 for each policy and each kind of insurance provided under the
23 policy, include the following:

24 (1) The limit of liability;

25 (2) The time period covered;

- 26 (3) The effective date;
- 27 (4) The name of the risk retention group which issued the
28 policy;
- 29 (5) The gross premium charged; and
- 30 (6) The amount of return premiums, if any.

CHAPTER 131

**(S. B. 486 — By Senators Minard, Jenkins, Rowe,
Sharpe, Ross and Minear)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirement that a certified public accountant must notify the insurer's board of directors or its audit committee if the insurer has materially misstated the insurer's financial condition.

Be it enacted by the Legislature of West Virginia:

That section nine, article thirty-three, 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 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-9. Notification of adverse financial condition.

- 1 (a) The independent certified public accountant shall
2 immediately notify, in writing, the insurer's board of directors

3 or its audit committee and the commissioner of any determina-
4 tion by the independent certified public accountant that the
5 insurer has materially misstated its financial condition as
6 reported to the commissioner as of the thirty-first day of
7 December immediately preceding or of any determination that
8 the insurer does not meet the applicable minimum capital and
9 surplus requirement of this chapter or, in the case of an insurer
10 not subject to capital and surplus requirement, that the surplus
11 of the insurer is less than one hundred thousand dollars as of the
12 thirty-first day of December immediately preceding. For
13 purposes of this article, material misstatement shall have the
14 meaning prescribed by the professional standards and pro-
15 nouncements of the American institute of certified public
16 accountants: *Provided*, That the independent certified public
17 accountant shall report a misstatement that overstates the
18 surplus as regards policyholders in single financial statement
19 items by five percent or more or, when taken together with all
20 financial statement items, the surplus as regards policyholders
21 is overstated by ten percent or more.

22 (b) No independent public accountant shall be liable in any
23 manner to any person for any statement made in connection
24 with subsection (a) of this section if the statement is made in
25 good faith in compliance with said subsection.

26 (c) If the accountant, subsequent to the date of the audited
27 financial report filed pursuant to this article, becomes aware of
28 facts which might have affected the report, the commissioner
29 notes the obligation of the accountant to take action as pre-
30 scribed in volume 1, section AU 561 of the professional
31 standards of the American institute of certified public accoun-
32 tants.

CHAPTER 132

(S. B. 485 — By Senators Minard, Jenkins, Minear, Sharpe and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article forty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the granting of authority to the insurance commissioner to enter into agreements and compromises relating to taxes, interest, penalties and other charges; and imposing conditions upon such authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-4a. Agreements and compromises.

1 (a) Prior to commencing any civil action, the commissioner
2 may compromise any claim relating to the liability of a person
3 with respect to any tax, including any surcharge, interest,
4 additional tax, fee, fine or penalty, administered by the commis-
5 sioner under this chapter for any taxable period. The following
6 conditions apply to any agreement entered into under this
7 subsection:

8 (1) The agreement must be in writing;

9 (2) In the absence of a showing of fraud, malfeasance or
10 misrepresentation of a material fact, then:

11 (A) The agreement shall be final and conclusive;

12 (B) The agreement and the matters so agreed upon shall not
13 be reopened or the agreement modified by any officer, em-
14 ployee or agent of this state; and

15 (C) In any civil action or administrative proceeding, the
16 compromise agreement or any determination, assessment,
17 collection, payment, abatement, refund or credit made in
18 accordance therewith may not be annulled, modified, set aside
19 or disregarded.

20 (b) The commissioner may compromise all or part of any
21 civil case arising under the provisions of this article. The
22 following conditions apply to any agreement entered into under
23 this subsection:

24 (1) Any liability for tax, including any surcharge, interest,
25 additional tax, fee, fine or penalty, may be compromised upon
26 consideration of the terms and conditions of the compromise
27 agreement in light of any or all of the following:

28 (A) Doubt as to liability;

29 (B) Doubt as to the ability to collect;

30 (C) Strength of the taxpayer's defenses to the assessment of
31 the tax, surcharge, interest, additional tax, fee, fine or penalty;

32 (D) Age of the dispute;

33 (E) The anticipated time and resources which will be
34 required to develop the civil action for adjudication; and

35 (F) Any other factors relevant to the determination of
36 whether citizens of the state of West Virginia are best served by
37 entering into a compromise agreement.

38 (2) In all matters involving issues in respect of a tax
39 liability in controversy of fifteen thousand dollars or more for
40 one or all of the years involved in claim or case, the commis-
41 sioner shall seek the written recommendation of the attorney
42 general before entering into the compromise agreement. The
43 written recommendation of the attorney general shall be placed
44 in the commissioner's file.

45 (c) Whenever a compromise agreement is made by the
46 commissioner under subsection (a) or (b) of this section, there
47 shall be placed on file in the commissioner's office an opinion
48 from the commissioner's legal counsel. The opinion must
49 include the following:

50 (1) The amount of tax, surcharge, additional tax, fee and
51 interest assessed;

52 (2) The anticipated fine or penalty imposed by law on the
53 person against whom the tax, surcharge, additional tax, fee and
54 interest was assessed; and

55 (3) The amount actually paid in accordance with the terms
56 of the compromise agreement;

57 (4) The reasons underlying the decision to enter into a
58 compromise agreement: *Provided*, That the requirements of this
59 subsection do not apply with respect to any agreement in which
60 the amount of the tax assessed, including any surcharge,
61 interest, additional tax, fee, fine or penalty, is less than one
62 thousand dollars.

63 (d) *Report to Legislature.* — The commissioner shall
64 submit to the speaker of the House of Delegates, the president

65 of the Senate and the legislative auditor a quarterly report
66 summarizing the issues and amounts of liabilities contained in
67 the agreements and compromises into which he or she has
68 entered pursuant to this section. The report shall be in a form
69 which preserves the confidentiality of the identity of the
70 taxpayers involved in the agreements and compromises.
71 Notwithstanding any other provision of law to the contrary, the
72 agreements and compromises entered into pursuant to this
73 section shall be subject to audit, in their entirety, by the
74 legislative auditor.

CHAPTER 133

**(S. B. 352 — By Senators Hunter, Unger, Bailey, Helmick, Rowe,
Kessler, Plymale, Dempsey, White, Bowman, Edgell, McCabe,
Love, Sprouse, Minard, Snyder, Caldwell, Chafin, Ross,
Sharpe, Guills, Jenkins, Fanning, Prezioso and Minear)**

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the
Governor; in Effect March 16, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia jobs act; defining terms; revising legislative findings; removing six-month residency requirement; requiring reporting to the joint committee on government and finance; changing reporting dates; and changing the effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

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

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

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

§21-1C-7. Effective date.

§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 one million dollars. The
6 term “construction project” does not include temporary or
7 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 and its
25 subdivisions, including counties and municipalities. Further, the
26 economic grant committee, economic development authority,
27 infrastructure and jobs development council and school
28 building authority shall be required to comply with the provi-
29 sions of this article for loans, grants or bonds provided for
30 public improvement construction projects;

31 (6) The term “public improvement” includes the construc-
32 tion of all buildings, roads, highways, bridges, streets, alleys,
33 sewers, ditches, sewage disposal plants, waterworks, airports
34 and all other structures that may be let to contract by a public
35 authority, excluding improvements funded, in whole or in part,
36 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 for the construction of public
13 improvement projects which directly utilize taxpayer funding,
14 in whole or in part.

**§21-1C-4. Local labor market utilization 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.

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

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

**§21-1C-5. Applicability and scope of article; reporting require-
ments.**

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, or require an employer as
6 defined in section two of this article to file, with the division of
7 labor copies of the waiver certificates and certified payrolls,
8 pursuant to article five-a of this chapter, or other comparable
9 documents that include the number of employees, the county
10 and state wherein the employees reside and their occupation.

11 (c) The division of labor shall compile the information
12 required by this section and submit it to the joint committee on
13 government and finance by the fifteenth day of October, two
14 thousand five, for a legislative audit to be prepared for the
15 December, two thousand five, interim session. Beginning with
16 the legislative interim meetings in May, two thousand three,
17 and continuing through the interim period ending in November,
18 two thousand five, the division of labor shall provide quarterly
19 reports to the joint committee on government and finance on the
20 information compiled pursuant to this article. The joint commit-
21 tee may forward these reports to the legislative auditor to
22 review and make comments regarding the usefulness of the
23 information collected and to suggest changes to the division's
24 method of reporting to ensure the information collected will
25 prove useful in evaluating the effectiveness of the provisions of
26 this article.

27 (d) Each public authority has the duty to implement the
28 reporting requirements of this article. Every public improve-
29 ment contract or subcontract let by a public authority shall
30 contain provisions conforming to the requirements of this
31 article.

32 (e) The division of labor is authorized to establish proce-
33 dures for the efficient collection of data, collection of civil
34 penalties prescribed in section six and transmittal of data to the
35 joint committee on government and finance.

§21-1C-7. Effective date.

1 This article is effective from passage through the fifteenth
2 day of March, two thousand six.

CHAPTER 134

(Com. Sub. for H. B. 2529 — By Delegates Beane, Kuhn,
Brown, Ellem and Leggett)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five-a, five-b, five-c and five-d, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure and regulation of psychophysiological detection of deception examiners; creating categories of licensure; authorizing legislative rules; prohibited activities; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections five-a, five-b, five-c and five-d, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5a. Definitions.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

§21-5-5d. Penalties; cause of action.

§21-5-5a. Definitions.

1 As used in sections five-b, five-c and five-d of this article,
2 unless the context clearly requires otherwise:

3 (1) "Employer" means any individual, person, corporation,
4 department, board, bureau, agency, commission, division,
5 office, company, firm, partnership, council or committee of the
6 state government; public benefit corporation, public authority
7 or political subdivision of the state; or other business entity,
8 which employs or seeks to employ an individual or individuals.
9 All provisions of sections five-b, five-c and five-d of this article
10 pertaining to employers shall apply in equal force and effect to
11 their agents and representatives.

12 (2) "Employee" means an individual employed by an
13 employer.

14 (3) "Psychophysiological detection of deception instru-
15 ment" means an instrument used for the detection of deception
16 which records permanently and simultaneously a person's
17 cardiovascular and respiratory patterns and galvanic skin
18 response: *Provided*, That the instrument may record other
19 physiological changes pertinent to the detection of deception.

20 (4) "Prospective employee" means an individual seeking or
21 being sought for employment with an employer.

22 (5) "Psychophysiological detection of deception" means an
23 examination which records permanently and simultaneously a
24 person's cardiovascular and respiratory patterns and galvanic
25 skin response.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

1 No employer may require or request either directly or
2 indirectly, that any employee or prospective employee of
3 the employer submit to a psychophysiological detection of
4 deception examination, lie detector or other similar examination
5 utilizing mechanical or electronic measures of physiological
6 reactions to evaluate truthfulness, and no employer may
7 knowingly allow the results of any examination administered
8 outside this state to be utilized for the purpose of determining
9 whether to employ a prospective employee or to continue the
10 employment of an employee in this state: *Provided*, That the
11 provisions of this section shall not apply to employees or
12 prospective employees who would have direct access to the
13 manufacture, storage, distribution or sale of any controlled
14 substance listed in schedule I, II, III, IV or V of section eight
15 hundred twelve of title twenty-one of the United States code:
16 *Provided, however*, That the provisions of this section shall not
17 apply to law-enforcement agencies or to military forces of the
18 state as defined by section one, article one, chapter fifteen of
19 the code: *Provided further*, That the results of any examination
20 shall be used solely for the purpose of determining whether to
21 employ or to continue to employ any person exempted hereun-
22 der and for no other purpose.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

1 (a) No person, firm or corporation shall administer a
2 psychophysiological detection of deception examination, lie
3 detector or other similar examination utilizing mechanical or
4 electronic measures of physiological reactions to evaluate

5 truthfulness without holding a current valid license to do so as
6 issued by the commissioner of labor. No examination shall be
7 administered by a licensed corporation except by an officer or
8 employee thereof who is also licensed.

9 (b) A person is qualified to receive a license as an examiner
10 if he or she:

11 (1) Is at least twenty-one years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involving
14 moral turpitude or a felony;

15 (4) Has not been released or discharged with other than
16 honorable conditions from any of the armed services of the
17 United States or that of any other nation;

18 (5) Has passed an examination conducted by the commis-
19 sioner of labor or under his or her supervision, to determine his
20 or her competency to obtain a license to practice as an exam-
21 iner;

22 (6) Has satisfactorily completed not less than six months of
23 internship training; and

24 (7) Has met any other qualifications of education or training
25 established by the commissioner of labor in his or her sole
26 discretion which qualifications are to be at least as stringent as
27 those recommended by the American polygraph association.

28 (c) The commissioner of labor may designate and adminis-
29 ter any test the commissioner considers appropriate to those
30 persons applying for a license to administer
31 psychophysiological detection of deception, lie detector or
32 similar examination. The test shall be designed to ensure that

33 the applicant is thoroughly familiar with the code of ethics of
34 the American polygraph association and has been trained in
35 accordance with association rules. The test must also include a
36 rigorous examination of the applicant's knowledge of and
37 familiarity with all aspects of operating psychophysiological
38 detection of deception equipment and administering
39 psychophysiological detection of deception examinations.

40 (d) The license to administer psychophysiological detection
41 of deception, lie detector or similar examinations to any person
42 shall be issued for a period of one year. It may be reissued from
43 year to year. The licenses to be issued are:

44 (1) "Class I license" which authorizes an individual to
45 administer psychophysiological detection of deception exami-
46 nations for all purposes which are permissible under the
47 provisions of this article and other applicable laws and rules.

48 (2) "Class II license" which authorizes an individual who
49 is a full-time employee of a law-enforcement agency to
50 administer psychophysiological detection of deception exami-
51 nations to its employees or prospective employees only.

52 (e) The commissioner of labor shall charge a fee to be
53 established by legislative rule. The fees shall be deposited in the
54 general revenue fund of the state. In addition to any other
55 information required, an application for a license shall include
56 the applicant's social security number.

57 (f) The commissioner of labor shall propose rules for
58 legislative approval in accordance with the provisions of article
59 three, chapter twenty-nine-a of this code governing the adminis-
60 tration of psychophysiological detection of deception, lie
61 detector or similar examination to any person: *Provided*, That
62 all applicable rules in effect on the effective date of sections
63 five-a, five-b, five-c and five-d of this article will remain in

64 effect until amended, withdrawn, revoked, repealed or replaced.

65 The legislative rules shall include:

66 (1) The type and amount of training or schooling necessary
67 for a person before which he or she may be licensed to adminis-
68 ter or interpret a psychophysiological detection of deception, lie
69 detector or similar examination;

70 (2) Testing requirements including the designation of the
71 test to be administered to persons applying for licensure;

72 (3) Standards of accuracy which shall be met by machines
73 or other devices to be used in psychophysiological detection of
74 deception, lie detector or similar examination;

75 (4) The conditions under which a psychophysiological
76 detection of deception, lie detector or similar examination may
77 be administered;

78 (5) Fees for licenses, renewals of licenses and other
79 services provided by the commissioner;

80 (6) Any other qualifications or requirements, including
81 continuing education, established by the commissioner for the
82 issuance or renewal of licenses; and

83 (7) Any other purpose to carry out the requirements of
84 sections five-a, five-b, five-c and five-d of this article.

§21-5-5d. Penalties; cause of action.

1 (a) It shall be a misdemeanor to administer or interpret a
2 psychophysiological detection of deception, lie detector or
3 similar examination utilizing mechanical or electronic measures
4 of physiological reactions to evaluate truthfulness without
5 having received a valid and current license to do so as issued by
6 the commissioner of labor or in violation of any rule or regula-

7 tion promulgated by the commissioner under section five-c of
8 this article. Any person convicted of violating section five-c
9 shall be fined not more than five hundred dollars.

10 (b) Any person who violates section five-b of this article is
11 guilty of a misdemeanor and, upon conviction thereof, shall be
12 fined not more than five hundred dollars.

13 (c) Any employee or prospective employee has a right to
14 sue an employer or prospective employer for a violation of the
15 provisions of section five-b of this article. If successful, the
16 employee or prospective employee shall recover threefold the
17 damages sustained by him or her, together with reasonable
18 attorneys' fees, filing fees and reasonable costs of the action.
19 Reasonable costs of the action may include, but shall not be
20 limited to, the expenses of discovery and document reproduc-
21 tion. Damages may include, but shall not be limited to, back
22 pay for the period during which the employee did not work or
23 was denied a job.

CHAPTER 135

(H. B. 2847 — By Delegates Stemple, Crosier,
Williams, Kominar and Cann)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the law-enforcement agency that places a person under arrest being responsible for the person's initial transportation to a regional or county jail, except where a transportation agreement exists between the other agency

and the sheriff; and requiring convicted persons to pay cost of transportation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-13. Allowance for expenses of sheriff.

1 The county commission of every county having a popula-
2 tion of thirty thousand or less as determined by the latest
3 official census available and which, as provided in section two-
4 a, article eight of this chapter, has directed the sheriff as jailer
5 to feed prisoners shall, in addition to his or her compensation,
6 allow to the sheriff for keeping and feeding each prisoner, other
7 than federal prisoners or prisoners held under civil process as
8 provided by law, not more than five dollars per day for each
9 prisoner.

10 The limitation per day shall not include cost of personal
11 service, bed or bedding, soaps and disinfectants and items of
12 like kind, the cost of which shall be paid out of the allowance
13 fixed by the county commission under the provisions of present
14 law.

15 All supplies of whatever kind for keeping and feeding
16 prisoners shall be purchased upon the requisition of the sheriff
17 under rules prescribed by the county commission. At the end of
18 each month the sheriff shall file with the county commission a
19 detailed statement showing the name of each prisoner, date of
20 commitment, date of discharge, the number of days in jail and
21 an itemized statement showing each purchase and the cost for
22 keeping and feeding prisoners.

23 The county commission of every county shall allow the
24 actual and necessary expenses incurred by the sheriff in the
25 discharge of his or her duties including, but not limited to, those
26 incurred in arresting, pursuing or transporting persons accused
27 or convicted of crimes and offenses; in the cost of law-enforce-
28 ment and safety equipment; in conveying or transporting a
29 prisoner from and to jail to participate in court proceedings; and
30 in conveying or transferring any person to or from any state
31 institution where he or she may be committed from his or her
32 county, where the sheriff is authorized to convey or transfer the
33 person: *Provided*, That the law-enforcement agency that places
34 a person under arrest shall be responsible for the person's initial
35 transportation to a regional or county jail, except where there is
36 a preexisting agreement between the county and the political
37 body the other law-enforcement agency serves. Any person
38 transported to the regional jail as provided for by the provisions
39 of this section shall, upon conviction for the offense causing his
40 or her incarceration, pay the reasonable costs of the transporta-
41 tion. The money is to be collected by the court of conviction at
42 the current mileage reimbursement rate. The county commis-
43 sion shall allow the actual and necessary expenses incurred in
44 serving summonses, notices or other official papers in connec-
45 tion with the sheriff's office.

46 Every sheriff shall file monthly, under oath, an accurate
47 account of all the actual and necessary expenses incurred by
48 him or her, his or her deputies, assistants and employees in the
49 performance and discharge of their official duties supported by
50 verified accounts before reimbursement thereof shall be
51 allowed by the county commission. Reimbursement, properly
52 allowed, shall be made from the general county fund.

CHAPTER 136

(Com. Sub. for H. B. 2799 — By Delegates Amores, Faircloth,
DeLong, Pino, Smirl, Stemple and Webster)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-one, relating to the West Virginia state police and the reemployment of recently retired troopers.

Be it enacted by the Legislature of West Virginia:

That article two, 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 fifty-one, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-51. State police reemployment.

1 (a) The Legislature finds:

2 (1) That the West Virginia state police is currently suffering
3 from an unacceptably high number of vacant trooper positions,
4 and that given the time factors and expense associated with the
5 hiring and training of personnel with no prior law-enforcement
6 experience, it is in the interest of the state to reemploy recently
7 retired troopers in order to fill vacant positions;

8 (2) That no pension rights of any kind shall accrue or attach
9 pursuant to reemployment under this section;

10 (3) That the state police shall bear no responsibility for
11 medical payments for work related injuries or illnesses of
12 employees hired pursuant to this section, other than those
13 commonly associated with state employees covered by work-
14 ers' compensation.

15 (b) Notwithstanding any provision of this code to the
16 contrary, any member of the West Virginia state police honor-
17 ably retired pursuant to the provisions of section twenty-seven
18 of this article between the first day of December, one thousand
19 nine hundred ninety-seven and the first day of December, two
20 thousand two, may, at the discretion of the superintendent and
21 subject to executive order of the governor specifying circum-
22 stances warranting such reemployment and establishing
23 beginning and end dates for such reemployment, be reemployed
24 subject to the provisions of this section.

25 (c) Notwithstanding any provision of this code to the
26 contrary, any honorably retired member of the state police who
27 qualifies for reemployment pursuant to the provisions of this
28 section and who is not currently certified as a law-enforcement
29 officer under section five, article twenty-nine, chapter thirty of
30 this code may be deemed to have met the entry level law-
31 enforcement recertification requirements of 149 CSR 215,
32 Section 15.3, upon successful completion of a course of
33 instruction prescribed by the superintendent. Such course of
34 instruction shall include at a minimum the following subject
35 areas: Firearms training and certification, defensive driving,
36 mechanics of arrest, law of arrest search and seizure, West
37 Virginia motor vehicle law, criminal law update, and domestic
38 crimes.

39 (d) Any member reemployed pursuant to the provisions of
40 this section shall hold the nonsupervisory rank of corporal and
41 shall receive the same compensation as a regularly enlisted
42 member of the same rank. For purposes of determining length

43 of service pursuant to section five of this article, any member
44 reemployed pursuant to this section shall receive credit for all
45 years of service accrued prior to their retirement, as well as
46 service rendered after reemployment. Any member reemployed
47 pursuant to this section shall exercise the same authority as a
48 regularly enlisted member of the state police, shall wear the
49 same uniform and insignia, shall be subject to the same oath,
50 shall execute the same bond, shall exercise the same powers
51 and shall be subject to the same limitations as a regularly
52 enlisted member of the state police.

53 (e) Any member reemployed pursuant to the provisions of
54 this section shall not be eligible for promotion or reclassifica-
55 tion of any type, nor shall he or she be eligible for appointment
56 to temporary rank pursuant to the provisions of section four of
57 this article.

58 (f) Any reemployment offered subject to the provisions of
59 this section shall be for a period not exceeding five years from
60 the effective date of this section.

61 (g) Any retired member applying for reemployment under
62 this section shall be required to pass such mental and physical
63 examinations, and meet such other requirements as may be
64 provided for in rules promulgated by the superintendent
65 pursuant to this section.

66 (h) Notwithstanding the provisions of section ten of this
67 article, the superintendent shall make provisions for coverage
68 of personnel employed pursuant to this section by the workers'
69 compensation division, bureau of employment programs. In the
70 event a member reemployed pursuant to this section sustains an
71 illness or injury which is work related in origin, any cost
72 associated with the treatment of same shall be defrayed in this
73 manner and not from state police funds.

74 (i) In the event a work related illness or injury, as described
75 within subsection (h) above, renders a member of the division
76 employed pursuant to the provisions of this section permanently
77 physically or mentally disabled, the provisions of subsections
78 (a) and (b), section twenty-nine of this article shall apply, and
79 the member's existing pension shall be recalculated as though
80 the disabling event had occurred coincident with the member's
81 original retirement. Any change in benefits resulting from this
82 recalculation shall not be retroactive in nature. The provisions
83 of subsection (c), section twenty-nine of this article shall not
84 apply with respect to payments for medical, surgical, labora-
85 tory, X-ray, hospital, ambulance and dental expenses and fees.
86 Neither shall the provisions of this subsection apply in the event
87 the member is disabled due to some cause or event which is
88 determined not to be work related.

89 (j) Any individual reemployed pursuant to this section is
90 not eligible to contribute to any pension plan administered by
91 the consolidated public retirement board, nor may he or she
92 establish or accrue any new pension eligibility pursuant to such
93 reemployment.

94 (k) Notwithstanding any provision of this code to the
95 contrary, any member reemployed pursuant to this section shall
96 serve at the will and pleasure of the superintendent, and is
97 subject to termination without cause. Any member reemployed
98 pursuant to this section shall not be included in the classified
99 service of the civil service system.

100 (l) Notwithstanding any provision of this code to the
101 contrary, compensation paid to any member reemployed
102 pursuant to this section shall be in addition to any retirement
103 payments or pension benefits which he or she is already entitled
104 to receive under section twenty-seven of this article.

105 (m) The provisions of this section shall terminate on the
106 first day of April, two thousand four.

CHAPTER 137

(Com. Sub. for H. B. 2592 —By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 8, 2003; 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, 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 legislative rules with amendments; 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 department of administration to promulgate a legislative rule relating to the general administration of records management and preservation; authorizing the department of

administration to promulgate a legislative rule relating to records retention and disposal scheduling; authorizing the department of administration to promulgate a legislative rule relating to the management of records maintained by the records center; authorizing the department of administration to promulgate a legislative rule relating to technology access for the visually impaired; authorizing the department of administration to promulgate a legislative rule relating to parking; authorizing the department of administration to promulgate a legislative rule relating to qualifications for participation; authorizing the auditor to promulgate a legislative rule relating to the standards for requisitions for payment issued by state officers on the auditor; authorizing the auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the auditor to promulgate a legislative rule relating to the state auditor's computer and technology donation program; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the public employees retirement system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers defined benefit plan; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the West Virginia state police disability determination and appeal process; authorizing the ethics commission to promulgate a legislative rule relating to lobbying; and authorizing the division of personnel to promulgate a legislative rule relating to the division.

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 autho-
3 rizes the promulgation of the rules described in articles two
4 through eleven, inclusive, of this chapter, subject only to the
5 limitations set forth with respect to each such rule in the section
6 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.

§64-2-2. Auditor.

§64-2-3. Consolidated public retirement board.

§64-2-4. Ethics commission.

§64-2-5. Division of personnel.

§64-2-1. Department of administration.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand two, authorized under
3 the authority of section eight, article eight, chapter five-a, 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 fifth day of December,
7 two thousand two, relating to the department of administration

8 (general administration of records management and preserva-
9 tion, 148 CSR 12), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-fifth day of July, two thousand two, authorized under
12 the authority of section eight, article eight, chapter five-a, of
13 this code, modified by the department of administration to meet
14 the objections of the legislative rule-making review committee
15 and refiled in the state register on the fifth day of December,
16 two thousand two, relating to the department of administration
17 (records retention and disposal scheduling, 148 CSR 13), is
18 authorized.

19 (c) The legislative rule filed in the state register on the
20 twenty-fifth day of July, two thousand two, authorized under
21 the authority of section eight, article eight, chapter five-a, of
22 this code, modified by the department of administration to meet
23 the objections of the legislative rule-making review committee
24 and refiled in the state register on the fifth day of December,
25 two thousand two, relating to the department of administration
26 (management of records maintained by the records center, 148
27 CSR 14), is authorized.

28 (d) The legislative rule filed in the state register on the
29 twenty-fifth day of July, two thousand two, authorized under
30 the authority of section three, article ten-n, chapter eighteen, of
31 this code, modified by the department of administration to meet
32 the objections of the legislative rule-making review committee
33 and refiled in the state register on the twentieth day of Decem-
34 ber, two thousand two, relating to the department of administra-
35 tion (technology access for visually impaired, 148 CSR 15), is
36 authorized.

37 (e) The legislative rule filed in the state register on the
38 twenty-fifth day of July, two thousand two, authorized under
39 the authority of section five, article four, chapter five-a, of this

40 code, modified by the department of administration to meet the
41 objections of the legislative rule-making review committee and
42 refiled in the state register on the twentieth day of December,
43 two thousand two, relating to the department of administration
44 (parking, 148 CSR 6), is authorized with the following amend-
45 ments:

46 “On page one, section one, subsection 1.1, following the
47 word ‘in’ by inserting ‘the city of Charleston’;

48 On page one, section two, subsection 2.1, line thirty-seven,
49 following the word ‘buildings’ by inserting ‘in the city of
50 Charleston’;

51 On page two, section four, following the word ‘buildings’
52 by inserting ‘in the city of Charleston’;

53 On page two, section five, line five, following the word
54 ‘purpose’ by striking the remainder of the sentence;

55 On page two, section five, following the number ‘2007’ by
56 striking ‘Each spending unit shall remit payment monthly to the
57 Department of Administration for all parking spaces assigned
58 to each spending unit. It is the responsibility of the spending
59 unit to keep all spaces assigned to its employees and to collect
60 the appropriate monthly fee’;

61 On page two, section five, paragraph two, following the
62 word ‘Secretary’ and the parenthesis and the period by striking
63 the remainder of the paragraph;

64 On page two, section five, following paragraph two by
65 inserting ‘The Secretary may charge a reasonable fee to replace
66 a parking tag or access card issued to a public officer or
67 employee.’;

68 On page two, section six, subsection 6.1, line thirteen,
69 following the word 'rule' and the period by striking 'The
70 Secretary may also authorize the removal, immobilization, or
71 any other remedy considered necessary, at owners expense, of
72 a vehicle whose owner owes more than ten (10) unpaid viola-
73 tions.' and inserting 'For the purposes of this subdivision, a
74 'motor vehicle parked in violation of this rule' shall include a
75 motor vehicle owned by a person who owes more than ten (10)
76 unpaid violations and is parked on property described in
77 subsection 2.1 of this rule.';

78 On page three, section seven, subsection 7.1, following line
79 nine, by striking 'Lost Parking Tag 10.00 Lost Access Card
80 15.00';

81 On page three, section seven, subsection 7.2, line ten,
82 following the word 'days' and the period by striking 'These
83 fines may be remitted by payroll deduction to the Office of the
84 Secretary. In addition to the penalties set forth in subsection
85 6.1, a civil' and inserting 'A';

86 And,

87 On page three, section seven, subsection 7.2, line fourteen,
88 following the word 'paid' by striking 'with' and inserting
89 'within'."

90 (f) The legislative rule filed in the state register on the
91 twenty-fifth day of July, two thousand two, authorized under
92 the authority of section five, article three-a, chapter five-a, of
93 this code, modified by the department of administration to meet
94 the objections of the legislative rule-making review committee
95 and refiled in the state register on the twentieth day of Decem-
96 ber, two thousand two, relating to the department of administra-
97 tion (qualifications for participation, 186 CSR 4), is authorized.

§64-2-2. Auditor.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand two, authorized under
3 the authority of section ten, article three, chapter twelve, of this
4 code, modified by the auditor to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the eighth day of November, two thousand two,
7 relating to the auditor (standards for requisitions for payment
8 issued by state officers on the auditor, 155 CSR 1), is autho-
9 rized.

10 (b) The legislative rule filed in the state register on the
11 twenty-fourth day of July, two thousand two, authorized under
12 the authority of section ten-c, article three, 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 November, two thousand two,
16 relating to the auditor (transaction fee and rate structure, 155
17 CSR 4), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-fourth day of July, two thousand two, authorized under
20 the authority of section two, article four-b, chapter twelve, of
21 this code, relating to the auditor (state auditor's computer and
22 technology donation program, 155 CSR 5), is authorized.

§64-2-3. Consolidated public retirement board.

1 (a) The legislative rule filed in the state register on the
2 twenty-third day of July, two thousand two, authorized under
3 the authority of section one, article ten-d, chapter five, of this
4 code, relating to the consolidated public retirement board
5 (public employees retirement system, 162 CSR 5), is authorized
6 with the amendment set forth below:

7 On page two, section nine, by striking out the period and
8 inserting in lieu thereof a colon and the following: *Provided,*

9 That beginning on the first day of July, two thousand three,
10 each participating public employer shall contribute ten and five-
11 tenths percent (10.5%) of each compensation payment of all its
12 employees who are members of the Public Employees Retirement
13 System.

14 (b) The legislative rule filed in the state register on the
15 twenty-third day of July, two thousand two, authorized under
16 the authority of section one, article ten-d, chapter five of this
17 code, modified by the consolidated public retirement board to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the twenty-ninth
20 day of October, two thousand two, relating to the consolidated
21 public retirement board (benefit determination and appeal, 162
22 CSR 2), is authorized with the amendment set forth below:

23 On page one, section 2.1, following the words “the Board
24 shall” by inserting a comma and the words “as part of its initial
25 review,”.

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

35 (d) The legislative rule filed in the state register on the
36 twenty-third day of July, two thousand two, authorized under
37 the authority of section one, article ten-d, chapter five, of this
38 code, modified by the consolidated public retirement board to
39 meet the objections of the legislative rule-making review
40 committee and refiled in the state register on the twenty-ninth

41 day of October, two thousand two, relating to the consolidated
42 public retirement board (West Virginia state police disability
43 determination and appeal process, 162 CSR 9), is authorized.

§64-2-4. Ethics commission.

1 The legislative rule filed in the state register on the nine-
2 tenth day of July, two thousand two, authorized under the
3 authority of section two, article three, chapter six-b, of this
4 code, relating to the ethics commission (lobbying, 158 CSR 12),
5 is authorized.

§64-2-5. Division of personnel.

1 The legislative rule filed in the state register on the twenty-
2 third day of July, two thousand two, under the authority of
3 section ten, article six, chapter twenty-nine, of this code,
4 modified by the division of personnel to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the fifth day of December, two thousand two,
7 relating to the division of personnel (administrative rule of the
8 division of personnel, 143 CSR 1), is authorized.

CHAPTER 138

(Com. Sub. for H. B. 2603 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 6, 2003; 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 administra-

tive 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 department of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides from nonelectric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to permits for the construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; authorizing the department 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 department 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 department of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides from electric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the department 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 department of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the department of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; authorizing the department of environmental protection to promulgate a legislative rule relating to coal related dam safety; authorizing the department of environmental protection to promulgate a legislative rule relating to standards for the beneficial use of materials similar to sewage sludge; authorizing the department of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to the hazardous waste management fund certification legislative rule concerning fee assessment; authorizing the department of environmental protection to promulgate a legislative rule relating to water pollution control permit fee schedules; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the oil and gas conservation commission to promulgate a legislative rule relating to rules of the commission.

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 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. Oil and gas conservation commission.

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

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, authorized under
3 the authority of section four, article five, chapter twenty-two of
4 this code, relating to the department of environmental protec-
5 tion (NOx budget trading program as a means of control and
6 reduction of nitrogen oxides from nonelectric generating units,
7 45 CSR 1), is authorized with the following amendment:

8 On page thirty-four, subsection 54.6, in the first sentence
9 after the words “starting in” by inserting the word “2005 or”
10 and after the word “2006,” by inserting the words “if the
11 Secretary determines the Administrator is utilizing this later
12 date for purposes of implementation under 40 CFR Part 96 or
13 40 CFR Part 52 in any state with a compliance date of May 31,
14 2004,”

15 (b) The legislative rule filed in the state register on the
16 twenty-sixth day of July, two thousand two, authorized under
17 the authority of section four, article five, chapter twenty-two of
18 this code, relating to the department of environmental protec-
19 tion (permits for construction, modification, relocation and
20 operation of stationary sources of air pollutants, notification
21 requirements, administrative updates, temporary permits,
22 general permits and procedures for evaluation, 45 CSR 13), is
23 authorized.

24 (c) The legislative rule filed in the state register on the
25 twenty-sixth day of July, two thousand two, authorized under
26 the authority of section four, article five, chapter twenty-two of
27 this code, relating to the department of environmental protec-
28 tion (standards of performance for new stationary sources
29 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

30 (d) The legislative rule filed in the state register on the
31 twenty-sixth day of July, two thousand two, authorized under
32 the authority of section four, article five, chapter twenty-two of

33 this code, relating to the department of environmental protec-
34 tion (to prevent and control air pollution from hazardous waste
35 treatment, storage or disposal facilities, 45 CSR 25), is autho-
36 rized.

37 (e) The legislative rule filed in the state register on the
38 twenty-sixth day of July, two thousand two, authorized under
39 the authority of section four, article five, chapter twenty-two of
40 this code, relating to the department of environmental protec-
41 tion (NOx budget trading program as a means of control and
42 reduction of nitrogen oxides from electric generating units, 45
43 CSR 26), is authorized with the following amendment:

44 On page thirty-two, subsection 54.6, in the first sentence
45 after the words "starting in" by inserting the word "2005 or"
46 and after the word "2006," by inserting the words "if the
47 Secretary determines the Administrator has approved or
48 promulgated this later date for purposes of implementation
49 under 40 CFR Part 96 or 40 CFR Part 52 in any state with a
50 compliance date of May 31, 2004,"

51 (f) The legislative rule filed in the state register on the
52 twenty-sixth day of July, two thousand two, authorized under
53 the authority of section four, article five, chapter twenty-two of
54 this code, relating to the department of environmental protec-
55 tion (requirements for operating permits, 45 CSR 30), is
56 authorized.

57 (g) The legislative rule filed in the state register on the
58 twenty-sixth day of July, two thousand two, authorized under
59 the authority of section four, article five, chapter twenty-two of
60 this code, relating to the department of environmental protec-
61 tion (emission standards for hazardous air pollutants for source
62 categories pursuant to 40 CFR Part 63, 45 CSR 34), is autho-
63 rized.

64 (h) The legislative rule filed in the state register on the
65 twenty-sixth day of July, two thousand two, authorized under
66 the authority of section four, article five, chapter twenty-two of
67 this code, modified by the department of environmental
68 protection to meet the objections of the legislative rule-making
69 review committee and refiled in the state register on the fourth
70 day of November, two thousand two, relating to the department
71 of environmental protection (acid rain provisions and permits,
72 45 CSR 33), is authorized.

73 (i) The legislative rule filed in the state register on the
74 twenty-sixth day of July, two thousand two, authorized under
75 the authority of sections four and twelve, article three, chapter
76 twenty-two of this code, modified by the department of
77 environmental protection to meet the objections of the legisla-
78 tive rule-making review committee and refiled in the state
79 register on the thirteenth day of January, two thousand three,
80 relating to the department of environmental protection (surface
81 mining and reclamation rule, 38 CSR 2), is authorized with the
82 following amendments:

83 On page twenty-two, following paragraph 3.7.c.2. by
84 inserting a new division 3.7.d to read as follows:

85 “3.7.d. A survey of the watershed identifying all man made
86 structures and residents in proximity to the disposal area to
87 determine potential storm runoff impacts. At least thirty (30)
88 days prior to any beginning of placement of material, the
89 accuracy of the survey shall be field verified. Any changes shall
90 be documented and brought to the attention of the Secretary to
91 determine if there is a need to revise the permit.”

92 On page twenty-five, subdivision 3.12.a.6. by following the
93 words “to surface lands, structures,” by striking the remainder
94 of the paragraph and inserting in lieu thereof “or facilities, due
95 to subsidence;”;

96 On page twenty-five, subdivision 3.12.a.7. by striking in
97 both places they appear in the paragraph the words “perennial
98 streams or wetlands”;

99 On page twenty-six, paragraph 3.12.a.8.D. by striking the
100 words “lands, perennial streams or wetlands.”;

101 On page thirty-five, subparagraph 3.22.f.5.A.2. by striking
102 the words “been dedicated” and inserting in lieu thereof, the
103 words “are available”;

104 On page fifty-eight, at the end of subdivision 5.4.b.4. by
105 adding the following: “All sediment control systems for valley
106 fills, including durable rock fills, shall be designed for the
107 entire disturbed acreage of the fill and shall include a schedule
108 indicating timing and sequence of construction over the life of
109 the fill.”;

110 On page fifty-eight, at the end of subdivision 5.4.b.11. by
111 adding the following: “The location of discharge points and the
112 volume to be released shall not cause a net increase in peak
113 runoff from the proposed permit area when compared to pre-
114 mining conditions and shall be compatible with the post-mining
115 configuration and adequately address watershed transfer.”

116 On page sixty-two, following division 5.5.1. by inserting a
117 new subsection 5.6, to read as follows:

118 “5.6 Storm Water Runoff. 5.6.a. Each application for a
119 permit shall contain a storm water runoff analysis which
120 includes the following:

121 5.6.a.1. An analysis showing the changes in storm runoff
122 caused by the proposed operation(s) using standard engineering
123 and hydrologic practices and assumptions.

124 5.6.a.2. The analysis will evaluate pre-mining, worst case
125 during mining, and post-mining (Phase III standards) condi-
126 tions. The storm used for the analysis will be the largest
127 required design storm for any sediment control or other water
128 retention structure proposed in the application. The analysis
129 must take into account all allowable operational clearing and
130 grubbing activities. The applicant will establish evaluation
131 points on a case-by-case basis depending on site specific
132 conditions including, but not limited to, type of operation and
133 proximity of man-made structures.

134 5.6.a.3. The worst case during mining and post-mining
135 evaluations must show no net increase in peak runoff compared
136 to the pre-mining evaluation.

137 5.6.b. Each application for a permit shall contain a runoff-
138 monitoring plan which shall include, but is not limited to, the
139 installation and maintenance of rain gauges. The plan shall be
140 specific to local conditions. All operations must record daily
141 precipitation and report monitoring results on a monthly basis
142 and any one (1) year, twenty-four (24) storm event or greater
143 must be reported to the Secretary within twenty-four (24) hours
144 and shall include the results of a permit wide drainage system
145 inspection.

146 5.6.c. Each application for a permit shall contain a sediment
147 retention plan to minimize downstream sediment deposition
148 within the watershed resulting from precipitation events.
149 Sediment retention plans may include, but are not limited to
150 decant ponds, secondary control structures, increased frequency
151 for cleaning out sediment control structures, or other methods
152 approved by the Secretary.

153 5.6.d. After the first day of January, two thousand four, all
154 active mining operations must be consistent with the require-
155 ments of this subdivision. The permittee must demonstrate in

156 writing that the operation is in compliance or a revision shall be
157 prepared and submitted to the Secretary for approval within the
158 schedule described in 5.6.d.1. Full compliance with the permit
159 revision shall be accomplished within 180 days from the date
160 of Secretary approval. Active mining operations for the purpose
161 of this subsection exclude permits that have obtained at least a
162 Phase I release and are vegetated: *Provided, however,* permits
163 or portions of permits that meet at least Phase I standards and
164 are vegetated will be considered on a case-by-case basis.

165 5.6.d.1. Schedule of Submittal.

166 5.6.d.1.a. Within 180 days from the first day of January,
167 two thousand four, all active mining operations with permitted
168 acreage greater than 400 acres must demonstrate in writing that
169 the operation is in compliance or a revision shall be prepared
170 and submitted to the Secretary for approval.

171 5.6.d.1.b. Within 360 days from the first day of January,
172 two thousand four, all active mining operations with permitted
173 acreage between 200 and 400 acres must demonstrate in writing
174 that the operation is in compliance or a revision shall be
175 prepared and submitted to the Secretary for approval.

176 5.6.d.1.c. Within 540 days from the first day of January,
177 two thousand four, all active mining operations with permitted
178 acreage between 100 and less than 200 acres must demonstrate
179 in writing that the operation is in compliance or a revision shall
180 be prepared and submitted to the Secretary for approval.

181 5.6.d.1.d. Within 720 days from the first day of January,
182 two thousand four, all active mining operations with permitted
183 acreage between 50 and less than 100 acres must demonstrate
184 in writing that the operation is in compliance or a revision shall
185 be prepared and submitted to the Secretary for approval.

186 5.6.d.1.e. Within 900 days from the first day of January,
187 two thousand four, all active mining operations with permitted
188 acreage less than 50 acres must demonstrate in writing that the
189 operation is in compliance or a revision shall be prepared and
190 submitted to the Secretary for approval: *Provided, however*, an
191 exemption may be considered on a case by case basis. Further-
192 more, haulroads, loadouts, and ventilation facilities are ex-
193 cluded from this requirement.”

194 On page ninety-five, subsection 8.2.e., following the words
195 “not to Impound water or” by inserting the following: “and
196 shall not be placed in such manner or location to”;

197 On page ninety-five, subsection 9.1.a., at the end of the
198 sentence, by adding the following: “Reforestation opportunities
199 must be maximized for all areas not directly associated with the
200 primary approved post mining land use. All revegetation plans
201 must include a map identifying areas to be reforested, planting
202 schedule and stocking rates.”;

203 On page one hundred fifty-eight, by revising the first
204 sentence in subdivision 14.14.g.1 to read as follows: “14.14.g.1.
205 For fills proposed after January 1, 2004, Secretary may only
206 approve the design, construction, and use of a single lift fill
207 with an erosion protection zone or a durable rock fill designed
208 to be reclaimed from the toe upward, both consisting of at least
209 eighty (80) percent durable rock if it can be determined, based
210 on information provided by the operator, that the following
211 conditions exist:”;

212 On page one hundred fifty-eight, following paragraph
213 14.14.g.1.b. by inserting new 14.14.g.2. and 14.14.g.3. to read
214 as follows:

215 “14.14.g.2. Design Specifications and Requirements of
216 Single Lift Fills with an Erosion Protection Zone. In addition to
217 the requirements of this subdivision, the design, specifications

218 and requirements of single lift fills with an erosion protection
219 zone shall be in accordance with the following:

220 14.14.g.2.A. Erosion Protection Zone.

221 The erosion protection zone is a designed structure con-
222 structed to provide energy dissipation to minimize erosion
223 vulnerability and may extend beyond the designed toe of the
224 fill.

225 14.14.g.2.A.1. The effective length of the erosion protection
226 zone shall be at least one half the height of the fill measured to
227 the target fill elevation or fill design elevation as defined in the
228 approximate original contour procedures and shall be designed
229 to provide a continuous underdrain extension from the fill
230 through and beneath the erosion protection zone.

231 14.14.g.2.A.2. The height of the erosion protection zone
232 shall be sufficient to accommodate designed flow from the
233 underdrain of the fill and shall comply with 14.14.e.1. of this
234 rule.

235 14.14.g.2.A.3. The erosion protection zone shall be con-
236 structed of durable rock as defined in 14.14.g.1. originating
237 from a permit area and shall be of sufficient gradation to satisfy
238 the underdrain function of the fill.

239 14.14.g.2.A.4. The outer slope or face of the erosion
240 protection zone shall be no steeper than two (2) horizontal or
241 one (1) vertical (2:1). The top of the erosion protection zone
242 shall slope toward the fill at a three (3) to five (5) percent grade
243 and slope laterally from the center toward the sides at one (1)
244 percent grade to discharge channels capable of passing the peak
245 runoff of a one-hundred (100) year, twenty-four (24) hour
246 precipitation event.

247 14.14.g.2.A.5. Prior to commencement of single lift
248 construction of the durable rock fill, the erosion protection zone
249 must be seeded and certified by a registered professional
250 engineer as a critical phase of fill construction. The erosion
251 protection zone shall be maintained until completion of
252 reclamation of the fill.

253 14.14.g.2.A.6. Unless otherwise approved in the reclama-
254 tion plan, the erosion protection zone shall be removed and the
255 area upon which it was located shall be regraded and
256 revegetated in accordance with the reclamation plan.

257 14.14.g.2.B. Single Lift Construction Requirements.

258 14.14.g.2.B.1 Excess spoil disposal shall commence at the
259 head of the hollow and proceed downstream to the final toe.
260 Unless required for construction of the underdrain, there shall
261 be no material placed in the fill from the sides of the valley
262 more than 300 feet ahead of the advancing toe. Exceptions
263 from side placement of material limits may be approved by the
264 Secretary if requested and the applicant can demonstrate
265 through sound engineering that it is necessary to facilitate
266 access to isolated coal seams, the head of the hollow or other-
267 wise facilitates fill stability, erosion, or drainage control.

268 14.14.g.2.B.2. During construction, the fill shall be de-
269 signed and maintained in such a manner as to prevent water
270 from discharging over the face of the fill.

271 14.14.g.2.B.2.(a) The top of the fill shall be configured to
272 prevent water from discharging over the face of the fill and to
273 direct water to the sides of the fill.

274 14.14.g.2.B.2.(b) Water discharging along the edges of the
275 fill shall be conveyed in such a manner to minimize erosion
276 along the edges of the fill.

277 14.14.g.2.B.3. Reclamation of the fill shall be initiated from
278 the top of the fill and progress to the toe with concurrent
279 construction of terraces and permanent drainage.

280 14.14.g.3. Design Specifications and Requirements for
281 Durable Rock Fills designed to be reclaimed from the toe
282 upward. Durable rock fills that are designed to be reclaimed
283 from the toe upward shall comply with all requirements of this
284 subdivision including the following:

285 14.14.g.3.A. Transportation of Material to toe of fill. The
286 method of transporting material to the toe of the fill shall be
287 specified in the application and shall include a plan for inclem-
288 ent weather dumping. The means of transporting material to the
289 toe may be by any method authorized by the Act and this rule
290 and is not limited to the use of roads.

291 14.14.g.3.A.1. Constructed roads shall be graded and sloped
292 in such a manner that water does not discharge over the face.
293 Sumps shall be constructed along the road in switchback areas
294 and shall be located at least 15 feet from the outslope.

295 14.14.g.3.A.2. The constructed road shall be in compliance
296 with all applicable State and Federal safety requirements. The
297 design criteria to comply with all applicable State and Federal
298 safety requirements shall be included in the permit.

299 14.14.g.3.B. Once the necessary volume of material has
300 been transported to the toe of the fill, face construction and
301 installation of terraces and permanent drainage shall com-
302 mence. The face construction and reclamation of the fill shall
303 be from the bottom up with progressive construction of terraces
304 and permanent drainage in dumping increments not to exceed
305 100 feet.”;

306 On page one hundred fifty eight, by renumbering existing
307 subdivision 14.14.g.2 as 14.14.g.4 and renumbering the
308 subsequent subdivisions accordingly;

309 On page one hundred sixty, subdivision 14.15.a.2., follow-
310 ing the words “unreclaimed area” by inserting the following:
311 “minimize surface water runoff, comply with the storm water
312 runoff plan and to quickly establish and maintain a specified
313 ratio of disturbed versus reclaimed area throughout the life of
314 the operation.”;

315 On page one hundred sixty-two, division 14.15.c., follow-
316 ing the words “meets Phase I standards” by inserting the words
317 “and seeding has occurred.”;

318 On page one hundred sixty-three, division 14.15.g.,
319 following the words “or economically feasible” by inserting the
320 words “and demonstrate that the variance being sought will
321 comply with section 5.6 of this rule”;

322 On page one hundred eighty-seven, division 20.6.d.,
323 following the term “Notice of Informal Assessment Confer-
324 ence.” by striking the subsequent sentence and insert in lieu
325 thereof, the following: “The Secretary shall arrange for a
326 conference to review the proposed assessment or reassessment,
327 upon written request of the person to whom the notice or order
328 was issued, if the request is received within fifteen (15) days
329 from the date the proposed assessment or reassessment is
330 received: *Provided, however,* the operator shall forward the
331 amount of proposed penalty assessment to the Secretary for
332 placement in an interest bearing escrow account.”;

333 On page one hundred eighty-eight, division 20.6.j., in the
334 first sentence, following the words “persons request” by
335 inserting the words “an informal conference or”, striking the
336 words “continue to be” and following the words “completion of
337 the” by inserting the words “conference or”;

338 On page one hundred ninety-eight, paragraph 22.4.g.3.A.,
339 at the end of the paragraph be inserting the following sentence:
340 “For existing structures exceeding the minimum 2 PMP volume
341 requirement, the dewatering system shall be installed when the
342 containment volume is reduced to 2 PMPs.”;

343 On page one hundred ninety-eight, subdivision 22.4.i.6., in
344 the first sentence following the words “used or new” by
345 inserting the words: “or unconstructed refuse”, and by follow-
346 ing the word “impoundments” by inserting the words “or slurry
347 cells”;

348 On page two hundred six, subsection 24.3., at the end
349 subsection by striking the period and inserting the following:
350 “or a coal remining operation as defined in 40 CFR Part 434 as
351 amended may qualify for the water quality exemptions set forth
352 in 40 CFR Part 434 as amended.”;

353 And,

354 On page two hundred seven, subsection 24.4., following the
355 words “subsection 12.2 of this rule” by striking the period and
356 inserting the following: “and the terms and conditions set forth
357 in the NPDES Permit in accordance with subsection (p), section
358 301 of the Federal Clean Water Act, as amended or 40 CFR
359 Part 434 as amended.”

360 (j) The legislative rule filed in the state register on the
361 twenty-sixth day of July, two thousand two, authorized under
362 the authority of section four, article fourteen, chapter twenty-
363 two of this code, modified by the department of environmental
364 protection to meet the objections of the legislative rule-making
365 review committee and refiled in the state register on the
366 thirteenth day of January, two thousand three, relating to the
367 department of environmental protection (coal related dam
368 safety, 38 CSR 4), is authorized with the following amend-
369 ments:

370 On page eleven, paragraph 7.1.f.3.A., following the words
371 “also be met.” by inserting the following sentence: “For
372 existing structures exceeding the minimum 2 PMP volume
373 requirement, the dewatering system shall be installed when the
374 containment volume is reduced to 2 PMPs.”;

375 On page twelve, division 7.1.n. in the first sentence
376 following the words “be used in new” by inserting the words
377 “or unconstructed refuse” and following the word “impound-
378 ments” by inserting the words “or slurry cells.”, in the second
379 sentence by following the words “be either” by inserting the
380 words “repaired or” and following the word “replaced” by
381 inserting a colon, striking the remainder of the sentence and
382 inserting the proviso: “*Provided*, That sediment control or other
383 water retention structures used for the treatment of effluent and
384 designated as Class A Dams under 3.4.b. of this rule are exempt
385 from this prohibition.”;

386 On page thirteen, subsection 8.1, in the second sentence
387 following the words “demonstrated that” by inserting the word
388 “the” and following the words “coal pillars” by inserting a
389 comma and the words “roofs and”;

390 On page thirteen, division 8.2.a., in the third sentence
391 following the words “by providing” by striking the words “a
392 combination of”, following the words “construction barriers”
393 striking the word “and”, following the word “grouting” insert-
394 ing the words “or other means”, and following the words
395 “establish equivalent” striking the word “distances” and
396 inserting in lieu thereof the word “protection.” and in the last
397 sentence following the word “Secretary” by inserting the word
398 “may”;

399 On page thirteen, division 8.2.b., in the third sentence
400 following the words “by grouting,” by striking the word “or”
401 and following the words “related voids” by striking the word

402 “completely” and inserting in lieu thereof the words “or
403 providing comparable protection.”;

404 On page thirteen, division 8.2.c., in the first sentence by
405 striking the words “analyzed for all types of potential failures”
406 and inserting in lieu thereof the words “3.4.c. of this rule.”;

407 On page fourteen, subsection 8.3., following the words
408 “Major design” by striking the word “Components” and
409 inserting in lieu thereof the word “considerations.”;

410 And,

411 On page twenty five, subsection 25.14, following the words
412 “practical pool level” by inserting the words “based upon the
413 design requirements and the AHCF”, by striking the sentence
414 “The lowest practical pool level is obtained by removing all
415 available clear water from the pool surface to the extent
416 practical without violating effluent limits.” and, in the last
417 sentence following the word “The” by inserting the words
418 “mechanical storm”.

419 (k) The legislative rule filed in the state register on the
420 twenty-third day of July, two thousand two, authorized under
421 the authority of section twenty-two-b, article fifteen, chapter
422 twenty-two of this code, modified by the department of
423 environmental protection to meet the objections of the legisla-
424 tive rule-making review committee and refiled in the state
425 register on the fifth day of December, two thousand two,
426 relating to the department of environmental protection (stan-
427 dards for beneficial use of materials similar to sewage sludge,
428 33 CSR 8), is authorized.

429 (l) The legislative rule filed in the state register on the
430 twenty-fifth day of July, two thousand two, authorized under
431 the authority of section six, article eighteen, chapter twenty-two
432 of this code, modified by the department of environmental

433 protection to meet the objections of the legislative rule-making
434 review committee and refiled in the state register on the sixth
435 day of December, two thousand two, relating to the department
436 of environmental protection (hazardous waste management, 33
437 CSR 20), is authorized.

438 (m) The legislative rule filed in the state register on the
439 twenty-fifth day of October, two thousand two, authorized
440 under the authority of section twenty-two, article eighteen,
441 chapter twenty-two of this code, modified by the department of
442 environmental protection to meet the objections of the legisla-
443 tive rule-making review committee and refiled in the state
444 register on the tenth day of January, two thousand three,
445 relating to the department of environmental protection (hazard-
446 ous waste management fund certification legislative rule
447 concerning fee assessment, 33 CSR 24), is authorized.

448 (n) The legislative rule filed in the state register on the
449 twenty-sixth day of July, two thousand two, authorized under
450 the authority of section four, article eleven, chapter twenty-two
451 of this code, modified by the department of environmental
452 protection to meet the objections of the legislative rule-making
453 review committee and refiled in the state register on the twenty-
454 first day of January, two thousand three, relating to the depart-
455 ment of environmental protection (water pollution control
456 permit fee schedules, 47 CSR 26), is authorized with the
457 following amendments:

458 “On page one, subsection 2.3, line two, following the words
459 “of the”, by striking out remainder of the subsection and
460 inserting in lieu thereof the words “Department of Environmen-
461 tal Protection”;

462 And,

463 On page two, subsection 2.11, line two, following the words
464 “equal to”, by inserting the words “or greater than”.

§64-3-2. Environmental quality board.

1 The legislative rule filed in the state register on the second
2 day of January, two thousand three, authorized under the
3 authority of section four, article three, chapter twenty-two-b of
4 this code, relating to the environmental quality board (require-
5 ments governing water quality standards, 46 CSR 1), is autho-
6 rized.

§64-3-3. Oil and gas conservation commission.

1 The legislative rule filed in the state register on the twenty-
2 fourth day of July, two thousand two, authorized under the
3 authority of section five, article nine, chapter twenty-two-c of
4 this code, modified by the oil and gas conservation commission
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fifteenth day
7 of January, two thousand three, relating to the department of
8 environmental protection (oil and gas conservation commission,
9 39 CSR 1), is authorized.

CHAPTER 139

(Com. Sub. for H. B. 2599 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 5, 2003; 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; and authorizing the division of culture and history to promulgate a legislative rule relating to the cultural facilities and capital resources grant program.

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 The legislative rule filed in the state register on the twenty-
2 sixth day of July, two thousand two, authorized under the
3 authority of section four, article one, chapter twenty-nine of this
4 code, modified by the division of culture and history to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the fifth day of December, two
7 thousand two, relating to the division of culture and history
8 (cultural facilities and capital resources grant program, 82 CSR
9 7), is authorized.

CHAPTER 140

**(Com. Sub. for H. B. 2625 — By Delegates Mahan, Cann,
Kominar and Faircloth)**

[Passed March 5, 2003; 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 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 health care authority to promulgate a legislative rule relating to benchmarking and discount contracts; authorizing the department of health and human resources to promulgate a legislative rule relating to the nurse aid abuse registry; authorizing the division of health to promulgate a legislative rule relating to sewage treatment and collection system design standards; authorizing the division of health to promulgate a legislative rule relating to the medical examiner rule for post

mortem inquiries; authorizing the division of health to promulgate a legislative rule relating to surrogates for incapacitated persons in health care facilities operated by the department of health and human resources; authorizing the division of health to promulgate a legislative rule relating to the uniform credentialing of health care practitioners; authorizing the division of human services to promulgate a legislative rule relating to day care centers licensing; authorizing the division of human services to promulgate a legislative rule relating to the tel-assistance program; and authorizing the division of human services to promulgate a legislative rule relating to family day care home registration requirements.

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 LEGISLA-
TIVE RULES.**

§64-5-1. Health care authority.

§64-5-2. Department of health and human resources.

§64-5-3. Division of health.

§64-5-4. Division of human services.

§64-5-1. Health care authority.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of July, two thousand two, under the authority of
3 section eight, article twenty-nine-b, chapter sixteen of this code,
4 modified by the health care authority to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the second day of December, two thousand
7 two, relating to the health care authority (benchmarking and
8 discount contracts, 65 CSR 26), is authorized.

§64-5-2. Department of health and human resources.

1 The legislative rule filed in the state register on the eighth-
2 teenth day of July, two thousand two, under the authority of
3 section two, article six, chapter nine, of this code, modified by
4 the department of health and human resources to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the eleventh day of December,
7 two thousand two, relating to the department of health and
8 human resources (nurse aid abuse registry, 69 CSR 6), is
9 authorized.

§64-5-3. Division of health.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, under the authority
3 of section four, article one, chapter sixteen, of this code,
4 modified by the division of health to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the sixth day of January, two thousand three,
7 relating to the division of health (sewage treatment and collec-
8 tion system design standards, 64 CSR 47), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-second day of July, two thousand two, under the
11 authority of section three, article twelve, chapter sixty-one, of
12 this code, modified by the division of health to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the eleventh day of December,
15 two thousand two, relating to the division of health (medical
16 examiner rule for post mortem inquiries, 64 CSR 84), is
17 authorized, with the following amendment:

18 “On page twenty-seven, section twenty-three, subsection
19 23.5, following the word ‘materials’ by inserting ‘may be’;

20 And,

21 On page twenty-eight, section twenty-five, subsection 25.2,
22 following the phrase ‘W. Va. Code §16-1-11’ by adding the
23 phrase, “except as provided for in subsection 13.6 of this rule’.”

24 (c) The legislative rule filed in the state register on the
25 eighth day of February, two thousand two, under the authority
26 of section eight, article thirty, chapter sixteen, of this code,
27 modified by the division of health to meet the objections of the
28 legislative rule-making review committee and refiled in the
29 state register on the thirtieth day of May, two thousand two,
30 relating to the division of health (surrogates for incapacitated
31 persons in health care facilities operated by the department of
32 health and human resources, 64 CSR 86), is authorized with the
33 following amendment:

34 “On page two of the rule, section four, subsection 4.1, by
35 striking out the remainder of the rule and inserting in lieu
36 thereof the following:

37 ‘4.1.a. Any organization authorized under state or federal
38 laws, or under contract with the Department, to advocate for
39 individuals in the Department’s health care facilities;

40 4.1.b. Any organization authorized under federal or state
41 laws, or under contract with the Department, to provide
42 surrogacy, guardianship or conservator services for persons in
43 the Department’s health care facilities; and

44 4.1.c. Any Department employee not otherwise precluded
45 from serving as a surrogate by the provisions of W. Va. Code
46 §16-30-8(i).”

47 (d) The legislative rule filed in the state register on the
48 eighteenth day of July, two thousand two, under the authority
49 of section two, article one-a, chapter sixteen, of this code,
50 modified by the division of health to meet the objections of the

51 legislative rule-making review committee and refiled in the
52 state register on the thirteenth day of January, two thousand
53 three, relating to the division of health (uniform credentialing
54 of health care practitioners, 64 CSR 89), is authorized.

§64-5-4. Division of human services.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, under the authority
3 of section four, article two-b, chapter forty-nine, of this code,
4 modified by the division of human resources 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 two, relating to the division of human
8 resources (day care centers licensing, 78 CSR 1), is authorized
9 with the following amendments:

10 “On page two of the rule, subsection 3.12, at the end of the
11 second line of said subsection, following the word ‘except:’, by
12 striking out the remainder of the subsection and inserting in lieu
13 thereof the following:

14 ‘3.12.a. A kindergarten, preschool or school education
15 program that is operated by a public school or that is accredited
16 by the state department of education, or any other kindergarten,
17 preschool or school programs that operate with sessions not
18 exceeding four hours per day for any child;

19 3.12.b. An individual or facility that offers occasional care
20 of children for brief periods while parents are shopping,
21 engaging in recreational activities, attending religious services
22 or engaging in other business or personal affairs;

23 3.12.c. Summer recreation camps operated for children
24 attending sessions for periods not exceeding thirty days;

25 3.12.d. Hospitals or other medical facilities that are
26 primarily used for temporary residential care of children for
27 treatment, convalescence or testing;

28 3.12.e. Persons providing family day care solely for
29 children related to them; or

30 3.12.f. Any juvenile detention facility or juvenile correc-
31 tional facility operated by or under contract with the division of
32 juvenile services, created pursuant to the provisions of W.Va.
33 Code §49-5E-2 for the secure housing or holding of juveniles
34 committed to its custody.'

35 On page twenty-two of the rule, section nine, subsection
36 9.1, subdivision 9.1.h, paragraph 9.1.h.1, following the word
37 'age', by inserting a comma, striking out the remainder of
38 paragraph 9.1.h.1, and inserting 'have a minimum of a high
39 school diploma or equivalent and:';

40 On page twenty-three, subparagraph 9.1.h.2.B, following
41 the word 'of' by striking out 'two (2)' and inserting in lieu
42 thereof 'ten (10)';

43 On page twenty-three, subparagraph 9.1.h.3.C., by striking
44 out the words 'three (3)' and inserting in lieu thereof 'fifteen
45 (15)';

46 And,

47 On page twenty-three, subparagraph 9.1.h.4.C, following
48 the word 'of' by striking out the words 'one (1)' and inserting
49 in lieu thereof the words 'two (2)'."

50 (b) The legislative rule filed in the state register on the
51 twenty-fifth day of June, two thousand two, under the authority
52 of section four, article two-c, chapter twenty-four, of this code,
53 modified by the division of human resources to meet the

54 objections of the legislative rule-making review committee and
55 refiled in the state register on the twenty-third day of Septem-
56 ber, two thousand two, relating to the division of human
57 resources (tel-assistance program, 78 CSR 15), is authorized
58 with the following amendments:

59 “On page two, section five, by striking out all of subsection
60 5.1 and inserting in lieu thereof the following:

61 ‘5.1. An individual is eligible for Tel-Assistance if he or she
62 meets the criteria set forth in W.Va. Code §24-2C-1. et seq.’”

63 (c) The legislative rule filed in the state register on the
64 twenty-sixth day of July, two thousand two, under the authority
65 of section four, article two-b, chapter forty-nine, of this code,
66 modified by the division of human resources to meet the
67 objections of the legislative rule-making review committee and
68 refiled in the state register on the twenty-third day of Septem-
69 ber, two thousand two, relating to the division of human
70 resources (family day care home registration requirements, 78
71 CSR 19), is authorized with the following amendment:

72 “On page eight of the rule, section six, subsection four,
73 subdivision d, paragraph three, by striking out all of §6.4.d.3,
74 and by renumbering the following paragraph as ‘§6.4.d.3.’”

CHAPTER 141

(Com. Sub. for H. B. 2615 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive 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 fire commission to promulgate a legislative rule relating to the state building code; authorizing the juvenile facilities standards commission to promulgate a legislative rule relating to minimum standards for the structure, operation and maintenance of juvenile detention and correctional facilities; and authorizing the state police to promulgate a legislative rule relating to the state police career progression system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire commission.

§64-6-2. Juvenile facilities standards commission.

§64-6-3. State police.

§64-6-1. Fire commission.

1 The legislative rule filed in the state register on the nine-
2 teenth day of July, two thousand two, authorized under the
3 authority of section five-b, article three, chapter twenty-nine of
4 this code, modified by the fire commission to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the fifteenth day of January, two
7 thousand three, relating to the fire commission (state building
8 code, 87 CSR 4), is authorized.

§64-6-2. Juvenile facilities standards commission.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of July, two thousand two, under the authority of
3 section nine-a, article twenty, chapter thirty-one of this code,
4 modified by the juvenile facilities standards commission to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the tenth day of
7 January, two thousand three, relating to the juvenile facilities
8 standards commission (minimum standards for structure,
9 operation and maintenance of juvenile detention and correc-
10 tional facilities, 101 CSR 1), is authorized. The commissioner
11 shall on or before the thirty-first day of July, two thousand
12 three, refile this rule (101 CSR 1) for purposes of legislative
13 promulgation of this rule during the two thousand four regular
14 legislative session.

§64-6-3. State police.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of July, two thousand two, authorized under the
3 authority of section five, article two, chapter fifteen of this
4 code, modified by the state police to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-seventh day of November, two

- 7 thousand two, relating to the state police (state police career
8 progression system, 81 CSR 3), is authorized.

CHAPTER 142

**(Com. Sub. for S. B. 287 — By Senators Ross, Minard,
Snyder, Boley and Minear)**

[Passed March 7, 2003; 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; 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; authorizing the insurance commissioner to promulgate a legislative rule relating to unfair trade practices; authorizing the insurance commissioner to promulgate a legislative rule relating to examiners' compensation, qualifications and classification; authorizing the insurance commissioner to promulgate a legisla-

tive rule relating to licensing and conduct of agents, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to excess line brokers; authorizing the insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to “tail” insurance covering certain medical and allied health care providers; authorizing the insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance minimum policy coverage standards; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance; authorizing the insurance commissioner to promulgate a legislative rule relating to medical malpractice insurance consent to rate and guide “A” rate agreements; authorizing the insurance commissioner to promulgate a legislative rule relating to credit personal property insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to standards for safeguarding consumer information; authorizing the insurance commissioner to promulgate a legislative rule relating to standard motor vehicle policy provisions; authorizing the insurance commissioner to promulgate a legislative rule relating to mental health parity; authorizing the tax commissioner to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; and authorizing the tax commissioner to promulgate a legislative rule relating to tax credit for medical malpractice liability insurance premiums.

Be it enacted by the Legislature of West Virginia:

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

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

§64-7-1. Insurance commissioner.

§64-7-2. Tax commissioner.

§64-7-1. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, authorized under
3 the authority of section ten, article two, chapter thirty-three of
4 this code, modified by the insurance commissioner to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the fifth day of December, two
7 thousand two, relating to the insurance commissioner (unfair
8 trade practices, 114 CSR 14), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-sixth day of July, two thousand two, authorized under
11 the authority of section ten, article two, chapter thirty-three of
12 this code, modified by the insurance commissioner to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the fourth day of November, two
15 thousand two, relating to the insurance commissioner (examin-
16 ers' compensation, qualifications and classification, 114 CSR
17 15), is authorized with the following amendment:

18 "On page one, section two, subsection 2.1 by striking the
19 words 'Market Conduct Examiner'."

20 (c) The legislative rule filed in the state register on the
21 twenty-sixth day of July, two thousand two, authorized under
22 the authority of section ten, article two, chapter thirty-three of
23 this code, modified by the insurance commissioner to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the first day of October, two
26 thousand two, relating to the insurance commissioner (licensing
27 and conduct of agents, agencies and solicitors, 114 CSR 2), is
28 authorized with the following amendment:

29 “On page four, by striking out all of subsection 3.8 and
30 inserting in lieu thereof the following:

31 ‘3.8. Every business entity transacting insurance as defined
32 in W. Va. Code §33-1-4 must be licensed as an agency insur-
33 ance producer. For purposes of this section, “insurance” means
34 all products defined or regulated by the State of West Virginia
35 except: (i) Limited lines insurance as defined in West Virginia
36 Code § 33-12-2(i) and (k); (ii) insurance placed by a lender in
37 connection with collateral pledged for a loan when the debtor
38 breaches the contractual obligation to provide this insurance;
39 and (iii) private mortgage insurance.’

40 On page four, subsection 4.1 after the word ‘with’ by
41 striking out the word ‘whom’ and inserting in lieu thereof the
42 word ‘which’;

43 On page five, by striking out all of subsection 5.1 and
44 inserting in lieu thereof the following:

45 ‘5.1. No person that owns or is affiliated with an insurance
46 agency or individual insurance producer may require, as a
47 condition precedent to making a loan, that the borrower cancel
48 insurance and purchase new insurance with the individual
49 insurance producer or with an agency insurance producer with
50 which the person is affiliated.’

51 And,

52 On page five, by striking out all of subsection 5.3 and
53 inserting in lieu thereof the following:

54 ‘5.3. The act of any person, that owns or is affiliated with
55 an insurance agency or individual insurance producer, in
56 making a loan in violation of this section, will be considered to

57 be the act of the individual insurance producer or agency
58 insurance producer with which the person making the loan is
59 affiliated. The individual insurance producer or agency insur-
60 ance producer will be held strictly accountable for the acts of a
61 person who is affiliated with the individual insurance producer
62 or agency insurance producer and who makes a loan in viola-
63 tion of this section.”

64 (d) The legislative rule filed in the state register on the
65 twenty-sixth day of July, two thousand two, authorized under
66 the authority of section ten, article two, chapter thirty-three of
67 this code, modified by the insurance commissioner to meet the
68 objections of the legislative rule-making review committee and
69 refiled in the state register on the first day of October, two
70 thousand two, relating to the insurance commissioner (excess
71 line brokers, 114 CSR 20), is authorized with the amendments
72 set forth below:

73 “On page three, subdivision 4.2.a., at the end of the
74 subdivision by adding the following: ‘The form shall contain an
75 affidavit that the individual insurance producer complied with
76 the due diligence requirements of this rule.’

77 And,

78 On page six, subdivision 4.6.j., after the word ‘producer’ by
79 inserting the words ‘required in section 4.2. of this rule’.

80 (e) The legislative rule filed in the state register on the
81 twenty-sixth day of July, two thousand two, authorized under
82 the authority of section ten, article two, chapter thirty-three of
83 this code, modified by the insurance commissioner to meet the
84 objections of the legislative rule-making review committee and
85 refiled in the state register on the fourth day of November, two

86 thousand two, relating to the insurance commissioner (AIDS,
87 114 CSR 27), is authorized with the following amendment:

88 “On Appendix A to rule, fifth paragraph, by striking the
89 entire paragraph and inserting in lieu thereof the following:
90 ‘Positive HIV antibody or antigen test results or other signifi-
91 cant abnormalities discovered in the body fluid sample tested
92 for the presence of HIV will adversely affect your application
93 for insurance. This means that your application may be de-
94 clined, that an increased premium may be charged, or that other
95 policy changes may be necessary.’”

96 (f) The legislative rule filed in the state register on the
97 twenty-sixth day of July, two thousand two, authorized under
98 the authority of section ten, article two, chapter thirty-three of
99 this code, relating to the insurance commissioner (“tail”
100 malpractice insurance covering certain medical and allied
101 health care providers, 114 CSR 30), is authorized.

102 (g) The legislative rule filed in the state register on the
103 twenty-sixth day of July, two thousand two, authorized under
104 the authority of section ten, article two, chapter thirty-three of
105 this code, modified by the insurance commissioner to meet the
106 objections of the legislative rule-making review committee and
107 refiled in the state register on the fifth day of December, two
108 thousand two, relating to the insurance commissioner (group
109 accident and sickness insurance minimum policy coverage
110 standards, 114 CSR 39), is authorized.

111 (h) The legislative rule filed in the state register on the
112 twenty-sixth day of July, two thousand two, authorized under
113 the authority of section ten, article two, chapter thirty-three of
114 this code, modified by the insurance commissioner to meet the
115 objections of the legislative rule-making review committee and
116 refiled in the state register on the first day of October, two

117 thousand two, relating to the insurance commissioner (continu-
118 ing education for individual insurance producers, 114 CSR 42),
119 is authorized.

120 (i) The legislative rule filed in the state register on the
121 twenty-sixth day of July, two thousand two, authorized under
122 the authority of section ten, article two, chapter thirty-three of
123 this code, relating to the insurance commissioner (quality
124 assurance, 114 CSR 53), is authorized.

125 (j) The legislative rule filed in the state register on the
126 twenty-second day of February, two thousand two, authorized
127 under the authority of section ten, article two, chapter thirty-
128 three of this code, relating to the insurance commissioner
129 (medical malpractice insurance consent to rate and guide "A"
130 rate agreements, 114 CSR 59), is authorized.

131 (k) The legislative rule filed in the state register on the
132 twenty-sixth day of July, two thousand two, authorized under
133 the authority of section ten, article two, chapter thirty-three of
134 this code, modified by the insurance commissioner to meet the
135 objections of the legislative rule-making review committee and
136 refiled in the state register on the third day of January, two
137 thousand three, relating to the insurance commissioner (credit
138 personal property insurance, 114 CSR 61), is authorized.

139 (l) The legislative rule filed in the state register on the
140 twenty-sixth day of July, two thousand two, authorized under
141 the authority of section ten, article two, chapter thirty-three of
142 this code, modified by the insurance commissioner to meet the
143 objections of the legislative rule-making review committee and
144 refiled in the state register on the fourth day of November, two
145 thousand two, relating to the insurance commissioner (standards
146 for safeguarding consumer information, 114 CSR 62), is
147 authorized.

148 (m) The legislative rule filed in the state register on the
149 twenty-sixth day of July, two thousand two, authorized under
150 the authority of section ten, article two, chapter thirty-three of
151 this code, modified by the insurance commissioner to meet the
152 objections of the legislative rule-making review committee and
153 refiled in the state register on the fourth day of November, two
154 thousand two, relating to the insurance commissioner (standard
155 motor vehicle policy provisions, 114 CSR 63), is authorized
156 with the following amendments:

157 “On page two, subsection 3.4, lines twenty-two and twenty-
158 three, by striking out the words ‘and may not exclude the
159 liability of the owner with respect to use by a bailee for hire,
160 restricted driver, or other permissive user’;

161 And,

162 On page three, subsection 3.13, lines sixteen and seventeen,
163 by striking out the words ‘, in exchange for a multi-car dis-
164 count,’.”

165 (n) The legislative rule filed in the state register on the
166 twenty-sixth day of July, two thousand two, authorized under
167 the authority of section ten, article two, chapter thirty-three of
168 this code, modified by the insurance commissioner to meet the
169 objections of the legislative rule-making review committee and
170 refiled in the state register on the fourth day of November, two
171 thousand two, relating to the insurance commissioner (mental
172 health parity, 114 CSR 64), is authorized with the following
173 amendments:

174 “On page one, subsection 1.1.b.1, by striking the word
175 ‘Any’ and inserting in lieu thereof the words ‘Group health
176 benefit plans issued by any’;

177 And,

178 On page one, subsection 1.1.b.3, by striking the word
179 'plans' and inserting in lieu thereof the words 'benefit plans'."

§64-7-2. Tax commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day of July, two thousand two, authorized under
3 the authority of section five-t, article ten, chapter eleven of this
4 code, modified by the tax commissioner to meet the objections
5 of the legislative rule-making review committee and refiled in
6 the state register on the twenty-second day of November, two
7 thousand two, relating to the tax commissioner (payment of
8 taxes by electronic funds transfer, 110 CSR 10F), is authorized
9 with the following amendments:

10 "On page three, subsection 3.2, by striking out the words
11 'for all taxable years or reporting periods' and inserting in lieu
12 thereof the words 'in tax liability per tax type per taxable year
13 or reporting period';

14 On page four, subsection 4.2, by striking out the entire
15 subsection;

16 On page four, subsection 5.2, first sentence, by striking out
17 the words 'Each EFT payment under this rule shall be limited
18 to' and inserting in lieu thereof the words 'The Department will
19 determine whether a taxpayer meets the \$100,000 tax liability
20 threshold requiring payment of taxes by EFT by considering
21 taxes paid for';

22 On page four, subsection 5.2, second sentence, by striking
23 out the words 'amount paid' and inserting in lieu thereof the
24 words 'taxes paid for all tax types';

25 On page four, subsection 5.3, first sentence, by striking out
26 the words 'Each EFT payment under this rule shall be limited
27 to' and inserting in lieu thereof the words 'The Department will
28 determine whether a taxpayer meets the \$100,000 tax liability
29 threshold requiring payment of taxes by EFT by considering';

30 On page five, subsection 7.1, by striking out the words
31 'Form WV/EFT-005' and inserting in lieu thereof the words
32 'Form WV/EFT-5';

33 And,

34 On page five, subsection 7.2, by striking out the words
35 'Form WV/EFT-005' and inserting in lieu thereof the words
36 'Form WV/EFT-5'."

37 (b) The legislative rule filed in the state register on the
38 twenty-fourth day of July, two thousand two, authorized under
39 the authority of section eight, article thirteen-p, chapter eleven
40 of this code, modified by the tax commissioner to meet the
41 objections of the legislative rule-making review committee and
42 refiled in the state register on the first day of October, two
43 thousand two, relating to the tax commissioner (tax credit for
44 medical malpractice insurance premiums, 110 CSR 13P), is
45 authorized.

CHAPTER 143

(Com. Sub. for H. B. 2648 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 5, 2003; 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 division of highways to promulgate a legislative rule relating to traffic and safety; 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 motor vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle test and lock program; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle inspection manual; authorizing the division of motor vehicles to promulgate a 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. Division of highways.

§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day of July, two thousand two, authorized under
3 the authority of section eight, article two-a, chapter seventeen
4 of this code, relating to the division of highways (traffic and
5 safety, 157 CSR 5), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-fourth day of July, two thousand two, under the author-
8 ity of section seven, article eighteen, chapter twenty-two of this
9 code, relating to the division of highways (transportation of
10 hazardous wastes upon the roads and highways, 157 CSR 7), is
11 authorized.

§64-8-2. Division of motor vehicles.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of December, two thousand two, authorized under
3 the authority of section fifteen, article two, chapter seventeen-b
4 of this code, relating to the division of motor vehicles (exami-
5 nation and issuance of driver's licenses, 91 CSR 4), is autho-
6 rized with the following amendments:

7 "On page eight, section six, subsection 6.1, line 1, follow-
8 ing the word 'license' by inserting 'or identification card';

9 On page eight, section six, subsection 6.1, following the
10 word 'licensee's' by inserting 'or identification card holder's';

11 On page eight, section six, subsection 6.1, line 7, following
12 the word 'license' by inserting 'or identification card';

13 On page eight, section six, subdivision 6.1.c, following the
14 word 'license' by inserting 'or identification card';

15 On page nine, section seven, subsection 7.1, following the
16 word 'license' by inserting 'or identification card';

17 On page nine, section seven, subsection 7.1, following the
18 word 'applicant' by inserting 'and the length of the applicant's
19 authorized legal presence in the United States';

20 On page ten, section seven, subsection 7.9, following the
21 word 'licensee' by inserting 'or identification card holder';

22 On page ten, section seven, subsection 7.9, following the
23 word 'license' by inserting 'or identification card';

24 On page twelve, section nine, subsection 9.2, following the
25 word 'license' by inserting 'or identification card';

26 On page twelve, section nine, subdivision 9.2.a, line one,
27 following the word 'licensee' by inserting 'or identification
28 card holder';

29 On page twelve, section nine, subdivision 9.2.a, line two,
30 following the word 'licensee' by inserting 'or identification
31 card holder';

32 On page twelve, section nine, subdivision 9.2.b, following
33 the word 'licensee' by inserting 'or identification card holder';

34 On page thirteen, section nine, subsection 9.7, following the
35 word 'license' by inserting 'or identification card';

36 On page thirteen, section nine, subsection 9.8, line one,
37 following the word 'license' by inserting 'or identification
38 card';

39 On page thirteen, section nine, subsection 9.8, line two,
40 following the word 'license' by inserting 'or identification
41 card';

42 On page thirteen, section ten, subsection 10.1, line one,
43 following the word 'license' by inserting 'or identification
44 card';

45 On page thirteen, section ten, subsection 10.1, line two,
46 following the word 'license' by inserting 'or identification
47 card';

48 On page thirteen, section ten, subsection 10.1, line three,
49 following the word 'license' by inserting 'or issue an identifica-
50 tion card to';

51 On page fourteen, section ten, subsection 10.3, line one,
52 following the word 'license' by inserting 'or issue identification
53 cards to';

54 On page fourteen, section ten, subsection 10.3, following
55 the word 'licensed' by inserting 'or issued identification cards';

56 And,

57 On page fourteen, section ten, subsection 10.3, following
58 the word 'license' by inserting 'or identification card'."

59 (b) The legislative rule filed in the state register on the
60 ninth day of October, two thousand two, authorized under the
61 authority of section three-a, article five-a, chapter seventeen-c
62 of this code, relating to the division of motor vehicles (motor
63 vehicle test and lock program, 91 CSR 9), is authorized.

64 (c) The legislative rule filed in the state register on the
65 eighteenth day of December, two thousand two, authorized
66 under the authority of section four, article sixteen, chapter
67 seventeen-c of this code, relating to the division of motor
68 vehicles (motor vehicle inspection manual, 91 CSR 12), is
69 authorized with the following amendment:

70 “On page one, section two, subsection 2.1, line 3, by
71 striking the words ‘July 1, 2003’ and inserting in lieu thereof
72 the phrase ‘January 1, 2002.’”

73 (d) The legislative rule filed in the state register on the
74 eighteenth day of July, two thousand two, authorized under the
75 authority of section nine, article two, chapter seventeen-a of this
76 code, modified by the division of motor vehicles to meet the
77 objections of the legislative rule-making review committee and
78 refiled in the state register on the twenty-third day of Septem-
79 ber, two thousand two, relating to the division of motor vehicles
80 (denial, suspension, revocation or nonrenewal of driving
81 privileges, 91 CSR 5), is authorized.

82 (e) The legislative rule filed in the state register on the third
83 day of July, two thousand two, authorized under the authority
84 of section nine, article two, chapter seventeen-a of this code,
85 modified by the division of motor vehicles to meet the objec-
86 tions of the legislative rule-making review committee and
87 refiled in the state register on the twenty-third day of Septem-
88 ber, two thousand two, relating to the division of motor vehicles
89 (motor vehicle dealers, wrecker/dismantler/rebuilders and

90 license services, automobile auctions, vehicle leasing compa-
91 nies, daily passenger rental car businesses and administrative
92 due process, 91 CSR 6), is authorized.

CHAPTER 144

**(Com. Sub. for S. B. 316 — By Senators Ross, Minard,
Snyder, Boley and Minear)**

[Passed March 7, 2003; 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; 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; authorizing division of forestry to promulgate legislative rule relating to sediment control during commercial timber harvesting operations; logger certification; authorizing division of forestry to promulgate legislative rule relating to sediment

control during commercial timber harvesting operation; licensing; authorizing development office to promulgate legislative rule relating to community development assessment and real property valuation procedures for office of coalfield community development; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of labor to promulgate legislative rule relating to elevator safety act; authorizing division of labor to promulgate legislative rule relating to regulation of trade—weights and measures; authorizing board of miner training, education and certification to promulgate legislative rule relating to standards for certification of coal mine electricians; authorizing division of natural resources to promulgate legislative rule relating to revocation of hunting and fishing licenses; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to prohibitions when hunting and trapping; authorizing division of natural resources to promulgate legislative rule relating to deer hunting; and authorizing division of natural resources to promulgate legislative rule relating to commercial sale of wildlife.

Be it enacted by the Legislature of West Virginia:

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

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

§64-10-1. Development office.

§64-10-2. Division of labor.

§64-10-3. Manufactured housing construction and safety standards board.

§64-10-4. Division of natural resources.

§64-10-5. Division of forestry.

§64-10-6. Board of miner training, education and certification.

§64-10-1. Development office.

1 The legislative rule filed in the state register on the twenty-
2 ninth day of July, two thousand two, authorized under the
3 authority of section twelve, article two-a, chapter five-b of this
4 code, modified by the department of environmental protection
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fourteenth day
7 of January, two thousand three, relating to the department of
8 environmental protection (community development assessment
9 and real property valuation procedures for office of coal field
10 community development, 145 CSR 8), is authorized.

§64-10-2. Division of labor.

1 (a) The legislative rule filed in the state register on the ninth
2 day of July, two thousand two, authorized under the authority
3 of section eleven, article three-c, chapter twenty-one of this
4 code, modified by the division of labor to meet the objections
5 of the legislative rule-making review committee and refiled in
6 the state register on the eighth day of November, two thousand
7 two, relating to the division of labor (elevator safety act, 42
8 CSR 21), is authorized with the following amendments:

9 “On page two, subsection 5.1 following the first word ‘No’,
10 by striking out the word ‘elevator’ and inserting in lieu thereof
11 the word ‘elevators’ and following the second words ‘certificate
12 of operation’, by striking out the words ‘shall be issued by the
13 Division’ and after the word ‘successfully’, by striking out the
14 word ‘pass’ and inserting in lieu thereof the word ‘passed’;

15 On page three, subsection 6.2 following the word ‘Chair-
16 lifts’, by striking out the word ‘is’ and inserting in lieu thereof
17 the word ‘are’;

18 And

19 On page four, subsection 6.4 following the words ‘no
20 inspection fee will’ by adding the word ‘be’”.

21 (b) The legislative rule filed in the state register on the
22 nineteenth day of July, two thousand two, authorized under the
23 authority of section three, article one, chapter forty-seven of
24 this code, modified by the division of labor to meet the objec-
25 tions of the legislative rule-making review committee and
26 refiled in the state register on the eighth day of November, two
27 thousand two, relating to the division of labor (regulation of
28 trade—weights and measures, 42 CSR 22), is authorized.

**§64-10-3. Manufactured housing construction and safety stan-
dards board.**

1 The legislative rule filed in the state register on the twenty-
2 sixth day of July, two thousand two, authorized under the
3 authority of section four, article nine, chapter twenty-one of this
4 code, relating to the manufactured housing construction and
5 safety standards board (West Virginia manufactured housing
6 construction and safety standards board, 42 CSR 19), is
7 authorized.

§64-10-4. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand two, authorized under
3 the authority of section seven, article one, 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 first day of October, two
7 thousand two, relating to the division of natural resources
8 (revocation of hunting and fishing licenses, 58 CSR 23), is
9 authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-sixth day of July, two thousand two, authorized under

12 the authority of section twenty-two, article seven, chapter
13 twenty of this code, relating to the division of natural resources
14 (special boating, 58 CSR 26), is authorized.

15 (c) The legislative rule filed in the state register on the
16 twenty-sixth day of July, two thousand two, authorized under
17 the authority of section seven, article one, chapter twenty of this
18 code, modified by the division of natural resources to meet the
19 objections of the legislature rule-making review committee and
20 refiled in the state register on the twenty-seventh day of
21 September, two thousand two, relating to the division of natural
22 resources (prohibitions when hunting and trapping, 58 CSR 47),
23 is authorized with the following amendment:

24 "On page two, section three, by striking out all of subdivi-
25 sion 3.6.1;

26 And,

27 On page 3, by striking out all of subdivision 3.15.2 and
28 inserting in lieu thereof a new subdivision 3.15.2, to read as
29 follows:

30 '3.15.2. The applicant shall authorize, by written release,
31 his or her medical provider to disclose to the director of the
32 Division of Natural Resources and the medical provider shall,
33 upon receipt of the written release, disclose to the director of
34 the Division of Natural Resources, that portion of the appli-
35 cant's medical records which substantiates the applicant's
36 physical impairment qualifying the applicant for the issuance of
37 a special permit for use of a modified bow. The director shall:
38 Restrict access to medical records submitted to him or her;
39 maintain the records in a secure locked cabinet; and not share
40 this information with other federal, state or local agencies or
41 entities, or any register or data bank.'"

42 (d) The legislative rule filed in the state register on the
43 twenty-sixth day of July, two thousand two, authorized under
44 the authority of section seven, article one, chapter twenty of this
45 code, modified by the division of natural resources to meet the
46 objections of the legislative rule-making review committee and
47 refiled in the state register on the twenty-seventh day of
48 September, two thousand two, relating to the division of natural
49 resources (deer hunting, 58 CSR 50), is authorized.

50 (e) The legislative rule filed in the state register on the
51 eighteenth day of November, two thousand two, authorized
52 under the authority of section eleven, article two, chapter
53 twenty of this code, modified by the division of natural re-
54 sources to meet the objections of the legislative rule-making
55 review committee and refiled in the state register on the twenty-
56 third day of December, two thousand two, relating to the
57 division of natural resources (commercial sale of wildlife, 58
58 CSR 63), is authorized with the following amendment:

59 “On page four, section sixty-three, by striking out all of
60 Subsections 4.7 and 4.8 and inserting in lieu thereof new
61 Subsections 4.7 and 4.8, to read as follows:

62 ‘4.7. In order to protect the public health and the welfare of
63 native wildlife, a licensee may not import cervids into West
64 Virginia. When the United States department of agriculture
65 implements rules and regulations on the interstate transportation
66 and sale of cervids, the interstate movement of cervids into
67 West Virginia will be governed by the United State department
68 of agriculture rules and regulations. The Division of Natural
69 Resources, however, may import wildlife during the normal
70 course of its mission.

71 4.8. A licensee may sell or relocate cervids within West
72 Virginia until January 15, 2004, or until the United States
73 department of agriculture establishes rules and regulations

74 regarding the intrastate transportation and sale of cervids,
75 whichever comes later. When the United States department of
76 agriculture implements rules and regulations on the intrastate
77 transportation and sale of cervids, the intrastate movement
78 within West Virginia will be governed by the United States
79 department of agriculture rules and regulations.’’

§64-10-5. Division of forestry.

1 (a) The legislative rule filed in the state register on the
2 twenty-third day of July, two thousand two, under the authority
3 of section four, article one-b, chapter nineteen of this code,
4 modified by the division of forestry to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the fifth day of December, two thousand two,
7 relating to the division of forestry (sediment control during
8 commercial timber harvesting operations - licensing, 22 CSR
9 2), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-third day of July, two thousand two, under the authority
12 of section four, article one-b, chapter nineteen of this code,
13 modified by the division of forestry to meet the objections of
14 the legislative rule-making review committee and refiled in the
15 state register on the fifth day of December, two thousand two,
16 relating to the division of forestry (sediment control during
17 commercial timber harvesting operations - logger certification,
18 22 CSR 3), is authorized.

§64-10-6. Board of miner training, education and certification.

1 The legislative rule filed in the state register on the thir-
2 teenth day of September, two thousand one, under the authority
3 of section five, article seven, chapter twenty-two-a of this code,
4 modified by the board of miner training, education and certifi-
5 cation to meet the objections of the legislative rule-making

6 review committee and refiled in the state register on the thirty-
7 first day of May, two thousand two, relating to the board of
8 miner training, education and certification (standards for
9 certification of coal mine electricians, 48 CSR 7), is authorized.

CHAPTER 145

(Com. Sub. for S. B. 387 — By Senators Sharpe, Ross and Oliverio)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to mechanics' liens; altering the periods for perfecting certain liens; and removing archaic language.

Be it enacted by the Legislature of West Virginia:

That sections eleven and thirteen, article two, chapter thirty-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 2. MECHANICS' LIENS.

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

1 For the purpose of perfecting and preserving his or her lien,
2 every materialman or furnisher of machinery or other necessary

32 State of West Virginia,

33 County of, being first duly sworn, upon his oath
34 says that the statements in the foregoing notice of lien con-
35 tained are true, as he verily believes.

36 Taken, subscribed and sworn to before me this day
37 of, 20. . . .

38 My commission expires

39
40 (Official Capacity)

41 The lien shall be discharged and avoided unless, within one
42 hundred days after the materialman or other furnisher of
43 machinery or other necessary equipment ceased to furnish the
44 materials or machinery or other equipment, he or she recorded
45 in the office of the clerk of the county commission of the
46 county wherein the property is situate a notice of the lien. The
47 notice shall be sufficient if in form and effect as that provided
48 in section eight of this article. The recorded notice need not
49 include the itemized account.

**§38-2-13. Notice and recordation of lien of mechanic or laborer
working for contractor or subcontractor.**

1 For the purpose of perfecting and preserving his or her lien,
2 every workman, artisan, mechanic, laborer or other person who
3 has performed any work or labor upon the building or improve-
4 ment thereto, under a contract with any general contractor or
5 with any subcontractor, as set forth in section six of this article,
6 shall give to the owner, or his or her authorized agent, by any
7 of the methods provided by law for the service of a legal notice
8 or summons within one hundred days after he or she ceased to
9 perform any work or labor a notice of the lien. The notice shall
10 be sufficient, if in form and effect as follows:

11 Notice of Mechanic's Lien.

12 To

13 You will please take notice that the undersigned has
14 performed work and labor under a contract with who
15 was general contractor with you (or who was subcontractor with
16, who was general contractor with you) in the erection
17 and construction (or removal, repair, improvement or otherwise,
18 as the case may be) of a certain building (or other structure or
19 improvement) on real estate known as (here insert an adequate
20 and ascertainable description of the real estate to be charged)
21 and that the work and labor was of the kind, was performed on
22 the dates, for the purposes and at the prices, as shown in the
23 following itemized account thereof:

24 (Here insert itemized account.)

25 You are further notified that the undersigned has not been
26 paid the sum of \$ (or that there is still due and owing to
27 the undersigned thereon the sum of \$.) and that he claims
28 a lien upon your interest in the said lot (or tract) of land and
29 upon the buildings, structures and improvements thereon to
30 secure the payment of the sum.

31

32 State of West Virginia,

33 County of, being first duly sworn, upon his oath
34 says that the statements in the foregoing notice of mechanic's
35 lien contained are true, as he verily believes.

36 Taken, subscribed and sworn to before me this day
37 of, 20.

38 My commission expires

39

40 (Official Capacity)

41 The lien shall be discharged unless the workman, artisan,
42 mechanic, laborer or other person shall record in the office of
43 the clerk of the county commission wherein the property is
44 situate, within one hundred days after he or she ceased to do
45 work or perform labor upon the building or improvement
46 thereto, a notice of the lien. The notice shall be sufficient if in
47 form and effect as that provided in section eight of this article.
48 The recorded notice need not include the itemized account.

CHAPTER 146

**(Com. Sub. for H. B. 3014 — By Mr. Speaker, Mr. Kiss, and Delegates
Michael, Doyle, Anderson, H. White, G. White and Browning)**

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, fourteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter; to amend and reenact sections one, two, three and five, article fifteen-b of said chapter; and to further amend said article fifteen-b by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all relating generally to “Main Street Fairness Act of 2003”, amending consumers sales and service and use tax laws to

conform to requirements of streamlined sales and use tax agreement; incorporating in this state's sales and use tax laws certain substantive provisions of agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; renaming simplified sales and use tax administration act as streamlined sales and use tax administration act; authorizing tax commissioner to sign agreement; specifying effective dates; deleting obsolete language and making other technical changes.

Be it enacted by the Legislature of West Virginia:

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

Article

15. Consumer Sales and Service Tax.

15A. Use Tax.

15B. Streamlined Sales and Use Tax Administration System.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-1a. Legislative findings.

§11-15-2. Definitions.

§11-15-3. Amount of tax; allocation of tax and transfers.

§11-15-4a. Failure to collect taxes; liability of vendor.

§11-15-4b. Liability of purchaser; assessment and collection.

§11-15-5. Total amount collected is to be remitted.

- §11-15-6. Vendor must show sale or service exempt; presumption.
- §11-15-8. Furnishing of services included; exceptions.
- §11-15-9f. Exemption for sales and services subject to special district excise tax.
- §11-15-13. Collection of tax when sale on credit.
- §11-15-14. When separate records of sales required.
- §11-15-16. Tax return and payment; exception.
- §11-15-31. Construction and severability.
- §11-15-33. Effective date.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the consumers
3 sales tax imposed by the provisions of article fifteen and the use
4 tax imposed by the provisions of article fifteen-a of this chapter,
5 be complementary laws and wherever possible be construed and
6 applied to accomplish such intent as to the imposition, adminis-
7 tration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four,
9 the taxes levied by this article and article fifteen-a of this
10 chapter shall also be administered and collected in accordance
11 with the provisions of article fifteen-b of this chapter.

***§11-15-2. Definitions.**

1 (a) *General.* — When used in this article and article fifteen-
2 a of this chapter, words defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature.

7 (b) *Definitions.* —

* **CLERK'S NOTE:** This section was also amended by SB 531 (Chapter 238),
which passed subsequent to this act.

8 (1) “Business” includes all activities engaged in or caused
9 to be engaged in with the object of gain or economic benefit,
10 direct or indirect, and all activities of the state and its political
11 subdivisions which involve sales of tangible personal property
12 or the rendering of services when those service activities
13 compete with or may compete with the activities of other
14 persons.

15 (2) “Communication” means all telephone, radio, light,
16 light wave, radio telephone, telegraph and other communication
17 or means of communication, whether used for voice communi-
18 cation, computer data transmission or other encoded symbolic
19 information transfers and includes commercial broadcast radio,
20 commercial broadcast television and cable television.

21 (3) “Contracting”:

22 (A) *In general.* — “Contracting” means and includes the
23 furnishing of work, or both materials and work, for another (by
24 a sole contractor, general contractor, prime contractor, subcon-
25 tractor or construction manager) in fulfillment of a contract for
26 the construction, alteration, repair, decoration or improvement
27 of a new or existing building or structure, or any part thereof,
28 or for removal or demolition of a building or structure, or any
29 part thereof, or for the alteration, improvement or development
30 of real property. Contracting also includes services provided by
31 a construction manager so long as the project for which the
32 construction manager provides the services results in a capital
33 improvement to a building or structure or to real property.

34 (B) *Form of contract not controlling.* — An activity that
35 falls within the scope of the definition of contracting constitutes
36 contracting regardless of whether the contract governing the
37 activity is written or verbal and regardless of whether it is in
38 substance or form a lump sum contract, a cost-plus contract, a

39 time and materials contract, whether or not open-ended, or any
40 other kind of construction contract.

41 (C) *Special rules.* — For purposes of this definition:

42 (i) The term “structure” includes, but is not limited to,
43 everything built up or composed of parts joined together in
44 some definite manner and attached or affixed to real property
45 or which adds utility to real property or any part thereof or
46 which adds utility to a particular parcel of property and is
47 intended to remain there for an indefinite period of time;

48 (ii) The term “alteration” means, and is limited to, alter-
49 ations which are capital improvements to a building or structure
50 or to real property;

51 (iii) The term “repair” means, and is limited to, repairs
52 which are capital improvements to a building or structure or to
53 real property;

54 (iv) The term “decoration” means, and is limited to,
55 decorations which are capital improvements to a building or
56 structure or to real property;

57 (v) The term “improvement” means, and is limited to,
58 improvements which are capital improvements to a building or
59 structure or to real property;

60 (vi) The term “capital improvement” means improvements
61 that are affixed to or attached to and become a part of a building
62 or structure or the real property or which add utility to real
63 property, or any part thereof, and that last or are intended to be
64 relatively permanent. As used herein, “relatively permanent”
65 means lasting at least a year in duration without the necessity
66 for regularly scheduled recurring service to maintain the capital
67 improvement. “Regular recurring service” means regularly
68 scheduled service intervals of less than one year;

69 (vii) Contracting does not include the furnishing of work,
70 or both materials and work, in the nature of hookup, connection,
71 installation or other services if the service is incidental to the
72 retail sale of tangible personal property from the service
73 provider's inventory: *Provided*, That the hookup, connection or
74 installation of the foregoing is incidental to the sale of the same
75 and performed by the seller thereof or performed in accordance
76 with arrangements made by the seller thereof. Examples of
77 transactions that are excluded from the definition of contracting
78 pursuant to this subdivision include, but are not limited to, the
79 sale of wall-to-wall carpeting and the installation of
80 wall-to-wall carpeting, the sale, hookup and connection of
81 mobile homes, window air conditioning units, dishwashers,
82 clothing washing machines or dryers, other household appli-
83 ances, drapery rods, window shades, venetian blinds, canvas
84 awnings, free standing industrial or commercial equipment and
85 other similar items of tangible personal property. Repairs made
86 to the foregoing are within the definition of contracting if the
87 repairs involve permanently affixing to or improving real
88 property or something attached thereto which extends the life
89 of the real property or something affixed thereto or allows or
90 intends to allow the real property or thing permanently attached
91 thereto to remain in service for a year or longer; and

92 (viii) The term "construction manager" means a person who
93 enters into an agreement to employ, direct, coordinate or
94 manage design professionals and contractors who are hired and
95 paid directly by the owner or the construction manager. The
96 business activities of a "construction manager" as defined in
97 this subdivision constitute contracting, so long as the project for
98 which the construction manager provides the services results in
99 a capital improvement to a building or structure or to real
100 property.

101 (4) "Directly used or consumed" in the activities of
102 manufacturing, transportation, transmission, communication or

103 the production of natural resources means used or consumed in
104 those activities or operations which constitute an integral and
105 essential part of the activities, as contrasted with and distin-
106 guished from those activities or operations which are simply
107 incidental, convenient or remote to the activities.

108 (A) Uses of property or consumption of services which
109 constitute direct use or consumption in the activities of manu-
110 facturing, transportation, transmission, communication or the
111 production of natural resources include only:

112 (i) In the case of tangible personal property, physical
113 incorporation of property into a finished product resulting from
114 manufacturing production or the production of natural re-
115 sources;

116 (ii) Causing a direct physical, chemical or other change
117 upon property undergoing manufacturing production or
118 production of natural resources;

119 (iii) Transporting or storing property undergoing transporta-
120 tion, communication, transmission, manufacturing production
121 or production of natural resources;

122 (iv) Measuring or verifying a change in property directly
123 used in transportation, communication, transmission, manufac-
124 turing production or production of natural resources;

125 (v) Physically controlling or directing the physical move-
126 ment or operation of property directly used in transportation,
127 communication, transmission, manufacturing production or
128 production of natural resources;

129 (vi) Directly and physically recording the flow of property
130 undergoing transportation, communication, transmission,
131 manufacturing production or production of natural resources;

132 (vii) Producing energy for property directly used in
133 transportation, communication, transmission, manufacturing
134 production or production of natural resources;

135 (viii) Facilitating the transmission of gas, water, steam or
136 electricity from the point of their diversion to property directly
137 used in transportation, communication, transmission, manufac-
138 turing production or production of natural resources;

139 (ix) Controlling or otherwise regulating atmospheric
140 conditions required for transportation, communication, trans-
141 mission, manufacturing production or production of natural
142 resources;

143 (x) Serving as an operating supply for property undergoing
144 transmission, manufacturing production or production of
145 natural resources, or for property directly used in transportation,
146 communication, transmission, manufacturing production or
147 production of natural resources;

148 (xi) Maintaining or repairing of property, including
149 maintenance equipment, directly used in transportation,
150 communication, transmission, manufacturing production or
151 production of natural resources;

152 (xii) Storing, removal or transportation of economic waste
153 resulting from the activities of manufacturing, transportation,
154 communication, transmission or the production of natural
155 resources;

156 (xiii) Engaging in pollution control or environmental
157 quality or protection activity directly relating to the activities of
158 manufacturing, transportation, communication, transmission or
159 the production of natural resources and personnel, plant,
160 product or community safety or security activity directly
161 relating to the activities of manufacturing, transportation,

162 communication, transmission or the production of natural
163 resources; or

164 (xiv) Otherwise using as an integral and essential part of
165 transportation, communication, transmission, manufacturing
166 production or production of natural resources.

167 (B) Uses of property or services which do not constitute
168 direct use or consumption in the activities of manufacturing,
169 transportation, transmission, communication or the production
170 of natural resources include, but are not limited to:

171 (i) Heating and illumination of office buildings;

172 (ii) Janitorial or general cleaning activities;

173 (iii) Personal comfort of personnel;

174 (iv) Production planning, scheduling of work or inventory
175 control;

176 (v) Marketing, general management, supervision, finance,
177 training, accounting and administration; or

178 (vi) An activity or function incidental or convenient to
179 transportation, communication, transmission, manufacturing
180 production or production of natural resources, rather than an
181 integral and essential part of these activities.

182 (5) "Directly used or consumed" in the activities of gas
183 storage, the generation or production or sale of electric power,
184 the provision of a public utility service or the operation of a
185 utility business means used or consumed in those activities or
186 operations which constitute an integral and essential part of
187 those activities or operation, as contrasted with and distin-
188 guished from activities or operations which are simply inciden-
189 tal, convenient or remote to those activities.

190 (A) Uses of property or consumption of services which
191 constitute direct use or consumption in the activities of gas
192 storage, the generation or production or sale of electric power,
193 the provision of a public utility service or the operation of a
194 utility business include only:

195 (i) Tangible personal property, custom software or services,
196 including equipment, machinery, apparatus, supplies, fuel and
197 power and appliances, which are used immediately in produc-
198 tion or generation activities and equipment, machinery,
199 supplies, tools and repair parts used to keep in operation exempt
200 production or generation devices. For purposes of this subsec-
201 tion, production or generation activities shall commence from
202 the intake, receipt or storage of raw materials at the production
203 plant site;

204 (ii) Tangible personal property, custom software or
205 services, including equipment, machinery, apparatus, supplies,
206 fuel and power, appliances, pipes, wires and mains, which are
207 used immediately in the transmission or distribution of gas,
208 water and electricity to the public, and equipment, machinery,
209 tools, repair parts and supplies used to keep in operation exempt
210 transmission or distribution devices, and these vehicles and
211 their equipment as are specifically designed and equipped for
212 those purposes are exempt from the tax when used to keep a
213 transmission or distribution system in operation or repair. For
214 purposes of this subsection, transmission or distribution
215 activities shall commence from the close of production at a
216 production plant or wellhead when a product is ready for
217 transmission or distribution to the public and shall conclude at
218 the point where the product is received by the public;

219 (iii) Tangible personal property, custom software or
220 services, including equipment, machinery, apparatus, supplies,
221 fuel and power, appliance, pipes, wires and mains, which are
222 used immediately in the storage of gas or water, and equipment,

223 machinery, tools, supplies and repair parts used to keep in
224 operation exempt storage devices;

225 (iv) Tangible personal property, custom software or
226 services used immediately in the storage, removal or transporta-
227 tion of economic waste resulting from the activities of gas
228 storage, the generation or production or sale of electric power,
229 the provision of a public utility service or the operation of a
230 utility business;

231 (v) Tangible personal property, custom software or services
232 used immediately in pollution control or environmental quality
233 or protection activity or community safety or security directly
234 relating to the activities of gas storage, generation or production
235 or sale of electric power, the provision of a public utility service
236 or the operation of a utility business.

237 (B) Uses of property or services which would not constitute
238 direct use or consumption in the activities of gas storage,
239 generation or production or sale of electric power, the provision
240 of a public utility service or the operation of a utility business
241 include, but are not limited to:

242 (i) Heating and illumination of office buildings;

243 (ii) Janitorial or general cleaning activities;

244 (iii) Personal comfort of personnel;

245 (iv) Production planning, scheduling of work or inventory
246 control;

247 (v) Marketing, general management, supervision, finance,
248 training, accounting and administration; or

249 (vi) An activity or function incidental or convenient to the
250 activities of gas storage, generation or production or sale of

251 electric power, the provision of public utility service or the
252 operation of a utility business.

253 (6) “Gas storage” means the injection of gas into a storage
254 reservoir or the storage of gas for any period of time in a
255 storage reservoir or the withdrawal of gas from a storage
256 reservoir engaged in by businesses subject to the business and
257 occupation tax imposed by sections two and two-e, article
258 thirteen of this chapter.

259 (7) “Generating or producing or selling of electric power”
260 means the generation, production or sale of electric power
261 engaged in by businesses subject to the business and occupation
262 tax imposed by section two, two-d, two-m or two-n, article
263 thirteen of this chapter.

264 (8) “Gross proceeds” means the amount received in money,
265 credits, property or other consideration from sales and services
266 within this state, without deduction on account of the cost of
267 property sold, amounts paid for interest or discounts or other
268 expenses whatsoever. Losses may not be deducted, but any
269 credit or refund made for goods returned may be deducted.

270 (9) “Includes” and “including,” when used in a definition
271 contained in this article, does not exclude other things otherwise
272 within the meaning of the term being defined.

273 (10) “Manufacturing” means a systematic operation or
274 integrated series of systematic operations engaged in as a
275 business or segment of a business which transforms or converts
276 tangible personal property by physical, chemical or other means
277 into a different form, composition or character from that in
278 which it originally existed.

279 (11) “Person” means any individual, partnership, associa-
280 tion, corporation, limited liability company, limited liability
281 partnership, or any other legal entity including this state or its

282 political subdivisions or an agency of either, or the guardian,
283 trustee, committee, executor or administrator of any person.

284 (12) "Personal service" includes those: (A) Compensated
285 by the payment of wages in the ordinary course of employment;
286 and (B) rendered to the person of an individual without, at the
287 same time, selling tangible personal property, such as nursing,
288 barbering, shoe shining, manicuring and similar services.

289 (13) Production of natural resource.

290 (A) "Production of natural resources" means, except for oil
291 and gas, the performance, by either the owner of the natural
292 resources or another, of the act or process of exploring, devel-
293 oping, severing, extracting, reducing to possession and loading
294 for shipment and shipment for sale, profit or commercial use of
295 any natural resource products and any reclamation, waste
296 disposal or environmental activities associated therewith and
297 the construction, installation or fabrication of ventilation
298 structures, mine shafts, slopes, boreholes, dewatering structures,
299 including associated facilities and apparatus, by the producer or
300 others, including contractors and subcontractors, at a coal mine
301 or coal production facility.

302 (B) For the natural resources oil and gas, "production of
303 natural resources" means the performance, by either the owner
304 of the natural resources, a contractor or a subcontractor, of the
305 act or process of exploring, developing, drilling, well-stimula-
306 tion activities such as logging, perforating or fracturing,
307 well-completion activities such as the installation of the casing,
308 tubing and other machinery and equipment and any reclama-
309 tion, waste disposal or environmental activities associated
310 therewith, including the installation of the gathering system or
311 other pipeline to transport the oil and gas produced or environ-
312 mental activities associated therewith and any service work

313 performed on the well or well site after production of the well
314 has initially commenced.

315 (C) All work performed to install or maintain facilities up
316 to the point of sale for severance tax purposes is included in the
317 “production of natural resources” and subject to the direct use
318 concept.

319 (D) “Production of natural resources” does not include the
320 performance or furnishing of work, or materials or work, in
321 fulfillment of a contract for the construction, alteration, repair,
322 decoration or improvement of a new or existing building or
323 structure, or any part thereof, or for the alteration, improvement
324 or development of real property, by persons other than those
325 otherwise directly engaged in the activities specifically set forth
326 in this subdivision (13) as “production of natural resources”.

327 (14) “Providing a public service or the operating of a utility
328 business” means the providing of a public service or the
329 operating of a utility by businesses subject to the business and
330 occupation tax imposed by sections two and two-d, article
331 thirteen of this chapter.

332 (15) “Purchaser” means a person who purchases tangible
333 personal property, custom software or a service taxed by this
334 article.

335 (16) “Sale”, “sales” or “selling” includes any transfer of the
336 possession or ownership of tangible personal property or
337 custom software for a consideration, including a lease or rental,
338 when the transfer or delivery is made in the ordinary course of
339 the transferor’s business and is made to the transferee or his or
340 her agent for consumption or use or any other purpose. “Sale”
341 also includes the furnishing of a service for consideration.

342 (17) “Service” or “selected service” includes all nonprofes-
343 sional activities engaged in for other persons for a consider-
344 ation, which involve the rendering of a service as distinguished
345 from the sale of tangible personal property or custom software,
346 but does not include contracting, personal services or the
347 services rendered by an employee to his or her employer or any
348 service rendered for resale.

349 (18) “Streamlined sales and use tax agreement” or “agree-
350 ment”, when used in this article, shall have the same meaning
351 as when used in article fifteen-b of this chapter, except when
352 the context in which the word agreement is used clearly
353 indicates that a different meaning is intended by the Legisla-
354 ture.

355 (19) “Tax” includes all taxes, additions to tax, interest and
356 penalties levied under this article or article ten of this chapter.

357 (20) “Tax commissioner” means the state tax commissioner
358 or his or her delegate. The term “delegate” in the phrase “or his
359 or her delegate,” when used in reference to the tax commis-
360 sioner, means any officer or employee of the state tax division
361 duly authorized by the tax commissioner directly, or indirectly
362 by one or more redelegations of authority, to perform the
363 functions mentioned or described in this article or rules
364 promulgated for this article.

365 (21) “Taxpayer” means any person liable for the tax
366 imposed by this article or additions to tax, penalties and interest
367 imposed by article ten of this chapter.

368 (22) “Transmission” means the act or process of causing
369 liquid, natural gas or electricity to pass or be conveyed from
370 one place or geographical location to another place or geo-
371 graphical location through a pipeline or other medium for
372 commercial purposes.

373 (23) “Transportation” means the act or process of convey-
374 ing, as a commercial enterprise, passengers or goods from one
375 place or geographical location to another place or geographical
376 location.

377 (24) “Ultimate consumer” or “consumer” means a person
378 who uses or consumes services or personal property.

379 (25) “Vendor” means any person engaged in this state in
380 furnishing services taxed by this article or making sales of
381 tangible personal property or custom software. “Vendor” and
382 “seller” are used interchangeably in this article.

383 (c) *Additional definitions.* — Other terms used in this
384 article are defined in article fifteen-b of this chapter, which
385 definitions are incorporated by reference into article fifteen.
386 Additionally, other sections of this article may define terms
387 primarily used in the section in which the term is defined.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) *Vendor to collect.* — For the privilege of selling
2 tangible personal property or custom software and for the
3 privilege of furnishing certain selected services defined in
4 sections two and eight of this article, the vendor shall collect
5 from the purchaser the tax as provided under this article and
6 article fifteen-b of this chapter, and shall pay the amount of tax
7 to the tax commissioner in accordance with the provisions of
8 this article or article fifteen-b of this chapter.

9 (b) *Amount of tax.* — The general consumer sales and
10 service tax imposed by this article shall be at the rate of six
11 cents on the dollar of sales or services, excluding gasoline and
12 special fuel sales, which remain taxable at the rate of five cents
13 on the dollar of sales.

14 (c) *Calculation tax on fractional parts of a dollar until*
15 *January 1, 2004.* — There shall be no tax on sales where the
16 monetary consideration is five cents or less. The amount of the
17 tax shall be computed as follows:

18 (1) On each sale, where the monetary consideration is from
19 six cents to sixteen cents, both inclusive, one cent.

20 (2) On each sale, where the monetary consideration is from
21 seventeen cents to thirty-three cents, both inclusive, two cents.

22 (3) On each sale, where the monetary consideration is from
23 thirty-four cents to fifty cents, both inclusive, three cents.

24 (4) On each sale, where the monetary consideration is from
25 fifty-one cents to sixty-seven cents, both inclusive, four cents.

26 (5) On each sale, where the monetary consideration is from
27 sixty-eight cents to eighty-four cents, both inclusive, five cents.

28 (6) On each sale, where the monetary consideration is from
29 eighty-five cents to one dollar, both inclusive, six cents.

30 (7) If the sale price is in excess of one dollar, six cents on
31 each whole dollar of sale price, and upon any fractional part of
32 a dollar in excess of whole dollars as follows: One cent on the
33 fractional part of the dollar if less than seventeen cents; two
34 cents on the fractional part of the dollar if in excess of sixteen
35 cents but less than thirty-four cents; three cents on the fractional
36 part of the dollar if in excess of thirty-three cents but less than
37 fifty-one cents; four cents on the fractional part of the dollar if
38 in excess of fifty cents but less than sixty-eight cents; five cents
39 on the fractional part of the dollar if in excess of sixty-seven
40 cents but less than eighty-five cents; and six cents on the
41 fractional part of the dollar if in excess of eighty-four cents. For
42 example, the tax on sales from one dollar and one cent to one
43 dollar and sixteen cents, both inclusive, seven cents; on sales

44 from one dollar and seventeen cents to one dollar and
45 thirty-three cents, both inclusive, eight cents; on sales from one
46 dollar and thirty-four cents to one dollar and fifty cents, both
47 inclusive, nine cents; on sales from one dollar and fifty-one
48 cents to one dollar and sixty-seven cents, both inclusive, ten
49 cents; on sales from one dollar and sixty-eight cents to one
50 dollar and eighty-four cents, both inclusive, eleven cents and on
51 sales from one dollar and eighty-five cents to two dollars, both
52 inclusive, twelve cents: *Provided*, That beginning the first day
53 of January, two thousand four, tax due under this article shall be
54 calculated as provided in subsection (d) of this subsection and
55 this subsection (c) does not apply to sales made after the thirty-
56 first day of December, two thousand three.

57 (d) *Calculation of tax on fractional parts of a dollar after*
58 *December 31, 2003.* — Beginning the first day of January, two
59 thousand four, the tax computation under subsection (b) of this
60 section shall be carried to the third decimal place, and the tax
61 rounded up to the next whole cent whenever the third decimal
62 place is greater than four and rounded down to the lower whole
63 cent whenever the third decimal place is four or less. The
64 vendor may elect to compute the tax due on a transaction on a
65 per item basis or on an invoice basis provided the method used
66 is consistently used during the reporting period.

67 (e) *No aggregation of separate sales transactions, excep-*
68 *tion for coin-operated devices.* — Separate sales, such as daily
69 or weekly deliveries, shall not be aggregated for the purpose of
70 computation of the tax even though the sales are aggregated in
71 the billing or payment therefor. Notwithstanding any other
72 provision of this article, coin-operated amusement and vending
73 machine sales shall be aggregated for the purpose of computa-
74 tion of this tax.

75 (f) *Rate of tax on certain mobile homes.* — Notwithstanding
76 any provision of this article to the contrary, after the thirty-first

77 day of December, two thousand three, the tax levied on sales of
78 mobile homes to be used by the owner thereof as his or her
79 principal year-round residence and dwelling shall be an amount
80 equal to six percent of fifty percent of the sales price.

81 (g) *Construction; custom software.* — After the thirty-first
82 day of December, two thousand three, whenever the words
83 “tangible personal property” or “property” appear in this article,
84 the same shall also include the words “custom software”.

85 (h) *Computation of tax on sales of gasoline and special*
86 *fuel.* — The method of computation of tax provided in this
87 section does not apply to sales of gasoline and special fuel.

§11-15-4. Purchaser to pay; accounting by vendor.

1 (a) The purchaser shall pay to the vendor the amount of tax
2 levied by this article which is added to and constitutes a part of
3 the sales price, and is collectible by the vendor who shall
4 account to the state for all tax paid by the purchaser.

5 (b) The vendor shall keep records necessary to account for:

6 (1) The vendor’s gross proceeds from sales of personal
7 property and services;

8 (2) The vendor’s gross proceeds from taxable sales;

9 (3) The vendor’s gross proceeds from exempt sales;

10 (4) The amount of taxes collected under this article, which
11 taxes shall be held in trust for the state of West Virginia until
12 paid over to the tax commissioner; and

13 (5) Any other information as required by this article, or
14 article fifteen-b of this chapter, or as required by the tax
15 commissioner.

§11-15-4a. Failure to collect tax; liability of vendor.

1 If any vendor fails to collect the tax imposed by section
2 three of this article, the vendor shall be personally liable for the
3 amount the vendor failed to collect, except as otherwise
4 provided in this article or article fifteen-b of this chapter.

§11-15-4b. Liability of purchaser; assessment and collection.

1 (a) *General.* — If any purchaser refuses or otherwise does
2 not pay to the vendor the tax imposed by section three of this
3 article, or a purchaser refuses to present to the vendor a proper
4 certificate indicating the sale is not subject to this tax, or
5 presents to the vendor a false certificate, or after presenting a
6 proper certificate uses the items purchased in a manner that the
7 sale would be subject to the tax, the purchaser shall be person-
8 ally liable for the amount of tax applicable to the transaction or
9 transactions.

10 (b) *Collection of tax from purchaser.* — Nothing in this
11 section relieves any purchaser who owes the tax and who has
12 not paid the tax imposed by section three of this article from
13 liability for payment of the tax. In those cases the tax commis-
14 sioner has authority to make an assessment against the pur-
15 chaser, based upon any information within his or her possession
16 or that may come into his or her possession. This assessment
17 and notice thereof shall be made and given in accordance with
18 sections seven and eight, article ten of this chapter.

19 (c) *Liability of vendor.* — This section may not be con-
20 strued as relieving the vendor from liability for the tax, except
21 as otherwise provided in this article or article fifteen-b of this
22 chapter.

§11-15-5. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the
2 collection of the tax levied by this article notwithstanding the
3 total amount of the taxes collected may be in excess of the
4 amount for which the person would be liable by the application
5 of the rate of tax levied by section three of this article to the
6 vendor's gross proceeds from taxable sales and services. The
7 total amount of all taxes collected by the vendor shall be
8 returned and remitted to the tax commissioner as provided in
9 this article or article fifteen-b of this chapter.

§11-15-6. Vendor must show sale or service exempt; presumption.

1 (a) The burden of proving that a sale or service was exempt
2 from the tax shall be upon the vendor, unless the vendor takes
3 from the purchaser an exemption certificate signed by and
4 bearing the address of the purchaser and setting forth the reason
5 for the exemption and substantially in the form prescribed by
6 the tax commissioner: *Provided*, That when the seller is
7 registered under the streamlined sales and use tax agreement to
8 collect the tax imposed by this article, the exemption certificate
9 shall be in the form prescribed by the governing board of the
10 streamlined sales and use tax agreement, and the signature of
11 the purchaser is not required unless a paper exemption certifi-
12 cate is furnished to the seller.

13 (b) To prevent evasion, it is presumed that all sales and
14 services are subject to the tax until the contrary is clearly
15 established.

§11-15-8. Furnishing of services included; exceptions.

1 The provisions of this article apply not only to selling
2 tangible personal property and custom software, but also to the
3 furnishing of all services, except professional and personal
4 services, and except those services furnished by businesses
5 subject to the control of the public service commission when

- 6 the service or the manner in which it is delivered is subject to
7 regulation by the public service commission.

***§11-15-9f. Exemption for sales and services subject to special district excise tax.**

- 1 Notwithstanding any provision of this article to the con-
2 trary, any sale or service upon which a special district excise tax
3 is paid, pursuant to the provisions of section eleven, article
4 thirteen-b, chapter eight of this code, is exempt from the tax
5 imposed by this article: *Provided*, That the special district
6 excise tax does not apply to sales of gasoline and special fuel.

§11-15-13. Collection of tax when sale on credit.

- 1 A vendor doing business wholly or partially on a credit
2 basis shall remit to the tax commissioner the tax due on the
3 credit sale for the month in which the credit transaction
4 occurred.

§11-15-14. When separate records of sales required.

- 1 (a) Any vendor engaged in a business subject to this tax,
2 who is at the same time engaged in some other kind of business,
3 occupation or profession, not taxable under this article, shall
4 keep records to show separately the transactions used in
5 determining the tax base taxed under this article.

- 6 (b) In the event the person fails to keep separate records
7 there shall be levied upon the person a tax based upon the entire
8 gross proceeds of both or all of the person's businesses.

§11-15-16. Tax return and payment; exception.

* **CLERK'S NOTE:** This section was also amended by SB 558 (Chapter 88),
which passed subsequent to this act.

1 (a) *Payment of tax.* — Subject to the exceptions set forth in
2 subsection (b) of this section, the taxes levied by this article are
3 due and payable in monthly installments, on or before the
4 twentieth day of the month next succeeding the month in which
5 the tax accrued, except as otherwise provided in this article.

6 (b) *Tax return.* — The taxpayer shall, on or before the
7 twentieth day of each month, make out and mail to the tax
8 commissioner a return for the preceding month, in the form
9 prescribed by the tax commissioner, showing:

10 (1) The total gross proceeds of the vendor's business for the
11 preceding month;

12 (2) The gross proceeds of the vendor's business upon which
13 the tax is based;

14 (3) The amount of the tax for which the vendor is liable;
15 and

16 (4) Any further information necessary in the computation
17 and collection of the tax which the tax commissioner may
18 require, except as otherwise provided in this article or article
19 fifteen-b of this chapter.

20 (c) *Remittance to accompany return.* — Except as other-
21 wise provided in this article or article fifteen-b of this chapter,
22 a remittance for the amount of the tax shall accompany the
23 return.

24 (d) *Deposit of collected tax.* — Tax collected by the tax
25 commissioner shall be deposited as provided in section thirty of
26 this article, except that:

27 (1) Tax collected on sales of gasoline and special fuel shall
28 be deposited in the state road fund; and

29 (2) Any sales tax collected by the alcohol beverage control
30 commissioner from persons or organizations licensed under
31 authority of article seven, chapter sixty of this code shall be
32 paid into a revolving fund account in the state treasury, desig-
33 nated the drunk driving prevention fund, to be administered by
34 the commission on drunk driving prevention, subject to
35 appropriations by the Legislature.

36 (e) *Return to be signed.* — A return shall be signed by the
37 taxpayer or the taxpayer's duly authorized agent, when a paper
38 return is prepared and filed. When the return is filed electroni-
39 cally, the return shall include the digital mark or digital
40 signature, as defined in article three, chapter thirty-nine-a of
41 this code, or the personal identification number of the taxpayer,
42 or the taxpayer's duly authorized agent, made in accordance
43 with any procedural rule that may be promulgated by the tax
44 commissioner.

45 (f) *Accelerated payment.* —

46 (1) Taxpayers whose average monthly payment of the taxes
47 levied by this article and article fifteen-a of this chapter during
48 the previous calendar year exceeds one hundred thousand
49 dollars, shall remit the tax attributable to the first fifteen days
50 of June each year on or before the twentieth day of June.

51 (2) For purposes of complying with subdivision (1) of this
52 subsection the taxpayer shall remit an amount equal to the
53 amount of tax imposed by this article and article fifteen-a of
54 this chapter on actual taxable sales of tangible personal property
55 and custom software and sales of taxable services during the
56 first fifteen days of June or, at the taxpayer's election, the
57 taxpayer may remit an amount equal to fifty percent of the
58 taxpayer's liability for tax under this article on taxable sales of
59 tangible personal property and custom software and sales of
60 taxable services made during the preceding month of May.

61 (3) For a business which has not been in existence for a full
62 calendar year, the total tax due from the business during the
63 prior calendar year shall be divided by the number of months,
64 including fractions of a month, that it was in business during the
65 prior calendar year; and if that amount exceeds one hundred
66 thousand dollars, the tax attributable to the first fifteen days of
67 June each year shall be remitted on or before the twentieth day
68 of June as provided in subdivision (2) of this subsection.

69 (4) When a taxpayer required to make an advanced pay-
70 ment of tax under subdivision (1) of this subsection makes out
71 its return for the month of June, which is due on the twentieth
72 day of July, the taxpayer may claim as a credit against liability
73 under this article for tax on taxable transactions during the
74 month of June, the amount of the advanced payment of tax
75 made under subdivision (1) of this subsection.

§11-15-31. Construction and severability.

1 (a) *Construction.* — If a court of competent jurisdiction
2 finds that the provisions of this article and of article fifteen-b of
3 this chapter conflict and cannot be harmonized, then the
4 provisions of article fifteen-b shall control.

5 (b) *Severability.* — If any section, subsection, subdivision,
6 paragraph, sentence, clause or phrase of this article is for any
7 reason held to be invalid, unlawful or unconstitutional, that
8 decision may not affect the validity of the remaining portions
9 of this article or any part thereof.

§11-15-33. Effective date.

1 The provisions of this article as amended or added during
2 the regular legislative session in the year two thousand three
3 shall take effect the first day of January, two thousand four, and
4 apply to all sales made on or after that date and to all returns
5 and payments due on or after that day.

ARTICLE 15A. USE TAX.

- §11-15A-1. Definitions.
- §11-15A-1a. Legislative findings.
- §11-15A-2. Imposition of tax; six percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.
- §11-15A-3. Exemptions.
- §11-15A-3a. Moving residence or business into state.
- §11-15A-4. Evidence of use.
- §11-15A-5. How collected.
- §11-15A-6. Collection by retailer.
- §11-15A-7. Foreign retailers.
- §11-15A-8. Absorbing tax; criminal penalty.
- §11-15A-9. Tax as debt.
- §11-15A-10. Payment to tax commissioner.
- §11-15A-10a. Credit for sales tax liability paid to another state.
- §11-15A-11. Liability of user.
- §11-15A-18. Seller must show sale not at retail; presumption.
- §11-15A-21. Books; examination.
- §11-15A-22. Canceling or revoking permits.
- §11-15A-27. Construction; partial unconstitutionality.
- §11-15A-29. Effective date.

§11-15A-1. Definitions.

1 (a) *General.* — When used in this article and article fifteen
2 of this chapter, terms defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature:

7 (b) “Business” means any activity engaged in by any
8 person, or caused to be engaged in by any person, with the
9 object of direct or indirect economic gain, benefit or advantage,
10 and includes any purposeful revenue generating activity in this
11 state;

12 (2) “Consumer” means any person purchasing tangible
13 personal property, custom software or a taxable service from a

14 retailer as defined in paragraph (7) of this subsection (b) or
15 from a seller as defined in section two, article fifteen-b of this
16 chapter;

17 (3) "Lease" includes rental, hire and license;

18 (4) "Person" includes any individual, firm, partnership,
19 joint venture, joint stock company, association, public or
20 private corporation, limited liability company, limited liability
21 partnership, cooperative, estate, trust, business trust, receiver,
22 executor, administrator, any other fiduciary, any representative
23 appointed by order of any court or otherwise acting on behalf
24 of others, or any other group or combination acting as a unit,
25 and the plural as well as the singular number;

26 (5) "Purchase" means any transfer, exchange or barter,
27 conditional or otherwise, in any manner or by any means
28 whatsoever, for a consideration;

29 (6) "Purchase price" means the measure subject to the tax
30 imposed by this article and has the same meaning as sales price;

31 (7) "Retailer" means and includes every person engaging in
32 the business of selling, leasing or renting tangible personal
33 property or custom software or furnishing a taxable service for
34 use within the meaning of this article, or in the business of
35 selling, at auction, tangible personal property or custom
36 software owned by the person or others for use in this state:
37 *Provided*, That when in the opinion of the tax commissioner it
38 is necessary for the efficient administration of this article to
39 regard any salespersons, representatives, truckers, peddlers or
40 canvassers as the agents of the dealers, distributors, supervisors,
41 employees or persons under whom they operate or from whom
42 they obtain the tangible personal property sold by them,
43 irrespective of whether they are making sales on their own
44 behalf or on behalf of the dealers, distributors, supervisors,

45 employers or persons, the tax commissioner may so regard
46 them and may regard the dealers, distributors, supervisors,
47 employers, or persons as retailers for purposes of this article;

48 (8) "Retailer engaging in business in this state" or any like
49 term, unless otherwise limited by federal statute, shall mean and
50 include, but not be limited to, any retailer having or maintain-
51 ing, occupying or using, within this state, directly or by a
52 subsidiary, an office, distribution house, sales house, ware-
53 house, or other place of business, or any agent (by whatever
54 name called) operating within this state under the authority of
55 the retailer or its subsidiary, irrespective of whether the place
56 of business or agent is located here permanently or temporarily,
57 or whether retailer or subsidiary is admitted to do business
58 within this state pursuant to article fifteen, chapter thirty-one-d
59 of this code or article fourteen, chapter thirty-one-e of this code;

60 (9) "Sale" means any transaction resulting in the purchase
61 or lease of tangible personal property, custom software or a
62 taxable service from a retailer;

63 (10) "Seller" means a retailer, and includes every person
64 selling or leasing tangible personal property or custom software
65 or furnishing a taxable service in a transaction that is subject to
66 the tax imposed by this article;

67 (11) "Streamlined sales and use tax agreement" or "agree-
68 ment," when used in this article, shall have the same meaning
69 as when used in article fifteen-b of this chapter, except when
70 the context in which the word agreement is used clearly
71 indicates that a different meaning is intended by the Legisla-
72 ture;

73 (12) "Tangible personal property" means personal property
74 that can be seen, weighed, measured, felt, or touched, or that is
75 in any manner perceptible to the senses. "Tangible personal

76 property” includes, but is not limited to, electricity, water, gas,
77 and prewritten computer software;

78 (13) “Tax commissioner” or “commissioner” means the
79 state tax commissioner, or his or her delegate. The term
80 “delegate” in the phrase “or his or her delegate,” when used in
81 reference to the tax commissioner, means any officer or
82 employee of the state tax division duly authorized by the tax
83 commissioner directly, or indirectly by one or more
84 redelegations of authority, to perform the functions mentioned
85 or described in this article or rules promulgated for this article;

86 (14) “Taxpayer” includes any person within the meaning of
87 this section, who is subject to a tax imposed by this article,
88 whether acting for himself or herself or as a fiduciary; and

89 (15) “Use” means and includes:

90 (A) The exercise by any person of any right or power over
91 tangible personal property or custom software incident to the
92 ownership, possession or enjoyment of the property, or by any
93 transaction in which possession of or the exercise of any right
94 or power over tangible personal property, custom software or
95 the result of a taxable service is acquired for a consideration,
96 including any lease, rental or conditional sale of tangible
97 personal property or custom software; or

98 (B) The use or enjoyment in this state of the result of a
99 taxable service. As used in this subdivision (15), “enjoyment”
100 includes a purchaser’s right to direct the disposition of the
101 property or the use of the taxable service, whether or not the
102 purchaser has possession of the property.

103 The term “use” does not include the keeping, retaining or
104 exercising any right or power over tangible personal property,
105 custom software or the result of a taxable service for the

106 purpose of subsequently transporting it outside the state for use
107 thereafter solely outside this state.

108 (b) *Additional definitions.* — Other terms used in this
109 article are defined in articles fifteen and fifteen-b of this
110 chapter, which definitions are incorporated by reference into
111 article fifteen-a. Additionally, other sections of this article may
112 define terms primarily used in the section in which the term is
113 defined.

§11-15A-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the use tax
3 imposed by the provisions of article fifteen-a and the consumers
4 sales tax imposed by the provisions of article fifteen of this
5 chapter be complementary laws and wherever possible be
6 construed and applied to accomplish the intent as to the
7 imposition, administration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four,
9 the taxes levied by this article and article fifteen of this chapter
10 shall also be administered and collected in accordance with the
11 provisions of article fifteen-b of this chapter.

**§11-15A-2. Imposition of tax; six percent tax rate; inclusion of
services as taxable; transition rules; allocation of
tax and transfers.**

1 (a) An excise tax is hereby levied and imposed on the use
2 in this state of tangible personal property, custom software or
3 taxable services, to be collected and paid as provided in this
4 article or article fifteen-b of this chapter, at the rate of six
5 percent of the purchase price of the property or taxable services,
6 except as otherwise provided in this article.

7 (b) *Calculation of tax on fractional parts of a dollar.* —

8 The tax computation under subsection (a) of this section shall
9 be carried to the third decimal place and the tax rounded up to
10 the next whole cent whenever the third decimal place is greater
11 than four and rounded down to the lower whole cent whenever
12 the third decimal place is four or less. The vendor may elect to
13 compute the tax due on a transaction on a per item basis or on
14 an invoice basis provided the method used is consistently used
15 during the reporting period.

16 (c) “Taxable services,” for the purposes of this article,
17 means services of the nature that are subject to the tax imposed
18 by article fifteen of this chapter. In this article, wherever the
19 words “tangible personal property” or “property” appear, the
20 same shall include the words “or taxable services,” where the
21 context so requires.

22 (d) Use tax is hereby imposed upon every person using
23 tangible personal property, custom software or taxable service
24 within this state. That person’s liability is not extinguished until
25 the tax has been paid. A receipt with the tax separately stated
26 thereon issued by a retailer engaged in business in this state, or
27 by a foreign retailer who is authorized by the tax commissioner
28 to collect the tax imposed by this article, relieves the purchaser
29 from further liability for the tax to which the receipt refers.

30 (e) Purchases of tangible personal property or taxable
31 services made for the government of the United States or any of
32 its agencies by ultimate consumers is subject to the tax imposed
33 by this section. Industrial materials and equipment owned by
34 the federal government within the state of West Virginia of a
35 character not ordinarily readily obtainable within the state, is
36 not subject to use tax when sold, if the industrial materials and
37 equipment would not be subject to use taxes if sold outside of
38 the state for use in West Virginia.

39 (f) This article does not apply to purchases made by
40 counties or municipal corporations.

§11-15A-3. Exemptions.

1 (a) The use in this state of the following tangible personal
2 property, custom software and services is hereby specifically
3 exempted from the tax imposed by this article to the extent
4 specified:

5 (1) All articles of tangible personal property and custom
6 software brought into the state of West Virginia by a nonresi-
7 dent individual thereof for his or her use or enjoyment while
8 temporarily within this state or while passing through this state,
9 except gasoline and special fuel: *Provided*, That fuel contained
10 in the supply tank of a motor vehicle that is not a motor carrier
11 may not be taxable.

12 (2) Tangible personal property, custom software or ser-
13 vices, the gross receipts from the sale of which are exempt from
14 the sales tax by the terms of article fifteen, chapter eleven of the
15 code of West Virginia, one thousand nine hundred thirty-one,
16 as amended, and the property or services are being used for the
17 purpose for which it was exempted.

18 (3) Tangible personal property, custom software or ser-
19 vices, the gross receipts or the gross proceeds from the sale of
20 which are required to be included in the measure of the tax
21 imposed by article fifteen, chapter eleven of the code of West
22 Virginia, one thousand nine hundred thirty-one, as amended,
23 and upon which the tax imposed by said article fifteen has been
24 paid.

25 (4) Tangible personal property, custom software or ser-
26 vices, the sale of which in this state is not subject to the West
27 Virginia consumers sales tax.

28 (5) Fifty percent of the measure of tax on mobile homes
29 utilized by the owners thereof as their principal year-round
30 residence and dwelling.

31 (b) The provisions of this section, as amended in the year
32 two thousand three, shall apply on and after the first day of
33 January, two thousand four.

§11-15A-3a. Moving residence or business into state.

1 The tax imposed by this article does not apply to tangible
2 personal property, custom software or services purchased
3 outside this state for use outside this state by a person who at
4 that time was a nonresident natural person, or a business entity
5 not actually doing business within this state, who or which later
6 brings tangible personal property or custom software into this
7 state in connection with his or her establishment of a permanent
8 residence or business in this state: *Provided*, That the property
9 was purchased more than six months prior to the date it was
10 first brought into this state, or six months prior to the establish-
11 ment of his or her residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

1 For the purpose of the proper administration of this article
2 to prevent evasion of the tax, evidence that tangible personal
3 property, custom software or a service was sold by any person
4 for delivery in this state is prima facie evidence that the tangible
5 personal property, custom software or service was sold for use
6 in this state.

§11-15A-5. How collected.

1 The tax imposed in section two of this article shall be
2 collected in the following manner:

3 (1) The tax upon the use of all tangible personal property,
4 custom software or services, sold by a retailer engaging in
5 business in this state, or by any other retailer as the tax commis-
6 sioner authorizes pursuant to section seven of this article, or
7 article fifteen –b of this chapter, shall be collected by the
8 retailer and remitted to the state tax commissioner, pursuant to
9 the provisions of sections six through ten, inclusive, of this
10 article, or by the seller registered under article fifteen-b of this
11 chapter, in accordance with the provisions of this article and
12 article fifteen-b of this chapter.

13 (2) The tax upon the use of all tangible personal property,
14 custom software and taxable services not paid pursuant to
15 subdivision (1) of this section, shall be paid to the tax commis-
16 sioner directly by any person using the property or service
17 within this state, pursuant to the provisions of section eleven of
18 this article.

§11-15A-6. Collection by retailer.

1 (a) Every retailer engaging in business in this state and
2 making sales of tangible personal property, custom software or
3 taxable services for delivery into this state, or with the knowl-
4 edge, directly or indirectly, that the property or service is
5 intended for use in this state, that are not exempted under the
6 provisions of section three of this article, shall at the time of
7 making the sales, whether within or without the state, collect
8 the tax imposed by this article from the purchaser, and give to
9 the purchaser a receipt therefor in the manner and form pre-
10 scribed by the tax commissioner, if the tax commissioner
11 prescribes by rule.

12 (b) Each retailer shall list with the tax commissioner the
13 name and address of all the retailer's agents operating in this
14 state, and the location of any and all distribution or sales houses

15 or offices or other places of business in this state of the retailer
16 and the retailer's agent or agents.

§11-15A-7. Foreign retailers.

1 The tax commissioner may, in his or her discretion, upon
2 application authorize the collection of the tax imposed in
3 section two of this article by any retailer not engaging in
4 business within this state, who, to the satisfaction of the tax
5 commissioner, furnishes adequate security to insure collection
6 and payment of the tax. The retailer shall be issued, without
7 charge, a permit to collect the tax in the manner, and subject to
8 the rules and agreements as the tax commissioner prescribes.
9 When authorized, it is the duty of the retailer to collect the tax
10 upon all tangible personal property, custom software and
11 services sold to the retailer's knowledge for use within this
12 state, in the same manner and subject to the same requirements
13 as a retailer engaging in business within this state. The authority
14 and permit may be canceled when, at any time, the tax commis-
15 sioner considers the security inadequate, or that the tax can
16 more effectively be collected from the person using the
17 property or taxable service in this state.

§11-15A-8. Absorbing tax; criminal penalty.

1 (a) It is unlawful for any retailer to advertise or hold out or
2 state to the public or to any purchaser, consumer or user,
3 directly or indirectly, that the tax or any part thereof imposed
4 by this article will be assumed or absorbed by the retailer or
5 that it will not be added to the selling price of the property or
6 taxable service sold, or if added that it or any part thereof will
7 be refunded.

8 (b) The tax commissioner has the power to adopt and
9 promulgate rules for adding the tax, or the equivalent thereof,
10 by providing different methods applying uniformly to retailers

11 within the same general classification for the purpose of
12 enabling retailers to add and collect, as far as practicable, the
13 amount of the tax.

14 (c) Any person violating any of the provisions of this
15 section within this state is guilty of a misdemeanor, and subject
16 to the penalties provided in section seven, article nine of this
17 chapter.

§11-15A-9. Tax as debt.

1 The tax required to be collected by any retailer pursuant to
2 sections six, six-a or seven of this article, or by any seller or
3 certified service provider pursuant to article fifteen-b of this
4 chapter, and any tax collected by any retailer, seller or certified
5 service provider pursuant to section six, six-a or seven of this
6 article, or article fifteen-b of this chapter, constitutes a debt
7 owed by the retailer, seller or certified service provider to this
8 state. The amount of tax collected shall be held in trust for the
9 state of West Virginia until paid over to the tax commissioner.

§11-15A-10. Payment to tax commissioner.

1 (a) Each retailer required or authorized, pursuant to section
2 six, six-a or seven, or pursuant to article fifteen-b of this
3 chapter, to collect the tax imposed in section two of this article,
4 is required to pay to the tax commissioner the amount of the tax
5 on or before the twentieth day of the month next succeeding
6 each calendar month, except as otherwise provided in this
7 article or article fifteen-b of this chapter.

8 (b) Each certified service provider for a Model I seller shall
9 pay to the tax commissioner the tax levied by this article on or
10 before the twentieth day of the month next succeeding the
11 calendar month in which the tax accrued, except as otherwise
12 provided in this article or article fifteen-b of this chapter.

13 (c) At that time, each retailer, seller or certified service
14 provider shall file with the tax commissioner a return for the
15 preceding monthly period, except as otherwise provided in this
16 article or article fifteen-b of this chapter, in the form prescribed
17 by the tax commissioner showing the sales price of any or all
18 tangible personal property, custom software and taxable
19 services sold by the retailer or seller during the preceding
20 quarterly period, the use of which is subject to the tax imposed
21 by this article, and any other information the tax commissioner
22 may consider necessary for the proper administration of this
23 article. The return shall be accompanied by a remittance of the
24 amount of the tax, for the period covered by the return, except
25 as otherwise provided in this article or article fifteen-b of this
26 chapter: *Provided*, That where the tangible personal property or
27 custom software is sold under a conditional sales contract, or
28 under any other form of sale wherein the payment of the
29 principal sum, or a part of the sum is extended over a period
30 longer than sixty days from the date of the sale, the retailer may
31 collect and remit each monthly period that portion of the tax
32 equal to six percent of that portion of the purchase price
33 actually received during the monthly period.

34 (d) The tax commissioner may, upon request and a proper
35 showing of the necessity to do so, grant an extension of time
36 not to exceed thirty days for making any return and payment.

37 (e) Returns shall be signed by the retailer or seller or his or
38 her duly authorized agent, and must be certified by him or her
39 to be correct, except as otherwise provided in this article or
40 article fifteen-b of this chapter.

41 (f) *Accelerated payment.* —

42 (1) For calendar years beginning after the thirty-first day of
43 December, two thousand two, taxpayers whose average
44 monthly payment of the taxes levied by this article and article

45 fifteen of this chapter during the previous calendar year exceeds
46 one hundred thousand dollars, shall remit the tax attributable to
47 the first fifteen days of June each year on or before the twenti-
48 eth day of said month of June.

49 (2) For purposes of complying with subdivision (1) of this
50 subsection, the taxpayer shall remit an amount equal to the
51 amount of tax imposed by this article and article fifteen of this
52 chapter on actual taxable sales of tangible personal property and
53 custom software and sales of taxable services during the first
54 fifteen days of June or, at the taxpayer's election, taxpayer may
55 remit an amount equal to fifty percent of taxpayer's liability for
56 tax under this article on taxable sales of tangible personal
57 property and custom software and sales of taxable services
58 made during the preceding month of May.

59 (3) For a business which has not been in existence for a full
60 calendar year, the total tax due from the business during the
61 prior calendar year shall be divided by the number of months,
62 including fractions of a month, that it was in business during the
63 prior calendar year; and if that amount exceeds one hundred
64 thousand dollars, the tax attributable to the first fifteen days of
65 June each year shall be remitted on or before the twentieth day
66 of said month of June as provided in subdivision (2) of this
67 subsection.

68 (4) When a taxpayer required to make an advanced pay-
69 ment of tax under subdivision (1) of this subsection makes out
70 its return for the month of June, which is due on the twentieth
71 day of July, the taxpayer may claim as a credit against its
72 liability under this article for tax on taxable transactions during
73 the month of June, the amount of the advanced payment of tax
74 made under subdivision (1) of this subsection.

§11-15A-10a. Credit for sales tax liability paid to another state.

1 (a) A person is entitled to a credit against the tax imposed
2 by this article on the use of a particular item of tangible
3 personal property, custom software or service equal to the
4 amount, if any, of sales tax lawfully paid to another state for the
5 acquisition of that property or service: *Provided*, That the
6 amount of credit allowed does not exceed the amount of use tax
7 imposed on the use of the property in this state.

8 (b) For purposes of this section:

9 (1) "Sales tax" includes a sales tax or compensating use tax
10 imposed on the use of tangible personal property or a service by
11 the state in which the sale occurred; and

12 (2) "State" includes the District of Columbia but does not
13 include any of the several territories organized by Congress.

§11-15A-11. Liability of user.

1 (a) Any person who uses any tangible personal property,
2 custom software or the results of a taxable service upon which
3 the tax herein imposed has not been paid either to a retailer or
4 direct to the tax commissioner is liable for the amount of the
5 nonpayment, and persons required by law to hold a West
6 Virginia business registration certificate shall on or before the
7 fifteenth day of the month next succeeding each quarterly
8 period pay the tax imposed in section two of this article upon all
9 the property and services used by him or her during the
10 preceding quarterly period and accompanied by returns the tax
11 commissioner prescribes: *Provided*, That if the aggregate
12 annual tax liability of any person under this article is six
13 hundred dollars or less, the person shall, in lieu of the quarterly
14 payment and filing, pay the tax on or before the fifteenth day of
15 the first month next succeeding the end of his or her taxable
16 year, and shall file the annual return as may be prescribed by
17 the tax commissioner. The tax commissioner may, by

18 nonemergency legislative rules promulgated pursuant to article
19 three, chapter twenty-nine-a of this code, change the foregoing
20 minimum amounts.

21 (b) Any individual who is not required by law to hold a
22 West Virginia business registration certificate, who uses any
23 personal property or taxable service upon which the West
24 Virginia use tax has not been paid either to a retailer or directly
25 to the tax commissioner is liable for the West Virginia use tax
26 upon property or taxable services and, notwithstanding the
27 amount of the annual aggregate annual tax liability, shall pay
28 the use tax imposed upon all property or taxable services used
29 by him or her during the taxpayer's federal taxable year on or
30 before the fifteenth day of April of the taxpayer's next succeed-
31 ing federal tax year, and shall file the annual return therewith as
32 the tax commissioner may authorize or require.

33 (c) All of the provisions of section ten with reference to
34 quarterly or annual returns and payments are applicable to the
35 returns and payments required under this section.

§11-15A-18. Seller must show sale not at retail; presumption.

1 (a) The burden of proving that a sale was not taxable shall
2 be upon the seller, unless, the seller, in good faith, takes from
3 the purchaser a certificate signed by and bearing the address of
4 the purchaser setting forth the reason for exemption of the sale
5 from imposition of the tax.

6 (b) Notwithstanding subsection (a) of this section, a seller
7 who is registered under the streamlined sales and use tax
8 agreement to collect this tax is relieved of the good faith
9 requirement for the taking of an exemption certificate in
10 accordance with article fifteen-b of this chapter, and any rule
11 promulgated by the governing board for the agreement.

12 (c) To prevent evasion it is presumed that all proceeds are
13 subject to the tax until the contrary is clearly established.

14 (d) This certificate shall be substantially in the form
15 prescribed by the tax commissioner: *Provided*, That when the
16 seller is registered under the streamlined sales and use tax
17 agreement to collect the tax imposed by this article, the
18 exemption certificate taken shall conform with requirements of
19 the streamlined sales and use tax agreement and any rules
20 prescribed by the governing board for the agreement.

§11-15A-21. Books; examination.

1 (a) Every retailer required or authorized to collect taxes
2 imposed by this article and every person using in this state
3 tangible personal property, custom software or taxable services
4 shall keep records, receipts, invoices, and other pertinent papers
5 as the tax commissioner requires, in any form as the tax
6 commissioner requires.

7 (b) In addition to the tax commissioner's powers set forth
8 in article ten of this chapter, the tax commissioner or any of his
9 or her duly authorized agents is hereby authorized to examine
10 the books, papers, records and equipment of any person who
11 either:

12 (1) Is selling tangible personal property, custom software
13 or taxable services; or

14 (2) Is liable for the tax imposed by this article, and to
15 investigate the character of the business of any person in order
16 to verify the accuracy of any return made, or if no return was
17 made by the person, to ascertain and determine the amount due
18 under the provisions of this article.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer engaging in business in this state, or
2 authorized to collect the tax imposed in this article pursuant to
3 section seven of this article, fails to comply with any of the
4 provisions of this article or any orders, or rules of the tax
5 commissioner prescribed and adopted for this article under
6 article ten of this chapter, the tax commissioner may, upon
7 notice and hearing, by order, cancel the business registration
8 certificate, if any, issued to the retailer under article twelve,
9 chapter eleven of the code of West Virginia, one thousand nine
10 hundred thirty-one, as amended, or if the retailer is a corpora-
11 tion authorized to do business in this state under article fifteen,
12 chapter thirty-one-d of this code or article fourteen, chapter
13 thirty-one-e of this code, may certify to the secretary of state a
14 copy of an order finding that the retailer has failed to comply
15 with certain specified provisions, orders, or rules. The secretary
16 of state shall, upon receipt of the certification, revoke the
17 permit authorizing the corporation to do business in this state,
18 and shall issue a new permit only when the corporation has
19 obtained from the tax commissioner an order finding that the
20 corporation has complied with its obligations under this article.
21 No order authorized in this section shall be made until the
22 retailer is given an opportunity to be heard and to show cause
23 why the order should not be made, and the corporation shall be
24 given twenty days' notice of the time, place and purpose of the
25 hearing, which shall be heard as provided in article ten-a of this
26 chapter. The tax commissioner shall have the power in his or
27 her discretion to issue a new business registration certificate
28 after the business registration certificate is canceled.

§11-15A-27. Construction; partial unconstitutionality.

1 (a) If a court of competent jurisdiction finds that the
2 provisions of this article and of article fifteen-b of this chapter
3 conflict and cannot be harmonized, then the provisions of
4 article fifteen-b shall control.

5 (b) If any section, subsection, subdivision, paragraph,
6 sentence, clause or phrase of this article is for any reason held
7 to be invalid, unlawful or unconstitutional, that decision does
8 not affect the validity of the remaining portions of this article
9 or any part thereof.

§11-15A-29. Effective date.

1 The provisions of this article, as amended or added during
2 the regular legislative session in the year two thousand three,
3 shall take effect the first day of January, two thousand four, and
4 apply to all sales made on or after that date and to all returns
5 and payments due on or after that day.

**ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION
ACT.**

- § 11-15B-1. Title.
- § 11-15B-2. Definitions.
- § 11-15B-2a. Streamlined sales and use tax agreement defined.
- § 11-15B-3. Legislative findings.
- § 11-15B-5. Authority to enter agreement.
- § 11-15B-11. Seller registration under streamlined sales tax agreement.
- § 11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.
- § 11-15B-13. Amnesty for registration.
- § 11-15B-14. General transaction sourcing definitions.
- § 11-15B-15. General transaction sourcing rules.
- § 11-15B-16. Application of general sourcing rule and exclusions from the rules.
- § 11-15B-17. Direct mail sourcing.
- § 11-15B-18. Multiple points of use of certain products and services.
- § 11-15B-19. [Reserved]
- § 11-15B-20. [Reserved]
- § 11-15B-21. Notice for state tax changes.
- § 11-15B-22. Effective date of rate changes for certain services.
- § 11-15B-23. Enactment of exemptions.
- § 11-15B-24. Administration of exemptions.
- § 11-15B-25. Uniform tax returns.
- § 11-15B-26. Uniform rules for remittances of funds.
- § 11-15B-27. Uniform rules for recovery of bad debt.

§11-15B-28. Confidentiality and privacy protections under Model I.

§11-15B-29. Customer refund procedure.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

§11-15B-31. Conflict; partial unconstitutionality.

§11-15B-32. Effective date.

§11-15B-1. Title.

1 The provisions of this article shall be known as and referred
2 to as the “Streamlined Sales and Use Tax Administration Act”.

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 Legislature.

8 (b) *Terms defined.* —

9 (1) “Agent” means a person appointed by a seller to
10 represent the seller before the member states.

11 (2) “Agreement” means the streamlined sales and use tax
12 agreement, as defined in section two-a of this article.

13 (3) “Alcoholic beverages” means beverages that are
14 suitable for human consumption and contain one-half of one
15 percent or more of alcohol by volume.

16 (4) “Certified automated system” or “CAS” means software
17 certified under the agreement to calculate the tax imposed by
18 each jurisdiction on a transaction, determine the amount of tax

19 to remit to the appropriate state, and maintain a record of the
20 transaction.

21 (5) “Certified service provider” or “CSP” means an agent
22 certified under the agreement to perform all of the seller’s sales
23 tax functions.

24 (6) “Computer” means an electronic device that accepts
25 information in digital or similar form and manipulates the
26 information for a result based on a sequence of instructions.

27 (7) “Computer software” means a set of coded instructions
28 designed to cause a “computer” or automatic data processing
29 equipment to perform a task.

30 (8) “Delivered electronically” means delivered to the
31 purchaser by means other than tangible storage media.

32 (9) “Delivery charges” means charges by the seller of
33 personal property or services for preparation and delivery to a
34 location designated by the purchaser of personal property or
35 services including, but not limited to, transportation, shipping,
36 postage, handling, crating, and packing.

37 (10) “Dietary supplement” means any product, other than
38 “tobacco,” intended to supplement the diet that:

39 (A) Contains one or more of the following dietary ingredi-
40 ents:

41 (i) A vitamin;

42 (ii) A mineral;

43 (iii) A herb or other botanical;

44 (iv) An amino acid;

45 (v) A dietary substance for use by humans to supplement
46 the diet by increasing the total dietary intake; or

47 (vi) A concentrate, metabolite, constituent, extract or
48 combination of any ingredient described in subparagraph (i)
49 through (v) of this subdivision;

50 (B) Is intended for ingestion in tablet, capsule, powder,
51 softgel, gelcap, or liquid form, or if not intended for ingestion
52 in such a form, is not represented as conventional food and is
53 not represented for use as a sole item of a meal or of the diet;
54 and

55 (C) Is required to be labeled as a dietary supplement,
56 identifiable by the “Supplemental Facts” box found on the label
57 as required pursuant to 21 C.F.R. §101.36, or in any successor
58 section of the code of federal regulations.

59 (11) “Direct mail” means printed material delivered or
60 distributed by United States mail or other delivery service to a
61 mass audience or to addressees on a mailing list provided by the
62 purchaser or at the direction of the purchaser when the cost of
63 the items are not billed directly to the recipients. “Direct mail”
64 includes tangible personal property supplied directly or
65 indirectly by the purchaser to the direct mail seller for inclusion
66 in the package containing the printed material. “Direct mail”
67 does not include multiple items of printed material delivered to
68 a single address.

69 (12) “Drug” means a compound, substance or preparation,
70 and any component of a compound, substance or preparation,
71 other than food and food ingredients, dietary supplements or
72 alcoholic beverages:

73 (A) Recognized in the official United States pharmaco-
74 poeia, official homeopathic pharmacopoeia of the United

75 States, or official national formulary, and supplement to any of
76 them;

77 (B) Intended for use in the diagnosis, cure, mitigation,
78 treatment, or prevention of disease in humans; or

79 (C) Intended to affect the structure or any function of the
80 human body.

81 (13) “Durable medical equipment” means equipment
82 including repair and replacement parts for the equipment, but
83 does not include “mobility enhancing equipment,” which:

84 (A) Can withstand repeated use;

85 (B) Is primarily and customarily used to serve a medical
86 purpose;

87 (C) Generally is not useful to a person in the absence of
88 illness or injury; and

89 (D) Is not worn in or on the body.

90 (14) “Electronic” means relating to technology having
91 electrical, digital, magnetic, wireless, optical, electromagnetic,
92 or similar capabilities.

93 (15) “Entity-based exemption” means an exemption based
94 on who purchases the product or service or who sells the
95 product or service.

96 (16) “Food and food ingredients” means substances,
97 whether in liquid, concentrated, solid, frozen, dried or dehy-
98 drated form, that are sold for ingestion or chewing by humans
99 and are consumed for their taste or nutritional value. “Food and
100 food ingredients” does not include alcoholic beverages or
101 tobacco.

102 (17) “Includes” and “including” when used in a definition
103 contained in this article is not considered to exclude other
104 things otherwise within the meaning of the term being defined.

105 (18) “Lease” includes rental, hire and license. “Lease”
106 means any transfer of possession or control of tangible personal
107 property for a fixed or indeterminate term for consideration. A
108 lease or rental may include future options to purchase or extend.

109 (A) “Lease” does not include:

110 (i) A transfer of possession or control of property under a
111 security agreement or deferred payment plan that requires the
112 transfer of title upon completion of the required payments;

113 (ii) A transfer or possession or control of property under an
114 agreement that requires the transfer of title upon completion of
115 required payments and payment of an option price does not
116 exceed the greater of one hundred dollars or one percent of the
117 total required payments; or

118 (iii) Providing tangible personal property along with an
119 operator for a fixed or indeterminate period of time. A condi-
120 tion of this exclusion is that the operator is necessary for the
121 equipment to perform as designed. For the purpose of this
122 subparagraph, an operator must do more than maintain, inspect,
123 or set-up the tangible personal property.

124 (B) This definition shall be used for sales and use tax
125 purposes regardless if a transaction is characterized as a lease
126 or rental under generally accepted accounting principles, the
127 Internal Revenue Code, the uniform commercial code, or other
128 provisions of federal, state or local law.

129 (19) “Load and leave” means delivery to the purchaser by
130 use of a tangible storage media where the tangible storage
131 media is not physically transferred to the purchaser.

132 (20) “Mobility enhancing equipment” means equipment,
133 including repair and replacement parts to the equipment, but
134 does not include “durable medical equipment,” which:

135 (A) Is primarily and customarily used to provide or increase
136 the ability to move from one place to another and which is
137 appropriate for use either in a home or a motor vehicle;

138 (B) Is not generally used by persons with normal mobility;
139 and

140 (C) Does not include any motor vehicle or equipment on a
141 motor vehicle normally provided by a motor vehicle manufac-
142 turer.

143 (21) “Model I seller” means a seller that has selected a
144 certified service provider as its agent to perform all the seller’s
145 sales and use tax functions, other than the seller’s obligation to
146 remit tax on its own purchases.

147 (22) “Model II seller” means a seller that has selected a
148 certified automated system to perform part of its sales and use
149 tax functions, but retains responsibility for remitting the tax.

150 (23) “Model III seller” means a seller that has sales in at
151 least five member states, has total annual sales revenue of at
152 least five hundred million dollars, has a proprietary system that
153 calculates the amount of tax due each jurisdiction, and has
154 entered into a performance agreement with the member states
155 that establishes a tax performance standard for the seller. As
156 used in this definition, a seller includes an affiliated group of
157 sellers using the same proprietary system.

158 (24) “Person” means an individual, trust, estate, fiduciary,
159 partnership, limited liability company, limited liability partner-
160 ship, corporation or any other legal entity.

161 (25) “Personal service” includes those:

162 (A) Compensated by the payment of wages in the ordinary
163 course of employment; and

164 (B) Rendered to the person of an individual without, at the
165 same time, selling tangible personal property, such as nursing,
166 barbering, manicuring and similar services.

167 (26) “Prescription” means an order, formula or recipe
168 issued in any form of oral, written, electronic, or other means
169 of transmission by a duly licensed practitioner authorized by the
170 laws of this state to issue prescriptions.

171 (27) “Prewritten computer software” means “computer
172 software,” including prewritten upgrades, which is not designed
173 and developed by the author or other creator to the specifica-
174 tions of a specific purchaser.

175 (A) The combining of two or more prewritten computer
176 software programs or prewritten portions thereof does not cause
177 the combination to be other than prewritten computer software.

178 (B) “Prewritten computer software” includes software
179 designed and developed by the author or other creator to the
180 specifications of a specific purchaser when it is sold to a person
181 other than the purchaser. Where a person modifies or enhances
182 computer software of which the person is not the author or
183 creator, the person is considered to be the author or creator only
184 of the person’s modifications or enhancements.

185 (C) “Prewritten computer software” or a prewritten portion
186 thereof that is modified or enhanced to any degree, where the
187 modification or enhancement is designed and developed to the
188 specifications of a specific purchaser, remains prewritten
189 computer software: *Provided*, That where there is a reasonable,
190 separately stated charge or an invoice or other statement of the

191 price given to the purchaser for the modification or enhance-
192 ment, the modification or enhancement does not constitute
193 prewritten computer software.

194 (28) “Product-based exemption” means an exemption based
195 on the description of the product or service and not based on
196 who purchases the product or service or how the purchaser
197 intends to use the product or service.

198 (29) “Prosthetic device” means a replacement, corrective,
199 or supportive device including repair and replacement parts for
200 the device worn on or in the body to:

201 (A) Artificially replace a missing portion of the body;

202 (B) Prevent or correct physical deformity or malfunction of
203 the body; or

204 (C) Support a weak or deformed portion of the body.

205 (30) “Protective equipment” means items for human wear
206 and designed as protection of the wearer against injury or
207 disease or as protections against damage or injury of other
208 persons or property but not suitable for general use.

209 (31) “Purchase price” means the measure subject to the tax
210 imposed by article fifteen or article fifteen-a of this chapter and
211 has the same meaning as sales price.

212 (32) “Purchaser” means a person to whom a sale of
213 personal property is made or to whom a service is furnished.

214 (33) “Registered under this agreement” means registration
215 by a seller with the member states under the central registration
216 system provided in article four of the agreement.

217 (34) “Retail sale” or “sale at retail” means:

218 (A) Any sale or lease for any purpose other than for resale
219 as tangible personal property, sublease or subrent; and

220 (B) Any sale of a service other than a service purchased for
221 resale.

222 (35)(A) "Sales price" means the measure subject to the tax
223 levied by this article and includes the total amount of consider-
224 ation, including cash, credit, property and services, for which
225 personal property or services are sold, leased or rented, valued
226 in money, whether received in money or otherwise, without any
227 deduction for the following:

228 (i) The seller's cost of the property sold;

229 (ii) The cost of materials used, labor or service cost,
230 interest, losses, all costs of transportation to the seller, all taxes
231 imposed on the seller, and any other expense of the seller;

232 (iii) Charges by the seller for any services necessary to
233 complete the sale, other than delivery and installation charges;

234 (iv) Delivery charges;

235 (v) Installation charges;

236 (vi) The value of exempt personal property given to the
237 purchaser where taxable and exempt personal property have
238 been bundled together and sold by the seller as a single product
239 or piece of merchandise; and

240 (vii) Credit for the fair market value of any trade-in.

241 (B) "Sales price" does not include:

242 (i) Discounts, including cash, term, or coupons that are not
243 reimbursed by a third party that are allowed by a seller and
244 taken by a purchaser on a sale;

245 (ii) Interest, financing, and carrying charges from credit
246 extended on the sale of personal property, goods or services, if
247 the amount is separately stated on the invoice, bill of sale or
248 similar document given to the purchaser; and

249 (iii) Any taxes legally imposed directly on the consumer
250 that are separately stated on the invoice, bill of sale or similar
251 document given to the purchaser.

252 (36) “Sales tax” means the tax levied under article fifteen
253 of this chapter.

254 (37) “Seller” means any person making sales, leases or
255 rentals of personal property or services.

256 (38) “Service” or “selected service” includes all nonprofes-
257 sional activities engaged in for other persons for a consider-
258 ation, which involve the rendering of a service as distinguished
259 from the sale of tangible personal property, but does not include
260 contracting, personal services, services rendered by an em-
261 ployee to his or her employer, any service rendered for resale,
262 or any service furnished by a business that is subject to the
263 control of the public service commission when the service or
264 the manner in which it is delivered is subject to regulation by
265 the public service commission of this state.

266 (39) “State” means any state of the United States and the
267 District of Columbia.

268 (40) “Tangible personal property” means personal property
269 that can be seen, weighed, measured, felt, or touched, or that is
270 in any manner perceptible to the senses. “Tangible personal
271 property” includes, but is not limited to, electricity, water, gas,
272 and prewritten computer software.

273 (41) “Tax” includes all taxes levied under articles fifteen
274 and fifteen-a of this chapter, and additions to tax, interest and
275 penalties levied under article ten of this chapter.

276 (42) “Tax commissioner” means the state tax commissioner
277 or his or her delegate. The term “delegate” in the phrase “or his
278 or her delegate,” when used in reference to the tax commis-
279 sioner, means any officer or employee of the state tax division
280 duly authorized by the tax commissioner directly, or indirectly
281 by one or more redelegations of authority, to perform the
282 functions mentioned or described in this article or rules
283 promulgated for this article.

284 (43) “Taxpayer” means any person liable for the taxes
285 levied by articles fifteen and fifteen-a of this chapter or any
286 additions to tax, penalties imposed by article ten of this chapter.

287 (44) “Tobacco” means cigarettes, cigars, chewing or pipe
288 tobacco, or any other item that contains tobacco.

289 (45) “Use tax” means the tax levied under article fifteen-a
290 of this chapter.

291 (46) “Use based exemption” means an exemption based on
292 the purchaser’s use of the product or service.

293 (47) “Vendor” means any person furnishing services taxed
294 by article fifteen or fifteen-a of this chapter, or making sales of
295 tangible personal property or custom software. “Vendor” and
296 “seller” are used interchangeably in this article and in article
297 fifteen and fifteen-a of this chapter.

298 (c) *Additional definitions.* — Other terms used in this
299 article are defined in articles fifteen and fifteen-a of this
300 chapter, which definitions are incorporated by reference into
301 article fifteen-b. Additionally, other sections of this article may

302 define terms primarily used in the section in which the term is
303 defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term “streamlined sales and use tax agreement”
3 or “agreement” means the agreement adopted the twelfth day of
4 November, two thousand two, by states that enacted authority
5 to engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which the
7 term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” does not include any
9 substantive changes in the agreement adopted after the Legisla-
10 ture enacts this section in the year two thousand three.

§11-15B-3. Legislative findings.

1 (a) The Legislature finds that a streamlined sales and use
2 tax administration system will reduce and over time eliminate
3 the burden and cost for all vendors to collect this state’s sales
4 and use tax. The Legislature further finds that this state should
5 participate in multistate discussions to review and/or amend the
6 terms of the agreement to simplify and modernize sales and use
7 tax administration in order to substantially reduce the burden of
8 tax compliance for all sellers and for all types of commerce.

9 (b) The Legislature finds that the streamlined sales and use
10 tax agreement adopted the twelfth day of November, two
11 thousand two, by representatives of the states participating in
12 multistate discussions to amend and implement the agreement
13 substantially complies with the requirements of section seven
14 of this article, as enacted in the year two thousand two, and that
15 this state should now sign the agreement.

§11-15B-5. Authority to enter agreement.

1 (a) The tax commissioner is authorized and directed to enter
2 into the streamlined sales and use tax agreement, after the
3 thirtieth day of June, two thousand three, with one or more
4 states to simplify and modernize sales and use tax administra-
5 tion in order to substantially reduce the burden of tax compli-
6 ance for all sellers and for all types of commerce.

7 (b) In furtherance of the agreement, the tax commissioner
8 is authorized to act jointly with other states that are members of
9 the agreement to establish standards for certification of a
10 certified service provider and certified automated system and
11 establish performance standards for multistate sellers. The tax
12 commissioner is further authorized to take other actions
13 reasonably required to implement the provisions set forth in this
14 article. Other actions authorized by this section include, but are
15 not limited to, the adoption of rules and the joint procurement,
16 with other member states, of goods and services in furtherance
17 of the cooperative agreement. The tax commissioner or the
18 commissioner's designee is authorized to represent this state
19 before the other states that are signatories to the agreement.

§11-15B-11. Seller registration under streamlined sales tax agreement.

1 (a) *General.* — A seller that registers to collect West
2 Virginia sales and use taxes using the online sales and use tax
3 registration system established under the streamlined sales and
4 use tax agreement is not required to also register under article
5 twelve of this chapter unless the seller has sufficient presence
6 in this state that provides at least the minimum contacts
7 necessary for a constitutionally sufficient nexus for this state to
8 require registration and payment of the registration tax under
9 article twelve of this chapter.

10 (b) *Registration by agent.* — A person appointed by a seller
11 to represent the seller before the states that are members of the

12 streamlined sales tax agreement may register the seller under
13 the agreement under uniform procedures adopted by the
14 member states. The appointment of an agent shall be in writing
15 and submitted to a member state if requested by a member.

16 (c) *Cancellation of registration.* — A seller registered
17 under the streamlined sales and use tax agreement may cancel
18 its registration at any time under uniform procedures adopted
19 by the member states.

**§11-15B-12. Effect of seller registration and participation in
streamlined sales and use tax administration.**

1 (a) *Collection of tax.* — By registering under the stream-
2 lined sales use tax agreement, the seller agrees to collect and
3 remit sales and use taxes for all taxable sales into this state, as
4 well as for all other states participating in the agreement.
5 Subsequent withdrawal or revocation of a member state does
6 not relieve a seller of its responsibility to remit taxes previously
7 or subsequently collected on behalf of the state.

8 (b) *Effect of registration.* — A member state, or a state that
9 has withdrawn or been expelled from the streamlined sales and
10 use tax agreement, may not use registration with the central
11 registration system and the collection of sales and use taxes in
12 the member states as a factor in determining whether the seller
13 has a nexus with that state for any tax at any time.

§11-15B-13. Amnesty for registration.

1 (a) Subject to the limitations in this section:

2 (1) The tax commissioner shall provide amnesty for
3 uncollected or unpaid sales or use tax to a seller who registers
4 to pay or to collect and remit applicable sales or use tax on sales
5 made to purchasers in this state in accordance with the terms of
6 the streamlined sales and use tax agreement: *Provided, That the*

7 seller was not registered in this state in the twelve-month period
8 preceding the effective date of this state's participation in the
9 streamlined sales and use tax agreement.

10 (2) The amnesty precludes assessment for uncollected or
11 unpaid sales or use tax together with additions to tax, penalty or
12 interest for sales made during the period the seller was not
13 registered in this state: *Provided*, That registration under the
14 agreement occurs within twelve months after the effective date
15 of this state's participation in the streamlined sales and use tax
16 agreement.

17 (b) *Exceptions.* — The amnesty is not available:

18 (1) To a seller with respect to any matter or matters for
19 which the seller received notice of the commencement of an
20 audit and which audit is not yet finally resolved including any
21 related administrative and judicial processes; or

22 (2) For sales or use taxes already paid or remitted to the
23 state or to taxes collected by the seller for this state.

24 (c) *Period of amnesty.* — The amnesty is fully effective,
25 absent the seller's fraud or intentional misrepresentation of a
26 material fact, as long as the seller continues registration under
27 the agreement and continues payment or collection and remit-
28 tance of applicable sales or use taxes for a period of at least
29 thirty-six months. The statute of limitations applicable to
30 asserting a tax liability during this thirty-six month period is
31 tolled.

32 (d) *Effect of amnesty.* — The amnesty is applicable only to
33 sales or use taxes due from a seller in its capacity as a seller and
34 not to sales or use taxes due from a seller in its capacity as a
35 buyer.

§11-15B-14. General transaction sourcing definitions.

1 (a) *Definition of receive or receipt.* — For the purposes of
2 subsection (a), section fifteen of this article, the terms “receive”
3 and “receipt” mean:

4 (1) Taking possession of tangible personal property;

5 (2) Making first use of services; or

6 (3) Taking possession or making first use of custom
7 software, whichever comes first.

8 (b) *Limitation.* — The terms “receive” and “receipt” do not
9 include possession by a shipping company on behalf of the
10 purchaser.

§11-15B-15. General transaction sourcing rules.

1 (a) *General rule.* — For purposes of articles fifteen and
2 fifteen-a of this chapter, the retail sale, excluding lease or
3 rental, of a product shall be sourced as follows:

4 (1) When the product is received by the purchaser at a
5 business location of the seller, the sale is sourced to that
6 business location.

7 (2) When the product is not received by the purchaser at a
8 business location of the seller, the sale is sourced to the location
9 where receipt by the purchaser or the purchaser’s designated
10 donee occurs, including the location indicated by instructions
11 for delivery to the purchaser or donee, known to the seller.

12 (3) When subdivisions (1) and (2) of this subsection do not
13 apply, the sale is sourced to the location indicated by an address
14 for the purchaser that is available from the business records of
15 the seller that are maintained in the ordinary course of the
16 seller’s business when use of this address does not constitute
17 bad faith.

18 (4) When subdivisions (1), (2), and (3) of this subsection do
19 not apply, the sale is sourced to the location indicated by an
20 address for the purchaser obtained during the consummation of
21 the sale, including the address of a purchaser's payment
22 instrument, if no other address is available, provided use of this
23 address does not constitute bad faith.

24 (5) When none of the previous subdivisions of this subsec-
25 tion apply, including the circumstance in which the seller is
26 without sufficient information to apply the previous rules, then
27 the location will be determined by the address from which
28 tangible personal property was shipped, or computer software
29 delivered electronically was first available for transmission by
30 the seller, or from which the service was provided: *Provided*,
31 That any location that merely provided the digital transfer of
32 the product sold is disregarded for these purposes.

33 (b) *Lease or rental.* -- The lease or rental of tangible
34 personal property, other than property identified in subsection
35 (c) or subsection (d) of this section, shall be sourced as follows:

36 (1) For a lease or rental that requires recurring periodic
37 payments, the first periodic payment is sourced the same as a
38 retail sale in accordance with the provisions of subsection (a) of
39 this section. Periodic payments made subsequent to the first
40 payment are sourced to the primary property location for each
41 period covered by the payment. The primary property location
42 is as indicated by an address for the property provided by the
43 lessee that is available to the lessor from its records maintained
44 in the ordinary course of business, when use of this address
45 does not constitute bad faith. The property location may not be
46 altered by intermittent use at different locations, such as use of
47 business property that accompanies employees on business trips
48 and service calls.

49 (2) For a lease or rental that does not require recurring
50 periodic payments, the payment is sourced the same as a retail
51 sale in accordance with the provisions of subsection (a) of this
52 section.

53 (3) This subsection does not affect the imposition or
54 computation of sales or use tax on leases or rentals based on a
55 lump sum or accelerated basis, or on the acquisition of property
56 for lease.

57 (c) *Vehicles.* — The lease or rental of motor vehicles,
58 trailers, semi-trailers, or aircraft that do not qualify as transpor-
59 tation equipment, as defined in subsection (d) of this section,
60 shall be sourced as follows:

61 (1) For a lease or rental that requires recurring periodic
62 payments, each periodic payment is sourced to the primary
63 property location. The primary property location is indicated by
64 an address for the property provided by the lessee that is
65 available to the lessor from its records maintained in the
66 ordinary course of business, when use of this address does not
67 constitute bad faith. This location shall not be altered by
68 intermittent use at different locations.

69 (2) For a lease or rental that does not require recurring
70 periodic payments, the payment is sourced the same as a retail
71 sale in accordance with the provisions of subsection (a) of this
72 section.

73 (3) This subsection does not affect the imposition or
74 computation of sales or use tax on leases or rentals based on a
75 lump sum or accelerated basis, or on the acquisition of property
76 for lease.

77 (d) *Sale or lease or rental of transportation equipment.* —
78 The retail sale, including lease or rental, of transportation
79 equipment is sourced the same as a retail sale in accordance

80 with the provisions of subsection (a) of this section, notwith-
81 standing the exclusion of lease or rental in subsection (a) of this
82 section. "Transportation equipment" means any of the follow-
83 ing:

84 (1) Locomotives and railcars that are utilized for the
85 carriage of persons or property in interstate commerce.

86 (2) Trucks and truck-tractors with a gross vehicle weight
87 rating of ten thousand pounds or greater, trailers, semitrailers,
88 or passenger buses that are:

89 (A) Registered through the international registration plan;
90 and

91 (B) Operated under authority of a carrier authorized and
92 certificated by the United States department of transportation or
93 another federal authority to engage in the carriage of persons or
94 property in interstate commerce.

95 (3) Aircraft that are operated by air carriers authorized and
96 certificated by the U.S. department of transportation or another
97 federal or foreign authority to engage in the carriage of persons
98 or property in interstate or foreign commerce.

99 (4) Containers designed for use on and component parts
100 attached or secured on the items set forth in subdivisions (1)
101 through (3) of this subsection.

**§11-15B-16. Application of general sourcing rule and exclusions
from the rules.**

1 (a) *General.* — Sellers who collect the taxes levied by
2 articles fifteen and fifteen-a of this chapter shall source the
3 retail sale of a product, as provided in section fifteen of this
4 article. As used in this section, the term "product" includes

5 tangible personal property, custom software or a service, or any
6 combination thereof.

7 (b) *Scope of sourcing rule.* — The provisions of section
8 fifteen of this article only apply to determine a seller's obliga-
9 tion to pay or collect and remit a sales or use tax with respect to
10 the seller's retail sale of a product. Section fifteen of this article
11 does not affect the obligation of a purchaser or lessee to remit
12 tax on the use of the product to the taxing jurisdiction of that
13 use.

14 (c) *Exceptions.* — The sourcing rules in this section and
15 section fifteen of this article do not apply to telecommunica-
16 tions services.

§11-15B-17. Direct mail sourcing.

1 (a) *General.* — Notwithstanding section fifteen of this
2 article, a purchaser of direct mail that is not a holder of a direct
3 pay permit shall provide to the seller in conjunction with the
4 purchase either a "direct mail form" or information to show the
5 jurisdictions to which the direct mail is delivered to recipients.

6 (1) Upon receipt of the direct mail form, the seller is
7 relieved of all obligations to collect, pay, or remit the applicable
8 tax and the purchaser is obligated to pay or remit the applicable
9 tax on a direct pay basis. A direct mail form remains in effect
10 for all future sales of direct mail by the seller to the purchaser
11 until revoked in writing.

12 (2) Upon receipt of information from the purchaser showing
13 the jurisdictions to which the direct mail is delivered to
14 recipients, the seller shall collect the tax according to the
15 delivery information provided by the purchaser. In the absence
16 of bad faith by the seller, the seller is relieved of any further
17 obligation to collect tax on any transaction where the seller has

18 collected tax pursuant to the delivery information provided by
19 the purchaser.

20 (b) *When purchaser does not have direct pay permit and*
21 *does not provide direct mail form.* — If the purchaser of direct
22 mail does not have a direct pay permit and does not provide the
23 seller with either a direct mail form or delivery information, as
24 required by subsection (a) of this section, the seller shall collect
25 the tax according to subdivision (5), subsection (a), section
26 fifteen of this article. Nothing in this subsection (b) shall limit
27 a purchaser's obligation for sales or use tax to any state to
28 which the direct mail is delivered.

29 (c) *Direct pay permit.* — If a purchaser of direct mail
30 provides the seller with documentation of direct pay authority,
31 the purchaser may not be required to provide a direct mail form
32 or delivery information to the seller.

**§11-15B-18. Multiple points of use of certain products and ser-
vices.**

1 (a) *General.* — Notwithstanding the provisions of section
2 fifteen of this article, a business purchaser that is not a holder
3 of a direct pay permit that knows at the time of the business
4 purchase of a digital good, computer software delivered
5 electronically, or a service that the digital good, computer
6 software delivered electronically, or service will be concur-
7 rently available for use in more than one jurisdiction shall
8 deliver to the seller in conjunction with the purchase a “multi-
9 ple points of use” or “MPU exemption” form disclosing this
10 fact.

11 (1) Upon receipt of the MPU exemption form, the seller is
12 relieved of all obligation to collect, pay, or remit the applicable
13 tax and the purchaser shall be obligated to collect, pay, or remit
14 the applicable tax on a direct pay basis.

15 (2) A purchaser delivering the MPU exemption form may
16 use any reasonable, but consistent and uniform, method of
17 apportionment that is supported by the purchaser's business
18 records as they exist at the time of the consummation of the
19 sale.

20 (3) The MPU exemption form remains in effect for all
21 future sales by the seller to the purchaser, except as to the
22 subsequent sale's specific apportionment that is governed by
23 the principle of subdivision (2) of this subsection and the facts
24 existing at the time of the sale, until revoked in writing.

25 (b) *Holders of direct pay permits.* — A holder of a direct
26 pay permit may not be required to deliver a MPU exemption
27 form to the seller. A direct pay permit holder shall follow the
28 provisions of subdivision (2), subsection (a) of this section in
29 apportioning the tax due on a digital good, computer software
30 delivered electronically, or a service that will be concurrently
31 available for use in more than one jurisdiction.

[§11-15B-19 and §11-15B-20 Reserved.]

§11-15B-21. Notice for state tax changes.

1 (a) *General.* — The tax commissioner shall provide sellers
2 with as much advance notice as practicable of a rate change for
3 a tax levied by article fifteen or fifteen-a of this chapter.

4 (b) *Effective date of rate changes.* — Unless the Legislature
5 expressly provides a different effective date for a rate change,
6 the change shall take effect on the first day of the calendar
7 quarter that begins on or after the effective date of the act of the
8 Legislature that makes the rate change and that is more than
9 sixty days after passage of the bill making the rate change.

10 (c) *Notification of changes to tax base.* — The tax commis-
11 sioner shall make reasonable efforts to notify sellers of legisla-

12 tive changes to the tax base and to amendments to sales and use
13 tax rules, as that term is defined in section two, article one,
14 chapter twenty-nine-a of this code.

15 (d) *Liability of seller.* — Failure of a seller to receive notice
16 or failure of the state to provide notice of a rate change or a
17 change in the tax base, or to limit the effective date of a rate
18 change, does not relieve the seller of its obligation to collect
19 sales or use taxes for this state.

§11-15B-22. Effective date of rate changes for certain services.

1 The effective date of rate changes for services covering a
2 service period starting before and ending after the statutory
3 effective date is as follows:

4 (1) For a rate increase, the new rate applies to the first
5 billing period starting on or after the effective date.

6 (2) For a rate decrease, the new rate applies to bills ren-
7 dered on or after the effective date.

§11-15B-23. Enactment of exemptions.

1 (a) *Product-based exemptions.* — The Legislature may
2 enact a product-based exemption from the taxes levied by
3 article fifteen and fifteen-a of this chapter without restriction if
4 the streamlined sales and use tax agreement does not have a
5 definition for the product or for a term that includes the
6 product. If the agreement has a definition for the product or for
7 a term that includes the product, the Legislature may exempt all
8 items included within the definition but may not exempt only
9 part of the items included within the definition, unless the
10 streamlined sales and use tax agreement sets out the exemption
11 for part of the items as an acceptable variation.

12 (b) *Entity-based or use-based exemption.* — The Legisla-
13 ture may enact an entity-based or use-based exemption from a
14 tax levied by article fifteen or fifteen-a of this chapter without
15 restriction if the streamlined sales and use tax agreement does
16 not have a definition for the product whose use or purchase by
17 a specific entity is exempt or for a term that includes the
18 product. If the agreement has a definition for the product whose
19 use or specific purchase is exempt, the Legislature may enact an
20 entity-based or use-based exemption that applies to that
21 product, as long as the exemption utilizes the streamline sales
22 and use tax agreement definition of the product. If the agree-
23 ment does not have a definition for the product whose use or
24 specific purchase is exempt but has a definition for a term that
25 includes the product, the Legislature may enact an entity-based
26 or use-based exemption for the product without restriction.

27 (c) *Construction.* — For purposes of complying with the
28 requirements in this section, the inclusion of a product within
29 the definition of tangible personal property is disregarded.

§11-15B-24. Administration of exemptions.

1 (a) *General.* — When a purchaser claims an exemption
2 under article fifteen or fifteen-a of this chapter:

3 (1) A seller registered under the streamlined sales and use
4 tax agreement shall obtain identifying information of the
5 purchaser and the reason for claiming a tax exemption at the
6 time of the purchase, as determined by the governing board
7 established pursuant to the agreement. A seller not registered
8 under the agreement shall obtain identifying information of the
9 purchaser and the reason for claiming a tax exemption at the
10 time of purchase, as determined by the tax commissioner.

11 (2) A purchaser is not required to provide a signature to
12 claim an exemption from tax unless a paper exemption certifi-
13 cate is used.

14 (3) The seller shall use the standard form for claiming an
15 exemption electronically that is adopted by the governing board
16 administering the streamlined sales and use tax agreement.

17 (4) The seller shall obtain the same information for proof of
18 a claimed exemption regardless of the medium in which the
19 transaction occurred.

20 (5) The tax commissioner may utilize a system wherein the
21 purchaser exempt from the payment of the tax is issued an
22 identification number that is presented to the seller at the time
23 of the sale.

24 (6) The seller shall maintain proper records of exempt
25 transactions and provide the records to the tax commissioner or
26 the tax commissioner's designee.

27 (7) The tax commissioner shall administer use-based and
28 entity-based exemptions when practicable through a direct pay
29 permit, an exemption certificate, or another means that does not
30 burden sellers.

31 (8) The tax commissioner shall relieve sellers registered
32 under the streamlined sales and use tax agreement that follow
33 the requirements of this section from any tax otherwise applica-
34 ble if it is determined that the purchaser improperly claimed an
35 exemption and shall hold the purchaser liable for the nonpay-
36 ment of tax. This relief from liability does not apply to a seller
37 who fraudulently fails to collect the tax or solicits purchasers to
38 participate in the unlawful claim of an exemption.

§11-15B-25. Uniform tax returns.

1 (a) *General.* — A seller who registers with this state under
2 the streamlined sales tax agreement is required to file one
3 sales/use tax return with the tax commissioner for each taxing
4 period.

5 (b) *Due date of return.* — This return shall be due on the
6 twentieth day of the month following the month in which the
7 transaction subject to tax occurred.

8 (c) *Additional information returns.* — The tax commis-
9 sioner shall allow any Model I, Model II, or Model III seller to
10 submit its sales and use tax returns in a simplified format that
11 does not include more data fields than permitted by the govern-
12 ing board administering the streamlined sales and use tax
13 agreement. The tax commissioner may require additional
14 informational returns to be submitted not more frequently than
15 every six months under a staggered system developed by the
16 governing board administering the streamlined sales and use tax
17 agreement.

18 (d) The tax commissioner shall allow any seller that is
19 registered with this state under the streamlined sales and use tax
20 agreement, which does not have a legal requirement to register
21 in this state under article twelve of this chapter, and is not a
22 Model I, II, or III seller, to submit its sales and use tax returns
23 as follows:

24 (1) Upon registration, the tax commissioner shall provide
25 to the seller the returns required by this state.

26 (2) The tax commissioner may require a seller to file a
27 return anytime within one year of the month of initial registra-
28 tion, and future returns may be required on an annual basis in
29 succeeding years.

30 (3) In addition to the returns required in subdivision (2) of
31 this subsection, a seller shall submit a return by the twentieth
32 day of the month following any month in which the seller
33 accumulated state and local tax funds for the state in the amount
34 of one thousand dollars or more.

35 (4) The tax commissioner shall participate with other states
36 that are members of the streamlined sales and use tax agree-
37 ment in developing a more uniform sales and use tax return
38 that, when completed, is available to all sellers.

39 (5) All Model I, II, and III sellers shall file returns electron-
40 ically after the first day of January, two thousand four.

§11-15B-26. Uniform rules for remittances of funds.

1 (a) *General.* — Only one remittance is required for each
2 return except as provided in this section.

3 (b) *When electronic remittance required.* — All remittances
4 from sellers under Models I, II, and III shall be remitted
5 electronically after the thirty-first day of December, two
6 thousand three.

7 (c) *Method of remittance.* — Electronic payments shall be
8 made using either the ACH credit or ACH debit method.

9 (d) *Alternative method.* — The tax commission shall
10 provide by rule, which may be an existing rule, an alternative
11 method for making “same day” payments if an electronic funds
12 transfer fails.

13 (e) *Format of data accompany remittance.* — Any data that
14 accompanies a remittance shall be formatted using uniform tax
15 type and payment type codes approved by the governing board
16 administering the streamlined sales and use tax agreement.

§11-15B-27. Uniform rules for recovery of bad debt.

1 (a) *General.* — A deduction from taxable sales is allowed
2 for bad debts. Any deduction taken that is attributed to bad
3 debts may not include interest or any amount upon which the
4 sales or use tax imposed by this state was not previously paid.

5 (b) "*Bad debt*" defined. — The term "bad debt" has the
6 same meaning as when used in the federal definition of "bad
7 debt" in 26 U.S.C. Sec. 166 as the basis for calculating bad debt
8 recovery. However, the amount calculated pursuant to 26
9 U.S.C. Sec. 166 is adjusted to exclude:

10 (1) Financing charges or interest;

11 (2) Sales or use taxes charged on the purchase price;

12 (3) Uncollectible amounts on property that remain in the
13 possession of the seller until the full purchase price is paid;

14 (4) Expenses incurred in attempting to collect any debt; and

15 (5) Repossessed property.

16 (c) *When deduction may be taken.* — Bad debts may be
17 deducted on the return for the period during which the bad debt
18 is written off as uncollectible in the claimant's books and
19 records and is eligible to be deducted for federal income tax
20 purposes. For purposes of this section, a claimant who is not
21 required to file federal income tax returns may deduct a bad
22 debt on a return filed for the period in which the bad debt is
23 written off as uncollectible in the claimant's books and records
24 and would be eligible for a bad debt deduction for federal
25 income tax purposes if the claimant was required to file a
26 federal income tax return.

27 (d) *Subsequent recovery.* — If a deduction is taken for a
28 bad debt and the debt is subsequently collected, in whole or in
29 part, the tax on the amount collected shall be paid and reported
30 on the return filed for the period in which the collection is
31 made.

32 (e) *When bad debt deduction exceeds taxable sales.* —
33 When the amount of bad debt exceeds the amount of taxable

34 sales for the period during which the bad debt is written off, a
35 refund claim may be filed within the period specified in section
36 fourteen, article ten of this chapter, for filing a claim for refund
37 or sales or use tax, except that the statute of limitations shall be
38 measured from the due date of the return on which the bad debt
39 could first be claimed.

40 (f) *When certified service provider is used.* — Where filing
41 responsibilities of the seller have been assumed by a certified
42 service provider, the certified service provider may claim, on
43 behalf of the seller, any bad debt allowance provided by this
44 section. The certified service provider shall credit or refund to
45 the seller the full amount of any bad debt allowance or refund
46 received under this section.

47 (g) *Reporting of payment received on previously claimed*
48 *bad debt.* — For the purposes of reporting a payment received
49 on a previously claimed bad debt, any payments made on a debt
50 or account is applied first proportionally to the taxable price of
51 the property or service and the sales tax thereon, and secondly
52 to interest, service charges, and any other charges.

53 (h) *Allocation.* — In situations where the books and records
54 of the party claiming the bad debt allowance support an
55 allocation of the bad debts among two or more states that are
56 members of the streamlined sales and use tax agreement, the
57 allocation is permitted.

§11-15B-28. Confidentiality and privacy protections under Model I.

1 (a) *Purpose.* — The purpose of this section is to set forth
2 the policy of this state for the protection of the confidentiality
3 rights of all participants in the streamlined sales and use tax
4 administration and collection system and of the privacy
5 interests of consumers who deal with Model I sellers.

6 (b) *Certain terms defined.* — As used in this section:

7 (1) The term “confidential taxpayer information” means all
8 information that is protected under section five-d, article ten of
9 this chapter;

10 (2) The term “personally identifiable information” means
11 information that identifies a person; and

12 (3) The term “anonymous data” means information that
13 does not identify a person.

14 (c) *Certified service providers.* — With very limited
15 exceptions, a certified service provider shall perform its tax
16 calculation, remittance, and reporting functions without
17 retaining the personally identifiable information of consumers.

18 (d) *Certification of service providers.* — The governing
19 board administering the streamlined sales and use tax agree-
20 ment may certify a service provider only if that certified service
21 provider certifies that:

22 (1) Its system has been designed and tested to ensure that
23 the fundamental precept of anonymity is respected;

24 (2) That personally identifiable information is only used
25 and retained to the extent necessary for the administration of
26 Model I with respect to exempt purchasers;

27 (3) It provides consumers clear and conspicuous notice of
28 its information practices, including what information it collects,
29 how it collects the information, how it uses the information,
30 how long, if at all, it retains the information and whether it
31 discloses the information to member states. This notice is
32 satisfied by a written privacy policy statement accessible by the
33 public on the official web site of the certified service provider;

34 (4) Its collection, use and retention of personally identi-
35 fiable information is limited to that required by the states that are
36 members of the streamlined sales and use tax agreement to
37 ensure the validity of exemptions from taxation that are claimed
38 by reason of a consumer's status or the intended use of the
39 goods or services purchased; and

40 (5) It provides adequate technical, physical, and administra-
41 tive safeguards as to protect personally identifiable information
42 from unauthorized access and disclosure.

43 (e) *State notification of privacy policy.* — The tax commis-
44 sioner shall provide public notification to consumers, including
45 their exempt purchasers, of this state's practices relating to the
46 collection, use and retention of personally identifiable informa-
47 tion.

48 (f) *Destruction of confidential information.* — When any
49 personally identifiable information that has been collected and
50 retained by the tax commissioner is no longer required for the
51 purposes set forth in subdivision (4), subsection (d) of this
52 section, the information shall no longer be retained by the tax
53 commissioner.

54 (g) *Review and correction by individuals.* — When
55 personally identifiable information regarding an individual is
56 retained by or on behalf of the tax commissioner, the commis-
57 sioner shall provide reasonable access by an individual to his or
58 her own information in the commissioner's possession and a
59 right to correct any inaccurately recorded information.

60 (h) *Discovery by other persons.* — If anyone other than the
61 individual, or a person authorized in writing by the individual,
62 seeks to discover personally identifiable information, the tax
63 commissioner shall make a reasonable and timely effort to
64 notify the individual of the request.

65 (i) *Enforcement.* — This privacy policy shall be enforced
66 by the tax commissioner or the attorney general of this state.

67 (j) *Service provider's confidentiality policy may be more*
68 *restrictive.* — This privacy policy does not preclude the
69 governing board administering the streamlined sales and use tax
70 agreement from certifying a certified service provider whose
71 privacy policy is more protective of confidential taxpayer
72 information or personally identifiable information than is
73 required by the agreement or the laws of this state.

§11-15B-29. Customer refund procedure.

1 (a) *General.* — The customer refund procedures set forth
2 in this section apply when a purchaser seeks a return of
3 over-collected sales or use taxes from the seller.

4 (b) *Applicability.* — These customer refund procedures
5 provide the first course of remedy available to purchasers
6 seeking a return of over-collected sales or use taxes from the
7 seller. A cause of action against the seller for the over-collected
8 sales or use taxes does not accrue until a purchaser has provided
9 written notice to a seller and the seller has had sixty days to
10 respond. The notice to the seller must contain the information
11 necessary to determine the validity of the request.

12 (c) *Presumption of reasonable business practice.* — In
13 connection with a purchaser's request from a seller of
14 over-collected sales or use taxes, a seller is presumed to have a
15 reasonable business practice, if in the collection of the sales or
16 use taxes, the seller:

17 (1) Uses either a certified service provider or a certified
18 automated system, including a proprietary system, that is
19 certified by the state; and

20 (2) Has remitted to the state all taxes collected less any
21 allowable deductions, credits, or collection allowances.

22 (d) *Statute of limitations.* — Nothing in this section shall
23 operate to extend any person's time to seek from the tax
24 commissioner a refund of sales or use taxes collected or
25 remitted by a seller in error.

**§11-15B-30. Monetary allowances for new technological models
for sales tax collection; delayed effective date.**

1 (a) *Monetary allowance under Model I.* —

2 (1) The tax commissioner shall provide a monetary
3 allowance to a certified service provider in Model I. This
4 allowance shall be in accordance with the terms of the contract
5 between the governing board of the streamlined sales and use
6 tax agreement and the certified service provider. The details of
7 this monetary allowance shall be developed and provided
8 through the contract process. The contract shall provide that the
9 allowance be funded entirely from money collected in Model I.

10 (2) The contract between the governing board and the
11 certified service provider may base the monetary allowance to
12 a certified service provider on one or more of the following:

13 (A) A base rate that applies to taxable transactions pro-
14 cessed by the certified service provider; or

15 (B) For a period not to exceed twenty-four months follow-
16 ing a voluntary seller's registration through the agreement's
17 central registration process, a percentage of tax revenue
18 generated for a member state by the voluntary seller for each
19 member state for which the seller does not have a requirement
20 to register to collect the tax.

21 (b) *Monetary allowance for Model II sellers.* — The
22 monetary allowance to sellers under Model II may be based on
23 the following:

24 (1) All sellers shall receive a base rate for a period not to
25 exceed twenty-four months following the commencement of
26 participation by a seller. The base rate is set by the governing
27 board of the streamlined sales and use tax agreement after the
28 base rate has been established for Model I certified service
29 providers. This allowance is in addition to any vendor or seller
30 discount afforded by each member state at the time.

31 (2) Following the conclusion of the twenty-four month
32 period, a seller will only be entitled to a vendor discount
33 afforded under each member state's law at the time the base
34 rate expires.

35 (c) *Monetary allowance for Model III sellers and all other*
36 *sellers that are not under Models I or II.* — A monetary
37 allowance to sellers under Model III and to all other sellers that
38 are not under Models I or II may be allowed based on the
39 following:

40 (1) For a period not to exceed twenty-four months follow-
41 ing a voluntary seller's registration through the agreement's
42 central registration process, a percentage of tax revenue
43 generated for a member state by the voluntary seller for each
44 member state for which the seller does not have a requirement
45 to register to collect the tax; and

46 (2) Vendor discounts afforded under each member state's
47 law.

48 (d) *Prohibition on allowance or payment of monetary*
49 *allowances.* — Notwithstanding subsections (a), (b) and (c) of
50 this section, the tax commissioner may not allow any vendor,
51 seller or certified service provider any monetary allowance,

52 discount or other compensation for collecting and remitting the
53 taxes levied by articles fifteen and fifteen-a of this chapter, or
54 for making and filing the periodic reports required by this
55 article, or articles fifteen and fifteen-a of this chapter, until this
56 section is amended by the Legislature.

57 (e) *Findings and declarations.* — The Legislature finds that
58 the vendor cost of collection study was not completed for use
59 by the governing board of the streamlined sales and use tax
60 agreement or this Legislature before this Legislature was asked
61 to authorize the tax commissioner to sign the streamlined sales
62 and use tax agreement. Additionally, no preliminary findings or
63 conclusions of the study regarding vendor costs of collection
64 are available upon which the tax commissioner or the Legisla-
65 ture can reasonably project the effect the payment of the
66 monetary allowances provided for in subsections (a) through (c)
67 of this section will have on net sales and use tax collections.
68 Because the cost of allowing monetary allowances under
69 collection Models I through IV may reduce net sales and use
70 tax collections, at least in the early years of the agreement,
71 because many states including this state are experiencing
72 revenue shortfalls, and because the Legislature is constitution-
73 ally required to pass a balanced budget, the Legislature finds
74 and declares that it is both reasonable and prudent to delay
75 approving this aspect of the agreement until adequate informa-
76 tion does become available and the effect the monetary allow-
77 ances will have on West Virginia sales and use tax collections
78 can reasonably be quantified. The Legislature declares its
79 support for the streamlined sales and use tax agreement by
80 adopting in this enactment all substantive changes in West
81 Virginia's sales and use tax laws necessary for West Virginia's
82 sales and use tax laws to be in substantial compliance with the
83 streamlined sales and use tax agreement. Additionally, the
84 Legislature declares that it can quickly act to reconsider
85 subsection (d) of this section once the requisite information
86 becomes available.

§11-15B-31. Conflict; partial unconstitutionality.

1 (a) *Conflict*. — If a court of competent jurisdiction finds
2 that the provisions of this article and of article fifteen-a of this
3 chapter conflict and cannot be harmonized, then the provisions
4 of this article shall control.

5 (b) *Severability*. — If any section, subsection, subdivision,
6 paragraph, sentence, clause or phrase of this article is for any
7 reason held to be invalid, unlawful or unconstitutional, that
8 decision does not affect the validity of the remaining portions
9 of this article or any part thereof.

§11-15B-32. Effective date..

1 The provisions of this article, as amended or added during
2 the regular legislative session in the year two thousand three,
3 shall take effect the first day of January, two thousand four, and
4 apply to all sales made on or after that date and to all returns
5 and payments due on or after that day, except as otherwise
6 expressly provided in section five of this article.

CHAPTER 147

(Com. Sub. for H. B. 2122 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Amended and Again Passed March 8, 2003, as a Result of the Objections of the
Governor; in Effect From Passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven-a, chapter
four of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; to amend chapter eleven of said code by adding thereto a new article, designated article thirteen-t; to amend and reenact section five, article twelve, chapter twenty-nine of said code; to amend and reenact sections six and fourteen, article twelve-b of said chapter; to further amend said chapter by adding thereto a new article, designated article twelve-c; to amend and reenact section fourteen, article three, chapter thirty of said code; to amend and reenact section twelve-a, article fourteen of said chapter; to amend article two, chapter thirty-three of said code by adding thereto a new section, designated section nine-a; to amend and reenact sections fourteen and fourteen-a of article three of said chapter; to amend and reenact section fifteen-a, article four of said chapter; to amend and reenact sections two and three, article twenty-b of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections two through eleven, inclusive, article twenty-f of said chapter; to further amend said article by adding thereto a new section, designated section one-a; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact section twenty-six, article twenty-five-d of said chapter; to amend and reenact section four, article ten, chapter thirty-eight of said code; to amend and reenact sections one, two, three, six, seven, eight, nine and ten, article seven-b, chapter fifty-five of said code; and to further amend said article by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all relating to medical professional liability generally; transferring funds from board of risk and insurance management and from tobacco settlement medical trust fund; providing a health care provider tax credit for physicians based upon payment of certain medical malpractice liability insurance premiums paid; setting forth legislative findings and purpose; defining terms; creating tax credit and providing eligibility; establishing amount and time period for credit; allowing unused credit to carry forward; providing for the application of the credit; providing for the computation and

application of credit; authorizing tax commissioner to promulgate legislative rules relating to the credit; establishing burden of proof relating to claiming the credit; allowing the board of risk and insurance management to include critical access hospitals as charitable or public service organizations eligible for receiving insurance coverage; authorizing the board of risk and insurance management to issue certain coverage to non-transferred health care providers; terminating authority of board of risk and insurance management to issue certain medical professional liability insurance upon transfer of assets to the physicians' mutual insurance company; creating board to study the feasibility of and propose a mechanism for funding the patient injury compensation fund; establishing term, authority and directives of the board; granting certain duties and conditionally authorizing the board of risk and insurance management to promulgate legislative and emergency rules; requiring the board of medicine and the board of osteopathy to take certain disciplinary actions against physicians in certain circumstances; providing for a limited diversion of premium taxes on certain insurance policies; providing a one-time assessment on all insurance carriers; prohibiting predatory rates and reduced rates designed to gain market share; requiring additional reporting requirements for insurance carriers providing medical malpractice coverage; providing for the creation of a physicians' mutual insurance company and the concomitant novation of certain board of risk and insurance management medical professional liability insurance programs; setting forth additional legislative findings and purpose; providing terms and conditions for transfer of specified assets and moneys to the physicians' mutual; defining terms; prohibiting company from taking certain actions; requiring certain premium taxes to be applied toward restoring West Virginia tobacco medical trust fund; returning premium taxes to originally allocated sources after moneys have been restored to the tobacco settlement medical trust fund; waiver of taxes under certain circumstances; providing for governance and organization

of the company; specifying composition of company's board of directors; creating a special account to receive funds transferred from the tobacco settlement medical trust fund; imposing a one time assessment on certain licensed physicians for the privilege of practicing in West Virginia; exempting certain physicians from assessment; requiring competitive bidding in certain circumstances; exempting company from certain requirements imposed on other mutual insurance companies by the insurance commission; providing for additional reporting requirements and actuarial studies for the company; authorizing transfer of funds from special account and of certain assets, obligations and liabilities of the board of risk and insurance management to the company on a certain date and establishing other terms and conditions associated with the transfer; increasing exemption available to certain physician and surgeon debtors in bankruptcy proceedings; providing additional legislative findings and purposes relating to medical professional liability; defining terms; adding an element of proof in certain malpractice claims; altering notice requirements for malpractice claims; modifying the qualifications for experts who testify in medical professional liability actions; limiting liability for certain noneconomic losses; providing a reversion provision; creating conditional limitations and cap on certain damages; providing for limited severability; eliminating joint, but not several, liability among multiple defendants in medical professional liability actions; prohibiting consideration of certain third parties in malpractice cases; eliminating a cause of action based on ostensible agency in certain circumstances; allowing for reduction in damage awards for certain collateral source payments to plaintiffs; providing mechanism for determining collateral source payments and damages distribution; providing for calculation methodology for determining award payments; altering collection of economic damages upon implementation of patient compensation fund; barring actions against health care providers for certain third party claims; limiting civil liability for designated trauma center care; directing the office of emergency

medical services to designate hospitals as trauma centers and provisional trauma centers; placing limitations on eligibility for trauma care caps; requiring the office of emergency medical services to develop a written protocol containing recognized and accepted standards for triage and emergency health procedures; authorizing the secretary of the department of health and human resources to promulgate legislative and emergency rules; and establishing effective date, applicable to all causes of action alleging medical professional liability.

Be it enacted by the Legislature of West Virginia:

That section two, article eleven-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that chapter eleven of said code be amended by adding thereto a new article, designated article thirteen-t; that section five, article twelve, chapter twenty-nine of said code be amended and reenacted; that sections six and fourteen, article twelve-b of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article twelve-c; that section fourteen, article three, chapter thirty of said code be amended and reenacted; that section twelve-a, article fourteen of said chapter be amended and reenacted; that article two, chapter thirty-three of said code be amended by adding thereto a new section, designated section nine-a; that sections fourteen and fourteen-a, article three of said chapter be amended and reenacted; that section fifteen-a, article four of said chapter be amended and reenacted; that sections two and three, article twenty-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-a; that sections two through eleven, inclusive, of article twenty-f of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-a; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; that section twenty-six, article twenty-five-d of said chapter be amended and reenacted; that section four, article ten, chapter thirty-eight of said code be amended and reenacted; that sections one, two, three, six,

seven, eight, nine and ten, article seven-b, chapter fifty-five of said code be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all to read as follows:

Chapter

- 4. The Legislature.**
- 11. Taxation.**
- 29. Miscellaneous Boards and Officers.**
- 30. Professions and Occupations.**
- 33. Insurance.**
- 38. Liens.**
- 55. Actions, Suits and Arbitration; Judicial Sale.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund.

1 (a) The Legislature finds and declares that certain dedicated
2 revenues should be preserved in trust for the purpose of
3 stabilizing the state's health related programs and delivery
4 systems. It further finds and declares that these dedicated
5 revenues should be preserved in trust for the purpose of
6 educating the public about the health risks associated with
7 tobacco usage and establishing a program designed to reduce
8 and stop the use of tobacco by the citizens of this state and in
9 particular by teenagers.

10 (b) There is hereby created a special account in the state
11 treasury, designated the "West Virginia Tobacco Settlement
12 Medical Trust Fund," which shall be an interest-bearing
13 account and may be invested in the manner permitted by section
14 nine, article six, chapter twelve of this code, with the interest
15 income a proper credit to the fund. Unless contrary to federal

16 law, fifty percent of all revenues received pursuant to the
17 master settlement agreement shall be deposited in this fund.
18 Funds paid into the account may also be derived from the
19 following sources:

20 (1) All interest or return on investment accruing to the fund;

21 (2) Any gifts, grants, bequests, transfers or donations which
22 may be received from any governmental entity or unit or any
23 person, firm, foundation or corporation;

24 (3) Any appropriations by the Legislature which may be
25 made for this purpose; and

26 (4) Any funds or accrued interest remaining in the board of
27 risk and insurance management physicians' mutual insurance
28 company account created pursuant to section seven, article
29 twenty-f, chapter thirty-three of this code on or after the first
30 day of July, two thousand four.

31 (c) The moneys from the principal in the trust fund may not
32 be expended for any purpose, except that on the first day of
33 April, two thousand three, the treasurer shall transfer to the
34 board of risk and insurance management physicians' mutual
35 insurance company account created by section seven, article
36 twenty-f, chapter thirty-three of this code, twenty-four million
37 dollars from the West Virginia tobacco settlement medical trust
38 fund for use as the initial capital and surplus of the physicians'
39 mutual insurance company created pursuant to article twenty-f,
40 chapter thirty-three of this code. The remaining moneys in the
41 trust fund resulting from interest earned on the moneys in the
42 fund and the return on investments of the moneys in the fund
43 shall be available only upon appropriation by the Legislature as
44 part of the state budget and expended in accordance with the
45 provisions of section three of this article.

CHAPTER 11. TAXATION.

ARTICLE 13T. TAX CREDIT FOR COMBINED CLAIMS MADE MEDICAL MALPRACTICE PREMIUMS AND MEDICAL MALPRACTICE LIABILITY TAIL INSURANCE PREMIUMS PAID.

- §11-13T-1. Legislative finding and purpose.
- §11-13T-2. Definitions.
- §11-13T-3. Eligibility for tax credits; creation of the credit.
- §11-13T-4. Amount of credit allowed.
- §11-13T-5. Unused credit; carryforward; credit forfeiture.
- §11-13T-6. Application of credit against health care provider tax; schedules; estimated taxes.
- §11-13T-7. Computation and application of credit.
- §11-13T-8. Legislative rules.
- §11-13T-9. Burden of proof.

§11-13T-1. Legislative finding and purpose.

1 The Legislature finds that the retention of physicians
2 practicing in this state is in the public interest and promotes the
3 general welfare of the people of this state. The Legislature
4 further finds that the promotion of stable and affordable
5 medical malpractice liability insurance premium rates and
6 medical malpractice liability tail insurance premium rates will
7 induce retention of physicians practicing in this state.

8 In order to effectively decrease the cost of medical malprac-
9 tice liability insurance premiums and medical malpractice
10 liability tail insurance premiums paid in this state on physi-
11 cians' services, there is hereby provided a tax credit for certain
12 medical malpractice liability insurance premiums and medical
13 malpractice liability tail insurance premiums paid.

§11-13T-2. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-
2 tration of this article, terms defined in subsection (b) of this
3 section have the meanings ascribed to them by this section,

4 unless a different meaning is clearly required by the context in
5 which the term is used.

6 (b) *Terms defined.* –

7 (1) “Claims made malpractice insurance policy” means a
8 medical malpractice liability insurance policy that covers
9 claims which:

10 (A) Are reported during the policy period,

11 (B) Meet the provisions specified by the policy, and

12 (C) Are for an incident which occurred during the policy
13 period, or occurred prior to the policy period, as is specified by
14 the policy.

15 (2) “Combined annual medical liability insurance premi-
16 ums” means the sum of the actual amount of insurance premi-
17 ums paid by or on behalf of the taxpayer during the taxable year
18 for medical malpractice insurance coverage under a claims
19 made malpractice insurance policy, plus the actual amount of
20 insurance premiums paid by or on behalf of the taxpayer during
21 the taxable year for tail insurance.

22 (3) “Eligible taxpayer” means any person subject to tax
23 under section sixteen, article twenty-seven of this chapter or a
24 physician who is a partner, member, shareholder or employee
25 of an eligible taxpayer.

26 (4) “Eligible taxpayer organization” means a partnership,
27 limited liability company, or corporation that is an eligible
28 taxpayer.

29 (5) “Payor” means a natural person who is a partner,
30 member, shareholder or owner, in whole or in part, of an
31 eligible taxpayer organization and who pays medical malprac-

32 tice insurance premiums or tail insurance premiums or both for
33 or on behalf of the eligible taxpayer organization.

34 (6) "Person" means and includes any natural person,
35 corporation, limited liability company, trust or partnership.

36 (7) "Physicians' services" means health care provider
37 services taxable under section sixteen, article twenty-seven of
38 this chapter, performed in this state by physicians licensed by
39 the state board of medicine or the state board of osteopathic
40 medicine.

41 (8) "Tail insurance" means insurance which covers an
42 eligible taxpayer insured once a claims made malpractice
43 insurance policy is canceled, not renewed or terminated and
44 which covers claims made or asserted after such cancellation or
45 termination for acts relating to the provision of physicians'
46 services by the eligible taxpayer occurring during the period the
47 prior malpractice insurance was in effect.

48 (9) "Tail insurance premium" means insurance coverage
49 premiums paid by an eligible taxpayer or payor during the
50 taxable year for tail insurance.

51 (10) "Tail liability" means the medical malpractice liability
52 of an eligible taxpayer insured that results from a claim asserted
53 subsequent to cancellation, nonrenewal or termination of a
54 claims made malpractice insurance policy for acts relating to
55 the provision of physicians' services by the eligible taxpayer
56 occurring during the period when the prior malpractice insur-
57 ance was in effect.

§11-13T-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit
2 against the tax payable under section sixteen, article twenty-

3 seven of this chapter. The amount of this credit shall be
4 determined and applied as provided in this article.

§11-13T-4. Amount of credit allowed.

1 (a) *Allowance.* —

2 (1) The amount of annual credit allowable under this article
3 to an eligible taxpayer shall be:

4 (A) Ten percent of the combined annual medical liability
5 insurance premiums paid in excess of thirty thousand dollars,
6 or

7 (B) Twenty percent of combined annual medical liability
8 insurance premiums paid in excess of seventy thousand dollars.

9 (2) This credit may be taken for combined annual medical
10 liability insurance premiums paid during any taxable year
11 beginning on or after the first day of January, two thousand two,
12 and ending on or before the thirty-first day of December, two
13 thousand three.

14 (b) *Exclusions.* — No credit shall be allowed for any
15 combined annual medical liability insurance premiums, or part
16 or component thereof, paid by or on behalf of an eligible
17 taxpayer employed by this state, its agencies or subdivisions.
18 No credit shall be allowed for any combined annual medical
19 liability insurance premiums, or part or component thereof, paid
20 by or on behalf of an eligible taxpayer or an eligible taxpayer
21 organization or a payor pursuant to insurance coverage pro-
22 vided under article twelve, chapter twenty-nine of this code. No
23 credit shall be allowed for any combined annual medical
24 liability insurance premiums, or part or component thereof, paid
25 before the first day of January, two thousand two, or paid after
26 the thirty-first day of December, two thousand three.

§11-13T-5. Unused credit; carryforward; credit forfeiture.

1 If any credit remains after application of the credit against
2 tax for any taxable year under this article, the amount thereof
3 shall be carried forward to each ensuing tax year until used or
4 until the first day of July, two thousand ten, whichever occurs
5 first. If any unused credit remains after the first day of July, two
6 thousand ten, the amount thereof is forfeited. No carryback to
7 a prior taxable year is allowed for the amount of any unused
8 portion of this credit.

§11-13T-6. Application of credit against health care provider tax; schedules; estimated taxes.

1 (a) The credit allowed under this article shall be applied
2 against the tax payable under section sixteen, article twenty-
3 seven of this chapter, for the taxable year in which the com-
4 bined annual medical liability insurance premiums are paid. To
5 assert credit against the tax payable under section sixteen,
6 article twenty-seven of this chapter, the eligible taxpayer shall
7 prepare and file with the annual tax return filed under article
8 twenty-seven of this chapter, a schedule showing the combined
9 annual medical liability insurance premiums paid for the
10 taxable year, the amount of credit allowed under this article, the
11 tax against which the credit is being applied and other informa-
12 tion that the tax commissioner may require. This annual
13 schedule shall set forth the information and be in the form
14 prescribed by the tax commissioner.

15 (b) An eligible taxpayer may consider the amount of credit
16 allowed under this article when determining the eligible
17 taxpayer's liability for periodic payments of estimated tax for
18 the taxable year for the tax payable under section sixteen,
19 article twenty-seven of this chapter, in accordance with the
20 procedures and requirements prescribed by the tax commis-
21 sioner. The annual total tax liability and total tax credit allowed

22 under this article are subject to adjustment and reconciliation
23 pursuant to the filing of the annual schedule required by this
24 section.

§11-13T-7. Computation and application of credit.

1 (a) *Credit resulting from premiums directly paid by persons*
2 *who pay the tax imposed by section sixteen, article twenty-seven*
3 *of this chapter.* — The annual credit allowable under this article
4 for eligible taxpayers other than payors described in subsection
5 (b) of this section, shall be applied as a credit to reduce the
6 eligible taxpayer's annual tax liability imposed under section
7 sixteen, article twenty-seven of this chapter, determined after
8 application of the credit allowed under article thirteen-p of this
9 chapter, if any, and after application of all other allowable
10 credits, deductions and exemptions.

11 (b) *Computation of credit for premiums directly paid by*
12 *partners, members or shareholders of partnerships, limited*
13 *liability companies, or corporations for or on behalf of such*
14 *organizations; application of credit.*

15 (1) *Qualification for credit.*— Combined annual medical
16 liability insurance premiums paid by a payor (as defined in this
17 article) qualify for tax credit under this article, provided that
18 such payments are made to insure against medical malpractice
19 liabilities arising out of or resulting from physicians' services
20 provided by a physician while practicing in service to or under
21 the organizational identity of an eligible taxpayer organization
22 or as an employee of such eligible taxpayer organization, and
23 where such insurance covers the medical malpractice liabilities
24 or tail liabilities of:

25 (A) The eligible taxpayer organization; or

26 (B) One or more physicians practicing in service to or under
27 the organizational identity of the eligible taxpayer organization

28 or as an employee of the eligible taxpayer organization; or

29 (C) Any combination thereof.

30 (2) *Application of credit by the payor against health care*
31 *provider tax on physician's services.* — The annual credit
32 allowable under this article shall be applied to reduce the tax
33 liability directly payable by the payor under section sixteen,
34 article twenty-seven of this chapter, determined after applica-
35 tion of the credit allowed under article thirteen-p of this chapter,
36 if any, and after application of all other allowable credits,
37 deductions and exemptions.

38 (3) *Application of credit by the eligible taxpayer organiza-*
39 *tion against health care provider tax on physician's services.* —
40 After application of this credit as provided in subdivision (2) of
41 this subsection, remaining annual credit shall then be applied to
42 reduce the tax liability directly payable by the eligible taxpayer
43 organization under section sixteen, article twenty-seven of this
44 chapter, determined after application of the credit allowed
45 under article thirteen-p of this chapter, if any, and after applica-
46 tion of all other allowable credits, deductions and exemptions.

47 (4) *Apportionment among multiple eligible taxpayer*
48 *organizations.* — Where a payor described in subdivision (1) of
49 this subsection pays combined annual medical liability insur-
50 ance premiums for and provides services to or under the
51 organizational identity of two or more eligible taxpayer
52 organizations described in this section or as an employee of two
53 or more such eligible taxpayer organizations, the tax credit
54 shall, for purposes of subdivision (3) of this subsection, be
55 allocated among such eligible taxpayer organizations in
56 proportion to the combined annual medical liability insurance
57 premiums paid directly by the payor during the taxable year to
58 cover physicians' services during such year for, or on behalf of,
59 each eligible taxpayer organization. In no event may the total

60 credit claimed by all payors, eligible taxpayers and eligible
61 taxpayer organizations exceed the credit which would be
62 allowable if the payor had paid all such combined annual
63 medical liability insurance premiums for or on behalf of one
64 eligible taxpayer organization, and if all physician's services
65 had been performed for, or under the organizational identity of,
66 or by employees of, one eligible taxpayer organization.

67 (c) Application of the credit allowed under this article in
68 combination with all other applicable tax credits, exemptions
69 and deductions shall in no event reduce the tax liability below
70 zero, and shall in no circumstances be applied as a refundable
71 tax credit, or result in a refundable tax credit.

§11-13T-8. Legislative rules.

1 The tax commissioner shall propose for promulgation rules
2 pursuant to the provisions of article three, chapter twenty-nine-a
3 of this code, as may be necessary to carry out the purposes of
4 this article.

§11-13T-9. Burden of proof.

1 The burden of proof is on the person claiming the credit
2 allowed by this article to establish by clear and convincing
3 evidence that the person is entitled to the amount of credit
4 asserted for the taxable year.

**CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.**

Article

12. State Insurance.

12B. West Virginia Health Care Provider Professional Liability Insurance Availability Act.

12C. Patient Injury Compensation Plan.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

1 (a) The board shall have general supervision and control
2 over the insurance of all state property, activities and responsi-
3 bilities, including the acquisition and cancellation thereof;
4 determination of amount and kind of coverage, including, but
5 not limited to, deductible forms of insurance coverage, inspec-
6 tions or examinations relating thereto, reinsurance, and any and
7 all matters, factors and considerations entering into negotiations
8 for advantageous rates on and coverage of all such state
9 property, activities and responsibilities. The board shall have
10 the authority to employ an executive director for an annual
11 salary of seventy thousand dollars and such other employees,
12 including legal counsel, as may be necessary to carry out its
13 duties. The legal counsel may represent the board before any
14 judicial or administrative tribunal and perform such other duties
15 as may be requested by the board. Any policy of insurance
16 purchased or contracted for by the board shall provide that the
17 insurer shall be barred and estopped from relying upon the
18 constitutional immunity of the state of West Virginia against
19 claims or suits: *Provided*, That nothing herein shall bar the
20 insurer of political subdivisions from relying upon any statutory
21 immunity granted such political subdivisions against claims or
22 suits. The board may enter into any contracts necessary to the
23 execution of the powers granted to it by this article. It shall
24 endeavor to secure the maximum of protection against loss,
25 damage or liability to state property and on account of state
26 activities and responsibilities by proper and adequate insurance
27 coverage through the introduction and employment of sound
28 and accepted methods of protection and principles of insurance.
29 It is empowered and directed to make a complete survey of all
30 presently owned and subsequently acquired state property
31 subject to insurance coverage by any form of insurance, which
32 survey shall include and reflect inspections, appraisals, expo-
33 sures, fire hazards, construction, and any other objectives or
34 factors affecting or which might affect the insurance protection

35 and coverage required. It shall keep itself currently informed
36 on new and continuing state activities and responsibilities
37 within the insurance coverage herein contemplated. The board
38 shall work closely in cooperation with the state fire marshal's
39 office in applying the rules of that office insofar as the appro-
40 priations and other factors peculiar to state property will permit.
41 The board is given power and authority to make rules govern-
42 ing its functions and operations and the procurement of state
43 insurance.

44 The board is hereby authorized and empowered to negotiate
45 and effect settlement of any and all insurance claims arising on
46 or incident to losses of and damages to state properties,
47 activities and responsibilities hereunder and shall have authority
48 to execute and deliver proper releases of all such claims when
49 settled. The board may adopt rules and procedures for han-
50 dling, negotiating and settlement of all such claims. Any
51 discussion or consideration of the financial or personal informa-
52 tion of an insured may be held by the board in executive session
53 closed to the public, notwithstanding the provisions of article
54 nine-a, chapter six of this code.

55 (b) If requested by a political subdivision, a charitable or
56 public service organization, or an emergency medical services
57 agency, the board is authorized to provide property and liability
58 insurance to insure their property, activities and responsibilities.
59 The board is authorized to enter into any necessary contract of
60 insurance to further the intent of this subsection.

61 The property insurance provided by the board, pursuant to
62 this subsection, may also include insurance on property leased
63 to or loaned to the political subdivision, a charitable or public
64 service organization or an emergency medical services agency
65 which is required to be insured under a written agreement.

66 The cost of this insurance, as determined by the board, shall
67 be paid by the political subdivision, the charitable or public
68 service organization or the emergency medical services agency
69 and may include administrative expenses. For purposes of this
70 section: *Provided*, That if an emergency medical services
71 agency is a for-profit entity its claims history may not adversely
72 affect other participant's rates in the same class. All funds
73 received by the board (including, but not limited to, state
74 agency premiums, mine subsidence premiums, and political
75 subdivision premiums) shall be deposited with the West
76 Virginia investment management board with the interest
77 income and returns on investment a proper credit to such
78 property insurance trust fund or liability insurance trust fund, as
79 applicable.

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

83 "Charitable" or public service organization as used in this
84 subsection means any hospital in this state which has been
85 certified as a critical access hospital by the federal centers for
86 medicare and medicaid upon the designation of the state office
87 of rural health policy, the office of community and rural health
88 services, the bureau for public health, or the department of
89 health and human resources, and any bona fide, not-for-profit,
90 tax-exempt, benevolent, educational, philanthropic, humane,
91 patriotic, civic, religious, eleemosynary, incorporated or
92 unincorporated association or organization or a rescue unit or
93 other similar volunteer community service organization or
94 association, but does not include any nonprofit association or
95 organization, whether incorporated or not, which is organized
96 primarily for the purposes of influencing legislation or support-
97 ing or promoting the campaign of any candidate for public
98 office.

99 “Emergency medical service agency” as used in this
100 subsection shall have the same meaning as in section three,
101 article four-c, chapter sixteen of this code.

102 (c) (1) The board shall have general supervision and control
103 over the optional medical liability insurance programs provid-
104 ing coverage to health care providers as authorized by the
105 provisions of article twelve-b of this chapter. The board is
106 hereby granted and may exercise all powers necessary or
107 appropriate to carry out and effectuate the purposes of this
108 article.

109 (2) The board shall:

110 (A) Administer the preferred medical liability program and
111 the high risk medical liability program and exercise and
112 perform other powers, duties and functions specified in this
113 article;

114 (B) Obtain and implement, at least annually, from an
115 independent outside source, such as a medical liability actuary
116 or a rating organization experienced with the medical liability
117 line of insurance, written rating plans for the preferred medical
118 liability program and high risk medical liability program on
119 which premiums shall be based;

120 (C) Prepare and annually review written underwriting
121 criteria for the preferred medical liability program and the high
122 risk medical liability program. The board may utilize review
123 panels, including, but not limited to, the same specialty review
124 panels to assist in establishing criteria;

125 (D) Prepare and publish, before each regular session of the
126 Legislature, separate summaries for the preferred medical
127 liability program and high risk medical liability program
128 activity during the preceding fiscal year, each summary to be
129 included in the board of risk and insurance management audited

130 financial statements as “other financial information”, and which
131 shall include a balance sheet, income statement and cash flow
132 statement, an actuarial opinion addressing adequacy of reserves,
133 the highest and lowest premiums assessed, the number of
134 claims filed with the program by provider type, the number of
135 judgments and amounts paid from the program, the number of
136 settlements and amounts paid from the program and the number
137 of dismissals without payment;

138 (E) Determine and annually review the claims history debit
139 or surcharge for the high risk medical liability program;

140 (F) Determine and annually review the criteria for transfer
141 from the preferred medical liability program to the high risk
142 medical liability program;

143 (G) Determine and annually review the role of independent
144 agents, the amount of commission, if any, to be paid therefor,
145 and agent appointment criteria;

146 (H) Study and annually evaluate the operation of the
147 preferred medical liability program and the high risk medical
148 liability program, and make recommendations to the Legisla-
149 ture, as may be appropriate, to ensure their viability, including,
150 but not limited to, recommendations for civil justice reform
151 with an associated cost-benefit analysis, recommendations on
152 the feasibility and desirability of a plan which would require all
153 health care providers in the state to participate with an associ-
154 ated cost-benefit analysis, recommendations on additional
155 funding of other state run insurance plans with an associated
156 cost-benefit analysis and recommendations on the desirability
157 of ceasing to offer a state plan with an associated analysis of a
158 potential transfer to the private sector with a cost-benefit
159 analysis, including impact on premiums;

160 (I) Establish a five-year financial plan to ensure an adequate
61 premium base to cover the long tail nature of the claims-made
162 coverage provided by the preferred medical liability program
163 and the high risk medical liability program. The plan shall be
164 designed to meet the program's estimated total financial
165 requirements, taking into account all revenues projected to be
166 made available to the program, and apportioning necessary
167 costs equitably among participating classes of health care
168 providers. For these purposes, the board shall:

169 (i) Retain the services of an impartial, professional actuary,
170 with demonstrated experience in analysis of large group
171 malpractice plans, to estimate the total financial requirements
172 of the program for each fiscal year and to review and render
173 written professional opinions as to financial plans proposed by
174 the board. The actuary shall also assist in the development of
175 alternative financing options and perform any other services
176 requested by the board or the executive director. All reasonable
177 fees and expenses for actuarial services shall be paid by the
178 board. Any financial plan or modifications to a financial plan
179 approved or proposed by the board pursuant to this section shall
180 be submitted to and reviewed by the actuary and may not be
181 finally approved and submitted to the governor and to the
182 Legislature without the actuary's written professional opinion
183 that the plan may be reasonably expected to generate sufficient
184 revenues to meet all estimated program and administrative
185 costs, including incurred but not reported claims, for the fiscal
186 year for which the plan is proposed. The actuary's opinion for
187 any fiscal year shall include a requirement for establishment of
188 a reserve fund;

189 (ii) Submit its final, approved five-year financial plan, after
190 obtaining the necessary actuary's opinion, to the governor and
191 to the Legislature no later than the first day of January preced-
192 ing the fiscal year. The financial plan for a fiscal year becomes
193 effective and shall be implemented by the executive director on

194 the first day of July of the fiscal year. In addition to each final,
195 approved financial plan required under this section, the board
196 shall also simultaneously submit an audited financial statement
197 based on generally accepted accounting practices (GAAP) and
198 which shall include allowances for incurred but not reported
199 claims: *Provided*, That the financial statement and the accrual-
200 based financial plan restatement shall not affect the approved
201 financial plan. The provisions of chapter twenty-nine-a of this
202 code shall not apply to the preparation, approval and implemen-
203 tation of the financial plans required by this section;

204 (iii) Submit to the governor and the Legislature a prospec-
205 tive five-year financial plan beginning on the first day of
206 January, two thousand three, and every year thereafter, for the
207 programs established by the provisions of article twelve-b of
208 this chapter. Factors that the board shall consider include, but
209 shall not be limited to, the trends for the program and the
210 industry; claims history, number and category of participants
211 in each program; settlements and claims payments; and judicial
212 results;

213 (iv) Obtain annually, certification from participants that
214 they have made a diligent search for comparable coverage in
215 the voluntary insurance market and have been unable to obtain
216 the same;

217 (J) Meet on at least a quarterly basis to review implementa-
218 tion of its current financial plan in light of the actual experience
219 of the medical liability programs established in article twelve-b
220 of this chapter. The board shall review actual costs incurred,
221 any revised cost estimates provided by the actuary, expendi-
222 tures and any other factors affecting the fiscal stability of the
223 plan and may make any additional modifications to the plan
224 necessary to ensure that the total financial requirements of these
225 programs for the current fiscal year are met;

226 (K) To analyze the benefit of and necessity for excess
227 verdict liability coverage;

228 (L) Consider purchasing reinsurance, in the amounts as it
229 may from time to time determine is appropriate, and the cost
230 thereof shall be considered to be an operating expense of the
231 board;

232 (M) Make available to participants, optional extended
233 reporting coverage or tail coverage: *Provided*, That, at least
234 five working days prior to offering such coverage to a partici-
235 pant or participants, the board shall notify the president of the
236 Senate and the speaker of the House of Delegates in writing of
237 its intention to do so, and such notice shall include the terms
238 and conditions of the coverage proposed;

239 (N) Review and approve, reject or modify rules that are
240 proposed by the executive director to implement, clarify or
241 explain administration of the preferred medical liability
242 program and the high risk medical liability program. Notwith-
243 standing any provisions in this code to the contrary, rules
244 promulgated pursuant to this paragraph are not subject to the
245 provisions of sections nine through sixteen, article three,
246 chapter twenty-nine-a of this code. The board shall comply
247 with the remaining provisions of article three and shall hold
248 hearings or receive public comments before promulgating any
249 proposed rule filed with the secretary of state: *Provided*, That
250 the initial rules proposed by the executive director and promul-
251 gated by the board shall become effective upon approval by the
252 board notwithstanding any provision of this code;

253 (O) Enter into settlements and structured settlement
254 agreements whenever appropriate. The policy may not require
255 as a condition precedent to settlement or compromise of any
256 claim the consent or acquiescence of the policy holder. The

257 board may own or assign any annuity purchased by the board to
258 a company licensed to do business in the state;

259 (P) Refuse to provide insurance coverage for individual
260 physicians whose prior loss experience or current professional
261 training and capability are such that the physician represents an
262 unacceptable risk of loss if coverage is provided;

263 (Q) Terminate coverage for nonpayment of premiums upon
264 written notice of the termination forwarded to the health care
265 provider not less than thirty days prior to termination of
266 coverage;

267 (R) Assign coverage or transfer insurance obligations
268 and/or risks of existing or in-force contracts of insurance to a
269 third party medical professional liability insurance carrier with
270 the comparable coverage conditions as determined by the
271 board. Any transfer of obligation or risk shall effect a novation
272 of the transferred contract of insurance and if the terms of the
273 assumption reinsurance agreement extinguish all liability of the
274 board and the state of West Virginia such extinguishment shall
275 be absolute as to any and all parties; and

276 (S) Meet and consult with and consider recommendations
277 from the medical malpractice advisory panel established by the
278 provisions of article twelve-b of this chapter.

279 (d) If, after the first day of September, two thousand two,
280 the board has assigned coverages or transferred all insurance
281 obligations and/or risks of existing or in-force contracts of
282 insurance to a third party medical professional liability insur-
283 ance carrier, and the board otherwise has no covered partici-
284 pants, then the board shall not thereafter offer or provide
285 professional liability insurance to any health care provider
286 pursuant to the provisions of subsection (c) of this section or the
287 provisions of article twelve-b of this chapter unless the Legisla-

288 ture adopts a concurrent resolution authorizing the board to
289 reestablish medical liability insurance programs.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

§29-12B-6. Health care provider professional liability insurance programs.

§29-12B-14. Effective date and termination of authority.

§29-12B-6. Health care provider professional liability insurance programs.

1 (a) There is hereby established through the board of risk
2 and insurance management optional insurance for health care
3 providers consisting of a preferred professional liability
4 insurance program and a high risk professional liability
5 insurance program.

6 (b) Each of the programs described in subsection (a) of this
7 section shall provide claims-made coverage for any covered act
8 or omission resulting in injury or death arising out of medical
9 professional liability as defined in subsection (d), section two,
10 article seven-b, chapter fifty-five of this code.

11 (c) Each of the programs described in subsection (a) of this
12 section shall offer optional prior acts coverage from and after
13 a retroactive date established by the policy declarations. The
14 premium for prior acts coverage may be based upon a five-year
15 maturity schedule depending on the years of prior acts expo-
16 sure, as more specifically set forth in a written rating manual
17 approved by the board.

18 (d) Each of the programs described in subsection (a) of this
19 section shall further provide an option to purchase an extended
20 reporting endorsement or tail coverage.

21 (e) Each of the programs described in subsection (a) of this
22 section shall offer limits for each health care provider in the
23 amount of one million dollars per claim, including repeated
24 exposure to the same event or series of events, and all deriva-
25 tive claims, and three million dollars in the annual aggregate.
26 Health care providers have the option to purchase higher limits
27 of up to two million dollars per claim, including repeated
28 exposure to the same event or series of events, and all deriva-
29 tive claims, and up to four million dollars in the annual aggre-
30 gate. In addition, hospitals covered by the plan shall have
31 available limits of three million dollars per claim, including
32 repeated exposure to the same event or series of events, and all
33 derivative claims, and five million dollars in the annual
34 aggregate. Installment payment plans as established in the
35 rating manual shall be available to all participants.

36 (f) Each of the programs described in subsection (a) of this
37 section shall cover any act or omission resulting in injury or
38 death arising out of medical professional liability as defined in
39 subsection (d), section two, article seven-b, chapter fifty-five of
40 this code. The board shall exclude from coverage sexual acts as
41 defined in subdivision (e), section three of this article, and shall
42 have the authority to exclude other acts or omission from
43 coverage.

44 (g) Each of the programs described in subsection (a) of this
45 section shall apply to damages, except punitive damages, for
46 medical professional liability as defined in subsection (d),
47 section two, article seven-b, chapter fifty-five of this code.

48 (h) The board may, but is not required, to obtain excess
49 verdict liability coverage for the programs described in subsec-
50 tion (a) of this section.

51 (i) Each of the programs shall be liable to the extent of the
52 limits purchased by the health care provider as set forth in

53 subsection (e) of this section. In the event that a claimant and a
54 health care provider are willing to settle within those limits
55 purchased by the health care provider, but the board refuses or
56 declines to settle, and the ultimate verdict is in excess of the
57 purchased limits, the board shall not be liable for the portion of
58 the verdict in excess of the coverage provided in subsection (e)
59 of this section unless the board acts in bad faith, with actual
60 malice, in declining or refusing to settle: *Provided*, That if the
61 board has in effect applicable excess verdict liability insurance,
62 the health care provider shall not be required to prove that the
63 board acted with actual malice in declining or refusing to settle
64 in order to be indemnified for that portion of the verdict in
65 excess of the limits of the purchased policy and within the
66 limits of the excess liability coverage. Notwithstanding any
67 provision of this code to the contrary, the board shall not be
68 liable for any verdict in excess of the combined limit of the
69 purchased policy and any applicable excess liability coverage
70 unless the board acts in bad faith with actual malice.

71 (j) Rates for each of the programs described in subsection
72 (a) of this section may not be excessive, inadequate or unfairly
73 discriminatory: *Provided*, That the rates charged for the
74 preferred professional liability insurance program shall not be
75 less than the highest approved comparable base rate for a
76 licensed carrier providing five percent of the malpractice
77 insurance coverage in this state for the previous calendar year
78 on file with the insurance commissioner: *Provided, however*,
79 That if there is only one licensed carrier providing five percent
80 or more of the malpractice insurance coverage in the state
81 offering comparable coverage, the board shall have discretion
82 to disregard the approved comparable base rate of the licensed
83 carrier.

84 (k) The premiums for each of the programs described in
85 subsection (a) of this section are subject to premium taxes
86 imposed by article three, chapter thirty-three of this code.

87 (l) Nothing in this article shall be construed to preclude a
88 health care provider from obtaining professional liability
89 insurance coverage for claims in excess of the coverage made
90 available by the provisions of this article.

91 (m) General liability coverage that may be required by a
92 health care provider may be offered as determined by the board.

93 (n) The board may provide coverage for the run out of, and
94 tail coverage for, any active policy issued pursuant to this
95 article which is not transferred to the physician's mutual
96 insurance company in accordance with section nine, article
97 twenty-f, chapter thirty-three of this code. The board may
98 permit such policy holders to finance, with interest, the tail
99 coverage premium payments therefore, up to a maximum
100 finance period of five years, on such terms as the board may set.

§29-12B-14. Effective date and termination of authority.

1 Policies written under this article may have an effective
2 date retroactive to the effective date of this article. Except as
3 provided in subsection (n), section six of this article, the
4 authority of the board of risk and insurance management to
5 issue medical liability policies under this article shall cease
6 upon the board's transfer, in accordance with section nine,
7 article twenty-f, chapter thirty-three of this code, of assets,
8 obligations and liabilities to the physicians' mutual insurance
9 company created pursuant to said article, or upon the first day
10 of July, two-thousand four, whichever occurs first. The board
11 shall continue to administer any existing policy of insurance
12 which was issued pursuant to this article, but was not trans-
13 ferred to the physician's mutual insurance company, until the
14 policy expires. Upon the expiration of the policy, the board
15 shall make tail coverage available at an appropriate premium
16 rate to be determined by the board. The board shall continue to
17 administer any tail coverage so provided. On the thirtieth day

18 of January each year, the board shall report to the legislature's
19 joint committee on government and finance the amount of any
20 unfunded liability associated with the run out and tail coverage
21 provided by this section.

ARTICLE 12C. PATIENT INJURY COMPENSATION PLAN.

§29-12C-1. Patient injury compensation plan study board created; purpose; study of creation and funding of patient injury compensation fund; developing rules and establishing program; and report to the Legislature.

§29-12C-2. Legislative rules.

§29-12C-1. Patient injury compensation plan study board created; purpose; study of creation and funding of patient injury compensation fund; developing rules and establishing program; and report to the Legislature.

1 (a) In recognition of the statewide concern over the rising
2 cost of medical malpractice insurance and the difficulty that
3 health care practitioners have in locating affordable medical
4 malpractice insurance, there is hereby created a patient injury
5 compensation fund study board to study the feasibility of
6 establishing a patient injury compensation fund to reimburse
7 claimants in medical malpractice actions for any portion of
8 economic damages awarded which are uncollectible due to
9 statutory limitations on damage awards for trauma care and/or
10 the elimination of joint and several liability of tortfeasor health
11 care providers and health care facilities.

12 (b) The patient injury compensation fund study board shall
13 consist of the director of the board of risk and insurance
14 management, who shall serve as chairperson, the insurance
15 commissioner and an appointee of the governor. The patient
16 injury compensation fund study board shall utilize the resources
17 of the board of risk and insurance management and the insur-
18 ance commission to effectuate the study required by this article.

19 The patient injury compensation fund study board shall meet
20 upon the call of the chair. A simple majority of the patient
21 injury compensation fund study board members constitutes a
22 quorum for the transaction of business.

23 (c) The patient injury compensation fund study board is
24 authorized to hold hearings, conduct investigations and con-
25 sider, without limitation, all options for identifying funding
26 methods and for the operation and administration of a patient
27 injury compensation fund within the following guidelines:

28 (1) The board of risk and insurance management is respon-
29 sible for implementing, administering and operating any patient
30 injury compensation fund;

31 (2) The patient injury compensation fund must be
32 actuarially sound and fully funded in accordance with generally
33 accepted accounting principles;

34 (3) Eligibility for reimbursement from the patient injury
35 compensation fund is limited to claimants who have been
36 awarded damages in a medical malpractice action but have been
37 certified by the board of risk and insurance management to be
38 unable, after exhausting all reasonable means available by law
39 of recovering the award, to collect all or part of the economic
40 damages awarded due to the limitations on awards established
41 in sections nine and nine-c, article seven-b, chapter fifty-five of
42 this code; and

43 (4) The board of risk and insurance management may invest
44 the moneys in the patient injury compensation fund and use any
45 interest or other return from investments to pay administration
46 expenses and claims granted.

47 (d) The patient injury compensation fund study board's
48 report and recommendations shall be completed no later than
49 the first day of December, two thousand three, and shall be

50 presented to the joint committee of government and finance
51 during the legislative interim meetings to be held in December,
52 two thousand three.

29-12C-2. Legislative rules.

1 (a) The Legislature hereby declares that an emergency
2 exists necessitating expeditious implementation of a patient
3 injury compensation fund, if economically feasible, and directs
4 the patient injury compensation fund study board to propose
5 emergency legislative rules relating to the establishment,
6 implementation and operation of the patient injury compensa-
7 tion fund in conjunction with its report and recommendations
8 to the Legislature under section one of this article. The rules
9 proposed by the patient injury compensation fund study board
10 shall:

11 (1) Provide the funding mechanism and the methodology
12 for processing and timely and accurately collect funds;

13 (2) Assure the actuarial soundness of the patient injury
14 compensation fund and sufficient moneys to satisfy all foresee-
15 able claims against the patient injury compensation fund, giving
16 due consideration to relevant loss or claim experience or trends
17 and normal costs of operation;

18 (3) Provide a reasonable reserve fund for unexpected
19 contingencies, consistent with generally accepted accounting
20 principles;

21 (4) Establish appropriate procedures for notification of
22 payment adjustments prior to any payment periods established
23 in which a funding adjustment will be in effect, consistent with
24 generally accepted accounting principles;

25 (5) Establish procedures for determining eligibility for and
26 distribution of funds to claimants seeking reimbursement;

27 (6) Establish the requirements and procedure for certifying
28 that a claimant has been unable to collect a portion of the
29 economic damages recovered;

30 (7) Establish the process for submitting a claim for payment
31 from the patient injury compensation fund; and

32 (8) Establish any additional requirements and criteria
33 consistent with and necessary to effectuate the provisions of
34 this article.

35 (b) If the Legislature accepts, in whole or in part, the
36 recommendations of the patient injury compensation fund study
37 board, enacts legislation establishing a patient injury compensa-
38 tion fund and approves rules governing the initial establish-
39 ment, implementation and operation of the patient injury
40 compensation fund, those rules shall be filed with the secretary
41 of state as emergency rules.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

3. West Virginia Medical Practice Act.

14. Osteopathic Physicians and Surgeons.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**§30-3-14. Professional discipline of physicians and podiatrists;
reporting of information to board pertaining to
medical professional liability and professional
incompetence required; penalties; grounds for
license denial and discipline of physicians and
podiatrists; investigations; physical and mental
examinations; hearings; sanctions; summary
sanctions; reporting by the board; reapplication;
civil and criminal immunity; voluntary limitation
of license; probable cause determinations.**

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings based
3 on information received from medical peer review committees,
4 physicians, podiatrists, hospital administrators, professional
5 societies and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon criminal
9 convictions; complaints by citizens, pharmacists, physicians,
10 podiatrists, peer review committees, hospital administrators,
11 professional societies or others; or unfavorable outcomes
12 arising out of medical professional liability. The board shall
13 initiate an investigation if it receives notice that three or more
14 judgments, or any combination of judgments and settlements
15 resulting in five or more unfavorable outcomes arising from
16 medical professional liability have been rendered or made
17 against the physician or podiatrist within a five-year period. The
18 board may not consider any judgments or settlements as
19 conclusive evidence of professional incompetence or conclusive
20 lack of qualification to practice.

21 (b) Upon request of the board, any medical peer review
22 committee in this state shall report any information that may
23 relate to the practice or performance of any physician or
24 podiatrist known to that medical peer review committee. Copies
25 of the requests for information from a medical peer review
26 committee may be provided to the subject physician or podia-
27 trist if, in the discretion of the board, the provision of such
28 copies will not jeopardize the board's investigation. In the event
29 that copies are provided, the subject physician or podiatrist is
30 allowed fifteen days to comment on the requested information
31 and such comments must be considered by the board.

32 The chief executive officer of every hospital shall, within
33 sixty days after the completion of the hospital's formal disci-

34 plinary procedure and also within sixty days after the com-
35 mencement of and again after the conclusion of any resulting
36 legal action, report in writing to the board the name of any
37 member of the medical staff or any other physician or podiatrist
38 practicing in the hospital whose hospital privileges have been
39 revoked, restricted, reduced or terminated for any cause,
40 including resignation, together with all pertinent information
41 relating to such action. The chief executive officer shall also
42 report any other formal disciplinary action taken against any
43 physician or podiatrist by the hospital upon the recommenda-
44 tion of its medical staff relating to professional ethics, medical
45 incompetence, medical professional liability, moral turpitude or
46 drug or alcohol abuse. Temporary suspension for failure to
47 maintain records on a timely basis or failure to attend staff or
48 section meetings need not be reported. Voluntary cessation of
49 hospital privileges for reasons unrelated to professional
50 competence or ethics need not be reported.

51 Any managed care organization operating in this state
52 which provides a formal peer review process shall report in
53 writing to the board, within sixty days after the completion of
54 any formal peer review process and also within sixty days after
55 the commencement of and again after the conclusion of any
56 resulting legal action, the name of any physician or podiatrist
57 whose credentialing has been revoked or not renewed by the
58 managed care organization. The managed care organization
59 shall also report in writing to the board any other disciplinary
60 action taken against a physician or podiatrist relating to
61 professional ethics, professional liability, moral turpitude or
62 drug or alcohol abuse within sixty days after completion of a
63 formal peer review process which results in the action taken by
64 the managed care organization. For purposes of this subsection,
65 “managed care organization” means a plan that establishes,
66 operates or maintains a network of health care providers who
67 have entered into agreements with and been credentialed by the
68 plan to provide health care services to enrollees or insureds to

69 whom the plan has the ultimate obligation to arrange for the
70 provision of or payment for health care services through
71 organizational arrangements for ongoing quality assurance,
72 utilization review programs or dispute resolutions.

73 Any professional society in this state comprised primarily
74 of physicians or podiatrists which takes formal disciplinary
75 action against a member relating to professional ethics, profes-
76 sional incompetence, medical professional liability, moral
77 turpitude or drug or alcohol abuse shall report in writing to the
78 board within sixty days of a final decision the name of the
79 member, together with all pertinent information relating to the
80 action.

81 Every person, partnership, corporation, association,
82 insurance company, professional society or other organization
83 providing professional liability insurance to a physician or
84 podiatrist in this state, including the state board of risk and
85 insurance management, shall submit to the board the following
86 information within thirty days from any judgment or settlement
87 of a civil or medical professional liability action excepting
88 product liability actions: The name of the insured; the date of
89 any judgment or settlement; whether any appeal has been taken
90 on the judgment and, if so, by which party; the amount of any
91 settlement or judgment against the insured; and other informa-
92 tion required by the board.

93 Within thirty days from the entry of an order by a court in
94 a medical professional liability action or other civil action in
95 which a physician or podiatrist licensed by the board is deter-
96 mined to have rendered health care services below the applica-
97 ble standard of care, the clerk of the court in which the order
98 was entered shall forward a certified copy of the order to the
99 board.

100 Within thirty days after a person known to be a physician
101 or podiatrist licensed or otherwise lawfully practicing medicine
102 and surgery or podiatry in this state or applying to be licensed
103 is convicted of a felony under the laws of this state or of any
104 crime under the laws of this state involving alcohol or drugs in
105 any way, including any controlled substance under state or
106 federal law, the clerk of the court of record in which the
107 conviction was entered shall forward to the board a certified
108 true and correct abstract of record of the convicting court. The
109 abstract shall include the name and address of the physician or
110 podiatrist or applicant, the nature of the offense committed and
111 the final judgment and sentence of the court.

112 Upon a determination of the board that there is probable
113 cause to believe that any person, partnership, corporation,
114 association, insurance company, professional society or other
115 organization has failed or refused to make a report required by
116 this subsection, the board shall provide written notice to the
117 alleged violator stating the nature of the alleged violation and
118 the time and place at which the alleged violator shall appear to
119 show good cause why a civil penalty should not be imposed.
120 The hearing shall be conducted in accordance with the provi-
121 sions of article five, chapter twenty-nine-a of this code. After
122 reviewing the record of the hearing, if the board determines that
123 a violation of this subsection has occurred, the board shall
124 assess a civil penalty of not less than one thousand dollars nor
125 more than ten thousand dollars against the violator. The board
126 shall notify any person so assessed of the assessment in writing
127 and the notice shall specify the reasons for the assessment. If
128 the violator fails to pay the amount of the assessment to the
129 board within thirty days, the attorney general may institute a
130 civil action in the circuit court of Kanawha County to recover
131 the amount of the assessment. In any civil action, the court's
132 review of the board's action shall be conducted in accordance
133 with the provisions of section four, article five, chapter twenty-
134 nine-a of this code. Notwithstanding any other provision of this

135 article to the contrary, when there are conflicting views by
136 recognized experts as to whether any alleged conduct breaches
137 an applicable standard of care, the evidence must be clear and
138 convincing before the board may find that the physician or
139 podiatrist has demonstrated a lack of professional competence
140 to practice with a reasonable degree of skill and safety for
141 patients.

142 Any person may report to the board relevant facts about the
143 conduct of any physician or podiatrist in this state which in the
144 opinion of that person amounts to medical professional liability
145 or professional incompetence.

146 The board shall provide forms for filing reports pursuant to
147 this section. Reports submitted in other forms shall be accepted
148 by the board.

149 The filing of a report with the board pursuant to any
150 provision of this article, any investigation by the board or any
151 disposition of a case by the board does not preclude any action
152 by a hospital, other health care facility or professional society
153 comprised primarily of physicians or podiatrists to suspend,
154 restrict or revoke the privileges or membership of the physician
155 or podiatrist.

156 (c) The board may deny an application for license or other
157 authorization to practice medicine and surgery or podiatry in
158 this state and may discipline a physician or podiatrist licensed
159 or otherwise lawfully practicing in this state who, after a
160 hearing, has been adjudged by the board as unqualified due to
161 any of the following reasons:

162 (1) Attempting to obtain, obtaining, renewing or attempting
163 to renew a license to practice medicine and surgery or podiatry
164 by bribery, fraudulent misrepresentation or through known error
165 of the board;

166 (2) Being found guilty of a crime in any jurisdiction, which
167 offense is a felony, involves moral turpitude or directly relates
168 to the practice of medicine. Any plea of nolo contendere is a
169 conviction for the purposes of this subdivision;

170 (3) False or deceptive advertising;

171 (4) Aiding, assisting, procuring or advising any unautho-
172 rized person to practice medicine and surgery or podiatry
173 contrary to law;

174 (5) Making or filing a report that the person knows to be
175 false; intentionally or negligently failing to file a report or
176 record required by state or federal law; willfully impeding or
177 obstructing the filing of a report or record required by state or
178 federal law; or inducing another person to do any of the
179 foregoing. The reports and records covered in this subdivision
180 mean only those that are signed in the capacity as a licensed
181 physician or podiatrist;

182 (6) Requesting, receiving or paying directly or indirectly a
183 payment, rebate, refund, commission, credit or other form of
184 profit or valuable consideration for the referral of patients to
185 any person or entity in connection with providing medical or
186 other health care services or clinical laboratory services,
187 supplies of any kind, drugs, medication or any other medical
188 goods, services or devices used in connection with medical or
189 other health care services;

190 (7) Unprofessional conduct by any physician or podiatrist
191 in referring a patient to any clinical laboratory or pharmacy in
192 which the physician or podiatrist has a proprietary interest
193 unless the physician or podiatrist discloses in writing such
194 interest to the patient. The written disclosure shall indicate that
195 the patient may choose any clinical laboratory for purposes of
196 having any laboratory work or assignment performed or any
197 pharmacy for purposes of purchasing any prescribed drug or

198 any other medical goods or devices used in connection with
199 medical or other health care services.

200 As used in this subdivision, “proprietary interest” does not
201 include an ownership interest in a building in which space is
202 leased to a clinical laboratory or pharmacy at the prevailing rate
203 under a lease arrangement that is not conditional upon the
204 income or gross receipts of the clinical laboratory or pharmacy;

205 (8) Exercising influence within a patient-physician relation-
206 ship for the purpose of engaging a patient in sexual activity;

207 (9) Making a deceptive, untrue or fraudulent representation
208 in the practice of medicine and surgery or podiatry;

209 (10) Soliciting patients, either personally or by an agent,
210 through the use of fraud, intimidation or undue influence;

211 (11) Failing to keep written records justifying the course of
212 treatment of a patient, including, but not limited to, patient
213 histories, examination and test results and treatment rendered,
214 if any;

215 (12) Exercising influence on a patient in such a way as to
216 exploit the patient for financial gain of the physician or
217 podiatrist or of a third party. Any influence includes, but is not
218 limited to, the promotion or sale of services, goods, appliances
219 or drugs;

220 (13) Prescribing, dispensing, administering, mixing or
221 otherwise preparing a prescription drug, including any con-
222 trolled substance under state or federal law, other than in good
223 faith and in a therapeutic manner in accordance with accepted
224 medical standards and in the course of the physician’s or
225 podiatrist’s professional practice: *Provided*, That a physician
226 who discharges his or her professional obligation to relieve the
227 pain and suffering and promote the dignity and autonomy of

228 dying patients in his or her care and, in so doing, exceeds the
229 average dosage of a pain relieving controlled substance, as
230 defined in Schedules II and III of the Uniform Controlled
231 Substance Act, does not violate this article;

232 (14) Performing any procedure or prescribing any therapy
233 that, by the accepted standards of medical practice in the
234 community, would constitute experimentation on human
235 subjects without first obtaining full, informed and written
236 consent;

237 (15) Practicing or offering to practice beyond the scope
238 permitted by law or accepting and performing professional
239 responsibilities that the person knows or has reason to know he
240 or she is not competent to perform;

241 (16) Delegating professional responsibilities to a person
242 when the physician or podiatrist delegating the responsibilities
243 knows or has reason to know that the person is not qualified by
244 training, experience or licensure to perform them;

245 (17) Violating any provision of this article or a rule or order
246 of the board or failing to comply with a subpoena or subpoena
247 duces tecum issued by the board;

248 (18) Conspiring with any other person to commit an act or
249 committing an act that would tend to coerce, intimidate or
250 preclude another physician or podiatrist from lawfully advertis-
251 ing his or her services;

252 (19) Gross negligence in the use and control of prescription
253 forms;

254 (20) Professional incompetence; or

255 (21) The inability to practice medicine and surgery or
256 podiatry with reasonable skill and safety due to physical or

257 mental impairment, including deterioration through the aging
258 process, loss of motor skill or abuse of drugs or alcohol. A
259 physician or podiatrist adversely affected under this subdivision
260 shall be afforded an opportunity at reasonable intervals to
261 demonstrate that he or she may resume the competent practice
262 of medicine and surgery or podiatry with reasonable skill and
263 safety to patients. In any proceeding under this subdivision,
264 neither the record of proceedings nor any orders entered by the
265 board shall be used against the physician or podiatrist in any
266 other proceeding.

267 (d) The board shall deny any application for a license or
268 other authorization to practice medicine and surgery or podiatry
269 in this state to any applicant who, and shall revoke the license
270 of any physician or podiatrist licensed or otherwise lawfully
271 practicing within this state who, is found guilty by any court of
272 competent jurisdiction of any felony involving prescribing,
273 selling, administering, dispensing, mixing or otherwise prepar-
274 ing any prescription drug, including any controlled substance
275 under state or federal law, for other than generally accepted
276 therapeutic purposes. Presentation to the board of a certified
277 copy of the guilty verdict or plea rendered in the court is
278 sufficient proof thereof for the purposes of this article. A plea
279 of nolo contendere has the same effect as a verdict or plea of
280 guilt.

281 (e) The board may refer any cases coming to its attention to
282 an appropriate committee of an appropriate professional
283 organization for investigation and report. Except for complaints
284 related to obtaining initial licensure to practice medicine and
285 surgery or podiatry in this state by bribery or fraudulent
286 misrepresentation, any complaint filed more than two years
287 after the complainant knew, or in the exercise of reasonable
288 diligence should have known, of the existence of grounds for
289 the complaint shall be dismissed: *Provided*, That in cases of
290 conduct alleged to be part of a pattern of similar misconduct or

291 professional incapacity that, if continued, would pose risks of
292 a serious or substantial nature to the physician's or podiatrist's
293 current patients, the investigating body may conduct a limited
294 investigation related to the physician's or podiatrist's current
295 capacity and qualification to practice and may recommend
296 conditions, restrictions or limitations on the physician's or
297 podiatrist's license to practice that it considers necessary for the
298 protection of the public. Any report shall contain recommenda-
299 tions for any necessary disciplinary measures and shall be filed
300 with the board within ninety days of any referral. The recom-
301 mendations shall be considered by the board and the case may
302 be further investigated by the board. The board after full
303 investigation shall take whatever action it considers appropri-
304 ate, as provided in this section.

305 (f) The investigating body, as provided for in subsection (e)
306 of this section, may request and the board under any circum-
307 stances may require a physician or podiatrist or person applying
308 for licensure or other authorization to practice medicine and
309 surgery or podiatry in this state to submit to a physical or
310 mental examination by a physician or physicians approved by
311 the board. A physician or podiatrist submitting to an examina-
312 tion has the right, at his or her expense, to designate another
313 physician to be present at the examination and make an
314 independent report to the investigating body or the board. The
315 expense of the examination shall be paid by the board. Any
316 individual who applies for or accepts the privilege of practicing
317 medicine and surgery or podiatry in this state is considered to
318 have given his or her consent to submit to all examinations
319 when requested to do so in writing by the board and to have
320 waived all objections to the admissibility of the testimony or
321 examination report of any examining physician on the ground
322 that the testimony or report is privileged communication. If a
323 person fails or refuses to submit to an examination under
324 circumstances which the board finds are not beyond his or her
325 control, failure or refusal is prima facie evidence of his or her

326 inability to practice medicine and surgery or podiatry compe-
327 tently and in compliance with the standards of acceptable and
328 prevailing medical practice.

329 (g) In addition to any other investigators it employs, the
330 board may appoint one or more licensed physicians to act for it
331 in investigating the conduct or competence of a physician.

332 (h) In every disciplinary or licensure denial action, the
333 board shall furnish the physician or podiatrist or applicant with
334 written notice setting out with particularity the reasons for its
335 action. Disciplinary and licensure denial hearings shall be
336 conducted in accordance with the provisions of article five,
337 chapter twenty-nine-a of this code. However, hearings shall be
338 heard upon sworn testimony and the rules of evidence for trial
339 courts of record in this state shall apply to all hearings. A
340 transcript of all hearings under this section shall be made, and
341 the respondent may obtain a copy of the transcript at his or her
342 expense. The physician or podiatrist has the right to defend
343 against any charge by the introduction of evidence, the right to
344 be represented by counsel, the right to present and cross-
345 examine witnesses and the right to have subpoenas and subpoe-
346 nas duces tecum issued on his or her behalf for the attendance
347 of witnesses and the production of documents. The board shall
348 make all its final actions public. The order shall contain the
349 terms of all action taken by the board.

350 (i) In disciplinary actions in which probable cause has been
351 found by the board, the board shall, within twenty days of the
352 date of service of the written notice of charges or sixty days
353 prior to the date of the scheduled hearing, whichever is sooner,
354 provide the respondent with the complete identity, address and
355 telephone number of any person known to the board with
356 knowledge about the facts of any of the charges; provide a copy
357 of any statements in the possession of or under the control of
358 the board; provide a list of proposed witnesses with addresses

359 and telephone numbers, with a brief summary of his or her
360 anticipated testimony; provide disclosure of any trial expert
361 pursuant to the requirements of rule 26(b)(4) of the West
362 Virginia rules of civil procedure; provide inspection and
363 copying of the results of any reports of physical and mental
364 examinations or scientific tests or experiments; and provide a
365 list and copy of any proposed exhibit to be used at the hearing:
366 *Provided*, That the board shall not be required to furnish or
367 produce any materials which contain opinion work product
368 information or would be a violation of the attorney-client
369 privilege. Within twenty days of the date of service of the
370 written notice of charges, the board shall disclose any exculpa-
371 tory evidence with a continuing duty to do so throughout the
372 disciplinary process. Within thirty days of receipt of the board's
373 mandatory discovery, the respondent shall provide the board
374 with the complete identity, address and telephone number of
375 any person known to the respondent with knowledge about the
376 facts of any of the charges; provide a list of proposed witnesses
377 with addresses and telephone numbers, to be called at hearing,
378 with a brief summary of his or her anticipated testimony;
379 provide disclosure of any trial expert pursuant to the require-
380 ments of rule 26(b)(4) of the West Virginia rules of civil
381 procedure; provide inspection and copying of the results of any
382 reports of physical and mental examinations or scientific tests
383 or experiments; and provide a list and copy of any proposed
384 exhibit to be used at the hearing.

385 (j) Whenever it finds any person unqualified because of any
386 of the grounds set forth in subsection (c) of this section, the
387 board may enter an order imposing one or more of the follow-
388 ing:

389 (1) Deny his or her application for a license or other
390 authorization to practice medicine and surgery or podiatry;

391 (2) Administer a public reprimand;

392 (3) Suspend, limit or restrict his or her license or other
393 authorization to practice medicine and surgery or podiatry for
394 not more than five years, including limiting the practice of that
395 person to, or by the exclusion of, one or more areas of practice,
396 including limitations on practice privileges;

397 (4) Revoke his or her license or other authorization to
398 practice medicine and surgery or podiatry or to prescribe or
399 dispense controlled substances for a period not to exceed ten
400 years;

401 (5) Require him or her to submit to care, counseling or
402 treatment designated by the board as a condition for initial or
403 continued licensure or renewal of licensure or other authoriza-
404 tion to practice medicine and surgery or podiatry;

405 (6) Require him or her to participate in a program of
406 education prescribed by the board;

407 (7) Require him or her to practice under the direction of a
408 physician or podiatrist designated by the board for a specified
409 period of time; and

410 (8) Assess a civil fine of not less than one thousand dollars
411 nor more than ten thousand dollars.

412 (k) Notwithstanding the provisions of section eight, article
413 one, chapter thirty of this code, if the board determines the
414 evidence in its possession indicates that a physician's or
415 podiatrist's continuation in practice or unrestricted practice
416 constitutes an immediate danger to the public, the board may
417 take any of the actions provided for in subsection (j) of this
418 section on a temporary basis and without a hearing if institution
419 of proceedings for a hearing before the board are initiated
420 simultaneously with the temporary action and begin within
421 fifteen days of the action. The board shall render its decision

422 within five days of the conclusion of a hearing under this
423 subsection.

424 (l) Any person against whom disciplinary action is taken
425 pursuant to the provisions of this article has the right to judicial
426 review as provided in articles five and six, chapter twenty-nine-
427 a of this code: *Provided*, That a circuit judge may also remand
428 the matter to the board if it appears from competent evidence
429 presented to it in support of a motion for remand that there is
430 newly discovered evidence of such a character as ought to
431 produce an opposite result at a second hearing on the merits
432 before the board and:

433 (1) The evidence appears to have been discovered since the
434 board hearing; and

435 (2) The physician or podiatrist exercised due diligence in
436 asserting his or her evidence and that due diligence would not
437 have secured the newly discovered evidence prior to the appeal.

438 A person may not practice medicine and surgery or podiatry
439 or deliver health care services in violation of any disciplinary
440 order revoking, suspending or limiting his or her license while
441 any appeal is pending. Within sixty days, the board shall report
442 its final action regarding restriction, limitation, suspension or
443 revocation of the license of a physician or podiatrist, limitation
444 on practice privileges or other disciplinary action against any
445 physician or podiatrist to all appropriate state agencies, appro-
446 priate licensed health facilities and hospitals, insurance compa-
447 nies or associations writing medical malpractice insurance in
448 this state, the American medical association, the American
449 podiatry association, professional societies of physicians or
450 podiatrists in the state and any entity responsible for the fiscal
451 administration of medicare and medicaid.

452 (m) Any person against whom disciplinary action has been
453 taken under the provisions of this article shall, at reasonable

454 intervals, be afforded an opportunity to demonstrate that he or
455 she can resume the practice of medicine and surgery or podiatry
456 on a general or limited basis. At the conclusion of a suspension,
457 limitation or restriction period the physician or podiatrist may
458 resume practice if the board has so ordered.

459 (n) Any entity, organization or person, including the board,
460 any member of the board, its agents or employees and any
461 entity or organization or its members referred to in this article,
462 any insurer, its agents or employees, a medical peer review
463 committee and a hospital governing board, its members or any
464 committee appointed by it acting without malice and without
465 gross negligence in making any report or other information
466 available to the board or a medical peer review committee
467 pursuant to law and any person acting without malice and
468 without gross negligence who assists in the organization,
469 investigation or preparation of any such report or information
470 or assists the board or a hospital governing body or any
471 committee in carrying out any of its duties or functions pro-
472 vided by law is immune from civil or criminal liability, except
473 that the unlawful disclosure of confidential information
474 possessed by the board is a misdemeanor as provided for in this
475 article.

476 (o) A physician or podiatrist may request in writing to the
477 board a limitation on or the surrendering of his or her license to
478 practice medicine and surgery or podiatry or other appropriate
479 sanction as provided in this section. The board may grant the
480 request and, if it considers it appropriate, may waive the
481 commencement or continuation of other proceedings under this
482 section. A physician or podiatrist whose license is limited or
483 surrendered or against whom other action is taken under this
484 subsection may, at reasonable intervals, petition for removal of
485 any restriction or limitation on or for reinstatement of his or her
486 license to practice medicine and surgery or podiatry.

487 (p) In every case considered by the board under this article
488 regarding discipline or licensure, whether initiated by the board
489 or upon complaint or information from any person or organiza-
490 tion, the board shall make a preliminary determination as to
491 whether probable cause exists to substantiate charges of
492 disqualification due to any reason set forth in subsection (c) of
493 this section. If probable cause is found to exist, all proceedings
494 on the charges shall be open to the public who are entitled to all
495 reports, records and nondeliberative materials introduced at the
496 hearing, including the record of the final action taken: *Pro-*
497 *vided*, That any medical records, which were introduced at the
498 hearing and which pertain to a person who has not expressly
499 waived his or her right to the confidentiality of the records, may
500 not be open to the public nor is the public entitled to the
501 records.

502 (q) If the board receives notice that a physician or podiatrist
503 has been subjected to disciplinary action or has had his or her
504 credentials suspended or revoked by the board, a hospital or a
505 professional society, as defined in subsection (b) of this section,
506 for three or more incidents during a five-year period, the board
507 shall require the physician or podiatrist to practice under the
508 direction of a physician or podiatrist designated by the board for
509 a specified period of time to be established by the board.

510 (r) Notwithstanding any other provisions of this article, the
511 board may, at any time, on its own motion, or upon motion by
512 the complainant, or upon motion by the physician or podiatrist,
513 or by stipulation of the parties, refer the matter to mediation.
514 The board shall obtain a list from the West Virginia state bar's
515 mediator referral service of certified mediators with expertise
516 in professional disciplinary matters. The board and the physi-
517 cian or podiatrist may choose a mediator from that list. If the
518 board and the physician or podiatrist are unable to agree on a
519 mediator, the board shall designate a mediator from the list by
520 neutral rotation. The mediation shall not be considered a

521 proceeding open to the public and any reports and records
522 introduced at the mediation shall not become part of the public
523 record. The mediator and all participants in the mediation shall
524 maintain and preserve the confidentiality of all mediation
525 proceedings and records. The mediator may not be subpoenaed
526 or called to testify or otherwise be subject to process requiring
527 disclosure of confidential information in any proceeding
528 relating to or arising out of the disciplinary or licensure matter
529 mediated: *Provided*, That any confidentiality agreement and
530 any written agreement made and signed by the parties as a
531 result of mediation may be used in any proceedings subse-
532 quently instituted to enforce the written agreement. The
533 agreements may be used in other proceedings if the parties
534 agree in writing.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations.

1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received from any
4 person.

5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed osteopathic
7 physician and surgeon may be adjudged unqualified if the board
8 receives notice that three or more judgments or any combina-
9 tion of judgments and settlements resulting in five or more
10 unfavorable outcomes arising from medical professional
11 liability have been rendered or made against such osteopathic
12 physician within a five-year period.

13 (b) Upon request of the board, any medical peer review
14 committee in this state shall report any information that may
15 relate to the practice or performance of any osteopathic
16 physician known to that medical peer review committee. Copies
17 of such requests for information from a medical peer review
18 committee may be provided to the subject osteopathic physician
19 if, in the discretion of the board, the provision of such copies
20 will not jeopardize the board's investigation. In the event that
21 copies are provided, the subject osteopathic physician has
22 fifteen days to comment on the requested information and such
23 comments must be considered by the board.

24 After the completion of a hospital's formal disciplinary
25 procedure and after any resulting legal action, the chief execu-
26 tive officer of such hospital shall report in writing to the board
27 within sixty days the name of any member of the medical staff
28 or any other osteopathic physician practicing in the hospital
29 whose hospital privileges have been revoked, restricted,
30 reduced or terminated for any cause, including resignation,
31 together with all pertinent information relating to such action.
32 The chief executive officer shall also report any other formal
33 disciplinary action taken against any osteopathic physician by
34 the hospital upon the recommendation of its medical staff
35 relating to professional ethics, medical incompetence, medical
36 malpractice, moral turpitude or drug or alcohol abuse. Tempo-
37 rary suspension for failure to maintain records on a timely basis
38 or failure to attend staff or section meetings need not be
39 reported.

40 Any professional society in this state comprised primarily
41 of osteopathic physicians or physicians and surgeons of other
42 schools of medicine which takes formal disciplinary action
43 against a member relating to professional ethics, professional
44 incompetence, professional malpractice, moral turpitude or
45 drug or alcohol abuse, shall report in writing to the board within

46 sixty days of a final decision the name of such member,
47 together with all pertinent information relating to such action.

48 Every person, partnership, corporation, association,
49 insurance company, professional society or other organization
50 providing professional liability insurance to an osteopathic
51 physician in this state shall submit to the board the following
52 information within thirty days from any judgment, dismissal or
53 settlement of a civil action or of any claim involving the
54 insured: The date of any judgment, dismissal or settlement;
55 whether any appeal has been taken on the judgment, and, if so,
56 by which party; the amount of any settlement or judgment
57 against the insured; and such other information required by the
58 board.

59 Within thirty days after a person known to be an osteo-
60 pathic physician licensed or otherwise lawfully practicing
61 medicine and surgery in this state or applying to be licensed is
62 convicted of a felony under the laws of this state, or of any
63 crime under the laws of this state involving alcohol or drugs in
64 any way, including any controlled substance under state or
65 federal law, the clerk of the court of record in which the
66 conviction was entered shall forward to the board a certified
67 true and correct abstract of record of the convicting court. The
68 abstract shall include the name and address of such osteopathic
69 physician or applicant, the nature of the offense committed and
70 the final judgment and sentence of the court.

71 Upon a determination of the board that there is probable
72 cause to believe that any person, partnership, corporation,
73 association, insurance company, professional society or other
74 organization has failed or refused to make a report required by
75 this subsection, the board shall provide written notice to the
76 alleged violator stating the nature of the alleged violation and
77 the time and place at which the alleged violator shall appear to
78 show good cause why a civil penalty should not be imposed.

79 The hearing shall be conducted in accordance with the provi-
80 sions of article five, chapter twenty-nine-a of this code. After
81 reviewing the record of such hearing, if the board determines
82 that a violation of this subsection has occurred, the board shall
83 assess a civil penalty of not less than one thousand dollars nor
84 more than ten thousand dollars against such violator. The board
85 shall notify anyone assessed of the assessment in writing and
86 the notice shall specify the reasons for the assessment. If the
87 violator fails to pay the amount of the assessment to the board
88 within thirty days, the attorney general may institute a civil
89 action in the circuit court of Kanawha County to recover the
90 amount of the assessment. In any such civil action, the court's
91 review of the board's action shall be conducted in accordance
92 with the provisions of section four, article five, chapter twenty-
93 nine-a of this code.

94 Any person may report to the board relevant facts about the
95 conduct of any osteopathic physician in this state which in the
96 opinion of such person amounts to professional malpractice or
97 professional incompetence.

98 The board shall provide forms for filing reports pursuant to
99 this section. Reports submitted in other forms shall be accepted
100 by the board.

101 The filing of a report with the board pursuant to any
102 provision of this article, any investigation by the board or any
103 disposition of a case by the board does not preclude any action
104 by a hospital, other health care facility or professional society
105 comprised primarily of osteopathic physicians or physicians
106 and surgeons of other schools of medicine to suspend, restrict
107 or revoke the privileges or membership of such osteopathic
108 physician.

109 (c) In every case considered by the board under this article
110 regarding suspension, revocation or issuance of a license

whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a license as set forth in subsection (a), section eleven of this article. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: *Provided*, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

(d) If the board receives notice that an osteopathic physician has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a medical peer review committee, a hospital or professional society, as defined in subsection (b) of this section, for three or more incidents in a five-year period, the board shall require the osteopathic physician to practice under the direction of another osteopathic physician for a specified period to be established by the board.

CHAPTER 33. INSURANCE.

Article

2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurers.
4. General Provisions.
- 20B. Rates and Malpractice Insurance Policies.

- 20F. Physicians' Mutual Insurance Company.
- 25A. Health Maintenance Organization Act.
- 25D. Prepaid Limited Health Service Organization Act.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9a. Imposing a one-time assessment on all insurance carriers.

1 For the purpose of completely novating the physician
2 liability currently borne by the state under the West Virginia
3 health care provider professional liability insurance availability
4 act found in article twelve-b, chapter twenty-nine of this code,
5 and to help capitalize the physicians' mutual insurance com-
6 pany created pursuant to article twenty-f of this chapter, and for
7 all the reasons set forth in section two of said article, the
8 insurance commissioner shall impose a special one-time
9 assessment of two thousand five hundred dollars on all insurers
10 licensed under this chapter for the privilege of writing insurance
11 in the state of West Virginia, except risk retention groups
12 defined in subsection (f), section four, article thirty-two of this
13 chapter and risk purchasing groups defined in subsection (e),
14 section seventeen of said article. The assessment is due and
15 payable on the first day of July, two thousand three. The
16 commissioner shall transfer funds collected pursuant to this
17 section to the physicians' mutual insurance company.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

- §33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.
- §33-3-14a. Additional premium tax.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

1 (a) Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day of
3 March, each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the commis-
5 sioner. The insurer shall also, on or before the first day of
6 March of each year subject to the provisions of section four-
7 teen-c of this article, under the oath of its president or secretary,
8 make a premium tax return for the previous calendar year, on
9 a form prescribed by the commissioner showing the gross
10 amount of direct premiums, whether designated as a premium
11 or by some other name, collected and received by it during the
12 previous calendar year on policies covering risks resident,
13 located or to be performed in this state and compute the amount
14 of premium tax chargeable to it in accordance with the provi-
15 sions of this article, deducting the amount of quarterly pay-
16 ments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium, and also
22 includes any additional tax due under section fourteen-a of this
23 article. All taxes received by the commissioner shall be paid
24 into the insurance tax fund created in subsection (b) of this
25 section: *Provided*, That each year, the first one million six
26 hundred sixty-seven thousand dollars of the portion of taxes
27 received by the commissioner from insurance policies for
28 medical liability insurance as defined in section three, article
29 twenty-f of this chapter and from any insurer on its medical
30 malpractice line, shall be temporarily dedicated to replenishing
31 moneys appropriated from the tobacco settlement account
32 pursuant to subsection (c), section two, article eleven-a, chapter
33 four of this code. Upon determination by the commissioner that
34 these moneys have been fully replenished to the tobacco
35 settlement account, the commissioner shall resume depositing

36 taxes received from medical malpractice premiums as provided
37 in subsection (b) of this section.

38 (b) There is created in the state treasury a special revenue
39 fund, administered by the treasurer, designated the "insurance
40 tax fund." This fund is not part of the general revenue fund of
41 the state. It consists of all amounts deposited in the fund
42 pursuant to subsection (a) of this section, sections fifteen and
43 seventeen of this article, any appropriations to the fund, all
44 interest earned from investment of the fund and any gifts, grants
45 or contributions received by the fund.

46 (c) The treasurer shall dedicate and transfer from the
47 insurance tax fund to the regional jail and correctional facility
48 investment fund created under the provisions of section
49 twenty-one, article six, chapter twelve of this code, on or before
50 the tenth day of each month, an amount equal to one twelfth of
51 the projected annual investment earnings to be paid and the
52 capital invested to be returned, as certified to the treasurer by
53 the investment management board: *Provided*, That the amount
54 dedicated and transferred may not exceed twenty million dollars
55 in any fiscal year. In the event there are insufficient funds
56 available in any month to transfer the amount required pursuant
57 to this subsection to the regional jail and correctional facility
58 investment fund, the deficiency shall be added to the amount
59 transferred in the next succeeding month in which revenues are
60 available to transfer the deficiency. Each month a lien on the
61 revenues generated from the insurance premium tax, the
62 annuity tax and the minimum tax, provided in this section and
63 sections fifteen and seventeen of this article, up to a maximum
64 amount equal to one twelfth of the projected annual principal
65 and return is granted to the investment management board to
66 secure the investment made with the regional jail and correc-
67 tional facility authority pursuant to section twenty, article six,
68 chapter twelve of this code. The treasurer shall, no later than the
69 last business day of each month, transfer amounts the treasurer

70 determines are not necessary for making refunds under this
71 article to meet the requirements of subsection (d), section
72 twenty-one, article six, chapter twelve of this code, to the credit
73 of the general revenue fund. Commencing on the first day of the
74 month following the month in which the investment created
75 under the provisions of section twenty-one, article six, chapter
76 twelve of this code, is returned to the investment management
77 board, the treasurer shall transfer all amounts deposited in the
78 insurance tax fund as appropriated by the Legislature.

§33-3-14a. Additional premium tax.

1 For the purpose of providing additional revenue for the
2 state general revenue fund, there is hereby levied and imposed,
3 in addition to the taxes imposed by section fourteen of this
4 article, an additional premium tax equal to one percent of
5 taxable premiums. Except as otherwise provided in this section,
6 all provisions of this article relating to the levy, imposition and
7 collection of the regular premium tax shall be applicable to the
8 levy, imposition and collection of the additional tax. All
9 moneys received from the additional tax imposed by this
10 section, less deductions allowed by this article for refunds and
11 for costs of administration, shall be received by the commis-
12 sioner and shall be paid by him or her into the state treasury for
13 the benefit of the state fund: *Provided*, That each year, the first
14 eight hundred thirty-three thousand dollars of the portion of
15 taxes received by the commissioner from insurance policies for
16 medical liability insurance as defined in section three, article
17 twenty-f of this chapter and from any insurer on its medical
18 malpractice line, shall be temporarily dedicated to replenishing
19 moneys appropriated from the tobacco settlement account
20 pursuant to subsection (c), section two, article eleven-a of
21 chapter four of this code. Upon determination by the commis-
22 sioner that these moneys have been fully replenished to the
23 tobacco settlement account, the commissioner shall resume

24 depositing taxes received from medical malpractice premiums
25 as provided herein.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; secu- rity; effective date.

1 (a) For purposes of this section, an “accredited reinsurer”
2 is one which:

3 (1) Has filed an application for accreditation and received
4 a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in at
6 least one of the fifty states of the United States or the District
7 of Columbia or, in the case of a United States branch of an alien
8 assuming insurer, is entered through and licensed to transact
9 insurance or reinsurance in at least one of the fifty states of the
10 United States or the District of Columbia;

11 (3) Has filed with the application a certified statement that
12 the company submits to this state’s jurisdiction and that the
13 company will comply with the laws and rules of the state of
14 West Virginia;

15 (4) Has filed with the application a certified statement that
16 the company submits to the examination authority granted the
17 commissioner by section nine, article two of this chapter and
18 will pay all examination costs and fees as required by that
19 section, and the one-time assessment on insurers imposed under
20 section nine-a, article two of this chapter;

21 (5) Has filed with the application a copy of its most recent
22 annual statement in a form consistent with the requirements of

23 subdivision (8) of this subsection and a copy of its last audited
24 financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for accredita-
27 tion under this section;

28 (7) Has remitted the applicable processing fee with its
29 application for accreditation;

30 (8) Files with the commissioner after initial accreditation on
31 or before the first day of March of each year a true statement of
32 its financial condition, transactions and affairs as of the
33 preceding thirty-first day of December. The statement shall be
34 on the appropriate national association of insurance commis-
35 sioners annual statement blank; shall be prepared in accordance
36 with the national association of insurance commissioners
37 annual statement instructions; and shall follow the accounting
38 practices and procedures prescribed by the national association
39 of insurance commissioners accounting practices and proce-
40 dures manual as amended. The statement shall be accompanied
41 by the applicable annual statement filing fee. The commissioner
42 may grant extensions of time for filing of this annual statement
43 upon application by the accredited reinsurer; and

44 (9) Files with the commissioner after initial accreditation by
45 the first day of June of each year a copy of its audited financial
46 statement for the period ending the preceding thirty-first day of
47 December.

48 (b) If the commissioner determines that the assuming
49 insurer has failed to continue to meet any of these qualifica-
50 tions, he or she may upon written notice and hearing, as
51 prescribed by section thirteen, article two of this chapter,
52 revoke an assuming insurer's accreditation. Credit shall not be
53 allowed to a ceding insurer if the assuming insurer's accredita-

54 tion has been revoked by the commissioner after notice and
55 hearing.

56 (c) Credit for reinsurance shall be allowed a domestic
57 ceding insurer or any foreign or alien insurer transacting
58 insurance in West Virginia that is domiciled in a jurisdiction
59 that employs standards regarding credit for reinsurance that are
60 not substantially similar to those applicable under this article as
61 either an asset or a deduction from liability on account of
62 reinsurance ceded only when the reinsurer meets one of the
63 following requirements:

64 (1) Credit shall be allowed when the reinsurance is ceded
65 to an assuming insurer which is licensed to transact insurance
66 or reinsurance in this state.

67 (2) Credit shall be allowed when the reinsurance is ceded
68 to an assuming insurer which is accredited as a reinsurer in this
69 state prior to the effective date of the reinsurance contract.

70 (3) Credit shall be allowed when the reinsurance is ceded
71 to an assuming insurer which is domiciled and licensed in, or in
72 the case of a United States branch of an alien assuming insurer,
73 is entered through one of the fifty states of the United States or
74 the District of Columbia and which employs standards regard-
75 ing credit for reinsurance substantially similar to those applica-
76 ble under this statute, and the ceding insurer provides evidence
77 suitable to the commissioner that the assuming insurer:

78 (A) Maintains a surplus as regards policyholders in an
79 amount not less than twenty million dollars: *Provided*, That the
80 requirements of this paragraph do not apply to reinsurance
81 ceded and assumed pursuant to pooling arrangements among
82 insurers in the same holding company system;

83 (B) The ceding insurer provides the commissioner with a
84 certified statement from the assuming insurer that the assuming

85 insurer submits to the authority of this state to examine its
36 books and records granted the commissioner by section nine,
87 article two of this chapter and will pay all examination costs
88 and fees as required by that section; and

89 (C) The reinsurer complies with the provisions of subdivi-
90 sion (6), subsection (c) herein.

91 (4) Credit shall be allowed when the reinsurance is ceded
92 to an assuming insurer which maintains a trust fund as required
93 by subsection (d) herein in a qualified United States financial
94 institution, as defined by this section, for the payment of the
95 valid claims of its United States policyholders and ceding
96 insurers, their assigns and successors in interest, and complies
97 with the provisions of subdivision (6) herein.

98 (5) Credit shall be allowed when the reinsurance is ceded
99 to an assuming insurer not meeting the requirements of subdivi-
100 sions (1) through (4), inclusive, subsection (c) of this section,
101 but only with respect to the insurance of risks located in
102 jurisdictions where such reinsurance is required by applicable
103 law or regulation of that jurisdiction.

104 (6) If the assuming insurer is not licensed or accredited to
105 transact insurance or reinsurance in this state, the credit
106 permitted by subdivisions (3) and (4) of this subsection shall
107 not be allowed unless the assuming insurer agrees in the
108 reinsurance agreements:

109 (A) That in the event of the failure of the assuming insurer
110 to perform its obligations under the terms of the reinsurance
111 agreement, the assuming insurer, at the request of the ceding
112 insurer, shall submit to the jurisdiction of any court of compe-
113 tent jurisdiction in any state of the United States, shall comply
114 with all requirements necessary to give such court jurisdiction
115 and shall abide by the final decision of such court or of any
116 appellate court in the event of an appeal; and

117 (B) To designate the secretary of state as its true and lawful
118 attorney upon whom may be served any lawful process in any
119 action, suit or proceeding instituted by or on behalf of the
120 ceding company. Process shall be served upon the secretary of
121 state, or accepted by him or her, in the same manner as pro-
122 vided for service of process upon unlicensed insurers under
123 section thirteen of this article: *Provided*, That this provision is
124 not intended to conflict with or override the obligation of the
125 parties to a reinsurance agreement to arbitrate their disputes, if
126 such an obligation is created in the agreement.

127 (d) Whenever an assuming insurer establishes a trust fund
128 for the payment of claims pursuant to the provisions of this
129 section, the following requirements shall apply:

130 (1) The assuming insurer shall report annually to the
131 commissioner information substantially the same as that
132 required to be reported on the national association of insurance
133 commissioners annual statement form by licensed insurers to
134 enable the commissioner to determine the sufficiency of the
135 trust fund. In the case of a single assuming insurer, the trust
136 shall consist of a trusteed account representing the assuming
137 insurer's liabilities attributable to business written in the United
138 States and, in addition, the assuming insurer shall maintain a
139 trusteed surplus of not less than twenty million dollars. In the
140 case of a group, including incorporated and individual unincor-
141 porated underwriters, the trust shall consist of a trusteed
142 account representing the group's liabilities attributable to
143 business written in the United States and, in addition, the group
144 shall maintain a trusteed surplus of which one hundred million
145 dollars shall be held jointly for the benefit of United States
146 ceding insurers of any member of the group. The incorporated
147 members of the group shall not be engaged in any business
148 other than underwriting as a member of the group and shall be
149 subject to the same level of solvency regulation and control by
150 the group's domiciliary regulator as are the unincorporated

151 members. The group shall make available to the commissioner
152 an annual certification of the solvency of each underwriter by
153 the group's domiciliary regulator and its independent public
154 accountants.

155 (2) In the case of a group of incorporated insurers under
156 common administration which complies with the filing require-
157 ments contained in the previous paragraph; which has continu-
158 ously transacted an insurance business outside the United States
159 for at least three years immediately prior to making application
160 for accreditation; which submits to this state's authority to
161 examine its books and records and bears the expense of the
162 examination; and which has aggregate policyholders' surplus of
163 ten billion dollars, the trust shall be in an amount equal to the
164 group's several liabilities attributable to business ceded by
165 United States ceding insurers to any member of the group
166 pursuant to reinsurance contracts issued in the name of the
167 group. The group shall also maintain a joint trusted surplus of
168 which one hundred million dollars shall be held jointly for the
169 benefit of United States ceding insurers of any member of the
170 group as additional security for any such liabilities. Each
171 member of the group shall make available to the commissioner
172 an annual certification of the member's solvency by the
173 member's domiciliary regulator and its independent public
174 accountants.

175 (3) Any trust that is subject to the provisions of this section
176 shall be established in a form approved by the commissioner.
177 The trust instrument shall provide that contested claims shall be
178 valid and enforceable upon the final order of any court of
179 competent jurisdiction in the United States. The trust shall vest
180 legal title to its assets in the trustees of the trust for its United
181 States policyholders and ceding insurers, their assigns and
182 successors in interest. The trust and the assuming insurer shall
183 be subject to examination as determined by the commissioner.
184 The trust described herein shall remain in effect for as long as

185 the assuming insurer shall have outstanding obligations due
186 under the reinsurance agreements subject to the trust.

187 (4) No later than the twenty-eighth day of February of each
188 year the trustees of the trust shall report to the commissioner in
189 writing setting forth the balance of the trust and listing the
190 trust's investments at the preceding year's end. The trustees
191 shall certify the date of termination of the trust, if so planned,
192 or certify that the trust shall not expire prior to the next follow-
193 ing December thirty-first.

194 (e) A reduction from liability for the reinsurance ceded by
195 a ceding insurer subject to the requirements of this article to an
196 assuming insurer not meeting the requirements of subsection (c)
197 of this section shall be allowed in an amount not exceeding the
198 liabilities carried by the ceding insurer. The reduction shall be
199 in the amount of funds held by or on behalf of the ceding
200 insurer, including funds held in trust for the ceding insurer,
201 under a reinsurance contract with the assuming insurer as
202 security for the payment of obligations thereunder: *Provided*,
203 That the security is held in the United States subject to with-
204 drawal solely by, and under the exclusive control of, the ceding
205 insurer; or, in the case of a trust, held in a qualified United
206 States financial institution, as defined by this section. The
207 security may be in the form of:

208 (1) Cash;

209 (2) Securities listed by the securities valuation office of the
210 national association of insurance commissioners and qualifying
211 as admitted assets; or

212 (3) Clean, irrevocable, unconditional letters of credit, issued
213 or confirmed by a qualified United States financial institution,
214 as defined by this section, no later than the thirty-first day of
215 December of the year for which filing is being made, and in the

216 possession of the ceding company on or before the filing date
217 of its annual statement: *Provided*, That letters of credit meeting
218 applicable standards of issuer acceptability as of the dates of
219 their issuance or confirmation shall, notwithstanding the issuing
220 or confirming institution's subsequent failure to meet applicable
221 standards of issuer acceptability, continue to be acceptable as
222 security until their expiration, extension, renewal, modification
223 or amendment, whichever first occurs.

224 (f) For purposes of this section, a "qualified United States
225 financial institution" means an institution that:

226 (1) Is organized or licensed under the laws of the United
227 States or any state thereof;

228 (2) Is regulated, supervised and examined by United States
229 federal or state authorities having regulatory authority over
230 banks and trust companies; and

231 (3) Has been determined by either the commissioner, or the
232 securities valuation office of the national association of
233 insurance commissioners, to meet the standards of financial
234 condition and standing as are considered necessary and appro-
235 priate to regulate the quality of financial institutions whose
236 letters of credit will be acceptable to the commissioner.

237 (g) A "qualified United States financial institution" means,
238 for purposes of those provisions of this law specifying those
239 institutions that are eligible to act as a fiduciary of a trust, an
240 institution that:

241 (1) Is organized or, in the case of a United States branch or
242 agency office of a foreign banking organization, licensed under
243 the laws of the United States or any state thereof and has been
244 granted authority to operate with fiduciary powers; and

245 (2) Is regulated, supervised and examined by federal or
246 state authorities having regulatory authority over banks and
247 trust companies.

248 (h) The provisions of this section shall apply to all cessions
249 on or after the first day of January, one thousand nine hundred
250 ninety-three.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-2. Ratemaking.

§33-20B-3. Rate filings.

§33-20B-3a. Rate prohibitions.

§33-20B-2. Ratemaking.

1 Any and all modifications of rates shall be made in accor-
2 dance with the following provisions:

3 (a) Due consideration shall be given to the past and
4 prospective loss experience within and outside this state.

5 (b) Due consideration shall be given to catastrophe hazards,
6 if any, to a reasonable margin for underwriting profit and
7 contingencies, to dividends, savings or unabsorbed premium
8 deposits allowed or returned by insurers to their policyholders,
9 members or subscribers and actual past expenses and demon-
10 strable prospective or projected expenses applicable to this
11 state.

12 (c) Rates shall not be excessive, inadequate, predatory or
13 unfairly discriminatory.

14 (d) Risks may not be grouped by territorial areas for the
15 establishment of rates and minimum premiums.

16 (e) An insurer may use guide "A" rates and other
17 nonapproved rates, also known as "consent to rates": *Provided,*

18 That the insurer shall, prior to entering into an agreement with
19 an individual provider or any health care entity, submit guide
20 “A” rates and other nonapproved rates to the commissioner for
21 review and approval: *Provided, however,* That the commis-
22 sioner shall propose legislative rules for promulgation in
23 accordance with the provisions of article three, chapter twenty-
24 nine-a of this code, which set forth the standards and procedure
25 for reviewing and approving guide “A” rates and other
26 nonapproved rates. No insurer may require execution of a
27 consent to rate endorsement for the purpose of offering to issue
28 or issuing a contract or coverage to an insured or continuing an
29 existing contract or coverage at a rate in excess of that provided
30 by a filing otherwise applicable.

31 (f) Except to the extent necessary to meet the provisions of
32 subdivision (c) of this section, uniformity among insurers, in
33 any matters within the scope of this section, is neither required
34 nor prohibited.

35 (g) Rates made in accordance with this section may be used
36 subject to the provisions of this article.

§33-20B-3. Rate filings.

1 (a) On or before the first day of July, two thousand four and
2 on the first day of July each year thereafter, or at such other
3 time specified by the commissioner, every insurer offering
4 malpractice insurance in this state shall make a rate filing, in
5 accordance with the provisions of section four, article twenty of
6 this chapter, regardless of whether any increase or decrease is
7 indicated, pursuant to subsection (a), section four, article twenty
8 of this chapter. The information furnished in support of a filing
9 shall include: (i) The experience or judgment of the insurer or
10 rating organization making the filing; (ii) its interpretation of
11 any statistical data the filing relies upon; (iii) the experience of
12 other insurers or rating organizations; (iv) the character and

13 extent of the coverage contemplated; (v) the proposed effective
14 date of any requested change and (vi) any other relevant factors
15 required by the commissioner. When a filing is not accompa-
16 nied by the information required by this section upon which the
17 insurer supports the filing, the commissioner shall require the
18 insurer to furnish the information and, in that event, the waiting
19 period prescribed by subsection (b) of this section shall
20 commence as of the date the information is furnished.

21 A filing and any supporting information shall be open to
22 public inspection as soon as the filing is received by the
23 commissioner. Any interested party may file a brief with the
24 commissioner supporting his or her position concerning the
25 filing. Any person or organization may file with the commis-
26 sioner a signed statement declaring and supporting his or her or
27 its position concerning the filing. Upon receipt of any such
28 statement prior to the effective date of the filing, the commis-
29 sioner shall mail or deliver a copy of the statement to the filer,
30 which may file a reply. This section is not applicable to any
31 memorandum or statement of any kind by any employee of the
32 commissioner.

33 (b) Every filing shall be on file for a waiting period of
34 ninety days before it becomes effective. The commissioner may
35 extend the waiting period for an additional period not to exceed
36 thirty days if he or she gives written notice within the waiting
37 period to the insurer or rating organization which made the
38 filing that he or she needs the additional time for the consider-
39 ation of the filing. Upon written application by the insurer or
40 rating organization, the commissioner may authorize a filing
41 which he or she has reviewed to become effective before the
42 expiration of the waiting period or any extension of the waiting
43 period. A filing shall be deemed to meet the requirements of
44 this article unless disapproved by the commissioner within the
45 waiting period or any extension thereof.

46 (c) No insurer shall make or issue a contract or policy of
47 malpractice insurance except in accordance with the filings
48 which are in effect for the insurer as provided in this article.

§33-20B-3a. Rate prohibitions.

1 Reduced rates charged for certain specialties or risks found
2 by the commissioner to be predatory, designed to gain market
3 share or otherwise inadequate are prohibited.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

- §33-20F-1a. Scope of article.
- §33-20F-2. Findings and purpose.
- §33-20F-3. Definitions.
- §33-20F-4. Authorization for creation of company; requirements and limitations.
- §33-20F-5. Governance and organization.
- §33-20F-6. Management and administration of the company.
- §33-20F-7. Initial capital and surplus; special assessment.
- §33-20F-8. Application for license; authority of commissioner.
- §33-20F-9. Kinds of coverage authorized; transfer of policies from the state board
of risk and insurance management; risk management practices
authorized.
- §33-20F-10. Controlling law.
- §33-20F-11. Liberal construction.

§33-20F-1a. Scope of article.

1 This article applies only to the physicians' mutual insurance
2 company created as a novation of the medical professional
3 liability insurance programs created in article twelve-b, chapter
4 twenty-nine of this code.

§33-20F-2. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a nationwide crisis in the field of medical
3 liability insurance;

4 (2) Similar crises have occurred at least three times during
5 the past three decades;

6 (3) Such crises are part of a naturally recurring cycle of a
7 hard market period, when medical professional liability
8 coverage is difficult to obtain, and a soft market period, when
9 coverage is more readily available;

10 (4) Such crises are particularly acute in this state due to the
11 small size of the insurance market;

12 (5) During a hard market period, insurers tend to flee this
13 state, creating a crisis for physicians who are left without
14 professional liability coverage;

15 (6) During the current crisis, physicians in West Virginia
16 find it increasingly difficult, if not impossible, to obtain
17 medical liability insurance either because coverage is unavail-
18 able or unaffordable;

19 (7) The difficulty or impossibility of obtaining medical
20 liability insurance may result in many qualified physicians
21 leaving the state;

22 (8) Access to quality health care is of utmost importance to
23 the citizens of West Virginia;

24 (9) A mechanism is needed to provide an enduring solution
25 to this recurring medical liability crisis;

26 (10) A physicians' mutual insurance company or a similar
27 entity has proven to be a successful mechanism in other states
28 for helping physicians secure insurance and for stabilizing the
29 insurance market;

30 (11) There is a substantial public interest in creating a
31 method to provide a stable medical liability market in this state;

32 (12) The state has attempted to temporarily alleviate the
33 current medical crisis by the creation of programs to provide
34 medical liability coverage through the board of risk and
35 insurance management;

36 (13) The state-run program is a substantial actual and
37 potential liability to the state;

38 (14) There is substantial public benefit in transferring the
39 actual and potential liability of the state to the private sector and
40 creating a stable self-sufficient entity which will be a source of
41 liability insurance coverage for physicians in this state;

42 (15) A stable, financially viable insurer in the private sector
43 will provide a continuing source of insurance funds to compen-
44 sate victims of medical malpractice; and

45 (16) Because the public will greatly benefit from the
46 formation of a physicians' mutual insurance company, state
47 efforts to encourage and support the formation of such an
48 entity, including providing a low-interest loan for a portion of
49 the entity's initial capital, is in the clear public interest.

50 (b) The purpose of this article is to create a mechanism for
51 the formation of a physicians' mutual insurance company that
52 will provide:

53 (1) A means for physicians to obtain medical liability
54 insurance that is available and affordable; and

55 (2) Compensation to persons who suffer injuries as a result
56 of medical professional liability as defined in subsection (d),
57 section two, article seven-b, chapter fifty-five of this code.

§33-20F-3. Definitions.

1 For purposes of this article, the term:

2 (a) "Board of medicine" means the West Virginia board of
3 medicine as provided in section five, article three, chapter thirty
4 of this code.

5 (b) "Board of osteopathy" means the West Virginia board
6 of osteopathy as provided in section three, article fourteen,
7 chapter thirty of this code.

8 (c) "Commissioner" means the insurance commissioner of
9 West Virginia as provided in section one, article two, chapter
10 thirty-three of this code.

11 (d) "Company" means the physicians' mutual insurance
12 company created pursuant to the terms of this article.

13 (e) "Medical liability insurance" means, for the purposes of
14 this article: All policies previously issued by the board of risk
15 and insurance management pursuant to article twelve-b, chapter
16 twenty-nine of this code which are transferred by the board of
17 risk and insurance management to the company, pursuant to
18 subsection (b), section nine of this article and all policies of
19 insurance subsequently issued by the company to physicians,
20 physician corporations, physician-operated clinics and such
21 other individual health care providers as the commissioner may,
22 upon written application of the company, approve.

23 (f) "Physician" means an individual who is licensed by the
24 board of medicine or the board of osteopathy to practice
25 medicine or podiatry in West Virginia.

26 (g) "Transfer date" means the date on which the assets,
27 obligations and liabilities resulting from the board of risk and
28 insurance management's issuance of medical liability policies
29 to physicians, physician corporations and physician-operated
30 clinics pursuant to article twelve-b, chapter twenty-nine of this
31 code are transferred to the company.

§33-20F-4. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a physicians'
2 mutual insurance company may be created as a domestic,
3 private, nonstock, nonprofit corporation. As an incentive for its
4 creation, the company may be eligible for funds from the
5 Legislature in accordance with the provisions of section seven
6 of this article. The company must remain for the duration of its
7 existence a domestic mutual insurance company owned by its
8 policyholders and may not be converted into a stock corpora-
9 tion, a for-profit corporation or any other entity not owned by
10 its policyholders. The company may not declare any dividend
11 to its policyholders; sell, assign or transfer substantial assets of
12 the company; or write coverage outside this state, except for
13 counties adjoining this state, until after any and all debts owed
14 by the company to the state have been fully paid.

15 (b) For the duration of its existence, the company is not and
16 may not be considered a department, unit, agency, or instru-
17 mentality of the state for any purpose. All debts, claims,
18 obligations, and liabilities of the company, whenever incurred,
19 shall be the debts, claims, obligations, and liabilities of the
20 company only and not of the state or of any department, unit,
21 agency, instrumentality, officer, or employee of the state.

22 (c) The moneys of the company are not and may not be
23 considered part of the general revenue fund of the state. The
24 debts, claims, obligations, and liabilities of the company are not
25 and may not be considered a debt of the state or a pledge of the
26 credit of the state.

27 (d) The company is not subject to provisions of article nine-
28 a, chapter six of this code or the provisions of article one,
29 chapter twenty-nine-b of this code.

30 (e) (1) All premiums collected by the company are subject
31 to the premium taxes and surcharges contained in sections
32 fourteen and fourteen-a, article three of this chapter: *Provided*,
33 That while the loan to the company of moneys from the West
34 Virginia tobacco settlement medical trust fund pursuant to
35 section nine of this article remains outstanding, the commis-
36 sioner may waive the company's premium taxes and surcharges
37 if payment would render the company insolvent or otherwise
38 financially impaired.

39 (2) On and after the first day of July, two thousand and
40 three, any premium taxes and surcharges paid by the company
41 and by any insurer on its medical malpractice line pursuant to
42 sections fourteen and fourteen-a, article three of this chapter,
43 shall be temporarily applied toward replenishing the moneys
44 appropriated from the West Virginia tobacco settlement
45 medical trust fund pursuant to subsection (c), section two,
46 article eleven-a, chapter four of this code pending repayment of
47 the loan of such moneys by the company.

48 (3) The state treasurer shall notify the commissioner when
49 the moneys appropriated from the West Virginia tobacco
50 settlement medical trust have been fully replenished, at which
51 time the commissioner shall resume depositing premium taxes
52 and surcharges diverted pursuant to subdivision (2) of this
53 subsection in accordance with the provisions of sections
54 fourteen and fourteen-a, article three of this chapter.

55 (4) Payments received by the treasurer from the company
56 in repayment of any outstanding loan made pursuant to section
57 nine of this article shall be deposited in the West Virginia
58 tobacco settlement medical trust fund and dedicated to replen-
59 ishing the moneys appropriated therefrom under subsection (c),
60 section two, article eleven-a, chapter four of this code. Once the
61 moneys appropriated from the West Virginia tobacco settlement
62 medical trust fund have been fully replenished, the treasurer

63 shall deposit any payments from the company in repayment of
64 any outstanding loan made pursuant to section nine of this
65 article in said fund and transfer a like amount from said fund to
66 the commissioner for disbursement in accordance with the
67 provisions of sections fourteen and fourteen-a, article three of
68 this chapter.

§33-20F-5. Governance and organization.

1 (a)(1) The board of risk and insurance management shall
2 implement the initial formation and organization of the com-
3 pany as provided by this article.

4 (2) From the first day of July, two thousand three, until the
5 thirtieth day of June, two thousand four, the company shall be
6 governed by a provisional board of directors consisting of the
7 members of the board of risk and insurance management, the
8 dean of the West Virginia University School of Medicine or a
9 physician representative designated by him or her, and five
10 physician directors, elected by the policyholders whose policies
11 are to be transferred to the company pursuant to section nine of
12 this article.

13 (3) Only physicians who are licensed to practice medicine
14 in this state pursuant to article three or article fourteen, chapter
15 thirty of this code and who have purchased medical profes-
16 sional liability coverage from the board of risk and insurance
17 management are eligible to serve as physician directors on the
18 provisional board of directors. One of the physician directors
19 shall be selected from a list of three physicians nominated by
20 the West Virginia medical association. The board of risk and
21 insurance management shall develop procedures for the
22 nomination of the remaining physician directors and for the
23 conduct of the election, to be held no later than the first day of
24 June, two thousand three, of all of the physician directors,
25 including, but not limited to, giving notice of the election to the

26 policyholders. These procedures shall be exempt from the
27 provisions of article three, chapter twenty-nine of this code.

28 (b) From the first day of July, two thousand four, the
29 company shall be governed by a board of directors consisting
30 of eleven directors, as follows:

31 (1) Five directors who are physicians licensed to practice
32 medicine in this state by the board of medicine or the board of
33 osteopathy, including at least one general practitioner and one
34 specialist: *Provided*, That only physicians who have purchased
35 medical professional liability coverage from the board of risk
36 and insurance management are eligible to serve as physician
37 representatives on the company's first board of directors;

38 (2) Three directors who have substantial experience as an
39 officer or employee of a company in the insurance industry;

40 (3) Two directors with general knowledge and experience
41 in business management who are officers and employees of the
42 company and are responsible for the daily management of the
43 company; and

44 (4) One director who is a dean of a West Virginia school of
45 medicine or osteopathy or his or her designated physician
46 representative. This director's position shall rotate annually
47 among the dean of the West Virginia University School of
48 Medicine, the dean of the Marshall University Joan C. Edwards
49 School of Medicine and the dean of the West Virginia School
50 of Osteopathic Medicine. This director shall serve until such
51 time as the moneys loaned to the company from the West
52 Virginia tobacco settlement medical trust fund have been
53 replenished as provided in subsection (e), section four of this
54 article. After the moneys have been replenished the West
55 Virginia tobacco settlement medical trust fund, this director

56 shall be a physician licensed to practice medicine in this state
57 by the board of medicine or the board of osteopathy.

58 (c) In addition to the eleven directors required by subsection
59 (b) of this section, the bylaws of the company may provide
60 for the addition of at least two directors who represent an entity
61 or institution which lends or otherwise provides funds to the
62 company.

63 (d) The directors and officers of the company are to be
64 chosen in accordance with the articles of incorporation and
65 bylaws of the company. The initial board of directors selected
66 in accordance with the provisions of subdivision (3), subsection
67 (a) of this section shall serve for the following terms: (1) Three
68 for four-year terms; (2) three for three-year terms; (3) three for
69 two-year terms; and (4) two for one-year terms. Thereafter, the
70 directors shall serve staggered terms of four years. If an
71 additional director is added to the board as provided in subsection
72 (c) of this section, his or her initial term shall be for four
73 years. No director chosen pursuant to subsection (b) of this
74 section may serve more than two consecutive terms.

75 (e) The incorporators are to prepare and file articles of
76 incorporation and bylaws in accordance with the provisions of
77 this article and the provisions of chapters thirty-one and thirty-
78 three of this code.

§33-20F-6. Management and administration of the company.

1 (a) If it is determined that the services of a third-party
2 administrator or other firm or company are necessary to
3 properly administer the affairs of the company prior to the first
4 day of July, two thousand four, the provisional board of
5 directors shall avail itself of any existing contracts entered into
6 by the board of risk and insurance management to manage its
7 affairs. The terms of the company's participation in the contract

8 shall be established by the board of risk and insurance manage-
9 ment.

10 (b) The provisional board of directors may enter into a one-
11 year contract with a third-party administrator or other firm or
12 company with suitable qualifications and experience to admin-
13 ister some or all of the affairs of the company from the first day
14 of July, two thousand four, until the thirtieth day of June, two
15 thousand five, subject to the continuing direction of the board
16 of directors as required by the articles of incorporation and
17 bylaws of the company, and the contract. Any contract entered
18 into pursuant to this subsection must be awarded by competitive
19 bidding not later than the first day of November, two thousand
20 three.

21 (c) After the first day of July, two thousand four, if the
22 company's board of directors determines that the affairs of the
23 company may be administered suitably and efficiently, the
24 company may enter into a contract with a licensed insurer,
25 licensed health service plan, insurance service organization,
26 third-party administrator, insurance brokerage firm or other
27 firm or company with suitable qualifications and experience to
28 administer some or all of the affairs of the company, subject to
29 the continuing direction of the board of directors as required by
30 the articles of incorporation and bylaws of the company, and
31 the contract. All such contracts shall be awarded by competitive
32 bidding.

33 (d) The company shall file a true copy of the contract with
34 the commissioner as provided in section twenty-one, article five
35 of this chapter.

§33-20F-7. Initial capital and surplus; special assessment.

1 (a) There is hereby created in the state treasury a special
2 revenue account designated as the "Board of Risk and Insurance

3 Management Physicians' Mutual Insurance Company Account"
4 solely for the purpose of receiving moneys transferred from the
5 West Virginia Tobacco Medical Trust Fund pursuant to sub-
6 section (c), section two, article eleven-a, chapter four of this
7 code for the company's use as initial capital and surplus.

8 (b) On the first day of July, two thousand three, a special
9 one-time assessment, in the amount of one thousand dollars,
10 shall be imposed on every physician licensed by the board of
11 medicine or by the board of osteopathy for the privilege of
12 practicing medicine in this state: *Provided*, That the following
13 physicians shall be exempt from the assessment:

14 (1) A faculty physician who meets the criteria for full-time
15 faculty under subsection (f), section one, article eight, chapter
16 eighteen-b of this code, who is a full-time employee of a school
17 of medicine or osteopathic medicine in this state, and who does
18 not maintain a private practice;

19 (2) A resident physician who is a graduate of a medical
20 school or college of osteopathic medicine enrolled and who is
21 participating in an accredited full-time program of post-
22 graduate medical education in this state;

23 (3) A physician who has presented suitable proof that he or
24 she is on active duty in armed forces of the United States and
25 who will not be reimbursed by the armed forces for the assess-
26 ment;

27 (4) A physician who receives more than fifty percent of his
28 or her practice income from providing services to federally
29 qualified health center as that term is defined in 42 U.S.C.
30 §1396d(l)(2); and

31 (5) A physician who practices solely under a special
32 volunteer medical license authorized by section ten-a, article
33 three or section twelve-b, article fourteen, chapter thirty of this

34 code. The assessment is to be imposed and collected by the
35 board of medicine and the board of osteopathy on forms
36 prescribed by each licensing board.

37 (c) The entire proceeds of the special assessment collected
38 pursuant to subsection (b) of this section shall be dedicated to
39 the company. The board of medicine and the board of osteopa-
40 thy shall promptly pay over to the company all amounts
41 collected pursuant to this section to be used as policyholder
42 surplus for the company.

43 (d) Any physician who applies to purchase insurance from
44 the company and who has not paid the assessment pursuant to
45 subsection (b) of this section shall pay one thousand dollars to
46 the company as a condition of obtaining insurance from the
47 company.

§33-20F-8. Application for license; authority of commissioner.

1 (a) As soon as practical, the company established pursuant
2 to the provisions of this article shall file its corporate charter
3 and bylaws with the commissioner and apply for a license to
4 transact insurance in this state. Notwithstanding any other
5 provision of this code, the commissioner shall act on the
6 documents within fifteen days of the filing by the company.

7 (b) In recognition of the medical liability insurance crisis in
8 this state at the time of enactment of this article and the critical
9 need to expedite the initial operation of the company, the
10 Legislature hereby authorizes the commissioner to review the
11 documentation submitted by the company and to determine the
12 initial capital and surplus requirements of the company,
13 notwithstanding the provisions of section five-b, article three of
14 this chapter. The commissioner has the sole discretion to
15 determine the capital and surplus funds of the company and to
16 monitor the economic viability of the company during its initial

17 operation and duration on not less than a monthly basis. The
18 company shall furnish the commissioner with all information
19 and cooperate in all respects necessary for the commissioner to
20 perform the duties set forth in this section and in other provi-
21 sions of this chapter, including annual audited financial
22 statements required by article thirty-three of this chapter and
23 fidelity bond coverage for each of the directors of the company.

24 (c) Subject to the provisions of subsection (d) of this
25 section, the commissioner may waive other requirements
26 imposed on mutual insurance companies by the provisions of
27 this chapter as the commissioner determines is necessary to
28 enable the company to begin insuring physicians in this state at
29 the earliest possible date.

30 (d) Within forty months of the date of the issuance of its
31 license to transact insurance, the company shall comply with
32 the capital and surplus requirements set forth in section five-b,
33 article three of this chapter.

**§33-20F-9. Kinds of coverage authorized; transfer of policies
from the state board of risk and insurance man-
agement; risk management practices authorized.**

1 (a) Upon approval by the commissioner for a license to
2 transact insurance in this state, the company may issue
3 nonassessable policies of malpractice insurance, as defined in
4 subdivision (9), subsection (e), section ten, article one of this
5 chapter, insuring a physician. Additionally, the company may
6 issue other types of casualty or liability insurance as may be
7 approved by the commissioner.

8 (b) On the transfer date:

9 (1) The company shall accept from the board of risk and
10 insurance management the transfer of any and all medical
11 liability insurance obligations and risks of existing or in force

12 contracts of insurance covering physicians, physician corpora-
13 tions and physician-operated clinics issued by the board
14 pursuant to article twelve-b, chapter twenty-nine of this code.
15 The transfer shall not include medical liability insurance
16 obligations and risks of existing or in-force contracts of
17 insurance covering hospitals and non-physician providers;

18 (2) The company shall assume all responsibility for and
19 defend, indemnify and hold harmless the board of risk and
20 insurance management and the state with respect to any and all
21 liabilities and duties arising from the assets and responsibilities
22 transferred to the company pursuant to article twelve-b, chapter
23 twenty-nine of this code;

24 (3) The board of risk and insurance management shall
25 disburse and pay to the company any funds attributable to
26 premiums paid for the insurance obligations transferred to the
27 company pursuant to subdivision (1) of this subsection, with
28 earnings thereon, less paid losses and expenses, and deposited
29 in the medical liability fund created by section ten, article
30 twelve-b, chapter twenty-nine of this code as reflected on the
31 ledgers of the board of risk and insurance management;

32 (4) The board of risk and insurance management shall
33 disburse and pay to the company any funds in the board of risk
34 and insurance management physicians' mutual insurance
35 company account created by section seven of this article. All
36 funds in this account shall be transferred pursuant to terms of a
37 surplus note or other loan arrangement satisfactory to the board
38 of risk and insurance management and the insurance commis-
39 sioner.

40 (c) The board of risk and insurance management shall cause
41 an independent actuarial study to be performed to determine the
42 amount of all paid losses, expenses and assets associated with
43 the policies the board has in force pursuant to article twelve-b,

44 chapter twenty-nine of this code. The actuarial study shall
45 determine the paid losses, expenses and assets associated with
46 the policies to be transferred to the company pursuant to
47 subsection (b) of this section and the paid losses, expenses and
48 assets associated with those policies retained by the board. The
49 determination shall not include liabilities created by issuance of
50 new tail insurance policies for nonphysician providers autho-
51 rized by subsection (n), section six, article twelve-b, chapter
52 twenty-nine of this code.

53 (d) The board of risk and insurance management may enter
54 into such agreements, including loan agreements, with the
55 company that are necessary to accomplish the transfers ad-
56 dressed in this section.

57 (e) The company shall make policies of insurance available
58 to physicians in this state, regardless of practice type or
59 specialty. Policies issued by the company to each class of
60 physicians are to be essentially uniform in terms and conditions
61 of coverage.

62 (f) Notwithstanding the provisions of subsection (b), (c) or
63 (e) of this section, the company may:

64 (1) Establish reasonable classifications of physicians,
65 insured activities and exposures based on a good faith determi-
66 nation of relative exposures and hazards among classifications;

67 (2) Vary the limits, coverages, exclusions, conditions and
68 loss-sharing provisions among classifications;

69 (3) Establish, for an individual physician within a classifi-
70 cation, reasonable variations in the terms of coverage, including
71 rates, deductibles and loss-sharing provisions, based on the
72 insured's prior loss experience and current professional training
73 and capability; and

74 (4) Except with respect to policies transferred from the
75 board of risk and insurance management under this section,
76 refuse to provide insurance coverage for individual physicians
77 whose prior loss experience or current professional training and
78 capability are such that the physician represents an unaccept-
79 able risk of loss if coverage is provided.

80 (g) The company shall establish reasonable risk manage-
81 ment and continuing education requirements which policyhold-
82 ers must meet in order to be and remain eligible for coverage.

§33-20F-10. Controlling law.

1 To the extent applicable, and when not in conflict with the
2 provisions of this article, the provisions of chapters thirty-one
3 and thirty-three of this code apply to the company created
4 pursuant to the provisions of this article. If a provision of this
5 article and another provision of this code are in conflict, the
6 provision of this article controls.

§33-20F-11. Liberal construction.

1 This article is enacted to address a situation critical to the
2 citizens of the state of West Virginia by providing a mechanism
3 for the speedy and deliberate creation of a company to begin
4 offering medical liability insurance to physicians in this state at
5 the earliest possible date ; and to accomplish this purpose, this
6 article shall be liberally construed.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws and provisions of hospital or medical
3 service corporation laws are not applicable to any health
4 maintenance organization granted a certificate of authority

5 under this article. The provisions of this article shall not apply
6 to an insurer or hospital or medical service corporation licensed
7 and regulated pursuant to the insurance laws or the hospital or
8 medical service corporation laws of this state except with
9 respect to its health maintenance corporation activities autho-
10 rized and regulated pursuant to this article. The provisions of
11 this article may not apply to an entity properly licensed by a
12 reciprocal state to provide health care services to employer
13 groups, where residents of West Virginia are members of an
14 employer group, and the employer group contract is entered
15 into in the reciprocal state. For purposes of this subsection, a
16 "reciprocal state" means a state which physically borders West
17 Virginia and which has subscriber or enrollee hold harmless
18 requirements substantially similar to those set out in section
19 seven-a of this article.

20 (b) Factually accurate advertising or solicitation regarding
21 the range of services provided, the premiums and copayments
22 charged, the sites of services and hours of operation and any
23 other quantifiable, nonprofessional aspects of its operation by
24 a health maintenance organization granted a certificate of
25 authority, or its representative may not be construed to violate
26 any provision of law relating to solicitation or advertising by
27 health professions: *Provided*, That nothing contained in this
28 subsection shall be construed as authorizing any solicitation or
29 advertising which identifies or refers to any individual provider
30 or makes any qualitative judgment concerning any provider.

31 (c) Any health maintenance organization authorized under
32 this article may not be considered to be practicing medicine and
33 is exempt from the provisions of chapter thirty of this code,
34 relating to the practice of medicine.

35 (d) The provisions of sections fifteen and twenty, article
36 four (general provisions); section nine-a, article two (one-time
37 assessment); section seventeen, article six (noncomplying

38 forms); section twenty, article five (borrowing by insurers);
39 article six-c (guaranteed loss ratio); article seven (assets and
40 liabilities); article eight (investments); article eight-a (use of
41 clearing corporations and federal reserve book-entry system);
42 article nine (administration of deposits); article twelve (agents,
43 brokers, solicitors and excess line); section fourteen, article
44 fifteen (individual accident and sickness insurance); section
45 sixteen, article fifteen (coverage of children); section eighteen,
46 article fifteen (equal treatment of state agency); section
47 nineteen, article fifteen (coordination of benefits with
48 medicaid); article fifteen-b (uniform health care administration
49 act); section three, article sixteen (required policy provisions);
50 section three-f, article sixteen (treatment of temporomandibular
51 disorder and craniomandibular disorder); section eleven, article
52 sixteen (coverage of children); section thirteen, article sixteen
53 (equal treatment of state agency); section fourteen, article
54 sixteen (coordination of benefits with medicaid); article
55 sixteen-a (group health insurance conversion); article sixteen-d
56 (marketing and rate practices for small employers); article
57 twenty-five-c (health maintenance organization patient bill of
58 rights); article twenty-seven (insurance holding company
59 systems); article thirty-four-a (standards and commissioner's
60 authority for companies considered to be in hazardous financial
61 condition); article thirty-five (criminal sanctions for failure to
62 report impairment); article thirty-seven (managing general
63 agents); article thirty-nine (disclosure of material transactions);
64 article forty-one (privileges and immunity); and article
65 forty-two (women's access to health care) shall be applicable to
66 any health maintenance organization granted a certificate of
67 authority under this article. In circumstances where the code
68 provisions made applicable to health maintenance organizations
69 by this section refer to the "insurer", the "corporation" or words
70 of similar import, the language shall be construed to include
71 health maintenance organizations.

72 (e) Any long-term care insurance policy delivered or issued
73 for delivery in this state by a health maintenance organization
74 shall comply with the provisions of article fifteen-a of this
75 chapter.

**ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION
ACT.**

§33-25D-26. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws, provisions of hospital, medical, dental or
3 health service corporation laws and provisions of health
4 maintenance organization laws are not applicable to any prepaid
5 limited health service organization granted a certificate of
6 authority under this article. The provisions of this article do not
7 apply to an insurer, hospital, medical, dental or health service
8 corporation, or health maintenance organization licensed and
9 regulated pursuant to the insurance laws, hospital, medical,
10 dental or health service corporation laws or health maintenance
11 organization laws of this state except with respect to its prepaid
12 limited health service corporation activities authorized and
13 regulated pursuant to this article. The provisions of this article
14 do not apply to an entity properly licensed by a reciprocal state
15 to provide a limited health care service to employer groups,
16 where residents of West Virginia are members of an employer
17 group, and the employer group contract is entered into in the
18 reciprocal state. For purposes of this subsection, a “reciprocal
19 state” means a state which physically borders West Virginia
20 and which has subscriber or enrollee hold harmless require-
21 ments substantially similar to those set out in section ten of this
22 article.

23 (b) Factually accurate advertising or solicitation regarding
24 the range of services provided, the premiums and copayments
25 charged, the sites of services and hours of operation and any
26 other quantifiable, nonprofessional aspects of its operation by

27 a prepaid limited health service organization granted a certifi-
28 cate of authority, or its representative do not violate any
29 provision of law relating to solicitation or advertising by health
30 professions: *Provided*, That nothing contained in this subsection
31 authorizes any solicitation or advertising which identifies or
32 refers to any individual provider or makes any qualitative
33 judgment concerning any provider.

34 (c) Any prepaid limited health service organization autho-
35 rized under this article is not considered to be practicing
36 medicine and is exempt from the provision of chapter thirty of
37 this code relating to the practice of medicine.

38 (d) The provisions of section nine, article two, examina-
39 tions; section nine-a, article two, one-time assessment; section
40 thirteen, article two, hearings; sections fifteen and twenty,
41 article four, general provisions; section twenty, article five,
42 borrowing by insurers; section seventeen, article six, noncom-
43 plying forms; article six-c, guaranteed loss ratio; article seven,
44 assets and liabilities; article eight, investments; article eight-a,
45 use of clearing corporations and federal reserve book-entry
46 system; article nine, administration of deposits; article ten,
47 rehabilitation and liquidation; article twelve, agents, brokers,
48 solicitors and excess line; section fourteen, article fifteen,
49 individual accident and sickness insurance; section sixteen,
50 article fifteen, coverage of children; section eighteen, article
51 fifteen, equal treatment of state agency; section nineteen, article
52 fifteen, coordination of benefits with medicaid; article fifteen-b,
53 uniform health care administration act; section three, article
54 sixteen, required policy provisions; section eleven, article
55 sixteen, coverage of children; section thirteen, article sixteen,
56 equal treatment of state agency; section fourteen, article
57 sixteen, coordination of benefits with medicaid; article six-
58 teen-a, group health insurance conversion; article sixteen-d,
59 marketing and rate practices for small employers; article
60 twenty-seven, insurance holding company systems; article

61 thirty-three, annual audited financial report; article thirty-four,
62 administrative supervision; article thirty-four-a, standards and
63 commissioner's authority for companies considered to be in
64 hazardous financial condition; article thirty-five, criminal
65 sanctions for failure to report impairment; article thirty-seven,
66 managing general agents; article thirty-nine, disclosure of
67 material transactions; and article forty-one, privileges and
68 immunity, all of this chapter are applicable to any prepaid
69 limited health service organization granted a certificate of
70 authority under this article. In circumstances where the code
71 provisions made applicable to prepaid limited health service
72 organizations by this section refer to the "insurer", the "corpo-
73 ration" or words of similar import, the language includes
74 prepaid limited health service organizations.

75 (e) Any long-term care insurance policy delivered or issued
76 for delivery in this state by a prepaid limited health service
77 organization shall comply with the provisions of article
78 fifteen-a of this chapter.

79 (f) A prepaid limited health service organization granted a
80 certificate of authority under this article is exempt from paying
81 municipal business and occupation taxes on gross income it
82 receives from its enrollees, or from their employers or others on
83 their behalf, for health care items or services provided directly
84 or indirectly by the prepaid limited health service organization.

CHAPTER 38. LIENS.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANK- RUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

1 Pursuant to the provisions of 11 U. S. C. §522(b)(1), this
2 state specifically does not authorize debtors who are domiciled

3 in this state to exempt the property specified under the provi-
4 sions of 11 U. S. C. §522(d).

5 Any person who files a petition under the federal bank-
6 ruptcy law may exempt from property of the estate in a bank-
7 ruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed twenty-five thou-
9 sand dollars in value, in real property or personal property that
10 the debtor or a dependent of the debtor uses as a residence, in
11 a cooperative that owns property that the debtor or a dependent
12 of the debtor uses as a residence or in a burial plot for the
13 debtor or a dependent of the debtor: *Provided*, That when the
14 debtor is a physician licensed to practice medicine in this state
15 under article three or article fourteen, chapter thirty of this
16 code, and has commenced a bankruptcy proceeding in part due
17 to a verdict or judgment entered in a medical professional
18 liability action, if the physician has current medical malpractice
19 insurance in the amount of at least one million dollars for each
20 occurrence, the debtor physician's interest that is exempt under
21 this subsection may exceed twenty-five thousand dollars in
22 value but may not exceed two hundred fifty thousand dollars
23 per household.

24 (b) The debtor's interest, not to exceed two thousand four
25 hundred dollars in value, in one motor vehicle.

26 (c) The debtor's interest, not to exceed four hundred dollars
27 in value in any particular item, in household furnishings,
28 household goods, wearing apparel, appliances, books, animals,
29 crops or musical instruments that are held primarily for the
30 personal, family or household use of the debtor or a dependent
31 of the debtor: *Provided*, That the total amount of personal
32 property exempted under this subsection may not exceed eight
33 thousand dollars.

34 (d) The debtor's interest, not to exceed one thousand dollars
35 in value, in jewelry held primarily for the personal, family or
36 household use of the debtor or a dependent of the debtor.

37 (e) The debtor's interest, not to exceed in value eight
38 hundred dollars plus any unused amount of the exemption
39 provided under subsection (a) of this section in any property.

40 (f) The debtor's interest, not to exceed one thousand five
41 hundred dollars in value, in any implements, professional books
42 or tools of the trade of the debtor or the trade of a dependent of
43 the debtor.

44 (g) Any unmeasured life insurance contract owned by the
45 debtor, other than a credit life insurance contract.

46 (h) The debtor's interest, not to exceed in value eight
47 thousand dollars less any amount of property of the estate
48 transferred in the manner specified in 11 U. S. C. §542(d), in
49 any accrued dividend or interest under, or loan value of, any
50 unmeasured life insurance contract owned by the debtor under
51 which the insured is the debtor or an individual of whom the
52 debtor is a dependent.

53 (i) Professionally prescribed health aids for the debtor or a
54 dependent of the debtor.

55 (j) The debtor's right to receive:

56 (1) A social security benefit, unemployment compensation
57 or a local public assistance benefit;

58 (2) A veterans' benefit;

59 (3) A disability, illness or unemployment benefit;

60 (4) Alimony, support or separate maintenance, to the extent
61 reasonably necessary for the support of the debtor and any
62 dependent of the debtor;

63 (5) A payment under a stock bonus, pension, profit sharing,
64 annuity or similar plan or contract on account of illness,
65 disability, death, age or length of service, to the extent reason-
66 ably necessary for the support of the debtor and any dependent
67 of the debtor, and funds on deposit in an individual retirement
68 account (IRA), including a simplified employee pension (SEP)
69 regardless of the amount of funds, unless:

70 (A) The plan or contract was established by or under the
71 auspices of an insider that employed the debtor at the time the
72 debtor's rights under the plan or contract arose;

73 (B) The payment is on account of age or length of service;

74 (C) The plan or contract does not qualify under Section
75 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code
76 of 1986; and

77 (D) With respect to an individual retirement account,
78 including a simplified employee pension, the amount is subject
79 to the excise tax on excess contributions under Section 4973
80 and/or Section 4979 of the Internal Revenue Code of 1986, or
81 any successor provisions, regardless of whether the tax is paid.

82 (k) The debtor's right to receive or property that is traceable
83 to:

84 (1) An award under a crime victim's reparation law;

85 (2) A payment on account of the wrongful death of an
86 individual of whom the debtor was a dependent, to the extent
87 reasonably necessary for the support of the debtor and any
88 dependent of the debtor;

89 (3) A payment under a life insurance contract that insured
90 the life of an individual of whom the debtor was a dependent on
91 the date of the individual's death, to the extent reasonably
92 necessary for the support of the debtor and any dependent of the
93 debtor;

94 (4) A payment, not to exceed fifteen thousand dollars on
95 account of personal bodily injury, not including pain and
96 suffering or compensation for actual pecuniary loss, of the
97 debtor or an individual of whom the debtor is a dependent;

98 (5) A payment in compensation of loss of future earnings
99 of the debtor or an individual of whom the debtor is or was a
100 dependent, to the extent reasonably necessary for the support of
101 the debtor and any dependent of the debtor;

102 (6) Payments made to the prepaid tuition trust fund or to the
103 savings plan trust fund, including earnings, in accordance with
104 article thirty, chapter eighteen of this code on behalf of any
105 beneficiary.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.

§55-7B-2. Definitions.

§55-7B-3. Elements of proof.

§55-7B-6. Prerequisites for filing an action against a health care provider;
procedures; sanctions.

§55-7B-7. Testimony of expert witness on standard of care.

§55-7B-8. Limit on liability for noneconomic loss.

§55-7B-9. Several liability.

§55-7B-9a. Reduction in compensatory damages for economic losses for payments
from collateral sources the same injury.

§55-7B-9b. Limitations on third-party claims.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which
patient is admitted to a designated trauma center; exceptions;
emergency rules.

§55-7B-10. Effective date; applicability of provisions.

§55-7B-1. Legislative findings and declaration of purpose.

1 The Legislature hereby finds and declares that the citizens
2 of this state are entitled to the best medical care and facilities
3 available and that health care providers offer an essential and
4 basic service which requires that the public policy of this state
5 encourage and facilitate the provision of such service to our
6 citizens;

7 That as in every human endeavor the possibility of injury
8 or death from negligent conduct commands that protection of
9 the public served by health care providers be recognized as an
10 important state interest;

11 That our system of litigation is an essential component of
12 this state's interest in providing adequate and reasonable
13 compensation to those persons who suffer from injury or death
14 as a result of professional negligence, and any limitation placed
15 on this system must be balanced with and considerate of the
16 need to fairly compensate patients who have been injured as a
17 result of negligent and incompetent acts by health care provid-
18 ers;

19 That liability insurance is a key part of our system of
20 litigation, affording compensation to the injured while fulfilling
21 the need and fairness of spreading the cost of the risks of injury;

22 That a further important component of these protections is
23 the capacity and willingness of health care providers to monitor
24 and effectively control their professional competency, so as to
25 protect the public and insure to the extent possible the highest
26 quality of care;

27 That it is the duty and responsibility of the Legislature to
28 balance the rights of our individual citizens to adequate and
29 reasonable compensation with the broad public interest in the
30 provision of services by qualified health care providers and

31 health care facilities who can themselves obtain the protection
32 of reasonably priced and extensive liability coverage;

33 That in recent years, the cost of insurance coverage has
34 risen dramatically while the nature and extent of coverage has
35 diminished, leaving the health care providers, the health care
36 facilities and the injured without the full benefit of professional
37 liability insurance coverage;

38 That many of the factors and reasons contributing to the
39 increased cost and diminished availability of professional
40 liability insurance arise from the historic inability of this state
41 to effectively and fairly regulate the insurance industry so as to
42 guarantee our citizens that rates are appropriate, that purchasers
43 of insurance coverage are not treated arbitrarily and that rates
44 reflect the competency and experience of the insured health
45 care providers and health care facilities;

46 That the unpredictable nature of traumatic injury health
47 care services often result in a greater likelihood of unsatisfac-
48 tory patient outcomes, a higher degree of patient and patient
49 family dissatisfaction and frequent malpractice claims, creating
50 a financial strain on the trauma care system of our state,
51 increasing costs for all users of the trauma care system and
52 impacting the availability of these services, requires appropriate
53 and balanced limitations on the rights of persons asserting
54 claims against trauma care health care providers, this balance
55 must guarantee availability of trauma care services while
56 mandating that these services meet all national standards of
57 care, to assure that our health care resources are being directed
58 towards providing the best trauma care available; and

59 That the cost of liability insurance coverage has continued
60 to rise dramatically, resulting in the state's loss and threatened
61 loss of physicians, which, together with other costs and taxation
62 incurred by health care providers in this state, have created a

63 competitive disadvantage in attracting and retaining qualified
64 physicians and other health care providers.

65 The Legislature further finds that medical liability issues
66 have reached critical proportions for the state's long-term
67 health care facilities, as: (1) Medical liability insurance
68 premiums for nursing homes in West Virginia continue to
69 increase and the number of claims per bed has increased
70 significantly; (2) the cost to the state medicaid program as a
71 result of such higher premiums has grown considerably in this
72 period; (3) current medical liability premium costs for some
73 nursing homes constitute a significant percentage of the amount
74 of coverage; (4) these high costs are leading some facilities to
75 consider dropping medical liability insurance coverage alto-
76 gether; and (5) the medical liability insurance crisis for nursing
77 homes may soon result in a reduction of the number of beds
78 available to citizens in need of long-term care.

79 Therefore, the purpose of this article is to provide for a
80 comprehensive resolution of the matters and factors which the
81 Legislature finds must be addressed to accomplish the goals set
82 forth in this section. In so doing, the Legislature has determined
83 that reforms in the common law and statutory rights of our
84 citizens must be enacted together as necessary and mutual
85 ingredients of the appropriate legislative response relating to:

86 (1) Compensation for injury and death;

87 (2) The regulation of rate making and other practices by the
88 liability insurance industry, including the formation of a
89 physicians' mutual insurance company and establishment of a
90 fund to assure adequate compensation to victims of malprac-
91 tice; and

92 (3) The authority of medical licensing boards to effectively
93 regulate and discipline the health care providers under such
94 board.

§55-7B-2. Definitions.

1 (a) “Board” means the state board of risk and insurance
2 management.

3 (b) “Collateral source” means a source of benefits or
4 advantages for economic loss that the claimant has received
5 from:

6 (1) Any federal or state act, public program or insurance
7 which provides payments for medical expenses, disability
8 benefits, including workers’ compensation benefits, or other
9 similar benefits. Benefits payable under the Social Security Act
10 are not considered payments from collateral sources except for
11 Social Security disability benefits directly attributable to the
12 medical injury in question;

13 (2) Any contract or agreement of any group, organization,
14 partnership or corporation to provide, pay for or reimburse the
15 cost of medical, hospital, dental, nursing, rehabilitation, therapy
16 or other health care services or provide similar benefits;

17 (3) Any group accident, sickness or income disability
18 insurance, any casualty or property insurance (including
19 automobile and homeowners’ insurance) which provides
20 medical benefits, income replacement or disability coverage, or
21 any other similar insurance benefits, except life insurance, to
22 the extent that someone other than the insured, including the
23 insured’s employer, has paid all or part of the premium or made
24 an economic contribution on behalf of the plaintiff; or

25 (4) Any contractual or voluntary wage continuation plan
26 provided by an employer or otherwise, or any other system
27 intended to provide wages during a period of disability.

28 (c) "Consumer price index" means the most recent con-
29 sumer price index for all consumers published by the United
30 States department of labor.

31 (d) "Emergency condition" means any acute traumatic
32 injury or acute medical condition which, according to standard-
33 ized criteria for triage, involves a significant risk of death or the
34 precipitation of significant complications or disabilities,
35 impairment of bodily functions, or, with respect to a pregnant
36 woman, a significant risk to the health of the unborn child.

37 (e) "Health care" means any act or treatment performed or
38 furnished, or which should have been performed or furnished,
39 by any health care provider for, to or on behalf of a patient
40 during the patient's medical care, treatment or confinement.

41 (f) "Health care facility" means any clinic, hospital,
42 nursing home, or assisted living facility, including personal care
43 home, residential care community and residential board and
44 care home, or behavioral health care facility or comprehensive
45 community mental health/mental retardation center, in and
46 licensed by the state of West Virginia and any state operated
47 institution or clinic providing health care.

48 (g) "Health care provider" means a person, partnership,
49 corporation, professional limited liability company, health care
50 facility or institution licensed by, or certified in, this state or
51 another state, to provide health care or professional health care
52 services, including, but not limited to, a physician, osteopathic
53 physician, hospital, dentist, registered or licensed practical
54 nurse, optometrist, podiatrist, chiropractor, physical therapist,
55 psychologist, emergency medical services authority or agency,

56 or an officer, employee or agent thereof acting in the course and
57 scope of such officer's, employee's or agent's employment.

58 (h) "Medical injury" means injury or death to a patient
59 arising or resulting from the rendering of or failure to render
60 health care.

61 (i) "Medical professional liability" means any liability for
62 damages resulting from the death or injury of a person for any
63 tort or breach of contract based on health care services ren-
64 dered, or which should have been rendered, by a health care
65 provider or health care facility to a patient.

66 (j) "Medical professional liability insurance" means a
67 contract of insurance or any actuarially sound self-funding
68 program that pays for the legal liability of a health care facility
69 or health care provider arising from a claim of medical profes-
70 sional liability.

71 (k) "Noneconomic loss" means losses, including, but not
72 limited to, pain, suffering, mental anguish and grief.

73 (l) "Patient" means a natural person who receives or should
74 have received health care from a licensed health care provider
75 under a contract, expressed or implied.

76 (m) "Plaintiff" means a patient or representative of a patient
77 who brings an action for medical professional liability under
78 this article.

79 (n) "Representative" means the spouse, parent, guardian,
80 trustee, attorney or other legal agent of another.

§55-7B-3. Elements of proof.

1 (a) The following are necessary elements of proof that an
2 injury or death resulted from the failure of a health care
3 provider to follow the accepted standard of care:

4 (1) The health care provider failed to exercise that degree
5 of care, skill and learning required or expected of a reasonable,
6 prudent health care provider in the profession or class to which
7 the health care provider belongs acting in the same or similar
8 circumstances; and

9 (2) Such failure was a proximate cause of the injury or
10 death.

11 (b) If the plaintiff proceeds on the “loss of chance” theory,
12 *i.e.*, that the health care provider’s failure to follow the accepted
13 standard of care deprived the patient of a chance of recovery or
14 increased the risk of harm to the patient which was a substantial
15 factor in bringing about the ultimate injury to the patient, the
16 plaintiff must also prove, to a reasonable degree of medical
17 probability, that following the accepted standard of care would
18 have resulted in a greater than twenty-five percent chance that
19 the patient would have had an improved recovery or would
20 have survived.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

1 (a) Notwithstanding any other provision of this code, no
2 person may file a medical professional liability action against
3 any health care provider without complying with the provisions
4 of this section.

5 (b) At least thirty days prior to the filing of a medical
6 professional liability action against a health care provider, the
7 claimant shall serve by certified mail, return receipt requested,
8 a notice of claim on each health care provider the claimant will
9 join in litigation. The notice of claim shall include a statement
10 of the theory or theories of liability upon which a cause of
11 action may be based, and a list of all health care providers and
12 health care facilities to whom notices of claim are being sent,
13 together with a screening certificate of merit. The screening

14 certificate of merit shall be executed under oath by a health care
15 provider qualified as an expert under the West Virginia rules of
16 evidence and shall state with particularity: (1) The expert's
17 familiarity with the applicable standard of care in issue; (2) the
18 expert's qualifications; (3) the expert's opinion as to how the
19 applicable standard of care was breached; and (4) the expert's
20 opinion as to how the breach of the applicable standard of care
21 resulted in injury or death. A separate screening certificate of
22 merit must be provided for each health care provider against
23 whom a claim is asserted. The person signing the screening
24 certificate of merit shall have no financial interest in the
25 underlying claim, but may participate as an expert witness in
26 any judicial proceeding. Nothing in this subsection may be
27 construed to limit the application of rule 15 of the rules of civil
28 procedure.

29 (c) Notwithstanding any provision of this code, if a claim-
30 ant or his or her counsel, believes that no screening certificate
31 of merit is necessary because the cause of action is based upon
32 a well-established legal theory of liability which does not
33 require expert testimony supporting a breach of the applicable
34 standard of care, the claimant or his or her counsel, shall file a
35 statement specifically setting forth the basis of the alleged
36 liability of the health care provider in lieu of a screening
37 certificate of merit.

38 (d) If a claimant or his or her counsel has insufficient time
39 to obtain a screening certificate of merit prior to the expiration
40 of the applicable statute of limitations, the claimant shall
41 comply with the provisions of subsection (b) of this section
42 except that the claimant or his or her counsel shall furnish the
43 health care provider with a statement of intent to provide a
44 screening certificate of merit within sixty days of the date the
45 health care provider receives the notice of claim.

46 (e) Any health care provider who receives a notice of claim
47 pursuant to the provisions of this section may respond, in
48 writing, to the claimant or his or her counsel within thirty days
49 of receipt of the claim or within thirty days of receipt of the
50 screening certificate of merit if the claimant is proceeding
51 pursuant to the provisions of subsection (d) of this section. The
52 response may state that the health care provider has a bona fide
53 defense and the name of the health care provider's counsel, if
54 any.

55 (f) Upon receipt of the notice of claim or of the screening
56 certificate of merit, if the claimant is proceeding pursuant to the
57 provisions of subsection (d) of this section, the health care
58 provider is entitled to pre-litigation mediation before a qualified
59 mediator upon written demand to the claimant.

60 (g) If the health care provider demands mediation pursuant
61 to the provisions of subsection (f) of this section, the mediation
62 shall be concluded within forty-five days of the date of the
63 written demand. The mediation shall otherwise be conducted
64 pursuant to rule 25 of the trial court rules, unless portions of the
65 rule are clearly not applicable to a mediation conducted prior to
66 the filing of a complaint or unless the supreme court of appeals
67 promulgates rules governing mediation prior to the filing of a
68 complaint. If mediation is conducted, the claimant may depose
69 the health care provider before mediation or take the testimony
70 of the health care provider during the mediation.

71 (h) Except as otherwise provided in this subsection, any
72 statute of limitations applicable to a cause of action against a
73 health care provider upon whom notice was served for alleged
74 medical professional liability shall be tolled from the date of
75 mail of a notice of claim to thirty days following receipt of a
76 response to the notice of claim, thirty days from the date a
77 response to the notice of claim would be due, or thirty days
78 from the receipt by the claimant of written notice from the

79 mediator that the mediation has not resulted in a settlement of
80 the alleged claim and that mediation is concluded, whichever
81 last occurs. If a claimant has sent a notice of claim relating to
82 any injury or death to more than one health care provider, any
83 one of whom has demanded mediation, then the statute of
84 limitations shall be tolled with respect to, and only with respect
85 to, those health care providers to whom the claimant sent a
86 notice of claim to thirty days from the receipt of the claimant of
87 written notice from the mediator that the mediation has not
88 resulted in a settlement of the alleged claim and that mediation
89 is concluded.

90 (i) Notwithstanding any other provision of this code, a
91 notice of claim, a health care provider's response to any notice
92 claim, a screening certificate of merit and the results of any
93 mediation conducted pursuant to the provisions of this section
94 are confidential and are not admissible as evidence in any court
95 proceeding unless the court, upon hearing, determines that
96 failure to disclose the contents would cause a miscarriage of
97 justice.

§55-7B-7. Testimony of expert witness on standard of care.

1 (a) The applicable standard of care and a defendant's failure
2 to meet the standard of care, if at issue, shall be established in
3 medical professional liability cases by the plaintiff by testimony
4 of one or more knowledgeable, competent expert witnesses if
5 required by the court. Expert testimony may only be admitted
6 in evidence if the foundation therefor is first laid establishing
7 that: (1) The opinion is actually held by the expert witness; (2)
8 the opinion can be testified to with reasonable medical proba-
9 bility; (3) the expert witness possesses professional knowledge
10 and expertise coupled with knowledge of the applicable
11 standard of care to which his or her expert opinion testimony is
12 addressed; (4) the expert witness maintains a current license to
13 practice medicine with the appropriate licensing authority of

14 any state of the United States: *Provided*, That the expert
15 witness' license has not been revoked or suspended in the past
16 year in any state; and (5) the expert witness is engaged or
17 qualified in a medical field in which the practitioner has
18 experience and/or training in diagnosing or treating injuries or
19 conditions similar to those of the patient. If the witness meets
20 all of these qualifications and devoted, at the time of the
21 medical injury, sixty percent of his or her professional time
22 annually to the active clinical practice in his or her medical
23 field or specialty, or to teaching in his or her medical field or
24 speciality in an accredited university, there shall be a rebuttable
25 presumption that the witness is qualified as an expert. The
26 parties shall have the opportunity to impeach any witness'
27 qualifications as an expert. Financial records of an expert
28 witness are not discoverable or relevant to prove the amount of
29 time the expert witness spends in active practice or teaching in
30 his or her medical field unless good cause can be shown to the
31 court.

32 (b) Nothing contained in this section may be construed to
33 limit a trial court's discretion to determine the competency or
34 lack of competency of a witness on a ground not specifically
35 enumerated in this section.

§55-7B-8. Limit on liability for noneconomic loss.

1 (a) In any professional liability action brought against a
2 health care provider pursuant to this article, the maximum
3 amount recoverable as compensatory damages for noneconomic
4 loss shall not exceed two hundred fifty thousand dollars per
5 occurrence, regardless of the number of plaintiffs or the number
6 of defendants or, in the case of wrongful death, regardless of
7 the number of distributees, except as provided in subsection (b)
8 of this section.

9 (b) The plaintiff may recover compensatory damages for
10 noneconomic loss in excess of the limitation described in
11 subsection (a) of this section, but not in excess of five hundred
12 thousand dollars for each occurrence, regardless of the number
13 of plaintiffs or the number of defendants or, in the case of
14 wrongful death, regardless of the number of distributees, where
15 the damages for noneconomic losses suffered by the plaintiff
16 were for: (1) Wrongful death; (2) permanent and substantial
17 physical deformity, loss of use of a limb or loss of a bodily
18 organ system; or (3) permanent physical or mental functional
19 injury that permanently prevents the injured person from being
20 able to independently care for himself or herself and perform
21 life sustaining activities.

22 (c) On the first of January, two thousand four, and in each
23 year thereafter, the limitation for compensatory damages
24 contained in subsections (a) and (b) of this section shall
25 increase to account for inflation by an amount equal to the
26 consumer price index published by the United States depart-
27 ment of labor, up to fifty percent of the amounts specified in
28 subsections (b) and (c) as a limitation of compensatory
29 noneconomic damages.

30 (d) The limitations on noneconomic damages contained in
31 subsections (a), (b), (c) and (e) of this section are not available
32 to any defendant in an action pursuant to this article which does
33 not have medical professional liability insurance in the amount
34 of at least one million dollars per occurrence covering the
35 medical injury which is the subject of the action.

36 (e) If subsection (a) or (b) of this section, as enacted during
37 the regular session of the Legislature, two thousand three, or the
38 application thereof to any person or circumstance, is found by
39 a court of law to be unconstitutional or otherwise invalid, the
40 maximum amount recoverable as damages for noneconomic
41 loss in a professional liability action brought against a health

42 care provider under this article shall thereafter not exceed one
43 million dollars.

§55-7B-9. Several liability.

1 (a) In the trial of a medical professional liability action
2 under this article involving multiple defendants, the trier of fact
3 shall report its findings on a form provided by the court which
4 contains each of the possible verdicts as determined by the
5 court. Unless otherwise agreed by all the parties to the action,
6 the jury shall be instructed to answer special interrogatories, or
7 the court, acting without a jury, shall make findings as to:

8 (1) The total amount of compensatory damages recoverable
9 by the plaintiff;

10 (2) The portion of the damages that represents damages for
11 noneconomic loss;

12 (3) The portion of the damages that represents damages for
13 each category of economic loss;

14 (4) The percentage of fault, if any, attributable to each
15 plaintiff; and

16 (5) The percentage of fault, if any, attributable to each of
17 the defendants.

18 (b) In assessing percentages of fault, the trier of fact shall
19 consider only the fault of the parties in the litigation at the time
20 the verdict is rendered and shall not consider the fault of any
21 other person who has settled a claim with the plaintiff arising
22 out of the same medical injury. *Provided, That*, upon the
23 creation of the patient injury compensation fund provided for in
24 article twelve-c, chapter twenty-nine of this code, or of some
25 other mechanism for compensating a plaintiff for any amount
26 of economic damages awarded by the trier of fact which the

27 plaintiff has been unable to collect, the trier of fact shall, in
28 assessing percentages of fault, consider the fault of all alleged
29 parties, including the fault of any person who has settled a
30 claim with the plaintiff arising out of the same medical injury.

31 (c) If the trier of fact renders a verdict for the plaintiff, the
32 court shall enter judgment of several, but not joint, liability
33 against each defendant in accordance with the percentage of
34 fault attributed to the defendant by the trier of fact.

35 (d) To determine the amount of judgment to be entered
36 against each defendant, the court shall first, after adjusting the
37 verdict as provided in section nine-a of this article, reduce the
38 adjusted verdict by the amount of any pre-verdict settlement
39 arising out of the same medical injury. The court shall then,
40 with regard to each defendant, multiply the total amount of
41 damages remaining, with interest, by the percentage of fault
42 attributed to each defendant by the trier of fact. The resulting
43 amount of damages, together with any post-judgment interest
44 accrued, shall be the maximum recoverable against the defen-
45 dant.

46 (e) Upon the creation of the patient injury compensation
47 fund provided for in article twelve-c, chapter twenty-nine of
48 this code, or of some other mechanism for compensating a
49 plaintiff for any amount of economic damages awarded by the
50 trier of fact which the plaintiff has been unable to collect, the
51 court shall, in determining the amount of judgment to be
52 entered against each defendant, first multiply the total amount
53 of damages, with interest, recoverable by the plaintiff by the
54 percentage of each defendant's fault and that amount, together
55 with any post-judgment interest accrued, is the maximum
56 recoverable against said defendant. Prior to the court's entry of
57 the final judgment order as to each defendant against whom a
58 verdict was rendered, the court shall reduce the total jury
59 verdict by any amounts received by a plaintiff in settlement of

60 the action. When any defendant's percentage of the verdict
61 exceeds the remaining amounts due plaintiff after the manda-
62 tory reductions, each defendant shall be liable only for the
63 defendant's pro rata share of the remainder of the verdict as
64 calculated by the court from the remaining defendants to the
65 action. The plaintiff's total award may never exceed the jury's
66 verdict less any statutory or court-ordered reductions.

67 (f) Nothing in this section is meant to eliminate or diminish
68 any defenses or immunities which exist as of the effective date
69 of this section, except as expressly noted in this section.

70 (g) Nothing in this article is meant to preclude a health care
71 provider from being held responsible for the portion of fault
72 attributed by the trier of fact to any person acting as the health
73 care provider's agent or servant or to preclude imposition of
74 fault otherwise imputable or attributable to the health care
75 provider under claims of vicarious liability. A health care
76 provider may not be held vicariously liable for the acts of a
77 nonemployee pursuant to a theory of ostensible agency unless
78 the alleged agent does not maintain professional liability
79 insurance covering the medical injury which is the subject of
80 the action in the aggregate amount of at least one million
81 dollars.

**§55-7B-9a. Reduction in compensatory damages for economic
losses for payments from collateral sources the
same injury.**

1 (a) In any action arising after the effective date of this
2 section, a defendant who has been found liable to the plaintiff
3 for damages for medical care, rehabilitation services, lost
4 earnings or other economic losses may present to the court,
5 after the trier of fact has rendered a verdict, but before entry of
6 judgment, evidence of payments the plaintiff has received for
7 the same injury from collateral sources.

8 (b) In any hearing pursuant to subsection (a) of this section,
9 the defendant may present evidence of future payments from
10 collateral sources if the court determines that: (1) There is a
11 preexisting contractual or statutory obligation on the collateral
12 source to pay the benefits; (2) the benefits, to a reasonable
13 degree of certainty, will be paid to the plaintiff for expenses the
14 trier of fact has determined the plaintiff will incur in the future;
15 and (3) the amount of the future expenses is readily reducible
16 to a sum certain.

17 (c) In the hearing pursuant to subsection (a) of this section,
18 the plaintiff may present evidence of the value of payments or
19 contributions he or she has made to secure the right to the
20 benefits paid by the collateral source.

21 (d) After hearing the evidence presented by the parties, the
22 court shall make the following findings of fact:

23 (1) The total amount of damages for economic loss found
24 by the trier of fact;

25 (2) The total amount of damages for each category of
26 economic loss found by the trier of fact;

27 (3) The total amount of allowable collateral source pay-
28 ments received or to be received by the plaintiff for the medical
29 injury which was the subject of the verdict in each category of
30 economic loss; and

31 (4) The total amount of any premiums or contributions paid
32 by the plaintiff in exchange for the collateral source payments
33 in each category of economic loss found by the trier of fact.

34 (e) The court shall subtract the total premiums the plaintiff
35 was found to have paid in each category of economic loss from
36 the total collateral source benefits the plaintiff received with

37 regard to that category of economic loss to arrive at the net
38 amount of collateral source payments.

39 (f) The court shall then subtract the net amount of collateral
40 source payments received or to be received by the plaintiff in
41 each category of economic loss from the total amount of
42 damages awarded the plaintiff by the trier of fact for that
43 category of economic loss to arrive at the adjusted verdict.

44 (g) The court shall not reduce the verdict rendered by the
45 trier of fact in any category of economic loss to reflect:

46 (1) Amounts paid to or on behalf of the plaintiff which the
47 collateral source has a right to recover from the plaintiff
48 through subrogation, lien or reimbursement;

49 (2) Amounts in excess of benefits actually paid or to be
50 paid on behalf of the plaintiff by a collateral source in a
51 category of economic loss;

52 (3) The proceeds of any individual disability or income
53 replacement insurance paid for entirely by the plaintiff;

54 (4) The assets of the plaintiff or the members of the
55 plaintiff's immediate family; or

56 (5) A settlement between the plaintiff and another tortfea-
57 sor.

58 (h) After determining the amount of the adjusted verdict,
59 the court shall enter judgment in accordance with the provisions
60 of section nine.

§55-7B-9b. Limitations on third-party claims.

1 An action may not be maintained against a health care
2 provider pursuant to this article by or on behalf of a third-party

3 nonpatient for rendering or failing to render health care services
4 to a patient whose subsequent act is a proximate cause of injury
5 or death to the third party unless the health care provider
6 rendered or failed to render health care services in willful and
7 wanton or reckless disregard of a foreseeable risk of harm to
8 third persons. Nothing in this section shall be construed to
9 prevent the personal representative of a deceased patient from
10 maintaining a wrongful death action on behalf of such patient
11 pursuant to article seven of this chapter or to prevent a deriva-
12 tive claim for loss of consortium arising from injury or death to
13 the patient arising from the negligence of a health care provider
14 within the meaning of this article.

**§55-7B-9c. Limit on liability for treatment of emergency condi-
tions for which patient is admitted to a designated
trauma center; exceptions; emergency rules.**

1 (a) In any action brought under this article for injury to or
2 death of a patient as a result of health care services or assistance
3 rendered in good faith and necessitated by an emergency
4 condition for which the patient enters a health care facility
5 designated by the office of emergency medical services as a
6 trauma center, including health care services or assistance
7 rendered in good faith by a licensed EMS agency or an em-
8 ployee of an licensed EMS agency, the total amount of civil
9 damages recoverable shall not exceed five hundred thousand
10 dollars, exclusive of interest computed from the date of
11 judgment.

12 (b) The limitation of liability in subsection (a) of this
13 section also applies to any act or omission of a health care
14 provider in rendering continued care or assistance in the event
15 that surgery is required as a result of the emergency condition
16 within a reasonable time after the patient's condition is stabi-
17 lized.

18 (c) The limitation on liability provided under subsection (a)
19 of this section does not apply to any act or omission in render-
20 ing care or assistance which: (1) Occurs after the patient's
21 condition is stabilized and the patient is capable of receiving
22 medical treatment as a nonemergency patient; or (2) is unre-
23 lated to the original emergency condition.

24 (d) In the event that: (1) A physician provides follow-up
25 care to a patient to whom the physician rendered care or
26 assistance pursuant to subsection (a) of this section; and (2) a
27 medical condition arises during the course of the follow-up care
28 that is directly related to the original emergency condition for
29 which care or assistance was rendered pursuant to said subsec-
30 tion, there is rebuttable presumption that the medical condition
31 was the result of the original emergency condition and that the
32 limitation on liability provided by said subsection applies with
33 respect to that medical condition.

34 (e) There is a rebuttable presumption that a medical
35 condition which arises in the course of follow-up care provided
36 by the designated trauma center health care provider who
37 rendered good faith care or assistance for the original emer-
38 gency condition is directly related to the original emergency
39 condition where the follow-up care is provided within a
40 reasonable time after the patient's admission to the designated
41 trauma center.

42 (f) The limitation on liability provided under subsection (a)
43 of this section does not apply where health care or assistance
44 for the emergency condition is rendered:

45 (1) In willful and wanton or reckless disregard of a risk of
46 harm to the patient; or

47 (2) In clear violation of established written protocols for
48 triage and emergency health care procedures developed by the

49 office of emergency medical services in accordance with
50 subsection (e) of this section. In the event that the office of
51 emergency medical services has not developed a written triage
52 or emergency medical protocol by the effective date of this
53 section, the limitation on liability provided under subsection (a)
54 of this section does not apply where health care or assistance is
55 rendered under this section in violation of nationally recognized
56 standards for triage and emergency health care procedures.

57 (g) The office of emergency medical services shall, prior to
58 the effective date of this section, develop a written protocol
59 specifying recognized and accepted standards for triage and
60 emergency health care procedures for treatment of emergency
61 conditions necessitating admission of the patient to a designated
62 trauma center.

63 (h) In its discretion, the office of emergency medical
64 services may grant provisional trauma center status for a period
65 of up to one year to a health care facility applying for desig-
66 nated trauma center status. A facility given provisional trauma
67 center status is eligible for the limitation on liability provided
68 in subsection (a) of this section. If, at the end of the provisional
69 period, the facility has not been approved by the office of
70 emergency medical services as a designated trauma center, the
71 facility will no longer be eligible for the limitation on liability
72 provided in subsection (a) of this section.

73 (i) The commissioner of the bureau for public health may
74 grant an applicant for designated trauma center status a one-
75 time only extension of provisional trauma center status, upon
76 submission by the facility of a written request for extension,
77 accompanied by a detailed explanation and plan of action to
78 fulfill the requirements for a designated trauma center. If, at the
79 end of the six-month period, the facility has not been approved
80 by the office of emergency medical services as a designated
81 trauma center, the facility will no longer have the protection of

82 the limitation on liability provided in subsection (a) of this
83 section.

84 (j) If the office of emergency medical services determines
85 that a health care facility no longer meets the requirements for
86 a designated trauma center, it shall revoke the designation, at
87 which time the limitation on liability established by subsection
88 (a) of this section shall cease to apply to that health care facility
89 for services or treatment rendered thereafter.

90 (k) The Legislature hereby finds that an emergency exists
91 compelling promulgation of an emergency rule, consistent with
92 the provisions of this section, governing the criteria for designa-
93 tion of a facility as a trauma center or provisional trauma center
94 and implementation of a statewide trauma/emergency care
95 system. The Legislature therefore directs the secretary of the
96 department of health and human resources to file, on or before
97 the first day of July, two thousand three, emergency rules
98 specifying the criteria for designation of a facility as a trauma
99 center or provisional trauma center in accordance with nation-
100 ally accepted and recognized standards and governing the
101 implementation of a statewide trauma/emergency care system.
102 The rules governing the statewide trauma/emergency care
103 system shall include, but not be limited to:

104 (1) System design, organizational structure and operation,
105 including integration with the existing emergency medical
106 services system;

107 (2) Regulation of facility designation, categorization and
108 credentialing, including the establishment and collection of
109 reasonable fees for designation; and

110 (3) System accountability, including medical review and
111 audit to assure system quality. Any medical review committees
112 established to assure system quality shall include all levels of

113 care, including emergency medical service providers, and both
114 the review committees and the providers shall qualify for all the
115 rights and protections established in article three-c, chapter
116 thirty of this code.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall be
3 effective at the same time that the provisions of Enrolled Senate
4 Bill 714, enacted during the Regular session, 1986, become
5 effective, and the provisions of said House Bill 149 shall be
6 deemed to amend the provisions of Enrolled Senate Bill 714.
7 The provisions of this article shall not apply to injuries which
8 occur before the effective date of this said Enrolled Senate Bill
9 714.

10 The amendments to this article as provided in House Bill
11 601, enacted during the sixth extraordinary session of the
12 Legislature, two thousand one, apply to all causes of action
13 alleging medical professional liability which are filed on or
14 after the first day of March, two thousand two.

15 (b) The amendments to this article provided in Enrolled
16 Committee Substitute for House Bill No. 2122 during the
17 regular session of the Legislature, two thousand three, apply to
18 all causes of action alleging medical professional liability
19 which are filed on or after the first day of July, two thousand
20 three.

CHAPTER 148

(Com. Sub. for H. B. 2077 — By Mr. Speaker, Mr. Kiss)

[Passed February 18, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that the joint committee on government and finance be given reports on the Colin Anderson closure and relocation of patients.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1b. Deinstitutionalization of residents at Colin Anderson.

1 (a) Notwithstanding any other provisions in this code to the
2 contrary, the secretary of the department of health and human
3 resources shall close the Colin Anderson Center on or before
4 the thirty-first day of December, one thousand nine hundred
5 ninety-six: *Provided*, That prior to any transfer of any resident
6 from Colin Anderson Center as a result of action taken pursuant
7 to this section, the secretary must design and be able to imple-
8 ment a detailed plan providing for the ongoing appropriate care,
9 placement and transfer of said resident in accordance with
10 subsection (b) of this section.

11 (b) The plan for providing for the ongoing appropriate care,
12 placement and transfer of each resident at Colin Anderson
13 Center shall be designed in accordance with the criteria set forth
14 in this subsection. Each resident must have a plan of service
15 developed to meet his or her individual medical, physical and
16 emotional needs. The plan of service shall be developed by a
17 team which shall include, but not be limited to, the following
18 persons: The resident; the immediate family of the resident, if
19 the immediate family of the resident is willing to participate;
20 the guardian of the resident, if the guardian is willing to
21 participate; representatives of the Colin Anderson Center;
22 community behavioral health service providers; and such other
23 persons as may be appointed to the team by the secretary of the
24 department. The plan shall not compromise the health, safety
25 and well-being of the resident. The plan will be implemented in
26 a timely manner. However, no plan shall be implemented until
27 the needed services are in place, adequate staff training has
28 been completed and an appropriate transition has been pro-
29 vided. Each resident, or his or her guardian, shall have access
30 to and be informed of the written appeal process which shall be
31 established by the department.

32 (c) In designing and implementing the placement plan, the
33 secretary of the department of health and human resources shall
34 transfer funds from the hospital services revenue account
35 created pursuant to section fifteen-a, article one, chapter sixteen
36 of this code and the consolidated medical service fund to a
37 special revenue account created in the state treasury, designated
38 the "Colin Anderson Transfer Fund" for the specific purposes
39 of caring for residents in alternative placement settings:
40 *Provided*, That transfers in excess of a total of ten million
41 dollars in any one fiscal year shall require the prior approval of
42 the governor and shall be reported forthwith to the joint
43 committee on government and finance. Moneys deposited in the
44 "Colin Anderson Transfer Fund" shall be expended directly
45 from the fund for payments related to care of persons affected

46 by the provisions of this section and may be expended by the
47 transfer of moneys from this fund to match the state's share of
48 medicaid payments necessary to effectuate the purposes of this
49 section. The secretary shall prepare a quarterly report of all
50 transfers made from the hospital services revenue account and
51 the consolidated medical service fund explaining the specific
52 reason for the transfer. In submitting a budget to the Legislature
53 for the fiscal year following the closure of Colin Anderson, the
54 secretary shall include funding necessary for the continued care
55 of each resident in the appropriate account and the authority of
56 the secretary to transfer funds pursuant to this section shall be
57 void and of no further effect.

58 (d) All savings accruing to the state as a result of actions
59 taken pursuant to this section shall be deposited in the medical
60 services trust fund established by section two-a, article four-a,
61 chapter nine of this code.

62 (e) The department of health and human resources, the
63 bureau of employment programs, the public employees retire-
64 ment system, the public employees insurance agency, any state
65 agency or local community action agency receiving job training
66 partnership act funds and any other agency of the state involved
67 with benefits or services to the unemployed shall work individ-
68 ually with all employees whose jobs have been terminated by
69 this section in order to recommend benefits, services, training,
70 interagency employment transfer or other employment. The
71 secretary of the department of health and human resources and
72 secretaries of all other state agencies shall use best efforts to
73 employ qualified employees who were employed at the facility
74 immediately prior to its closure: *Provided*, That notwithstand-
75 ing any other provision of this code to the contrary, in filling
76 vacancies at other facilities or other state agencies, the secretary
77 and the directors of other agencies shall, for a period of twelve
78 months after the closure, give preference over all but existing
79 employees to qualified employees who were permanently

80 employed at the facility immediately prior to its closure:
81 *Provided, however,* That qualified persons who were perma-
82 nently employed at Colin Anderson immediately prior to its
83 closure shall not supersede those employees with recall rights
84 in other state agencies. The secretary of the department of
85 health and human resources is directed to encourage vendors
86 providing mental health related services for the department to
87 hire employees who were separated from service as a result of
88 the closure of Colin Anderson.

89 (f) No later than the thirtieth day of November, one
90 thousand nine hundred ninety-five, the department shall report
91 to the joint committee on government and finance regarding the
92 feasibility of establishing one or more permanent intermediate
93 care facilities for the mentally retarded which would house up
94 to thirty residents which is constructed and/or operated by a
95 private contractor. Prior to preparing the report, the department
96 shall solicit requests for proposals from private contractors who
97 are willing to construct and/or operate such a facility within this
98 state. In formulating the feasibility report, the department shall
99 consider the availability of all necessary equipment at the
100 private facility, the cost to the state of maintaining patients in
101 the private facility and the quality of care available at the
102 privately run facility vis-a-vis the care available at a group
103 home in this state. The department shall also consider, when
104 making its report, the preference of a guardian of any resident
105 at Colin Anderson Center who prefers the more restrictive
106 placement of that resident in an intermediate care facility for
107 the mentally retarded. The department may also consider and
108 report on such other factors which are relevant to the feasibility
109 of permanently maintaining, in this state, one or more interme-
110 diate care facilities for the mentally retarded which would
111 house up to an aggregate of thirty residents statewide.

112 (g) In order to assist the department in completing the
113 transfer of residents at Colin Anderson Center to some other

114 appropriate placement by the thirty-first day of December, one
115 thousand nine hundred ninety-six, the health care cost review
116 authority is authorized and required to expedite any certificate
117 of need review of group homes or other facilities that are
118 necessitated as a direct result of the required closure of Colin
119 Anderson Center. For the purposes of this subsection only, the
120 health care cost review authority may decrease any time
121 limitations or other requirements set forth in section seven,
122 article two-d, chapter sixteen of this code: *Provided*, That in no
123 event may the health care cost review authority fail to follow
124 any other provision of said article. The secretary of the depart-
125 ment of health and human resources shall provide the health
126 care cost review authority with a list of the applications that are
127 to be expedited under this subsection.

128 (h) The Legislature shall establish a subcommittee of the
129 joint committee on government and finance to monitor the
130 placement and care of residents transferred from Colin Ander-
131 son Center as a result of the provisions of this section. The
132 subcommittee shall monitor both state and federal moneys
133 expended as a result of the implementation of this section. The
134 subcommittee, upon approval by the joint committee and when
135 the terms of the visitation are in compliance with any applicable
136 law or regulation regarding confidentiality and privacy of the
137 residents, may visit any facility or placement location.

CHAPTER 149

(Com. Sub. for S. B. 204 — By Senators Oliverio, Sharpe,
Ross, McKenzie and Hunter)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to removing language which precludes incarcerated persons from being subjected to mental hygiene proceedings; and clarifying that licensed independent clinical social workers and advanced nurse practitioners with psychiatric certification may certify persons for purposes of mental health proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§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.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) Any adult person may make an application for involun-
2 tary hospitalization for examination of an individual when the
3 person making the application has reason to believe that:

4 (1) The individual to be examined is addicted, as defined in
5 section eleven, article one of this chapter; or

6 (2) The individual is mentally ill and, because of his or her
7 mental illness, the individual is likely to cause serious harm to
8 himself or herself or to others if allowed to remain at liberty
9 while awaiting an examination and certification by a physician
10 or psychologist.

11 Notwithstanding any language in subsection (a) of this
12 section to the contrary, if the individual to be examined under
13 the provisions of this section is incarcerated in a jail, prison or
14 other correctional facility, then only the chief administrative
15 officer of the facility holding the individual may file the
16 application and the application must include the additional
17 statement that the correctional facility itself cannot reasonably
18 provide treatment and other services for the individual's mental
19 illness or addiction.

20 (b) The person making the application shall make the
21 application under oath.

22 (c) Application for involuntary custody for examination
23 may be made to the circuit court or a mental hygiene commis-
24 sioner of the county in which the individual resides or of the
25 county in which he or she may be found. When no circuit court
26 judge or mental hygiene commissioner is available for immedi-
27 ate presentation of the application, the application may be made
28 to a magistrate designated by the chief judge of the judicial
29 circuit to accept applications and hold probable cause hearings.
30 A designated magistrate before whom an application or matter
31 is pending may, upon the availability of a mental hygiene
32 commissioner or circuit court judge for immediate presentation
33 of an application or pending matter, transfer the pending matter
34 or application to the mental hygiene commissioner or circuit
35 court judge for further proceedings unless otherwise ordered by
36 the chief judge of the judicial circuit.

37 (d) The person making the application shall give informa-
38 tion and state facts in the application as may be required by the
39 form provided for this purpose by the supreme court of appeals.

40 (e) The circuit court, mental hygiene commissioner or
41 designated magistrate may enter an order for the individual
42 named in the application to be detained and taken into custody

43 for the purpose of holding a probable cause hearing as provided
44 for in subsection (g) of this section for the purpose of an
45 examination of the individual by a physician, psychologist, a
46 licensed independent clinical social worker practicing in
47 compliance with article thirty, chapter thirty of this code or
48 advanced nurse practitioner with psychiatric certification
49 practicing in compliance with article seven of said chapter:
50 *Provided*, That a licensed independent clinical social worker or
51 an advanced nurse practitioner with psychiatric certification
52 may only perform the examination if he or she has previously
53 been authorized by an order of the circuit court to do so, said
54 order having found that the licensed independent clinical social
55 worker or advanced nurse practitioner with psychiatric certifi-
56 cation has particularized expertise in the areas of mental health
57 and mental hygiene sufficient to make such determinations as
58 are required by the provisions of this section. The examination
59 is to be provided or arranged by a community mental health
60 center designated by the secretary of the department of health
61 and human resources to serve the county in which the action
62 takes place. The order is to specify that the hearing be held
63 forthwith and is to provide for the appointment of counsel for
64 the individual: *Provided, however*, That the order may allow the
65 hearing to be held up to twenty-four hours after the person to be
66 examined is taken into custody rather than forthwith if the
67 circuit court of the county in which the person is found has
68 previously entered a standing order which establishes within
69 that jurisdiction a program for placement of persons awaiting a
70 hearing which assures the safety and humane treatment of
71 persons: *Provided further*, That the time requirements set forth
72 in this subsection shall only apply to persons who are not in
73 need of medical care for a physical condition or disease for
74 which the need for treatment precludes the ability to comply
75 with said time requirements. During periods of holding and
76 detention authorized by this subsection, upon consent of the
77 individual or in the event of a medical or psychiatric emer-

78 gency, the individual may receive treatment. The medical
79 provider shall exercise due diligence in determining the
80 individual's existing medical needs and provide such treatment
81 as the individual requires, including previously prescribed
82 medications. As used in this section, "psychiatric emergency"
83 means an incident during which an individual loses control and
84 behaves in a manner that poses substantial likelihood of
85 physical harm to himself, herself or others. Where a physician,
86 psychologist, licensed independent clinical social worker or
87 advanced nurse practitioner with psychiatric certification has
88 within the preceding seventy-two hours performed the examina-
89 tion required by the provisions of this subdivision, the commu-
90 nity mental health center may waive the duty to perform or
91 arrange another examination upon approving the previously
92 performed examination. Notwithstanding the provisions of this
93 subsection, subsection (r), section four of this article applies
94 regarding payment by the county commission for examinations
95 at hearings. If the examination reveals that the individual is not
96 mentally ill or addicted, or is determined to be mentally ill but
97 not likely to cause harm to himself, herself or others, the
98 individual shall be immediately released without the need for a
99 probable cause hearing and absent a finding of professional
100 negligence such examiner shall not be civilly liable for the
101 rendering of such opinion absent a finding of professional
102 negligence. The examiner shall immediately provide the mental
103 hygiene commissioner, circuit court or designated magistrate
104 before whom the matter is pending the results of the examina-
105 tion on the form provided for this purpose by the supreme court
106 of appeals for entry of an order reflecting the lack of probable
107 cause.

108 (f) A probable cause hearing is to be held before a magis-
109 trate designated by the chief judge of the judicial circuit, the
110 mental hygiene commissioner or circuit judge of the county of
111 which the individual is a resident or where he or she was found.

112 If requested by the individual or his or her counsel, the hearing
113 may be postponed for a period not to exceed forty-eight hours.

114 The individual must be present at the hearing and has the
115 right to present evidence, confront all witnesses and other
116 evidence against him or her and to examine testimony offered,
117 including testimony by representatives of the community
118 mental health center serving the area. Expert testimony at the
119 hearing may be taken telephonically or via videoconferencing.
120 The individual has the right to remain silent and to be pro-
121 ceeded against in accordance with the rules of evidence of the
122 supreme court of appeals, except as provided for in section
123 twelve, article one of this chapter. At the conclusion of the
124 hearing, the magistrate, mental hygiene commissioner or circuit
125 court judge shall find and enter an order stating whether or not
126 there is probable cause to believe that the individual, as a result
127 of mental illness, is likely to cause serious harm to himself or
128 herself or to others or is addicted.

129 (g) The magistrate, mental hygiene commissioner or circuit
130 court judge at a probable cause hearing or at a final commit-
131 ment hearing held pursuant to the provisions of section four of
132 this article finds that the individual, as a result of mental illness,
133 is likely to cause serious harm to himself, herself or others or is
134 addicted and because of mental illness or addiction requires
135 treatment, the magistrate, mental hygiene commissioner or
136 circuit court judge may consider evidence on the question of
137 whether the individual's circumstances make him or her
138 amenable to outpatient treatment in a nonresidential or
139 nonhospital setting pursuant to a voluntary treatment agree-
140 ment. The agreement is to be in writing and approved by the
141 individual, his or her counsel and the magistrate, mental
142 hygiene commissioner or circuit judge. If the magistrate, mental
143 hygiene commissioner or circuit court judge determines that
144 appropriate outpatient treatment is available in a nonresidential
145 or nonhospital setting, the individual may be released to

146 outpatient treatment upon the terms and conditions of the
147 voluntary treatment agreement. The failure of an individual
148 released to outpatient treatment pursuant to a voluntary
149 treatment agreement to comply with the terms of the voluntary
150 treatment agreement constitutes evidence that outpatient
151 treatment is insufficient and, after a hearing before a magistrate,
152 mental hygiene commissioner or circuit judge on the issue of
153 whether or not the individual failed or refused to comply with
154 the terms and conditions of the voluntary treatment agreement
155 and whether the individual as a result of mental illness remains
156 likely to cause serious harm to himself, herself or others or
157 remains addicted, the entry of an order requiring admission
158 under involuntary hospitalization pursuant to the provisions of
159 section three of this article may be entered. In the event a
160 person released pursuant to a voluntary treatment agreement is
161 unable to pay for the outpatient treatment and has no applicable
162 insurance coverage, including, but not limited to, private
163 insurance or medicaid, the secretary of health and human
164 resources may transfer funds for the purpose of reimbursing
165 community providers for services provided on an outpatient
166 basis for individuals for whom payment for treatment is the
167 responsibility of the department: *Provided*, That the department
168 may not authorize payment of outpatient services for an
169 individual subject to a voluntary treatment agreement in an
170 amount in excess of the cost of involuntary hospitalization of
171 the individual. The secretary shall establish and maintain fee
172 schedules for outpatient treatment provided in lieu of involun-
173 tary hospitalization. Nothing in the provisions of this article
174 regarding release pursuant to a voluntary treatment agreement
175 or convalescent status may be construed as creating a right to
176 receive outpatient mental health services or treatment or as
177 obligating any person or agency to provide outpatient services
178 or treatment. Time limitations set forth in this article relating to
179 periods of involuntary commitment to a mental health facility
180 for hospitalization do not apply to release pursuant to the terms

181 of a voluntary treatment agreement: *Provided, however*, That
182 release pursuant to a voluntary treatment agreement may not be
183 for a period of more than six months if the individual has not
184 been found to be involuntarily committed during the previous
185 two years and for a period of no more than two years if the
186 individual has been involuntarily committed during the preced-
187 ing two years. If in any proceeding held pursuant to this article
188 the individual objects to the issuance or conditions and terms of
189 an order adopting a voluntary treatment agreement, then the
190 circuit judge, magistrate or mental hygiene commissioner may
191 not enter an order directing treatment pursuant to a voluntary
192 treatment agreement. If involuntary commitment with release
193 pursuant to a voluntary treatment agreement is ordered, the
194 individual subject to the order may, upon request during the
195 period the order is in effect, have a hearing before a mental
196 hygiene commissioner or circuit judge where the individual
197 may seek to have the order canceled or modified. Nothing in
198 this section may affect the appellate and habeas corpus rights of
199 any individual subject to any commitment order.

200 (h) If the certifying physician or psychologist determines
201 that a person requires involuntary hospitalization for an
202 addiction to a substance which, due to the degree of addiction,
203 creates a reasonable likelihood that withdrawal or detoxification
204 from the substance of addiction will cause significant medical
205 complications, the person certifying the individual shall
206 recommend that the individual be closely monitored for
207 possible medical complications. If the magistrate, mental
208 hygiene commissioner or circuit court judge presiding orders
209 involuntary hospitalization, he or she shall include a recommen-
210 dation that the individual be closely monitored in the order of
211 commitment.

212 (i) The supreme court of appeals and the secretary of the
213 department of health and human resources shall collect data and
214 report to the Legislature at its regular annual sessions in two

215 thousand three and two thousand four of the effects of the
216 changes made in the mental hygiene judicial process along with
217 any recommendations which they may deem proper for further
218 revision or implementation in order to improve the administra-
219 tion and functioning of the mental hygiene system utilized in
220 this state, to serve the ends of due process and justice in
221 accordance with the rights and privileges guaranteed to all
222 citizens, to promote a more effective, humane and efficient
223 system and to promote the development of good mental health.
224 The supreme court of appeals and the secretary of the depart-
225 ment of health and human resources shall specifically develop
226 and propose a statewide system for evaluation and adjudication
227 of mental hygiene petitions which shall include payment
228 schedules and recommendations regarding funding sources.
229 Additionally, the secretary of the department of health and
230 human resources shall also immediately seek reciprocal
231 agreements with officials in contiguous states to develop
232 interstate/intergovernmental agreements to provide efficient and
233 efficacious services to out-of-state residents found in West
234 Virginia and who are in need of mental hygiene services.

**§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 a physician, psychologist, licensed
6 independent clinical social worker practicing in compliance
7 with the provisions of article thirty, chapter thirty of this code
8 or an advanced nurse practitioner with psychiatric certification
9 practicing in compliance with article seven of said chapter that
10 he or she has examined the individual and is of the opinion that
11 the individual is mentally ill and, because of such mental
12 illness, is likely to cause serious harm to himself or herself or

13 to others if not immediately restrained or is addicted: *Provided*,
14 That the opinions offered by an independent clinical social
15 worker or an advanced nurse practitioner with psychiatric
16 certification must be within their particular areas of expertise,
17 as recognized by the order of the authorizing court.

18 (b) *Three-day time limitation on examination.* — If said
19 examination does not take place within three days from the date
20 the individual is taken into custody, the individual shall be
21 released. If the examination reveals that the individual is not
22 mentally ill or addicted, the individual shall be released.

23 (c) *Three-day time limitation on certification.* — The
24 certification required in subsection (a) of this section shall be
25 valid for three days. Any individual with respect to whom such
26 certification has been issued may not be admitted on the basis
27 thereof at any time after the expiration of three days from the
28 date of such examination.

29 (d) *Findings and conclusions required for certification.* —
30 A certification under this section must include findings and
31 conclusions of the mental examination, the date, time and place
32 thereof and the facts upon which the conclusion that involun-
33 tary commitment is necessary is based.

34 (e) *Notice requirements.* — When an individual is admitted
35 to a mental health facility pursuant to the provisions of this
36 section, the chief medical officer thereof shall immediately give
37 notice of the individual's admission to the individual's spouse,
38 if any, and one of the individual's parents or guardians or if
39 there be no such spouse, parents or guardians, to one of the
40 individual's adult next of kin: *Provided*, That such next of kin
41 shall not be the applicant. Notice shall also be given to the
42 community mental health facility, if any, having jurisdiction in
43 the county of the individual's residence. Such notices other than
44 to the community mental health facility shall be in writing and

45 shall be transmitted to such person or persons at his, her or their
46 last known address by certified or registered mail, return receipt
47 requested.

48 (f) *Five-day time limitation for examination and certifica-*
49 *tion at mental health facility.* — After the individual's admis-
50 sion to a mental health facility, he or she may not be detained
51 more than five days, excluding Sundays and holidays, unless,
52 within such period, the individual is examined by a staff
53 physician and such physician certifies that in his or her opinion
54 the patient is mentally ill and is likely to injure himself or
55 herself or others or will remain addicted if allowed to be at
56 liberty.

57 (g) *Fifteen-day time limitation for institution of final*
58 *commitment proceedings.* — If, in the opinion of the examining
59 physician, the patient is mentally ill and because of such mental
60 illness is likely to injure himself or herself or others or will
61 continue to abuse a substance to which he or she is addicted if
62 allowed to be at liberty, the chief medical officer shall, within
63 fifteen days from the date of admission, institute final commit-
64 ment proceedings as provided in section four of this article. If
65 such proceedings are not instituted within such fifteen-day
66 period, the patient shall be immediately released. After the
67 request for hearing is filed, the hearing shall not be canceled on
68 the basis that the individual has become a voluntary patient
69 unless the mental hygiene commissioner concurs in the motion
70 for cancellation of the hearing.

71 (h) *Thirty-day time limitation for conclusion of all proceed-*
72 *ings.* — If all proceedings as provided in articles three and four
73 of this chapter are not completed within thirty days from the
74 date of institution of such proceedings, the patient shall be
75 immediately released.

CHAPTER 150

(Com. Sub. for H. B. 2881 — By Delegates Craig, Morgan and Smirl)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface coal mining and reclamation; and establishing requirements for bond release.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

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

- 1 (a) The permittee may file a request with the secretary for
- 2 the release of a bond or deposit. The permittee shall publish an
- 3 advertisement regarding the request for release in the same
- 4 manner as is required of advertisements for permit applications.
- 5 A copy of the advertisement shall be submitted to the secretary
- 6 as part of any bond release application and shall contain a
- 7 notification of the precise location of the land affected, the
- 8 number of acres, the permit and the date approved, the amount
- 9 of the bond filed and the portion sought to be released, the type
- 10 and appropriate dates of reclamation work performed and a

11 description of the results achieved as they relate to the
12 permittee's approved reclamation plan. In addition, as part of
13 any bond release application, the permittee shall submit copies
14 of letters which the permittee has sent to adjoining property
15 owners, local government bodies, planning agencies, sewage
16 and water treatment authorities or water companies in the
17 locality in which the surface mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accompa-
20 nied by final maps.

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

35 (c) If the secretary is satisfied that reclamation covered by
36 the bond or deposit or portion thereof has been accomplished as
37 required by this article, he or she may release the bond or
38 deposit, in whole or in part, according to the following sched-
39 ule:

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

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

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

55 (C) When the operator has completed successfully all
56 surface mining and reclamation activities, the release of the
57 remaining portion of the bond, but not before the expiration of
58 the period specified in subdivision (20), subsection (b), section
59 thirteen of this article: *Provided*, That the revegetation has been
60 established on the regraded mined lands in accordance with the
61 approved reclamation plan: *Provided, however*, That the release
62 may be made where the quality of the untreated post-mining
63 water discharged is better than or equal to the premining water
64 quality discharged from the mining site where expressly
65 authorized by legislative rule promulgated pursuant to section
66 three, article one of this chapter.

67 (2) For operations with an approved variance from approxi-
68 mate original contour:

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

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

82 (C) When the operator has completed successfully all
83 surface mining and reclamation activities, the release of the
84 remaining portion of the bond, but not before the expiration of
85 the period specified in subdivision (20), subsection (b), section
86 thirteen of this article: *Provided*, That the revegetation has been
87 established on the regraded mined lands in accordance with the
88 approved reclamation plan and if applicable the necessary post-
89 mining infrastructure is established and any necessary financing
90 is completed: *Provided, however*, That the release may be made
91 where the quality of the untreated post-mining water discharged
92 is better than or equal to the premining water quality discharged
93 from the mining site where expressly authorized by legislative
94 rule promulgated pursuant to section three, article one of this
95 chapter.

96 No part of the bond or deposit may be released under this
97 subsection so long as the lands to which the release would be
98 applicable are contributing additional suspended solids to
99 streamflow or runoff outside the permit area in excess of the
100 requirements set by section thirteen of this article, or until soil
101 productivity for prime farmlands has returned to equivalent
102 levels of yield as nonmined land of the same soil type in the
103 surrounding area under equivalent management practices as
104 determined from the soil survey performed pursuant to section
105 nine of this article. Where a sediment dam is to be retained as
106 a permanent impoundment pursuant to section thirteen of this
107 article, or where a road or minor deviation is to be retained for
108 sound future maintenance of the operation, the portion of the

109 bond may be released under this subsection so long as provi-
110 sions for sound future maintenance by the operator or the
111 landowner have been made with the secretary.

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

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

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

138 (f) Any person with a valid legal interest which is or may
139 be adversely affected by release of the bond or the responsible
140 officer or head of any federal, state or local governmental

141 agency which has jurisdiction by law or special expertise with
142 respect to any environmental, social or economic impact
143 involved in the operation, or is authorized to develop and
144 enforce environmental standards with respect to the operations,
145 has the right to file written objections to the proposed bond
146 release and request a hearing with the secretary within thirty
147 days after the last publication of the permittee's advertisement.
148 If written objections are filed and a hearing requested, the
149 secretary shall inform all of the interested parties of the time
150 and place of the hearing and shall hold a public hearing in the
151 locality of the surface-mining operation proposed for bond
152 release within three weeks after the close of the public comment
153 period. The date, time and location of the public hearing shall
154 also be advertised by the secretary in a newspaper of general
155 circulation in the same locality.

156 (g) Without prejudice to the rights of the objectors, the
157 applicant, or the responsibilities of the secretary pursuant to this
158 section, the secretary may hold an informal conference to
159 resolve any written objections and satisfy the hearing require-
160 ments of this section thereby.

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

CHAPTER 151

(H. B. 2882 — By Delegates Craig, Morgan, Caputo and Smirl)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals to the environmental quality boards generally; and limiting requirements for stays for appeals under the surface coal mining and reclamation act for unjust hardship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-7. Appeals to boards.

1 (a) The provisions of this section are applicable to all
2 appeals to the boards, with the modifications or exceptions set
3 forth in this section.

4 (b) Any person authorized by statute to seek review of an
5 order, permit or official action of the chief of air quality, the
6 chief of water resources, the chief of waste management, the
7 chief of mining and reclamation, the chief of oil and gas, or the
8 secretary may appeal to the air quality board, the environmental
9 quality board or the surface mine board, as appropriate, in
10 accordance with this section. The person so appealing shall be

11 known as the appellant and the appropriate chief or the secre-
12 tary shall be known as the appellee.

13 (c) An appeal filed with a board by a person subject to an
14 order, permit or official action shall be perfected by filing a
15 notice of appeal with the board within thirty days after the date
16 upon which such order, permit or official action was received
17 by such person as demonstrated by the date of receipt of
18 registered or certified mail or of personal service. For parties
19 entitled to appeal other than the person subject to such order,
20 permit or official action, an appeal shall be perfected by filing
21 a notice of appeal with the board within thirty days after the
22 date upon which service was complete. For purposes of this
23 subsection, service is complete upon tendering a copy to the
24 designated agent or to the individual who, based upon reason-
25 able inquiry, appears to be in charge of the facility or activity
26 involved, or to the permittee; or by tendering a copy by
27 registered or certified mail, return receipt requested to the last
28 known address of the person on record with the agency. Service
29 is not incomplete by refusal to accept. Notice of appeal must be
30 filed in a form prescribed by the rule of the board for such
31 purpose. Persons entitled to appeal may also file a notice of
32 appeal related to the failure or refusal of the appropriate chief
33 or the secretary to act within a specified time on an application
34 for a permit; such notice of appeal shall be filed within a
35 reasonable time.

36 (d) The filing of the notice of appeal does not stay or
37 suspend the effectiveness or execution of the order, permit or
38 official action appealed from, except that the filing of a notice
39 of appeal regarding a notice of intent to suspend, modify or
40 revoke and reissue a permit, issued pursuant to the provisions
41 of section five, article five, chapter twenty-two of this code,
42 does stay the notice of intent from the date of issuance pending
43 a final decision of the board. If it appears to the appropriate
44 chief, the secretary or the board that an unjust hardship to the

45 appellant will result from the execution or implementation of a
46 chief's or secretary's order, permit or official action pending
47 determination of the appeal, the appropriate chief, the secretary
48 or the board, as the case may be, may grant a stay or suspension
49 of the order, permit or official action and fix its terms: *Pro-*
50 *vided*, That unjust hardship shall not be grounds for granting a
51 stay or suspension of an order, permit or official action for an
52 order issued pursuant to article three, chapter twenty-two of this
53 code. A decision shall be made on any request for a stay within
54 five days of the date of receipt of the request for stay. The
55 notice of appeal shall set forth the terms and conditions of the
56 order, permit or official action complained of and the grounds
57 upon which the appeal is based. A copy of the notice of appeal
58 shall be filed by the board with the appropriate chief or secre-
59 tary within seven days after the notice of appeal is filed with the
60 board.

61 (e) Within fourteen days after receipt of a copy of the notice
62 of appeal, the appropriate chief or the secretary as the case may
63 be, shall prepare and certify to the board a complete record of
64 the proceedings out of which the appeal arises including all
65 documents and correspondence in the applicable files relating
66 to the matter in question. With the consent of the board and
67 upon such terms and conditions as the board may prescribe, any
68 person affected by the matter pending before the board may by
69 petition intervene as a party appellant or appellee. In any appeal
70 brought by a third party, the permittee or regulated entity shall
71 be granted intervenor status as a matter of right where issuance
72 of a permit or permit status is the subject of the appeal. The
73 board shall hear the appeal *de novo*, and evidence may be
74 offered on behalf of the appellant, appellee and by any
75 intervenors. The board may visit the site of the activity or
76 proposed activity which is the subject of the hearing and take
77 such additional evidence as it considers necessary: *Provided*,
78 That all parties and intervenors are given notice of the visit and
79 are given an opportunity to accompany the board. The appeal

80 hearing shall be held at such location as may be approved by
81 the board including Kanawha County, the county wherein the
82 source, activity or facility involved is located or such other
83 location as may be agreed to among the parties.

84 (f) Any such hearing shall be held within thirty days after
85 the date upon which the board received the timely notice of
86 appeal, unless there is a postponement or continuance. The
87 board may postpone or continue any hearing upon its own
88 motion, or upon application of the appellant, the appellee or any
89 intervenors for good cause shown. The chief or the secretary, as
90 appropriate, may be represented by counsel. If so represented
91 they shall be represented by the attorney general or with the
92 prior written approval of the attorney general may employ
93 counsel who shall be a special assistant attorney general. At any
94 such hearing the appellant and any intervenor may represent
95 themselves or be represented by an attorney-at-law admitted to
96 practice before the supreme court of appeals.

97 (g) After such hearing and consideration of all the testi-
98 mony, evidence and record in the case:

99 (1) The environmental quality board or the air quality
100 board, as the case may be, shall make and enter a written order
101 affirming, modifying or vacating the order, permit or official
102 action of the chief or secretary, or shall make and enter such
103 order as the chief or secretary should have entered, or shall
104 make and enter an order approving or modifying the terms and
105 conditions of any permit issued; and

106 (2) The surface mine board shall make and enter a written
107 order affirming the decision appealed from if the board finds
108 that the decision was lawful and reasonable, or if the board
109 finds that the decision was not supported by substantial
110 evidence in the record considered as a whole, it shall make and

111 enter a written order reversing or modifying the decision of the
112 secretary.

113 (h) In appeals of an order, permit or official action taken
114 pursuant to articles six, eleven, twelve, thirteen, fifteen, chapter
115 twenty-two of this code, the environmental quality board
116 established in article three of this chapter, shall take into
117 consideration, in determining its course of action in accordance
118 with subsection (g) of this section, not only the factors which
119 the appropriate chief or the secretary was authorized to consider
120 in issuing an order, in granting or denying a permit, in fixing
121 the terms and conditions of any permit, or in taking other
122 official action, but also the economic feasibility of treating or
123 controlling, or both, the discharge of solid waste, sewage,
124 industrial wastes or other wastes involved.

125 (i) An order of a board shall be accompanied by findings of
126 fact and conclusions of law as specified in section three, article
127 five, chapter twenty-nine-a of this code, and a copy of such
128 order and accompanying findings and conclusions shall be
129 served upon the appellant, and any intervenors, and their
130 attorneys of record, if any, and upon the appellee in person or
131 by registered or certified mail.

132 (j) The board shall also cause a notice to be served with the
133 copy of such order, which notice shall advise the appellant, the
134 appellee and any intervenors of their right to judicial review, in
135 accordance with the provisions of this chapter. The order of the
136 board shall be final unless vacated or modified upon judicial
137 review thereof in accordance with the provisions of this chapter.

CHAPTER 152

(Com. Sub. for H. B. 3056 — By Delegate Boggs)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to motor carriers for hire and providing for the regulation of intrastate driving hours and duty hours of for-hire carriers which transport passengers.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four-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 six, to read as follows:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-6. For hire common carriers of passengers; definitions; driving time; rules.

1 (a) When used in this section, the following words and
2 phrases have the following meanings, unless the context clearly
3 indicates a different meaning:

4 (1) "Driving time" means all time spent at the driving
5 controls of a commercial for-hire vehicle designed to transport
6 passengers;

7 (2) "Eight consecutive days" means the period of eight
8 consecutive days beginning on any day at the time designated
9 by the for-hire carrier for a twenty-four-hour period;

10 (3) "On duty time" means all time from the time a driver
11 begins to work or is required to be in readiness to work until the
12 time he or she is relieved from work and all responsibility for
13 performing work; and

14 (4) "Twenty-four-hour period" means any
15 twenty-four-consecutive-hour period beginning at the time
16 designated by the for-hire carrier for the terminal from which
17 the driver is normally dispatched.

18 (b) The provisions of this section apply only to for-hire
19 carriers operated by an on board driver which is designed to
20 transport passengers exclusively on any public highway or road
21 in this state. The provisions of this section apply only to
22 intrastate commerce and do not apply where preempted by
23 federal regulation.

24 (c) Drivers of for-hire carriers may not:

25 (1) Engage in driving time of a for-hire vehicle for more
26 than ten consecutive hours without eight consecutive hours off
27 duty;

28 (2) Engage in driving time of a for-hire vehicle after the
29 driver has on duty time of fifteen hours without eight
30 consecutive hours off duty; or

31 (3) Engage in driving time of a for-hire vehicle after the
32 driver has been on duty for a total of seventy consecutive hours
33 within eight consecutive days.

34 (d) For-hire carrier companies shall keep time records, for
35 six months, indicating the time all for-hire drivers report for

36 duty, the time of relief from duty, hours driven, hours on duty,
37 and hours off duty. These records shall be made available to the
38 state police and the public service commission.

39 (e) The public service commission may promulgate rules
40 necessary to implement the provisions of this section.

CHAPTER 153

(Com. Sub. for H. B. 2190 — By Delegates Michael and Warner)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article sixteen, chapter seventeen-c of said code, all relating to exceptions to motor vehicle registration; allowing certain farm use motor vehicles with valid inspection stickers limited use of highways between sunset and sunrise; and providing for the inspection of these farm use motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article sixteen, chapter seventeen-c of said code, be amended and reenacted, all to read as follows:

Chapter

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

17C. Traffic Regulations and Laws of the Road.

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.**

**§17A-3-2. Every motor vehicle, etc., subject to registration and
certificate of title provisions; exceptions.**

1 (a) Every motor vehicle, trailer, semitrailer, pole trailer and
2 recreational vehicle when driven or moved upon a highway is
3 subject to the registration and certificate of title provisions of
4 this chapter except:

5 (1) Any vehicle driven or moved upon a highway in
6 conformance with the provisions of this chapter relating to
7 manufacturers, transporters, dealers, lienholders or nonresidents
8 or under a temporary registration permit issued by the division
9 as authorized under this chapter;

10 (2) Any implement of husbandry upon which is securely
11 attached a machine for spraying fruit trees and plants of the
12 owner or lessee or for any other implement of husbandry which
13 is used exclusively for agricultural or horticultural purposes on
14 lands owned or leased by the owner of the implement and
15 which is not operated on or over any public highway of this
16 state for any other purpose other than for the purpose of
17 operating it across a highway or along a highway other than an
18 expressway as designated by the commissioner of the division
19 of highways from one point of the owner's land to another part
20 of the owner's land, irrespective of whether or not the tracts
21 adjoin: *Provided*, That the distance between the points may not
22 exceed twenty-five miles, or for the purpose of taking it or other
23 fixtures attached to the implement, to and from a repair shop for
24 repairs. The exemption in this subdivision from registration and
25 license requirements also applies to any vehicle described in

26 this subsection or to any farm trailer owned by the owner or
27 lessee of the farm on which the trailer is used, when the trailer
28 is used by the owner of the trailer for the purpose of moving
29 farm produce and livestock from the farm along a public
30 highway for a distance not to exceed twenty-five miles to a
31 storage house or packing plant, when the use is a seasonal
32 operation:

33 (A) The exemptions contained in this section also apply to
34 farm machinery and tractors: *Provided*, That the machinery and
35 tractors may use the highways in going from one tract of land
36 to another tract of land regardless of whether the land is owned
37 by the same or different persons;

38 (B) Any vehicle exempted under this subsection from the
39 requirements of annual registration certificate and license plates
40 and fees for the registration certificate and license plate may not
41 use the highways between sunset and sunrise unless the vehicle
42 is classified as a Class A motor vehicle with a farm use
43 exemption under the provisions of section one, article ten of
44 this chapter and has a valid and current inspection sticker as
45 required by the provisions of article sixteen, chapter seventeen-
46 c of this code and is traveling from one tract of land to another
47 over a distance of twenty-five miles or less;

48 (C) Any vehicle exempted under this section from the
49 requirements of annual registration certificate and license plates
50 may use the highways as provided in this section whether the
51 exempt vehicle is self-propelled, towed by another exempt
52 vehicle or towed by another vehicle required to be registered;

53 (D) Any vehicle used as an implement of husbandry exempt
54 under this section shall have the words "farm use" affixed to
55 both sides of the implement in ten inch letters. Any vehicle
56 which would be subject to registration as a Class A or B vehicle
57 if not exempted by this section shall display a farm-use

58 exemption certificate on the lower driver's side of the
59 windshield:

60 (i) The farm-use exemption certificate shall be provided by
61 the commissioner and shall be issued annually by the assessor
62 of the applicant's county of residence. The assessor shall issue
63 a farm-use exemption certificate to the applicant upon his or her
64 determination pursuant to an examination of the property books
65 or documentation provided by the applicant that the vehicle has
66 been properly assessed as Class I personal property. The
67 assessor shall charge a fee of two dollars for each certificate,
68 which shall be retained by the assessor;

69 (ii) A farm-use exemption certificate shall not exempt the
70 applicant from maintaining the security required by chapter
71 seventeen-d of this code on any vehicle being operated on the
72 roads or highways of this state;

73 (iii) No person charged with the offense of operating a
74 vehicle without a farm-use exemption certificate, if required
75 under this section, may be convicted of the offense if he or she
76 produces in court, or in the office of the arresting officer, a
77 valid farm-use exemption certificate for the vehicle in question
78 within five days;

79 (3) Any vehicle which is propelled exclusively by electric
80 power obtained from overhead trolley wires though not
81 operated upon rails;

82 (4) Any vehicle of a type subject to registration which is
83 owned by the government of the United States;

84 (5) Any wrecked or disabled vehicle towed by a licensed
85 wrecker or dealer on the public highways of this state;

86 (6) The following recreational vehicles are exempt from the
87 requirements of annual registration, license plates and fees,

88 unless otherwise specified by law, but are subject to the
89 certificate of title provisions of this chapter regardless of
90 highway use: Motorboats, all-terrain vehicles and snowmobiles;
91 and

92 (7) Any special mobile equipment as defined in subsection
93 (r), section one, article one of this chapter.

94 (b) Notwithstanding the provisions of subsection (a) of this
95 section:

96 (1) Mobile homes or manufactured homes are exempt from
97 the requirements of annual registration, license plates and fees;

98 (2) House trailers may be registered and licensed; and

99 (3) Factory-built homes are subject to the certificate of title
100 provisions of this chapter.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-4. Commissioner to require periodical inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

1 (a) The commissioner of motor vehicles shall once each
2 year require that every motor vehicle, trailer, semitrailer, and
3 pole trailer registered in this state be inspected and that an
4 official certificate of inspection and approval be obtained for
5 each such vehicle.

6 Such inspections shall be made and such certificates
7 obtained with respect to the mechanism, brakes, and equipment

8 of every such vehicle as shall be designated by the
9 commissioner.

10 The commissioner is hereby authorized to make necessary
11 rules and regulations for the administration and enforcement of
12 this section and to designate any period or periods of time
13 during which owners of any vehicles, subject to this section,
14 shall display upon such vehicles certificates of inspection and
15 approval or shall produce the same upon demand of any officer
16 or employee of the department designated by the commissioner
17 or any police or peace officer when authorized by the
18 commissioner.

19 (b) The commissioner may authorize the acceptance in this
20 state of a certificate of inspection and approval issued in
21 another state having an inspection law similar to this chapter
22 and may extend the time within which a certificate shall be
23 obtained by the resident owner of a vehicle which was not in
24 this state during the time an inspection was required.

25 (c) The commissioner may suspend the registration of any
26 vehicle which he determines is in such unsafe condition as to
27 constitute a menace to safety or which after notice and demand
28 is not equipped as required in this chapter or for which a
29 required certificate has not been obtained.

30 (d) If requested by the owner thereof, the commissioner
31 shall also cause to be inspected a Class A, farm use, motor
32 vehicle exempt from annual registration certificate and
33 licensing as provided in section two, article three, chapter
34 seventeen-a of this code. If the Class A farm use motor vehicle
35 passes the inspection, the commissioner shall cause to be issued
36 a certificate of inspection for that vehicle.

CHAPTER 154

**(Com. Sub. for H. B. 2511 — By Delegates Stalnaker, Beane,
Warner, Fragale, Cann, Azinger and Iaquina)**

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to original and renewal of registration plates; authorizing the issuance of special motor vehicle license plates for members of the Nemesis Shrine, volunteers and employees of the American Red Cross, individuals who have received the Combat Infantry Badge or Combat Medic Badge, members of the Knights of Columbus, former members of the Legislature, democratic state or county executive committee members, female veterans, West Liberty State College, Harley Owners and Knights of Columbus; prescribing fees; providing that special registration plates may only be issued to those nonprofit charitable and educational organizations authorized by prior law; prohibiting the commissioner of motor vehicles from approving or authorizing additional nonprofit charitable and educational organizations to design or market special registration plates; eliminating the requirement that a certified firefighter produce annual evidence of certification; requiring the West Virginia university fire service extension to notify the division of motor vehicles when a firefighter loses his or her certification; making technical corrections; removing the restriction on the number of plates a volunteer firefighter may obtain and increasing the cost of those plates; prohibiting the division of motor vehicles from beginning the design or production of any license plate based on

membership or affiliation with a private organization until a minimum number of persons have applied and paid for the plate; procedure where minimum number not met by private organization; and providing that the division of protective services may have up to two Class A license plates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue to the
2 owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet the
5 following requirements:

6 (1) Every registration plate shall be of reflectorized material
7 and have displayed upon it the registration number assigned to
8 the vehicle for which it is issued; the name of this state, which

9 may be abbreviated; and the year number for which it is issued
10 or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of one hundred feet during daylight:
14 *Provided*, that the requirements of this subdivision shall not
15 apply to the year number for which the plate is issued or the
16 date of expiration.

17 (3) Registration numbering for registration plates shall
18 begin with number two.

19 (c) The division may not issue, permit to be issued or
20 distribute any special registration plates except as follows:

21 (1) The governor shall be issued two registration plates, on
22 one of which shall be imprinted the numeral one and on the
23 other the word one.

24 (2) State officials and judges may be issued special
25 registration plates as follows:

26 (A) Upon appropriate application, the division shall issue
27 to the secretary of state, state superintendent of schools, auditor,
28 treasurer, commissioner of agriculture and the attorney general,
29 the members of both houses of the Legislature, including the
30 elected officials of both houses of the Legislature, the justices
31 of the supreme court of appeals of West Virginia, the
32 representatives and senators of the state in the Congress of the
33 United States, the judges of the West Virginia circuit courts,
34 active and retired on senior status, the judges of the United
35 States district courts for the state of West Virginia and the
36 judges of the United States court of appeals for the fourth
37 circuit, if any of the judges are residents of West Virginia, a
38 special registration plate for a Class A motor vehicle and a
39 special registration plate for a Class G motorcycle owned by the

40 official or his or her spouse: *Provided*, that the division may
41 issue a Class A special registration plate for each vehicle titled
42 to the official and a Class G special registration plate for each
43 motorcycle titled to the official.

44 (B) Each plate issued pursuant to this subdivision shall bear
45 any combination of letters and numbers not to exceed an
46 amount determined by the commissioner and a designation of
47 the office. Each plate shall supersede the regular numbered
48 plate assigned to the official or his or her spouse during the
49 official's term of office and while the motor vehicle is owned
50 by the official or his or her spouse.

51 (C) The division shall charge an annual fee of fifteen
52 dollars for every registration plate issued pursuant to this
53 subdivision, which is in addition to all other fees required by
54 this chapter.

55 (3) The division may issue members of the national guard
56 forces special registration plates as follows:

57 (A) Upon receipt of an application on a form prescribed by
58 the division and receipt of written evidence from the chief
59 executive officer of the army national guard or air national
60 guard, as appropriate, or the commanding officer of any United
61 States armed forces reserve unit that the applicant is a member
62 thereof, the division shall issue to any member of the national
63 guard of this state or a member of any reserve unit of the United
64 States armed forces a special registration plate designed by the
65 commissioner for any number of Class A motor vehicles owned
66 by the member. Upon presentation of written evidence of
67 retirement status, retired members of this state's army or air
68 national guard, or retired members of any reserve unit of the
69 United States armed forces, are eligible to purchase the special
70 registration plate issued pursuant to this subdivision.

71 (B) The division shall charge an initial application fee of
72 ten dollars for each special registration plate issued pursuant to
73 this subdivision, which is in addition to all other fees required
74 by this chapter. All initial application fees collected by the
75 division shall be deposited into a special revolving fund to be
76 used in the administration of this section.

77 (C) A surviving spouse may continue to use his or her
78 deceased spouse's national guard forces license plate until the
79 surviving spouse dies, remarries or does not renew the license
80 plate.

81 (4) Specially arranged registration plates may be issued as
82 follows:

83 (A) Upon appropriate application, any owner of a motor
84 vehicle subject to Class A registration, or a motorcycle subject
85 to Class G registration, as defined by this article, may request
86 that the division issue a registration plate bearing specially
87 arranged letters or numbers with the maximum number of
88 letters or numbers to be determined by the commissioner. The
89 division shall attempt to comply with the request wherever
90 possible.

91 (B) The commissioner shall propose rules for legislative
92 approval in accordance with the provisions of chapter
93 twenty-nine-a of this code regarding the orderly distribution of
94 the plates: *Provided*, that for purposes of this subdivision, the
95 registration plates requested and issued shall include all plates
96 bearing the numbers two through two thousand.

97 (C) An annual fee of fifteen dollars shall be charged for
98 each special registration plate issued pursuant to this
99 subdivision, which is in addition to all other fees required by
100 this chapter.

101 (5) The division may issue honorably discharged veterans
102 special registration plates as follows:

103 (A) Upon appropriate application, the division shall issue
104 to any honorably discharged veteran of any branch of the armed
105 services of the United States a special registration plate for any
106 number of vehicles titled in the name of the qualified applicant
107 with an insignia designed by the commissioner of the division
108 of motor vehicles.

109 (B) The division shall charge a special initial application
110 fee of ten dollars in addition to all other fees required by law.
111 This special fee is to compensate the division of motor vehicles
112 for additional costs and services required in the issuing of the
113 special registration and shall be collected by the division and
114 deposited in a special revolving fund to be used for the
115 administration of this section: *Provided*, that nothing in this
116 section may be construed to exempt any veteran from any other
117 provision of this chapter.

118 (C) A surviving spouse may continue to use his or her
119 deceased spouse's honorably discharged veterans license plate
120 until the surviving spouse dies, remarries or does not renew the
121 license plate.

122 (6) The division may issue disabled veterans special
123 registration plates as follows:

124 (A) Upon appropriate application, the division shall issue
125 to any disabled veteran who is exempt from the payment of
126 registration fees under the provisions of this chapter a
127 registration plate for a vehicle titled in the name of the qualified
128 applicant which bears the letters "DV" in red and also the
129 regular identification numerals in red.

130 (B) A surviving spouse may continue to use his or her
131 deceased spouse's disabled veterans license plate until the

132 surviving spouse dies, remarries or does not renew the license
133 plate.

134 (C) A qualified disabled veteran may obtain a second
135 disabled veteran license plate as described in this section for
136 use on a passenger vehicle titled in the name of the qualified
137 applicant. The division shall charge a one-time fee of ten
138 dollars to be deposited into a special revolving fund to be used
139 in the administration of this section, in addition to all other fees
140 required by this chapter, for the second plate.

141 (7) The division may issue recipients of the distinguished
142 purple heart medal special registration plates as follows:

143 (A) Upon appropriate application, there shall be issued to
144 any armed service person holding the distinguished purple heart
145 medal for persons wounded in combat a registration plate for a
146 vehicle titled in the name of the qualified applicant bearing
147 letters or numbers. The registration plate shall be designed by
148 the commissioner of motor vehicles and shall denote that those
149 individuals who are granted this special registration plate are
150 recipients of the purple heart. All letterings shall be in purple
151 where practical.

152 (B) Registration plates issued pursuant to this subdivision
153 are exempt from all registration fees otherwise required by the
154 provisions of this chapter.

155 (C) A surviving spouse may continue to use his or her
156 deceased spouse's purple heart medal license plate until the
157 surviving spouse dies, remarries or does not renew the license
158 plate.

159 (D) A recipient of the purple heart medal may obtain a
160 second purple heart medal license plate as described in this
161 section for use on a passenger vehicle titled in the name of the
162 qualified applicant. The division shall charge a one-time fee of

163 ten dollars to be deposited into a special revolving fund to be
164 used in the administration of this section, in addition to all other
165 fees required by this chapter, for the second plate.

166 (8) The division may issue survivors of the attack on Pearl
167 Harbor special registration plates as follows:

168 (A) Upon appropriate application, the owner of a motor
169 vehicle who was enlisted in any branch of the armed services
170 that participated in and survived the attack on Pearl Harbor on
171 the seventh day of December, one thousand nine hundred forty-
172 one, the division shall issue a special registration plate for a
173 vehicle titled in the name of the qualified applicant. The
174 registration plate shall be designed by the commissioner of
175 motor vehicles.

176 (B) Registration plates issued pursuant to this subdivision
177 are exempt from the payment of all registration fees otherwise
178 required by the provisions of this chapter.

179 (C) A surviving spouse may continue to use his or her
180 deceased spouse's survivors of the attack on Pearl Harbor
181 license plate until the surviving spouse dies, remarries or does
182 not renew the license plate.

183 (D) A survivor of the attack on Pearl Harbor may obtain a
184 second survivors of the attack on Pearl Harbor license plate as
185 described in this section for use on a passenger vehicle titled in
186 the name of the qualified applicant. The division shall charge a
187 one-time fee of ten dollars to be deposited into a special
188 revolving fund to be used in the administration of this section,
189 in addition to all other fees required by this chapter, for the
190 second plate.

191 (9) The division may issue special registration plates to
192 nonprofit charitable and educational organizations authorized
193 under prior enactment of this subdivision as follows:

194 (A) Approved nonprofit charitable and educational
195 organizations previously authorized under the prior enactment
196 of this subdivision may accept and collect applications for
197 special registration plates from owners of Class A motor
198 vehicles together with a special annual fee of fifteen dollars,
199 which is in addition to all other fees required by this chapter.
200 The applications and fees shall be submitted to the division of
201 motor vehicles with the request that the division issue a
202 registration plate bearing a combination of letters or numbers
203 with the organizations' logo or emblem, with the maximum
204 number of letters or numbers to be determined by the
205 commissioner.

206 (B) The commissioner shall propose rules for legislative
207 approval in accordance with the provisions of article three,
208 chapter twenty-nine-a of this code regarding the procedures for
209 and approval of special registration plates issued pursuant to
210 this subdivision.

211 (C) The commissioner shall set an appropriate fee to defray
212 the administrative costs associated with designing and
213 manufacturing special registration plates for a nonprofit
214 charitable or educational organization. The nonprofit charitable
215 or educational organization shall collect this fee and forward it
216 to the division for deposit in a special revolving fund to pay the
217 administrative costs. The nonprofit charitable or educational
218 organization may also collect a fee for marketing the special
219 registration plates.

220 (D) The commissioner may not approve or authorize any
221 additional nonprofit charitable and educational organizations to
222 design or market special registration plates.

223 (10) The division may issue specified emergency or
224 volunteer registration plates as follows:

225 (A) Any owner of a motor vehicle who is a resident of the
226 state of West Virginia and who is a certified paramedic or
227 emergency medical technician, a member of a paid fire
228 department, a member of the state fire commission, the state
229 fire marshal, the state fire marshal's assistants, the state fire
230 administrator and voluntary rescue squad members may apply
231 for a special license plate for any number of Class A vehicles
232 titled in the name of the qualified applicant which bears the
233 insignia of the profession, group or commission. Any insignia
234 shall be designed by the commissioner. License plates issued
235 pursuant to this subdivision shall bear the requested insignia in
236 addition to the registration number issued to the applicant
237 pursuant to the provisions of this article.

238 (B) Each application submitted pursuant to this subdivision
239 shall be accompanied by an affidavit signed by the fire chief or
240 department head of the applicant stating that the applicant is
241 justified in having a registration with the requested insignia;
242 proof of compliance with all laws of this state regarding
243 registration and licensure of motor vehicles; and payment of all
244 required fees.

245 (C) Each application submitted pursuant to this subdivision
246 shall be accompanied by payment of a special initial application
247 fee of ten dollars, which is in addition to any other registration
248 or license fee required by this chapter. All special fees shall be
249 collected by the division and deposited into a special revolving
250 fund to be used for the purpose of compensating the division of
251 motor vehicles for additional costs and services required in the
252 issuing of the special registration and for the administration of
253 this section.

254 (11) The division may issue specified certified firefighter
255 registration plates as follows:

256 (A) Any owner of a motor vehicle who is a resident of the
257 state of West Virginia and who is a certified firefighter may
258 apply for a special license plate which bears the insignia of the
259 profession, for any number of Class A vehicles titled in the
260 name of the qualified applicant. Any insignia shall be designed
261 by the commissioner. License plates issued pursuant to this
262 subdivision shall bear the requested insignia pursuant to the
263 provisions of this article. Upon presentation of written evidence
264 of certification as a certified firefighter, certified firefighters are
265 eligible to purchase the special registration plate, issued
266 pursuant to this subdivision.

267 (B) Each year an application submitted pursuant to this
268 subdivision shall be accompanied by an affidavit stating that the
269 applicant is justified in having a registration with the requested
270 insignia; proof of compliance with all laws of this state
271 regarding registration and licensure of motor vehicles; and
272 payment of all required fees. The firefighter certification
273 department, section or division of the West Virginia university
274 fire service extension shall notify the commissioner in writing
275 immediately when a firefighter loses his or her certification. If
276 a firefighter loses his or her certification, the commissioner may
277 not issue him or her a license plate under this subsection.

278 (C) Each year an application submitted pursuant to this
279 subdivision shall be accompanied by payment of a special
280 initial application fee of ten dollars, which is in addition to any
281 other registration or license fee required by this chapter. All
282 special fees shall be collected by the division and deposited into
283 a special revolving fund to be used for the purpose of
284 compensating the division of motor vehicles for additional costs
285 and services required in the issuing of the special registration
286 and for the administration of this section.

287 (12) The division may issue special scenic registration
288 plates as follows:

289 (A) Upon appropriate application, the commissioner shall
290 issue a special registration plate displaying a scenic design of
291 West Virginia which displays the words "Wild Wonderful" as
292 a slogan.

293 (B) The division shall charge a special one-time initial
294 application fee of ten dollars in addition to all other fees
295 required by this chapter. All initial application fees collected by
296 the division shall be deposited into a special revolving fund to
297 be used in the administration of this chapter.

298 (13) The division may issue honorably discharged marine
299 corps league members special registration plates as follows:

300 (A) Upon appropriate application, the division shall issue
301 to any honorably discharged marine corps league member a
302 special registration plate for any number of vehicles titled in the
303 name of the qualified applicant with an insignia designed by the
304 commissioner of the division of motor vehicles.

305 (B) The division may charge a special one-time initial
306 application fee of ten dollars in addition to all other fees
307 required by this chapter. This special fee is to compensate the
308 division of motor vehicles for additional costs and services
309 required in the issuing of the special registration and shall be
310 collected by the division and deposited in a special revolving
311 fund to be used for the administration of this section: *Provided*,
312 that nothing in this section may be construed to exempt any
313 veteran from any other provision of this chapter.

314 (C) A surviving spouse may continue to use his or her
315 deceased spouse's honorably discharged marine corps league
316 license plate until the surviving spouse dies, remarries or does
317 not renew the license plate.

318 (14) The division may issue military organization
319 registration plates as follows:

320 (A) The division may issue a special registration plate for
321 the members of any military organization chartered by the
322 United States Congress upon receipt of a guarantee from
323 organization of a minimum of one hundred applicants. The
324 insignia on the plate shall be designed by the commissioner.

325 (B) Upon appropriate application, the division may issue
326 members of the chartered organization in good standing, as
327 determined by the governing body of the chartered
328 organization, a special registration plate for any number of
329 vehicles titled in the name of the qualified applicant.

330 (C) The division shall charge a special one-time initial
331 application fee of ten dollars for each special license plate in
332 addition to all other fees required by this chapter. All initial
333 application fees collected by the division shall be deposited into
334 a special revolving fund to be used in the administration of this
335 chapter: *Provided*, that nothing in this section may be construed
336 to exempt any veteran from any other provision of this chapter.

337 (D) A surviving spouse may continue to use his or her
338 deceased spouse's military organization registration plate until
339 the surviving spouse dies, remarries or does not renew the
340 special military organization registration plate.

341 (15) The division may issue special nongame wildlife
342 registration plates and special wildlife registration plates as
343 follows:

344 (A) Upon appropriate application, the division shall issue
345 a special registration plate displaying a species of West Virginia
346 wildlife which shall display a species of wildlife native to West
347 Virginia as prescribed and designated by the commissioner and
348 the director of the division of natural resources.

349 (B) The division shall charge an annual fee of fifteen
350 dollars for each special nongame wildlife registration plate and

351 each special wildlife registration plate in addition to all other
352 fees required by this chapter. All annual fees collected for
353 nongame wildlife registration plates and wildlife registration
354 plates shall be deposited in a special revenue account
355 designated the nongame wildlife fund and credited to the
356 division of natural resources.

357 (C) The division shall charge a special one-time initial
358 application fee of ten dollars in addition to all other fees
359 required by this chapter. All initial application fees collected by
360 the division shall be deposited in a special revolving fund to be
361 used in the administration of this chapter.

362 (16) The division may issue members of the silver haired
363 legislature special registration plates as follows:

364 (A) Upon appropriate application, the division shall issue
365 to any person who is a duly qualified member of the silver
366 haired legislature a specialized registration plate which bears
367 recognition of the applicant as a member of the silver haired
368 legislature.

369 (B) A qualified member of the silver haired legislature may
370 obtain one registration plate described in this subdivision for
371 use on a passenger vehicle titled in the name of the qualified
372 applicant. The division shall charge an annual fee of fifteen
373 dollars, in addition to all other fees required by this chapter, for
374 the plate. All annual fees collected by the division shall be
375 deposited in a special revolving fund to be used in the
376 administration of this chapter.

377 (17) Upon appropriate application, the commissioner shall
378 issue to a classic motor vehicle or classic motorcycle as defined
379 in section three-a, article ten of this chapter, a special
380 registration plate designed by the commissioner. An annual fee
381 of fifteen dollars, in addition to all other fees required by this
382 chapter, shall be charged for each classic registration plate.

383 (18) Honorably discharged veterans may be issued special
384 registration plates for motorcycles subject to Class G
385 registration as follows:

386 (A) Upon appropriate application, there shall be issued to
387 any honorably discharged veteran of any branch of the armed
388 services of the United States a special registration plate for any
389 number of motorcycles subject to Class G registration titled in
390 the name of the qualified applicant with an insignia designed by
391 the commissioner of the division of motor vehicles.

392 (B) A special initial application fee of ten dollars shall be
393 charged in addition to all other fees required by law. This
394 special fee is to compensate the division of motor vehicles for
395 additional costs and services required in the issuing of the
396 special registration and shall be collected by the division and
397 deposited in a special revolving fund to be used for the
398 administration of this section: *Provided*, that nothing in this
399 section may be construed to exempt any veteran from any other
400 provision of this chapter.

401 (C) A surviving spouse may continue to use his or her
402 deceased spouse's honorably discharged veterans license plate
403 until the surviving spouse dies, remarries or does not renew the
404 license plate.

405 (19) Racing theme special registration plates:

406 (A) The division may issue a series of special registration
407 plates displaying national association for stock car auto racing
408 themes.

409 (B) An annual fee of twenty-five dollars shall be charged
410 for each special racing theme registration plate in addition to all
411 other fees required by this chapter. All annual fees collected for
412 each special racing theme registration plate shall be deposited

413 into a special revolving fund to be used in the administration of
414 this chapter.

415 (C) A special application fee of ten dollars shall be charged
416 at the time of initial application as well as upon application for
417 any duplicate or replacement registration plate, in addition to all
418 other fees required by this chapter. All application fees shall be
419 deposited into a special revolving fund to be used in the
420 administration of this chapter.

421 (20) The division may issue recipients of the navy cross,
422 distinguished service cross, distinguished flying cross, air force
423 cross, bronze star or silver star special registration plates as
424 follows:

425 (A) Upon appropriate application, the division shall issue
426 to any recipient of the navy cross, distinguished service cross,
427 distinguished flying cross, air force cross, silver star or bronze
428 star, a registration plate for any number of vehicles titled in the
429 name of the qualified applicant bearing letters or numbers. A
430 separate registration plate shall be designed by the
431 commissioner of motor vehicles for each award that denotes
432 that those individuals who are granted this special registration
433 plate are recipients of the navy cross, distinguished service
434 cross, distinguished flying cross, air force cross, silver star or
435 bronze star, as applicable.

436 (B) The division shall charge a special initial application
437 fee of ten dollars in addition to all other fees required by law.
438 This special fee is to compensate the division of motor vehicles
439 for additional costs and services required in the issuing of the
440 special registration and shall be collected by the division and
441 deposited in a special revolving fund to be used for the
442 administration of this section: *Provided*, that nothing in this
443 section exempts the applicant for a special registration plate
444 under this subdivision from any other provision of this chapter.

445 (C) A surviving spouse may continue to use his or her
446 deceased spouse's navy cross, distinguished service cross,
447 distinguished flying cross, air force cross, silver star or bronze
448 star special registration plate until the surviving spouse dies,
449 remarries or does not renew the special registration plate.

450 (21) The division may issue honorably discharged veterans
451 special registration plates as follows:

452 (A) Upon appropriate application, the division shall issue
453 to any honorably discharged veteran of any branch of the armed
454 services of the United States with verifiable service during
455 World War II, the Korean War, the Vietnam War, the Persian
456 Gulf War or the War against Terrorism, a special registration
457 plate for any number of vehicles titled in the name of the
458 qualified applicant with an insignia designed by the
459 commissioner denoting service in the applicable conflict.

460 (B) The division shall charge a special one-time initial
461 application fee of ten dollars in addition to all other fees
462 required by law. This special fee is to compensate the division
463 of motor vehicles for additional costs and services required in
464 the issuing of the special registration and shall be collected by
465 the division and deposited in a special revolving fund to be used
466 for the administration of this section: *Provided*, that nothing
467 contained in this section may be construed to exempt any
468 veteran from any other provision of this chapter.

469 (C) A surviving spouse may continue to use his or her
470 deceased spouse's honorably discharged veterans registration
471 plate until the surviving spouse dies, remarries or does not
472 renew the special registration plate.

473 (22) The division may issue special volunteer firefighter
474 registration plates as follows:

475 (A) Any owner of a motor vehicle who is a resident of West
476 Virginia and who is a volunteer firefighter may apply for a
477 special license plate for any Class A vehicle titled in the name
478 of the qualified applicant which bears the insignia of the
479 profession in white letters on a red background. The insignia
480 shall be designed by the commissioner and shall contain a
481 fireman's helmet insignia on the left side of the license plate.

482 (B) Each application submitted pursuant to this subdivision
483 shall be accompanied by an affidavit signed by the applicant's
484 fire chief, stating that the applicant is a volunteer firefighter and
485 justified in having a registration plate with the requested
486 insignia. The applicant must comply with all other laws of this
487 state regarding registration and licensure of motor vehicles and
488 must pay all required fees.

489 (C) Each application submitted pursuant to this subdivision
490 shall be accompanied by payment of a special one-time initial
491 application fee of ten dollars, which is in addition to any other
492 registration or license fee required by this chapter. All
493 application fees shall be deposited into a special revolving fund
494 to be used in the administration of this chapter.

495 (23) The division may issue special registration plates
496 which reflect patriotic themes, including the display of any
497 United States symbol, icon, phrase or expression, which evokes
498 patriotic pride or recognition.

499 (A) Upon appropriate application, the division shall issue
500 to an applicant a registration plate of the applicant's choice,
501 displaying a patriotic theme as provided in this subdivision, for
502 a vehicle titled in the name of the applicant. A series of
503 registration plates displaying patriotic themes shall be designed
504 by the commissioner of motor vehicles for distribution to
505 applicants.

506 (B) The division shall charge a special one-time initial
507 application fee of ten dollars in addition to all other fees
508 required by law. This special fee is to compensate the division
509 of motor vehicles for additional costs and services required in
510 the issuing of the special registration and shall be collected by
511 the division and deposited in a special revolving fund to be used
512 for the administration of this section.

513 (24) Special license plates bearing the American flag and
514 the logo "9/11/01".

515 (A) Upon appropriate application, the division shall issue
516 special registration plates which shall display the American flag
517 and the logo "9/11/01".

518 (B) An annual fee of fifteen dollars shall be charged for
519 each plate in addition to all other fees required by this chapter.

520 (C) A special application fee of ten dollars shall be charged
521 at the time of initial application as well as upon application for
522 any duplicate or replacement registration plate, in addition to all
523 other fees required by this chapter. All application fees shall be
524 deposited into a special revolving fund to be used in the
525 administration of this chapter.

526 (25) The division may issue a special registration plate
527 celebrating the centennial of the 4-H youth development
528 movement and honoring the future farmers of America
529 organization as follows:

530 (A) Upon appropriate application, the division may issue a
531 special registration plate depicting the symbol of the 4-H
532 organization which represents the head, heart, hands and health
533 as well as the symbol of the future farmers of America
534 organization which represents a cross section of an ear of corn
535 for any number of vehicles titled in the name of the qualified
536 applicant.

537 (B) The division shall charge a special initial application
538 fee of ten dollars in addition to all other fees required by law.
539 This special fee is to compensate the division of motor vehicles
540 for additional costs and services required in the issuing of the
541 special registration and shall be collected by the division and
542 deposited in a special revolving fund to be used for the
543 administration of this section.

544 (C) The division shall charge an annual fee of fifteen
545 dollars for each special 4-H future farmers of America
546 registration plate in addition to all other fees required by this
547 chapter.

548 (26) The division may issue special registration plates to
549 educators in the state's elementary and secondary schools and
550 in the state's institutions of higher education as follows:

551 (A) Upon appropriate application, the division may issue a
552 special registration plate designed by the commissioner for any
553 number of vehicles titled in the name of the qualified applicant.

554 (B) The division shall charge a special initial application
555 fee of ten dollars in addition to all other fees required by law.
556 This special fee is to compensate the division of motor vehicles
557 for additional costs and services required in the issuing of the
558 special registration and shall be collected by the division and
559 deposited in a special revolving fund to be used for the
560 administration of this section.

561 (C) The division shall charge an annual fee of fifteen
562 dollars for each special educator registration plate in addition
563 to all other fees required by this chapter.

564 (27) The division may issue special registration plates to
565 members of the Nemesis Shrine as follows:

566 (A) Upon appropriate application, the division may issue a
567 special registration plate designed by the commissioner for any
568 number of vehicles titled in the name of the qualified applicant.
569 Persons desiring the special registration plate shall offer
570 sufficient proof of membership in Nemesis Shrine.

571 (B) The division shall charge a special initial application
572 fee of ten dollars in addition to all other fees required by law.
573 This special fee is to compensate the division of motor vehicles
574 for additional costs and services required in the issuing of the
575 special registration and shall be collected by the division and
576 deposited in a special revolving fund to be used for the
577 administration of this section.

578 (C) An annual fee of fifteen dollars shall be charged for
579 each plate in addition to all other fees required by this chapter.

580 (28) The division may issue volunteers and employees of
581 the American Red Cross special registration plates as follows:

582 (A) Upon appropriate application, the division shall issue
583 to any person who is a duly qualified volunteer or employee of
584 the American Red Cross a specialized registration plate which
585 bears recognition of the applicant as a volunteer or employee of
586 the American Red Cross for any number of vehicles titled in the
587 name of the qualified applicant.

588 (B) The division shall charge a special initial application
589 fee of ten dollars in addition to all other fees required by law.
590 This special fee is to compensate the division of motor vehicles
591 for additional costs and services required in the issuing of the
592 special registration and shall be collected by the division and
593 deposited in a special revolving fund to be used for the
594 administration of this section.

595 (C) An annual fee of fifteen dollars shall be charged for
596 each plate in addition to all other fees required by this chapter.

597 (29) The division shall issue special registration plates to
598 individuals who have received either the Combat Infantry
599 Badge or the Combat Medic Badge as follows:

600 (A) Upon appropriate application, the division shall issue
601 a special registration plate designed by the commissioner for
602 any number of vehicles titled in the name of the qualified
603 applicant. Persons desiring the special registration plate shall
604 offer sufficient proof that they have received either the Combat
605 Infantry Badge or the Combat Medic Badge.

606 (B) The division shall charge a special initial application
607 fee of ten dollars in addition to all other fees required by law.
608 This special fee is to compensate the division of motor vehicles
609 for additional costs and services required in the issuing of the
610 special registration and shall be collected by the division and
611 deposited in a special revolving fund to be used for the
612 administration of this section.

613 (30) The division may issue special registration plates to
614 members of the Knights of Columbus as follows:

615 (A) Upon appropriate application, the division shall issue
616 a special registration plate designed by the commissioner for
617 any number of vehicles titled in the name of the qualified
618 applicant. Persons desiring the special registration plate shall
619 offer sufficient proof of membership in the Knights of
620 Columbus.

621 (B) The division shall charge a special initial application
622 fee of ten dollars in addition to all other fees required by law.
623 This special fee is to compensate the division of motor vehicles
624 for additional costs and services required in the issuing of the
625 special registration and shall be collected by the division and
626 deposited in a special revolving fund to be used for the
627 administration of this section.

628 (C) An annual fee of fifteen dollars shall be charged for
629 each plate in addition to all other fees required by this chapter.

630 (31) The division may issue special registration plates to
631 former members of the Legislature as follows:

632 (A) Upon appropriate application, the division shall issue
633 a special registration plate designed by the commissioner for
634 any number of vehicles titled in the name of the qualified
635 applicant. Persons desiring the special registration plate shall
636 offer sufficient proof of former service as an elected or
637 appointed member of the West Virginia House of Delegates or
638 the West Virginia Senate.

639 (B) The division shall charge a special initial application
640 fee of ten dollars in addition to all other fees required by law.
641 This special fee is to compensate the division of motor vehicles
642 for additional costs and services required in the issuing of the
643 special registration and shall be collected by the division and
644 deposited in a special revolving fund to be used for the
645 administration of this section. The design of the plate shall
646 indicate total years of service in the Legislature.

647 (C) An annual fee of fifteen dollars shall be charged for
648 each plate in addition to all other fees required by this chapter.

649 (32) Democratic state or county executive committee
650 member special registration plates:

651 (A) The division shall design and issue special registration
652 plates for use by democratic state or county executive
653 committee members. The design of the plates shall include an
654 insignia of a donkey and shall differentiate by wording on the
655 plate between state and county executive committee members.

656 (B) An annual fee of twenty-five dollars shall be charged
657 for each democratic state or county executive committee

658 member registration plate in addition to all other fees required
659 by this chapter. All annual fees collected for each special plate
660 issued under this subdivision shall be deposited into a special
661 revolving fund to be used in the administration of this chapter.

662 (C) A special application fee of ten dollars shall be charged
663 at the time of initial application as well as upon application for
664 any duplicate or replacement registration plate, in addition to all
665 other fees required by this chapter. All application fees shall be
666 deposited into a special revolving fund to be used in the
667 administration of this chapter.

668 (D) The division shall not begin production of a plate
669 authorized under the provisions of this subdivision until the
670 division receives at least one hundred completed applications
671 from the state or county executive committee members,
672 including all fees required pursuant to this subdivision.

673 (33) The division may issue honorably discharged female
674 veterans special registration plates as follows:

675 (A) Upon appropriate application, there shall be issued to
676 any female honorably discharged veteran, of any branch of the
677 armed services of the United States, a special registration plate
678 for any number of vehicles titled in the name of the qualified
679 applicant with an insignia designed by the commissioner of the
680 division of motor vehicles to designate the recipient as a woman
681 veteran.

682 (B) A special initial application fee of ten dollars shall be
683 charged in addition to all other fees required by law. This
684 special fee is to compensate the division of motor vehicles for
685 additional costs and services required in the issuing of the
686 special registration and shall be collected by the division and
687 deposited in a special revolving fund to be used for the
688 administration of this section: *Provided*, that nothing in this

689 section may be construed to exempt any veteran from any other
690 provision of this chapter.

691 (C) A surviving spouse may continue to use his deceased
692 spouse's honorably discharged veterans license plate until the
693 surviving spouse dies, remarries or does not renew the license
694 plate.

695 (34) The division may issue special registration plates
696 bearing the logo, symbol, insignia, letters or words
697 demonstrating association with West Liberty State College to
698 any resident owner of a motor vehicle. Resident owners may
699 apply for the special license plate for any number of Class A
700 vehicles titled in the name of the applicant. The special
701 registration plates shall be designed by the commissioner. Each
702 application submitted pursuant to this subdivision shall be
703 accompanied by payment of a special initial application fee of
704 fifteen dollars, which is in addition to any other registration or
705 license fee required by this chapter. The division shall charge
706 an annual fee of fifteen dollars for each special educator
707 registration plate in addition to all other fees required by this
708 chapter. All special fees shall be collected by the division and
709 deposited into a special revolving fund to be used for the
710 purpose of compensating the division of motor vehicles for
711 additional costs and services required in the issuing of the
712 special registration and for the administration of this section.

713 (35) The division may issue special registration plates to
714 members of the Harley Owners Group as follows:

715 (A) Upon appropriate application, the division may issue a
716 special registration plate designed by the commissioner for any
717 number of vehicles titled in the name of the qualified applicant.
718 Persons desiring the special registration plate shall offer
719 sufficient proof of membership in the Harley Owners Group.

720 (B) The division shall charge a special initial application
721 fee of ten dollars in addition to all other fees required by law.
722 This special fee is to compensate the division of motor vehicles
723 for additional costs and services required in the issuing of the
724 special registration and shall be collected by the division and
725 deposited in a special revolving fund to be used for the
726 administration of this section.

727 (C) An annual fee of fifteen dollars shall be charged for
728 each plate in addition to all other fees required by this chapter.

729 (36) The division may issue special registration plates for
730 persons retired from any branch of the armed services of the
731 United States as follows:

732 (A) Upon appropriate application, there shall be issued to
733 any person who has retired after service in any branch of the
734 armed services of the United States, a special registration plate
735 for any number of vehicles titled in the name of the qualified
736 applicant with an insignia designed by the commissioner of the
737 division of motor vehicles to designate the recipient as retired
738 from the armed services of the United States.

739 (B) A special initial application fee of ten dollars shall be
740 charged in addition to all other fees required by law. This
741 special fee is to compensate the division of motor vehicles for
742 additional costs and services required in the issuing of a special
743 registration and shall be collected by the division and deposited
744 in a special revolving fund to be used for the administration of
745 this section: Provided, that nothing in this section may be
746 construed to exempt any registrants from any other provision of
747 this chapter.

748 (C) A surviving spouse may continue to use his or her
749 deceased spouses retired military license plate until the
750 surviving dies, remarries or does not renew the license plate.

751 (d) The commissioner shall propose rules for legislative
752 approval in accordance with the provisions of article three,
753 chapter twenty-nine-a of this code regarding the proper forms
754 to be used in making application for the special license plates
755 authorized by this section. The commissioner may not begin the
756 design or production of any license plates for which eligibility
757 is based on membership or affiliation with a particular private
758 organization until at least one hundred persons complete an
759 application and deposit a check to cover the first year's basic
760 registration, one time design and manufacturing costs and to
761 cover the first year additional annual fee. If the organization
762 fails to submit the required number of applications with
763 attached checks within six months of the effective date of the
764 authorizing legislation, the plate will not be produced and will
765 require legislative reauthorization: *Provided*, That the six
766 month requirement in this subsection does not apply to
767 subdivisions (1) through (26) inclusive, subsection (c) of this
768 section.

769 (e)(1) Nothing in this section requires a charge for a free
770 prisoner of war license plate or a free recipient of the
771 Congressional Medal of Honor license plate for a vehicle titled
772 in the name of the qualified applicant as authorized by other
773 provisions of this code.

774 (2) A surviving spouse may continue to use his or her
775 deceased spouse's prisoner of war or Congressional Medal of
776 Honor license plate until the surviving spouse dies, remarries or
777 does not renew the license plate.

778 (3) Qualified former prisoners of war and recipients of the
779 Congressional Medal of Honor may obtain a second special
780 registration plate for use on a passenger vehicle titled in the
781 name of the qualified applicant. The division shall charge a
782 one-time fee of ten dollars to be deposited into a special
783 revolving fund to be used in the administration of this chapter,

784 in addition to all other fees required by this chapter, for the
785 second special plate.

786 (f) The division may issue special ten-year registration
787 plates as follows:

788 (1) The commissioner may issue or renew for a period of no
789 more than ten years any registration plate exempted from
790 registration fees pursuant to any provision of this code or any
791 restricted use antique motor vehicle license plate authorized by
792 section three-a, article ten of this chapter: *Provided*, that the
793 provisions of this subsection do not apply to any person who
794 has had a special registration suspended for failure to maintain
795 motor vehicle liability insurance as required by section three,
796 article two-a, chapter seventeen-d of this code or failure to pay
797 personal property taxes as required by section three-a of this
798 article.

799 (2) An initial nonrefundable fee shall be charged for each
800 special registration plate issued pursuant to this subsection,
801 which is the total amount of fees required by section fifteen,
802 article ten of this chapter, section three, article three of this
803 chapter or section three-a, article ten of this chapter for the
804 period requested.

805 (g) The provisions of this section may not be construed to
806 exempt any registrant from maintaining motor vehicle liability
807 insurance as required by section three, article two-a, chapter
808 seventeen-d of this code or from paying personal property taxes
809 on any motor vehicle as required by section three-a of this
810 article.

811 (h) The commissioner may, in his or her discretion, issue a
812 registration plate of reflectorized material suitable for
813 permanent use on motor vehicles, trailers and semitrailers,
814 together with appropriate devices to be attached to the
815 registration to indicate the year for which the vehicles have

816 been properly registered or the date of expiration of the
817 registration. The design and expiration of the plates shall be
818 determined by the commissioner.

819 (i) Any license plate issued or renewed pursuant to this
820 chapter, which is paid for by a check that is returned for
821 nonsufficient funds, is void without further notice to the
822 applicant. The applicant may not reinstate the registration until
823 the returned check is paid by the applicant in cash, money order
824 or certified check and all applicable fees assessed as a result
825 thereof have been paid.

**§17A-3-23. Registration plates to state, county, municipal and
other governmental vehicles; use for undercover
activities.**

1 (a) Any motor vehicle designed to carry passengers, owned
2 or leased by the state of West Virginia, or any of its
3 departments, bureaus, commissions or institutions, except
4 vehicles used by the governor, treasurer, three vehicles per
5 elected office of the board of public works, vehicles operated
6 by the state police, vehicles operated by conservation officers
7 of the division of natural resources, not to exceed ten vehicles
8 operated by the arson investigators of the office of state fire
9 marshal, not to exceed two vehicles operated by the division of
10 protective services and not to exceed sixteen vehicles operated
11 by inspectors of the office of the alcohol beverage control
12 commissioner, may not be operated or driven by any person
13 unless it has displayed and attached to the front thereof, in the
14 same manner as regular motor vehicle registration plates are
15 attached, a plate of the same size as the regular registration
16 plate, with white lettering on a green background bearing the
17 words "West Virginia" in one line and the words "State Car" in
18 another line and the lettering for the words "State Car" shall be
19 of sufficient size to be plainly readable from a distance of one
20 hundred feet during daylight.

21 The vehicle shall also have attached to the rear a plate
22 bearing a number and any other words and figures as the
23 commissioner of motor vehicles shall prescribe. The rear plate
24 shall also be green with the number in white.

25 (b) On registration plates issued to vehicles owned by
26 counties, the color shall be white on red with the word
27 "County" on top of the plate and the words "West Virginia" on
28 the bottom. On any registration plates issued to a city or
29 municipality, the color shall be white on blue with the word
30 "City" on top and the words "West Virginia" on the bottom.
31 The colors may not be reversed and shall be of reflectorized
32 material. The registration plates issued to counties,
33 municipalities and other governmental agencies authorized to
34 receive colored plates hereunder shall be affixed to both the
35 front and rear of the vehicles.

36 (c) Registration plates issued to vehicles operated by county
37 sheriffs shall be designed by the commissioner in cooperation
38 with the sheriffs' association with the word "Sheriff" on top of
39 the plate and the words "West Virginia" on the bottom. The
40 plate shall contain a gold shield representing the sheriff's star
41 and a number assigned to that plate by the commissioner. Every
42 county sheriff shall provide the commissioner with a list of
43 vehicles operated by the sheriff, unless otherwise provided in
44 this section, and a fee of ten dollars for each vehicle submitted
45 by the first day of July, two thousand two.

46 (d) The commissioner is authorized to designate the colors
47 and design of any other registration plates that are issued
48 without charge to any other agency in accordance with the
49 motor vehicle laws.

50 (e) Upon application, the commissioner is authorized to
51 issue a maximum of five Class A license plates per applicant to
52 be used by county sheriffs and municipalities on

53 law-enforcement vehicles while engaged in undercover
54 investigations.

55 (f) The commissioner is authorized to issue an unlimited
56 number of license plates per applicant to authorized drug and
57 violent crime task forces in the state of West Virginia when the
58 chairperson of the control group of a drug and violent crime
59 task force signs a written affidavit stating that the vehicle or
60 vehicles for which the plates are being requested will be used
61 only for official undercover work conducted by a drug and
62 violent crime task force.

63 (g) The commissioner is authorized to issue twenty Class
64 A license plates to the criminal investigation division of the
65 department of tax and revenue for use by its investigators.

66 (h) The commissioner may issue a maximum of ten Class
67 A license plates to the division of natural resources for use by
68 conservation officers. The commissioner shall designate the
69 color and design of the registration plates to be displayed on the
70 front and the rear of all other state-owned vehicles owned by
71 the division of natural resources and operated by conservation
72 officers.

73 (i) The commissioner is authorized to issue an unlimited
74 number of Class A license plates to the commission on special
75 investigations for state-owned vehicles used for official
76 undercover work conducted by the commission on special
77 investigations. The commissioner is authorized to issue a
78 maximum of two Class A plates to the division of protective
79 services for state owned vehicles used by the division of
80 protective services in fulfilling its mission.

81 (j) No other registration plate may be issued for, or attached
82 to, any state-owned vehicle.

83 (k) The commissioner of motor vehicles shall have a
34 sufficient number of both front and rear plates produced to
85 attach to all state-owned cars. The numbered registration plates
86 for the vehicles shall start with the number “five hundred” and
87 the commissioner shall issue consecutive numbers for all
88 state-owned cars.

89 (l) It is the duty of each office, department, bureau,
90 commission or institution furnished any vehicle to have plates
91 as described herein affixed thereto prior to the operation of the
92 vehicle by any official or employee.

93 (m) Any person who violates the provisions of this section
94 is guilty of a misdemeanor and, upon conviction thereof, shall
95 be fined not less than fifty dollars nor more than one hundred
96 dollars. Magistrates shall have concurrent jurisdiction with
97 circuit and criminal courts for the enforcement of this section.

CHAPTER 155

(S. B. 388 — By Senator Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article three-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two and three of said article, all relating to imported vehicles; compliance with federal safety and emission standards; and changing the requirements which must be met to obtain a title and registration.

Be it enacted by the Legislature of West Virginia:

That section one, article three-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two and three of said article be amended and reenacted, all to read as follows:

ARTICLE 3A. VEHICLE COMPLIANCE WITH FEDERAL CLEAN AIR STANDARDS AND VEHICLE SAFETY.

§17A-3A-2. Consumer disclosure.

§17A-3A-3. Certificates of title.

§17A-3A-2. Consumer disclosure.

1 Before a motor vehicle not originally manufactured in
2 accordance with the laws and regulations of the United States
3 Clean Air Act and the Motor Vehicle Safety Act can be sold to
4 a consumer in this state, the seller must provide the purchaser
5 with full written disclosure of all modifications performed to
6 the vehicle. This disclosure consists of a description phrased in
7 terms reasonably understandable to a consumer with no
8 specialized technical training, accompanied by a copy of the
9 technical submissions made to the environmental protection
10 agency and department of transportation in order to obtain
11 certification of compliance. Failure to make this disclosure
12 renders the sale voidable.

§17A-3A-3. Certificates of title.

1 (a) Before any imported vehicle which has not previously
2 been titled or registered in the United States may be titled in
3 this state, the applicant must submit: (1) A manufacturer's
4 certificate of origin issued by the actual vehicle manufacturer
5 together with a notarized translation thereof; or (2) the docu-
6 ments constituting valid proof of ownership by an individual
7 owner or exporter and evidencing a change of such ownership
8 to the applicant, together with a notarized translation of any
9 document; or (3) with regard to vehicles imported from
10 countries which cancel the vehicle registration and title for

11 export, the documents assigned to such vehicle after the
12 registration and title have been canceled, together with a
13 notarized translation thereof, and proof satisfactory to the
14 division that the motor vehicle complies with the United States
15 Clean Air Act and the Motor Vehicle Safety Act.

16 (b) In the event that the documents submitted as required
17 by subsection (a) of this section do not name as owner the
18 current applicant for a certificate of title, the applicant must
19 also submit reliable proof of a chain of title. For those countries
20 which utilize documents of registration rather than a certificate
21 of title, proof of a chain of title for purposes of this subsection
22 shall be accomplished by presenting the change of ownership
23 certificate referred to in subsection (a) of this section.

CHAPTER 156

(H. B. 2797 — By Delegates Warner and Butcher)

[Passed March 8, 2003; in effect ninety days from passage. 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 amend and reenact section eight, article one-d, chapter seventeen-b of said code, all relating to advisory boards to the commissioner of motor vehicles; authorizing the division of motor vehicles to reimburse members of the motor vehicle dealer advisory board and members of the motorcycle safety awareness board for travel and other reasonable and necessary expenses.

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 section eight, article one-d, chapter seventeen-b of said code be amended and reenacted, all to read as follows:

Chapter

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

17B. Motor Vehicle Driver's Licenses.

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

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS.**

§17A-6-18a. Motor vehicle dealers advisory board.

1 (a) There is continued a motor vehicle dealers advisory
2 board to assist and to advise the commissioner on the adminis-
3 tration of laws regulating the motor vehicle industry; to work
4 with the commissioner in developing new laws, rules or policies
5 regarding the motor vehicle industry; and to give the commis-
6 sioner any 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.

23 The terms of the board members shall be for three years.
24 The attorney general representative shall serve continuously.

25 The board shall meet at least four times annually and at the
26 call of the commissioner.

27 (b) The commissioner shall consult with the board before
28 he or she takes any disciplinary action against a dealer, an
29 automobile auction or a license service to revoke, or suspend a
30 license, place the licensee on probation or levy a civil penalty,
31 unless the commissioner determines that the consultation would
32 endanger a criminal investigation.

33 (c) The commissioner may consult with the board by mail,
34 by facsimile, by telephone or at a meeting of the board, but the
35 commissioner is not bound by the recommendations of the
36 board. The commissioner shall give members seven days from
37 the date of a mailing or other notification to respond to pro-
38 posed actions, except in those instances when the commissioner
39 determines that the delay in acting creates a serious danger to
40 the public's health or safety or would unduly compromise the
41 effectiveness of the action.

42 (d) No action taken by the commissioner is subject to
43 challenge or rendered invalid on account of his or her failure to
44 consult with the board.

45 (e) The appointed members shall serve without compensa-
46 tion, however, members are entitled to reimbursement of travel
47 and other necessary expenses actually incurred while engaged

48 in legitimate board activities in accordance with the guidelines
49 of the travel management office of the department of adminis-
50 tration or its successor agency.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§17B-1D-8. Motorcycle safety awareness board continued.

1 (a) There is continued an eight member motorcycle safety
2 awareness board consisting of four ex-officio members and four
3 nongovernmental members. The ex-officio members are the
4 motorcycle safety program coordinator, as appointed under
5 section two of this article, or a designee; the superintendent of
6 the state police or a designee; the commissioner of the bureau
7 of public health or a designee; and the commissioner of the
8 division of tourism or a designee. The four nongovernmental
9 members are a licensed motorcycle operator; a member of
10 American bikers aimed toward education (ABATE) or the West
11 Virginia confederation of motorcycle clubs; a licensed insur-
12 ance agent who has a valid motorcycle endorsement who will
13 be appointed for an initial term of two years; and, an owner of
14 a motorcycle dealership or supplier of aftermarket nonfran-
15 chised motorcycle supplies who will be appointed for an initial
16 term of three years. The motorcycle safety program coordinator
17 shall serve as chair of the board. The nongovernmental mem-
18 bers shall be appointed by the governor with the advice and
19 consent of the Senate. The terms are for three years, except for
20 the initial appointments which will be staggered according to
21 the provisions of this article. Members may be reappointed to
22 the board. Any nongovernmental member who is absent without
23 good cause from three consecutive meetings of the board may
24 be removed from the board and a new member appointed by the
25 governor.

26 (b) The board may recommend to the superintendent of the
27 state police types and makes of protective helmets, eye protec-
28 tion devices and equipment offered for sale, purchased or used
29 by any person. The board may make recommendations to the
30 commissioner of motor vehicles regarding the use of the
31 moneys in the motorcycle safety fund created under section
32 seven of this article. The board shall report annually to the
33 Legislature on or before the first day of each regular legislative
34 session.

35 (c) The appointed members shall serve without compensa-
36 tion, however, members are entitled to reimbursement of travel
37 and other necessary expenses actually incurred while engaged
38 in legitimate board activities in accordance with the guidelines
39 of the travel management office of the department of adminis-
40 tration or successor agency.

CHAPTER 157

(S. B. 342 — By Senator Bailey)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance and renewals of driver's licenses; and limiting the time a driver's license may be issued to a person who is not a citizen of the United States to the time the person is authorized to be in the United States.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 (a) Except as provided in subsection (e) of this section,
2 every driver's license shall expire five years from the date of its
3 issuance.

4 (b) (1) Every driver's license issued to persons who have
5 attained their twenty-first birthday shall expire on the day of the
6 month designated by the commissioner in which the applicant's
7 birthday occurs in those years in which the applicant's age is
8 evenly divisible by five. Except as provided in the following
9 subdivisions and in subsection (e) of this section, no driver's
10 license may be issued for less than three years nor more than
11 seven years and shall be valid for a period of five years,
12 expiring in the month in which the applicant's birthday occurs
13 and in a year in which the applicant's age is evenly divisible by
14 five.

15 (2) Every driver's license issued to persons who have not
16 attained their twenty-first birthday shall expire on the day of the
17 month designated by the commissioner in the year in which the
18 applicant attains the age of twenty-one years, except as pro-
19 vided in section three-a of this article.

20 (3) The driver's license of any person in the armed forces
21 is extended for a period of six months from the date the person
22 is separated under honorable circumstances from active duty in
23 the armed forces.

24 (4) The commissioner may change the date that a driver's
25 license expires from the last day of the month in those years
26 specified in subdivisions (1) and (2) of this subsection to the

27 day of the month in which the applicant's birthday occurs in
28 those years. If the commissioner changes the expiration date,
29 the change may only affect new licenses and renewed licenses.

30 (c) A person who allows his or her driver's license to expire
31 may apply to the division for renewal of the license. Applica-
32 tion shall be made upon a form furnished by the division and
33 shall be accompanied by payment of the fee required by section
34 eight of this article plus an additional fee of five dollars. The
35 commissioner shall determine whether the person qualifies for
36 a renewed license and may, in the commissioner's discretion,
37 renew any expired license without examination of the applicant.

38 (d) Each renewal of a driver's license shall contain a new
39 color photograph of the licensee. By first class mail to the
40 address last known to the division, the commissioner shall
41 notify each person who holds a valid driver's license of the
42 expiration date of the license. The notice shall be mailed at least
43 thirty days prior to the expiration date of the license and shall
44 include a renewal application form.

45 (e) A license issued to a person who is not a citizen of the
46 United States may only be issued for the time the person is
47 legally authorized to be in the United States, not to exceed five
48 years. If the time the person is authorized to be in the United
49 States is extended, the commissioner may renew the license for
50 the time extended, not to exceed five years.

CHAPTER 158

(Com. Sub. for S. B. 162 — By Senator Rowe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; and expunging motor vehicle license information for nineteen-year-olds when denials, suspensions or revocations of their licenses are due to school attendance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-14. Records and indices to be kept by the division.

1 The division shall file every application for a license
2 received by it and shall maintain suitable indices containing, in
3 alphabetical order:

4 (1) All applications denied and on each a notation of the
5 reasons for such denial;

6 (2) All applications granted; and

7 (3) The name of every licensee whose license has been
8 suspended or revoked by the division and after each name a
9 notation of the reasons for the action: *Provided*, That upon
10 application for a license by an individual eighteen years of age
11 or older, any record of a previous license denial, suspension or
12 revocation related solely to the school attendance of the
13 applicant may not be released to any third party.

14 The division shall also file all abstracts of court records of
15 convictions received by it under the laws of this state and in
16 connection therewith maintain convenient records or make
17 suitable notations in order that an individual record of each

18 licensee showing the convictions of such licensee shall be
19 readily ascertainable and available for the consideration of the
20 division upon any application for renewal of license and at
21 other suitable times.

CHAPTER 159

(Com. Sub. for H. B. 2814 — By Delegates Butcher,
Wright, Hrutkay, Ferrell and Warner)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nine, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to moving traffic regulations generally and increasing the penalty for failure of a driver to yield the right-of-way.

Be it enacted by the Legislature of West Virginia:

That section six, article nine, 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 9. RIGHT-OF-WAY.

§17C-9-6. Misdemeanor to violate provisions of article; penalty.

1 Any person violating the provisions of this article is guilty
2 of a misdemeanor and, upon conviction thereof, shall be fined
3 not more than two hundred dollars; upon a second conviction
4 within one year thereafter, shall be fined not more than three

5 hundred dollars; and upon a third or subsequent conviction,
6 shall be fined not more than one thousand dollars.

CHAPTER 160

(H. B. 2763 — By Delegates Warner, Shelton,
laquinta and Renner)

[Passed February 24, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to auxiliary lighting on motor vehicles; allowing roof-mounted light bar lighting devices on motor vehicles when used off road; and requiring that the devices be turned off and covered when the motor vehicle is operated on a road or highway.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-17. Spot lamps and other auxiliary lamps.

1 (a) *Spot lamps.* — Any motor vehicle except a public utility
2 company maintenance vehicle may be equipped with not more
3 than one spot lamp and every lighted spot lamp shall be so
4 aimed and used upon approaching another vehicle that no part
5 of the high-intensity portion of the beam will be directed to the
6 left of the prolongation of the extreme left side of the vehicle
7 nor more than one hundred feet ahead of the vehicle. A public

8 utility company maintenance vehicle may be equipped with
9 more than one spot lamp but all lighted spot lamps shall be
10 aimed and used in conformity to the requirements of this
11 subsection.

12 (b) *Fog lamps.* — Any motor vehicle may be equipped with
13 not more than two fog lamps mounted on the front at a height
14 not less than twelve inches nor more than thirty inches above
15 the level surface upon which the vehicle stands and so aimed
16 that when the vehicle is not loaded none of the high-intensity
17 portion of the light to the left of the center of the vehicle shall
18 at a distance of twenty-five feet ahead project higher than a
19 level of four inches below the level of the center of the lamp
20 from which it comes.

21 (c) *Auxiliary passing lamp.* — Any motor vehicle may be
22 equipped with not more than one auxiliary passing lamp
23 mounted on the front at a height not less than twenty-four
24 inches nor more than forty-two inches above the level surface
25 upon which the vehicle stands and every auxiliary passing lamp
26 shall meet the requirements and limitations set forth in this
27 article.

28 (d) *Auxiliary driving lamp.* — Any motor vehicle may be
29 equipped with not more than one auxiliary driving lamp
30 mounted on the front at a height not less than sixteen inches nor
31 more than forty-two inches above the level surface upon which
32 the vehicle stands and every such auxiliary driving lamp shall
33 meet the requirements and limitations set forth in this article.

34 (e) *Roof-mounted off-road light bar lighting device.* — Any
35 motor vehicle may be equipped with a roof-mounted off-road
36 light bar lighting device comprised of multiple lamps: *Pro-*
37 *vided,* That whenever the vehicle is operated or driven upon any
38 road or highway of this state, the roof-mounted off-road light
39 bar lighting device shall be turned off and covered with an
40 opaque covering that prohibits light from being emitted while

- 41 the vehicle is being operated on any road or highway of this
42 state.

CHAPTER 161

(S. B. 95 —By Senators Ross, Love and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the size, weight and load of vehicles; increasing the maximum length and width of certain vehicles; increasing the maximum length of the combination of certain vehicles coupled together; allowing commissioner to increase combination vehicle length; and mandating that the commissioner annually publish a map designating state highways and various maximum vehicle lengths pertinent thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.

§17C-17-3. Projecting loads on passenger vehicles.

§17C-17-4. Height and length of vehicles and loads.

§17C-17-2. Width of vehicles.

1 (a) The total outside width, exclusive of safety equipment
2 authorized by the United States department of transportation, of
3 any vehicle or the load thereon may not exceed ninety-six
4 inches except as otherwise provided in this article: *Provided,*
5 That any vehicle with a total outside width of one hundred two
6 inches, exclusive of safety equipment authorized by the United
7 States department of transportation, may be operated on any
8 highway within the state designated by the United States
9 department of transportation or the commissioner of the
10 department of highways or on any highway having a minimum
11 lane width of ten feet.

12 (b) Motor homes, travel trailers, truck campers, motor
13 buses and trackless trolley coaches with a total outside width of
14 one hundred two inches, excluding safety equipment authorized
15 by the United States department of transportation, may operate
16 on any highway.

§17C-17-3. Projecting loads on passenger vehicles.

1 (a) No passenger-type vehicle shall be operated on any
2 highway with any load carried thereon extending beyond the
3 line of the fenders of the left side of such vehicle nor extending
4 more than six inches beyond the line of the fenders on the right
5 side thereof.

6 (b) A motor home, travel trailer or truck camper may
7 exceed the maximum width prescribed section two of this
8 article, if the excess width is attributable to an appurtenance
9 that does not exceed more than six inches beyond the body of
10 the vehicle.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle, including any load thereon, may not exceed
2 a height of thirteen feet six inches, but the owner or owners of
3 such vehicles shall be responsible for damage to any bridge or

4 highway structure and to municipalities for any damage to
5 traffic control devices or other highway structures where such
6 bridges, devices or structures have a vehicle clearance of less
7 than thirteen feet six inches.

8 (b) A motor vehicle, including any load thereon, may not
9 exceed a length of forty feet extreme overall dimension,
10 inclusive of front and rear bumpers, except that a motor home
11 may not exceed a length of forty-five feet, exclusive of front
12 and rear bumpers.

13 (c) Except as hereinafter provided in this subsection or in
14 subsection (d) of this section, a combination of vehicles coupled
15 together may not consist of more than two units and no combi-
16 nation of vehicles including any load thereon shall have an
17 overall length, inclusive of front and rear bumpers, in excess of
18 fifty-five feet except as provided in section eleven-b of this
19 article and except as otherwise provided in respect to the use of
20 a pole trailer as authorized in section five of this article. The
21 limitation that a combination of vehicles coupled together may
22 not consist of more than two units may not apply to: (1) A
23 combination of vehicles coupled together by a saddle-mount
24 device used to transport motor vehicles in a drive-away service
25 when no more than three saddle mounts are used, if equipment
26 used in the combination meets the requirements of the safety
27 regulations of the United States department of transportation
28 and may not exceed an overall length of more than seventy-five
29 feet; or (2) a combination of vehicles coupled together, one of
30 which is a travel trailer or folding camping trailer having an
31 overall length, exclusive of front and rear bumpers, not exceed-
32 ing sixty-five feet.

33 (d) A combination of two vehicles coupled together, one of
34 which is a motor home, or a combination of vehicles coupled
35 together, one of which is a travel trailer or folding camping

36 trailer, may not exceed an overall length, exclusive of front and
37 rear bumpers of sixty-five feet.

38 (e) Notwithstanding the provisions of subsections (a), (b),
39 (c) and (d) of this section, the commissioner may designate,
40 upon his own motion or upon the petition of an interested party,
41 a combination vehicle length not to exceed seventy feet.

42 (f) The length limitations for truck tractor-semitrailer
43 combinations and truck tractor-semitrailer-trailer combinations
44 operating on the national system of interstate and defense
45 highways and those classes of qualifying federal-aid primary
46 system highways so designated by the United States secretary
47 of transportation and those highways providing reasonable
48 access to and from terminals, facilities for food, fuel, repairs
49 and rest and points of loading and unloading for household
50 goods carriers from such highways and further, as to other
51 highways so designated by the West Virginia commissioner of
52 highways, shall be as follows: The maximum length of a
53 semitrailer unit operating in a truck tractor-semitrailer combina-
54 tion shall not exceed forty-eight feet in length except where
55 semitrailers have an axle spacing of not more than thirty-seven
56 feet between the rear axle of the truck tractor and the front axle
57 of the semitrailer, such semitrailer shall be allowed to be not
58 more than fifty-three feet in length and the maximum length of
59 any semitrailer or trailer operating in a truck tractor-semitrailer-
60 trailer combination may not exceed twenty-eight feet in length
61 and in no event shall any combinations exceed three units,
62 including the truck tractor: *Provided*, That nothing herein
63 contained shall impose an overall length limitation as to
64 commercial motor vehicles operating in truck trac-
65 tor-semitrailer or truck tractor-semitrailer-trailer combinations.

66 (g) The commissioner shall publish annually an official
67 map designating the highways of the state and the various
68 maximum vehicle lengths relating thereto.

CHAPTER 162

(S. B. 52 — By Senator Rowe)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the requirement of a one hundred dollar bond on out-of-state defendants in automobile accident cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

- 1 (a) Every nonresident, for the privilege of operating a motor
- 2 vehicle on a public street, road or highway of this state, either
- 3 personally or through an agent, appoints the secretary of state,
- 4 or his or her successor in office, to be his or her agent or
- 5 attorney-in-fact upon whom may be served all lawful process
- 6 in any action or proceeding against him or her in any court of
- 7 record in this state arising out of any accident or collision
- 8 occurring in the state of West Virginia in which the nonresident
- 9 was involved: *Provided*, That in the event process against a

10 nonresident defendant cannot be effected through the secretary
11 of state, as provided by this section, for the purpose only of
12 service of process, the nonresident motorist shall be considered
13 to have appointed as his or her agent or attorney-in-fact any
14 insurance company which has a contract of automobile or
15 liability insurance with the nonresident defendant.

16 (b) For purposes of service of process as provided in this
17 section, every insurance company shall be considered the agent
18 or attorney-in-fact of every nonresident motorist insured by that
19 company if the insured nonresident motorist is involved in any
20 accident or collision in this state and service of process cannot
21 be effected upon the nonresident through the office of the
22 secretary of state. Upon receipt of process as provided in this
23 section, the insurance company may, within thirty days, file an
24 answer or other pleading or take any action allowed by law on
25 behalf of the defendant.

26 (c) A nonresident operating a motor vehicle in this state,
27 either personally or through an agent, is considered to acknowl-
28 edge the appointment of the secretary of state, or, as the case
29 may be, his or her automobile insurance company, as his or her
30 agent or attorney-in-fact, or the agent or attorney-in-fact of his
31 or her administrator, administratrix, executor or executrix in the
32 event the nonresident dies, and furthermore is considered to
33 agree that any process against him or her or against his or her
34 administrator, administratrix, executor or executrix, which is
35 served in the manner provided in this section, shall be of the
36 same legal force and validity as though the nonresident or his
37 or her administrator, administratrix, executor or executrix were
38 personally served with a summons and complaint within this
39 state.

40 Any action or proceeding may be instituted, continued or
41 maintained on behalf of or against the administrator,
42 administratrix, executor or executrix of any nonresident who

43 dies during or subsequent to an accident or collision resulting
44 from the operation of a motor vehicle in this state by the
45 nonresident or his or her duly authorized agent.

46 (d) Service of process upon a nonresident defendant shall
47 be made by leaving the original and two copies of both the
48 summons and complaint, together with the bond certificate of
49 the clerk, and the fee required by section two, article one,
50 chapter fifty-nine of this code with the secretary of state, or in
51 his or her office, and the service shall be sufficient upon the
52 nonresident defendant or, if a natural person, his or her adminis-
53 trator, administratrix, executor or executrix: *Provided*, That
54 notice of service and a copy of the summons and complaint
55 shall be sent by registered or certified mail, return receipt
56 requested, by the secretary of state to the nonresident defendant.
57 The return receipt signed by the defendant or his or her duly
58 authorized agent shall be attached to the original summons and
59 complaint and filed in the office of the clerk of the court from
60 which process is issued. In the event the registered or certified
61 mail sent by the secretary of state is refused or unclaimed by
62 the addressee or if the addressee has moved without any
63 forwarding address, the registered or certified mail returned to
64 the secretary of state, or to his or her office, showing on the
65 mail the stamp of the post office department that delivery has
66 been refused or not claimed or that the addressee has moved
67 without any forwarding address, shall be appended to the
68 original summons and complaint and filed in the clerk's office
69 of the court from which process issued. The court may order
70 any reasonable continuances to afford the defendant opportu-
71 nity to defend the action.

72 (e) The fee remitted to the secretary of state at the time of
73 service shall be taxed in the costs of the proceeding. The
74 secretary of state shall keep a record in his or her office of all
75 service of process and the day and hour of service of process.

76 (f) In the event service of process upon a nonresident
77 defendant cannot be effected through the secretary of state as
78 provided by this section, service may be made upon the
79 defendant's insurance company. The plaintiff shall file with the
80 clerk of the circuit court an affidavit alleging that the defendant
81 is not a resident of this state; that process directed to the
82 secretary of state was sent by registered or certified mail, return
83 receipt requested; that the registered or certified mail was
84 returned to the office of the secretary of state showing the
85 stamp of the post office department that delivery was refused or
86 that the notice was unclaimed or that the defendant addressee
87 moved without any forwarding address; and that the secretary
88 of state has complied with the provisions of subsection (d) of
89 this section. Upon receipt of process the insurance company
90 may, within thirty days, file an answer or other pleading and
91 take any action allowed by law in the name of the defendant.

92 (g) The following words and phrases, when used in this
93 article, for the purpose of this article and unless a different
94 intent on the part of the Legislature is apparent from the
95 context, have the following meanings:

96 (1) "Duly authorized agent" means and includes, among
97 others, a person who operates a motor vehicle in this state for
98 a nonresident as defined in this section and chapter, in pursuit
99 of business, pleasure or otherwise, or who comes into this state
100 and operates a motor vehicle for, or with the knowledge or
101 acquiescence of, a nonresident; and includes, among others, a
102 member of the family of the nonresident or a person who, at the
103 residence, place of business or post office of the nonresident,
104 usually receives and acknowledges receipt for mail addressed
105 to the nonresident.

106 (2) "Motor vehicle" means and includes any self-propelled
107 vehicle, including a motorcycle, tractor and trailer, not operated
108 exclusively upon stationary tracks.

109 (3) "Nonresident" means any person who is not a resident
110 of this state or a resident who has moved from the state subse-
111 quent to an accident or collision and among others includes a
112 nonresident firm, partnership, corporation or voluntary associa-
113 tion, or a firm, partnership, corporation or voluntary association
114 that has moved from the state subsequent to an accident or
115 collision.

116 (4) "Nonresident plaintiff or plaintiffs" means a nonresident
117 who institutes an action in a court in this state having jurisdic-
118 tion against a nonresident in pursuance of the provisions of this
119 article.

120 (5) "Nonresident defendant or defendants" means a
121 nonresident motorist who, either personally or through his or
122 her agent, operated a motor vehicle on a public street, highway
123 or road in this state and was involved in an accident or collision
124 which has given rise to a civil action filed in any court in this
125 state.

126 (6) "Street", "road" or "highway" means the entire width
127 between property lines of every way or place of whatever
128 nature when any part of the street, road or highway is open to
129 the use of the public, as a matter of right, for purposes of
130 vehicular traffic.

131 (7) "Insurance company" means any firm, corporation,
132 partnership or other organization which issues automobile
133 insurance.

134 (h) The provision for service of process in this section is
135 cumulative and nothing contained in this section shall be
136 construed as a bar to the plaintiff in any action from having
137 process in the action served in any other mode and manner
138 provided by law.

CHAPTER 163

(Com. Sub. for S. B. 505 — By Senators Bowman,
Jenkins, Bailey and Plymale)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal fire chiefs; and authorizing retention of rank attained during service as fire chief when tenure as fire chief ends.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 15. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; “appointing officer” defined.

- 1 (a) All appointments and promotions to all positions in all
- 2 paid fire departments shall be made only according to qualifica-

3 tions and fitness to be ascertained by examinations, which, so
4 far as practicable, shall be competitive, as hereinafter provided.

5 (b) No individual may be appointed, promoted, reinstated,
6 removed, discharged, suspended or reduced in rank or pay as a
7 paid member of any paid fire department, regardless of rank or
8 position, in any manner or by any means other than those
9 prescribed in this article: *Provided*, That in all municipalities in
10 which the office of fire chief of a paid fire department was not
11 covered by the provisions of former article six-a of this chapter
12 on the first day of January, one thousand nine hundred forty-
13 nine, the office in the municipality shall be excepted from the
14 civil service provisions of article fifteen of this chapter, until
15 the time the governing body of the municipality shall, by
16 appropriate ordinance or resolution adopted by a majority of its
17 members, elect to place the office of fire chief under the civil
18 service provisions of this article.

19 (c) Until the office of fire chief is placed under the civil
20 service provisions of this article by the governing body, the
21 member of any paid fire department now occupying such office
22 or hereafter appointed to such office shall in all cases of
23 removal, except for removal for good cause, retain the status he
24 or she held in the paid fire department at the time of his or her
25 appointment to the office of fire chief or which he or she
26 attained during his or her term as fire chief.

27 (d) The term "appointing officer" as used in this article
28 shall mean the municipal officer in whom the power of appoint-
29 ment of members of a paid fire department is vested by charter
30 provision or ordinance of the municipality.

CHAPTER 164

(H. B. 3037 — By Delegates Fleischauer, Craig,
Campbell, Beach, Fragale and Palumbo)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to paid municipal fire departments; providing that a paid municipal fire department with an apprentice program for firefighters must terminate an apprentice after three unsuccessful attempts to pass the final apprenticeship examination; and setting forth effective date.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-16a. Apprenticeship programs.

- 1 Any paid municipal fire department may have an appren-
- 2 ticeship program. If a paid municipal fire department has an
- 3 apprenticeship program and the program has a final apprentice-

4 ship examination, an apprentice shall be terminated from
5 employment after three unsuccessful attempts to pass the final
6 apprenticeship examination. The provisions of this section
7 apply to apprentices hired after the last day of March, two
8 thousand three.

CHAPTER 165

(H. B. 2878 — By Delegates Webster, Brown,
Walters, Amores, Caputo and Smirl)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a, relating to civil service for municipal firefighters generally; allowing certain municipalities providing advanced life support ambulance services to examine, train and employ firefighter paramedics; and requiring firefighter paramedics to maintain a paramedic license and complete all required fire service training.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

§8-15-20a. Special examination for firefighter paramedic.

1 (a) A municipality with a firefighter's civil service commis-
2 sion providing an advanced life support ambulance service
3 licensed by the state health department may also administer a
4 special examination for the position of firefighter paramedic.

5 (b) An applicant for the position of firefighter paramedic
6 shall: (1) Be a certified paramedic; (2) successfully pass the
7 firefighter paramedic examination; and (3) meet the require-
8 ments of section seventeen of this article.

9 (c) Any person employed as a firefighter paramedic under
10 the provisions of this section shall: (1) Maintain paramedic
11 certification; (2) complete all required fire service training; and
12 (3) comply with all other provisions of this article applicable to
13 the continued employment of firefighters.

14 (d) Every position of firefighter paramedic, unless filled by
15 promotion, reinstatement, reduction or a current firefighter,
16 shall be filled only in the manner specified in section twenty of
17 this article.

CHAPTER 166

(Com. Sub. for H. B. 2972 — By Mr. Speaker, Mr. Kiss,
and Delegates Browning and Hall)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal policemen's and firemen's pension and relief funds; funding options; providing that a municipality may elect normal cost funding

following election to fund at one hundred seven percent of prior years funding; and conditions upon the election.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund shall
2 have regularly scheduled actuarial valuation reports prepared by
3 a qualified actuary. All of the following standards must be met:

4 (a) An actuarial valuation report shall be prepared at least
5 once every three years commencing with the later of: (1) The
6 first day of July, one thousand nine hundred eighty-three; or (2)
7 three years following the most recently prepared actuarial
8 valuation report: *Provided*, That this most recently prepared
9 actuarial valuation report meets all of the standards of this
10 section.

11 (b) The actuarial valuation report shall consist of, but is not
12 limited to, the following disclosures: (1) The financial objective
13 of the fund and how the objective is to be attained; (2) the
14 progress being made toward realization of the financial objec-
15 tive; (3) recent changes in the nature of the fund, benefits
16 provided, or actuarial assumptions or methods; (4) the fre-
17 quency of actuarial valuation reports and the date of the most
18 recent actuarial valuation report; (5) the method used to value
19 fund assets; (6) the extent to which the qualified actuary relies

20 on the data provided and whether the data was certified by the
21 fund's auditor or examined by the qualified actuary for reason-
22 ableness; (7) a description and explanation of the actuarial
23 assumptions and methods; and (8) any other information the
24 qualified actuary feels is necessary or would be useful in fully
25 and fairly disclosing the actuarial condition of the fund.

26 (c)(1) After the thirtieth day of June, one thousand nine
27 hundred ninety-one, and thereafter, the financial objective of
28 each municipality shall not be less than to contribute to the fund
29 annually an amount which, together with the contributions from
30 the members and the allocable portion of the state premium tax
31 fund for municipal pension and relief funds established under
32 section fourteen-d, article three, chapter thirty-three of this code
33 and other income sources as authorized by law, will be suffi-
34 cient to meet the normal cost of the fund and amortize any
35 actuarial deficiency over a period of not more than forty years:
36 *Provided*, That in the fiscal year ending the thirtieth day of
37 June, one thousand nine hundred ninety-one, the municipality
38 may elect to make its annual contribution to the fund utilizing
39 an alternative contribution in an amount not less than: (i) One
40 hundred seven percent of the amount contributed for the fiscal
41 year ending the thirtieth day of June, one thousand nine hundred
42 ninety; or (ii) an amount equal to the average of the contribu-
43 tion payments made in the five highest fiscal years beginning
44 with the 1984 fiscal year whichever is greater: *Provided*,
45 *however*, That contribution payments in subsequent fiscal years
46 under this alternative contribution method may not be less than
47 one hundred seven percent of the amount contributed in the
48 prior fiscal year: *Provided further*, That prior to utilizing this
49 alternative contribution methodology the actuary of the fund
50 shall certify in writing that the fund is projected to be solvent
51 under the alternative contribution method for the next consecu-
52 tive fifteen-year period. For purposes of determining this
53 minimum financial objective: (1) The value of the fund's assets
54 shall be determined on the basis of any reasonable actuarial

55 method of valuation which takes into account fair market value;
56 and (2) all costs, deficiencies, rate of interest, and other factors
57 under the fund shall be determined on the basis of actuarial
58 assumptions and methods which, in aggregate, are reasonable
59 (taking into account the experience of the fund and reasonable
60 expectations) and which, in combination, offer the qualified
61 actuary's best estimate of anticipated experience under the
62 fund: *And provided further*, That any municipality which
63 elected the alternative funding method under this section and
64 which has an unfunded actuarial liability of not more than
65 twenty-five percent of fund assets, may, beginning the first day
66 of September, two thousand three, elect to revert back to the
67 standard funding method, which is to contribute to the fund
68 annually an amount which is not less than an amount which,
69 together with the contributions from the members and the
70 allocable portion of the state premium tax fund for municipal
71 pension and relief funds established under section fourteen-d,
72 article three, chapter thirty-three of this code and other income
73 sources as authorized by law, will be sufficient to meet the
74 normal cost of the fund and amortize any actuarial deficiency
75 over a period of not more than forty years, beginning from the
76 first day of July, one thousand nine hundred ninety-one.

77 (2) No municipality may anticipate or use in any manner
78 any state funds accruing to the police or firemen's pension fund
79 to offset the minimum required funding amount for any fiscal
80 year.

81 (3) Notwithstanding any other provision of this section or
82 article to the contrary, each municipality shall contribute
83 annually to the fund an amount which may not be less than the
84 normal cost, as determined by the actuarial report.

85 (d) For purposes of this section the term "qualified actuary"
86 means only an actuary who is a member of the society of
87 actuaries or the American academy of actuaries. The qualified

88 actuary shall be designated a fiduciary and shall discharge his
89 or her duties with respect to a fund solely in the interest of the
90 members and member's beneficiaries of that fund. In order for
91 the standards of this section to be met, the qualified actuary
92 shall certify that the actuarial valuation report is complete and
93 accurate and that in his or her opinion the technique and
94 assumptions used are reasonable and meet the requirements of
95 this section of this article.

96 (e) The cost of the preparation of the actuarial valuation
97 report shall be paid by the fund.

98 (f) Notwithstanding any other provision of this section, for
99 the fiscal year ending the thirtieth day of June, one thousand
100 nine hundred ninety-one, the municipality may calculate its
101 annual contribution based upon the provisions of the supple-
102 mental benefit provided for in this article enacted during the
103 one thousand nine hundred ninety-one regular session of the
104 Legislature.

CHAPTER 167

(S. B. 634 — By Senators Fanning, Bowman,
Helmick, Love, Ross and White)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two of said chapter, all relating to defining crow as a gamebird; and setting hunting season for crows.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Organization and Administration.

2. Wildlife Resources.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires
2 a different meaning:

3 “Agency” means any branch, department or unit of the state
4 government, however designated or constituted.

5 “Alien” means any person not a citizen of the United States.

6 “Bag limit” or “creel limit” means the maximum number of
7 wildlife which may be taken, caught, killed or possessed by any
8 person.

9 “Bona fide resident, tenant or lessee” means a person who
10 permanently resides on the land.

11 “Citizen” means any native born citizen of the United
12 States and foreign born persons who have procured their final
13 naturalization papers.

14 “Closed season” means the time or period during which it
15 shall be unlawful to take any wildlife as specified and limited
16 by the provisions of this chapter.

17 “Commission” means the natural resources commission.

18 “Commissioner” means a member of the advisory commis-
19 sion of the natural resources commission.

20 “Director” means the director of the division of natural
21 resources.

22 “Fishing” or “to fish” means the taking, by any means, of
23 fish, minnows, frogs or other amphibians, aquatic turtles and
24 other forms of aquatic life used as fish bait.

25 “Fur-bearing animals” include: (a) The mink; (b) the
26 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the
27 skunk and civet cat, commonly called polecat; (g) the otter; (h)
28 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx;
29 (k) the raccoon; and (l) the fisher.

30 “Game” means game animals, game birds and game fish as
31 herein defined.

32 “Game animals” include: (a) The elk; (b) the deer; (c) the
33 cottontail rabbits and hares; (d) the fox squirrels, commonly
34 called red squirrels, and gray squirrels and all their color phases
35 - red, gray, black or albino; (e) the raccoon; (f) the black bear;
36 and (g) the wild boar.

37 “Game birds” include: (a) The anatidae, commonly known
38 as swan, geese, brants and river and sea ducks; (b) the rallidae,
39 commonly known as rails, sora, coots, mudhens and gallinales;
40 (c) the limicolae, commonly known as shorebirds, plover, snipe,
41 woodcock, sandpipers, yellow legs and curlews; (d) the galli,
42 commonly known as wild turkey, grouse, pheasants, quails and
43 partridges (both native and foreign species); (e) the columbidae,
44 commonly known as doves; (f) the icteridae, commonly known
45 as blackbirds, redwings and grackle; and (g) the corvidae,
46 commonly known as crows.

47 “Game fish” include: (a) Brook trout; (b) brown trout; (c)
48 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
49 smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
50 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m)
51 rock bass; (n) white bass; (o) white crappie; (p) black crappie;
52 (q) all sunfish species; (r) channel catfish; (s) flathead catfish;
53 (t) sauger; and (u) all game fish hybrids.

54 “Hunt” means to pursue, chase, catch or take any wild birds
55 or wild animals.

56 “Lands” means land, waters and all other appurtenances
57 connected therewith.

58 “Migratory birds” means any migratory game or nongame
59 birds included in the terms of conventions between the United
60 States and Great Britain and between the United States and
61 United Mexican States, known as the “Migratory Bird Treaty
62 Act” for the protection of migratory birds and game mammals
63 concluded, respectively, the sixteenth day of August, one
64 thousand nine hundred sixteen, and the seventh day of Febru-
65 ary, one thousand nine hundred thirty-six.

66 “Nonresident” means any person who is a citizen of the
67 United States and who has not been a domiciled resident of the
68 state of West Virginia for a period of thirty consecutive days
69 immediately prior to the date of his or her application for a
70 license or permit except any full-time student of any college or
71 university of this state, even though he or she is paying a
72 nonresident tuition.

73 “Open season” means the time during which the various
74 species of wildlife may be legally caught, taken, killed or
75 chased in a specified manner and shall include both the first and
76 the last day of the season or period designated by the director.

77 “Person”, except as otherwise defined elsewhere in this
78 chapter, means the plural “persons” and shall include individu-
79 als, partnerships, corporations or other legal entities.

80 “Preserve” means all duly licensed private game farmlands,
81 or private plants, ponds or areas, where hunting or fishing is
82 permitted under special licenses or seasons other than the
83 regular public hunting or fishing seasons.

84 “Protected birds” means all wild birds not included within
85 the definition of “game birds” and “unprotected birds”.

86 “Resident” means any person who is a citizen of the United
87 States and who has been a domiciled resident of the state of
88 West Virginia for a period of thirty consecutive days or more
89 immediately prior to the date of his or her application for
90 license or permit: *Provided*, That a member of the armed forces
91 of the United States who is stationed beyond the territorial
92 limits of this state, but who was a resident of this state at the
93 time of his or her entry into such service and any full-time
94 student of any college or university of this state, even though he
95 or she is paying a nonresident tuition, shall be considered a
96 resident under the provisions of this chapter.

97 “Roadside menagerie” means any place of business, other
98 than commercial game farm, commercial fish preserve, place or
99 pond, where any wild bird, game bird, unprotected bird, game
100 animal or fur-bearing animal is kept in confinement for the
101 attraction and amusement of the people for commercial
102 purposes.

103 “Take” means to hunt, shoot, pursue, lure, kill, destroy,
104 catch, capture, keep in captivity, gig, spear, trap, ensnare,
105 wound or injure any wildlife, or attempt to do so.

106 “Unprotected birds” shall include: (a) The English sparrow;
107 (b) the European starling; and (c) the cowbird.

108 “Wild animals” means all mammals native to the state of
109 West Virginia occurring either in a natural state or in captivity,
110 except house mice or rats.

111 “Wild birds” shall include all birds other than: (a) Domestic
112 poultry - chickens, ducks, geese, guinea fowl, peafowls and
113 turkeys; (b) psittacidae, commonly called parrots and parakeets;
114 and (c) other foreign cage birds such as the common canary,
115 exotic finches and ring dove. All wild birds, either: (a) Those
116 occurring in a natural state in West Virginia; or (b) those
117 imported foreign game birds, such as waterfowl, pheasants,
118 partridges, quail and grouse, regardless of how long raised or
119 held in captivity, shall remain wild birds under the meaning of
120 this chapter.

121 “Wildlife” means wild birds, wild animals, game and
122 fur-bearing animals, fish (including minnows), reptiles,
123 amphibians, mollusks, crustaceans and all forms of aquatic life
124 used as fish bait, whether dead or alive.

125 “Wildlife refuge” means any land set aside by action of the
126 director as an inviolate refuge or sanctuary for the protection of
127 designated forms of wildlife.

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 possession or subject to his or her control, any firearm, whether cased
14 or uncased, bow, arrow, or both, or other implement or device
15 suitable for taking, killing or trapping a wild bird or animal:
16 *Provided*, That it may not be unlawful to hunt or take raccoon,
17 opossum or skunk by the use of artificial lights. No person is
18 guilty of a violation of this subdivision merely because he or
19 she looks for, looks at, attracts or makes motionless a wild bird
20 or wild animal with or by the use of an artificial light, unless at
21 the time he or she has in his or her possession a firearm,
22 whether cased or uncased, bow, arrow, or both, or other
23 implement or device suitable for taking, killing or trapping a
24 wild bird or wild animal, or unless the artificial light (other than
25 the head lamps of an automobile or other land conveyance) is
26 attached to, a part of, or used from within or upon an automobile or other land conveyance.

29 Any person violating the provisions of this subdivision is
30 guilty of a misdemeanor and, upon conviction thereof, shall for
31 each offense be fined not less than one hundred dollars nor
32 more than five hundred dollars and shall be imprisoned in the
33 county jail for not less than ten days nor more than one hundred
34 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 authorized by rules promulgated
39 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 shall
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 o'clock
65 antemeridian, eastern standard time of the day following, any
66 unloaded firearm, being lawfully carried in accordance with the
67 foregoing provisions, shall be so carried only when in a case or
68 taken apart and securely wrapped. During the period from the
69 first day of July to the thirtieth day of September, inclusive, of
70 each year, the foregoing requirements relative to carrying
71 certain unloaded firearms are permissible only from eight-thirty

72 o'clock postmeridian to five o'clock antemeridian, eastern
73 standard time: *Provided*, That the time periods for carrying
74 unloaded and uncased firearms are extended for one hour after
75 the postmeridian times and one hour before the antemeridian
76 times established above if a hunter is preparing to or in the
77 process of transporting or transferring the firearms to or from
78 a hunting site, campsite, home or other place of abode;

79 (10) Hunt, catch, take, kill, trap, injure or pursue with
80 firearms or other implement by which wildlife may be taken
81 after the hour of five o'clock antemeridian on Sunday on private
82 land without the written consent of the landowner any wild
83 animals or wild birds except when a big game season opens on
84 a Monday, the Sunday prior to that opening day will be closed
85 for any taking of wild animals or birds after five o'clock
86 antemeridian on that Sunday: *Provided*, That traps previously
87 and legally set may be tended after the hour of five o'clock
88 antemeridian on Sunday and the person so doing may carry
89 only a twenty-two caliber firearm for the purpose of humanely
90 dispatching trapped animals. Any person violating the provi-
91 sions of this subdivision is guilty of a misdemeanor and, upon
92 conviction thereof, in addition to any fines that may be imposed
93 by this or other sections of this code, shall be subject to a one
94 hundred dollar fine;

95 (11) Hunt with firearms or long bow while under the
96 influence of intoxicating liquor;

97 (12) Hunt, catch, take, kill, injure or pursue a wild animal
98 or bird with the use of a ferret;

99 (13) Buy raw furs, pelts or skins of fur-bearing animals
100 unless licensed to do so;

101 (14) Catch, take, kill or attempt to catch, take or kill any
102 fish at any time by any means other than by rod, line and hooks
103 with natural or artificial lures unless otherwise authorized by

104 law or rules issued by the director: *Provided*, That snaring of
105 any species of suckers, carp, fallfish and creek chubs shall at all
106 times be lawful;

107 (15) Employ or hire, or induce or persuade, by the use of
108 money or other things of value, or by any means, any person to
109 hunt, take, catch or kill any wild animal or wild bird except
110 those species on which there is no closed season, or to fish for,
111 catch, take or kill any fish, amphibian or aquatic life which is
112 protected by the provisions of this chapter or rules of the
113 director or the sale of which is prohibited;

114 (16) Hunt, catch, take, kill, capture, pursue, transport,
115 possess or use any migratory game or nongame birds included
116 in the terms of conventions between the United States and Great
117 Britain and between the United States and United Mexican
118 States for the protection of migratory birds and wild mammals
119 concluded, respectively, the sixteenth day of August, one
120 thousand nine hundred sixteen, and the seventh day of Febru-
121 ary, one thousand nine hundred thirty-six, except during the
122 time and in the manner and numbers prescribed by the Federal
123 Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and
124 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 pro-
129 tected bird shall be sold or had in possession for sale except
130 mounted or stuffed plumage, skin, bodies or heads of the birds
131 legally taken and stuffed or mounted, irrespective of whether
132 the bird was captured within or without this state, except the
133 English or European sparrow (*passer domesticus*), starling
134 (*sturnus vulgaris*), and cowbird (*molothrus ater*), which may not
135 be protected and the killing thereof at any time is lawful;

136 (18) Use dynamite or any like explosive or poisonous
137 mixture placed in any waters of the state for the purpose of
138 killing or taking fish. Any person violating the provisions of
139 this subdivision is guilty of a felony and, upon conviction
140 thereof, shall be fined not more than five hundred dollars or
141 imprisoned for not less than six months nor more than three
142 years, or both fined and imprisoned;

143 (19) Have a bow and gun, or have a gun and any arrow or
144 arrows, in the fields or woods at the same time;

145 (20) Have a crossbow in the woods or fields or use a
146 crossbow to hunt for, take or attempt to take any wildlife;

147 (21) Take or attempt to take turkey, bear, elk or deer with
148 any arrow unless the arrow is equipped with a point having at
149 least two sharp cutting edges measuring in excess of three
150 fourths of an inch wide;

151 (22) Take or attempt to take any wildlife with an arrow
152 having an explosive head or shaft, a poisoned arrow or an arrow
153 which would affect wildlife by any chemical action;

154 (23) Shoot an arrow across any public highway or from
155 aircraft, motor-driven watercraft, motor vehicle or other land
156 conveyance;

157 (24) Permit any dog owned by him or her or under his or
158 her control to chase, pursue or follow upon the track of any wild
159 animal or wild bird, either day or night, between the first day of
160 May and the fifteenth day of August next following: *Provided*,
161 That dogs may be trained on wild animals and wild birds,
162 except deer and wild turkeys, and field trials may be held or
163 conducted on the grounds or lands of the owner or by his or her
164 bona fide tenant or tenants or upon the grounds or lands of
165 another person with his or her written permission or on public
166 lands at any time: *Provided, however*, That nonresidents may

167 not train dogs in this state at any time except during the legal
168 small game hunting season: *Provided further*, That the person
169 training said dogs does not have firearms or other implements
170 in his or her possession during the closed season on wild
171 animals and wild birds, whereby wild animals or wild birds
172 could be taken or killed;

173 (25) Conduct or participate in a field trial, shoot-to-retrieve
174 field trial, water race or wild hunt hereafter referred to as trial:
175 *Provided*, That any person, group of persons, club or organiza-
176 tion may hold such trial at any time of the year upon obtaining
177 a permit as is provided for in section fifty-six of this article.
178 The person responsible for obtaining the permit shall prepare
179 and keep an accurate record of the names and addresses of all
180 persons participating in said trial and make same readily
181 available for inspection by any conservation officer upon
182 request;

183 (26) Except as provided in section four of this article, hunt,
184 catch, take, kill or attempt to hunt, catch, take or kill any wild
185 animal, wild bird or wild fowl except during the open season
186 established by rule of the director as authorized by subdivision
187 (6), section seven, article one of this chapter;

188 (27) Hunting on public lands on Sunday after five o'clock
189 antemeridian is prohibited; and

190 (28) Hunt, catch, take, kill, trap, injure or pursue with
191 firearms or other implement which wildlife can be taken, on
192 private lands on Sunday after the hour of five o'clock
193 antemeridian: *Provided*, That the provisions of this subdivision
194 do not apply in any county until the county commission of the
195 county holds an election on the question of whether the
196 provisions of this subdivision prohibiting hunting on Sunday
197 shall apply within the county and the voters approve the
198 allowance of hunting on Sunday in the county. The election is

199 determined by a vote of the resident voters of the county in
200 which the hunting on Sunday is proposed to be authorized. The
201 county commission of the county in which Sunday hunting is
202 proposed shall give notice to the public of the election by
203 publication of the notice as a Class II-0 legal advertisement in
204 compliance with the provisions of article three, chapter
205 fifty-nine of this code and the publication area for the publica-
206 tion shall be the county in which the election is to be held. The
207 date of the last publication of the notice shall fall on a date
208 within the period of the fourteen consecutive days next preced-
209 ing the election.

210 On the local option election ballot shall be printed the
211 following:

212 Shall hunting on Sunday be authorized in _____
213 County?

214 ☐ Yes ☐ No

215 (Place a cross mark in the square opposite your choice.)

216 Any local option election to approve or disapprove of the
217 proposed authorization of Sunday hunting within a county shall
218 be in accordance with procedures adopted by the commission.
219 The local option election may be held in conjunction with a
220 primary or general election, or at a special election. Approval
221 shall be by a majority of the voters casting votes on the question
222 of approval or disapproval of Sunday hunting at the election.

223 If a majority votes against allowing Sunday hunting, no
224 election on the issue may be held for a period of one hundred
225 four weeks. If a majority votes "yes", no election reconsidering
226 the action may be held for a period of five years. A local option
227 election may thereafter be held if a written petition of qualified
228 voters residing within the county equal to at least five percent
229 of the number of persons who were registered to vote in the

230 next preceding general election is received by the county
231 commission of the county in which Sunday hunting is autho-
232 rized. The petition may be in any number of counterparts. The
233 election shall take place at the next primary or general election
234 scheduled more than ninety days following receipt by the
235 county commission of the petition required by this subsection:
236 *Provided*, That the issue may not be placed on the ballot until
237 all statutory notice requirements have been met. No local law
238 or regulation providing any penalty, disability, restriction,
239 regulation or prohibition of Sunday hunting may be enacted and
240 the provisions of this article preempt all regulations, rules,
241 ordinances and laws of any county or municipality in conflict
242 with this subdivision.

CHAPTER 168

(Com. Sub. for H. B. 2512 — By Delegates R. Thompson and Perdue)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and six, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishing a special public land corporation; requirements for leasing minerals; consultation the office of the attorney general; contracting for consulting services; and accounting for revenues.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-3. Public land corporation, powers and duties.

§20-1A-5. Public land corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.

§20-1A-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

§20-1A-3. Public land corporation, powers and duties.

1 (a) The corporation is hereby authorized and empowered to:

2 (1) Acquire from any persons or the state auditor or any
3 local, state or federal agency, by purchase, lease or other
4 agreement, any lands necessary and required for public use;

5 (2) Acquire by purchase, condemnation, lease or agreement,
6 receive by gifts and devises, or exchange, rights-of-way,
7 easements, waters and minerals suitable for public use;

8 (3) Sell or exchange public lands where it is determined
9 that the sale or exchange of such tract meets any or all of the
10 following disposal criteria:

11 (A) The tract was acquired for a specific purpose and the
12 tract is no longer required for that or any other state purpose;

13 (B) Disposal of the tract serves important public objectives
14 including, but not limited to, expansion of communities and
15 economic development which cannot be achieved on lands
16 other than public lands and which clearly outweigh other public
17 objectives and values including, but not limited to, recreation
18 and scenic values which would be served by maintaining the
19 tract in state ownership; or

20 (C) The tract, because of its location or other characteris-
21 tics, is difficult and uneconomic to manage as part of the public
22 lands and is not suitable for management by another state
23 department or agency.

24 (4) Sell, purchase or exchange lands or stumpage for the
25 purpose of consolidating lands under state or federal govern-
26 ment administration subject to the disposal criteria specified in
27 subdivision (3) of this section;

28 (5) Negotiate and effect loans or grants from the govern-
29 ment of the United States or any agency thereof for acquisition
30 and development of lands as may be authorized by law to be
31 acquired for public use;

32 (6) Expend the income from the use and development of
33 public lands for the following purposes:

34 (A) Liquidate obligations incurred in the acquisition,
35 development and administration of lands, until all obligations
36 have been fully discharged;

37 (B) Purchase, develop, restore and preserve for public use,
38 sites, structures, objects and documents of prehistoric, histori-
39 cal, archaeological, recreational, architectural and cultural
40 significance to the state of West Virginia; and

41 (C) Obtain grants or matching moneys available from the
42 government of the United States or any of its instrumentalities
43 for prehistoric, historic, archaeological, recreational, architec-
44 tural and cultural purposes.

45 (7) Designate lands, to which it has title, for development
46 and administration for the public use including recreation,
47 wildlife stock grazing, agricultural rehabilitation and
48 homesteading or other conservation activities;

49 (8) Enter into leases as a lessor for the development and
50 extraction of minerals, including coal, oil, gas, sand or gravel,
51 except as otherwise circumscribed herein: *Provided*, That leases
52 for the development and extraction of minerals shall be made
53 in accordance with the provisions of sections five and six of this

54 article. The corporation shall reserve title and ownership to the
55 mineral rights in all cases;

56 (9) Convey, assign, or allot lands to the title or custody of
57 proper departments or other agencies of state government for
58 administration and control within the functions of departments
59 or other agencies as provided by law;

60 (10) Make proper lands available for the purpose of
61 cooperating with the government of the United States in the
62 relief of unemployment and hardship or for any other public
63 purpose.

64 (b) There is hereby created in the state treasury a special
65 public land corporation fund into which shall be paid all
66 proceeds from public land sales and exchanges and rents,
67 royalties and other payments from mineral leases. The corpora-
68 tion may acquire public lands from use of the payments made
69 to the fund, along with any interest accruing to the fund. The
70 corporation shall report annually, just prior to the beginning of
71 the regular session of the Legislature, to the finance committees
72 of the Legislature on the financial condition of the special fund.
73 The corporation shall report annually to the Legislature on its
74 public land holdings and all its leases, its financial condition
75 and its operations and shall make such recommendations to the
76 Legislature concerning the acquisition, leasing, development,
77 disposition and use of public lands.

78 (c) All state agencies, institutions, divisions and depart-
79 ments shall make an inventory of the public lands of the state
80 as may be by law specifically allocated to and used by each and
81 provide to the corporation a list of such public lands and
82 minerals, including their current use, intended use or best use
83 to which lands and minerals may be put: *Provided*, That the
84 division of highways need not provide the inventory of public
85 lands allocated to and used by it. The inventory shall identify

86 those parcels of land which have no present or foreseeable
87 useful purpose to the state of West Virginia. The inventory shall
88 be submitted annually to the corporation by the first day of
89 August. The corporation shall compile the inventory of all
90 public lands and minerals and report annually to the Legislature
91 by no later than the first day of January, on its public lands and
92 minerals and the lands and minerals of the other agencies,
93 institutions, divisions or departments of this state which are
94 required to report their holdings to the corporation as set forth
95 in this subsection, and its financial condition and its operations.

**§20-1A-5. Public land corporation to hold public hearing before
sale, lease, exchange or transfer of land or miner-
als.**

1 (a) Prior to any final decision of any state agency to sell,
2 lease as a lessor, exchange or transfer land or minerals title to
3 which is vested in the public land corporation pursuant to
4 section one of this article, the public land corporation shall:

5 (1) Prepare and reduce to writing the reasons and support-
6 ing data regarding the sale, lease, exchange or transfer of land
7 or minerals. The written reasons required under this section
8 shall be available for public inspection at the office of the
9 county clerk at the county courthouse of each county in which
10 the affected lands or minerals are located during the two
11 successive weeks before the date of the public hearing required
12 by this section;

13 (2) Provide for a public hearing to be held at a reasonable
14 time and place within each county in which the affected lands
15 or minerals are located to allow interested members of the
16 public to attend the hearing without undue hardship. Members
17 of the public may be present, submit statements and testimony
18 and question the corporation's representative appointed
19 pursuant to this section;

20 (3) Not less than thirty days prior to the public hearing,
21 provide notice to all members of the Legislature, to the head of
22 the governing body of any political subdivision having zoning
23 or other land use regulatory responsibility in the geographic
24 area within which the public lands or minerals are located and
25 to the head of any political subdivision having administrative or
26 public services responsibility in the geographic area within
27 which the lands or minerals are located;

28 (4) Cause to be published a notice of the required public
29 hearing. The notice shall be published as a Class II legal
30 advertisement in compliance with the provisions of article
31 three, chapter fifty-nine of this code and the publication area
32 shall be each county in which the affected lands or minerals are
33 located. The public hearing shall be held no earlier than the
34 fourteenth successive day and no later than the twenty-first
35 successive day following the first publication of the notice. The
36 notice shall contain the time and place of the public hearing
37 along with a brief description of the affected lands or minerals;

38 (5) Cause a copy of the required notice to be posted in a
39 conspicuous place at the affected land for members of the
40 public to observe. The notice shall remain posted for two
41 successive weeks prior to the date of the public hearing;

42 (6) Appoint a representative of the corporation who shall
43 conduct the required public hearing. The corporation's repre-
44 sentative shall have full knowledge of all the facts and circum-
45 stances surrounding the proposed sale, lease, exchange or
46 transfer. The representative of the corporation conducting the
47 public hearing shall make the results of the hearing available to
48 the corporation for its consideration prior to the board making
49 final decisions regarding the affected lands or minerals. The
50 representative of the corporation shall make a report of the
51 public hearing available for inspection by the public or, upon
52 written request of any interested person, provide a written copy

53 thereof and to all individuals previously receiving written
54 notice of the hearing within thirty days following the public
55 hearing; and

56 (7) If the evidence at the public hearing establishes by a
57 preponderance that the appraisal provided for in subsection (c),
58 section four of this article does not reflect the true, fair market
59 value, the public land corporation shall cause another appraisal
60 to be made.

61 (8) If the evidence at the public hearing establishes by a
62 preponderance that the sale or exchange of land does not meet
63 the criteria set forth in subdivision three, subsection (a), section
64 three of this article, the public land corporation may not
65 proceed with the sale or exchange of said land without judicial
66 approval.

67 (b) The corporation may not sell, lease as lessor, exchange
68 or transfer lands or minerals before the thirtieth successive day
69 following the public hearing required by this section, but in no
70 event may the sale, lease, exchange or transfer of lands or
71 minerals be made prior to fifteen days after the report of the
72 public hearings are made available to the public in general.

73 (c) If the corporation authorizes the staff to proceed with
74 consideration of the lease or sale under the terms of this article,
75 all requirements of this section shall be completed within one
76 year of date of the authorization by the corporation.

**§20-1A-6. Competitive bidding and notice requirements before
the development or extraction of minerals on
certain lands; related standards.**

1 (a) The corporation may enter into a lease or contract for
2 the development of minerals, including, but not limited to, coal,
3 gas, oil, sand or gravel on or under lands in which the corpora-
4 tion holds any right, title or interest: *Provided*, That no lease or

5 contract may be entered into for the extraction and removal of
6 minerals by surface mining or auger mining of coal.

7 (b) With the exception of deep mining operations which are
8 already in progress and permitted as of the fifth day of July, one
9 thousand nine hundred eighty-nine, the extraction of coal by
10 deep mining methods under state forests or wildlife refuges
11 may be permitted only if the lease or contract provides that no
12 entries, portals, air shafts or other incursions upon and into the
13 land incident to the mining operations may be placed or
14 constructed upon the lands or within three thousand feet of its
15 boundary.

16 (c) Any lease or contract entered into by the corporation for
17 the development of minerals shall reserve to the state all rights
18 to subjacent surface support with which the state is seized or
19 possessed at the time of such lease or contract.

20 (d) Notwithstanding any other provisions of the code to the
21 contrary, nothing herein may be construed to permit extraction
22 of minerals by any method from, on or under any state park or
23 state recreation area, nor the extraction of minerals by strip or
24 auger mining upon any state forest or wildlife refuge.

25 (e) The corporation may enter into a lease or contract for
26 the development of minerals where the lease or contract is not
27 prohibited by any other provisions of this code, only after
28 receiving sealed bids therefor, after notice by publication as a
29 Class II legal advertisement in compliance with the provisions
30 of article three, chapter fifty-nine of this code. The area for
31 publication shall be each county in which the minerals are
32 located.

33 (f) The minerals so advertised may be leased or contracted
34 for development at not less than the fair market value, as
35 determined by an appraisal made by an independent person or
36 firm chosen by the corporation, to the highest responsible

37 bidder, who shall give bond for the proper performance of the
38 contract or lease as the corporation designates: *Provided*, That
39 the corporation may reject any and all bids and to readvertise
40 for bids.

41 (g) If the provisions of this section have been complied
42 with, and no bid equal to or in excess of the fair market value
43 is received, the corporation may, at any time during a period of
44 six months after the opening of the bids, lease or contract for
45 the development of the minerals, but the lease or contract price
46 may not be less than the fair market value.

47 (h) Any lease or contract for the development of minerals
48 entered into after the effective date of this section shall be made
49 in accordance with the provisions of this section and section
50 five of this article.

51 (i) The corporation will consult with the office of the
52 attorney general to assist the corporation in carrying out the
53 provisions of this section.

54 (j) The corporation shall consult with an independent
55 mineral consultant and any other competent third parties with
56 experience and expertise in the leasing of minerals, to assist the
57 corporation in carrying out the provisions of this section,
58 including determining fair market value and negotiating terms
59 and conditions of mineral leases.

60 (k) Once the lessee commences the production of minerals
61 and royalties become due and are paid to the public land
62 corporation, the public land corporation shall hire an independ-
63 ent auditing firm to periodically review the lessee's books and
64 accounts for compliance of payment of appropriate royalties
65 due the public land corporation for its minerals as produced
66 under the lease agreement.

CHAPTER 169

(S. B. 447 — By Senators Fanning, White, Bowman, Deem, Facemyer, Helmick, Love, Minear, Prezioso, Ross and Smith)

[Passed February 28, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the director of natural resources to enter reciprocal agreements with the state of Ohio with regard to hunting and fishing on tributaries of the Ohio River.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be required to
2 obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident children,
4 or resident parents, or bona fide resident tenants of such land
5 may hunt, trap or fish on their own land during open season in
6 accordance with the laws and regulations applying to such
7 hunting, trapping and fishing without obtaining a license to do
8 so unless such lands have been designated as a wildlife refuge
9 or preserve.

10 (b) Any bona fide resident of this state who is totally blind
11 may fish in this state without obtaining a fishing license to do
12 so. A written statement or certificate from a duly licensed
13 physician of this state showing the said resident to be totally
14 blind shall serve in lieu of a fishing license and shall be carried
15 on the person of said resident at all times while he or she is
16 fishing in this state.

17 (c) All residents of West Virginia on active duty in the
18 armed forces of the United States of America, while on leave or
19 furlough, shall have the right and privilege to hunt, trap or fish
20 in season in West Virginia without obtaining a license to do so.
21 Leave or furlough papers shall serve in lieu of any such license
22 and shall be carried on the person at all times while trapping,
23 hunting or fishing.

24 (d) In accordance with the provisions of section twenty-
25 seven of this article, any resident sixty-five years of age or
26 older is not required to have a license to hunt, trap or fish
27 during the legal seasons in West Virginia, but in lieu of such
28 license any such person shall at all times while hunting,
29 trapping or fishing carry on his or her person a valid West
30 Virginia driver's license or nondriver identification card issued
31 by the division of motor vehicles.

32 (e) Residents of the state of Maryland who carry hunting or
33 fishing licenses valid in that state may hunt or fish from the
34 West Virginia banks of the Potomac River without obtaining
35 licenses to do so, but such hunting or fishing shall be confined
36 to the fish and waterfowl of the river proper and not on its
37 tributaries: *Provided*, That the state of Maryland shall first enter
38 into a reciprocal agreement with the director extending a like
39 privilege of hunting and fishing on the Potomac River from the
40 Maryland banks of said river to licensed residents of West
41 Virginia without requiring said residents to obtain Maryland
42 hunting and fishing licenses.

43 (f) Residents of the state of Ohio who carry hunting or
44 fishing licenses valid in that state may hunt or fish on the Ohio
45 River or from the West Virginia banks of said river without
46 obtaining licenses to do so, but such hunting or fishing shall be
47 confined to fish and waterfowl of the river proper and to points
48 on West Virginia tributaries and embayments identified by the
49 director: *Provided*, That the state of Ohio shall first enter into
50 a reciprocal agreement with the director extending a like
51 privilege of hunting and fishing from the Ohio banks of said
52 river to licensed residents of West Virginia without requiring
53 said residents to obtain Ohio hunting and fishing licenses.

54 (g) Any resident of West Virginia who was honorably
55 discharged from the armed forces of the United States of
56 America and who receives a veteran's pension based on total
57 permanent service-connected disability as certified to by the
58 veterans administration shall be permitted to hunt, trap or fish
59 in this state without obtaining a license therefor. The director
60 shall propose rules for legislative approval in accordance with
61 the provisions of article three, chapter twenty-nine-a of this
62 code setting forth the procedure for the certification of the
63 veteran, manner of applying for and receiving the certification
64 and requirements as to identification while said veteran is
65 hunting, trapping or fishing.

66 (h) Any disabled veteran who is a resident of West Virginia
67 and who, as certified to by the commissioner of motor vehicles,
68 is eligible to be exempt from the payment of any fee on account
69 of registration of any motor vehicle owned by such disabled
70 veteran as provided for in section eight, article ten, chapter
71 seventeen-a of this code shall be permitted to hunt, trap or fish
72 in this state without obtaining a license therefor. The director
73 shall propose rules for legislative approval in accordance with
74 the provisions of article three, chapter twenty-nine-a of this
75 code setting forth the procedure for the certification of the
76 disabled veteran, manner of applying for and receiving the

77 certification and requirements as to identification while said
78 disabled veteran is hunting, trapping or fishing.

79 (i) Any resident or inpatient in any state mental health,
80 health or benevolent institution or facility may fish in this state,
81 under proper supervision of the institution involved, without
82 obtaining a fishing license to do so. A written statement or
83 certificate signed by the superintendent of the mental health,
84 health or benevolent institution or facility in which the resident
85 or inpatient, as the case may be, is institutionalized shall serve
86 in lieu of a fishing license and shall be carried on the person of
87 the resident or inpatient at all times while he or she is fishing in
88 this state.

89 (j) Any resident who is developmentally disabled, as
90 certified by a physician and the director of the division of
91 health, may fish in this state without obtaining a fishing license
92 to do so. As used in this section, "developmentally disabled"
93 means a person with a severe, chronic disability which:

94 (1) Is attributable to a mental or physical impairment or a
95 combination of mental and physical impairments;

96 (2) Is manifested before the person attains age twenty-two;

97 (3) Results in substantial functional limitations in three or
98 more of the following areas of major life activity: (A) Self-care;
99 (B) receptive and expressive language; (C) learning; (D)
100 mobility; (E) self-direction; (F) capacity for independent living;
101 and (G) economic self-sufficiency; and

102 (4) Reflects the person's need for a combination and
103 sequence of care, treatment or supportive services which are of
104 lifelong or extended duration and are individually planned and
105 coordinated.

CHAPTER 170

(Com. Sub. for H. B. 2240 — By Delegates Boggs and Yeager)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty, thirty-three, thirty-four and forty-three, article two, chapter twenty 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 thirty-three-a, all relating generally to hunting and fishing license applications and fees; statement of eligibility for license; false statement; electronic application for license to apprise applicant of hunters helping the hungry program; voluntary donations; creating subaccount designated “hunters helping the hungry fund”; authorized expenditures; establishing a Class J license for small game preserves; and technical amendments.

Be it enacted by the Legislature of West Virginia:

That sections thirty, thirty-three, thirty-four and forty-three, article two, chapter twenty 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 thirty-three-a, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

- §20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.
- §20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.
- §20-2-33a. Electronic application to apprise applicant of hunters helping the hungry program; check-off donations; special fund continued; authorized expenditures.

§20-2-34. Disposition of license fees and donations; reports of agents; special funds and uses.

§20-2-43. Class E, Class EE, Class F, Class H and Class J licenses for nonresidents.

§20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

1 (a) Each person who applies for any class of license must
2 state to the issuing agent that he or she is eligible for and has
3 satisfied all prerequisites required by this chapter for that class
4 of license.

5 (b) It is unlawful for a person to make a false statement
6 when applying for any license issued pursuant to the provisions
7 of this chapter.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

1 (a) The director may appoint, in addition to the clerk of the
2 county commission, agents to issue licenses under the provi-
3 sions of this article to serve the convenience of the public. Each
4 person appointed shall, before issuing any license, file with the
5 director a bond payable to the state of West Virginia, in the
6 amount to be fixed by the director, conditioned upon the
7 faithful performance of his or her obligation to issue licenses
8 only in conformity with the provisions of this article and to
9 account for all license fees received by him or her. The form of
10 the bond shall be prescribed by the attorney general. No person,
11 other than those designated as issuing agents by the director,
12 may sell licenses or buy the licenses for the purpose of resale.

13 (b) Except when a license is purchased from a state official,
14 every person making application for a license must pay, in
15 addition to the license fee prescribed in this article, an addi-
16 tional fee of seventy-five cents to any county official issuing
17 the license and all fees collected by county officials must be
18 paid by them into the general fund of the county treasury or, in

19 the case of an agent issuing the license, an additional fee of one
20 dollar as compensation: *Provided*, That only one fee of sev-
21 enty-five cents or one dollar may be collected by county
22 officials or authorized agents, respectively, for issuing two or
23 more licenses at the same time for use by the same person or for
24 issuing combination resident statewide hunting, trapping and
25 fishing licenses: *Provided, however*, That licenses may be
26 issued electronically in a manner prescribed by the director, and
27 persons purchasing electronically issued licenses may be
28 assessed, in addition to the license fee prescribed in this article,
29 an electronic issuance fee to be prescribed by the director.

30 (c) In lieu of the license issuance fee prescribed in subsec-
31 tion (b) of this section, the director shall propose rules for
32 legislative approval in accordance with the provisions of article
33 three, chapter twenty-nine-a of this code, governing the
34 application for and issuance of licenses by telephone and other
35 electronic methods.

**§20-2-33a. Electronic application to apprise applicant of hunters
helping the hungry program; check-off donations;
special fund continued; authorized expenditures.**

1 (a)(1) Every application for electronic license shall include
2 a solicitation for a voluntary donation to the division's previ-
3 ously established hunters helping the hungry program.

4 (2) The license applicant will be offered an opportunity to
5 designate a donation in any amount to the hunters helping the
6 hungry program.

7 (b) There is hereby created a subaccount, designated the
8 "hunters helping the hungry fund", within the special revenue
9 account established in section thirty-four of this article, into
10 which all donations derived under this section shall be depos-
11 ited. Moneys in the subaccount shall be expended solely for the
12 purposes set forth in subsection (c) of this section. Funds paid

13 into the subaccount may also be derived from the following
14 sources: (1) All interest or return on investment accruing to the
15 subaccount; (2) Any gifts, grants, bequests, transfers, appropri-
16 ations or other donations which may be received from any
17 governmental entity or unit or any person, firm, foundation, or
18 corporation; and (3) any appropriations by the Legislature
19 which may be made for the purposes of this section. Any
20 balance including accrued interest and other earnings at the end
21 of any fiscal year shall not revert to the general fund but shall
22 remain in the fund for the purposes set forth in this section.

23 (c) The moneys in the fund will be paid out, at the direction
24 of the director, to eligible participants for the butchering of
25 game carcasses and for the expenses related to the acquisition
26 and distribution of food to the needy residents of West Virginia.

27 (d) For purposes of this section, "eligible participant"
28 means a nonprofit organization that coordinates, with the
29 division of natural resources and other entities, a statewide
30 system for the distribution of meat products derived from the
31 butchering of donated game carcasses by a person licensed
32 under the provisions of article two-b, chapter nineteen of this
33 code.

**§20-2-34. Disposition of license fees and donations; reports of
agents; special funds and uses.**

1 (a) All persons in this state who receive money for licenses
2 and permits required by this chapter, or as donations for the
3 hunters helping the hungry program, shall, on the first day of
4 each month, pay over to the director all moneys so collected by
5 them during the preceding month. The payment shall be
6 accompanied by a report showing, in the case of license fees
7 and donated money, the name of the county, the class of license
8 sold, the amount of any donation, the names and addresses of
9 the persons paying the license fees and donated moneys, the

10 date of the receipt, the signature of the person receiving and
11 remitting the funds, and other information the director deter-
12 mines necessary.

13 (b) Except where other provisions of this chapter specifi-
14 cally require and direct payment of moneys into designated
15 funds for specific uses and purposes, all license fees received
16 by the director shall be promptly paid into the state treasury and
17 credited to the division of natural resources "license
18 fund—wildlife resources" which shall be used and paid out,
19 upon order of the director solely for law enforcement and for
20 other purposes directly relating to the conservation, protection,
21 propagation and distribution of wildlife in this state pursuant to
22 the provisions of this chapter.

23 No funds from the "license fund—wildlife resources" may
24 be expended for recreational facilities or activities that are used
25 by or for the benefit of the general public, rather than purchas-
26 ers of hunting and fishing licenses.

27 Of the annual license fund income, the director shall retain
28 ten percent for capital improvements and land purchases
29 benefiting state wildlife, forty percent shall be budgeted to the
30 wildlife resources division, forty percent to law enforcement
31 and ten percent apportioned by the director within provisions of
32 this section. Any unexpended moneys for capital improvements
33 and land purchases shall be carried forward.

34 All interest generated from game and fish license fees after
35 the thirty-first day of July, one thousand nine hundred ninety-
36 one, shall be used by the director for the division of natural
37 resources in the same manner as is provided for the use of
38 license fees.

39 (c) Moneys received as donations to the hunters helping the
40 hungry program shall be deposited in the hunters helping the
41 hungry fund.

§20-2-43. Class E, Class EE, Class F, Class H and Class J licenses for nonresidents.

1 The licenses in this section are required of nonresidents to
2 hunt, trap or fish in West Virginia.

3 (1) A Class E license is a nonresident hunting and trapping
4 license and entitles the licensee to hunt or trap all legal species
5 of wild animals and wild birds in all counties of the state except
6 when other licenses or permits are required. The fee for the
7 license is one hundred dollars.

8 (2) A Class EE license is a nonresident bear hunting license
9 and entitles the licensee to hunt bear in all counties of the state,
10 except when additional licenses or permits are required. The fee
11 for the license is one hundred fifty dollars.

12 (3) A Class F license is a nonresident fishing license and
13 entitles the licensee to fish for all fish in all counties of the state
14 except when additional licenses or permits are required. The fee
15 for the license is thirty dollars. Trout fishing is not permitted
16 with a Class F license unless the license has affixed to it an
17 appropriate trout stamp as prescribed by the division of natural
18 resources.

19 (4) A Class H license is a nonresident small game hunting
20 license and entitles the licensee to hunt small game in all
21 counties of the state, except when additional licenses or permits
22 are required, for a period of six days beginning with the date it
23 is issued.

24 The fee for the license is twenty dollars. As used in this
25 section, "small game" means all game except bear, deer, wild
26 turkey and wild boar.

27 (5) A Class J license is a nonresident small game shooting
28 preserve license and entitles the licensee to hunt small game on

29 designated shooting preserves, except when additional licenses
30 or permits are required, for a period of six days beginning with
31 the date it is issued. The fee for the license is ten dollars.

CHAPTER 171

(H. B. 2285 — By Delegates Stemple, Varner and Yeager)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-six and thirty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to requiring licensees of hunting and fishing licenses to carry and exhibit for inspection proof of identity and all documents applicable to the nature and location of the licensees' regulated activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-36. When license, related documents, and picture identification to be carried; using license of another; transferring license to another.

§20-2-37. Display of license, etc., by persons in possession of hunting, fishing, etc., paraphernalia.

§20-2-36. When license, related documents, and picture identification to be carried; using license of another; transferring license to another.

1 (a) A person who is required by this article to be licensed
2 may not hunt, take, pursue, trap for, kill, catch or chase for
3 sport any wild animal or wild bird; or fish for, take, kill or catch
4 any fish or amphibians of any kind whatsoever in this state
5 unless he or she shall have on his or her person: (1) A valid
6 license issued to him or her, or other proof that a valid license
7 has been issued to him or her in accordance with this article; (2)
8 all applicable stamps, permits, and written consents required by
9 this article; (3) a driver's license, passport, or picture identifica-
10 tion issued to him or her by his or her state of residence; and (4)
11 a certificate of training or other proof of hunter safety education
12 as required by section thirty-a of this article.

13 As an alternative to the identification required by subsec-
14 tion (a)(3) of this section, the name, address and birthdate of a
15 licensee under the age of fifteen years may be established by
16 the averment of an accompanying licensed adult.

17 (b) It is unlawful for any person to use at any time any
18 license other than those valid licenses legally issued to him or
19 her in accordance with this article.

20 (c) Except as expressly provided by this article, it is
21 unlawful for any person to transfer a license to any other
22 person.

**§20-2-37. Display of license, etc., by persons in possession of
hunting, fishing, etc., paraphernalia.**

1 Any person having in his or her possession in or near the
2 fields or woods, or about the streams of this state, any dog, gun,
3 fishing rod or other hunting, fishing or trapping paraphernalia,
4 shall, upon demand of any officer authorized to enforce the
5 provisions of this chapter, state his or her correct name and
6 address, and shall exhibit for inspection: (a) All applicable
7 licenses and documents set forth in section thirty-six of this

8 article; and (b) all firearms and wildlife which he or she may
9 have in his or her possession.

10 Nothing in this section may be construed as authorizing
11 searches that violate article three, section six of the West
12 Virginia Constitution or the Fourth Amendment to the Constitu-
13 tion of the United States, nor may anything in this section be
14 construed as effecting a waiver of these constitutional provi-
15 sions.

CHAPTER 172

(Com. Sub. for H. B. 2094 — By Delegates Caputo,
Varner, Tucker and Yeager)

[Passed March 5, 2003; 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 sixty-four, relating to regulating the release of fish, water animals and other aquatic organism into the waters of this state.

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 sixty-four, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-64. Regulating release of fish, water animal and other aquatic organisms; stocking permit.

1 (a) It is unlawful for any person to release any fish, water
2 animal or other aquatic organism, alive or dead, or any part,
3 nest or egg thereof into the waters of this state except as
4 authorized by a stocking permit issued by the director: *Pro-*
5 *vided*, That nothing in this subsection shall be construed as
6 restricting the release of fish, water animal or other aquatic
7 organism into the waters of this state from which they were
8 taken by lawful methods: *Provided, however*, That nothing in
9 this subsection shall be construed as restricting the release of
10 native or established species of fish in privately owned ponds.

11 (b) A stocking permit is not required for the stocking of
12 trout in waters of the state provided that the trout originate from
13 a source within the state or meet the disease free certification
14 requirements for imported salmondiae set forth in section
15 thirteen of this article.

16 (c) A stocking permit is not required for the stocking of
17 black bass provided that the division of natural resources is
18 notified prior to stocking and is provided a disease free certi-
19 fication.

CHAPTER 173

(H. B. 2953 — By Delegates Michael, Mezzatesta and Doyle)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the
Governor; in Effect From Passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirty, chapter
eighteen of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section thirteen,

article eight, chapter thirty-six of said code, all relating to the administration of the prepaid tuition plan of the West Virginia college prepaid tuition and savings program; clarifying how moneys in the prepaid tuition trust fund are processed when the plan is terminated; closing the prepaid tuition plan to new contracts until further legislative authorization; continuing the plan as to current contract owners; providing for accrual of investment earnings; continuing annual evaluation of actuarial soundness of the prepaid tuition trust fund; requiring annual reports by the chairman of the prepaid tuition trust fund; establishing a mechanism to eliminate any actuarially projected unfunded liability in the prepaid tuition trust fund over a fixed period with funds from the unclaimed property trust fund in an amount not to exceed five hundred thousand dollars annually; creating the prepaid tuition trust escrow account and establishing purposes therefor; providing for the investment and use of the money in the prepaid tuition trust escrow account; providing for the transfer of funds in the unclaimed property trust fund to the prepaid tuition trust escrow account and to the general revenue fund; and providing for the disposition of funds in the prepaid tuition trust escrow account upon closure of the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

That section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article eight, chapter thirty-six of said code, be amended and reenacted, all to read as follows:

Chapter

18. Education.

36. Estates and Property.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-6. West Virginia prepaid tuition trust.

1 (a) The "Prepaid Tuition Trust Fund" is continued within
2 the accounts held by the state treasurer for administration by the
3 board.

4 (b) The prepaid tuition trust fund shall continue to receive
5 all payments from account owners on behalf of beneficiaries of
6 prepaid tuition contracts or from any other source, public or
7 private. Earnings derived from the investment of moneys in the
8 prepaid tuition trust fund shall remain in the prepaid tuition
9 trust fund held in trust in the same manner as payments, except
10 as refunded, applied for purposes of the beneficiaries, and
11 applied for purposes of maintaining and administering the
12 prepaid tuition plan.

13 (c) The corpus, assets and earnings of the prepaid tuition
14 trust fund do not constitute public funds of the state and are
15 available solely for carrying out the purposes of this article.
16 Any contract entered into by or any obligation of the board on
17 behalf of and for the benefit of the prepaid tuition plan does not
18 constitute a debt of the state, but is solely an obligation of the
19 prepaid tuition trust fund. The state has no obligation to any
20 designated beneficiary or any other person as a result of the
21 prepaid tuition plan. All amounts payable from the prepaid
22 tuition trust fund are limited to amounts available in the prepaid
23 tuition trust fund.

24 (d) Nothing in this article or in any prepaid tuition contract
25 is a promise or guarantee of admission to, continued enrollment
26 in, or graduation from an eligible educational institution.

27 (e) The requirements of the provisions of chapter thirty-two
28 of this code do not apply to the sale of a prepaid tuition contract
29 by the board, its employees and agents.

30 (f) The prepaid tuition plan and the prepaid tuition trust
31 fund shall continue in existence until terminated by the Legisla-
32 ture as it determines or by the board upon determining that
33 continued operation is infeasible. Upon termination of the plan
34 and after payment of all fees, charges, expenses and penalties,
35 the assets of the prepaid tuition trust fund are paid to current
36 account owners, to the extent possible, on a pro rata basis as
37 their interests may appear, and any assets presumed abandoned
38 are reported and remitted to the unclaimed property administra-
39 tor in accordance with the uniform unclaimed property act in
40 article eight, chapter thirty-six of this code. Any assets then
41 remaining in the prepaid tuition trust fund shall revert to the
42 state general revenue fund.

43 (g) Effective the eighth day of March, two thousand three,
44 the prepaid tuition plan is closed to new contracts until the
45 Legislature authorizes the plan to reopen. Closing the plan to
46 new contracts shall not mean the prepaid tuition plan is closed
47 and shall not affect any prepaid tuition plan contracts in effect
48 on the eighth day of March, two thousand three. All contract
49 owners shall continue to pay any amounts due, including
50 without limitation monthly installments, penalties and fees.
51 Earnings derived from the investment of moneys in the prepaid
52 tuition trust fund shall continue to accrue to the fund until the
53 fund is closed in accordance with this article.

54 (h) The board shall continue to have the actuarial soundness
55 of the prepaid tuition trust fund evaluated annually.

56 (i)(1) On or before the first day of December, two thousand
57 three, and each year thereafter, the chairman of the board shall
58 submit to the governor, the president of the Senate, the speaker

59 of the House of Delegates, joint committee on government and
60 finance and the unclaimed property administrator a report
61 certified by an actuary of the actuarial status of the prepaid
62 tuition trust fund at the end of the fiscal year immediately
63 preceding the date of the report. In the event the report for fiscal
64 year two thousand three states there is a projected unfunded
65 liability in the prepaid tuition trust fund, the report shall also
66 state the amount needed for the next fiscal year to eliminate the
67 projected unfunded liability in equal payments over a period of
68 ten fiscal years, concluding the thirtieth day of June, two
69 thousand thirteen. In the event the projected unfunded liability
70 of the prepaid tuition trust fund increases in subsequent reports,
71 the actuary shall calculate the amount needed, less any amount
72 in the prepaid tuition trust escrow account, to eliminate the
73 projected unfunded liability over a period the actuary deter-
74 mines is fiscally responsible.

75 (2) The prepaid tuition trust escrow account is hereby
76 created in the state treasury to guarantee payment of prepaid
77 tuition plan contracts. The board shall invest the prepaid tuition
78 trust escrow account in accordance with the provisions of this
79 article in fixed income securities, and all earnings of the escrow
80 account shall remain in the escrow account.

81 (3) In the event the actuary determines an unfunded liability
82 exists in the prepaid tuition trust fund, the report shall certify
83 the amount of money needed for the next fiscal year to elimi-
84 nate the projected unfunded liability pursuant to the provisions
85 of subdivision (1) of this subsection. The certified amount may
86 not exceed five hundred thousand dollars each year. On or
87 before the fifteenth day of December in which the chairman
88 submitted a report stating the amount needed for the next fiscal
89 year to eliminate a projected unfunded liability, the unclaimed
90 property administrator shall transfer the amount requested, not
91 to exceed five hundred thousand dollars each year, from the

92 unclaimed property trust fund to the prepaid tuition trust escrow
93 account.

94 (4) In the event the money in the prepaid tuition trust fund
95 is insufficient to cover the amount of money needed to meet the
96 current obligations of the prepaid tuition trust fund, the board
97 may withdraw from the prepaid tuition trust escrow account the
98 amount of money needed to meet current obligations of the
99 prepaid tuition trust fund.

100 (5) Notwithstanding any provision of this code to the
101 contrary, the governor, after consultation with the budget
102 section of the finance division of the department of administra-
103 tion, may request an appropriation to the board in the amount
104 of the deficiency to meet the current obligations of the prepaid
105 tuition trust fund, in the budget presented to the next session of
106 the Legislature for its consideration. The Legislature is not
107 required to make any appropriation pursuant to this subsection,
108 and the amount of the deficiency is not a debt or a liability of
109 the state.

110 (6) As used in this section, "current obligations of the
111 prepaid tuition trust fund" means amounts required for the
112 payment of contract distributions or other obligations of the
113 prepaid tuition trust fund, the maintenance of the fund, and
114 operating expenses for the current fiscal year.

115 (7) Nothing in this subsection creates an obligation of state
116 general revenue funds or requires any level of funding by the
117 Legislature.

118 (8) After the prepaid tuition trust fund has been closed and
119 all moneys paid in accordance with this section, any moneys
120 remaining in the prepaid tuition trust escrow account shall be
121 transferred to the general revenue fund and the account closed.

122 (j) To fulfill the charitable and public purpose of this
123 article, neither the earnings nor the corpus of the prepaid tuition
124 trust fund is subject to taxation by the state or any of its
125 political subdivisions.

126 (k) Notwithstanding any provision of this code to the
127 contrary, money in the prepaid tuition trust fund is exempt from
128 creditor process and not subject to attachment, garnishment or
129 other process; is not available as security or collateral for any
130 loan, or otherwise subject to alienation, sale, transfer, assign-
131 ment, pledge, encumbrance or charge; and is not subject to
132 seizure, taking, appropriation or application by any legal or
133 equitable process or operation of law to pay any debt or liability
134 of any account owner, beneficiary or successor in interest.

135 (1) No provision of this section may be construed to
136 interfere with the operation of the savings plan authorized under
137 this article.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

1 (a) The administrator shall record the name and last known
2 address of each person appearing from the holders reports to be
3 entitled to the property and the name and last known address of
4 each insured person or annuitant and beneficiary and with
5 respect to each policy or annuity listed in the report of an
6 insurance company, its number, the name of the company and
7 the amount due.

8 (b) The unclaimed property fund is continued. The adminis-
9 trator shall deposit all funds received pursuant to this article in
10 the unclaimed property fund, including the proceeds from the
11 sale of abandoned property under section twelve of this article.

12 In addition to paying claims of unclaimed property duly
13 allowed, the administrator may deduct the following expenses
14 from the unclaimed property fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to owners,
17 including without limitation the costs of mailing and publica-
18 tion to locate owners;

19 (3) Reasonable service charge; and

20 (4) Expenses incurred in examining records of holders of
21 property and in collecting the property from those holders.

22 (c) The unclaimed property trust fund is continued within
23 the state treasury. After deducting the expenses specified in
24 subsection (b) of this section and maintaining a sum of money
25 from which to pay claims duly allowed, the administrator shall
26 transfer the remaining moneys in the unclaimed property fund
27 to the unclaimed property trust fund.

28 (d) On or before the fifteenth day of December of each year
29 and after receipt of a report from the chairman of the board of
30 trustees of the West Virginia college prepaid tuition and savings
31 program stating the amount certified by an actuary in accor-
32 dance with the provisions of section six, article thirty, chapter
33 eighteen of this code, notwithstanding any provision of this
34 code to the contrary, the administrator shall transfer the sum of
35 money certified by the actuary from the unclaimed property
36 trust fund to the prepaid tuition trust escrow account, the
37 amount transferred not to exceed five hundred thousand dollars
38 annually.

39 (e) After transferring any money required by subsection (d)
40 of this section, the administrator shall transfer moneys remain-
41 ing in the unclaimed property trust fund to the general revenue
42 fund.

CHAPTER 174

(S. B. 375 — By Senator Bowman)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to contractor licensing generally; and allowing the transfer of a license to a new business entity in which the license holder is the principal owner, partner or officer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-7. Application for and issuance of license.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

§21-11-7. Application for and issuance of license.

- 1 (a) A person desiring to be licensed as a contractor under
- 2 this article shall submit to the board a written application
- 3 requesting licensure, providing the applicant's social security
- 4 number and such other information as the board may require on
- 5 forms supplied by the board. The applicant shall pay a license
- 6 fee not to exceed one hundred fifty dollars: *Provided*, That
- 7 electrical contractors already licensed under section four, article
- 8 three-b, chapter twenty-nine of this code shall pay no more than
- 9 twenty dollars.

10 (b) A person holding a business registration certificate to
11 conduct business in this state as a contractor on the thirtieth day
12 of September, one thousand nine hundred ninety-one, may
13 register with the board, certify by affidavit the requirements of
14 subsection (c), section fifteen of this article and pay such
15 license fee not to exceed one hundred fifty dollars and shall be
16 issued a contractor's license without further examination:
17 *Provided*, That no license may be issued without examination
18 pursuant to this subsection after the first day of April, two
19 thousand two: *Provided, however*, That any person issued a
20 contractor's license by the board pursuant to this subsection
21 may apply to the board for transfer of the license to a new
22 business entity in which the license holder is the principal
23 owner, partner or corporate officer: *Provided further*, That a
24 license holder may hold a license on behalf of only one
25 business entity during a given time period. The board may
26 transfer the license issued pursuant to this subsection to the new
27 business entity without requiring examination of the license
28 holder.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

1 No license may be used for any purpose by any person
2 other than the person to whom the license is issued. No license
3 may be assigned, transferred or otherwise disposed of so as to
4 permit the unauthorized use thereof. No license issued pursuant
5 to the provisions of subsection (b), section seven of this article
6 may be assigned, transferred or otherwise disposed of except as
7 provided in said subsection. Any person who violates this
8 section is subject to the penalties imposed in section thirteen of
9 this article.

CHAPTER 175

(H. B. 2700 — By Delegates H. White, Hrutkay
and R. M. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three-c, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to peer review organization protection and adding to the definition of “review organization” a health maintenance organization review committee and a hospital, medical, dental and health service corporation review committee.

Be it enacted by the Legislature of West Virginia:

That section one, article three-c, 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 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-1. Definitions.

- 1 As used in this article:
- 2 “Health care professionals” means individuals who are
- 3 licensed to practice in any health care field;
- 4 “Peer review” means the procedure for evaluation by health
- 5 care professionals of the quality and efficiency of services
- 6 ordered or performed by other health care professionals,
- 7 including practice analysis, inpatient hospital and extended care

8 facility utilization review, medical audit, ambulatory care
9 review, and claims review;

10 “Professional society” includes medical, psychological,
11 nursing, dental, optometric, pharmaceutical, chiropractic and
12 podiatric organizations having as members at least a majority
13 of the eligible licentiates in the area or health care facility or
14 agency served by the particular organization; and

15 “Review organization” means any committee or organiza-
16 tion engaging in peer review, including a hospital utilization
17 review committee, a hospital tissue committee, a medical audit
18 committee, a health insurance review committee, a health
19 maintenance organization review committee, hospital, medical,
20 dental and health service corporation review committee, a
21 hospital plan corporation review committee, a professional
22 health service plan review committee or organization, a dental
23 review committee, a physicians’ advisory committee, a podiatry
24 advisory committee, a nursing advisory committee, any
25 committee or organization established pursuant to a medical
26 assistance program, and any committee established by one or
27 more state or local professional societies or institutes, to gather
28 and review information relating to the care and treatment of
29 patients for the purposes of: (i) Evaluating and improving the
30 quality of health care rendered; (ii) reducing morbidity or
31 mortality; or (iii) establishing and enforcing guidelines de-
32 signed to keep within reasonable bounds the cost of health care.
33 It shall also mean any hospital board committee or organization
34 reviewing the professional qualifications or activities of its
35 medical staff or applicants for admission thereto, and any
36 professional standards review organizations established or
37 required under state or federal statutes or regulations.

CHAPTER 176

(Com. Sub. for S. B. 611 — By Senators Bailey,
Facemyer, Bowman and McKenzie)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six, nine and ten, 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 two new sections, designated sections six-a and six-b, all relating to licenses and permits issued by the board of radiologic technologists; defining podiatric medical assistants; establishing the requirement of a permit to perform podiatric radiographs and eligibility criteria therefor; restricting the scope of practice under such permit; and requiring the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections two, six, nine and ten, 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 two new sections, designated sections six-a and six-b, all to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

- §30-23-2. Definitions.
- §30-23-6. Qualifications of applicants; exceptions; applications; fee.
- §30-23-6a. Podiatric medical assistants; permit requirements.
- §30-23-6b. Scope of practice for podiatric medical assistants.
- §30-23-9. Suspension or revocation of license or permits.
- §30-23-10. Procedures for hearing.

§30-23-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) "ASPMA" means the American society of podiatric
4 medical assistants.

5 (b) "Board" means the West Virginia radiologic technology
6 board of examiners.

7 (c) "License" means a license granted and issued by the
8 board for the practice of radiologic technology.

9 (d) "Licensed practitioner" means a person licensed to
10 practice medicine, chiropractic, podiatry, osteopathy or
11 dentistry.

12 (e) "Licensee" means any person holding a license or a
13 temporary permit issued pursuant to the provisions of this
14 article.

15 (f) "Permitee" means any person holding a podiatric
16 medical assistant permit issued pursuant to the provisions of
17 this article.

18 (g) "Podiatric medical assistant" means a person who has
19 met the requirements of section six-a and who has been granted
20 a permit by the board for performance of podiatric radiographs.

21 (h) "Podiatric radiographs" means radiographs confined to
22 the foot and ankle performed on dedicated podiatric X-ray
23 equipment.

24 (i) "Radiologic technologist" means a person, other than a
25 licensed practitioner, who applies ionizing radiation or assists
26 in the application of ionizing radiation to human beings for

27 diagnostic or therapeutic purposes under the supervision of a
28 licensed practitioner.

29 (j) "Radiologic technology" means the application of
30 ionizing radiation or assisting in the application of ionizing
31 radiation to human beings for diagnostic or therapeutic pur-
32 poses under the supervision of a licensed practitioner.

33 (k) "Radiologist" means a licensed practitioner who
34 specializes in the use of ionizing radiation for the diagnosis or
35 treatment of disease.

36 (l) "Radiology resident" means a licensed practitioner who
37 is in training to become a radiologist and who uses ionizing
38 radiation in the diagnosis or treatment of disease under the
39 supervision of a radiologist.

40 (m) "Supervision" means responsibility for and control of
41 quality, radiation safety and technical aspects in the application
42 of ionizing radiation of human beings for diagnostic or thera-
43 peutic purposes.

44 (n) "Technology" hereinafter relates to radiologic technol-
45 ogy.

**§30-23-6. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to practice radiologic
2 technology the applicant shall:

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 an accredited course in
7 radiologic study technology, as determined by an accreditation

8 body recognized by the board, from a school of radiologic
9 technology that has been approved by the board;

10 (4) Have passed the examination prescribed by the board,
11 which examination shall cover the basic subject matter of
12 radiologic technology, skills and techniques; and

13 (5) Not have been convicted of a felony in any court in this
14 state or any federal court in this or any other state within ten
15 years preceding the date of application for registration, which
16 conviction remains unreversed; and not have been convicted of
17 a felony in any court in this state or any federal court in this or
18 any other state at any time if the offense for which the applicant
19 was convicted related to the practice of radiologic technology,
20 which conviction remains unreversed.

21 (b) Any person who holds a license or certificate, including
22 the American registry of radiologic technologists, to practice
23 radiologic technology issued by any other state, the require-
24 ments for which license or certificate are found by the board to
25 be at least equal to those provided in this article, shall be
26 eligible for a license to practice radiologic technology in this
27 state without examination.

28 (c) The following persons are not required to obtain a
29 license in accordance with the provisions of this article:

30 (1) A technology student enrolled in or attending an
31 approved school of technology who as part of his or her course
32 of study applies ionizing radiation to a human being under the
33 supervision of a licensed practitioner;

34 (2) A person acting as a dental assistant who under the
35 supervision of a licensed dentist operates only radiographic
36 dental equipment for the sole purpose of dental radiography;

37 (3) A person engaged in performing the duties of a technol-
38 ogist in the person's employment by an agency, bureau or
39 division of the government of the United States;

40 (4) Any licensed practitioner, radiologist or radiology
41 resident; and

42 (5) Any person who demonstrates to the board that as of the
43 first day of July, one thousand nine hundred ninety-nine, he or
44 she:

45 (A) Has engaged in the practice of radiologic technology
46 for the limited purpose of performing bone densitometry in this
47 state for five or more years;

48 (B) Practices under the supervision of a licensed practitio-
49 ner; and

50 (C) Has received a densitometry technologist degree
51 certified by the international society for clinical densitometry.

52 (d) Any person seeking a license shall submit an application
53 therefor at such time, in such manner, on such forms and
54 containing such information as the board may, from time to
55 time, by legislative rule prescribe and shall pay to the board a
56 license fee, which fee shall be returned to the applicant if the
57 license application is denied.

58 (e) The board shall propose rules for legislative approval in
59 accordance with the provisions of article three, chapter twenty-
60 nine of this code setting forth fees for licenses and permits and
61 the renewals of licenses and permits.

§30-23-6a. Podiatric medical assistants; permit requirements.

1 (a) No person not otherwise licensed under this article shall
2 perform podiatric radiographs in this state unless he or she has
3 first obtained a permit to do so from the board.

4 (b) To be eligible for a permit to perform podiatric radio-
5 graphs in this state, an applicant shall:

6 (1) Be of good moral character;

7 (2) Have completed four years of high school education or
8 its equivalent;

9 (3) Pass a written examination for certification from the
10 American society of podiatric medical assistants (ASPMA);

11 (4) Maintain an active certification in the American society
12 of podiatric medical assistants (ASPMA) and meet all require-
13 ments of that organization including the continuing education
14 requirements;

15 (5) Not have been convicted of a felony in any court in this
16 state or any federal court in this or any other state within ten
17 years preceding the date of application for the permit, which
18 conviction remains unreversed; and not have been convicted of
19 a felony in any court in this state or any federal court in this or
20 any other state at any time if the offense for which the applicant
21 was convicted related to the practice of radiologic technology,
22 which conviction remains unreversed; and

23 (6) Pay to the board a permit fee, which fee shall be
24 returned to the applicant if the permit application is denied.

25 (c) Original permits shall be prominently displayed in
26 public view in the permittee's primary place of employment. A
27 duplicate permit issued by the board may be displayed in the
28 permittee's secondary place of employment.

29 (d) Permits issued pursuant to this section are valid for one
30 year from the date issued and may be renewed every year
31 without examination. Applications for renewal shall be upon a
32 form provided by the board. Upon application for renewal, the
33 permittee shall submit documentation of an active certification
34 in ASPMA and payment of a renewal fee.

§30-23-6b. Scope of practice for podiatric medical assistants.

1 (a) A podiatric medical assistant granted a permit under
2 section six-a of this article may only use equipment, specifi-
3 cally designed for the performance of foot or ankle podiatric
4 radiographs, that has been approved by the board.

5 (b) All podiatric radiographs performed by a podiatric
6 medical assistant permittee shall be performed under the
7 supervision of a licensed podiatrist.

§30-23-9. Suspension or revocation of license or permits.

1 (a) The board may at any time, upon its own motion and
2 shall upon the verified written complaint of any person, conduct
3 an investigation to determine whether there are grounds for
4 suspension or revocation of a license or a permit issued under
5 the provisions of this article.

6 (b) The board shall suspend or revoke any license or permit
7 when it finds the holder thereof has:

8 (1) Been convicted of a felony in any court in this state or
9 any federal court in this or any other state within ten years
10 preceding the date of the motion or complaint, which conviction
11 remains unreversed; or been convicted of a felony in any court
12 in this state or any federal court in this or any other state at any
13 time if the offense for which he was convicted related to the
14 practice of radiologic technology, which conviction remains
15 unreversed;

16 (2) Obtained a license or permit by means of fraud or
17 deceit;

18 (3) Been incompetent, grossly negligent or guilty of other
19 malpractice as defined by the board by reasonable rules;

20 (4) Failed or refused to comply with the provisions of this
21 article or any reasonable rule promulgated by the board
22 hereunder or any order or final decision of the board; or

23 (5) Except in emergency situations, failed to obtain written
24 authorization from the attending licensed practitioner or from
25 the patient and if the patient is a minor, from a parent or a
26 person having custody of the minor.

27 (c) The board shall also suspend or revoke any license or
28 permit if it finds the existence of any grounds which would
29 justify the denial of an application for such license or permit if
30 application were then being made for it.

§30-23-10. Procedures for hearing.

1 (a) Whenever the board denies an application for any
2 original or renewal license or permit or suspends or revokes any
3 license or permit, it shall make an interim order to that effect
4 and serve a copy thereof on the applicant or licensee or
5 permittee, as the case may be, by certified mail, return receipt
6 requested. Such order shall state the grounds for the action
7 taken and shall require that any license or temporary permit
8 suspended or revoked thereby shall be returned to the board by
9 the holder within twenty days after receipt of said copy of said
10 order.

11 (b) Any person adversely affected by any such order is
12 entitled to a hearing thereon (as to all issues not excluded from
13 the definition of a "contested case" as set forth in article one,
14 chapter twenty-nine-a of this code) if, within twenty days after

15 receipt of a copy thereof, he or she files with the board a written
16 demand for such hearing.

17 A demand for hearing shall operate automatically to stay or
18 suspend the execution of any order suspending or revoking a
19 license or permit or denying an application for a renewal license
20 or permit. The board may require the person demanding such
21 hearing to give reasonable security for the cost thereof and if
22 such person does not substantially prevail at such hearing such
23 cost shall be assessed against him or her and may be collected
24 by civil action or other proper remedy.

25 (c) Upon receipt of a written demand for such hearing, the
26 board shall set a time and place therefor not less than ten and
27 not more than thirty days thereafter. Any scheduled hearing
28 may be continued by the board upon its own motion or for good
29 cause shown by the person demanding the hearing.

30 (d) All of the pertinent provisions of article five, chapter
31 twenty-nine-a of this code apply to and govern the hearing and
32 the administrative procedures in connection with and following
33 such hearing, with like effect as if the provisions of said article
34 were set forth in this subsection.

35 (e) Any such hearing shall be conducted by a quorum of the
36 board. For the purpose of conducting any such hearing any
37 member of the board may issue subpoenas and subpoenas duces
38 tecum which shall be issued and served within the time, for the
39 fees and shall be enforced as specified in section one, article
40 five, chapter twenty-nine-a of this code, and all of the said
41 section one provisions dealing with subpoenas and subpoenas
42 duces tecum shall apply to subpoenas and subpoenas duces
43 tecum issued for the purpose of a hearing hereunder.

44 (f) At any such hearing the person who demanded the same
45 may represent himself or be represented by an attorney-at-law
46 admitted to practice before any circuit court of this state. Upon

47 request by the board, it shall be represented at any such hearing
48 by the attorney general or his or her assistants without addi-
49 tional compensation.

50 (g) After any such hearing and consideration of all testi-
51 mony, evidence and record in the case, the board shall render its
52 decision in writing. The written decision of the board shall be
53 accompanied by findings of fact and conclusions of law as
54 specified in section three, article five, chapter twenty-nine-a of
55 this code and a copy of such decision and accompanying
56 findings and conclusions shall be served by certified mail,
57 return receipt requested, upon the person demanding such
58 hearing and his or her attorney of record, if any.

59 (h) The decision of the board is final unless reversed,
60 vacated or modified upon judicial review thereof in accordance
61 with the provisions of section eleven of this article.

CHAPTER 177

(S. B. 414 — By Senators Plymale, Rowe, Jenkins,
Bailey, Ross and McCabe)

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the West Virginia real estate commission to enter into license reciprocity agreements with other states.

Be it enacted by the Legislature of West Virginia:

That section seven, article forty, 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 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-7. General powers and duties.

1 The commission has all the powers set forth in article one
2 of this chapter and in addition:

3 (a) May sue and be sued in its official name as an agency of
4 this state;

5 (b) Shall employ an executive director and shall fix his or
6 her compensation subject to the general laws of this state. The
7 commission shall determine the duties of the executive director
8 as it shall consider necessary and appropriate to discharge the
9 duties imposed by the provisions of this code;

10 (c) Shall employ or contract with such other investigators,
11 hearing examiners, attorneys, consultants, clerks and assistants
12 as the commission considers necessary and determine the duties
13 and fix the compensation of such investigators, clerks and
14 assistants subject to the general laws of this state;

15 (d) Shall have the authority to issue subpoenas and subpoe-
16 nas duces tecum through any member, its executive director or
17 any duly authorized representative;

18 (e) Shall prescribe, examine and determine the qualifica-
19 tions of any applicant for a license;

20 (f) Shall provide for an appropriate examination of any
21 applicant for a license;

22 (g) May enter into agreements with other jurisdictions
23 whereby the license issued by another jurisdiction may be

24 recognized as successfully qualifying a nonresident for a license
25 in this state;

26 (h) Shall issue, renew, deny, suspend, revoke or reinstate
27 licenses and take disciplinary action against any licensee;

28 (i) May investigate or cause to be investigated alleged
29 violations of the provisions of this article, the rules promulgated
30 hereunder and the orders or final decisions of the commission;

31 (j) Shall conduct hearings or cause hearings to be conducted
32 upon charges calling for the discipline of a licensee or for the
33 suspension or revocation of a license;

34 (k) May examine the books and records relating to the real
35 estate business of a licensee if the licensee is charged in a
36 complaint of any violation of this article, commission rule or
37 any order or final decision issued by the commission: *Provided*,
38 That such examination shall not extend beyond the specific
39 violation charged in the complaint;

40 (l) May impose one or more sanctions as considered
41 appropriate in the circumstances for the discipline of a licensee.
42 Available sanctions include, but are not limited to, denial of a
43 license or renewal thereof, administrative fine not to exceed one
44 thousand dollars per day per violation, probation, revocation,
45 suspension, restitution, require additional education, censure,
46 denial of future license, downgrade of license, reprimand or
47 order the return of compensation collected from an injured
48 consumer;

49 (m) Shall meet at least once each calendar year at such
50 place and time as the commission shall designate and at such
51 other times and places as it considers necessary to conduct
52 commission business;

53 (n) Shall publish an annual directory of licensees in
54 compliance with the provisions of section thirteen, article one,
55 chapter thirty of this code;

56 (o) May sponsor real estate-related educational seminars,
57 courses, workshops or institutes, may incur and pay the
58 necessary expenses and may charge a fee for attendance;

59 (p) May assist libraries, institutions and foundations with
60 financial aid or otherwise in providing texts, sponsoring studies,
61 surveys and programs;

62 (q) May perform compliance audits on real estate brokerage
63 offices, education providers or any other person regulated by
64 the commission;

65 (r) May provide distance education courses for applicants
66 for a license sufficient to meet the educational requirements
67 contained in subsections (a) and (b), section fourteen of this
68 article; and

69 (s) Shall take all other actions necessary and proper to
70 effectuate the purposes of this article.

CHAPTER 178

(H. B. 3089 — By Delegates H. White, Trump, Kominar and Amores)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eighteen and twenty-two,
article forty, chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all relating to

modifying the requirement that financial institutions which maintain a trust fund deposit account for real estate brokers notify the real estate commission if any checks drawn against the account are returned for any cause; providing that a financial institution is required to notify the real estate commission if any checks drawn against the trust fund account are returned for insufficient funds; removing criminal and civil penalties applicable to a financial institution if a trust fund account for a real estate broker fails to notify the real estate commission if any check drawn against the account is returned for insufficient funds.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and twenty-two, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-18. Trust fund accounts.

§30-40-22. Penalties for violations.

§30-40-18. Trust fund accounts.

1 (a) Every person licensed as a broker under the provisions
2 of this article who does not immediately deliver all funds
3 received, in relation to a real estate transaction, to his or her
4 principal or to a neutral escrow depository shall maintain one
5 or more trust fund accounts in a recognized financial institution
6 and shall place all funds therein: *Provided*, That nothing
7 contained herein shall require a broker to maintain a trust fund
8 account if the broker does not hold any money in trust for
9 another party.

10 (b) Funds that must be deposited into a trust fund account
11 include, but are not limited to, earnest money deposits, security
12 deposits, rental receipts, auction proceeds and money held in
13 escrow at closing.

14 (c) Each trust fund account must be established at a
15 financial institution which is insured against loss by an agency
16 of the federal government and the amount deposited therein
17 cannot exceed the amount that is insured against loss.

18 (d) Each trust fund account must provide for the withdrawal
19 of funds without notice.

20 (e) No trust fund account may earn interest or any other
21 form of income, unless specifically authorized by commission
22 rule.

23 (f) The broker may not commingle his or her own funds
24 with trust funds and the account may not be pledged as collat-
25 eral for a loan or otherwise utilized by the broker in a manner
26 that would violate his or her fiduciary obligations in relation to
27 the trust funds: *Provided*, That nothing contained herein
28 prevents the broker from depositing a maximum of one hundred
29 dollars of his or her own money in the trust fund account to
30 maintain a minimum balance in the account.

31 (g) No financial institution, in which a trust fund account is
32 established under the provisions of this article, shall require a
33 minimum balance in excess of the amount authorized in
34 subsection (f) of this section.

35 (h) The broker shall be the designated trustee of the account
36 and shall maintain complete authority and control over all
37 aspects of each trust fund account, including signature author-
38 ity: *Provided*, That only one other member or officer of a
39 corporation, association or partnership, who is licensed under
40 the provisions of this article, may be authorized to disburse
41 funds from the account: *Provided, however*, That if disburse-
42 ments from a trust fund account require two signatures, one
43 additional member or officer may be a signatory as provided in
44 this section.

45 (i) The broker shall, at a minimum, maintain records of all
46 funds deposited into the trust fund account, which shall clearly
47 indicate the date and from whom the money was received, date
48 deposited, date of withdrawal, to whom the money belongs, for
49 whose account the money was received and other pertinent
50 information concerning the transaction. All records shall be
51 open to inspection by the commission or its duly authorized
52 representative at all times during regular business hours at the
53 broker's place of business.

54 (j) The broker shall cause the financial institution wherein
55 a trust fund account is maintained, to execute a statement,
56 prepared by the commission, which shall include, but is not
57 limited to:

58 (1) Exact title of the account as registered by the financial
59 institution;

60 (2) The account number of the trust fund account;

61 (3) Identification of all persons authorized to make with-
62 draws from the account;

63 (4) Name and address of the financial institution;

64 (5) Title of the person executing the statement on behalf of
65 the financial institution;

66 (6) Date the statement was executed; and

67 (7) Certification that the financial institution will notify the
68 real estate commission if any checks drawn against the account
69 are returned for insufficient funds and that the financial
70 institution does not require a minimum balance in excess of the
71 amount authorized in subsection (f) of this section.

72 (k) The broker shall execute a statement authorizing the
73 commission, or its duly authorized representative, to make
74 periodic inspections of the trust fund account and to obtain
75 copies of records from any financial institution wherein a trust
76 fund account is maintained. A copy of any authorization shall
77 be accepted by any financial institution with the same force and
78 effect as the original.

79 (l) The broker shall notify the commission, within ten days,
80 of the establishment of or any change to a trust fund account.

81 (m) Nothing provided in this section creates any duty or
82 obligation on a financial institution to monitor the activities of
83 a broker designated as trustee of a trust fund account, except for
84 those duties or obligations specifically provided in subsection
85 (g) of this section and subdivision (7), subsection (j) of this
86 section.

§30-40-22. Penalties for violations.

1 (a) Any person violating a provision of this article or the
2 commission's rules is guilty of a misdemeanor. Any person
3 convicted of a first violation shall be fined not less than one
4 thousand dollars nor more than two thousand dollars, or
5 confined in the county or regional jail not more than ninety
6 days, or both fined and confined;

7 (b) Any person convicted of a second or subsequent
8 violation shall be fined not less than two thousand dollars nor
9 more than five thousand dollars, or confined in the county or
10 regional jail for a term not to exceed one year, or both fined and
11 confined;

12 (c) Any corporation, association or partnership convicted of
13 a first violation of this article or the commission's rules, shall
14 be fined not less than two thousand dollars nor more than five
15 thousand dollars;

16 (d) Any corporation, association or partnership convicted
17 of a second or subsequent violation, shall be fined not less than
18 five thousand dollars nor more than ten thousand dollars;

19 (e) Any officer, member, employee or agent of a corpora-
20 tion, association or partnership, shall be subject to the penalties
21 herein prescribed for individuals;

22 (f) Each and every day a violation of this article continues
23 shall constitute a separate offense;

24 (g) In addition to the penalties herein provided, if any
25 person receives compensation for acts or services performed in
26 violation of this article, he or she shall also be subject to a
27 penalty of not less than the value of the compensation received
28 nor more than three times the value of the compensation
29 received, as may be determined by a court of competent
30 jurisdiction. Any penalty may be recovered by a person
31 aggrieved as a result of a violation of this article;

32 (h) The penalties provided in this section do not apply to a
33 violation of the duties or obligations of a financial institution
34 under the certification required by subdivision (7), subsection
35 (j), section eighteen of this article by a financial institution
36 providing trust fund account services to a broker.

CHAPTER 179

(S. B. 381 — By Senator Minard)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one thousand three hundred one, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding professional surveyors to the list of professionals who may organize professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1301. Definitions.

1 As used in this article:

2 (1) "Licensing board" means the governing body or agency
3 established under chapter thirty of this code which is responsi-
4 ble for the licensing and regulation of the practice of the
5 profession which the professional limited liability company is
6 organized to provide;

7 (2) "Professional limited liability company" means a
8 limited liability company organized under this chapter for the
9 purpose of rendering a professional service; and

10 (3) "Professional service" means the services rendered by
11 the following professions: Attorneys-at-law under article two,
12 physicians and podiatrists under article three, dentists under
13 article four, optometrists under article eight, accountants under
14 article nine, veterinarians under article ten, architects under
15 article twelve, engineers under article thirteen, osteopathic
16 physicians and surgeons under article fourteen, chiropractors
17 under article sixteen, psychologists under article twenty-one,

- 18 social workers under article thirty and land surveyors under
19 article thirteen-a, all of chapter thirty of this code.

CHAPTER 180

**(H. B. 2870 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, 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 eleven-c, all relating to specifying the jurisdiction of the public service commission over, and the application of said chapter twenty-four to, owners or operators of, and persons, corporations or other entities that intend to construct or construct and operate, certain described electric generating facilities, the output of which is not sold directly to retail customers in West Virginia; and requiring persons, corporations and other entities that intend to construct or construct and operate such electric generating facilities, or that intend to make or construct a material modification thereof, to obtain from the public service commission a siting certificate, in lieu of a certificate of public convenience and necessity, for each such facility or material modification thereof pursuant and subject to certain new provisions and requirements which, among other things, allow the public service commission, under specified circumstances, to seek the imposition of civil or criminal penalties, or both such civil and criminal penalties; and providing that the public service commission may promulgate rules relating to siting certificates.

Be it enacted by the Legislature of West Virginia:

That section one, article two, 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 eleven-c, all to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission shall extend to all
2 public utilities in this state, and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;
8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline;
10 sleeping car or parlor car services; transmission of messages by
11 telephone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service
13 to the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity, by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems; any public service
17 district created under the provisions of article thirteen-a, chapter
18 sixteen of this code; toll bridges, wharves, ferries; solid waste
19 facilities; and any other public service: *Provided*, That natural
20 gas producers who provide natural gas service to not more than
21 twenty-five residential customers are exempt from the jurisdic-

tion of the commission with regard to the provisions of such residential service: *Provided, however,* That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: *Provided further,* That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: *And provided further,* That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

(b) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia custom-

54 ers shall be the same as the rate the utility is duly authorized to
55 charge in the adjoining jurisdiction. The commission, in the
56 case of any such utility, may revoke its waiver of jurisdiction
57 for good cause.

58 (c) Any other provisions of this chapter to the contrary
59 notwithstanding:

60 (1) An owner or operator of an electric generating facility
61 located or to be located in this state that has been designated as
62 an exempt wholesale generator under applicable federal law, or
63 will be so designated prior to commercial operation of the
64 facility, and for which such facility the owner or operator holds
65 a certificate of public convenience and necessity issued by the
66 commission on or before the first day of July, two thousand
67 three, shall be subject to subsections (e), (f), (g), (h), (i) and (j),
68 section eleven-c of this article as if the certificate of public
69 convenience and necessity for such facility were a siting
70 certificate issued under said section eleven-c and shall not
71 otherwise be subject to the jurisdiction of the commission or to
72 the provisions of this chapter with respect to such facility
73 except for the making or constructing of a material modification
74 thereof as provided in subdivision (5) of this subsection.

75 (2) Any person, corporation or other entity that intends to
76 construct or construct and operate an electric generating facility
77 to be located in this state that has been designated as an exempt
78 wholesale generator under applicable federal law, or will be so
79 designated prior to commercial operation of the facility, and for
80 which facility the owner or operator does not hold a certificate
81 of public convenience and necessity issued by the commission
82 on or before the first day of July, two thousand three, shall,
83 prior to commencement of construction of the facility, obtain a
84 siting certificate from the commission pursuant to the provi-
85 sions of section eleven-c of this article in lieu of a certificate of
86 public convenience and necessity pursuant to the provisions of

87 section eleven of this article. An owner or operator of an
88 electric generating facility as is described in this subdivision for
89 which a siting certificate has been issued by the commission
90 shall be subject to subsections (e), (f), (g), (h), (i) and (j),
91 section eleven-c of this article and shall not otherwise be
92 subject to the jurisdiction of the commission or to the provi-
93 sions of this chapter with respect to such facility except for the
94 making or constructing of a material modification thereof as
95 provided in subdivision (5) of this subsection.

96 (3) An owner or operator of an electric generating facility
97 located in this state that had not been designated as an exempt
98 wholesale generator under applicable federal law prior to
99 commercial operation of the facility, that generates electric
100 energy solely for sale at retail outside this state or solely for
101 sale at wholesale in accordance with any applicable federal law
102 that preempts state law or solely for both such sales at retail and
103 such sales at wholesale, and that had been constructed and had
104 engaged in commercial operation on or before the first day of
105 July, two thousand three, shall not be subject to the jurisdiction
106 of the commission or to the provisions of this chapter with
107 respect to such facility, regardless of whether such facility
108 subsequent to its construction has been or will be designated as
109 an exempt wholesale generator under applicable federal law:
110 *Provided*, That such owner or operator shall be subject to
111 subdivision (5) of this subsection if a material modification of
112 such facility is made or constructed.

113 (4) Any person, corporation or other entity that intends to
114 construct or construct and operate an electric generating facility
115 to be located in this state that has not been or will not be
116 designated as an exempt wholesale generator under applicable
117 federal law prior to commercial operation of the facility, that
118 will generate electric energy solely for sale at retail outside this
119 state or solely for sale at wholesale in accordance with any
120 applicable federal law that preempts state law or solely for both

121 such sales at retail and such sales at wholesale, and that had not
122 been constructed and had not been engaged in commercial
123 operation on or before the first day of July, two thousand three,
124 shall, prior to commencement of construction of the facility,
125 obtain a siting certificate from the commission pursuant to the
126 provisions of section eleven-c of this article in lieu of a certifi-
127 cate of public convenience and necessity pursuant to the
128 provisions of section eleven of this article. An owner or
129 operator of an electric generating facility as is described in this
130 subdivision for which a siting certificate has been issued by the
131 commission shall be subject to subsections (e), (f), (g), (h), (i)
132 and (j), section eleven-c of this article and shall not otherwise
133 be subject to the jurisdiction of the commission or to the
134 provisions of this chapter with respect to such facility except
135 for the making or constructing of a material modification
136 thereof as provided in subdivision (5) of this subsection.

137 (5) An owner or operator of an electric generating facility
138 described in this subsection shall, before making or construct-
139 ing a material modification of the facility that is not within the
140 terms of any certificate of public convenience and necessity or
141 siting certificate previously issued for the facility or an earlier
142 material modification thereof, obtain a siting certificate for the
143 modification from the commission pursuant to the provisions of
144 section eleven-c of this article in lieu of a certificate of public
145 convenience and necessity for the modification pursuant to the
146 provisions of section eleven of this article and, except for the
147 provisions of section eleven-c of this article, shall not otherwise
148 be subject to the jurisdiction of the commission or to the
149 provisions of this chapter with respect to such modification.

150 (6) The commission shall consider an application for a
151 certificate of public convenience and necessity filed pursuant to
152 section eleven of this article to construct an electric generating
153 facility described in this subsection or to make or construct a
154 material modification of such electric generating facility as an

155 application for a siting certificate pursuant to section eleven-c
156 of this article if the application for the certificate of public
157 convenience and necessity was filed with the commission prior
158 to the first day of July, two thousand three, and if the commis-
159 sion has not issued a final order thereon as of that date.

160 (7) The limitations on the jurisdiction of the commission
161 over, and on the applicability of the provisions of this chapter
162 to, the owner or operator of an electric generating facility as
163 imposed by, and described in this subsection, shall not be
164 deemed to affect or limit the commission's jurisdiction over
165 contracts or arrangements between the owner or operator of
166 such facility and any affiliated public utility subject to the
167 provisions of this chapter.

**§24-2-11c. Siting certificates for certain electric generating
facilities or material modifications thereof.**

1 (a) Notice of an application for a siting certificate required
2 under the provisions of subdivisions (1), (2), (3), (4) and (5),
3 subsection (c), section one of this article shall be given as a
4 Class I legal advertisement in compliance with the provisions
5 of article three, chapter fifty-nine of this code, with the publica-
6 tion area being each county in which all or a portion of the
7 facility is located or to be located. Such notice shall also be
8 published as a Class I legal advertisement in a newspaper
9 published each weekday in Kanawha County and circulated
10 both within and outside of Kanawha County. If no substantial
11 protest is received within thirty days after the publication of
12 notice, the commission may waive formal hearing on the
13 application.

14 (b) The commission shall render its decision within three
15 hundred days of the date of filing of an application for a siting
16 certificate or within four hundred days of the filing of an
17 application for a certificate of public convenience and necessity

18 pursuant to section eleven of this article if the application is
19 considered as an application for a siting certificate pursuant to
20 this section as provided in subdivision (6), subsection (c),
21 section one of this article. If no decision is rendered within such
22 time period, the commission shall issue a siting certificate as
23 applied for.

24 (c) In deciding whether to issue, refuse to issue, or issue in
25 part and refuse to issue in part a siting certificate, the commis-
26 sion shall appraise and balance the interests of the public, the
27 general interests of the state and local economy, and the
28 interests of the applicant. The commission may issue a siting
29 certificate only if it determines that the terms and conditions of
30 any public funding or any agreement relating to the abatement
31 of property taxes do not offend the public interest, and the
32 construction of the facility or material modification of the
33 facility will result in a substantial positive impact on the local
34 economy and local employment. The commission shall issue an
35 order that includes appropriate findings of fact and conclusions
36 of law that address each factor specified in this subsection. All
37 material terms, conditions and limitations applicable to the
38 construction and operation of the proposed facility or material
39 modification of the facility shall be specifically set forth in the
40 commission order.

41 (d) The commission may require an applicant for a siting
42 certificate to provide such documents and other information as
43 the commission deems necessary for its consideration of the
44 application.

45 (e) If the commission issues the siting certificate, the
46 commission shall have continuing jurisdiction over the holder
47 of the siting certificate for the limited purposes of: (1) Consid-
48 ering future requests by the holder for modifications of or
49 amendments to the siting certificate; (2) considering and
50 resolving complaints related to the holder's compliance with

51 the material terms and conditions of the commission order
52 issuing the siting certificate, whether or not the complainant
53 was a party to the case in which the siting certificate was
54 issued, which complaints shall be filed, answered, and resolved
55 in accordance with the commission's procedures for resolving
56 formal complaints; and (3) enforcing the material terms and
57 conditions of a commission order as provided in subsection (f)
58 of this section.

59 (f) If the commission determines, in a proceeding instituted
60 on its own motion or on the motion of any person, that the
61 holder of a siting certificate has failed without reasonable
62 justification to comply with any of the material terms and
63 conditions of a commission order issuing a siting certificate,
64 modifying or amending a siting certificate, or resolving a
65 complaint related to compliance of the holder with the material
66 terms and conditions of a siting certificate, the commission may
67 enforce the material terms and conditions of the commission
68 order: (1) By requiring the holder to show cause why it should
69 not be required so to comply; (2) through a proceeding seeking
70 the imposition of a civil penalty not to exceed five thousand
71 dollars or criminal penalties as provided in section four, article
72 four of this chapter, or both such civil and criminal penalties,
73 and the imposition of either or both such civil penalty and
74 criminal penalties shall be subject to the provisions of section
75 eight, article four, of this chapter; (3) by mandamus or injunc-
76 tion as provided in section two of this article; or (4) prior to the
77 completion of construction of the proposed facility or prior to
78 the completion of construction of a material modification of the
79 facility, by the suspension or revocation of the siting certificate,
80 including the preliminary suspension of the siting certificate
81 under the standards applicable to circuit courts of this state for
82 the issuance of preliminary injunctions.

83 (g) Any person may seek to compel compliance with the
84 material terms and conditions of a commission order issuing,

85 modifying or amending a siting certificate, or resolving a
86 complaint related to the holder's compliance with the material
87 terms and conditions a siting certificate through appropriate
88 proceedings in any circuit court having jurisdiction.

89 (h) The material terms and conditions of a commission
90 order issuing, modifying or amending a siting certificate or
91 resolving a complaint related to the holder's compliance with
92 the material terms and conditions of a commission order issuing
93 a siting certificate shall continue to apply to any transferee of
94 the siting certificate or to any transferee of all or a portion of
95 the ownership interest in an electric generating facility for
96 which a siting certificate has been issued. In either case, the
97 transferee or original holder of the siting certificate shall be
98 subject to the continuing jurisdiction of the commission to the
99 extent provided in subsections (e) and (f) of this section.

100 (i) Any party feeling aggrieved by a final order of the
101 commission under this section may petition for a review thereof
102 by the supreme court of appeals pursuant to section one, article
103 five of this chapter.

104 (j) The commission may prescribe such rules as may be
105 necessary to carry out the provisions of this section in accor-
106 dance with the provisions of section seven, article one of this
107 chapter. Such rules may include and provide for an application
108 fee to be charged an applicant for a siting certificate, or for a
109 modification of, or amendment to, a siting certificate previously
110 issued, under the provisions of this section, which fee shall be
111 paid into the state treasury and kept in a special fund designated
112 public service commission fund as established in subsection (a),
113 section six, article three of this chapter, to be used for the
114 purposes set forth in that subsection.

CHAPTER 181

(Com. Sub. for S. B. 422 — By Senator Chafin)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to broadening the power of the public service commission to allow an emergency rate for a municipality or a utility cooperative.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

- 1 (a) The rates and charges of electric cooperatives, natural
- 2 gas cooperatives and municipally operated public utilities,
- 3 except for municipally operated commercial solid waste
- 4 facilities as defined in section two, article fifteen, chapter
- 5 twenty-two of this code, and the rates and charges for local
- 6 exchange services provided by telephone cooperatives are not
- 7 subject to the rate approval provisions of section four or four-a
- 8 of this article, but are subject to the limited rate provisions of
- 9 this section.

10 (b) All rates and charges set by electric cooperatives,
11 natural gas cooperatives and municipally operated public
12 utilities and all rates and charges for local exchange services set
13 by telephone cooperatives shall be just, reasonable, applied
14 without unjust discrimination or preference and based primarily
15 on the costs of providing these services. The rates and charges
16 shall be adopted by the electric, natural gas or telephone
17 cooperative's governing board and in the case of the municipi-
18 pally operated public utility by municipal ordinance to be
19 effective not sooner than forty-five days after adoption:
20 *Provided*, That notice of intent to effect a rate change shall be
21 specified on the monthly billing statement of the customers of
22 the utility for the month next preceding the month in which the
23 rate change is to become effective or the utility shall give its
24 customers, and in the case of a cooperative, its customers,
25 members and stockholders, other reasonable notices as will
26 allow filing of timely objections to the rate change. The rates
27 and charges shall be filed with the commission, together with
28 any information showing the basis of the rates and charges and
29 other information as the commission considers necessary. Any
30 change in the rates and charges with updated information shall
31 be filed with the commission. If a petition, as set out in subdivi-
32 sion (1), (2) or (3), subsection (c) of this section is received and
33 the electric cooperative, natural gas cooperative, telephone
34 cooperative or municipality has failed to file with the commis-
35 sion the rates and charges with information showing the basis
36 of rates and charges and other information as the commission
37 considers necessary, the suspension period limitation of one
38 hundred twenty days and the one hundred-day period limitation
39 for issuance of an order by a hearing examiner, as contained in
40 subsections (d) and (e) of this section, is tolled until the
41 necessary information is filed. The electric cooperative, natural
42 gas cooperative, telephone cooperative or municipality shall set
43 the date when any new rate or charge is to go into effect.

44 (c) The commission shall review and approve or modify the
45 rates upon the filing of a petition within thirty days of the
46 adoption of the ordinance or resolution changing the rates or
47 charges by:

48 (1) Any customer aggrieved by the changed rates or charges
49 who presents to the commission a petition signed by not less
50 than twenty-five percent of the customers served by the
51 municipally operated public utility or twenty-five percent of the
52 membership of the electric, natural gas or telephone cooperative
53 residing within the state;

54 (2) Any customer who is served by a municipally operated
55 public utility and who resides outside the corporate limits and
56 who is affected by the change in the rates or charges and who
57 presents to the commission a petition alleging discrimination
58 between customers within and without the municipal bound-
59 aries. The petition shall be accompanied by evidence of
60 discrimination; or

61 (3) Any customer or group of customers who are affected
62 by the change in rates who reside within the municipal bound-
63 aries and who present a petition to the commission alleging
64 discrimination between customer or group of customers and
65 other customers of the municipal utility. The petition shall be
66 accompanied by evidence of discrimination.

67 (d) (1) The filing of a petition with the commission signed
68 by not less than twenty-five percent of the customers served by
69 the municipally operated public utility or twenty-five percent of
70 the membership of the electric, natural gas or telephone
71 cooperative residing within the state under subdivision (1),
72 subsection (c) of this section shall suspend the adoption of the
73 rate change contained in the ordinance or resolution for a period
74 of one hundred twenty days from the date the rates or charges

75 would otherwise go into effect or until an order is issued as
76 provided herein.

77 (2) Upon sufficient showing of discrimination by customers
78 outside the municipal boundaries or a customer or a group of
79 customers within the municipal boundaries under a petition
80 filed under subdivision (2) or (3), subsection (c) of this section,
81 the commission shall suspend the adoption of the rate change
82 contained in the ordinance for a period of one hundred twenty
83 days from the date the rates or charges would otherwise go into
84 effect or until an order is issued as provided herein.

85 (e) The commission shall forthwith appoint a hearing
86 examiner from its staff to review the grievances raised by the
87 petitioners. The hearing examiner shall conduct a public
88 hearing and shall, within one hundred days from the date the
89 rates or charges would otherwise go into effect, unless other-
90 wise tolled as provided in subsection (b) of this section, issue
91 an order approving, disapproving or modifying, in whole or in
92 part, the rates or charges imposed by the electric, natural gas or
93 telephone cooperative or by the municipally operated public
94 utility pursuant to this section.

95 (f) Upon receipt of a petition for review of the rates under
96 the provisions of subsection (c) of this section, the commission
97 may exercise the power granted to it under the provisions of
98 section three of this article. The commission may determine the
99 method by which the rates are reviewed and may grant and
100 conduct a de novo hearing on the matter if the customer,
101 electric, natural gas or telephone cooperative or municipality
102 requests a hearing.

103 (g) The commission may, upon petition by a municipality
104 or electric, natural gas or telephone cooperative, allow an
105 interim or emergency rate to take effect, subject to refund or
106 future modification, if it is determined that the interim or

107 emergency rate is necessary to protect the municipality from
108 financial hardship attributable to the purchase of the utility
109 commodity sold, or the commission determines that a tempo-
110 rary or interim rate increase is necessary for the utility to avoid
111 financial distress. In such cases, the commission may waive the
112 45-day waiting period provided for in subsection (b) of this
113 section and the one hundred twenty-day suspension period
114 provided for in subsection (d) of this section.

115 (h) Notwithstanding any other provision, the commission
116 has no authority or responsibility with regard to the regulation
117 of rates, income, services or contracts by municipally operated
118 public utilities for services which are transmitted and sold
119 outside of the state of West Virginia.

CHAPTER 182

(S. B. 436 — By Senators Hunter, Oliverio, Prezioso, Kessler, Snyder,
Caldwell, Dempsey, Love, Bailey, Helmick, McCabe, Rowe,
Fanning, Bowman, McKenzie, Ross, White, Jenkins,
Minard, Unger and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article eight, relating to directing
the public service commission to implement the West Virginia
211 information and referral system in accordance with the
recommendations of the public service commissions' appointed
task force as reported to the Legislature in two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. 211 INFORMATION AND REFERRAL SYSTEM.

§24-8-1. Legislative findings.

§24-8-2. Rule-making authority.

§24-8-1. Legislative findings.

1 The Legislature finds that it is in the best interest of the
2 citizens of West Virginia to implement the universally, free
3 access telephone number “211” made available by the federal
4 communications commission for states to develop an informa-
5 tion and referral source for human and social services. The
6 “211” system will provide a vital resource to the citizens of
7 West Virginia for social and human service information and
8 referral by providing a critical connection between individuals
9 and families in need and the appropriate community-based
10 organizations and government agencies.

11 The Legislature further finds that implementing the “211”
12 information and referral system will serve as a centralized
13 resource for human and social service professionals, medical
14 personnel, government agencies and charitable organizations by
15 providing a full spectrum of service options to the citizens of
16 West Virginia. The “211” system will also serve as a central-
17 ized point in times of natural disasters or national emergencies
18 by providing access to information for the coordination of
19 relief.

20 Therefore, the Legislature authorizes and directs the public
21 service commission to implement the “211” information and
22 referral system in accordance with the recommendations of the
23 public service commissions’ appointed task force as reported to
24 the Legislature.

§24-8-2. Rule-making authority.

1 The public service commission shall propose rules for
2 legislative promulgation in accordance with article three,
3 chapter twenty-nine-a of this code regarding the implementa-
4 tion and administration of this system. From the effective date
5 of this section until the date of the promulgation of these rules,
6 the commission may file rules as emergency rules in accor-
7 dance with the applicable provisions of this code in order to
8 implement and administer this system.

CHAPTER 183

(Com. Sub. for S. B. 412 — By Senators Love, Sharpe,
Sprouse and Minear)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; public utility services; providing that unpaid charges for services do not become a lien against the owner of real property nor is the owner liable for the charges unless the owner contracted directly with the provider for the services; modifying deposit; and providing refund of deposit with interest.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE,
STORMWATER AND GAS SERVICES.**

**§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections;
lien for delinquent fees.**

1 (a)(1) The board may make, enact and enforce all needful
2 rules in connection with the acquisition, construction, improve-
3 ment, extension, management, maintenance, operation, care,
4 protection and the use of any public service properties owned
5 or controlled by the district. The board shall establish rates, fees
6 and charges for the services and facilities it furnishes, which
7 shall be sufficient at all times, notwithstanding the provisions
8 of any other law or laws, to pay the cost of maintenance,
9 operation and depreciation of the public service properties and
10 principal of and interest on all bonds issued, other obligations
11 incurred under the provisions of this article and all reserve or
12 other payments provided for in the proceedings which autho-
13 rized the issuance of any bonds under this article. The schedule
14 of the rates, fees and charges may be based upon:

15 (A) The consumption of water or gas on premises con-
16 nected with the facilities, taking into consideration domestic,
17 commercial, industrial and public use of water and gas;

18 (B) The number and kind of fixtures connected with the
19 facilities located on the various premises;

20 (C) The number of persons served by the facilities;

21 (D) Any combination of paragraphs (A), (B) and (C) of this
22 subdivision; or

23 (E) May be determined on any other basis or classification
24 which the board may determine to be fair and reasonable,
25 taking into consideration the location of the premises served
26 and the nature and extent of the services and facilities fur-

27 nished. However, no rates, fees or charges for stormwater
28 services may be assessed against highways, road and drainage
29 easements or stormwater facilities constructed, owned or
30 operated by the West Virginia division of highways.

31 (2) Where water, sewer, stormwater or gas services, or any
32 combination thereof, are all furnished to any premises, the
33 schedule of charges may be billed as a single amount for the
34 aggregate of the charges. The board shall require all users of
35 services and facilities furnished by the district to designate on
36 every application for service whether the applicant is a tenant
37 or an owner of the premises to be served. If the applicant is a
38 tenant, he or she shall state the name and address of the owner
39 or owners of the premises to be served by the district. Notwith-
40 standing the provisions of section eight, article three, chapter
41 twenty-four of this code to the contrary, all new applicants for
42 service shall deposit the greater of a sum equal to two twelfths
43 of the average annual usage of the applicant's specific customer
44 class or fifty dollars, with the district to secure the payment of
45 service rates, fees and charges in the event they become
46 delinquent as provided in this section. If a district provides both
47 water and sewer service, all new applicants for service shall
48 deposit the greater of a sum equal to two twelfths of the average
49 annual usage for water service or fifty dollars and the greater of
50 a sum equal to two twelfths of the average annual usage for
51 wastewater service of the applicant's specific customer class or
52 fifty dollars. In any case where a deposit is forfeited to pay
53 service rates, fees and charges which were delinquent at the
54 time of disconnection or termination of service, no reconnection
55 or reinstatement of service may be made by the district until
56 another deposit equal to the greater of a sum equal to two
57 twelfths of the average usage for the applicant's specific
58 customer class or fifty dollars has been remitted to the district.
59 After twelve months of prompt payment history, the district
60 shall return the deposit to the customer or credit the customer's
61 account at a rate as the public service commission may pre-
62 scribe: *Provided*, That where the customer is a tenant, the
63 district is not required to return the deposit until the time the
64 tenant discontinues service with the district. Whenever any

65 rates, fees, rentals or charges for services or facilities furnished
66 remain unpaid for a period of twenty days after the same
67 become due and payable, the user of the services and facilities
68 provided is delinquent and the user is liable at law until all
69 rates, fees and charges are fully paid. The board may, under
70 reasonable rules promulgated by the public service commission,
71 shut off and discontinue water or gas services to all delinquent
72 users of either water or gas facilities, or both, ten days after the
73 water or gas services become delinquent.

74 (b) In the event that any publicly or privately owned utility,
75 city, incorporated town, other municipal corporation or other
76 public service district included within the district owns and
77 operates separately either water facilities or sewer facilities, and
78 the district owns and operates the other kind of facilities, either
79 water or sewer, as the case may be, then the district and the
80 publicly or privately owned utility, city, incorporated town or
81 other municipal corporation or other public service district shall
82 covenant and contract with each other to shut off and discon-
83 tinue the supplying of water service for the nonpayment of
84 sewer service fees and charges: *Provided*, That any contracts
85 entered into by a public service district pursuant to this section
86 shall be submitted to the public service commission for
87 approval. Any public service district providing water and sewer
88 service to its customers has the right to terminate water service
89 for delinquency in payment of either water or sewer bills.
90 Where one public service district is providing sewer service and
91 another public service district or a municipality included within
92 the boundaries of the sewer district is providing water service,
93 and the district providing sewer service experiences a delin-
94 quency in payment, the district or the municipality included
95 within the boundaries of the sewer district that is providing
96 water service, upon the request of the district providing sewer
97 service to the delinquent account, shall terminate its water
98 service to the customer having the delinquent sewer account:
99 *Provided, however*, That any termination of water service must
100 comply with all rules and orders of the public service commis-
101 sion.

102 (c) Any district furnishing sewer facilities within the district
103 may require, or may by petition to the circuit court of the
104 county in which the property is located, compel or may require
105 the division of health to compel all owners, tenants or occu-
106 pants of any houses, dwellings and buildings located near any
107 sewer facilities where sewage will flow by gravity or be
108 transported by other methods approved by the division of
109 health, including, but not limited to, vacuum and pressure
110 systems, approved under the provisions of section nine, article
111 one, chapter sixteen of this code, from the houses, dwellings or
112 buildings into the sewer facilities, to connect with and use the
113 sewer facilities and to cease the use of all other means for the
114 collection, treatment and disposal of sewage and waste matters
115 from the houses, dwellings and buildings where there is gravity
116 flow or transportation by any other methods approved by the
117 division of health, including, but not limited to, vacuum and
118 pressure systems, approved under the provisions of section
119 nine, article one, chapter sixteen of this code and the houses,
120 dwellings and buildings can be adequately served by the sewer
121 facilities of the district and it is declared that the mandatory use
122 of the sewer facilities provided for in this paragraph is neces-
123 sary and essential for the health and welfare of the inhabitants
124 and residents of the districts and of the state. If the public
125 service district requires the property owner to connect with the
126 sewer facilities even when sewage from dwellings may not flow
127 to the main line by gravity and the property owner incurs costs
128 for any changes in the existing dwellings' exterior plumbing in
129 order to connect to the main sewer line, the public service
130 district board shall authorize the district to pay all reasonable
131 costs for the changes in the exterior plumbing, including, but
132 not limited to, installation, operation, maintenance and purchase
133 of a pump or any other method approved by the division of
134 health. Maintenance and operation costs for the extra installa-
135 tion should be reflected in the users charge for approval of the
136 public service commission. The circuit court shall adjudicate

137 the merits of the petition by summary hearing to be held not
138 later than thirty days after service of petition to the appropriate
139 owners, tenants or occupants.

140 (d) Whenever any district has made available sewer
141 facilities to any owner, tenant or occupant of any house,
142 dwelling or building located near the sewer facility and the
143 engineer for the district has certified that the sewer facilities are
144 available to and are adequate to serve the owner, tenant or
145 occupant and sewage will flow by gravity or be transported by
146 other methods approved by the division of health from the
147 house, dwelling or building into the sewer facilities, the district
148 may charge, and the owner, tenant or occupant shall pay the
149 rates and charges for services established under this article only
150 after thirty-day notice of the availability of the facilities has
151 been received by the owner, tenant or occupant. Rates and
152 charges for sewage services shall be based upon actual water
153 consumption or the average monthly water consumption based
154 upon the owner's, tenant's or occupant's specific customer
155 class.

156 (e) Whenever any district has made available a stormwater
157 system to any owner, tenant or occupant of any real property
158 located near the stormwater system and where stormwater from
159 real property affects or drains into the stormwater system, it is
160 hereby found, determined and declared that the owner, tenant
161 or occupant is being served by the stormwater system and it is
162 further hereby found, determined and declared that the manda-
163 tory use of the stormwater system is necessary and essential for
164 the health and welfare of the inhabitants and residents of the
165 district and of the state. The district may charge, and the owner,
166 tenant or occupant shall pay the rates, fees and charges for
167 stormwater services established under this article only after
168 thirty-day notice of the availability of the stormwater system
169 has been received by the owner.

170 (f) All delinquent fees, rates and charges of the district for
171 either water facilities, sewer facilities, gas facilities or storm-
172 water systems or stormwater management programs are liens on
173 the premises served of equal dignity, rank and priority with the
174 lien on the premises of state, county, school and municipal
175 taxes. In addition to the other remedies provided in this section,
176 public service districts are granted a deferral of filing fees or
177 other fees and costs incidental to the bringing and maintenance
178 of an action in magistrate court for the collection of delinquent
179 water, sewer, stormwater or gas bills. If the district collects the
180 delinquent account, plus reasonable costs, from its customer or
181 other responsible party, the district shall pay to the magistrate
182 the normal filing fee and reasonable costs which were previ-
183 ously deferred. In addition, each public service district may
184 exchange with other public service districts a list of delinquent
185 accounts: *Provided*, That an owner of real property may not be
186 held liable for the delinquent rates or charges for services or
187 facilities of a tenant, nor may any lien attach to real property for
188 the reason of delinquent rates or charges for services or
189 facilities of a tenant of the real property, unless the owner has
190 contracted directly with the public service district to purchase
191 the services or facilities.

192 (g) Anything in this section to the contrary notwithstanding,
193 any establishment, as defined in section three, article eleven,
194 chapter twenty-two, now or hereafter operating its own sewage
195 disposal system pursuant to a permit issued by the division of
196 environmental protection, as prescribed by section eleven,
197 article eleven, chapter twenty-two of this code, is exempt from
198 the provisions of this section.

CHAPTER 184

(Com. Sub. for H. B. 3068 — By Delegates Staton,
R. Thompson and Perdue)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contracts for the provision of engineering, design or feasibility studies by public service districts.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER SEWERAGE
AND GAS SERVICES.**

§16-13A-25. Borrowing and bond issuance; procedure.

- 1 (a) Notwithstanding any other provisions of this article to
- 2 the contrary, a public service district may not borrow money,
- 3 enter into contracts for the provision of engineering, design or
- 4 feasibility studies, issue or contract to issue revenue bonds or
- 5 exercise any of the powers conferred by the provisions of
- 6 section thirteen, twenty or twenty-four of this article, without
- 7 the prior consent and approval of the public service commis-
- 8 sion.

9 (b) The public service commission may waive the provision
10 of prior consent and approval for entering into contracts for
11 engineering, design or feasibility studies pursuant to this section
12 for good cause shown which is evidenced by the public service
13 district filing a request for waiver of this section stated in a
14 letter directed to the commission with a brief description of the
15 project, a verified statement by the board members that the
16 public service district has complied with chapter five-g of this
17 code, and further explanation of ability to evaluate their own
18 engineering contract, including, but not limited to: (1) Experi-
19 ence with the same engineering firm; or (2) completion of a
20 construction project requiring engineering services. The district
21 shall also forward an executed copy of the engineering contract
22 to the commission after receiving approval of the waiver.

23 (c) An engineering contract that meets one or more of the
24 following criteria is exempt from the waiver or approval
25 requirements:

26 (1) A contract with a public service district that is a Class
27 A utility on the first day of April, two thousand three, or
28 subsequently becomes a Class A utility as defined by commis-
29 sion rule;

30 (2) A contract with a public service district that does not
31 require borrowing and that can be paid out of existing rates;

32 (3) A contract where the payment of engineering fees are
33 contingent upon the receipt of funding, and commission
34 approval of the funding, to construct the project which is the
35 subject of the contract; or

36 (4) A contract that does not exceed fifteen thousand dollars.

37 (d) Requests for approval or waivers of engineering
38 contracts shall be deemed granted thirty days after the filing
39 date unless the staff of the public service commission or a party

40 files an objection to the request. If an objection is filed, the
41 public service commission shall issue its decision within one
42 hundred twenty days of the filing date. In the event objection is
43 received to a request for a waiver, the application shall be
44 considered a request for waiver as well as a request for approval
45 in the event a waiver is not appropriate.

46 (e) Unless the properties to be constructed or acquired
47 represent ordinary extensions or repairs of existing systems in
48 the usual course of business, a public service district must first
49 obtain a certificate of public convenience and necessity from
50 the public service commission in accordance with the provi-
51 sions of chapter twenty-four of this code, when a public service
52 district is seeking to acquire or construct public service prop-
53 erty.

54 Thirty days prior to making formal application for the
55 certificate, the public service district shall prefile with the
56 public service commission its plans and supporting information
57 for the project in a manner prescribed by public service
58 commission rules and regulations.

CHAPTER 185

(H. B. 2534 — By Delegates Doyle, Manuel, Tabb,
Campbell, Duke, Blair and Trump)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighty-five, article
twenty-four, chapter eight of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to the tax

on the privilege of transferring title to real estate; and eliminating the maximum value of the property to which the tax applies.

Be it enacted by the Legislature of West Virginia:

That section eighty-five, article twenty-four, 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 24. PLANNING AND ZONING.

§8-24-85. Tax on privilege of transferring real property.

1 (a) Notwithstanding the provisions of section two, article
2 twenty-two, chapter eleven, and effective on the effective date
3 of the amendments of this section enacted during the two
4 thousand three regular session of the Legislature and thereafter,
5 in addition to the tax imposed pursuant to article twenty-two,
6 chapter eleven of this code, any county commission that has
7 created a farmland protection program may impose an addi-
8 tional county excise tax for the privilege of transferring title to
9 real estate at the rate of no more than one dollar and ten cents
10 for each five hundred dollars' value or fraction thereof, as
11 represented by any document as defined in section one, article
12 twenty-two, chapter eleven of this code, payable at the time of
13 delivery, acceptance or presentation for recording of the
14 document.

15 (b) The tax imposed pursuant to this section is to be
16 administered and collected as the tax on the privilege of
17 transferring title to real estate imposed pursuant to the provi-
18 sions of article twenty-two, chapter eleven of this code.

19 (c) The tax imposed pursuant to this section is to be used
20 exclusively for the purpose of funding farmland preservation.

CHAPTER 186

(H. B. 2802 — By Delegates Staton, Palumbo, Hrutkay
and R. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine; and to amend article three, chapter thirty-six of said code, by adding thereto a new section, designated section five-a, all relating to the description of property required to create an easement or right-of-way by deed or other legal instrument; providing that a description of the easement be filed with the deed or other instrument executing the easement; excludes specified easements and right-of-ways from this requirement; and exempts certain documents from survey and certification filing requirements.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-four 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; and that article three, chapter thirty-six of said code be amended by adding thereto a new section, designated section five-a, all to read as follows:

Chapter

- 24. Public Service Commission.
- 36. Estates and Property.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT
TO REGULATIONS OF COMMISSION.**

§24-3-9. Easement and right-of-way.

1 A public utility may not acquire an easement or right-of-
2 way unless the deed or other instrument granting or reserving
3 the easement or right-of-way describes the property in accor-
4 dance with the requirements of section five-a, article three,
5 chapter thirty-six of this code.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

**§36-3-5a. Easement and right-of-way; description of property;
exception for certain public utility facilities.**

1 (a) Any deed or instrument that initially grants or reserves
2 an easement or right-of-way shall describe the easement or
3 right-of-way by metes and bounds, or by specification of the
4 centerline of the easement or right-of-way, or by station and
5 offset, or by reference to an attached drawing or plat which may
6 not require a survey, or instrument based on the use of the
7 global positioning system which may not require a survey, or
8 by source of title and reference to the most recent deed suffi-
9 cient to reasonably identify and locate the easement or right-of-
10 way on the property: *Provided*, That the easement or right-of-
11 way is not invalid because of the failure of the easement or
12 right-of-way to meet the requirements of this subsection.

13 (b) This section does not apply to the construction of a
14 service extension from a main distribution system of a public
15 utility when such service extension is located entirely on,
16 below, or above the property to which the utility service is to be
17 provided.

18 (c) The clerk of the county commission of any county in
19 which an easement or right-of-way is recorded pursuant to this
20 section shall only accept for recordation any document that
21 complies with this section and that otherwise complies with the
22 requirements of article one, chapter thirty-nine of this code,
23 without need for a survey or certification under section twelve,
24 article thirteen-a, chapter thirty of this code.

CHAPTER 187

(H. B. 3062 — By Delegate Michael)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to partition of real estate; and authorizing partition of real estate owned by certain close corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARTITION.

§37-4-1. Who entitled to partition; jurisdiction; state as party plaintiff.

1 Tenants in common, joint tenants and coparceners of real
2 property, including minerals, lessees of mineral rights other
3 than lessees of oil and gas minerals and stockholders of a

4 closely held corporation when there are no more than five
5 stockholders and the only substantial asset of the corporation is
6 real estate, shall be compelled to make partition, and the circuit
7 court of the county wherein the land or estate, or any part
8 thereof, may be, has jurisdiction, in cases of partition, and in the
9 exercise of that jurisdiction, may take cognizance of all
10 questions of law affecting the legal title, that may arise in any
11 proceedings.

12 The state hereafter shall, whenever it is an owner of an
13 undivided interest in any land or real estate, together with other
14 persons, become a party plaintiff in any proceedings by any
15 person entitled to demand partition under the first sentence of
16 this section. Before instituting suit for partition the person
17 entitled to demand it shall notify the proper official who has
18 supervision of the state land and thereafter they shall proceed
19 as they determine best. In all cases resulting in partition or sale
20 the costs of suit shall come from the proceeds of sale. No state
21 official in charge of state lands may refuse to perform his duty
22 in any case where any person is entitled to demand a partition,
23 or sale under this article.

CHAPTER 188

(Com. Sub. for H. B. 2239 — By Delegates Boggs and Kuhn)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one thousand five hundred one, article fifteen, chapter thirty-one-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one thousand four hundred one, article

fourteen, chapter thirty-one-e of said code; and to amend and reenact section two, article sixteen, chapter forty-seven of said code, all relating to the reporting procedures of collection agencies; providing that certain entities collecting debts originally owed them is not defined as a collection agency; and providing that a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state, if their business is defined as a collection agency.

Be it enacted by the Legislature of West Virginia:

That section one thousand five hundred one, article fifteen, chapter thirty-one-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one thousand four hundred one, article fourteen, chapter thirty-one-e of said code be amended and reenacted; and that section two, article sixteen, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

31D. West Virginia Business Corporation Act.

31E. West Virginia Nonprofit Corporation Act.

47. Regulation of Trade.

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 15. FOREIGN CORPORATIONS.

**§31D-15-1501. Authority to transact business and jurisdiction
over foreign corporations.**

1 (a) A foreign corporation may not conduct affairs in this
2 state until it obtains a certificate of authority from the secretary
3 of state.

4 (b) The following activities, among others, do not constitute
5 conducting affairs within the meaning of subsection (a) of this
6 section:

7 (1) Maintaining, defending or settling any proceeding;

8 (2) Holding meetings of the board of directors or sharehold-
9 ers or carrying on other activities concerning internal corporate
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or
14 through employees or agents or otherwise, if the orders require
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages and
17 security interests in real or personal property;

18 (7) Securing or collecting debts or enforcing mortgages and
19 security interests in property securing the debts: *Provided*, That
20 this exemption does not include debts collected by collection
21 agencies as defined in subdivision (b), section two, article
22 sixteen, chapter forty-seven of this code;

23 (8) Owning, without more, real or personal property;

24 (9) Conducting an isolated transaction that is completed
25 within thirty days and that is not one in the course of repeated
26 transactions of a like nature;

27 (10) Conducting affairs in interstate commerce;

28 (11) Granting funds or other gifts;

29 (12) Distributing information to its shareholders or mem-
30 bers;

31 (13) Effecting sales through independent contractors;

32 (14) The acquisition by purchase of lands secured by
33 mortgage or deeds;

34 (15) Physical inspection and appraisal of property in West
35 Virginia as security for deeds of trust, or mortgages and
36 negotiations for the purchase of loans secured by property in
37 West Virginia; and

38 (16) The management, rental, maintenance and sale or the
39 operating, maintaining, renting or otherwise dealing with
40 selling or disposing of property acquired under foreclosure sale
41 or by agreement in lieu of foreclosure sale.

42 (c) The list of activities in subsection (b) of this section is
43 not exhaustive.

44 (d) A foreign corporation is deemed to be transacting
45 business in this state if:

46 (1) The corporation makes a contract to be performed, in
47 whole or in part, by any party thereto in this state;

48 (2) The corporation commits a tort, in whole or in part, in
49 this state; or

50 (3) The corporation manufactures, sells, offers for sale or
51 supplies any product in a defective condition and that product
52 causes injury to any person or property within this state
53 notwithstanding the fact that the corporation had no agents,
54 servants or employees or contacts within this state at the time
55 of the injury.

56 (e) A foreign corporation's making of a contract, the
57 committing of a manufacture or sale, offer of sale or supply of
58 defective product as described in subsection (d) of this section
59 is deemed to be the agreement of that foreign corporation that
60 any notice or process served upon, or accepted by, the secretary

61 of state in a proceeding against that foreign corporation arising
62 from, or growing out of, contract, tort or manufacture or sale,
63 offer of sale or supply of the defective product has the same
64 legal force and validity as process duly served on that corpora-
65 tion in this state.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1401. Authority to conduct affairs required.

1 (a) A foreign corporation may not conduct affairs in this
2 state until it obtains a certificate of authority from the secretary
3 of state.

4 (b) The following activities, among others, do not constitute
5 conducting affairs within the meaning of subsection (a) of this
6 section:

7 (1) Maintaining, defending, or settling any proceeding;

8 (2) Holding meetings of the board of directors or members
9 or carrying on other activities concerning internal corporate
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or
14 through employees or agents or otherwise, if the orders require
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages, and
17 security interests in real or personal property: *Provided*, That
18 this exemption does not include debts collected by collection

19 agencies as defined in subdivision (b), section two, article
20 sixteen, chapter forty-seven of this code;

21 (7) Securing or collecting debts or enforcing mortgages and
22 security interests in property securing the debts;

23 (8) Owning, without more, real or personal property;

24 (9) Conducting an isolated transaction that is completed
25 within thirty days and that is not one in the course of repeated
26 transactions of a like nature;

27 (10) Conducting affairs in interstate commerce;

28 (11) Granting funds or other gifts;

29 (12) Distributing information to its shareholders or mem-
30 bers;

31 (13) Effecting sales through independent contractors;

32 (14) The acquisition by purchase of lands secured by
33 mortgage or deeds;

34 (15) Physical inspection and appraisal of property in West
35 Virginia as security for deeds of trust, or mortgages and
36 negotiations for the purchase of loans secured by property in
37 West Virginia; and

38 (16) The management, rental, maintenance and sale; or the
39 operating, maintaining, renting or otherwise, dealing with
40 selling or disposing of property acquired under foreclosure sale
41 or by agreement in lieu of foreclosure sale.

42 (c) The list of activities in subsection (b) of this section is
43 not exhaustive.

44 (d) A foreign corporation is to be deemed to be conducting
45 affairs in this state if:

46 (1) The corporation makes a contract to be performed, in
47 whole or in part, by any party thereto, in this state;

48 (2) The corporation commits a tort, in whole or in part, in
49 this state; or

50 (3) The corporation manufactures, sells, offers for sale or
51 supplies any product in a defective condition and that product
52 causes injury to any person or property within this state
53 notwithstanding the fact that the corporation had no agents,
54 servants or employees or contacts within this state at the time
55 of the injury.

56 (e) A foreign corporation's making of a contract, the
57 committing of a manufacture or sale, offer of sale or supply of
58 defective product as described in subsection (d) of this section
59 is deemed to be the agreement of that foreign corporation that
60 any notice or process served upon, or accepted by, the secretary
61 of state in a proceeding against that foreign corporation arising
62 from, or growing out of, contract, tort, or manufacture or sale,
63 offer of sale or supply of the defective product has the same
64 legal force and validity as process duly served on that corpora-
65 tion in this state.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 16. COLLECTION AGENCIES.

§47-16-2. Definitions.

1 The following words and terms as used in this article shall
2 be construed as follows:

3 (a) "Claim" means any obligation for the payment of
4 money due or asserted to be due to another person, firm,
5 corporation or association.

6 (b) "Collection agency" means and includes all persons,
7 firms, corporations and associations: (1) Directly or indirectly
8 engaged in the business of soliciting from or collecting for
9 others any account, bill or indebtedness originally due or
10 asserted to be owed or due another and all persons, firms,
11 corporations and associations directly or indirectly engaged in
12 asserting, enforcing or prosecuting those claims; (2) which, in
13 attempting to collect or in collecting his or her or its own
14 accounts or claims uses a fictitious name or names other than
15 his or her or its own name; (3) which attempts to or does give
16 away or sell to others any system or series of letters or forms
17 for use in the collection of accounts or claims which assert or
18 indicate directly or indirectly that the claims or accounts are
19 being asserted or collected by any person, firm, corporation or
20 association other than the creditor or owner of the claim or
21 account; or (4) directly or indirectly engaged in the business of
22 soliciting, or who holds himself or herself out as engaged in the
23 business of soliciting, debts of any kind owed or due, or
24 asserted to be owed or due, to any solicited person, firm,
25 corporation or association for fee, commission or other com-
26 pensation.

27 The term "collection agency" shall not mean or include: (1)
28 Regular employees of a single creditor or of a collection agency
29 licensed hereunder; (2) banks; (3) trust companies; (4) savings
30 and loan associations; (5) building and loan associations; (6)
31 industrial loan companies; (7) small loan companies; (8)
32 abstract companies doing an escrow business; (9) duly licensed
33 real estate brokers or agents when the claims or accounts being
34 handled by such broker or agent are related to or in connection
35 with such brokers' or agents' regular real estate business; (10)
36 express and telegraph companies subject to public regulation
37 and supervision; (11) attorneys-at-law handling claims and
38 collections in their own names and not operating a collection
39 agency under the management of a layman; (12) any person,
40 firm, corporation or association acting under the order of any

41 court of competent jurisdiction; or (13) any person collecting a
42 debt owed to another person only where: (A) Both persons are
43 related by wholly-owned, common ownership or affiliated by
44 wholly-owned corporate control; (B) the person collecting the
45 debt acts only on behalf of persons related as described in
46 paragraph (A) of this subdivision; and (C) debt collection is not
47 the principal business of the person collecting the debt.

48 (c) "Commissioner" means the state tax commissioner or
49 his or her agent.

50 (d) "Customer" means any person, firm, corporation or
51 association who has filed, assigned or sold any claim or chose
52 in action with or to a collection agency for collection.

53 (e) "Licensee" means any person holding a business
54 franchise registration certificate under section two, article
55 twelve, chapter eleven of this code and under the provisions of
56 this article.

57 (f) "Trust account" means a special account established by
58 a collection agency with a banking institution in this state,
59 wherein funds collected on behalf of a customer shall be
60 deposited.

CHAPTER 189

(Com. Sub. for S. B. 455 — By Senators Minard and Unger)

[Passed March 7, 2003; in effect from passage. 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 fifteen-b, relating to authorizing service credit toward retirement to public employees for public employment in another state.

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 fifteen-b, to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15b. Credit for public employment in another state.

1 (a) Any member of the retirement system who has previ-
2 ously been employed in public employment in any other state
3 of the United States is entitled to receive credited service for the
4 time of public employment in that state, not to exceed five
5 years, if the member substantiates by appropriate documenta-
6 tion or evidence his or her public employment in another state
7 and makes contributions as required: *Provided*, That the
8 employee is not entitled to receive the credited service if the
9 employee is vested or entitled to be vested in a retirement
10 system of the state in which the employment credit was earned
11 and the employee is entitled to service credit in that retirement
12 system for the employment period for which the applicant seeks
13 credited service in West Virginia: *Provided, however*, That the
14 service credit from the other state may not be used to meet
15 West Virginia's eligibility requirements for retirement or
16 vesting.

17 Employees entitled to out-of-state service credit under the
18 provisions of this section shall make additional contribution to
19 the retirement system equal to the actuarial equivalent of the
20 amount which would have been contributed, together with
21 earnings thereon, by the employee and the employer, had the

22 employee been covered during the period of the retroactive
23 service credit.

24 (b) In any case of doubt as to the period of service to be
25 credited a member under the provisions of this section, the
26 board of trustees has the final power to determine this period.

CHAPTER 190

(H. B. 2975 — By Delegate Kominar)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a time period a member of the public employees retirement system has to repurchase service credit previously forfeited.

Be it enacted by the Legislature of West Virginia:

That section eighteen, 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.

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires or dies,
2 he or she ceases to be a member. When a member leaves the
3 employ of a participating public employer for any other reason,
4 he or she ceases to be a member and forfeits service credited to
5 him or her at that time. If he or she becomes reemployed by a

6 participating public employer he or she shall be reinstated as a
7 member of the retirement system and his or her credited service
8 last forfeited by him or her shall be restored to his or her credit:
9 *Provided*, That he or she must be reemployed for a period of
10 one year or longer to have the service restored: *Provided*,
11 *however*, That he or she returns to the members' deposit fund
12 the amount, if any, he or she withdrew from the fund, together
13 with regular interest on the withdrawn amount from the date of
14 withdrawal to the date of repayment, and that the repayment
15 begins within two years of the return to employment and that
16 the full amount is repaid within five years of the return to
17 employment.

18 (b) The Prestera center for mental health services, valley
19 comprehensive mental health center, Westbrook health services
20 and eastern panhandle mental health center, and their succes-
21 sors in interest, shall provide for their employees a pension plan
22 in lieu of the public employees retirement system during the
23 existence of the named mental health centers and their succes-
24 sors in interest.

25 (c) The administrative bodies of the Prestera center for
26 mental health services, valley comprehensive mental health
27 center, Westbrook health services and eastern panhandle mental
28 health center shall, on or before the first day of May, one
29 thousand nine hundred ninety-seven, give written notice to each
30 employee who is a member of the public employees retirement
31 system of the option to withdraw from or remain in the system.
32 The notice shall include a copy of this section and a statement
33 explaining the member's options regarding membership. The
34 notice shall include a statement in plain language giving a full
35 explanation and actuarial projection figures in support of the
36 explanation regarding the individual member's current account
37 balance, vested and nonvested, and his or her projected return
38 upon remaining in the public employees retirement system until
39 retirement, disability or death, in comparison with the projected

40 return upon withdrawing from the public employees retirement
41 system and joining a private pension plan provided by the
42 community mental health center and remaining therein until
43 retirement, disability or death. The administrative bodies shall
44 keep in their respective records a permanent record of each
45 employee's signature confirming receipt of the notice.

46 (d) Effective the first day of March, two thousand three,
47 and ending the thirty-first day of December, two thousand four,
48 any member may purchase credited service previously forfeited
49 by him or her and the credited service shall be restored to his or
50 her credit: *Provided*, That he or she returns to the members'
51 deposit fund the amount, if any, he or she withdrew from the
52 fund, together with interest on the withdrawn amount from the
53 date of withdrawal to the date of repayment at a rate to be
54 determined by the board. The repayment under this section may
55 be made by lump sum or repaid over a period of time not to
56 exceed sixty months. Where the member elects to repay the
57 required amount other than by lump sum, the member is
58 required to pay interest at the rate determined by the board until
59 all sums are fully repaid.

CHAPTER 191

(H. B. 2118 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 8, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of members of the

West Virginia state police retirement system and increasing certain benefits to dependents of a state trooper who dies in performance of his duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

**§15-2A-12. Awards and benefits to dependents of member —
When member dies in performance of duty, etc.;
dependent child scholarship and amount.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any member who has lost or
3 loses his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was or is engaged in the performance of his or her duties as a
7 member of the division, or the survivor of a member who dies
8 from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive
10 and shall be paid from the fund benefits as follows: To the
11 surviving spouse annually, in equal monthly installments during
12 his or her lifetime, one or the other of two amounts, which shall
13 become immediately available and which shall be the greater
14 of:

15 (1) An amount equal to nine tenths of the base salary
16 received in the preceding twelve-month employment period by
17 the deceased member: *Provided*, That if the member had not
18 been employed with the division for twelve months prior to his
19 or her death, the amount of monthly salary shall be annualized
20 for the purpose of determining the benefit; or

21 (2) The sum of ten thousand dollars.

22 In addition thereto, the surviving spouse is entitled to
23 receive and there shall be paid to that person one hundred fifty
24 dollars monthly for each dependent child or children. If the
25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the fund a sum equal to one third of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: *Provided*, That when there is but one dependent
34 parent surviving, that parent is entitled to receive during his or
35 her lifetime one-half the amount which both parents, if living,
36 would have been entitled to receive.

37 Any person qualifying as a surviving dependent child under
38 this section is, in addition to any other benefits due under this
39 or other sections of this article, entitled to receive a scholarship
40 to be applied to the career development education of that
41 person. This sum, up to but not exceeding seven thousand five
42 hundred dollars, shall be paid from the fund to any university
43 or college in this state or to any trade or vocational school or
44 other entity in this state approved by the board, to offset the
45 expenses of tuition, room and board, books, fees or other costs
46 incurred in a course of study at any of these institutions so long
47 as the recipient makes application to the board on an approved
48 form and under any rules the board provides and maintains
49 scholastic eligibility as defined by the institution or the board.
50 The board may by appropriate rules define age requirements,
51 physical and mental requirements, scholastic eligibility,
52 disbursement methods, institutional qualifications and other
53 requirements as necessary and not inconsistent with this
54 section.

55 Awards and benefits for a surviving spouse or dependents
56 of a member received under any section or any of the provi-
57 sions of this retirement system shall be in lieu of receipt of any
58 benefits for these persons under the provisions of any other
59 state retirement system. Receipt of benefits under any other
60 state retirement system shall be in lieu of any right to receive
61 any benefits under this retirement system, so that only a single
62 receipt of state retirement benefits shall occur.

CHAPTER 192

(H. B. 2984 — By Delegate H. White)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; increasing the amount of service credit a teacher off work on workers' compensation may purchase; setting forth a window for the purchase and providing that a teacher receive increment credit for each year purchased.

Be it enacted by the Legislature of West Virginia:

That section fourteen-b, 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-14b. Members' option to make contributions for periods of temporary total disability.

1 Any member who was absent from work while receiving
2 temporary total disability benefits pursuant to the provisions of
3 chapter twenty-three of this code as a result of a compensable
4 injury received in the course of and as a result of his or her
5 employment with the covered employer during the time period
6 beginning the first day of January, one thousand nine hundred
7 eighty-eight and the thirty-first day of December, one thousand
8 nine hundred ninety-eight, may purchase credited service for
9 that time period or those time periods the member was absent
10 from work as a result of a compensable injury and receiving
11 temporary total disability benefits: *Provided*, That the member
12 returned to work with his or her covered employer within one
13 year following the cessation of temporary total disability
14 benefits. The member desiring to purchase such credited service
15 may do so only by lump sum payment from personal funds:
16 *Provided, however*, That the purchase of service credit pursuant
17 to the provisions of this section shall be completed between the
18 time period beginning the first day of July, two thousand three
19 and ending the thirtieth day of June, two thousand four:
20 *Provided further*, That in order to purchase such service credit,
21 the member shall pay to the board his or her regular contribu-
22 tion and an equal amount that represents the employer's
23 contribution, based on the salary the member was receiving
24 immediately prior to having sustained such compensable injury:
25 *And provided further*, That the member purchasing service
26 credit under the provisions of this section may not be charged
27 interest. The maximum number of years of service credit that
28 may be purchased under this section shall not exceed five: *And*
29 *provided further*, That each year purchased under this section
30 shall count as a year of experience for purposes of the incre-
31 ment set forth in section two, article four, chapter eighteen-a of
32 this code.

CHAPTER 193

(H. B. 2983 — By Delegates Campbell and Craig)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen and thirty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the teachers' retirement system; providing technical corrections for conflicting language created when federal compliance provisions were previously added; and placing loan procedures within federal standards.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and thirty-four, article seven-a, 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 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

§18-7A-34. Loans to members.

§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
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 to be determined by the board compounded annually from the
100 date of withdrawal to the date of payment. The interest paid
101 shall be 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 subsec-
137 tion is two years: *Provided further,* That a member must apply
138 and pay for the service credit allowed under this subsection and
139 provide all necessary documentation by the thirty-first day of
140 March, two thousand three: *And provided further,* That the

141 board shall exercise due diligence to notify affected employees
142 of the provisions of this subsection.

143 (j) If a member is not eligible for prior service credit or
144 pension as provided in this article, then his or her prior service
145 shall not be considered a part of his or her total service.

146 (k) A member who withdrew from membership may regain
147 his or her former membership rights as specified in section
148 thirteen of this article only in case he or she has served two
149 years since his or her last withdrawal.

150 (l) Subject to the provisions of subsections (a) through (l),
151 inclusive, of this section, the board shall verify as soon as
152 practicable the statements of service submitted. The retirement
153 board shall issue prior service certificates to all persons eligible
154 for the certificates under the provisions of this article. The
155 certificates shall state the length of the prior service credit, but
156 in no case shall the prior service credit exceed forty years.

157 (m) Notwithstanding any provision of this article to the
158 contrary, when a member is or has been elected to serve as a
159 member of the Legislature, and the proper discharge of his or
160 her duties of public office require that member to be absent
161 from his or her teaching or administrative duties, the time
162 served in discharge of his or her duties of the legislative office
163 are credited as time served for purposes of computing service
164 credit: *Provided*, That the board may not require any additional
165 contributions from that member in order for the board to credit
166 him or her with the contributing service credit earned while
167 discharging official legislative duties: *Provided, however*, That
168 nothing herein may be construed to relieve the employer from
169 making the employer contribution at the member's regular
170 salary rate or rate of pay from that employer on the contributing
171 service credit earned while the member is discharging his or her
172 official legislative duties. These employer payments shall

173 commence as of the first day of June, two thousand: *Provided*
174 *further*, That any member to which the provisions of this
175 subsection apply may elect to pay to the board an amount equal
176 to what his or her contribution would have been for those
177 periods of time he or she was serving in the Legislature. The
178 periods of time upon which the member paid his or her contri-
179 bution shall then be included for purposes of determining his or
180 her final average salary as well as for determining years of
181 service: *And provided further*, That a member utilizing the
182 provisions of this subsection is not required to pay interest on
183 any contributions he or she may decide to make.

184 (n) The teachers retirement board shall grant service credit
185 to any former member of the state police death, disability and
186 retirement system who has been a contributing member for
187 more than three years, for service previously credited by the
188 state police death, disability and retirement system; and: (1)
189 Shall require the transfer of the member's contributions to the
190 teachers retirement system; or (2) shall require a repayment of
191 the amount withdrawn any time prior to the member's retire-
192 ment: *Provided*, That the member shall add to the amounts
193 transferred or repaid under this paragraph an amount which is
194 sufficient to equal the contributions he or she would have made
195 had the member been under the teachers retirement system
196 during the period of his or her membership in the state police
197 death, disability and retirement system plus interest at a rate of
198 six percent compounded annually from the date of withdrawal
199 to the date of payment. The interest paid shall be deposited in
200 the reserve fund.

§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 out-
32 standing loan at any time.

33 (4) If a refund is payable to the borrower or his or her
34 beneficiary before he or she repays the loan with interest, the
35 balance due with interest to date shall be deducted from such
36 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 194

(Com. Sub. for H. B. 3109 — By Delegate Warner)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teachers' defined contribution retirement system; providing for service credit for members

while serving in the Legislature; member contributions; employer contributions; effective dates; and option of member.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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-11. Termination of membership.

1 Any member whose employment with a participating
2 employer terminates after the completion of six complete years
3 of employment service shall be eligible to terminate his or her
4 annuity account and receive a distribution from the member's
5 annuity account, in an amount equal to the member's contribu-
6 tion plus one third of the employer contributions and any
7 earnings thereon. Any member whose employment with a
8 participating employer terminates after the completion of nine
9 complete years of employment service shall be eligible to
10 terminate his or her annuity account and receive a distribution
11 from the member's annuity account, in an amount equal to the
12 member's contribution plus two thirds of the employer's
13 contributions and any earnings thereon. Any member whose
14 employment with a participating employer terminates after the
15 completion of twelve complete years of employment service
16 shall be eligible to terminate his or her annuity account and
17 receive a distribution of all funds contributed and accumulated
18 in his or her annuity account. Any member whose employment
19 with a participating employer terminates prior to the completion
20 of six complete years of employment service shall be eligible
21 to terminate his or her annuity account and receive a distribu-
22 tion from the member's annuity account, in an amount equal to
23 the member's contribution plus any earnings thereon: *Provided,*
24 That on the death or permanent, total disability of any member,

25 that member shall be eligible to terminate his or her annuity
26 account and receive all funds contributed to or accumulated in
27 his or her annuity account.

28 The remaining balance, if any, in the member's account
29 after the distribution shall be remitted and paid into a suspen-
30 sion account, hereby created, to be administered by the board.
31 The board shall promulgate rules regarding the distribution of
32 any balance in the special account created by this section:
33 *Provided*, That any funds in the account shall be used solely for
34 the purpose of reducing employer contributions in future years.

35 Any account balances remitted to the suspension account
36 herein shall be maintained by the board in said suspension
37 account in the name of the terminated employee for a period of
38 five years following initial remittance to the suspension
39 account. For each said terminated employee at the culmination
40 of the aforesaid five-year period, the board shall certify in
41 writing to each contributing employer the amount of the
42 account balances plus earnings thereon attributable to each
43 separate contributing employers previously terminated employ-
44 ees' accounts which have been irrevocably forfeited due to the
45 elapse of a five-year period since termination pursuant to
46 section sixteen of this article.

47 Upon certification to the several contributing employers of
48 the aggregate account balances plus earnings thereon which
49 have been irrevocably forfeited pursuant to this section, the
50 several contributing employers shall be permitted in the next
51 succeeding fiscal year or years to reduce their total aggregate
52 contribution requirements pursuant to section seventeen of this
53 article, for the then current fiscal year by an amount equal to the
54 aggregate amounts irrevocably forfeited and certified as such to
55 each contributing employer.

56 Upon the utilization of the amounts irrevocably forfeited to
57 any contributing employer as a reduction in the then current
58 fiscal year contribution obligation and upon notification
59 provided by the several contributing employers to the board of
60 their intention to utilize irrevocably forfeited amounts, the
61 board shall direct the distribution of said irrevocably forfeited
62 amounts from the suspension account to be deposited on behalf
63 of the contributing employer to the member annuity accounts of
64 its then current employees pursuant to section seventeen of this
65 article: *Provided*, That notwithstanding any provision of this
66 article to the contrary, when a member is or has been elected to
67 serve as a member of the Legislature, and the proper discharge
68 of his or her duties of public office require that member to be
69 absent from his or her teaching, nonteaching or administrative
70 duties, the time served in discharge of his or her duties of the
71 legislative office are credited as time served for purposes of
72 computing service credit, regardless when this time was served:
73 *Provided, however*, That the board may not require any
74 additional contributions from that member in order for the
75 board to credit him or her with the contributing service credit
76 earned while discharging official legislative duties: *Provided*
77 *further*, That nothing herein may be construed to relieve the
78 employer from making the employer contribution at the
79 member's regular salary rate or rate of pay from that employer
80 on the contributing service credit earned while the member is
81 discharging his or her official legislative duties. These em-
82 ployer payments shall commence as of the first day of July, two
83 thousand three: *And provided further*, That any member to
84 which the provisions of this subsection apply may elect to pay
85 to the board an amount equal to what his or her contribution
86 would have been for those periods of time he or she was serving
87 in the Legislature.

CHAPTER 195

(Com. Sub. for S. B. 404 — By Senators Facemyer, Smith, Minard,
Sharpe, Edgell, Boley, Deem and Kessler)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the blue and gray intermodal highway authority;
functions; members; appointment; powers and duties; officers;
bylaws; rules; compensation; and authority as corporate body.

Be it enacted by the Legislature of West Virginia:

BLUE AND GRAY INTERMODAL HIGHWAY AUTHORITY.

§1. Intermodal highway authority created; functions.

1 There is created a blue and gray intermodal highway
2 authority, to promote and advance the construction of a modern
3 highway which would connect Interstate 79 and Interstate 77.
4 The highway must travel through Jackson, Roane, Calhoun,
5 Gilmer, Braxton and Lewis counties. The authority shall
6 coordinate with counties, municipalities, state and federal
7 agencies, public nonprofit corporations, private corporations,
8 associations, partnerships and individuals for the purpose of
9 planning, assisting and establishing recreational, tourism,
10 industrial, economic and community development of the blue
11 and gray intermodal highway for the benefit of the region and
12 all West Virginians.

§2. Members; appointment; officers; bylaws; rules; compensation.

1 (a) The authority shall consist of twelve voting members
2 and two ex-officio nonvoting members. All members shall be
3 appointed before the first day of July, two thousand three.

4 (b) Each of the county commissions of the counties of
5 Jackson, Roane, Calhoun, Gilmer, Braxton and Lewis shall
6 appoint two voting members to the commission. The terms of
7 the voting members initially appointed by a county commission
8 are as follows: One member from each county shall be ap-
9 pointed for two years and the other member appointed from
10 each county shall be appointed for four years. All successive
11 appointments are for terms of four years. Any voting member
12 may be removed for cause by the appointing county commis-
13 sion.

14 (c) The two ex-officio nonvoting members are the commis-
15 sioner of highways or his or her designee and the executive
16 director of the West Virginia development office or his or her
17 designee. All terms of ex-officio nonvoting members are for
18 four years.

19 (d) If a vacancy occurs, the person appointed to fill the
20 vacancy shall serve only for the unexpired portion of the term.
21 All members are eligible for reappointment.

22 (e) The authority shall meet annually on the third Monday
23 in July and at other times that the authority designates in its
24 bylaws. A special meeting may be called by the president, the
25 secretary or any four members of the authority and may be held
26 only after all members are given notice of the meeting in
27 writing. The presence of seven voting members constitutes a
28 quorum for all meetings. At each annual meeting of the
29 authority, the members shall elect a president, secretary and
30 treasurer. The authority shall adopt bylaws and rules that are
31 necessary for its operation and management.

§3. Powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, may
3 exercise all powers necessary or appropriate to carry out the
4 purposes of this article, including, but not limited to, the power
5 to:

6 (1) Acquire, own, hold and dispose of property, real and
7 personal, tangible and intangible;

8 (2) Lease property, whether as lessee or lessor, and to
9 acquire or grant through easement, license or other appropriate
10 legal form the right to develop and use property and open it to
11 the use of the public;

12 (3) Sue and be sued;

13 (4) Adopt, use and alter a corporate seal;

14 (5) Promote economic development and tourism along the
15 blue and gray intermodal highway;

16 (6) Advocate actions consistent with its plan of economic
17 development and tourism or its provisions to or before any
18 governmental entity or any private person or entity;

19 (7) Otherwise act in an advisory capacity with regard to any
20 aspects of the blue and gray intermodal highway at the request
21 of or without the request of any governmental entity or private
22 person or entity;

23 (8) Zone property adjacent to the intermodal highway;

24 (9) Regulate advertising along the intermodal highway; and

25 (10) Regulate the speed limit on the intermodal highway.

26 The authority may own any of the real estate or real
27 property described in this section for development and is

28 responsible for operating or maintaining the blue and gray
29 intermodal highway.

30 Each voting member of the authority shall be compensated
31 monthly by the governing body that appointed him or her in an
32 amount to be fixed by the governing body.

§4. Body corporate.

1 The authority created in this article is a public corporation
2 with all the powers and duties of a public corporation.

CHAPTER 196

(H. B. 3104 — By Delegate Warner)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to the commissioner of highways generally; providing for commercial work orders for vehicle and equipment repair; establishing criteria for commercial vehicle and equipment repair vendors; and requiring a cost effectiveness analysis for issuing commercial work orders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**§17-2A-23. Administration of commercial vehicle and equipment related work orders.**

1 In order to promote cost effective vehicle and equipment
2 repair work efficiently and effectively and in order to provide
3 for repair work to be done in a safe and timely manner when in-
4 house repair is determined not to be cost effective or practical
5 under the circumstances, the commissioner of highways may
6 establish a cost effective analysis for determining the reason-
7 ableness and effectiveness of obtaining repair of vehicles and
8 equipment by certain certified vendors.

9 The commissioner may issue a commercial work order to
10 certified vendors for repair of vehicles and equipment when the
11 commissioner determines that the repairs would extend the life
12 of the equipment or vehicle a minimum of five years and that
13 the expenditure would be the safest cost effective alternative to
14 purchase of new vehicles and equipment or in-house repair.

15 Any commercial vendor of vehicle and equipment repair
16 may apply to the commissioner for certification as a certified
17 repair vendor under the provisions of this section. In order to
18 qualify, the vendor must provide proof that it has the trained
19 personnel, the required tools, equipment and facilities to
20 provide the work. The commissioner shall inspect or cause to
21 be inspected the facilities and shall review the qualifications of
22 personnel of vendors applying for certification. If approved by
23 the commissioner, the vendor may be certified as a qualified
24 vendor for the type of repair work the commissioner determines
25 the vendor is qualified to provide.

26 Prior to issuing a commercial work order with a certified
27 vendor, the commissioner must determine the cost of repair of
28 the vehicle or equipment. If on site inspection is required, the

29 commissioner may issue a work order to provide for the
30 inspection and estimate.

31 Preference for issuing vehicle and equipment repair work
32 orders shall be given to in-state licensed qualified vendors:
33 *Provided*, That a vendor failing to guarantee its work for five
34 years or failing to complete any work order in the time and to
35 the specifications of the work order shall be decertified for a
36 period of five years.

37 Nothing herein requires the commissioner of highways to
38 issue a work order to any particular commercial vendor.

39 The commissioner of highways shall propose a legislative
40 rule pursuant to article three, chapter twenty-nine-a of this code
41 regarding certification of qualified vendors and awarding work
42 orders. The legislative rule may include provisions for devia-
43 tions from the standard cost principles in special situations and
44 circumstances.

CHAPTER 197

(Com. Sub. for S. B. 651 — By Senators Prezioso, Unger, Boley,
Edgell, Ross, Rowe, Sharpe, Smith and Weeks)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter five-b of said code by adding thereto a new article, designated article two-c, relating to creation of the West Virginia academy of science and technology; declaring legislative

purpose; establishing the academy council; defining the qualifications and selection of members; establishing terms of members; providing that members shall not be entitled to compensation; executive director of the council; duties of the council and the executive director; nomination of fellows of the academy and their participation in working groups of the academy; requiring periodic reports; continuation; and providing for confidentiality of trade secrets.

Be it enacted by the Legislature of West Virginia:

That article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five-b of said code be amended by adding thereto a new article, designated article two-c, to read as follows:

ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.

§5B-2C-1. Legislative purpose.

§5B-2C-2. West Virginia academy of science and technology; composition; creation of council, appointment and terms; expenses; selection of chairperson; quorum; meetings.

§5B-2C-3. Executive director; powers and duties; compensation; expenses.

§5B-2C-4. Powers and duties of the council of the academy of science and technology.

§5B-2C-5. Fellows of the academy of science and technology.

§5B-2C-6. Periodic reports.

§5B-2C-7. Confidentiality of contributed material.

§5B-2C-8. Continuation of the academy.

§5B-2C-1. Legislative purpose.

- 1 (a) The Legislature hereby finds that educational and
- 2 economic development require an integrated program of
- 3 support for research and development, assistance in the transfer
- 4 of technological innovations and discoveries to public and
- 5 private enterprises and facilitation of the commercialization of

6 intellectual property. To that end, the state recognizes the need
7 for:

8 (1) Informed analysis of the status of science and technol-
9 ogy research, development and commercialization capabilities,
10 infrastructure and activities within West Virginia and the
11 development of innovative options that build upon and expand
12 them with the goal of increasing the gross state product;

13 (2) Coordination of efforts to attract private and federal
14 assistance for research, development and commercialization in
15 those fields most likely to maximize the gross state product;

16 (3) Increased collaboration between all of the federal, state
17 and private research and development and technology commer-
18 cialization organizations in the state;

19 (4) Strengthening the leadership and support of the West
20 Virginia experimental program to stimulate competitive
21 research; and

22 (5) Leadership in science and technology policy.

23 (b) The Legislature therefore declares that creation of a
24 West Virginia academy of science and technology will promote
25 and foster the educational and economic development of the
26 state.

**§5B-2C-2. West Virginia academy of science and technology;
composition; creation of council, appointment and
terms; expenses; selection of chairperson; quo-
rum; meetings.**

1 (a) There is hereby created, within the West Virginia
2 development office, a West Virginia academy of science and
3 technology. The academy consists of a standing council of nine
4 members and such ad hoc working groups as may be necessary
5 to review a particular field of study. A working group may

6 include both members of the council and also such individuals
7 having expertise within their profession or discipline who can
8 be appointed fellows of the academy.

9 (b) Members of the academy council shall be selected for
10 their demonstrated ability in innovative thinking, management
11 skills, broad technical knowledge and a record of working to
12 improve the science and technology base of the state. The
13 objective of the process of selection shall be to create a council
14 that, in its composition, represents a broad cross-section of
15 those involved throughout the state's science and technology
16 enterprises. Members of the council shall be selected and
17 appointed as follows:

18 (1) The governor shall appoint to the council, with the
19 advice and consent of the Senate, three members experienced
20 with, or serving in, federal agencies that promote and utilize
21 research, development and commercialization, from a list of six
22 persons recommended by a nominating committee. The
23 nominating committee will be organized and lead by a repre-
24 sentative from the national energy technology laboratory and
25 may consist of representatives of United States government
26 agencies, including, but not limited to, the federal departments
27 of energy, transportation, agriculture, defense and homeland
28 security, the national science foundation and the national
29 aeronautics and space administration;

30 (2) The governor shall appoint to the council, with the
31 advice and consent of the Senate, three members with experi-
32 ence and expertise in private enterprise, research and develop-
33 ment and commercialization from a list of six persons recom-
34 mended by a nominating committee. The nominating committee
35 will be organized and lead by a representative from the council
36 for community and economic development and may consist of
37 representatives from labor and industry, including, but not
38 limited to, the economic development authority, the infrastruc-

39 ture council, the West Virginia high technology consortium and
40 the West Virginia American federation of labor - congress of
41 industrial organizations; and

42 (3) The governor shall appoint to the council, with the
43 advice and consent of the Senate, three members with experi-
44 ence and expertise in stimulating competitive research and
45 development from a list of six persons recommended by a
46 nominating committee. The nominating committee shall be
47 organized and lead by a representative of the higher education
48 policy commission and may consist of representatives from the
49 state institutions of higher education.

50 (c) The terms of the council members taking office on or
51 after the effective date of this legislation shall expire as
52 designated by the governor at the time of their appointment,
53 with one term in each of the three categories in subsection (b)
54 of this section expiring at the end of the second year, one term
55 in each category expiring at the end of the fourth year and one
56 term in each category expiring at the end of the sixth year. As
57 the original appointments expire, each subsequent appointment
58 will be for a full six-year term. Any member whose term has
59 expired may serve until a successor has been duly appointed
60 and qualified. For any vacancy in the office of a member
61 occurring prior to the expiration of that term, the vacancy may
62 be filled by the governor from a list of three qualified persons
63 recommended by the remaining members of the council. Any
64 person appointed to fill a vacancy shall serve for only the
65 unexpired term unless reappointed by the governor for an
66 additional term. Any member may be appointed to successive
67 terms not to exceed two full terms.

68 (d) Members of the council are not entitled to compensation
69 for service on the council but may be reimbursed by the West
70 Virginia development office for all reasonable and necessary
71 expenses actually incurred in the performance of their duties in

72 a manner consistent with guidelines of the travel management
73 office of the department of administration or its successor.

74 (e) The governor will select and appoint a member of the
75 council to serve as chairperson for a term of two years to run
76 concurrently with the term of office of the member designated
77 as chair.

78 (f) A majority of members constitutes a quorum for the
79 purpose of conducting business.

80 (g) The council shall meet at least once each quarter of the
81 year and shall conduct all meetings in accordance with the open
82 governmental meetings proceedings act pursuant to article nine-
83 a, chapter six of this code.

**§5B-2C-3. Executive director; powers and duties; compensation;
expenses.**

1 (a) The governor is authorized and directed to request and
2 negotiate the loan of a federal executive employee, pursuant to
3 the provisions of the federal intergovernmental personnel act,
4 to serve as the initial executive director of the council. This
5 person is expected to serve as executive director of the academy
6 for a period of not less than one year. He or she must have
7 training and experience in science, technology research,
8 development and commercialization and demonstrable skills in
9 managing new programs. The executive director shall serve at
10 the will and pleasure of the academy council and is not entitled
11 to compensation but may be reimbursed by the West Virginia
12 development office for all reasonable and necessary expenses
13 actually incurred in the performance of his or her duties in a
14 manner consistent with guidelines of the travel management
15 office of the department of administration or its successor.

16 (b) Subsequent executive directors may be selected by the
17 council in consultation with the director of the West Virginia
18 development office.

19 (c) In addition to assisting the council and its working
20 groups in the exercise of their duties, the executive director
21 shall:

22 (1) Facilitate and oversee the process for the initial nomina-
23 tion and appointment of council members;

24 (2) Provide and obtain scientific, technical, economic,
25 programmatic information and market research to support the
26 work of the academy;

27 (3) Foster and maintain relationships between agencies of
28 this state, other states, the federal government, educational
29 institutions, nonprofit organizations and private enterprises for
30 the advancement of research, development and commercializa-
31 tion;

32 (4) Organize, prepare and lead presentations on science,
33 technology research and development and commercialization
34 for business executives, state legislative leaders and commit-
35 tees, and federal agencies; and

36 (5) Develop yearly work plans for the academy.

37 (d) The executive director will be available to the governor,
38 the speaker of the House of Delegates and the president of the
39 Senate to analyze and comment upon proposed legislation and
40 rules that relate to or materially affect state scientific, technical
41 and commercialization issues.

**§5B-2C-4. Powers and duties of the council of the academy of
science and technology.**

1 (a) The council may seek and accept public and private
2 research grants and contracts, matching funds and procurement
3 arrangements from the state and federal government, private
4 industry and other agencies, in furtherance of and consistent
5 with its mission and programs: *Provided*, That members of the
6 council may not violate the West Virginia ethics act, pursuant
7 to the provisions of chapter six-b of this code.

8 (b) The council may, through the West Virginia develop-
9 ment office, receive and accept gifts or grants from private
10 foundations, corporations, individuals, devises and bequests or
11 from other lawful sources. All moneys collected shall be
12 deposited in a special account in the state treasury to be known
13 as the "West Virginia academy of science and technology
14 fund". Expenditures from the fund shall be made by the West
15 Virginia development office on the request of the council for
16 the purposes set forth in this article and are not authorized from
17 collections but are to be made only in accordance with appro-
18 priation by the Legislature and in accordance with the provi-
19 sions of article three, chapter twelve of this code and upon
20 fulfillment of the provisions of article two, chapter five-a of this
21 code: *Provided*, That for the fiscal year ending the thirtieth day
22 of June, two thousand four, expenditures are authorized from
23 collections rather than pursuant to appropriation by the Legisla-
24 ture.

25 (c) The council may select and appoint fellows of the
26 council pursuant to the provision of section five of this article.

27 (d) The council may make recommendations to the gover-
28 nor, the speaker of the House of Delegates, the president of the
29 Senate and the joint commission on economic development
30 concerning strategic and specific policies to foster research and
31 development within this state.

32 (e) The council may recommend legislation to facilitate
33 improved coordination between state agencies, educational
34 institutions, industries and research laboratories.

35 (f) The council may develop and produce written or
36 electronic information to assist researchers in educational
37 institutions or private enterprise in identifying, applying for and
38 obtaining grants, stipends or other financial support for re-
39 search, development, technology transfer or commercialization
40 of intellectual property.

41 (g) The council may convene public meetings to gather
42 information or receive public comments regarding the adminis-
43 tration and coordination of research and development efforts
44 within this state.

45 (h) The council may, through the West Virginia develop-
46 ment office, enter into contracts or joint venture agreements
47 with federal and state agencies, corporations, partnerships and
48 other organizations that conduct research, make grants, improve
49 educational programs and work for the scientific, educational
50 or economic development of this state. The director of the West
51 Virginia development office and the council must, by majority
52 vote, approve all contracts and joint venture agreements.

53 (i) The council may enter into contractual agreements for
54 consideration with entities that are funded from sources other
55 than the state: *Provided*, That members of the council may not
56 violate the West Virginia ethics act pursuant to the provisions
57 of chapter six-b of this code.

58 (j) Members of the academy may be appointed to serve on
59 boards of directors of any contracting private nonprofit corpora-
60 tion, foundation or firm: *Provided*, That members of the council
61 may not violate the West Virginia ethics act pursuant to the
62 provisions of chapter six-b of this code.

§5B-2C-5. Fellows of the academy of science and technology.

1 (a) In order to address the specific opportunities and needs
2 of any particular field of science and technology, the council
3 may establish working groups composed of a member or
4 members of the council with expertise in that field or discipline
5 and additional individuals, to be known as fellows of the
6 academy of science and technology. Any working group so
7 created may conduct business, research and meetings by
8 telephone, electronic mail or in person and shall not require a
9 quorum to conduct its business. The committee or working
10 group shall submit a report or reports of its findings and
11 recommendations to the council for incorporation in policy
12 recommendations and the annual report of the academy.

13 (b) Selection of a fellow of the academy will be made on
14 the basis of the designated individual's experience and expertise
15 in the field to be addressed by the working group and must be
16 by a majority vote of the council. The term of a fellow of the
17 academy is one year and a term may be renewed by the council
18 as needed.

§5B-2C-6. Periodic reports.

1 (a) The academy will prepare and produce an annual report
2 on the state of science and technology in West Virginia and
3 submit it to the governor, the speaker of the House of Dele-
4 gates, the president of the Senate and the joint commission on
5 economic development or before the first day of July of each
6 year. The report shall address all aspects of research, develop-
7 ment and commercialization that the academy council deems
8 material, including, but not limited to:

9 (1) Strengths, weaknesses, opportunities and threats to West
10 Virginia's research, development and commercialization
11 environment and establishments;

12 (2) Options for actions by the Legislature and the governor
13 to maximize the ability of the state to attract investment, grants
14 and infrastructure development to support growth of science
15 and technology research, development and commercialization
16 in the state;

17 (3) The status of, and options to improve, scientific and
18 technological entrepreneurship in West Virginia; and

19 (4) The status of, and options to improve, the collaboration
20 of institutions of higher education in obtaining competitive
21 research awards and grants.

22 (b) In preparing its annual report, the council may utilize
23 the technical support available to it through the West Virginia
24 development office, the West Virginia department for education
25 and arts, the West Virginia experimental program to stimulate
26 competitive research (EPSCoR), the West Virginia higher
27 education system, federal and state agencies and other entities
28 that have an interest in fostering science and technology
29 research, development and commercialization in this state.

30 (c) Each month, an academy representative shall meet with
31 legislative and executive leaders to provide updates and
32 information concerning opportunities, issues and progress of
33 science, technology and commercialization in the state.

§5B-2C-7. Confidentiality of contributed material.

1 Any documentary material, data or other writing made or
2 received by the West Virginia academy of science and technol-
3 ogy for the purpose of developing state summaries or policy
4 options concerning the capabilities, performance or plans of
5 individual businesses or organizations is deemed to be confi-
6 dential trade secrets which are exempt from disclosure under
7 the provisions of section four, article one, chapter twenty-nine-b

8 of this code, and the provisions of section one, article two of
9 this chapter.

§5B-2C-8. Continuation of the academy.

1 The academy of science and technology hereby created
2 shall continue to exist, pursuant to article ten, chapter four of
3 this code until the first day of July, two thousand six, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 198

(H. B. 3195 — By Delegates Beane, Kuhn, Butcher, Martin,
Perdue, Leggett and Azinger)

[Passed March 8, 2003; in effect ninety days from passage. 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 four: Division of
5 personnel; division of rehabilitation services; division of labor;
6 division of motor vehicles; department of environmental
7 protection; department of health and human resources; division
8 of natural resources; purchasing division within the department
9 of administration; school building authority; state police;
10 consolidated public retirement board; and workers' compensa-
11 tion.

12 (2) On the first day of July, two thousand five: Parkways,
13 economic development and tourism authority; department of
14 tax and revenue; division of highways; division of corrections;
15 West Virginia public land corporation; office of insurance
16 commissioner; James "Tiger" Morton catastrophic illness
17 commission; investment management board; and tourism
18 functions within the development office.

19 (3) On the first day of July, two thousand seven: Office of
20 health facilities licensure and certification within the depart-
21 ment of health and human resources.

22 (4) On the first day of July, two thousand nine: Office of
23 judges in workers' compensation.

§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 five: Division of
7 culture and history.

§4-10-5. Termination of agencies following preliminary performance 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 three: advisory
15 council on public health; governors' office of fiscal risk
16 analysis and management.

17 (6) On the first day of July, two thousand four: Meat
18 inspection program of the department of agriculture; state board
19 of risk and insurance management; real estate commission;
20 rural health advisory panel; state fire commission; motorcycle
21 safety awareness board; motor vehicle dealers advisory board;
22 interstate commission on uniform state laws; design-build
23 board; center for professional development board; parks section
24 and parks function of the division of natural resources; office of
25 water resources of the department of environmental protection;
26 division of protective services; state rail authority; care home
27 advisory board; steel advisory commission and steel futures
28 program; children's health insurance board; capitol building
29 commission; public defender services; public employees
30 insurance agency finance board; office of explosives and
31 blasting; workers' compensation appeal board; records manage-
32 ment and preservation board; public energy authority and public
33 energy authority board; waste tire fund; and interstate commis-
34 sion on the Potomac River basin.

35 (7) On the first day of July, two thousand five: Board of
36 banking and financial institutions; lending and credit rate board;
37 governor's cabinet on children and families; oil and gas
38 conservation commission; health care authority; educational
39 broadcasting authority; clean coal technology council; racing
40 commission; manufactured housing construction and safety
41 board; environmental quality board; commission for the deaf
42 and hard-of-hearing; public employees insurance agency; oral
43 health program; and emergency medical services advisory
44 council.

45 (8) On the first day of July, two thousand six: Family
46 protection services board; medical services fund advisory
47 council; West Virginia stream partners program; Ohio River
48 valley water sanitation commission; state lottery commission;
49 whitewater commission within the division of natural resources;
50 unemployment compensation; women's commission; personal

51 assistance services program; contractor licensing board; and
52 soil conservation committee.

53 (9) On the first day of July, two thousand seven: Human
54 rights commission; office of coalfield community development;
55 and state geological and economic survey.

56 (10) On the first day of July, two thousand eight: Ethics
57 commission; public service commission; and marketing and
58 development division of department of agriculture.

59 (11) On the first day of July, two thousand nine: Driver's
60 licensing advisory board; West Virginia commission for
61 national and community service; membership in the southern
62 regional education board; bureau of senior services; oil and gas
63 inspector's examining board; and commission on holocaust
64 education.

§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 four: Office of the
9 environmental advocate; and veterans' council.

10 (3) On the first day of July, two thousand five: Bureau for
11 child support enforcement.

§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 four: Board of
14 examiners of land surveyors; board of landscape architects;
15 board of architects; real estate appraiser licensing and certifica-
16 tion board; and board of registration for foresters.

17 (2) On the first day of July, two thousand five: Board of
18 social work examiners; board of accountancy; board of veteri-
19 nary medicine; board of dental examiners; acupuncture board;
20 and board of medicine.

21 (3) On the first day of July, two thousand six: Board of
22 examiners in counseling; board of osteopathy; and board of
23 licensed dietitians.

24 (4) On the first day of July, two thousand seven: Board of
25 registration for sanitarians; board of embalmers and funeral
26 directors; board of optometry; and board of respiratory care
27 practitioners.

28 (5) On the first day of July, two thousand eight: Nursing
29 home administrators board; board of hearing aid dealers; board
30 of pharmacy; and board of barbers and cosmetologists.

31 (6) On the first day of July, two thousand nine: Board of
32 physical therapy; board of chiropractic examiners; and board of
33 occupational therapy.

34 (7) On the first day of July, two thousand ten: Board of
35 registration for professional engineers; board of examiners for
36 registered professional nurses; board of examiners for licensed
37 practical nurses; board of examiners for speech language
38 pathology and audiology; and radiologic technology board of
39 examiners.

40 (8) On the first day of July, two thousand twelve: Board of
41 examiners of psychologists.

42 (9) On the first day of July, two thousand fifteen: Massage
43 therapy licensure board.

CHAPTER 199

**(S. B. 417 — By Senators Bowman, Bailey, Caldwell, Jenkins,
Minard, Rowe, White, Minear and Smith)**

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD-OF-HEARING.**

**§5-14-12. Continuation of the West Virginia commission for the
deaf and hard-of-hearing.**

- 1 The West Virginia commission for the deaf and
- 2 hard-of-hearing shall continue to exist, pursuant to the provi-
- 3 sions of article ten, chapter four of this code, until the first day
- 4 of July, two thousand five, unless sooner terminated, continued
- 5 or reestablished pursuant to the provisions of that article.

CHAPTER 200

**(H. B. 2486 — By Delegates Beane, Kuhn, Yeager,
laquinta, Talbott, Leggett and Frich)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.

§5-16-27. Continuation.

- 1 The public employees insurance agency shall continue to
- 2 exist, pursuant to article ten, chapter four of this code, until the
- 3 first day of July, two thousand five, unless sooner terminated,
- 4 continued or reestablished pursuant to the provisions of that
- 5 article.

CHAPTER 201

**(S. B. 165 — By Senators Bowman, Bailey, Boley, Caldwell,
Minard, Minear, Rowe, Smith, Weeks and White)**

[Passed February 25, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission for national and community service.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-six-a, 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 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND
COMMUNITY SERVICE.**

§5-26A-6. Continuation date.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the West Virginia commission for national and commu-
- 3 nity service shall continue to exist until the first day of July,
- 4 two thousand nine.

CHAPTER 202

(H. B. 2879 — By Delegates Beane, Kuhn, Manuel,
Martin, Yost, Leggett and Frich)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-eight, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission on holocaust education.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-eight, 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 28. COMMISSION ON HOLOCAUST EDUCATION.**§5-28-4. Continuation of the commission.**

- 1 The West Virginia commission on holocaust education
- 2 shall continue to exist, pursuant to the provisions of article ten,
- 3 chapter four of this code, until the first day of July, two

- 4 thousand nine, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

CHAPTER 203

(S. B. 284 — By Senators Bowman, Bailey, Caldwell, Jenkins,
Rowe, White, Boley, Minear, Smith and Weeks)

[Passed March 3, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of purchasing within the department of administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. 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 four, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 204

(H. B. 2831 — By Delegates Beane, Kuhn, Butcher,
Ennis, Manchin, Leggett and Azinger)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the records management and preservation board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15a. Continuation of board.

- 1 The records management and preservation board shall
- 2 continue to exist, pursuant to the provisions of article ten,
- 3 chapter four of this code, until the first day of July, two
- 4 thousand four, unless sooner terminated, continued or reestab-
- 5 lished pursuant to the provisions of that article.

CHAPTER 205

**(S. B. 164 — By Senators Bowman, Bailey, Boley, Caldwell,
Minard, Minear, Rowe, Smith, Weeks and White)**

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the office of coalfield community development.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-13. Continuation of office.

- 1 The office of coalfield community development shall
- 2 continue to exist, pursuant to the provisions of article ten,
- 3 chapter four of this code, until the first day of July, two
- 4 thousand seven, unless sooner terminated, continued or
- 5 reestablished pursuant to the provisions of that article.

CHAPTER 206

(H. B. 2751 — By Delegates Beane, Kuhn, Butcher,
Manuel, Leggett, Frich and Schoen)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of 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 SER-
VICES; 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 pursuant
4 to the provisions of article ten, chapter four of this code, until
5 the first day of July, two thousand four, unless sooner termi-
6 nated, continued or reestablished pursuant to the provisions of
7 that article.

CHAPTER 207

(S. B. 418 — By Senators Bowman, Bailey, Caldwell, Jenkins, Minard, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed February 25, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Continuation of board.

- 1 The West Virginia investment management board shall
- 2 continue to exist, pursuant to the provisions of article ten,
- 3 chapter four of this code, until the first day of July, two
- 4 thousand five, unless sooner terminated, continued or reestab-
- 5 lished pursuant to the provisions of that article.

CHAPTER 208

(H. B. 2778 — By Delegates Beane, Kuhn, Butcher,
Ferrell, Talbott, Leggett and Frich)

[Passed February 18, 2003; in effect ninety days from passage. 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 the continuation of 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. Continuation date.

1 The West Virginia state police shall continue to exist,
2 pursuant to the provisions of article ten, chapter four of this
3 code, until the first day of July, two thousand four, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 209

**(H. B. 2750 — By Delegates Beane, Kuhn, Hatfield, Perdue,
Spencer, Iaquina and Leggett)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to continuation of the office of health facility licensure and certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-13a. Continuation of the office of health facility licensure and certification.

1 The office of health facility licensure and certification shall
2 continue to exist, pursuant to the provisions of article ten,
3 chapter four of this code, until the first day of July, two
4 thousand seven, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 210

(H. B. 2752 — By Delegates Beane, Kuhn, Ennis, Hatfield,
Martin, Yeager and Leggett)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-p, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the bureau of senior services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Continuation of bureau.

- 1 The bureau of senior services shall continue to exist,
- 2 pursuant to the provisions of article ten, chapter four of this
- 3 code, until the first day of July, two thousand nine, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 211

**(S. B. 282 — By Senators Bowman, Bailey, Caldwell, Jenkins, Rowe,
White, Boley, Minear, Smith and Weeks)**

[Passed February 24, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article two, 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 2. DIVISION OF MOTOR VEHICLES.

§17A-2-24. Continuation of division.

- 1 The division of motor vehicles shall continue to exist until
- 2 the first day of July, two thousand four, pursuant to the provi-
- 3 sions 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 212

**(S. B. 163 — By Senators Bowman, Bailey, Boley, Caldwell,
Minard, Minear, Rowe, Smith, Weeks and White)**

[Passed February 24, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the driver's licensing advisory board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

1 The driver's licensing advisory board is hereby continued.
2 The board shall consist of five members to be appointed by the
3 governor, by and with the advice and consent of the Senate, for
4 terms of three years, except that as to the members first
5 appointed, two shall be appointed for a term of three years, two
6 shall be appointed for a term of two years and one shall be
7 appointed for a term of one year, all from the first day of July,
8 one thousand nine hundred seventy-four. All vacancies occur-
9 ring on the board shall be filled by the governor, by and with
10 the advice and consent of the Senate. One member of the board
11 shall be an optometrist duly registered to practice optometry in
12 this state and the other four members of the board shall be

13 physicians or surgeons duly licensed to practice medicine or
14 surgery in this state. The governor shall appoint persons
15 qualified to serve on the board who, in his opinion, will best
16 serve the work and function of the board.

17 The board shall advise the commissioner of motor vehicles
18 as to vision standards and all other medical criteria of whatever
19 kind or nature relevant to the licensing of persons to operate
20 motor vehicles under the provisions of this chapter. The board
21 shall, upon request, advise the commissioner of motor vehicles
22 as to the mental or physical fitness of an applicant for, or the
23 holder of, a license to operate a motor vehicle. The board shall
24 furnish the commissioner with all such medical standards,
25 statistics, data, professional information and advice as he may
26 reasonably request.

27 The members of the board shall receive compensation and
28 expense reimbursement in an amount not to exceed the same
29 compensation and expense reimbursement as is paid to mem-
30 bers of the Legislature for their interim duties as recommended
31 by the citizens legislative compensation commission and
32 authorized by law, for each day or substantial portion thereof
33 engaged in the performance of official duties.

34 Pursuant to the provisions of article ten, chapter four of this
35 code, the driver's licensing advisory board shall continue to
36 exist until the first day of July, two thousand nine.

CHAPTER 213

**(H. B. 2779 — By Delegates Beane, Kuhn, Perdue,
Wright, Yost, Leggett and Azinger)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten-l, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the personal assistance services program.

Be it enacted by the Legislature of West Virginia:

That section eight, article ten-l, 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 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-8. Continuation of program.

1 The personal assistance services program shall continue to
2 exist, pursuant to the provisions of article ten, chapter four of
3 this code, until the first day of July, two thousand six, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 214

(H. B. 2554 — By Delegates Beane, Kuhn, Butcher,
Manuel, Spencer, Leggett and Schoen)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter nineteen 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 three-b, all

relating to the continuation of the marketing and development division of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, chapter nineteen 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 three-b, all to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Marketing and development division; duties.

§19-1-3b. Continuation of division.

§19-1-3a. Marketing and development division; duties.

1 In recognition that article ten, chapter four of this code
2 requires a preliminary performance review of the rural resource
3 division of the department of agriculture and that performance
4 standards must be stated before such audit can be performed,
5 the rural resources division is hereby formally established and
6 renamed the marketing and development division in the
7 department of agriculture. The duties of the division are to
8 establish marketing, promotional and development programs to
9 advance West Virginia agriculture in the domestic and interna-
10 tional markets; to provide grading, inspection and market news
11 services to the various elements of the West Virginia agricul-
12 tural industry; and to regulate and license individuals involved
13 in the marketing of agricultural products.

§19-1-3b. Continuation of division.

1 The marketing and development division of the department
2 of agriculture shall continue to exist, pursuant to the provisions
3 of article ten, chapter four of this code, until the first day of

- 4 July, two thousand eight, unless sooner terminated, continued
- 5 or reestablished pursuant to the provisions of that article.

CHAPTER 215

(H. B. 2830 — By Delegates Beane, Kuhn, Yeager,
Iaquinta, Talbott, Leggett and Schoen)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-21. Continuation of the division of natural resources.

- 1 The division of natural resources shall continue to exist,
- 2 pursuant to the provisions of article ten, chapter four of this
- 3 code, until the first day of July, two thousand four, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 216

(S. B. 470 — By Senators Bowman, Bailey, Caldwell, McCabe, Minard, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed March 3, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia board of manufactured housing construction and safety.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY
STANDARDS.**

**§21-9-13. Continuation of the board of manufactured housing
construction and safety.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia board of manufactured housing
3 construction and safety shall continue to exist until the first day
4 of July, two thousand five, unless sooner terminated, continued
5 or reestablished by act of the Legislature.

CHAPTER 217

(S. B. 469 — By Senators Bowman, Bailey, Caldwell, McCabe, Minard, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia contractor licensing board.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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.

§21-11-19. Continuation of board.

1 The West Virginia contractor licensing board shall continue
2 to exist pursuant to the provisions of article ten, chapter four of
3 this code until the first day of July, two thousand six, unless
4 sooner terminated, continued or reestablished pursuant to that
5 article.

CHAPTER 218

**(S. B. 281 — By Senators Bowman, Bailey, Caldwell, Jenkins,
Rowe, White, Boley, Minear and Weeks)**

[Passed February 19, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the 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 four, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 219

**(H. B. 2864 — By Delegates Beane, Kuhn, Butcher,
Manchin, Tucker, Wright and Leggett)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the office of explosives and blasting.

Be it enacted by the Legislature of West Virginia:

That section eleven, article three-a, 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 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-11. Continuation of office.

1 The office of explosives and blasting shall continue to exist,
2 pursuant to the provisions of article ten, chapter four of this
3 code, until the first day of July, two thousand four, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 220

**(S. B. 415 — By Senators Bowman, Bailey, Caldwell,
Jenkins, Minard, Rowe, White and Minear)**

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the environmental quality board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-5. Continuation of the board.

- 1 The environmental quality board shall continue to exist
- 2 pursuant to the provisions of article ten, chapter four of this
- 3 code until the first day of July, two thousand five, unless sooner
- 4 terminated, continued or reestablished pursuant to that article.

CHAPTER 221

**(S. B. 166 — By Senators Bowman, Bailey, Boley, Caldwell,
Minard, Minear, Rowe, Smith, Weeks and White)**

[Passed February 26, 2003; in effect ninety days from passage. 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 continuation of 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. ENVIRONMENTAL RESOURCES.

§22C-7-4. Continuation of oil and gas inspectors' examining board.

- 1 The oil and gas inspectors' examining board shall continue
- 2 to exist pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand nine, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 222

**(S. B. 283 — By Senators Bowman, Bailey, Caldwell, Jenkins, Rowe,
White, Boley, Minear, Smith and Weeks)**

[Passed March 3, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-10. Continuation of commission.

- 1 The public service commission shall continue to exist until
- 2 the first day of July, two thousand eight, 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 223

(H. B. 2829 — By Delegates Beane, Kuhn, Ennis,
Manchin, Manuel, Martin and Leggett)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of culture and history.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1b. Continuation date.

- 1 The division of culture and history, together with its
- 2 citizen's commissions, shall continue to exist pursuant to the
- 3 provisions of article ten, chapter four of this code, until the first
- 4 day of July, two thousand five, unless sooner terminated,
- 5 continued or reestablished pursuant to the provisions of that
- 6 article.

CHAPTER 224

(H. B. 2916 — By Delegates Beane, Kuhn, Ennis,
Martin, Wright, Leggett and Caruth)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state geological and economic survey.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-10. Continuation.

- 1 The state geological and economic survey shall continue to
- 2 exist, pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand seven, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 225

**(S. B. 471 — By Senators Bowman, Bailey, Caldwell, McCabe,
Minard, Rowe, White, Boley, Minear, Smith and Weeks)**

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to continuation of the West Virginia board of pharmacy.

Be it enacted by the Legislature of West Virginia:

That article five, 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 twenty-five, to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY
INTERNS AND PHARMACIES.**

§30-5-25. Continuation of the board.

- 1 The West Virginia board of pharmacy will continue to exist
- 2 until the first day of July, two thousand eight, 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 the article.

CHAPTER 226

(H. B. 2888 — By Delegates Beane, Kuhn, Perdue,
Tucker, Talbott, Leggett and Caruth)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to continuation of the board of osteopathy.

Be it enacted by the Legislature of West Virginia:

That article fourteen, 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 sixteen, to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-16. Continuation of board.

- 1 The West Virginia board of osteopathy shall continue to
- 2 exist, pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand six, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 227

(H. B. 2889 — By Delegates Beane, Kuhn, Hatfield,
Manchin, Leggett, Blair and Caruth)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to continuation of the board of examiners of psychologists.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, 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 sixteen, to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-16. Continuation of board.

- 1 The board of examiners of psychologists shall continue to
- 2 exist pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand twelve, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 228

(H. B. 2803 — By Delegates Beane, Kuhn, Butcher,
Spencer, Tucker, Yost and Leggett)

[Passed February 18, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-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 seventeen, relating to continuation of the board of barbers and cosmetologists.

Be it enacted by the Legislature of West Virginia:

That article twenty-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 seventeen, to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-17. Continuation of board.

- 1 The board of barbers and cosmetologists shall continue to
- 2 exist, pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand eight, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 229

(S. B. 416 — By Senators Bowman, Bailey, Caldwell,
Jenkins, Minard, Rowe, White and Minear)

[Passed February 25, 2003; in effect ninety days from passage. Approved 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 the continuation of the massage therapy licensure 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. Continuation of board.

- 1 The massage therapy licensure board shall continue to exist,
- 2 pursuant to the provisions of article ten, chapter four of this
- 3 code, until the first day of July, two thousand fifteen, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 230

(Com. Sub. for H. B. 2477 — By Delegates Perry,
Williams, Mezzatesta, Trump and Pino)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, four, five and six, article six-b of said chapter, all relating to property tax designations and homestead exemptions from property taxes, and permitting certain homeowners to retain a homestead exemption and Class II property designation for certain property while they are residing with family members or resident of a nursing home or other facility as a result of illness, accident or infirmity and changing due dates and response deadlines to exemption requests.

Be it enacted by the Legislature of West Virginia:

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

Article

- 4. Assessment of Real Property.**
- 6B. Homestead Property Tax Exemption.**

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

1 For the purpose of giving effect to the "Tax Limitations
2 Amendment," this chapter shall be interpreted in accordance
3 with the following definitions, unless the context clearly
4 requires a different meaning:

5 "Owner" means the person, as defined in section ten, article
6 two, chapter two of this code, who is possessed of the freehold,
7 whether in fee or for life. A person seized or entitled in fee
8 subject to a mortgage or deed of trust securing a debt or liability
9 is considered the owner until the mortgagee or trustee takes
10 possession, after which the mortgagee or trustee shall be
11 considered the owner. A person who has an equitable estate of
12 freehold, or is a purchaser of a freehold estate who is in
13 possession before transfer of legal title is also considered the
14 owner.

15 "Used and occupied by the owner thereof exclusively for
16 residential purpose" means actual habitation by the owner or
17 the owner's spouse of all or a portion of a parcel of real
18 property as a primary place of abode to the exclusion of any
19 commercial use: *Provided*, That if the parcel of real property
20 was unoccupied at the time of assessment and either: (a) Was
21 used and occupied by the owner thereof exclusively for
22 residential purposes on the first day of July of the previous year
23 assessment date; (b) was unimproved on the first of July of the
24 previous year but a building improvement for residential
25 purposes was subsequently constructed thereon between that
26 date and the time of assessment; or (c) is retained by the
27 property owner for noncommercial purposes and was most
28 recently used and occupied by the owner or the owner's spouse
29 as a residence, and the owner, as a result of illness, accident or
30 infirmity, is residing with a family member or is a resident in a
31 nursing home, personal care home, rehabilitation center or
32 similar facility, then the property shall be considered "used and
33 occupied by the owner thereof exclusively for residential
34 purpose": *Provided, however*, That nothing herein contained

35 shall permit an unoccupied or unimproved property to be
36 considered “used and occupied by the owner thereof exclu-
37 sively for residential purposes” for more than one year unless
38 the owner, as a result of illness, accident or infirmity, is
39 residing with a family member or is a resident of a nursing
40 home, personal care home, rehabilitation center or similar
41 facility. If a license is required for an activity on the premises
42 or if an activity is conducted thereon which involves the use of
43 equipment of a character not commonly employed solely for
44 domestic as distinguished from commercial purposes, the use
45 may not be considered to be exclusively residential.

46 “Family member” means a person who is related by
47 common ancestry, adoption or marriage including, but not
48 limited to, persons related by lineal and collateral consanguin-
49 ity.

50 “Farm” means a tract or contiguous tracts of land used for
51 agriculture, horticulture or grazing and includes all real
52 property designated as “wetlands” by the United States army
53 corps of engineers or the United States fish and wildlife service.

54 “Occupied and cultivated” means subjected as a unit to
55 farm purposes, whether used for habitation or not, and although
56 parts may be lying fallow, in timber or in wastelands.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

§11-6B-5. Determination; notice of denial of claim or exemption.

§11-6B-2. Definitions.

1 For purposes of this article, the term:

2 (1) “Assessed value” means the value of property as
3 determined under article three of this chapter.

4 (2) "Claimant" means a person who is age sixty-five or
5 older or who is certified as being permanently and totally
6 disabled, and who owns a homestead that is used and occupied
7 by the owner thereof exclusively for residential purposes:
8 *Provided, That:* (1) If the property was most recently used and
9 occupied by the owner or the owner's spouse thereof exclu-
10 sively for residential purposes; (2) the owner, as a result of
11 illness, accident or infirmity, is residing with a family member
12 or is a resident of a nursing home, personal care home, rehabili-
13 tation center or similar facility; and (3) the property is retained
14 by the owner for noncommercial purposes, then the owner of
15 that property may continue to claim a homestead property tax
16 exemption on the property.

17 (3) "Family member" means a person who is related by
18 common ancestry, adoption or marriage including, but not
19 limited to, persons related by lineal and collateral consanguin-
20 ity.

21 (4) "Homestead" means a single family residential house,
22 including a mobile or manufactured or modular home, and the
23 land surrounding such structure; or a mobile or manufactured
24 or modular home regardless of whether the land upon which
25 such mobile or manufactured or modular home is situated is
26 owned or leased.

27 (5) "Owner" means the person who is possessed of the
28 homestead, whether in fee or for life. A person seized or
29 entitled in fee subject to a mortgage or deed of trust shall be
30 considered the owner. A person who has an equitable estate of
31 freehold, or is a purchaser of a freehold estate who is in
32 possession before transfer of legal title shall also be considered
33 the owner. Personal property mortgaged or pledged shall, for
34 the purpose of taxation, be considered the property of the party
35 in possession.

36 (6) “Permanently and totally disabled” means a person who
37 is unable to engage in any substantial gainful activity by reason
38 of any medically determinable physical or mental condition
39 which can be expected to result in death or which has lasted or
40 can be expected to last for a continuous period of not less than
41 twelve months.

42 (7) “Sixty-five years of age or older” includes a person who
43 attains the age of sixty-five on or before the thirtieth day of
44 June following the July first assessment day.

45 (8) “Used and occupied exclusively for residential pur-
46 poses” means that the property is used as an abode, dwelling or
47 habitat for more than six consecutive months of the calendar
48 year prior to the date of application by the owner thereof; and
49 that the property is used only as an abode, dwelling or habitat
50 to the exclusion of any commercial use: *Provided*, That failure
51 to satisfy this six-month period shall not prevent allowance of
52 a homestead exemption to a former resident in accordance with
53 section three of this article.

54 (9) “Tax year” means the calendar year following the July
55 first assessment day.

56 (10) “Resident of this state” means an individual who is
57 domiciled in this state for more than six months of the calendar
58 year.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.* — No exemption shall be allowed under this
2 article unless a claim of exemption is filed with the assessor of
3 the county in which the homestead is located, on or before the
4 first day of December following the July first assessment day.
5 In the case of sickness, absence or other disability of the
6 claimant, the claim may be filed by the claimant or his or her
7 duly authorized agent.

8 (b) *Claims for disability exemption.* — Each claim for
9 exemption based on the owner being permanently and totally
10 disabled shall include one of the following forms of documenta-
11 tion in support of said claim: (1) A written certification by a
12 doctor of medicine or doctor of osteopathy licensed to practice
13 their particular profession in this state that the claimant is
14 permanently and totally disabled; (2) a written certification by
15 the social security administration that the claimant is currently
16 receiving benefits for permanent and total disability; (3) a copy
17 of the letter from the social security administration originally
18 awarding benefits to the claimant for permanent and total
19 disability and a copy of a current check for such benefits,
20 marked void; (4) a current social security health insurance
21 (medicare) card in the name of the claimant and a copy of a
22 current check to the claimant, marked void, for benefits from
23 the social security administration for permanent and total
24 disability; (5) a written certification signed by the veterans
25 administration certifying that a person is totally and perma-
26 nently disabled; (6) any lawfully recognized workers' compen-
27 sation documentation certifying that a person is totally and
28 permanently disabled; (7) any lawfully recognized pneumoconi-
29 osis documentation certifying that a person is totally and
30 permanently disabled; or (8) any other lawfully recognized
31 documentation certifying that a person is totally and perma-
32 nently disabled.

33 (c) *Renewals.* —

34 (1) *Senior citizens.* — If the claimant is age sixty-five or
35 older, then after the claimant has filed for the exemption once
36 with his or her assessor, there shall be no need for that claimant
37 to refile unless the claimant moves to a new homestead.

38 (2) *Disabled.* — If the claimant is permanently and totally
39 disabled, then after the claimant has filed for the exemption
40 once with his or her assessor, and signed a statement certifying

41 that he or she will notify the assessor if he or she is no longer
42 eligible for an exemption on the basis of being permanently and
43 totally disabled and that the claimant will notify the assessor
44 within thirty days of the discontinuance of the receipt of
45 benefits for permanent and total disability, if the claimant
46 originally claimed receipt of said benefits to document his or
47 her claim for exemption, there shall be no need for that claim-
48 ant to refile, unless the claimant moves to a new homestead.

49 (3) *Waiver of exemption.* — Any person not filing his or her
50 claim for exemption on or before the first day of December
51 shall be determined to have waived his or her right to exemp-
52 tion for the next tax year.

53 (4) *Residential care exception.* — For purposes of this
54 section, an otherwise qualified claimant who, as a result of
55 illness, accident or infirmity, resides with a family member or
56 is a resident at a nursing home, personal care home, rehabilita-
57 tion center or similar facility is not considered to have moved
58 to a new homestead.

§11-6B-5. Determination; notice of denial of claim or exemption.

1 (a) The assessor shall, as soon as practicable after a claim
2 for exemption is filed, review that claim and either approve or
3 deny it. If the exemption is denied, the assessor shall promptly,
4 but not later than the first day of January, serve the claimant
5 with written notice explaining why the exemption was denied
6 and furnish a form for filing with the county commission should
7 the claimant desire to take an appeal. The notice required or
8 authorized by this section shall be served on the claimant or his
9 or her authorized representative either by personal service or by
10 certified mail.

11 (b) In the event that the assessor shall have information
12 sufficient to form a reasonable belief that a claimant, after
13 having been originally granted an exemption, is not eligible for

14 said exemption, he or she shall deny the exemption on the next
15 assessment date and shall promptly, but no later than the first
16 day of January, serve the claimant with written notice explain-
17 ing the reasons for the denial and furnish a form for filing with
18 the county commission should the claimant desire to take an
19 appeal.

§11-6B-6. Appeals procedure.

1 (a) *Notice of appeal; thirty days.* — Any claimant ag-
2 grieved by the denial of his or her claim for exemption or the
3 subsequent denial of his or her exemption may appeal to the
4 county commission within thirty days after receipt of written
5 notice explaining why the exemption was denied.

6 (b) *Review; determination; appeal.* — The county commis-
7 sion shall complete its review and issue its determination as
8 soon as practicable after receipt of the notice of appeal, but in
9 no event later than the twenty-eighth day of February of the tax
10 year for which the exemption is first applied. In conducting its
11 review, the county commission may hold a hearing on the
12 claim. The assessor or the claimant may apply to the circuit
13 court of the county for review of the determination of the
14 county commission in the same manner as is provided for
15 appeals from the county commission in section twenty-five,
16 article three of this chapter.

CHAPTER 231

(S. B. 655 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley,
Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-seven; and to amend and reenact section seventeen, article six-g of said chapter, all relating to creating the public utilities tax loss restoration fund; and providing additional funds to counties, districts and municipalities that have lost public utilities-assessed value.

Be it enacted by the Legislature of West Virginia:

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

Article

6. Assessment of Public Service Businesses.

6G. Assessment of Interstate Corporation Motor Vehicle Business Registered Under a Proportional Registration Agreement.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in auditor's office.

§11-6-27. Public utilities tax loss restoration fund.

§11-6-26. Operating fund for public utilities division in auditor's office.

1 The auditor shall establish a special operating fund in the
2 state treasury for the public utilities division in his or her office.
3 The auditor shall pay into the fund one and three eighths
4 percent of the gross receipts of all moneys collected as provided
5 for in this article. Up to one percent of the gross receipts shall
6 be transferred from the operating fund to the tax loss restoration
7 fund created in section twenty-seven of this article. From the
8 operating fund, the auditor shall reimburse the department of
9 tax and revenue for the actual operating expenses incurred in

10 the performance of its duties required by this article the
11 reimbursement to the tax department from the fund shall not
12 exceed fifty percent of three eighths of one percent of the
13 annual deposits to the fund. Any moneys remaining in the
14 special operating fund after reimbursement to the tax depart-
15 ment shall be used by the auditor for funding the operation of
16 the public utilities division located in his or her office. On the
17 thirty-first day of July in each fiscal year, if the balance in the
18 operating fund exceeds one percent of gross revenues plus fifty
19 thousand dollars, the excess shall be withdrawn from the special
20 fund and deposited in the general fund of the state.

§11-6-27. Public utilities tax loss restoration fund.

1 The auditor shall establish a special revenue fund in the
2 state treasury entitled the "Public Utilities Tax Loss Restoration
3 Fund". The auditor shall pay into the fund up to one percent of
4 the gross receipts deposited in the public utilities operating fund
5 created in section twenty-six of this article and up to one
6 percent of the gross receipts deposited in the operating fund of
7 the interstate commerce division created in section seventeen,
8 article six-g of this chapter. The proceeds of the tax loss
9 restoration fund shall be distributed quarterly on a proportional
10 basis to counties, districts and municipalities that have lost
11 assessed value from the prior year's assessment and the method
12 of distribution is based upon the county, district or municipal-
13 ity's percentage loss compared to the total loss of all counties,
14 districts and municipalities that have lost assessed value from
15 the prior year's assessment: *Provided*, That the calculation to
16 the adjustments shall exclude loss in tax revenue attributed to
17 the school current levy, as set forth in section six-c, article
18 eight, chapter eleven of this code: *Provided, however*, That the
19 proceeds received by any county, district or municipality shall
20 not be greater than the loss of tax revenue caused by the
21 decrease in assessed value.

**ARTICLE 6G. ASSESSMENT OF INTERSTATE CORPORATION MOTOR
VEHICLE BUSINESS REGISTERED UNDER A PROPOR-
TIONAL REGISTRATION AGREEMENT.**

**§11-6G-17. Operating fund for interstate commerce disclosure
division in auditor's office.**

1 The auditor shall establish a special operating fund in the
2 state treasury for the interstate commerce disclosure division in
3 his or her office. The auditor shall pay into the fund two percent
4 of the gross receipts of all moneys collected as provided for in
5 this article. Up to one percent of the gross receipts shall be
6 transferred to the public utilities tax loss restoration fund
7 created in section twenty-seven, article six of this chapter. From
8 the fund, the auditor shall reimburse the tax division and the
9 division of motor vehicles for the actual operating expenses
10 incurred in the performance of its duties required by this article.
11 The reimbursements to the tax division and division of motor
12 vehicles from the fund shall not exceed one third of one percent
13 of the annual deposits to the fund per agency. Any moneys
14 remaining in the special operating fund after reimbursement to
15 the tax division and the division of motor vehicles shall be used
16 by the auditor for funding the operation of the interstate
17 commerce disclosure division located in his or her office.

18 The interstate commerce disclosure division is hereby
19 granted authority and required to share any and all information
20 obtained by the division in the implementation of this article
21 with the state auditor, tax commissioner and the commissioner
22 of motor vehicles to effectuate the collection of taxes and fees
23 under this article. The commissioner of motor vehicles is
24 hereby authorized and required to share any and all information
25 obtained by the division of motor vehicles in the implementa-
26 tion of this article. The commissioner of motor vehicles will
27 supply to the interstate commerce disclosure division the names
28 of, location or locations of and amount or amounts paid by
29 West Virginia owners or operators of interstate motor vehicles

30 registered under the terms of any proportional registration
31 agreement. The tax commissioner is hereby authorized and
32 required to share any and all information obtained by the
33 department of tax and revenue. The state auditor and the
34 interstate commerce disclosure division is hereby authorized
35 and required to share any and all information obtained by the
36 auditor or the division.

CHAPTER 232

**(Com. Sub. for S. B. 496 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fourteen, article ten of said chapter; to amend article fourteen of said chapter by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three, five, nine and eleven, article fourteen-a of said chapter; to amend and reenact section two, article fourteen-b of said chapter; to further amend said chapter by adding thereto a new article, designated article fourteen-c; to amend and reenact section eighteen, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eighteen-b; to amend and reenact section thirteen, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto a new section, designated section thirteen-a, all relating generally to the levy, collection and administration of West

Virginia motor fuels excise tax; making tax crimes and penalties act applicable to West Virginia motor fuels excise tax as of specified date; making West Virginia tax procedure and administration act applicable to West Virginia motor fuels excise tax effective as of specified date; applying overpayments, credits and refunds to West Virginia motor fuels excise tax effective as of effective date; replacing gasoline and special fuel excise tax with motor fuel excise tax as of specified date, after which gasoline and special fuel excise tax is repealed; defining certain motor carrier road tax terms; requiring motor carrier road tax to be equal to the motor fuel excise tax; changing frequency for filing motor carrier road tax reports; providing credit against motor carrier road tax for payment of motor fuels excise tax; authorizing refunds of the motor fuels tax; defining certain terms in interstate fuel tax agreement; enacting motor fuels excise tax; defining terms; authorizing promulgation of rules and forms; authorizing exchange of information; levying motor fuels excise tax; establishing rate of motor fuels excise tax; establishing points at which the tax is imposed; imposing tax on unaccounted for motor fuel losses; imposing back-up tax on taxable use of untaxed fuel; establishing exemptions from tax; designating persons to be licensed; establishing license application procedure; authorizing permissive supplier to collect tax; establishing bond requirements; grounds for issuance and for denial of license; requiring notice of discontinuance of business; providing for permitting license cancellation under certain circumstances; records of license applicants and licensees; specifying when tax returns and tax payments are due; requiring remittance of tax by suppliers and permissive suppliers; providing for notice of cancellation and reissuance of license; identifying information required on tax return; specifying deductions and discounts allowed to suppliers and permissive suppliers; specifying duties of suppliers and permissive suppliers as trustee; requiring returns and allowing discounts to importers; requiring information returns by terminal operators; requiring information returns by motor fuel transport-

ers; requiring return by exporters; identifying information required on returns; authorizing refund of taxes erroneously collected or for gallonage exported or lost through casualty or evaporation; providing method for claiming and paying refunds; incorporating provisions of tax crimes and penalties act and West Virginia tax procedure and administration act into motor fuels excise tax; specifying information required on shipping documents; requiring import confirmation number; prohibiting improper sale or use of untaxed motor fuels; providing remedy for refusal to allow inspection or taking of fuel sample; prohibiting engaging in business without a license; prohibiting certain persons from obtaining license; providing civil remedy for filing false returns and for failure to file returns; providing criminal penalties for willful commission of prohibited acts; imposing penalties for unlawful importing, transportation, delivery, storage or sale of motor fuel; providing for enforcement of assessment; imposing record-keeping requirements; providing for inspection of records; providing commissioner authority to inspect; specifying marking requirements for dyed diesel fuel storage facilities; providing for disposition of tax collected; and specifying that sections pertaining to sales and use taxes on gasoline and special fuel are, after a specified date, repealed and replaced by new sections continuing sales and use taxes on motor fuel and harmonizing these taxes with new motor fuel excise tax.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three and fourteen, article ten of said chapter be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section thirty-one; that sections two, three, five, nine and eleven, article fourteen-a of said chapter be amended and reenacted; that section two, article fourteen-b of said chapter be amended and

reenacted; that said chapter be further amended by adding thereto a new article, designated article fourteen-c; that section eighteen, article fifteen of said chapter be amended and reenacted; that article fifteen of said chapter be amended by adding thereto a new section, designated section eighteen-b; that section thirteen, article fifteen-a of said chapter be amended and reenacted; and that article fifteen-a of said chapter be further amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

Article

- 9. Crimes and Penalties.**
- 10. Procedure and Administration.**
- 14. Gasoline and Special Fuel Excise Tax.**
- 14A. Motor Carrier Road Tax.**
- 14B. International Fuel Tax Agreement.**
- 14C. Motor Fuel Excise Tax.**
- 15. Consumers Sales Tax.**
- 15A. Use Tax.**

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

- 1 (a) The provisions of this article apply to the following
- 2 taxes imposed by this chapter: (1) The inheritance and transfer
- 3 taxes and estate taxes imposed by article eleven of this chapter;
- 4 (2) the business registration tax imposed by article twelve of
- 5 this chapter; (3) the minimum severance tax on coal imposed by
- 6 article twelve-b of this chapter; (4) the corporate license tax
- 7 imposed by article twelve-c of this chapter; (5) the business and
- 8 occupation tax imposed by article thirteen of this chapter; (6)
- 9 the severance tax imposed by article thirteen-a of this chapter;
- 10 (7) the telecommunications tax imposed by article thirteen-b of
- 11 this chapter; (8) the gasoline and special fuels excise tax
- 12 imposed by article fourteen of this chapter; (9) the motor fuel
- 13 excise tax imposed by article fourteen-c of this chapter; (10) the
- 14 motor carrier road tax imposed by article fourteen-a of this
- 15 chapter; (11) the interstate fuel tax agreement authorized by

16 article fourteen-b of this chapter; (12) the consumers sales and
17 service tax imposed by article fifteen of this chapter; (13) the
18 use tax imposed by article fifteen-a of this chapter; (14) the
19 tobacco products excise tax imposed by article seventeen of this
20 chapter; (15) the soft drinks tax imposed by article nineteen of
21 this chapter; (16) the personal income tax imposed by article
22 twenty-one of this chapter; (17) the business franchise tax
23 imposed by article twenty-three of this chapter; (18) the
24 corporation net income tax imposed by article twenty-four of
25 this chapter; and (19) the health care provider tax imposed by
26 article twenty-seven of this chapter.

27 (b) The provisions of this article also apply to the West
28 Virginia tax procedure and administration act in article ten of
29 this chapter, and to any other articles of this chapter when
30 application is expressly provided for by the Legislature.

31 (c) The provisions of this article also apply to the charitable
32 bingo fee imposed by sections six and six-a, article twenty,
33 chapter forty-seven of this code; the charitable raffle fee
34 imposed by section seven, article twenty-one of said chapter;
35 and the charitable raffle boards and games fees imposed by
36 section three, article twenty-three of said chapter.

37 (d) Each and every provision of this article applies to the
38 articles of this chapter listed in subsections (a), (b) and (c) of
39 this section, with like effect, as if the provisions of this article
40 were applicable only to the tax and were set forth in extenso in
41 this article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

§11-10-14. Overpayments; credits; refunds and limitations.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to the inheritance
2 and transfer taxes, the estate tax, and interstate compromise and
3 arbitration of inheritance and death taxes, the business registra-
4 tion tax, the annual tax on incomes of certain carriers, the
5 minimum severance tax on coal, the corporate license tax, the
6 business and occupation tax, the severance tax, the telecommu-
7 nications tax, the interstate fuel tax, the consumers sales and
8 service tax, the use tax, the tobacco products excise tax, the soft
9 drinks tax, the personal income tax, the business franchise tax,
10 the corporation net income tax, the gasoline and special fuel
11 excise tax, the motor fuel excise tax, the motor carrier road tax,
12 the health care provider tax, and the tax relief for elderly
13 homeowners and renters administered by the state tax commis-
14 sioner. This article shall not apply to ad valorem taxes on real
15 and personal property or any other tax not listed in this section,
16 except that in the case of ad valorem taxes on real and personal
17 property, when any return, claim, statement or other document
18 is required to be filed, or any payment is required to be made
19 within a prescribed period or before a prescribed date, and the
20 applicable law requires delivery to the office of the sheriff of a
21 county of this state, the methods prescribed in section five-f of
22 this article for timely filing and payment to the tax commis-
23 sioner or state tax department are the same methods utilized for
24 timely filing and payment with the sheriff.

25 (b) The provisions of this article apply to the beer barrel tax
26 levied by article sixteen of this chapter and to the wine liter tax
27 levied by section four, article eight, chapter sixty of this code.

28 (c) The provisions of this article also apply to any other
29 article of this chapter when the application is expressly pro-
30 vided for by the Legislature.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds or credits of overpayments.* — In the case of
2 overpayment of any tax (or fee), additions to tax, penalties or
3 interest imposed by this article, or any of the other articles of
4 this chapter, or of this code, to which this article is applicable,
5 the tax commissioner shall, subject to the provisions of this
6 article, refund to the taxpayer the amount of the overpayment
7 or, if the taxpayer so elects, apply the same as a credit against
8 the taxpayer's liability for the tax for other periods. The refund
9 or credit shall include any interest due the taxpayer under the
10 provisions of section seventeen of this article.

11 (b) *Refunds or credits of gasoline and special fuel excise*
12 *tax or motor carrier road tax.* — Any person who seeks a
13 refund or credit of gasoline and special fuel excise taxes under
14 the provisions of section ten, eleven or twelve, article fourteen
15 of this chapter, section nine or eleven, article fourteen-a of this
16 chapter, or of motor fuel excise tax under section nine, article
17 fourteen-c of this chapter shall file his or her claim for refund
18 or credit in accordance with the provisions of the applicable
19 sections. The ninety-day time period for determination of
20 claims for refund or credit provided in subsection (d) of this
21 section does not apply to these claims for refund or credit:
22 *Provided*, That claims for refund or credit of the motor fuel
23 excise tax under section nine, article fourteen-c, of this chapter
24 are subject to the ninety-day time period provided in subsection
25 (d) of this section: *Provided, however*, That claims for refund
26 or credit of the motor fuel excise tax under section nine, article
27 fourteen-c of this chapter made by the United States govern-
28 ment or unit or agency thereof, any municipal government or
29 any agency thereof, or any county board of education made
30 pursuant to subdivisions one, two, three, four, five and six,
31 subsection (c), section nine, article fourteen-c of this chapter
32 will be subject to a thirty-day time period.

33 (c) *Claims for refund or credit.* — No refund or credit shall
34 be made unless the taxpayer has timely filed a claim for refund

35 or credit with the tax commissioner. A person against whom an
36 assessment or administrative decision has become final is not
37 entitled to file a claim for refund or credit with the tax commis-
38 sioner as prescribed herein. The tax commissioner shall
39 determine the taxpayer's claim and notify the taxpayer in
40 writing of his or her determination.

41 (d) *Petition for refund or credit; hearing.* —

42 (1) If the taxpayer is not satisfied with the tax commis-
43 sioner's determination of taxpayer's claim for refund or credit,
44 or if the tax commissioner has not determined the taxpayer's
45 claim within ninety days after the claim was filed, or six
46 months in the case of claims for refund or credit of the taxes
47 imposed by articles twenty-one, twenty-three and twenty-four
48 of this chapter, after the filing thereof, the taxpayer may file,
49 with the tax commissioner, either personally or by certified
50 mail, a petition for refund or credit: *Provided*, That no petition
51 for refund or credit may be filed more than sixty days after the
52 taxpayer is served with notice of denial of taxpayer's claim:
53 *Provided, however*, That after the thirty-first day of December,
54 two thousand two, the taxpayer shall file the petition with the
55 office of tax appeals in accordance with the provisions of
56 section nine, article ten-a of this chapter.

57 (2) The petition for refund or credit shall be in writing,
58 verified under oath by the taxpayer, or by taxpayer's duly
59 authorized agent having knowledge of the facts, and set forth
60 with particularity the items of the determination objected to,
61 together with the reasons for the objections.

62 (3) When a petition for refund or credit is properly filed, the
63 procedures for hearing and for decision applicable when a
64 petition for reassessment is timely filed shall be followed.

65 (e) *Appeal.* — An appeal from the office of tax appeal's
66 administrative decision upon the petition for refund or credit

67 may be taken by the taxpayer in the same manner and under the
68 same procedure as that provided for judicial review of an
69 administrative decision on a petition for reassessment, but no
70 bond is required of the taxpayer. An appeal from the adminis-
71 trative decision of the office of tax appeals on a petition for
72 refund or credit, if taken by the taxpayer, shall be taken as
73 provided in section nineteen, article ten-a of this chapter.

74 (f) *Decision of the court.* — Where the appeal is to review
75 an administrative decision on a petition for refund or credit, the
76 court may determine the legal rights of the parties but in no
77 event shall it enter a judgment for money.

78 (g) *Refund made or credit established.* — The tax commis-
79 sioner shall promptly issue his or her requisition on the treasury
80 or establish a credit, as requested by the taxpayer, for any
81 amount finally administratively or judicially determined to be
82 an overpayment of any tax (or fee) administered under this
83 article. The auditor shall issue his or her warrant on the trea-
84 surer for any refund requisitioned under this subsection payable
85 to the taxpayer entitled to the refund, and the treasurer shall pay
86 the warrant out of the fund into which the amount refunded was
87 originally paid: *Provided*, That refunds of personal income tax
88 may also be paid out of the fund established pursuant to section
89 ninety-three, article twenty-one of this chapter.

90 (h) *Forms for claim for refund or a credit; where return*
91 *constitutes claim.* — The tax commissioner may prescribe by
92 rule or regulation the forms for claims for refund or credit.
93 Notwithstanding the foregoing, where the taxpayer has overpaid
94 the tax imposed by article twenty-one, twenty-three or twenty-
95 four of this chapter, a return signed by the taxpayer which
96 shows on its face that an overpayment of tax has been made
97 constitutes a claim for refund or credit.

98 (i) *Remedy exclusive.* — The procedure provided by this
99 section constitutes the sole method of obtaining any refund,
100 credit, or any tax (or fee) administered under this article, it
101 being the intent of the Legislature that the procedure set forth
102 in this article is in lieu of any other remedy, including the
103 uniform declaratory judgments act embodied in article thirteen,
104 chapter fifty-five of this code, and the provisions of section
105 two-a, article one of this chapter.

106 (j) *Applicability of this section.* — The provisions of this
107 section apply to refunds or credits of any tax (or fee), additions
108 to tax, penalties or interest imposed by this article, or any article
109 of this chapter, or of this code, to which this article is applica-
110 ble.

111 (k) *Erroneous refund or credit.* — If the tax commissioner
112 believes that an erroneous refund has been made or an errone-
113 ous credit has been established, he or she may proceed to
114 investigate and make an assessment or institute civil action to
115 recover the amount of the refund or credit, within two years
116 from the date the erroneous refund was paid or the erroneous
117 credit was established, except that the assessment may be issued
118 or civil action brought within five years from the date if it
119 appears that any portion of the refund or credit was induced by
120 fraud or misrepresentation of a material fact.

121 (l) *Limitation on claims for refund or credit.* —

122 (1) *General rule.* — Whenever a taxpayer claims to be
123 entitled to a refund or credit of any tax (or fee), additions to tax,
124 penalties or interest imposed by this article, or any article of
125 this chapter, or of this code, administered under this article,
126 paid into the treasury of this state, the taxpayer shall, except as
127 provided in subsection (d) of this section, file a claim for
128 refund, or credit, within three years after the due date of the
129 return in respect of which the tax (or fee) was imposed,

130 determined by including any authorized extension of time for
131 filing the return, or within two years from the date the tax, (or
132 fee), was paid, whichever of the periods expires the later, or if
133 no return was filed by the taxpayer, within two years from the
134 time the tax (or fee) was paid, and not thereafter.

135 (2) *Extensions of time for filing claim by agreement.* — The
136 tax commissioner and the taxpayer may enter into a written
137 agreement to extend the period within which the taxpayer may
138 file a claim for refund or credit, which period shall not exceed
139 two years. The period agreed upon may be extended for
140 additional periods not in excess of two years each by subse-
141 quent agreements in writing made before expiration of the
142 period previously agreed upon.

143 (3) *Special rule where agreement to extend time for making*
144 *an assessment.* — Notwithstanding the provisions of subdivi-
145 sions (1) and (2) of this subsection, if an agreement is made
146 under the provisions of section fifteen of this article extending
147 the time period in which an assessment of tax can be made, then
148 the period for filing a claim for refund or credit for overpay-
149 ment of the same tax made during the periods subject to
150 assessment under the extension agreement are also extended for
151 the period of the extension agreement plus ninety days.

152 (4) *Overpayment of federal tax.* — Notwithstanding the
153 provisions of subdivisions (1) and (2) of this subsection, in the
154 event of a final determination by the United States Internal
155 Revenue Service or other competent authority of an overpay-
156 ment in the taxpayer's federal income or estate tax liability, the
157 period of limitation upon claiming a refund reflecting the final
158 determination in taxes imposed by articles eleven, twenty-one
159 and twenty-four of this chapter shall not expire until six months
160 after the determination is made by the United States Internal
161 Revenue Service or other competent authority.

162 (5) *Tax paid to the wrong state.* — Notwithstanding the
163 provisions of subdivisions (1) and (2) of this subsection, when
164 an individual, or the fiduciary of an estate, has in good faith
165 erroneously paid personal income tax, estate tax or sales tax, to
166 this state on income or a transaction which was lawfully taxable
167 by another state and, therefore, not taxable by this state, and no
168 dispute exists as to the jurisdiction to which the tax should have
169 been paid, then the time period for filing a claim for refund, or
170 credit, for the tax erroneously paid to this state does not expire
171 until ninety days after the tax is lawfully paid to the other state.

172 (6) *Exception for gasoline and special fuel excise tax, motor*
173 *fuel excise tax and motor carrier road tax.* — This subsection
174 does not apply to refunds or credits of gasoline and special fuel
175 excise tax, motor carrier road tax, or motor fuel excise tax
176 sought under the provisions of article fourteen, fourteen-a or
177 fourteen-c of this chapter.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-31. Repeal of article.

1 Each and every provision of this article is repealed for all
2 tax periods beginning on and after the first day of January, two
3 thousand four: *Provided*, That tax liabilities arising for taxable
4 periods ending before the first day of January, two thousand
5 four, are determined, paid, administered, assessed and collected
6 as if the tax imposed by this article had not been repealed, and
7 the rights and duties of the taxpayer and the state of West
8 Virginia are fully and completely preserved.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

- §11-14A-2. Definitions.
- §11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.
- §11-14A-5. Reports of carriers; joint reports; records; examination of records;
subpoenas and witnesses.
- §11-14A-9. Credits against tax.
- §11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety
bonds and cash bonds.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the tax
3 commissioner of the state of West Virginia or his or her duly
4 authorized agent.

5 (2) "Gallon" means two hundred thirty-one cubic inches of
6 liquid measurement, by volume: *Provided*, That the commis-
7 sioner may by rule prescribe other measurement or definition of
8 gallon.

9 (3) "Gasoline" means any product commonly or commer-
10 cially known as gasoline, regardless of classification, suitable
11 for use as fuel in an internal combustion engine, except special
12 fuel as hereinafter defined: *Provided*, That effective the first
13 day of January, two thousand four, "gasoline" shall have the
14 same meaning as in article fourteen-c of this chapter.

15 (4) "Highway" means every way or place of whatever
16 nature open to the use of the public as a matter of right for the
17 purpose of vehicular travel, which is maintained by this state or
18 some taxing subdivision or unit thereof or the federal govern-
19 ment or any of its agencies.

20 (5) "Identification marker" means the decal issued by the
21 commissioner for display upon a particular motor carrier and
22 authorizing a person to operate or cause to be operated a motor
23 carrier upon any highway of the state.

24 (6) "Lease" means any oral or written contract for valuable
25 consideration granting the use of a motor carrier.

26 (7) "Motor carrier" means any vehicle used, designed or
27 maintained for the transportation of persons or property and
28 having two axles and a gross vehicle weight exceeding twenty-
29 six thousand pounds or having three or more axles regardless of
30 weight or is used in combination when the weight of the

31 combination exceeds twenty-six thousand pounds or registered
32 gross vehicle weight: *Provided*, That the gross vehicle weight
33 rating of the vehicles being towed is in excess of ten thousand
34 pounds. The term motor carrier does not include any type of
35 recreational vehicle.

36 (8) "Motor fuel" means motor fuel as defined in article
37 fourteen-c of this chapter effective the first day of January, two
38 thousand four.

39 (9) "Operation" means any operation of any motor carrier,
40 whether loaded or empty, whether for compensation or not, and
41 whether owned by or leased to the person who operates or
42 causes to be operated any motor carrier.

43 (10) "Person" means and includes any individual, firm,
44 partnership, limited partnership, joint venture, association,
45 company, corporation, organization, syndicate, receiver, trust
46 or any other group or combination acting as a unit, in the plural
47 as well as the singular number, and means and includes the
48 officers, directors, trustees or members of any firm, partnership,
49 limited partnership, joint venture, association, company,
50 corporation, organization, syndicate, receiver, trust or any other
51 group or combination acting as a unit, in the plural as well as
52 the singular number, unless the intention to give a more limited
53 meaning is disclosed by the context.

54 (11) "Pool operation" means any operation whereby two or
55 more taxpayers combine to operate or cause to be operated a
56 motor carrier or motor carriers upon any highway in this state.

57 (12) "Purchase" means and includes any acquisition of
58 ownership of property or of a security interest for a consider-
59 ation.

60 (13) "Recreational vehicles" means vehicles such as motor
61 homes, pickup trucks with attached campers and buses, when

62 used exclusively for personal pleasure by an individual. In order
63 to qualify as a recreational vehicle, the vehicle shall not be used
64 in connection with any business endeavor.

65 (14) "Road tractor" means every motor carrier designed and
66 used for drawing other vehicles and not constructed as to carry
67 any load thereon either independently or any part of the weight
68 of a vehicle or load so drawn.

69 (15) "Sale" means any transfer, exchange, gift, barter or
70 other disposition of any property or security interest for a
71 consideration.

72 (16) "Special fuel" means any gas or liquid, other than
73 gasoline, used or suitable for use as fuel in an internal combus-
74 tion engine. The term "special fuel" includes products com-
75 monly known as natural or casinghead gasoline but shall not
76 include any petroleum product or chemical compound such as
77 alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not
78 commonly used nor practicably suited for use as fuel in an
79 internal combustion engine: *Provided*, That effective the first
80 day of January, two thousand four, "special fuel" has the same
81 meaning as in article fourteen-c of this chapter.

82 (17) "Tax" includes, within its meaning, interest, additions
83 to tax and penalties, unless the intention to give it a more
84 limited meaning is disclosed by the context.

85 (18) "Taxpayer" means any person liable for any tax,
86 interest, additions to tax or penalty under the provisions of this
87 article.

88 (19) "Tractor truck" means every motor carrier designed
89 and used primarily for drawing other vehicles and not con-
90 structed as to carry a load other than a part of the weight of the
91 vehicle and load so drawn.

92 (20) "Truck" means every motor carrier designed, used or
93 maintained primarily for the transportation of property and
94 having more than two axles.

§11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.

1 Every person who operates or causes to be operated on any
2 highway in this state any motor carrier shall pay a road tax on
3 each motor carrier equivalent to the amount of tax per gallon of
4 gasoline or special fuel imposed by article fourteen of this
5 chapter, calculated on each gallon of gasoline or special fuel
6 used as fuel in each motor carrier's operations in this state:
7 *Provided*, That effective the first day of January, two thousand
8 four, the tax imposed by this section shall be equal to the
9 amount of the flat rate of tax per gallon of motor fuel imposed
10 by article fourteen-c of this chapter and calculated on each
11 gallon of motor fuel used as fuel in each motor carrier's
12 operations in this state.

13 The tax imposed by this article is in addition to all other
14 taxes of whatever character imposed upon any person by any
15 other provisions of law.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

1 (a) Every taxpayer subject to the tax imposed by this article,
2 or by article fourteen-c of this chapter, except as provided in
3 subsections (b) and (c) of this section, shall on or before the
4 twenty-fifth day of January, April, July and October of every
5 calendar year make to the commissioner reports of its opera-
6 tions during the quarter ending the last day of the preceding
7 month as the commissioner requires and other reports from time
8 to time as the commissioner considers necessary. For good
9 cause shown, the commissioner may extend the time for filing
10 the reports for a period not exceeding thirty days.

11 (b) Every motor carrier which operates exclusively in this
12 state during a fiscal year that begins on the first day of July of
13 one calendar year and ends on the thirtieth day of June of the
14 next succeeding calendar year and during the fiscal year
15 consumes in its operation only gasoline or special fuel upon
16 which the tax imposed by article fourteen of this chapter has
17 been paid shall, in lieu of filing the quarterly reports required
18 by subsection (a), file an annual report for the fiscal year on or
19 before the last day of July each calendar year: *Provided*, That
20 effective the first day of January, two thousand four, every
21 motor carrier which operates exclusively in this state during a
22 fiscal year that begins on the first day of July of one calendar
23 year and ends on the thirtieth day of June of the next succeeding
24 calendar year and during the fiscal year consumes in its
25 operation only motor fuel upon which the tax imposed by
26 article fourteen-c of this chapter has been paid shall, in lieu of
27 filing the quarterly reports required by subsection (a), file an
28 annual report for the fiscal year on or before the last day of July
29 of each calendar year. For good cause shown, the commissioner
30 may extend the time for filing the report for a period of thirty
31 days.

32 (c) Two or more taxpayers regularly engaged in the
33 transportation of passengers on through buses on through
34 tickets in pool operation may, at their option and upon proper
35 notice to the commissioner, make joint reports of their entire
36 operations in this state in lieu of the separate reports required by
37 subsection (a) of this section. The taxes imposed by this article
38 are calculated on the basis of the joint reports as though the
39 taxpayers were a single taxpayer; and the taxpayers making the
40 reports are jointly and severally liable for the taxes shown to be
41 due. The joint reports shall show the total number of highway
42 miles traveled in this state and the total number of gallons of
43 gasoline or special fuel purchased in this state by the reporting
44 taxpayers. Credits to which the taxpayers making a joint return
45 are entitled are not allowed as credits to any other taxpayer; but

46 taxpayers filing joint reports shall permit all taxpayers engaged
47 in this state in pool operations with them to join in filing joint
48 reports.

49 (d) A taxpayer shall keep records necessary to verify the
50 highway miles traveled within and without the state of West
51 Virginia, the number of gallons of gasoline and special fuel
52 used and purchased within and without West Virginia and any
53 other records which the commissioner by regulation may
54 prescribe.

55 (e) In addition to the tax commissioner's powers set forth
56 in sections five-a and five-b, article ten of this chapter, the
57 commissioner may inspect or examine the records, books,
58 papers, storage tanks, meters and any equipment records or
59 records of highway miles traveled within and without West
60 Virginia and the records of any other person to verify the truth
61 and accuracy of any statement or report to ascertain whether the
62 tax imposed by this article has been properly paid.

63 (f) In addition to the tax commissioner's powers set forth in
64 sections five-a and five-b, article ten of this chapter, and as a
65 further means of obtaining the records, books and papers of a
66 taxpayer or any other person and ascertaining the amount of
67 taxes and reports due under this article, the commissioner has
68 the power to examine witnesses under oath; and if any witness
69 shall fail or refuse at the request of the commissioner to grant
70 access to the books, records and papers, the commissioner shall
71 certify the facts and names to the circuit court of the county
72 having jurisdiction of the party and the court shall thereupon
73 issue a subpoena duces tecum to the party to appear before the
74 commissioner, at a place designated within the jurisdiction of
75 the court, on a day fixed.

§11-14A-9. Credits against tax.

1 Every taxpayer subject to the road tax herein imposed is
2 entitled to a credit on the tax equivalent to the amount of tax per
3 gallon of gasoline or special fuel imposed by article fourteen of
4 this chapter on all gasoline or special fuel purchased by the
5 taxpayer for fuel in each motor carrier which it operates or
6 causes to be operated within this state, and upon which gasoline
7 or special fuel the tax imposed by the laws of this state has been
8 paid: *Provided*, That the credit is not allowed for any gasoline
9 or special fuel taxes for which any taxpayer has applied or
10 received a refund of gasoline or special fuel tax under article
11 fourteen of this chapter: *Provided, however*, That effective the
12 first day of January, two thousand four, every taxpayer subject
13 to the road tax herein imposed is entitled to a credit against the
14 tax equivalent to the amount of the flat rate of tax per gallon of
15 motor fuel imposed by article fourteen-c of this chapter on all
16 motor fuel purchased by the taxpayer and used as motor fuel in
17 motor carriers which it operates or causes to be operated within
18 this state, and upon which the motor fuel tax imposed by the
19 laws of this state has been paid: *Provided further*, That no credit
20 is allowed for any motor fuel taxes for which the taxpayer has
21 applied or received a refund of motor fuel tax under article
22 fourteen-c of this chapter. Evidence of the payment of the tax
23 in the form as required by the commissioner shall be furnished
24 by the taxpayer claiming the credit allowed in this section.
25 When the amount of the credit provided for in this section
26 exceeds the amount of the tax for which the taxpayer is liable
27 in the same quarter, the excess shall, upon written request by
28 the taxpayer, be allowed as a credit on the tax for which the
29 taxpayer would be otherwise liable for any of the four succeed-
30 ing quarters.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

1 (a) The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article and

3 article fourteen of this chapter, the amount of the credit accrued
4 for gallons of gasoline or special fuel purchased in this state but
5 consumed outside of this state, if the taxpayer by duly filed
6 claim requests the commissioner to issue a refund and if the
7 commissioner is satisfied that the taxpayer is entitled to the
8 refund and that the taxpayer has not applied for a refund of the
9 tax imposed by article fourteen of this chapter: *Provided*, That
10 effective the first day of January, two thousand four, the refunds
11 authorized in this section shall be made from the funds col-
12 lected under the provisions of this article and from the flat rate
13 of tax imposed under section five, article fourteen-c of this
14 chapter: *Provided, however*, That the commissioner shall not
15 approve a claim for refund when the claim for a refund is filed
16 after thirteen months from the close of the quarter in which the
17 tax was paid or the credit, as provided for in section nine of this
18 article, was allowed: *Provided further*, That the refund shall not
19 be made until after audit of the claimant's records by the
20 commissioner or until after a continuous surety bond or cash
21 bond has been furnished by the claimant, as hereinafter pro-
22 vided, in an amount fixed by the commissioner, conditioned to
23 pay all road taxes due hereunder: *And provided further*, That the
24 credit or refund shall in no case be allowed to reduce the
25 amount of tax to be paid by a taxpayer below the amount due as
26 tax on gasoline or special fuel used as fuel in this state as
27 provided by article fourteen of this chapter: *And provided*
28 *further*, That effective the first day of January, two thousand
29 four, the credit or refund shall in no case be allowed to reduce
30 the amount of tax to be paid by a taxpayer below the amount
31 due as tax on motor fuel used in this state as provided by article
32 fourteen-c of this chapter. The right to receive any refund under
33 the provisions of this article is not assignable and any attempt
34 at assignment thereof is void and of no effect. The claim for
35 refund or credit shall also be subject to the provisions of section
36 fourteen, article ten of this chapter.

37 A taxpayer shall furnish a continuous surety bond or a cash
38 bond in an amount fixed by the commissioner, but the amount
39 shall not be less than the total refunds due or to be paid within
40 one year: *Provided*, That if a continuous surety bond is filed, an
41 annual notice of renewal shall be filed thereafter: *Provided*,
42 *however*, That if the continuous surety bond includes the
43 requirement that the commissioner is to be notified of cancella-
44 tion at least sixty days prior to the surety bond being canceled,
45 an annual notice of renewal is not required. The bond, whether
46 a continuous surety bond or a cash bond, is conditioned upon
47 compliance with the requirements of this article and shall be
48 payable to this state in the form required by the commissioner.

49 (b) The surety must be authorized to engage in business
50 within this state. The cash bond or the continuous surety bond
51 is conditioned upon faithful compliance with the provisions of
52 this article, including the filing of the returns and payment of all
53 tax prescribed by this article. The cash bond or the continuous
54 surety bond shall be approved by the commissioner as to
55 sufficiency and form, and shall indemnify the state against any
56 loss arising from the failure of the taxpayer to pay for any cause
57 whatever the motor carrier road tax or the motor fuel excise tax
58 imposed by article fourteen-c of this chapter.

59 Any surety on a continuous surety bond furnished hereun-
60 der shall be relieved, released and discharged from all liability
61 accruing on the bond after the expiration of sixty days from the
62 date the surety shall have lodged, by certified mail, with the
63 commissioner a written request to be discharged. Discharge
64 from a continuous surety bond shall not relieve, release or
65 discharge the surety from liability already accrued, or which
66 shall accrue before the expiration of the sixty-day period.
67 Whenever any surety seeks discharge as provided in this
68 section, it is the duty of the principal of the bond to supply the
69 commissioner with another continuous surety bond or a cash
70 bond prior to the expiration of the original bond. Failure to
71 provide such other bond results in no refund being paid until

72 after completion of an audit of the taxpayer's records as
73 provided in subsection (a) of this section and the commissioner
74 may cancel any registration card and identification marker
75 previously issued to the person.

76 (c) Any taxpayer that has furnished a cash bond shall be
77 relieved, released and discharged from all liability accruing on
78 the cash bond after the expiration of sixty days from the date
79 the taxpayer shall have lodged, by certified mail, with the
80 commissioner a written request to be discharged and the
81 amount of the cash bond refunded: *Provided*, That the commis-
82 sioner may retain all or part of the bond until the commissioner
83 may perform an audit of the taxpayer's business or three years,
84 whichever first occurs. Discharge from the cash bond shall not
85 relieve, release or discharge the taxpayer from liability already
86 accrued, or which shall accrue before the expiration of the
87 sixty-day period. Whenever any taxpayer seeks discharge as
88 provided in this section, it is the duty of the taxpayer to provide
89 the commissioner with another cash bond or a continuous
90 surety bond prior to the expiration of the original cash bond.
91 Failure to provide another bond results in no refund being paid
92 until after completion of an audit of the taxpayer's records as
93 provided in subsection (a) of this section.

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-2. Definitions.

1 (a) "Commercial motor vehicle": (1) As used with respect
2 to the international registration plan, has the meaning the term
3 "apportionable vehicle" has under that plan; and (2) as used
4 with respect to the international fuel tax agreement, has the
5 meaning the term "qualified motor vehicle" has under that
6 agreement.

7 (b) "Fuel use tax" means a tax imposed on or measured by
8 the consumption of fuel in a motor vehicle.

9 (c) "Gasoline" has the same meaning as the term is defined
10 in article fourteen-c of this chapter.

11 (d) "International fuel tax agreement" means the interna-
12 tional agreement for the collection and distribution of fuel use
13 taxes paid by motor carriers, developed under the auspices of
14 the national governors' association.

15 (e) "International registration plan" means the interstate
16 agreement for the apportionment of vehicle registration fees
17 paid by motor carriers developed by the American association
18 of motor vehicle administrators.

19 (f) "Motor fuel use taxes imposed by this state" means the
20 aggregate amount of taxes, expressed in cents per gallon,
21 imposed by this state, under articles fourteen-a and fifteen-a of
22 this chapter, on gasoline or special fuel consumed in this state
23 by a motor carrier.

24 (g) "Special fuel" has the same meaning as the term is
25 defined in article fourteen-c of this chapter.

26 (h) "State" means any of the forty-eight contiguous states
27 and the District of Columbia, and any other jurisdiction which
28 imposes a motor fuel use tax and is a member of the interna-
29 tional fuel tax agreement.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-1. Short title; nature of tax.

§11-14C-2. Definitions.

§11-14C-3. Rules; forms.

§11-14C-4. Exchange of information; criminal penalty for unauthorized disclosure.

§11-14C-5. Taxes levied; rate.

§11-14C-6. Point of imposition of motor fuels tax.

§11-14C-7. Tax on unaccounted for motor fuel losses; liability.

§11-14C-8. Backup tax; liability.

- §11-14C-9. Exemptions from tax; claiming refunds of tax.
- §11-14C-10. Persons required to be licensed.
- §11-14C-11. License application procedure.
- §11-14C-12. Permissive supplier requirements on out-of-state removals.
- §11-14C-13. Bond requirements.
- §11-14C-14. Grounds for denial of license.
- §11-14C-15. Issuance of license.
- §11-14C-16. Notice of discontinuance, sale or transfer of business.
- §11-14C-17. License cancellation.
- §11-14C-18. Records and lists of license applicants and licensees.
- §11-14C-19. When tax return and payment are due.
- §11-14C-20. Remittance of tax to supplier or permissive supplier.
- §11-14C-21. Notice of cancellation or reissuance of licenses; effect of notice.
- §11-14C-22. Information required on return filed by supplier or permissive supplier.
- §11-14C-23. Deductions and discounts allowed a supplier and a permissive supplier when filing a return.
- §11-14C-24. Duties of supplier or permissive supplier as trustee.
- §11-14C-25. Returns and discounts of importers.
- §11-14C-26. Informational returns of terminal operators.
- §11-14C-27. Informational returns of motor fuel transporters.
- §11-14C-28. Exports.
- §11-14C-29. Identifying information required on return.
- §11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.
- §11-14C-31. Claiming refunds.
- §11-14C-32. Payment of refund.
- §11-14C-33. General procedure and administration; crimes and penalties.
- §11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.
- §11-14C-35. Import confirmation number; civil penalty.
- §11-14C-36. Improper sale or use of untaxed motor fuel; civil penalty.
- §11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.
- §11-14C-38. Engaging in business without a license; civil penalty.
- §11-14C-39. Preventing a person from obtaining a license; civil penalty.
- §11-14C-40. Filing a false return; failure to file return; civil penalty.
- §11-14C-41. Willful commission of prohibited acts; criminal penalties.
- §11-14C-42. Unlawful importing, transportation, delivery, storage or sale of motor fuel; sale to enforce assessment.
- §11-14C-43. Record-keeping requirements.
- §11-14C-44. Inspection of records.
- §11-14C-45. Authority to inspect.

§11-14C-46. Marking requirements for dyed diesel fuel storage facilities.

§11-14C-47. Disposition of tax collected.

PART 1. GENERAL PROVISIONS.

§11-14C-1. Short title; nature of tax.

1 (a) This article shall be known and may be cited as the
2 “West Virginia Motor Fuels Excise Tax Act”.

3 (b) All taxes levied under this article, or imposed under any
4 other article of this chapter but collected under this article, are
5 imposed upon the ultimate consumer but are precollected as
6 prescribed in this article. The levies and assessments imposed
7 on licensees as provided in this article are imposed on them as
8 agents of this state for the precollection of the tax. The taxes
9 levied under this article shall be collected and paid at those
10 times, in the manner, and by those persons specified in this
11 article.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed
3 herein.

4 (1) “Agricultural purposes” means the activities of:

5 (A) Cultivating the soil, including the planting and harvest-
6 ing of crops, for the commercial production of food, fiber, and
7 ornamental woodland products;

8 (B) Using land for breeding and management of farm
9 livestock, including dairy, apiary, equine or poultry husbandry;
10 and

11 (C) Using land for the practice of horticulture including the
12 growing of Christmas trees, orchards and nursery stock:

13 *Provided*, That agricultural purposes shall not include commer-
14 cial forestry, growing of timber for commercial purposes, or
15 any other activity that normally would not be included in
16 subdivision (A), (B) or (C) of this definition.

17 (2) "Aircraft" includes any airplane or helicopter.

18 (3) "Alcohol" means motor fuel grade ethanol or a mixture
19 of motor fuel-grade ethanol and methanol, excluding denaturant
20 and water that is a minimum of ninety-eight percent ethanol or
21 methanol by volume.

22 (4) "Article" or "this article" means article fourteen-c,
23 chapter eleven of this code.

24 (5) "Assessment" means a written determination by the
25 commissioner of the amount of taxes owed by a taxpayer.

26 (6) "Aviation fuel" means aviation gasoline or aviation jet
27 fuel.

28 (7) "Aviation gasoline" means motor fuel designed for use
29 in the operation of aircraft other than jet aircraft, and sold or
30 used for that purpose.

31 (8) "Aviation jet fuel" means motor fuel designed for use
32 in the operation of jet or turbo-prop aircraft, and sold or used
33 for that purpose.

34 (9) "Biodiesel fuel" means any motor fuel or mixture of
35 motor fuels that is derived, in whole or in part, from agricultural
36 products or animal fats, or the wastes of such products or fats,
37 and is advertised as, offered for sale as, suitable for use or used
38 as motor fuel in an internal combustion engine.

39 (10) "Blended fuel" means a mixture composed of gasoline
40 or diesel fuel and another liquid, including, but not limited to,

41 gasoline blend stocks, gasohol, ethanol, methanol, fuel grade
42 alcohol, diesel fuel enhancers and resulting blends, other than
43 a de minimus amount of a product such as carburetor detergent
44 or oxidation inhibitor, that can be used as a motor fuel in a
45 highway vehicle.

46 (11) "Blender" means a person who produces blended
47 motor fuel outside the bulk transfer/terminal system.

48 (12) "Blending" means the mixing of one or more petro-
49 leum products, with or without another product, regardless of
50 the original character of the product blended, if the product
51 obtained by the blending is capable of use in the generation of
52 power for the propulsion of a motor vehicle, an airplane, or a
53 marine vessel. Blending does not include mixing that occurs in
54 the process of refining by the original refiner of crude petro-
55 leum or the blending of products known as lubricating oil in the
56 production of lubricating oils and greases.

57 (13) "Bulk plant" means a motor fuel storage and distribu-
58 tion facility that is not a terminal and from which motor fuel
59 may be removed at a rack.

60 (14) "Bulk transfer" means any transfer of motor fuel from
61 one location to another by pipeline tender or marine delivery
62 within a bulk transfer/terminal system, including, but not
63 limited to, all of the following:

64 (A) A marine vessel movement of motor fuel from a
65 refinery or terminal to a terminal;

66 (B) Pipeline movements of motor fuel from a refinery or
67 terminal to a terminal;

68 (C) Book transfer of motor fuel within a terminal between
69 licensed suppliers prior to completion of removal across the
70 rack; and

71 (D) Two-party exchange between licensed suppliers or
72 between licensed suppliers and permissive suppliers.

73 (15) "Bulk user" means a person who maintains storage
74 facilities for motor fuel and uses part or all of the stored motor
75 fuel to operate a motor vehicle, watercraft or aircraft.

76 (16) "Bulk transfer/terminal system" means the motor fuel
77 distribution system consisting of refineries, pipelines, marine
78 vessels, and terminals. Motor fuel in a refinery, a pipeline, a
79 terminal, or a marine vessel transporting motor fuel to a
80 refinery or terminal is in the bulk transfer/terminal system.
81 Motor fuel in a motor fuel storage facility including, but not
82 limited to, a bulk plant that is not part of a refinery or terminal,
83 in the motor fuel supply tank of any engine or motor vehicle, in
84 a marine vessel transporting motor fuel to a motor fuel storage
85 facility that is not in the bulk transfer/terminal system, or in any
86 tank car, rail car, trailer, truck, or other equipment suitable for
87 ground transportation is not in the bulk transfer/terminal
88 system.

89 (17) "Carrier" means any operator of a pipeline or marine
90 vessel engaged in the business of transporting motor fuel above
91 the terminal rack.

92 (18) "Code" means the code of West Virginia of one
93 thousand nine hundred thirty-one, as amended.

94 (19) "Commercial watercraft" means a watercraft employed
95 in the business of commercial fishing, transporting persons or
96 property for compensation or hire, or any other trade or
97 business.

98 (20) "Commissioner" or "tax commissioner" means the
99 West Virginia state tax commissioner, or his or her delegate.

100 (21) “Compressed natural gas” means natural gas that has
101 been compressed and dispensed into motor fuel storage
102 containers and is advertised as, offered for sale as, suitable for
103 use as, or used as an engine motor fuel.

104 (22) “Corporate or partnership officer” means an officer or
105 director of a corporation, partner of a partnership, or member of
106 a limited liability company, who as an officer, director, partner
107 or member is under a duty to perform on behalf of the corpora-
108 tion, partnership, or limited liability company the tax collection,
109 accounting, or remitting obligations.

110 (23) “Dead storage” is the amount of motor fuel that cannot
111 be pumped out of a motor fuel storage tank because the motor
112 fuel is below the mouth of the draw pipe. The amount of motor
113 fuel in dead storage is two hundred gallons for a tank with a
114 capacity of less than ten thousand gallons and four hundred
115 gallons for a tank with a capacity of ten thousand gallons or
116 more.

117 (24) “Denaturants” means and includes gasoline, natural
118 gasoline, gasoline components, or toxic or noxious materials
119 added to motor fuel grade ethanol to make it unsuitable for
120 beverage use, but not unsuitable for automotive use.

121 (25) “Designated inspection site” means any state highway
122 inspection station, weigh station, agricultural inspection station,
123 mobile station, or other location designated by the commis-
124 sioner to be used as a motor fuel inspection site.

125 (26) “Destination state” means the state, territory, or
126 foreign country to which motor fuel is directed for delivery into
127 a storage facility, a receptacle, a container, or a type of trans-
128 portation equipment for the purpose of resale or use. The term
129 shall not include a tribal reservation of any recognized native
130 American tribe.

131 (27) “Diesel fuel” means any liquid that is advertised as,
132 offered for sale as, sold for use as, suitable for use as or used as
133 a motor fuel in a diesel-powered highway vehicle or watercraft.
134 The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and
135 kerosene, but shall not include gasoline or aviation fuel.

136 (28) “Distributor” means a person who acquires motor fuel
137 from a licensed supplier, permissive supplier, or from another
138 licensed distributor for subsequent sale or use.

139 (29) “Diversion” means transporting motor fuel outside a
140 reasonably direct route from the source to the destination state.

141 (30) “Division” or “state tax division” means the tax
142 division of the West Virginia department of tax and revenue.

143 (31) “Dyed diesel fuel” means diesel fuel that meets the
144 dyeing and marking requirements of section 4082, Title 26,
145 United States Code, regardless of how the diesel fuel was dyed.

146 (32) “End seller” means the person who sells motor fuel to
147 the ultimate user of the motor fuel.

148 (33) “Export” means to obtain motor fuel in West Virginia
149 for sale or other distribution in another state, territory, or
150 foreign country.

151 (34) “Exporter” means a person that exports motor fuel
152 from this state. The seller is the exporter of motor fuel delivered
153 out-of-state by or for the seller, and the purchaser is the
154 exporter of motor fuel delivered out-of-state by or for the
155 purchaser.

156 (35) “Fuel” means motor fuel.

157 (36) “Fuel alcohol” means methanol or motor fuel grade
158 ethanol.

159 (37) "Fuel grade ethanol" means the ASTM standard in
160 effect on the effective date of this article as the D-4806 specifi-
161 cation for denatured motor fuel grade ethanol for blending with
162 gasoline.

163 (38) "Fuel supply tank" means any receptacle on a motor
164 vehicle from which motor fuel is supplied for the propulsion of
165 the motor vehicle.

166 (39) "Gallon" means a unit of liquid measure as custom-
167 arily used in the United States containing 231 cubic inches by
168 volume.

169 (40) "Gasohol" means a blended motor fuel composed of
170 gasoline and motor fuel alcohol.

171 (41) "Gasoline" means any product commonly or commer-
172 cially known as gasoline, regardless of classification, that is
173 advertised as, offered for sale as, sold for use as, suitable for
174 use as or used as motor fuel in an internal combustion engine,
175 including gasohol, but does not include special fuel as defined
176 in this section.

177 (42) "Gasoline blend stocks" includes any petroleum
178 product component of gasoline, such as naphtha, reformat, or
179 toluene, listed in Treas. Reg. §48.4081-1(c)(3) that can be
180 blended for use in a motor fuel. However, the term does not
181 include any substance that will be ultimately used for consumer
182 nonmotor fuel use and is sold or removed in drum quantities of
183 fifty-five gallons or less at the time of the removal or sale.

184 (43) "Gross gallons" means the total measured product,
185 exclusive of any temperature or pressure adjustments, consider-
186 ations or deductions, in U.S. gallons.

187 (44) "Governmental entity" means this state or any political
188 subdivision thereof or the United States or its commissioners,
189 agencies and instrumentalities.

190 (45) "Heating oil" means any combustible liquid, including,
191 but not limited, to #1 fuel oil, #2 dyed fuel oil and kerosene,
192 that is burned in a boiler, furnace, or stove for heating or for
193 industrial processing purposes.

194 (46) "Highway" means every way or place of whatever
195 nature open to the use of the public for purposes of vehicular
196 travel in this state, including the streets and alleys in towns and
197 cities.

198 (47) "Highway vehicle" means any self-propelled vehicle,
199 trailer or semitrailer that is designed or used for transporting
200 persons or property over the public highway, and includes all
201 vehicles subject to registration under article three, chapter
202 seventeen-a of this code.

203 (48) "Import" means to bring motor fuel into this state by
204 motor vehicle, marine vessel, pipeline, or any other means.
205 However, import does not include bringing motor fuel into this
206 state in the motor fuel supply tank of a motor vehicle, if the
207 motor fuel is used to power that motor vehicle.

208 (49) "Importer" means a person that imports motor fuel into
209 this state. The seller is the importer for motor fuel delivered
210 into this state from outside of this state by or for the seller, and
211 the purchaser is the importer for motor fuel delivered into this
212 state from outside of this state by or for the purchaser.

213 (50) "Import verification number" means the number
214 assigned by the commissioner with respect to a single transport
215 vehicle delivery into this state from another state upon request
216 for an assigned number by an importer or the transporter
217 carrying taxable motor fuel into this state for the account of an
218 importer.

219 (51) "In this state" means the area within the borders of
220 West Virginia, including all territory within the borders of West
221 Virginia that is owned by the United States of America.

222 (52) "Invoiced gallons" means the gallons actually billed on
223 an invoice for payment.

224 (53) "Licensee" means any person licensed by the commis-
225 sioner pursuant to section ten of this article.

226 (54) "Liquid" means any substance that is liquid above its
227 freezing point.

228 (55) "Liquefied natural gas" means natural gas that has
229 been liquefied at -126.1 degrees centigrade and stored in
230 insulated cryogenic tanks for use as an engine motor fuel.

231 (56) "Motor carrier" means any vehicle used, designated or
232 maintained for the transportation of persons or property and
233 having two axles and a gross vehicle weight exceeding twenty-
234 six thousand pounds or having three or more axles regardless of
235 weight or is used in combination when the weight of the
236 combination exceeds twenty-six thousand pounds or registered
237 gross vehicle weight, and any aircraft, barge or other watercraft
238 or railroad locomotive transporting passengers or freight in or
239 through this state: *Provided*, That the gross vehicle weight
240 rating of the vehicles being towed is in excess of ten thousand
241 pounds. The term motor carrier does not include any type of
242 recreational vehicle.

243 (57) "Motor fuel" means gasoline, blended fuel, aviation
244 fuel and any special fuel.

245 (58) "Motor fuel transporter" means a person who trans-
246 ports motor fuel outside the bulk transfer/terminal system by
247 means of a transport vehicle, a railroad tank car, or a marine
248 vessel.

249 (59) "Motor vehicle" means automobiles, motor carriers,
250 motor trucks, motorcycles and all other vehicles or equipment,
251 engines or machines which are operated or propelled by
252 combustion of motor fuel.

253 (60) "Net gallons" means the amount of motor fuel mea-
254 sured in gallons when adjusted to a temperature of sixty degrees
255 fahrenheit and a pressure of fourteen and seven-tenths pounds
256 pressure per square inch.

257 (61) "Permissive supplier" is a person who may not be
258 subject to the taxing jurisdiction of this state, but who meets
259 both of the following requirements: (A) Is registered under
260 section 4101 of the Internal Revenue Code for transactions in
261 motor fuel in the bulk transfer/terminal system; and (B) a
262 position holder in motor fuel only located in another state or a
263 person who receives motor fuel only in another state pursuant
264 to a two-party exchange: *Provided*, That a person is classified
265 as a supplier if it has or maintains, occupies or uses, within this
266 state, directly or by a subsidiary, an office, distribution house,
267 sales house, warehouse, or other place of business, or any agent
268 (by whatever name called) operating within this state under the
269 authority of the supplier or its subsidiary.

270 (62) "Person" means any individual; firm; cooperative;
271 association; corporation; limited liability corporation; trust;
272 business trust; syndicate; partnership; limited liability partner-
273 ship; joint venture; receiver; trustee in bankruptcy; club, society
274 or other group or combination acting as a unit; or public body,
275 including, but not limited to, this state, any other state, and any
276 agency, commissioner, institution, political subdivision or
277 instrumentality of this state or any other state.

278 (63) "Position holder" means the person who holds the
279 inventory position in motor fuel in a terminal, as reflected on
280 the records of the terminal operator. A person holds the
281 inventory position in motor fuel when that person has a contract

282 with the terminal operator for the use of storage facilities and
283 terminaling services for motor fuel at the terminal. The term
284 includes a terminal operator who owns motor fuel in the
285 terminal.

286 (64) "Principal" means:

287 (A) If a partnership, all its partners;

288 (B) If a corporation, all its officers, directors, and control-
289 ling direct or indirect owners;

290 (C) If a limited liability company, all its members; or

291 (D) An individual.

292 (65) "Rack" means a mechanism for delivering motor fuel
293 from a refinery, terminal, marine vessel, or bulk plant into a
294 transport vehicle, railroad tank car, or other means of transfer
295 that is outside the bulk transfer/terminal system.

296 (66) "Railroad locomotive" means any diesel-powered
297 equipment or machinery that rides on railroad rails, and
298 includes a switching engine.

299 (67) "Receive" means any acquisition of ownership or
300 possession of motor fuel.

301 (68) "Refiner" means any person who owns, operates or
302 otherwise controls a refinery.

303 (69) "Refinery" means a facility for the manufacture or
304 reprocessing of finished or unfinished petroleum products
305 usable as motor fuel and from which motor fuel may be
306 removed by pipeline or marine vessel or at a rack.

307 (70) "Removal" means a physical transfer other than by
308 evaporation, loss, or destruction. A physical transfer to a

309 transport vehicle or other means of conveyance outside the bulk
310 transfer/terminal system is complete upon delivery into the
311 means of conveyance.

312 (71) "Retailer" means a person who sells motor fuel at
313 retail or dispenses motor fuel at a retail location.

314 (72) "Special fuel" means any gas or liquid, other than
315 gasoline, used or suitable for use as motor fuel in an internal
316 combustion engine or motor to propel any form of vehicle,
317 machine, or mechanical contrivance, and includes products
318 commonly known as natural or casing-head gasoline, diesel
319 fuel, dyed diesel fuel, biodiesel fuel, transmix, and all forms of
320 motor fuel commonly or commercially known or sold as
321 butane, propane, liquefied natural gas, liquefied petroleum gas,
322 compressed natural gas product, or a combination of liquefied
323 petroleum gas and a compressed natural gas product. "Special
324 fuel" does not include any petroleum product or chemical
325 compound such as alcohol, industrial solvent, heavy furnace oil,
326 or lubricant, unless blended in or sold for use as motor fuel in
327 an internal combustion engine.

328 (73) "State" or "this state" means the state of West Vir-
329 ginia.

330 (74) "Supplier" means a person that is:

331 (A) Subject to the general taxing jurisdiction of this state;

332 (B) Registered under section 4101 of the Internal Revenue
333 Code for transactions in motor fuel in the bulk transfer/terminal
334 distribution system; and

335 (C) One of the following:

336 (i) A position holder in motor fuel in a terminal or refinery
337 in this state and may concurrently also be a position holder in
338 motor fuel in another state; or

339 (ii) A person who receives motor fuel in this state pursuant
340 to a two-party exchange.

341 A terminal operator shall not be considered a supplier based
342 solely on the fact that the terminal operator handles motor fuel
343 consigned to it within a terminal.

344 (75) "Tax" or "this tax" is the motor fuel excise tax
345 imposed by this article fourteen-c and includes within its
346 meaning interest, additions to tax and penalties, unless the
347 context requires a more limited meaning.

348 (76) "Taxpayer" means any person required to file a return
349 for the tax imposed by this article or any person liable for
350 payment of the tax imposed by this article.

351 (77) "Terminal" means a motor fuel storage and distribu-
352 tion facility to which a terminal control number has been
353 assigned by the Internal Revenue Service, to which motor fuel
354 is supplied by pipeline or marine vessel, and from which motor
355 fuel may be removed at a rack.

356 (78) "Terminal operator" means a person who owns,
357 operates or otherwise controls a terminal.

358 (79) "Transmix" means: (A) The buffer or interface
359 between two different products in a pipeline shipment; or (B)
360 a mix of two different products within a refinery or terminal
361 that results in an off-grade mixture.

362 (80) "Transport vehicle" means a vehicle designed or used
363 to carry motor fuel over the highway and includes a straight

364 truck, a straight truck/trailer combination and a semitrailer
365 combination rig.

366 (81) "Trustee" means a person who is licensed as a supplier
367 or a permissive supplier and receives tax payments from and on
368 behalf of another pursuant to section twenty-four of this article.

369 (82) "Two-party exchange" means a transaction in which
370 motor fuel is transferred from one licensed supplier or permis-
371 sive supplier to another licensed supplier or permissive supplier
372 pursuant to an exchange agreement, and:

373 (A) Includes a transfer from the person who holds the
374 inventory position in taxable motor fuel in the terminal as
375 reflected on the records of the terminal operator;

376 (B) Is completed prior to removal of the product from the
377 terminal by the receiving exchange partner; and

378 (C) Is recorded on the terminal operator's books and
379 records with the receiving exchange partner as the supplier that
380 removes the motor fuel across the terminal rack for purposes of
381 reporting the transaction to this state.

382 (83) "Use" means the actual consumption or receipt of
383 motor fuel by any person into a motor vehicle, aircraft, or
384 watercraft.

385 (84) "Watercraft" means any vehicle used on waterways.

§11-14C-3. Rules; forms.

1 The commissioner may promulgate rules in accordance
2 with article three, chapter twenty-nine-a of this code that are
3 necessary to effectuate and enforce this article. The commis-
4 sioner may also prescribe forms necessary to effectuate and
5 enforce this article, and provide other necessary guidelines on
6 the administration of this article.

§11-14C-4. Exchange of information; criminal penalty for unauthorized disclosure.

1 (a) The commissioner may enter into written agreements
2 with duly constituted tax officials of other states and of the
3 United States for the inspection of tax returns, the making of
4 audits, the exchange of information relating to taxes adminis-
5 tered by the commissioner pursuant to this article, and provid-
6 ing information relative to the production, manufacture,
7 refining, compounding, receipt, sale, use, transportation, or
8 shipment by any person of motor fuel.

9 (b) The commissioner may divulge tax information to the
10 commissioner of the division of highways: *Provided*, That the
11 information disclosure requirements of section five-d, article
12 ten of this chapter are satisfied.

13 (c) The commissioner may provide to any person a list of
14 licensees. The list shall state the name, business address and, if
15 available, telephone number of each licensee on the list.

16 (d) Any person to whom tax information is divulged
17 pursuant to this section is subject to the prohibitions and
18 penalties prescribed in article ten of this chapter as though that
19 person was an employee of the state tax division.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to twenty and one-half cents per
3 invoiced gallon plus a variable component comprised of either
4 the tax imposed by section eighteen-b, article fifteen of this
5 chapter or the tax imposed under section thirteen-a, article
6 fifteen-a of this chapter, as applicable: *Provided*, That the motor
7 fuel excise tax shall take effect the first day of January, two
8 thousand four: *Provided, however*, That on and after the first

9 day of August, two thousand seven, the flat rate portion of the
10 motor fuel excise tax shall be fifteen and one-half cents per
11 gallon: *Provided further*, That the variable component shall be
12 equal to five percent of the average wholesale price of the
13 motor fuel: *And provided further*, That the average wholesale
14 price shall be no less than ninety-seven cents per invoiced
15 gallon and is computed as hereinafter prescribed in this section.

16 (b) *Determination of average wholesale price. –*

17 (1) To simplify determining the average wholesale price of
18 all motor fuel, the tax commissioner shall, effective with the
19 period beginning the first day of the month of the effective date
20 of this section and each first day of January thereafter, deter-
21 mine the average wholesale price of motor fuel for each annual
22 period on the basis of sales data gathered for the preceding
23 period of the first day of July through the thirty-first day of
24 October. Notification of the average wholesale price of motor
25 fuel shall be given by the tax commissioner at least thirty days
26 in advance of each first day of January by filing notice of the
27 average wholesale price in the state register, and by any other
28 means as the tax commissioner considers reasonable: *Provided*,
29 That notice of the average wholesale price of motor fuel for the
30 first period shall be timely given if filed in the state register on
31 the effective date of this section.

32 (2) The “average wholesale price” means the single,
33 statewide average per gallon wholesale price, rounded to the
34 third decimal (thousandth of a cent), exclusive of state and
35 federal excise taxes on each gallon of motor fuel, as determined
36 by the tax commissioner from information furnished by
37 suppliers, importers and distributors of motor fuel in this state,
38 or other information regarding wholesale selling prices as the
39 tax commissioner may gather, or a combination of information:
40 *Provided*, That in no event shall the average wholesale price be

41 determined to be less than ninety-seven cents per gallon of
42 motor fuel.

43 (3) All actions of the tax commissioner in acquiring data
44 necessary to establish and determine the average wholesale
45 price of motor fuel, in providing notification of his or her
46 determination prior to the effective date of any change in rate,
47 and in establishing and determining the average wholesale price
48 of motor fuel, may be made by the tax commissioner without
49 compliance with the provisions of article three, chapter twenty-
50 nine-a of this code.

51 (4) In any administrative or court proceeding brought to
52 challenge the average wholesale price of motor fuel as deter-
53 mined by the tax commissioner, his or her determination is
54 presumed to be correct and shall not be set aside unless it is
55 clearly erroneous.

56 (c) There is hereby levied a floorstocks tax on motor fuel
57 held in storage outside the bulk transfer/terminal system as of
58 the close of the business day preceding the first day of January,
59 two thousand four, and upon which the tax levied by this
60 section has not been paid. For the purposes of this section,
61 "close of the business day" means the time at which the last
62 transaction has occurred for that day. The floorstocks tax is
63 payable by the person in possession of the motor fuel on the
64 first day of January, two thousand four. The amount of the
65 floorstocks tax on motor fuel is equal to the sum of the tax rate
66 specified in subsection (a) of this section multiplied by the
67 gallons in storage as of the close of the business day preceding
68 the first day of January, two thousand four.

69 (1) Persons in possession of taxable motor fuel in storage
70 outside the bulk transfer/terminal system as of the close of the
71 business day preceding the first day of January, two thousand
72 four, shall:

73 (A) Take an inventory at the close of the business day
74 preceding the first day of January, two thousand four, to
75 determine the gallons in storage for purposes of determining the
76 floorstocks tax;

77 (B) Report no later than the thirty-first day of January, two
78 thousand four, the gallons on forms provided by the commis-
79 sioner; and

80 (C) Remit the tax levied under this section no later than the
81 first day of June, two thousand four.

82 (2) In the event the tax due is paid to the commissioner on
83 or before the thirty-first day of January, two thousand four, the
84 person remitting the tax may deduct from their remittance five
85 percent of the tax liability due.

86 (3) In the event the tax due is paid to the commissioner
87 after the first day of June, two thousand four, the person
88 remitting the tax shall pay, in addition to the tax, a penalty in
89 the amount of five percent of the tax liability due.

90 (4) In determining the amount of floorstocks tax due under
91 this section, the amount of motor fuel in dead storage may be
92 excluded. There are two methods for calculating the amount of
93 motor fuel in dead storage:

94 (A) If the tank has a capacity of less than ten thousand
95 gallons, the amount of motor fuel in dead storage is two
96 hundred gallons and if the tank has a capacity of ten thousand
97 gallons or more, the amount of motor fuel in dead storage is
98 four hundred gallons; or

99 (B) Use the manufacturer's conversion table for the tank
100 after measuring the number of inches between the bottom of the
101 tank and the bottom of the mouth of the drainpipe: *Provided,*
102 That the distance between the bottom of the tank and the

103 bottom of the mouth of the draw pipe is presumed to be six
104 inches.

105 (d) Every licensee who, on the effective date of any rate
106 change, has in inventory any motor fuel upon which the tax or
107 any portion thereof has been previously paid shall take a
108 physical inventory and file a report thereof with the commis-
109 sioner, in the format as required by the commissioner, within
110 thirty days after the effective date of the rate change, and shall
111 pay to the commissioner at the time of filing the report any
112 additional tax due under the increased rate.

§11-14C-6. Point of imposition of motor fuels tax.

1 (a) The tax levied pursuant to section five of this article is
2 imposed at the time motor fuel is imported into this state, other
3 than by a bulk transfer, is measured by invoiced gallons
4 received outside this state at a refinery, terminal or bulk plant
5 for delivery to a destination in this state and is payable by the
6 person importing the motor fuel unless otherwise specified in
7 this section.

8 (b) Except as provided in subsection (a) of this section, the
9 tax levied pursuant to section five of this article is measured by
10 invoiced gallons of motor fuel removed, other than by a bulk
11 transfer:

12 (1) From the bulk transfer/terminal system within this state;

13 (2) From the bulk transfer/terminal system outside this state
14 for delivery to a location in this state as represented on the
15 shipping papers: *Provided*, That the supplier imports the motor
16 fuel for the account of the supplier; and

17 (3) Upon sale or transfer in a terminal or refinery in this
18 state to any person not holding a supplier's license and payable
19 by the person selling or transferring the motor fuel.

20 (c) The tax levied pursuant to section five of this article
21 upon motor fuel removed from a refinery or terminal in this
22 state shall be collected by the supplier, as shown in the records
23 of the terminal operator, acting as trustee, from the person
24 removing the motor fuel from the facility.

25 (d) The tax levied pursuant to section five of this article
26 shall not apply to motor fuel imported into this state in the
27 motor fuel supply tank or tanks of a motor vehicle, other than
28 in the motor fuel supply tank of a vehicle being hauled:
29 *Provided*, That the person owning or operating as a motor
30 carrier is not relieved of any taxes imposed by article fourteen-a
31 of this chapter.

32 (e) The tax imposed pursuant to section five of this article
33 at the point that blended motor fuel is made in West Virginia
34 outside the bulk transfer/terminal system is payable by the
35 blender. The number of gallons of blended motor fuel on which
36 the tax is payable is the difference, if any, between the number
37 of gallons of blended motor fuel made and the number of
38 gallons of previously taxed motor fuel used to make the blended
39 motor fuel.

40 (f) The terminal operator of a terminal in this state is jointly
41 and severally liable with the supplier for the tax levied pursuant
42 to section five of this article and shall remit payment to this
43 state at the same time and on the same basis as a supplier under
44 section twenty-two of this article upon:

45 (1) The removal of motor fuel from the terminal on account
46 of any supplier who is not licensed in this state: *Provided*, That
47 the terminal operator is relieved of liability if the terminal
48 operator establishes all of the following:

49 (A) The terminal operator has a valid terminal operator's
50 license issued for the facility from which the motor fuel is
51 withdrawn;

52 (B) The terminal operator has a copy of a valid license from
53 the supplier as required by the commissioner; and

54 (C) The terminal operator has no reason to believe that any
55 information is false; or

56 (2) The removal of motor fuel that is not dyed and marked
57 in accordance with Internal Revenue Service requirements, if
58 the terminal operator provides any person with any bill of
59 lading, shipping paper, or similar document indicating that the
60 motor fuel is dyed and marked in accordance with the Internal
61 Revenue Service requirements.

§11-14C-7. Tax on unaccounted for motor fuel losses; liability.

1 (a) There is hereby annually levied a tax at the rate speci-
2 fied by section five of this article on taxable unaccounted for
3 motor fuel losses at a terminal in this state. "Taxable unac-
4 counted for motor fuel losses" means the number of net gallons
5 of unaccounted for motor fuel losses that exceed one half of one
6 percent of the number of net gallons removed from the terminal
7 during the year by a bulk transfer or at the terminal rack.
8 "Unaccounted for motor fuel losses" means the difference
9 between: (1) The amount of motor fuel in inventory at the
10 terminal at the beginning of the year plus the amount of motor
11 fuel received by the terminal during the year; and (2) the
12 amount of motor fuel in inventory at the terminal at the end of
13 the year plus the amount of motor fuel removed from the
14 terminal during the year. Accounted for motor fuel losses which
15 have been approved by the commissioner or motor fuel losses
16 constituting part of a transmix shall not constitute unaccounted
17 for motor fuel losses.

18 (b) The terminal operator whose motor fuel is unaccounted
19 for is liable for the tax levied by this section. Motor fuel
20 received by a terminal operator and not shown on an informa-
21 tional return filed by the terminal operator with the commis-

22 sioner as having been removed from the terminal is presumed
23 to be unaccounted for motor fuel losses. A terminal operator
24 may rebut this presumption by establishing that motor fuel
25 received at a terminal, but not shown on an informational return
26 as having been removed from the terminal, was an accounted
27 for loss or constitutes part of a transmix.

§11-14C-8. Backup tax; liability.

1 (a) The tax levied pursuant to section five of this article is
2 levied on the following:

3 (1) Dyed diesel fuel that is used to operate a highway
4 vehicle for a taxable use other than a use exempt under 26
5 U.S.C. §4082;

6 (2) Motor fuel that was allowed an exemption from the
7 motor fuel tax and was then used or consumed on a highway;
8 and

9 (3) Motor fuel that is used to operate a highway vehicle
10 after an application for a refund of tax paid on the motor fuel is
11 made or allowed on the basis that the motor fuel was used for
12 an off-highway purpose.

13 (b) The operator of a highway vehicle that uses untaxed or
14 refunded motor fuel that is taxable under this section is liable
15 for the tax. If the highway vehicle that uses the motor fuel is
16 owned by or leased to a motor carrier, the operator of the
17 highway vehicle and the motor carrier are jointly and severally
18 liable for the tax. If the end seller of motor fuel taxable under
19 this section knew or had reason to know that the motor fuel
20 would be used for a purpose that is taxable under this section,
21 the operator of the highway vehicle and the end seller are
22 jointly and severally liable for the tax.

23 (c) The tax liability levied by this section is in addition to
24 any other penalty imposed pursuant to this article.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions for flat rate.* — Sales of motor fuel to
2 the following, or as otherwise stated in this subsection, is
3 exempt per se from the flat rate of the tax levied by section five
4 of this article and the flat rate shall not be paid at the rack:

5 (1) All motor fuel exported from this state to any other state
6 or nation: *Provided*, That the supplier collects and remits to the
7 destination state or nation the appropriate amount of tax due on
8 the motor fuel transported to that state or nation: *Provided*,
9 *however*, That this exemption shall not apply to any motor fuel
10 which is transported and delivered outside this state in the
11 motor fuel supply tank of a highway vehicle;

12 (2) Sales of aircraft fuel;

13 (3) All sales of dyed special fuel; and

14 (4) Sales of propane.

15 (b) *Per se exemptions for variable component.* — Sales of
16 motor fuel to the following are exempt per se from the variable
17 component of the tax levied by section five of this article and
18 the variable component shall not be paid at the rack:

19 All motor fuel exported from this state to any other state or
20 nation: *Provided*, That the supplier collects and remits to the
21 destination state or nation the appropriate amount of tax due on
22 the motor fuel transported to that state or nation: *Provided*,
23 *however*, That this exemption shall not apply to any motor fuel
24 which is transported and delivered outside this state in the
25 motor fuel supply tank of a highway vehicle.

26 (c) *Refundable exemptions for flat rate.* — Any person
27 having a right or claim to any of the following exemptions to
28 the flat rate of the tax levied by section five of this article that

29 is set forth in this subsection shall first pay the tax levied by this
30 article and then apply to the tax commissioner for a refund:

31 (1) The United States or any agency thereof;

32 (2) Any county government or unit or agency thereof;

33 (3) Any municipal government or any agency thereof;

34 (4) Any county boards of education;

35 (5) Any urban mass transportation authority created
36 pursuant to the provisions of article twenty-seven, chapter eight
37 of this code;

38 (6) Any municipal, county, state or federal civil defense or
39 emergency service program pursuant to a government contract
40 for use in conjunction therewith, or to any person on whom is
41 imposed a requirement to maintain an inventory of motor fuel
42 for the purpose of the program: *Provided*, That motor fueling
43 facilities used for these purposes are not capable of fueling
44 motor vehicles and the person in charge of the program has in
45 his or her possession a letter of authority from the tax commis-
46 sioner certifying his or her right to the exemption: *Provided*,
47 *however*, That in order for this exemption to apply, motor fuel
48 sold under subdivisions (1) through (6) of this subsection shall
49 be used in vehicles or equipment owned and operated by the
50 respective government entity or government agency or author-
51 ity and purchased for delivery in bulk quantities of five hundred
52 gallons or more;

53 (7) All gallons of motor fuel purchased by a licensed
54 exporter and subsequently exported from this state to any other
55 state or nation: *Provided*, That the exporter has paid the
56 applicable motor fuel tax to the destination state or nation prior
57 to claiming this refund: *Provided, however*, That a refund shall
58 not be granted on any motor fuel which is transported and

59 delivered outside this state in the motor fuel supply tank of a
60 highway vehicle;

61 (8) All gallons of motor fuel used and consumed in station-
62 ary off-highway turbine engines;

63 (9) All gallons of special fuel used for heating any public or
64 private dwelling, building or other premises;

65 (10) All gallons of special fuel used for boilers;

66 (11) All gallons of motor fuel used as a dry cleaning solvent
67 or commercial or industrial solvent;

68 (12) All gallons of motor fuel used as lubricants, ingredi-
69 ents or components of any manufactured product or compound;

70 (13) All gallons of motor fuel sold for use or used as a
71 motor fuel for commercial watercraft;

72 (14) All gallons of special fuel sold for use or consumed in
73 railroad diesel locomotives;

74 (15) All gallons of motor fuel purchased in quantities of
75 twenty-five gallons or more for use as a motor fuel for internal
76 combustion engines not operated upon highways of this state;

77 (16) All gallons of motor fuel purchased in quantities of
78 twenty-five gallons or more and used to power a power take-off
79 unit on a motor vehicle. When a motor vehicle with auxiliary
80 equipment uses motor fuel and there is no auxiliary motor for
81 the equipment or separate tank for a motor, the person claiming
82 the refund may present to the tax commissioner a statement of
83 his or her claim and is allowed a refund for motor fuel used in
84 operating a power take-off unit on a cement mixer truck or
85 garbage truck equal to twenty-five percent of the tax levied by
86 this article paid on all motor fuel used in such a truck;

87 (17) Motor fuel used by any person regularly operating any
88 vehicle under a certificate of public convenience and necessity
89 or under a contract carrier permit for transportation of persons,
90 when purchased in an amount of twenty-five gallons or more:
91 *Provided*, That the amount refunded is equal to six cents per
92 gallon: *Provided, however*, That the gallons of motor fuel shall
93 have been consumed in the operation of urban and suburban bus
94 lines, and the majority of passengers use the bus for traveling
95 a distance not exceeding forty miles, measured one way, on the
96 same day between their places of abode and their places of
97 work, shopping areas or schools; and

98 (18) All gallons of motor fuel that are not otherwise exempt
99 under subsection (a) of this section and that are purchased and
100 used by any bona fide volunteer fire department, nonprofit
101 ambulance service or emergency rescue service that has been
102 certified by the municipality or county wherein the bona fide
103 volunteer fire department, nonprofit ambulance service or
104 emergency rescue service is located.

105 (d) *Refundable exemptions for variable rate.* — Any of the
106 following persons may claim an exemption to the variable rate
107 of the tax levied by section five of this article on the purchase
108 and use of motor fuel by first paying the tax levied by this
109 article and then applying to the tax commissioner for a refund.

110 (1) The United States or any agency thereof;

111 (2) This state and its institutions;

112 (3) Any county government or unit or agency thereof;

113 (4) Any municipal government or any agency thereof;

114 (5) Any county boards of education;

115 (6) Any urban mass transportation authority created
116 pursuant to the provisions of article twenty-seven, chapter eight
117 of this code;

118 (7) Any municipal, county, state or federal civil defense or
119 emergency service program pursuant to a government contract
120 for use in conjunction therewith, or to any person on whom is
121 imposed a requirement to maintain an inventory of motor fuel
122 for the purpose of the program: *Provided*, That fueling facilities
123 used for these purposes are not capable of fueling motor
124 vehicles and the person in charge of the program has in his or
125 her possession a letter of authority from the tax commissioner
126 certifying his or her right to the exemption;

127 (8) Any bona fide volunteer fire department, nonprofit
128 ambulance service or emergency rescue service that has been
129 certified by the municipality or county wherein the bona fide
130 volunteer fire department, nonprofit ambulance service or
131 emergency rescue service is located; or

132 (9) All gallons of motor fuel purchased by a licensed
133 exporter and subsequently exported from this state to any other
134 state or nation: *Provided*, That the exporter has paid the
135 applicable motor fuel tax to the destination state or nation prior
136 to claiming this refund: *Provided, however*, That a refund shall
137 not be granted on any motor fuel which is transported and
138 delivered outside this state in the motor fuel supply tank of a
139 highway vehicle.

140 (e) The provision in subdivision (9), subsection (a), section
141 nine, article fifteen of this chapter that exempts as a sale for
142 resale those sales of gasoline and special fuel by a distributor or
143 importer to another distributor shall not apply to sales of motor
144 fuel under this article.

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

1 (a) A person shall obtain the appropriate license or licenses
2 issued by the commissioner before conducting the activities of:

3 (1) A supplier which includes a refiner;

4 (2) A permissive supplier;

5 (3) An importer;

6 (4) An exporter;

7 (5) A terminal operator;

8 (6) A blender;

9 (7) A motor fuel transporter; or

10 (8) A distributor.

11 (b) A person who is engaged in more than one activity for
12 which a license is required shall have a separate license for each
13 activity, except as otherwise determined by the commissioner.

§11-14C-11. License application procedure.

1 (a) To obtain a license under this article, an applicant shall
2 file an application with the commissioner on a form provided
3 by the commissioner. The application shall include the appli-
4 cant's name, address, federal employer identification number,
5 and any other information required by the commissioner.

6 (b) An applicant for a license as a supplier, permissive
7 supplier, terminal operator, importer, blender, or distributor,
8 shall satisfy the following requirements:

9 (1) If the applicant is a corporation, the applicant shall
10 either be incorporated in this state or authorized to transact
11 business in this state;

12 (2) If the applicant is a limited liability company, the
13 applicant shall either be organized in this state or authorized to
14 transact business in this state;

15 (3) If the applicant is a limited liability partnership, the
16 applicant shall either be formed in this state or authorized to
17 transact business in this state; and

18 (4) If the applicant is an individual or a general partnership,
19 the applicant shall designate an agent for service of process and
20 provide the agent's name and address.

21 (c) An applicant for a license as a supplier, permissive
22 supplier, terminal operator, or blender shall have a federal
23 certificate of registry issued under 26 U.S.C. §4101 that
24 authorizes the applicant to enter into federal tax-free transac-
25 tions in taxable motor fuel in the terminal transfer system. An
26 applicant that is required to have a federal certificate of registry
27 shall include the registration number of the certificate on the
28 application for a license under this section. An applicant for a
29 license as an importer, an exporter, or a distributor who has a
30 federal certificate of registry issued under 26 U.S.C. §4101
31 shall include the registration number of the certificate on the
32 application for a license under this section.

33 (d) An applicant for a license as an importer or distributor
34 shall list on the application each state from which the applicant
35 intends to import motor fuel and, if required by a state listed,
36 shall be licensed or registered for motor fuel tax purposes in
37 that state. If a state listed requires the applicant to be licensed
38 or registered, the applicant shall provide the applicant's license
39 or registration number of that state. A licensee who intends to
40 import motor fuel from a state not listed on its application for
41 an importer's license or a distributor's license shall provide the

42 commissioner written notice of the action before importing
43 motor fuel from that state. The notice shall include the informa-
44 tion that is required on the license application.

45 (e) An applicant for a license as an exporter shall designate
46 an agent located in West Virginia for service of process and
47 provide the agent's name and address. An applicant for a
48 license as an exporter or distributor shall list on the application
49 each state to which the applicant intends to export motor fuel
50 received in West Virginia by means of a transfer that is outside
51 the terminal transfer system and, if required by a state listed,
52 shall be licensed or registered for motor fuel tax purposes in
53 that state. If a state listed requires the applicant to be licensed
54 or registered, the applicant shall provide the applicant's license
55 or registration number of that state. A licensee who intends to
56 export motor fuel to a state not listed on its application for an
57 exporter's license or a distributor's license shall provide the
58 commissioner written notice of the action before exporting
59 motor fuel to that state. The notice shall include the information
60 required on the license application.

61 (f) An applicant for a license as a motor fuel transporter
62 shall list on the application each state from which and to which
63 the applicant intends to transport motor fuel and, if required by
64 a state listed, shall be licensed or registered for motor fuel tax
65 purposes in that state. If a state listed requires the applicant to
66 be licensed or registered, the applicant shall provide the
67 applicant's license or registration number of that state. A
68 licensee who intends to transport motor fuel from or to a state
69 not listed on its application for a motor fuel transporter's
70 license shall provide the commissioner written notice of the
71 action before transporting motor fuel from or to that state. The
72 notice shall include the information that is required on the
73 license application.

**§11-14C-12. Permissive supplier requirements on out-of-state
removals.**

1 (a) A person may elect to obtain a permissive supplier
2 license to collect the tax levied by section five of this article for
3 motor fuel that is removed at a terminal in another state and has
4 West Virginia as the destination state.

5 (b) A licensed permissive supplier shall comply with all of
6 the following requirements with respect to motor fuel that is
7 removed by that licensed permissive supplier at a terminal
8 located in another state and has West Virginia as the destination
9 state:

10 (1) Collect the tax due this state on the motor fuel;

11 (2) Waive any defense that this state lacks jurisdiction to
12 require the supplier to collect the tax due this state on the motor
13 fuel under this article;

14 (3) Report and pay the tax due on the motor fuel in the
15 same manner as if the removal had occurred at a terminal
16 located in West Virginia;

17 (4) Keep records of the removal of the motor fuel and
18 submit to audits concerning the motor fuel as if the removal had
19 occurred at a terminal located in West Virginia; and

20 (5) Report sales by the supplier not engaged in business in
21 this state to a person who is not licensed in the state where the
22 removal occurred if the destination state is West Virginia.

23 (c) A licensed permissive supplier acknowledges that this
24 state imposes the requirements listed in subsection (b) of this
25 section under its general police power and submits to the
26 jurisdiction of this state only for purposes related to the
27 administration of this article.

§11-14C-13. Bond requirements.

1 (a) There shall be filed with an application for a license
2 required by section eleven of this article either a cash bond or
3 a continuous surety bond in the amount or amounts specified in
4 this section: *Provided*, That if a continuous surety bond is filed,
5 an annual notice of renewal shall be filed thereafter: *Provided*,
6 *however*, That if the continuous surety bond includes the
7 requirements that the commissioner is to be notified of cancel-
8 lation at least sixty days prior to the continuous surety bond
9 being canceled, an annual notice of renewal is not required. The
10 bond, whether a cash bond or a continuous surety bond, shall be
11 conditioned upon compliance with the requirements of this
12 article, be payable to this state, and be in the form required by
13 the commissioner. The amount of the bond is as follows:

14 (1) For a supplier license, the amount shall be no less than
15 one hundred thousand dollars nor greater than two million
16 dollars;

17 (2) For a permissive supplier license, the amount shall be
18 no less than one hundred thousand dollars nor greater than two
19 million dollars;

20 (3) For a terminal operator license, the amount shall be no
21 less than one hundred thousand dollars nor greater than two
22 million dollars;

23 (4) For an importer license for a person, other than a
24 supplier, that imports by transport vehicle or another means of
25 transfer outside the bulk transfer/terminal system motor fuel
26 removed from a terminal located in another state in which: (A)
27 The state from which the motor fuel is imported does not
28 require the seller of the motor fuel to collect a motor fuel excise
29 tax on the removal either at that state's rate or the rate of the
30 destination state; and (B) the seller of the motor fuel is not a
31 permissive supplier, the amount shall be no less than one
32 hundred thousand dollars nor greater than two million dollars;

33 (5) For an importer license for a person that imports by
34 transport vehicle or another means outside the bulk trans-
35 fer/terminal system motor fuel removed from a terminal located
36 in another state in which: (A) The state from which the motor
37 fuel is imported requires the seller of the motor fuel to collect
38 a motor fuel excise tax on the removal either at that state's rate
39 or the rate of the destination state; or (B) the seller of the motor
40 fuel is a permissive supplier, the amount shall be a minimum of
41 two thousand dollars or an amount equal to three months tax
42 liability, whichever is greater: *Provided*, That the amount shall
43 not exceed three hundred thousand dollars: *Provided, however*,
44 That when required by the commissioner to file a cash bond or
45 a continuous surety bond in an additional amount, the licensee
46 shall comply with the commissioner's notification within thirty
47 days after receiving that notification;

48 (6) For a license as both a distributor and an importer as
49 described in subdivision (4) of this subsection, the amount shall
50 be no less than one hundred thousand dollars nor greater than
51 two million dollars;

52 (7) For a license as both a distributor and an importer as
53 described in subdivision (5) of this subsection, the amount shall
54 be a minimum of two thousand dollars or an amount equal to
55 three months tax liability, whichever is greater: *Provided*, That
56 the amount shall not exceed three hundred thousand dollars:
57 *Provided, however*, That when required by the commissioner to
58 file a cash bond or a continuous surety bond in an additional
59 amount, the licensee shall comply with the commissioner's
60 notification within thirty days after receiving that notification;

61 (8) For an exporter license, the amount shall be a minimum
62 of two thousand dollars or an amount equal to three months tax
63 liability, whichever is greater: *Provided*, That the amount shall
64 not exceed three hundred thousand dollars: *Provided, however*,
65 That when required by the commissioner to file a cash bond or

66 a continuous surety bond in an additional amount, the licensee
67 shall comply with the commissioner's notification within thirty
68 days after receiving that notification;

69 (9) For a blender license, the amount shall be a minimum
70 of two thousand dollars or an amount equal to three months tax
71 liability, whichever is greater: *Provided*, That the amount shall
72 not exceed three hundred thousand dollars: *Provided, however*,
73 That when required by the commissioner to file a cash bond or
74 a continuous surety bond in an additional amount, the licensee
75 shall comply with the commissioner's notification within thirty
76 days after receiving that notification;

77 (10) For a distributor license, the amount shall be a mini-
78 mum of two thousand dollars or an amount equal to three
79 months tax liability, whichever is greater: *Provided*, That the
80 amount shall not exceed three hundred thousand dollars:
81 *Provided, however*, That when required by the commissioner to
82 file a cash bond or a continuous surety bond in an additional
83 amount, the licensee shall comply with the commissioner's
84 notification within thirty days after receiving that notification;

85 (11) For a motor fuel transporter license, there shall be no
86 bond; and

87 (12) An applicant for a licensed activity listed under
88 subdivisions (1) through (10) of this subsection may in lieu of
89 posting either the cash bond or continuous surety bond required
90 by this subsection (a) provide proof of financial responsibility
91 acceptable to the commissioner: *Provided*, That the proof of
92 financial responsibility shall demonstrate the absence of
93 circumstances indicating risk with the collection of taxes from
94 the applicant: *Provided, however*, That the following shall
95 constitute proof of financial responsibility:

96 (A) Proof of five million dollars net worth shall constitute
97 evidence of financial responsibility in lieu of posting the
98 required bond;

99 (B) Proof of two million five hundred thousand dollars net
100 worth constitutes financial responsibility in lieu of posting fifty
101 per cent of the required bond; and

102 (C) Proof of one million two hundred fifty thousand dollars
103 net worth constitutes financial responsibility in lieu of posting
104 twenty-five per cent of the required bond. Net worth is calcu-
105 lated on a business, not individual basis.

106 (13) In lieu of providing either cash bond, a continuance
107 surety bond or proof of financial responsibility acceptable to the
108 commissioner, an applicant for a licensed activity listed under
109 this subsection that has established with the state tax division a
110 good filing record that is accurate, complete and timely for the
111 preceding eighteen months shall be granted a waiver of the
112 requirement to file either a cash bond or continuance surety
113 bond: *Provided*, That when a licensee that has been granted a
114 waiver of the requirement to file a bond violates a provision of
115 this article, the licensee shall file the applicable bond as stated
116 in this subsection.

117 (14) Any licensee who disagrees with the commissioner's
118 decision requiring new or additional security may seek a
119 hearing by filing a petition with the office of tax appeals in
120 accordance with the provisions of section nine, article ten-a of
121 this chapter: *Provided*, That the hearing shall be provided
122 within thirty days after receipt by the office of tax appeals of
123 the petition for the hearing.

124 (b) The surety must be authorized to engage in business
125 within this state. The cash bond and the continuous surety bond
126 are conditioned upon faithful compliance with the provisions of
127 this article, including the filing of the returns and payment of all

128 tax prescribed by this article. The cash bond and the continuous
129 surety bond shall be approved by the commissioner as to
130 sufficiency and form, and shall indemnify the state against any
131 loss arising from the failure of the taxpayer to pay for any cause
132 whatever the motor fuel excise tax levied by this article.

133 (c) Any surety on a continuous surety bond furnished
134 hereunder shall be relieved, released and discharged from all
135 liability accruing on the bond after the expiration of sixty days
136 from the date the surety shall have lodged, by certified mail,
137 with the commissioner a written request to be discharged.
138 Discharge from the continuous surety bond shall not relieve,
139 release or discharge the surety from liability already accrued, or
140 which shall accrue before the expiration of the sixty-day period.
141 Whenever any surety seeks discharge as herein provided, it is
142 the duty of the principal of the bond to supply the commissioner
143 with another continuous surety bond or a cash bond prior to the
144 expiration of the original bond. Failure to provide a new
145 continuous surety bond or a cash bond shall result in the
146 commissioner canceling each license and registration previ-
147 ously issued to the person.

148 (d) Any taxpayer that has furnished a cash bond hereunder
149 shall be relieved, released and discharged from all liability
150 accruing on the cash bond after the expiration of sixty days
151 from the date the taxpayer shall have lodged, by certified mail,
152 with the commissioner a written request to be discharged and
153 the amount of the cash bond refunded: *Provided*, That the
154 commissioner may retain all or part of the cash bond until such
155 time as the commissioner may perform an audit of the tax-
156 payer's business or three years, whichever first occurs. Dis-
157 charge from the cash bond shall not relieve, release or discharge
158 the taxpayer from liability already accrued, or which shall
159 accrue before the expiration of the sixty-day period. Whenever
160 any taxpayer seeks discharge as herein provided, it is the duty
161 of the taxpayer to provide the commissioner with another cash

162 bond or a continuous surety bond prior to the expiration of the
163 original cash bond. Failure to provide either a new cash bond or
164 a continuous surety bond shall result in the commissioner
165 canceling each license and registration previously issued to the
166 taxpayer.

§11-14C-14. Grounds for denial of license.

1 (a) The commissioner may refuse to issue a license under
2 this article if the applicant or any principal of the applicant that
3 is a business entity has:

4 (1) Had a license or registration issued under prior law or
5 this article canceled by the commissioner for cause;

6 (2) Had a motor fuel license or registration issued by
7 another state canceled for cause;

8 (3) Had a federal certificate of registry issued under section
9 4101 of the Internal Revenue Code, or a similar federal
10 authorization, revoked;

11 (4) Been convicted of any offense involving fraud or
12 misrepresentation; or

13 (5) Been convicted of any other offense that indicates that
14 the applicant may not comply with this article if issued a
15 license.

§11-14C-15. Issuance of license.

1 Upon approval of an application, the commissioner shall
2 issue to the applicant the appropriate license or licenses for
3 each place of business of the applicant. Each licensee shall
4 display the license issued under this article in a conspicuous
5 place at each of the licensee's places of business. A license is
6 not transferable and remains in effect until surrendered or
7 canceled.

§11-14C-16. Notice of discontinuance, sale or transfer of business.

1 (a) A licensee who discontinues the business for which was
2 issued a license authorized by this article shall notify the
3 commissioner in writing within fifteen days of discontinuance
4 and shall surrender the license to the commissioner. The notice
5 shall state the effective date of the discontinuance and, if the
6 licensee has transferred the business or otherwise relinquished
7 control to another person by sale or otherwise, the date of the
8 sale or transfer and the name and address of the person to whom
9 the business is transferred or relinquished. The notice shall also
10 include any other information required by the commissioner.

11 (b) All taxes for which the licensee is liable under this
12 article but are not yet due are due on the date of the discontinu-
13 ance. If the licensee has transferred the business to another
14 person and does not give the notice required by this section, the
15 person to whom the business was transferred is jointly and
16 severally liable for the amount of any tax owed by the licensee
17 to this state on the date the business was transferred. The
18 liability of the person to whom the business was transferred
19 shall not exceed the value of the property acquired from the
20 licensee.

§11-14C-17. License cancellation.

1 (a) The commissioner may cancel the license of any person
2 licensed under this article, upon written notice sent by regis-
3 tered mail to the licensee's last known address, or to the
4 licensee's designated agent for service of process, appearing in
5 the commissioner's files, for any of the following reasons:

6 (1) Filing by the licensee of a false report of the data or
7 information required by this article;

8 (2) Failure, refusal, or neglect of the licensee to file a report
9 or information required by this article;

10 (3) Failure of the licensee to pay the full amount of the tax
11 due or pay any penalties or interest due as required by this
12 article;

13 (4) Failure of the licensee to keep accurate records of the
14 quantities of motor fuel received, produced, refined, manufac-
15 tured, compounded, sold, or used in West Virginia;

16 (5) Failure to file a new or additional cash bond or continu-
17 ous surety bond upon request of the commissioner pursuant to
18 section thirteen of this article;

19 (6) Conviction of the licensee or a principal of the licensee
20 for any act prohibited under this article;

21 (7) Failure, refusal, or neglect of a licensee to comply with
22 any other provision of this article or any rule promulgated
23 pursuant to this article; or

24 (8) A change in the ownership or control of the business.

25 (b) Upon cancellation of any license for any cause listed in
26 subsection (a) of this section, the tax levied under this article
27 becomes due and payable on all untaxed motor fuel held in
28 storage or otherwise in the possession of the licensee and all
29 motor fuel sold, delivered, or used prior to the cancellation on
30 which the tax has not been paid.

31 (c) The commissioner may cancel any license upon the
32 written request of the licensee.

33 (d) Upon cancellation of any license and payment by the
34 licensee of all taxes due, including all penalties accruing due to
35 any failure by the licensee to comply with the provisions of this
36 article, the commissioner shall cancel and surrender the bond,
37 filed by the licensee: *Provided*, That the requirements of section
38 thirteen of this article are satisfied.

§11-14C-18. Records and lists of license applicants and licensees.

1 (a) The Commissioner shall maintain a record of:

2 (1) All applicants for a license under this article;

3 (2) All persons to whom a license has been issued under
4 this article; and

5 (3) All persons holding a current license issued under this
6 article, by license category.

7 (b) The commissioner shall provide a list of licensees to
8 any person who requests a copy. The list shall state the name,
9 business address, and, if available, telephone number of each
10 licensee on the list and may include other information deter-
11 mined appropriate by the commissioner.

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.**§11-14C-19. When tax return and payment are due.**

1 (a) The tax levied by this article shall be paid by each
2 taxpayer on or before the last day of the calendar month by
3 check, bank draft, or money order payable to the commissioner
4 for the amount of tax due, if any, for the preceding month:
5 *Provided*, That the commissioner may require all or certain
6 taxpayers to file tax returns and payments electronically. The
7 return required by the commissioner shall accompany the
8 payment of tax: *Provided, however*, That if no tax is due, the
9 return required by the commissioner shall be completed and
10 filed before the last day of the calendar month for the preceding
11 month.

12 (b) The following shall file a monthly return as required by
13 this section:

14 (1) A terminal operator;

- 15 (2) A supplier;
- 16 (3) An importer;
- 17 (4) A blender;
- 18 (5) A person incurring liability under section eight of this
19 article for the backup tax on motor fuel;
- 20 (6) A permissive supplier;
- 21 (7) A motor fuel transporter; and
- 22 (8) An exporter.

§11-14C-20. Remittance of tax to supplier or permissive supplier.

1 (a) Each licensed distributor and licensed importer shall
2 remit to the supplier or permissive supplier, as applicable, of
3 the motor fuel the tax levied by section five of this article and
4 due on motor fuel removed at a terminal rack: *Provided*, That
5 at the election of a licensed distributor or licensed importer, the
6 supplier or permissive supplier shall not require the licensed
7 distributor or licensed importer to pay tax levied by section five
8 of this article until two days before the date the supplier or
9 permissive supplier is required to pay the tax to this state:
10 *Provided, however*, That an election under this subsection is
11 subject to the condition that remittances by the licensed
12 distributor or licensed importer of all tax due to the supplier or
13 permissive supplier shall be paid by electronic funds transfer
14 two days before the date of the remittance by the supplier or
15 permissive supplier to the commissioner. An election under this
16 subsection may be terminated by the supplier or permissive
17 supplier if the licensed distributor or licensed importer does not
18 make timely payments to the supplier or permissive supplier as
19 required by this subsection.

20 (b) A licensed exporter shall remit tax due on motor fuel
21 removed at a terminal rack to the supplier of the motor fuel.
22 The date by which an exporter shall remit tax is governed by
23 the law of the destination state of the exported motor fuel:
24 *Provided*, That if the laws of the destination state prohibit the
25 collection of the destination state's tax, the tax levied by section
26 five of this article shall be collected.

27 (c) All tax payments received by a supplier or permissive
28 supplier shall be held in trust by the supplier or permissive
29 supplier until the supplier or permissive supplier remits the tax
30 payment to this state or to another state, and the supplier or
31 permissive supplier shall constitute the trustee for the tax
32 payments.

33 (d) The license of a licensed distributor, exporter or
34 importer who fails to pay the full amount of tax required by this
35 article is subject to cancellation.

**§11-14C-21. Notice of cancellation or reissuance of licenses; effect
of notice.**

1 (a) If the commissioner cancels the license of a distributor
2 or importer, the commissioner shall notify all suppliers and
3 permissive suppliers of the cancellation. If the commissioner
4 issues a license to a distributor or importer whose license was
5 previously canceled, the commissioner shall notify all suppliers
6 and permissive suppliers of the issuance.

7 (b) A supplier or permissive supplier who sells motor fuel
8 to a distributor or importer after receiving notice from the
9 commissioner that the commissioner has canceled the distribu-
10 tor's or importer's license is jointly and severally liable with the
11 distributor or importer for any tax due on motor fuel sold to the
12 distributor or importer subsequent to receipt of the notice:
13 *Provided*, That the supplier or permissive supplier is not liable
14 for tax due on motor fuel sold to a previously unlicensed

15 distributor or importer after the supplier or permissive supplier
16 receives notice from the commissioner that the commissioner
17 has issued another license to the distributor or importer.

18 (c) If the commissioner cancels the license of a supplier or
19 permissive supplier, the commissioner shall notify all licensed
20 distributors, exporters and importers of the cancellation. If the
21 commissioner issues a license to a supplier or permissive
22 supplier whose license was previously canceled, the commis-
23 sioner shall notify all licensed distributors, exporters, and
24 importers of the issuance.

25 (d) A licensed distributor, exporter or importer who
26 purchases motor fuel from a supplier or permissive supplier
27 after receiving notice from the commissioner that the commis-
28 sioner has canceled the supplier's or permissive supplier's
29 license is jointly and severally liable with the supplier or
30 permissive supplier for any tax due on motor fuel purchased
31 from the supplier or permissive supplier after receiving the
32 notice: *Provided*, That a licensed distributor that purchases
33 motor fuel from a supplier or permissive supplier whose license
34 has been canceled shall file a tax return on or before the last day
35 of the month following the month in which the purchase
36 occurred. The return shall include the following information
37 and any other information required by the commissioner:

38 (1) The number of invoiced gallons of tax paid motor fuel,
39 sorted by type of motor fuel, terminal code, name of seller,
40 point of origin and carrier; and

41 (2) The number of invoiced gallons of untaxed motor fuel,
42 sorted by type of motor fuel, terminal code, name of seller,
43 point of origin and carrier.

44 The licensed distributor, exporter or importer is not liable
45 for tax due on motor fuel purchased from a previously unli-
46 censed supplier or permissive supplier after the licensee

47 receives notice from the commissioner that the commissioner
48 has issued another license to the supplier or permissive sup-
49 plier.

**§11-14C-22. Information required on return filed by supplier or
permissive supplier.**

1 The return of each supplier and permissive supplier shall
2 list all of the following information and any other information
3 required by the commissioner:

4 (a) The number of gross gallons of tax-paid motor fuel
5 received by the supplier or permissive supplier during the
6 month, sorted by type of motor fuel, seller, point of origin,
7 destination state, and carrier;

8 (b) The number of gross gallons of motor fuel removed at
9 a terminal rack during the month from the account of the
10 supplier, sorted by type of motor fuel, person receiving the
11 motor fuel, terminal code, and carrier;

12 (c) The number of gross gallons of motor fuel removed
13 during the month for export, sorted by type of motor fuel,
14 person receiving the motor fuel, terminal code, destination
15 state, and carrier;

16 (d) The number of gross gallons of motor fuel removed
17 during the month from a terminal located in another state for
18 conveyance to West Virginia, as indicated on the shipping
19 document for the motor fuel, sorted by type of motor fuel,
20 person receiving the motor fuel, terminal code, and carrier;

21 (e) The number of gross gallons of motor fuel the supplier
22 or permissive supplier sold during the month to a governmental
23 entity whose use of motor fuel is exempt from the tax, sorted by
24 type of motor fuel, carrier, and governmental entity receiving
25 the motor fuel, terminal code.

§11-14C-23. Deductions and discounts allowed a supplier and a permissive supplier when filing a return.

1 (a) The supplier or permissive supplier may deduct from the
2 next monthly return those tax payments that were not remitted
3 for the previous month to the supplier or permissive supplier by
4 any licensed distributor or any licensed importer who removed
5 motor fuel on which the tax is due from the supplier's or
6 permissive supplier's terminal. The licensed supplier or
7 permissive supplier is eligible to take this deduction if the
8 licensed supplier or permissive supplier notifies the state within
9 ten business days after a return is due of any licensed distributor
10 or importer who did not pay to the supplier or permissive
11 supplier the tax due by the time the supplier or permissive
12 supplier filed the monthly return: *Provided*, That when a
13 licensed distributor or licensed importer fails to remit the tax to
14 the licensed supplier or permissive supplier, the licensed
15 supplier or permissive supplier is not eligible to take the
16 deduction for any tax payments that accrue after the ten
17 business day period referenced above for delinquent distributors
18 or importers. The notice shall be transmitted to the state in the
19 form required by the commissioner. A supplier or permissive
20 supplier is not liable for the tax a licensee owes but fails to pay.
21 If a licensee pays to a supplier or permissive supplier the tax
22 owed, but the payment occurs after the supplier or permissive
23 supplier has deducted the amount of the tax on a return, the
24 supplier or permissive supplier shall remit the payment to the
25 commissioner with the next monthly return filed subsequent to
26 receipt of the tax.

27 (b) A supplier or permissive supplier who timely files a
28 return with the payment due may deduct, from the amount of
29 tax payable with the return, an administrative discount of one
30 tenth of one percent of the amount of tax payable to this state,
31 not to exceed five thousand dollars per month.

32 (c) For sales from permissive suppliers or suppliers to
33 licensed distributors, a supplier or permissive supplier shall
34 deduct three fourths of one percent of the tax due from the
35 licensed distributor as a discount to that licensed distributor.
36 The discount given to the licensed distributor shall be reported
37 on the supplier or the permissive supplier's next monthly
38 return. This discount only applies to sales from permissive
39 suppliers and suppliers to licensed distributors, and shall not
40 apply to any other transactions, including, but not limited to,
41 licensed distributor to licensed distributor transactions: *Pro-*
42 *vided*, That if the permissive supplier and/or supplier is also a
43 licensed distributor, this discount shall not apply.

§11-14C-24. Duties of supplier or permissive supplier as trustee.

1 (a) All tax payments due to this state that are received by a
2 supplier or permissive supplier shall be held by the supplier or
3 permissive supplier as trustee in trust for this state, and the
4 supplier or permissive supplier has a fiduciary duty to remit to
5 the commissioner the amount of tax received. A supplier or
6 permissive supplier is liable for the taxes paid to it.

7 (b) A supplier or permissive supplier shall notify a licensed
8 distributor, licensed exporter, or licensed importer who received
9 motor fuel from the supplier or permissive supplier during a
10 reporting period of the number of taxable gallons received. The
11 supplier or permissive supplier shall give this notice after the
12 end of each reporting period and before the licensee is required
13 to remit the amount of tax due on the motor fuel.

14 (c) A supplier or permissive supplier of motor fuel at a
15 terminal shall notify the commissioner within the time period
16 established by the commissioner of any licensed distributors,
17 licensed exporters, or licensed importers who did not pay the
18 tax due when the supplier or permissive supplier filed its return.
19 The notice shall be transmitted to the commissioner in the form
20 required by the commissioner.

21 (d) A supplier or permissive supplier who receives a
22 payment of tax shall not apply the payment of tax to a debt that
23 the person making the payment owes for motor fuel purchased
24 from the supplier or permissive supplier.

§11-14C-25. Returns and discounts of importers.

1 (a) The monthly return of an importer shall contain the
2 following information for the period covered by the return and
3 any other information required by the commissioner:

4 (1) The number of gross gallons of imported motor fuel
5 acquired from a supplier or permissive supplier who collected
6 the tax due this state on the motor fuel;

7 (2) The number of gross gallons of imported motor fuel
8 acquired from a person who did not collect the tax due this state
9 on the motor fuel, listed by type of motor fuel, source state,
10 person, and terminal;

11 (3) The number of gross gallons of imported motor fuel
12 acquired from a bulk plant outside this state, listed by bulk
13 plant name, address and type of motor fuel; and

14 (4) The import confirmation number, as may be required
15 under section thirty-five of this article, of each import that is
16 reported under subdivision (2) or subdivision (3) of this
17 subsection, as applicable, and was removed from a terminal or
18 bulk plant.

19 (b) An importer that imports by transport vehicle or another
20 means of transfer outside the terminal transfer system motor
21 fuel removed from a terminal located in another state in which:
22 (1) The state from which the motor fuel is imported does not
23 require the seller of the motor fuel to collect a motor fuel excise
24 tax on the removal either at that state's rate or the rate of the
25 destination state; and (2) the seller of the motor fuel is not a

26 licensed supplier or permissive supplier, who timely files a
27 return with the payment due may deduct, from the amount of
28 tax payable with the return, an administrative discount of one
29 tenth of one percent of the amount of tax payable by the
30 importer to this state, not to exceed five thousand dollars per
31 month.

§11-14C-26. Informational returns of terminal operators.

1 (a) A terminal operator shall file with the commissioner a
2 monthly information return showing the amount of motor fuel
3 received and removed from the terminal during the month. The
4 return is due by the last day of the month following the month
5 covered by the return. The return shall contain the following
6 information and any other information required by the commis-
7 sioner:

8 (1) The beginning and ending inventory which pertains to
9 the applicable reporting month;

10 (2) The number of gross gallons of motor fuel received in
11 inventory at the terminal during the month and each position
12 holder for the motor fuel;

13 (3) The number of gross gallons of motor fuel removed
14 from inventory at the terminal during the month and, for each
15 removal, the position holder for the motor fuel and the destina-
16 tion state of the motor fuel; and

17 (4) The number of gross gallons of motor fuel gained or lost
18 at the terminal during the month.

19 (b) The tax commissioner may accept the Federal
20 ExSTARS terminal operator report provided to the Internal
21 Revenue Service in lieu of the required state terminal operator
22 report.

§11-14C-27. Informational returns of motor fuel transporters.

1 (a) A person who transports by marine vessel, railroad tank
2 car, or transport vehicle, motor fuel that is imported into West
3 Virginia or exported from West Virginia shall file a monthly
4 information return with the commissioner that shows motor fuel
5 received or delivered for import or export by the transporter
6 during the month. This requirement does not apply to a distribu-
7 tor who is not required to be licensed as a motor fuel trans-
8 porter.

9 (b) The return required by this section is due by the last day
10 of the month following the month covered by the return. The
11 return shall contain the following information and any other
12 information required by the commissioner:

13 (1) The name, address and terminal control number of each
14 person or terminal from whom the transporter received motor
15 fuel outside West Virginia for delivery in West Virginia, the
16 invoiced gallons of motor fuel received, the date the motor fuel
17 was received, and the name and address of the purchaser of the
18 motor fuel; and

19 (2) The name, address and terminal control number of each
20 person or terminal from whom the transporter received motor
21 fuel in West Virginia for delivery outside West Virginia, the
22 invoiced gallons of motor fuel delivered, the date the motor fuel
23 was delivered, and the destination state of the motor fuel.

§11-14C-28. Exports.

1 (a) A person who exports motor fuel from West Virginia
2 shall file a monthly return with the commissioner identifying
3 the exports. The return is due by the last day of the month
4 following the month covered by the return. The return shall
5 serve as a claim for a refund for tax paid to this state on
6 exported motor fuel.

7 (b) The return shall contain the following information and
8 any other information required by the commissioner:

9 (1) The number of invoiced gallons of motor fuel exported
10 during the month;

11 (2) The destination state of the motor fuel exported during
12 the month; and

13 (3) A certification that the tax has been paid to the destina-
14 tion state of the motor fuel exported during the month.

§11-14C-29. Identifying information required on return.

1 When a transaction with a person licensed under this article
2 is required to be reported on a return, the return must state the
3 licensee's name, address, and, if available, license number and
4 telephone number as stated on the lists compiled by the
5 commissioner under section nineteen of this article.

PART 5. REFUNDS.

**§11-14C-30. Refund of taxes erroneously collected, etc.; refund
for gallonage exported or lost through casualty or
evaporation; change of rate; petition for refund.**

1 (a) The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article any tax,
3 interest, additions to tax or penalties which have been errone-
4 ously collected from any person.

5 (b) Any supplier, distributor, producer, retail dealer,
6 exporter or importer, while the owner of motor fuel in this state,
7 that loses any gallons of motor fuel through fire, lightning,
8 breakage, flood or other casualty, which gallons having been
9 previously included in the tax by or for that person, may claim
10 a refund of a sum equal to the amount of the flat rate of the tax
11 levied by section five of this article paid upon the gallons lost.

12 (c) Any dealer as defined in section two, article eleven-c,
13 chapter forty-seven of the code, and any bulk plant in this state
14 that purchases or receives motor fuel in this state upon which
15 the tax levied by section five of this article has been paid, is
16 entitled to an annual refund of the flat rate of the tax levied by
17 section five of this article for gallons lost through evaporation:
18 *Provided*, That only the owner of the bulk plant that is also the
19 owner of the fuel in the bulk plant may claim this refund for
20 gallons lost through evaporation. The refund is computed at the
21 flat rate of tax levied per gallon under this article on all gallons
22 of motor fuel actually lost due to evaporation, not exceeding
23 one half of one percent of the adjusted total accountable
24 gallons, computed as determined by the commissioner.

25 (d) Every supplier, distributor or producer, retail dealer,
26 exporter or importer is entitled to a refund of the flat rate of the
27 tax levied by section five of this article from this state of the
28 amount resulting from a change of rate decreasing the tax under
29 the provisions of this article on motor fuel on hand and in
30 inventory on the effective date of the rate change, which motor
31 fuel has been included in any previous computation by which
32 the tax levied by this article has been paid.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to subsection (b),
2 section nine of this article shall present to the commissioner a
3 petition accompanied by the original or duplicate original sales
4 slip or invoice from the distributor or producer or retail dealer,
5 as the case may be, showing the amount of the purchases,
6 together with evidence of payment thereof, and a statement
7 stating how the motor fuel was used: *Provided*, That sales slips
8 or invoices marked "duplicate" are not acceptable: *Provided*,
9 *however*, That certified copies of sales slips or invoices are
10 acceptable: *Provided further*, That copies of sales slips and
11 invoices may be used with any application for refund made
12 under authority of subdivision (9), subsection (c), section nine

13 of this article when the gasoline is used to operate tractors and
14 gas engines or threshing machines for agricultural purposes.

15 (b) Any person claiming a refund pursuant to section thirty
16 of this article shall file a petition in writing with the commis-
17 sioner. The petition shall be in the form and with supporting
18 records as required by the commissioner and made under the
19 penalty of perjury.

20 (c) The right to receive any refund under the provisions of
21 this section is not assignable and any assignment thereof is void
22 and of no effect. No payment of any refund may be made to any
23 person other than the original person entitled. The commis-
24 sioner shall cause a refund to be made under the authority of
25 this section only when the claim for refund is filed with the
26 commissioner within the following time periods:

27 (1) A petition for refund under section thirty of this article,
28 other than for evaporation loss, shall be filed with the commis-
29 sioner within three years from the end of the month in which
30 the tax was erroneously or illegally paid or the gallons were
31 exported or lost by casualty, or in which a change of rate took
32 effect;

33 (2) A petition for refund under section thirty of this article
34 for evaporation loss shall be filed within three years from the
35 end of the year in which the evaporation occurred;

36 (3) A petition for refund under subsection (c), section nine
37 of this article shall be filed with the commissioner within six
38 months from the month of purchase or delivery of the motor
39 fuel: *Provided*, That any application for refund made under
40 authority of subdivision (9), subsection (c), section nine of this
41 article when the gasoline is used to operate tractors and gas
42 engines or threshing machines for agricultural purposes shall be
43 filed within twelve months from the month of purchase or
44 delivery of the motor fuel: *Provided, however*, That all persons

45 authorized to claim a refund under the authority of subdivision
46 (12), subsection (c), section nine of this article to claim a
47 refundable exemption shall do so no later than the thirty-first
48 day of August for the purchases of motor fuel made during the
49 preceding fiscal year ending the thirtieth day of June.

50 (d) Any petition for a refund not timely filed is not con-
51 strued to be or constitute a moral obligation of the state of West
52 Virginia for payment. Every petition for refund is subject to the
53 provisions of section fourteen, article ten of this chapter.

54 (e) The commissioner may make any investigation consid-
55 ered necessary before refunding to a person the tax levied by
56 section five of this article. The commissioner may also subject
57 to audit the records related to a refund of the tax levied by
58 section five of this article.

§11-14C-32. Payment of refund.

1 Whenever it appears to the satisfaction of the commissioner
2 that any person is entitled to a refund for taxes paid pursuant to
3 section five of this article, the commissioner shall forthwith
4 certify the amount of the refund.

PART 6. ENFORCEMENT AND ADMINISTRATION.

§11-14C-33. General procedure and administration; crimes and penalties.

1 (a) Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article ten of
3 this chapter applies to the taxes levied by this article, except as
4 otherwise expressly provided in this article, with like effect as
5 if that act were applicable only to the taxes levied by this article
6 and were set forth in extenso in this article.

7 (b) Each and every provision of the "West Virginia Tax
8 Crimes and Penalties Act" set forth in article nine of this

9 chapter applies to the taxes levied by this article with like effect
10 as if that act were applicable only to the taxes levied by this
11 article and were set forth in extenso in this article.

12 (c) To the extent that any provision of this article is in
13 conflict with either article nine or article ten of this chapter, the
14 provision of this article shall control.

**§11-14C-34. Shipping documents; transportation of motor fuel by
barge, watercraft, railroad tank car or transport
truck; civil penalty.**

1 (a) A person shall not transport in this state any motor fuel
2 by barge, watercraft, railroad tank car or transport vehicle
3 unless the person has a shipping document for the motor fuel
4 that complies with this section. A terminal operator or operator
5 of a bulk plant shall give a shipping document to the person
6 who operates the barge, watercraft, railroad tank car or trans-
7 port vehicle into which motor fuel is loaded at the terminal rack
8 or bulk plant rack.

9 (b) The shipping document issued by the terminal operator
10 or operator of a bulk plant shall contain the following informa-
11 tion and any other information required by the commissioner:

12 (1) Identification, including address, of the terminal or bulk
13 plant from which the motor fuel was received;

14 (2) Date the motor fuel was loaded;

15 (3) Invoiced gallons loaded;

16 (4) Destination state of the motor fuel, as represented by the
17 purchaser of the motor fuel or the purchaser's agent;

18 (5) In the case of aviation jet fuel, the shipping document
19 shall be marked with the phrase "Aviation Jet Fuel, Not for On-
20 road Use" or a similar phrase;

21 (6) In the case of dyed diesel fuel, the shipping document
22 shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable
23 Use Only, Penalty for Taxable Use" or a similar phrase; and

24 (7) If the document is issued by a terminal operator, the
25 gross gallons loaded and a statement indicating the name of the
26 supplier that is responsible for the tax due on the motor fuel.

27 (c) A terminal operator or bulk plant operator may rely on
28 the representation made by the purchaser of motor fuel or the
29 purchaser's agent concerning the destination state of the motor
30 fuel. A purchaser is liable for any tax due as a result of the
31 purchaser's diversion of motor fuel from the represented
32 destination state.

33 (d) A person to whom a shipping document was issued
34 shall:

35 (1) Carry the shipping document in the means of convey-
36 ance for which it was issued when transporting the motor fuel
37 described;

38 (2) Show the shipping document upon request to any
39 law-enforcement officer, representative of the commissioner
40 and any other authorized individual when transporting the
41 motor fuel described;

42 (3) Deliver motor fuel to the destination state printed on the
43 shipping document unless the person:

44 (A) Notifies the commissioner before transporting the
45 motor fuel into a state other than the printed destination state
46 that the person has received instructions after the shipping
47 document was issued to deliver the motor fuel to a different
48 destination state;

49 (B) Receives from the commissioner a confirmation
50 number authorizing the diversion; and

51 (C) Writes on the shipping document the change in destina-
52 tion state and the confirmation number for the diversion; and

53 (4) Gives a copy of the shipping document to the person to
54 whom the motor fuel is delivered.

55 (e) The person to whom motor fuel is delivered by barge,
56 watercraft, railroad tank car or transport vehicle shall not accept
57 delivery of the motor fuel if the destination state shown on the
58 shipping document for the motor fuel is a state other than West
59 Virginia: *Provided*, That delivery may be accepted if the
60 destination state is other than West Virginia if the document
61 contains a diversion number authorized by the commissioner.
62 The person to whom the motor fuel is delivered shall examine
63 the shipping document to determine that West Virginia is the
64 destination state, and shall retain a copy of the shipping
65 document: (1) At the place of business where the motor fuel
66 was delivered for ninety days following the date of delivery;
67 and (2) at the place or another place for at least three years
68 following the date of delivery. The person who accepts delivery
69 of motor fuel in violation of this subsection and any person
70 liable for the tax on the motor fuel pursuant to section five of
71 this article is jointly and severally liable for any tax due on the
72 motor fuel.

73 (f) Any person who transports motor fuel in a barge,
74 watercraft, railroad tank car or transport vehicle without a
75 shipping document or with a false or an incomplete shipping
76 document, or delivers motor fuel to a destination state other
77 than the destination state shown on the shipping document, is
78 subject to the following civil penalty.

79 (1) If the motor fuel is transported in a barge, watercraft or
80 transport vehicle, the civil penalty shall be payable by the
81 person in whose name the means of conveyance is registered.

82 (2) If the motor fuel is transported in a railroad tank car, the
83 civil penalty shall be payable by the person responsible for
84 shipping the motor fuel in the railroad tank car.

85 (3) The amount of the civil penalty for a first violation is
86 five thousand dollars.

87 (4) The amount of the civil penalty for each subsequent
88 violation is ten thousand dollars.

89 (5) Civil penalties prescribed under this section are as-
90 sessed, collected and paid in the same manner as the motor fuel
91 excise tax imposed by this article.

§11-14C-35. Import confirmation number; civil penalty.

1 (a) The commissioner may require an importer who
2 acquires motor fuel for import from a person who is not a
3 supplier or a permissive supplier to obtain an import confirma-
4 tion number from the commissioner before importing the motor
5 fuel. The importer shall write the import confirmation number
6 on the shipping document issued for the motor fuel. If required
7 by the commissioner, the importer shall obtain a separate
8 import confirmation number for each delivery of motor fuel
9 into West Virginia.

10 (b) An importer who does not obtain an import confirma-
11 tion number when required by this section is subject to the
12 following civil penalty.

13 (1) For the first violation, the amount is five thousand
14 dollars.

15 (2) For each subsequent violation the amount is ten
16 thousand dollars.

17 (c) The civil penalty is payable by the person in whose
18 name the transport vehicle is registered.

19 (d) Civil penalties prescribed under this section are as-
20 sessed, collected and paid in the same manner as the motor fuel
21 excise tax imposed by this article.

**§11-14C-36. Improper sale or use of untaxed motor fuel; civil
penalty.**

1 (a) Any person who commits any of the following viola-
2 tions is subject to the civil penalty specified in subsection (b) of
3 this section:

4 (1) Sells or stores any dyed diesel fuel for use in a highway
5 vehicle that is licensed or required to be licensed as such, unless
6 that use is allowed under the authority of 26 U.S.C. §4082;

7 (2) Willfully alters or attempts to alter the strength or
8 composition of any dye or marker in any dyed diesel fuel;

9 (3) Uses dyed diesel fuel in a highway vehicle unless that
10 use is allowed under the authority of 26 U.S.C. §4082;

11 (4) Acquires, sells or stores any motor fuel for use in a
12 watercraft, aircraft, or highway vehicle that is licensed or
13 required to be licensed unless the tax levied by section five of
14 this article has been paid; or

15 (5) Uses any motor fuel in a watercraft, aircraft, or highway
16 vehicle that is licensed or required to be licensed unless the tax
17 levied by section five of this article has been paid.

18 (b) The amount of the civil penalty for the first two
19 violations of this section in a calendar year, as described in

20 subsection (a) of this section, is ten dollars per gallon of motor
21 fuel based upon the maximum capacity of the motor fuel
22 storage tank, container or storage tank of the highway vehicle,
23 watercraft or aircraft in which the motor fuel is found or one
24 thousand dollars, whichever is greater: *Provided*, That for each
25 subsequent violation in the same calendar year, the penalty is
26 fifteen dollars per gallon based upon the maximum capacity of
27 the motor fuel storage tank, container or storage tank of the
28 highway vehicle, watercraft or aircraft in which the motor fuel
29 is found or two thousand dollars, whichever is greater.

30 (c) Each violation is subject to a separate civil penalty.

31 (d) Civil penalties prescribed under this section shall be
32 assessed, collected and paid in the same manner as the motor
33 fuel tax.

**§11-14C-37. Refusal to allow inspection or taking of fuel sample;
civil penalty.**

1 (a) Any person who refuses to allow an inspection autho-
2 rized by section forty-seven of this article or to allow the taking
3 of a fuel sample authorized by section forty-seven of this article
4 is subject to a civil penalty of five thousand dollars for each
5 refusal. If the refusal is for a sample to be taken from a vehicle,
6 the person operating the vehicle and the owner of the vehicle
7 are jointly and severally liable for payment of the civil penalty.
8 If the refusal is for a sample to be taken from any other storage
9 tank or container, the owner of the storage tank or container and
10 the owner of the motor fuel in the storage tank or container, if
11 different from the owner of the storage tank or container, are
12 jointly and severally liable for payment of the civil penalty.

13 (b) Civil penalties prescribed under this section shall be
14 assessed, collected and paid in the same manner as the motor
15 fuel tax.

§11-14C-38. Engaging in business without a license; civil penalty.

1 (a) Any person who engages in any business activity for
2 which a license is required by this article without having first
3 obtained and subsequently retained such a valid license is
4 subject to the following civil penalty.

5 (1) For the first violation the amount is five thousand
6 dollars.

7 (2) For each subsequent violation the amount is ten
8 thousand dollars.

9 (b) Civil penalties prescribed under this section shall be
10 assessed, collected and paid in the same manner as the motor
11 fuel tax.

§11-14C-39. Preventing a person from obtaining a license; civil penalty.

1 (a) Any terminal operator, supplier, or position holder in a
2 terminal who, by use of coercion, threat, intimidation or any
3 other means of interference, intentionally prevents any person
4 from applying for or obtaining a license issued under this article
5 is subject to the following civil penalty.

6 (1) For the first violation the amount is five thousand
7 dollars.

8 (2) For each subsequent violation the amount is ten
9 thousand dollars.

10 (b) Civil penalties prescribed under this section shall be
11 assessed, collected and paid in the same manner as the motor
12 fuel tax.

§11-14C-40. Filing a false return; failure to file return; civil penalty.

1 (a) Any person liable for a tax levied under this article who
2 files a false return, report or document under the provisions of
3 this article with the intent to evade the tax levied by section five
4 of this article is subject to a civil penalty equal to the total
5 amount of tax evaded, or not collected, by the filing of a return,
6 report or document. The civil penalty is in addition to the
7 amount of the tax evaded or not collected.

8 (b) Any person liable for a tax levied under this article who
9 fails to file, even if no tax is due, within thirty days after it is
10 due any return required by this article is subject to a civil
11 penalty of fifty dollars for each month, or part thereof, the
12 return is not filed. The civil penalty is in addition to the amount
13 of tax not correctly returned.

14 (c) Any person required to file a return under this article
15 who fails to file within thirty days after it is due is subject to a
16 civil penalty of fifty dollars for each month, or part thereof, the
17 return is not filed.

18 (d) Civil penalties prescribed under this section shall be
19 assessed, collected and paid in the same manner as the motor
20 fuel tax.

§11-14C-41. Willful commission of prohibited acts; criminal penalties.

1 (a) Any person who willfully commits any of the following
2 offenses is guilty of a misdemeanor, and upon conviction
3 thereof, shall be fined not less than five thousand dollars nor
4 more than twenty-five thousand dollars, or imprisoned in the
5 county or regional jail not more than one year, or both fined and
6 imprisoned:

7 (1) Fails to obtain a license required by this article prior to
8 performing an act for which the license is required;

9 (2) Fails to pay to this state no more than thirty days after
10 the date the tax is due the tax levied by this article;

11 (3) Makes a false statement in an application, return, ticket,
12 invoice, statement, or any other document required under this
13 article;

14 (4) Fails to file no more than thirty days after it is due any
15 return required by this article;

16 (5) Fails to maintain any record required by this article;

17 (6) Makes a false statement in an application for a refund;

18 (7) Refuses to allow the commissioner to examine the
19 person's books and records concerning motor fuel;

20 (8) Fails to make a required disclosure of the correct
21 amount of fuel sold or used in this state;

22 (9) Fails to file a replacement or additional cash bond or
23 continuous surety bond as required under this article;

24 (10) Fails to show or give a shipping document as required
25 under this article;

26 (11) Refuses to allow a licensed distributor, licensed
27 exporter, or licensed importer to defer payment of tax to the
28 licensed supplier or permissive supplier, as required by section
29 twenty of this article;

30 (12) Uses, delivers, or sells any aviation fuel for use or
31 intended for use in highway vehicles or watercraft;

32 (13) Interferes with or refuses to permit seizures authorized
33 under section forty-two of this article;

34 (14) Delivers motor fuel from a transport vehicle to the fuel
35 supply tank of a highway vehicle;

36 (15) Dispenses into the supply tank of a highway vehicle,
37 watercraft or aircraft any motor fuel on which tax levied by
38 section five of this article has not been paid;

39 (16) Allows to be dispensed into the supply tank of a
40 highway vehicle, watercraft or aircraft any motor fuel on which
41 tax levied by section five of this article has not been paid;

42 (17) Purchases motor fuel from an unlicensed distributor,
43 unlicensed importer or unlicensed supplier; or

44 (18) Uses twenty-five or less gallons of dyed diesel fuel for
45 a use that the user knows or has reason to know is a taxable use
46 of the motor fuel, or sells twenty-five or less gallons of dyed
47 diesel fuel to a person who the seller knows or has reason to
48 know will use the motor fuel for a taxable purpose.

49 (b) Any person who willfully commits any of the following
50 offenses with the intent either to evade or circumvent the tax
51 levied by section five of this article or to assist any other person
52 in efforts to evade or circumvent the tax levied by section five
53 of this article is guilty of a felony, and upon conviction thereof,
54 shall be fined not less than twenty-five thousand dollars nor
55 more than fifty thousand dollars, or imprisoned in a state
56 correctional facility not less than one nor more than five years,
57 or both fined and imprisoned:

58 (1) Alters, manipulates, replaces, or in any other manner
59 tampers or interferes with, or causes to be altered, manipulated,
60 replaced, tampered or interfered with, a totalizer attached to
61 motor fuel pumps to measure the dispensing of motor fuel;

62 (2) Fails to pay motor fuels taxes and diverts the tax
63 proceeds for other purposes;

64 (3) As a licensee or the agent or representative of a li-
65 censee, converts or attempts to convert motor fuel tax proceeds
66 for the use of the licensee or the licensee's agent or representa-
67 tive, with the intent to defraud this state;

68 (4) Collects motor fuel taxes when not authorized or
69 licensed by the commissioner to do so;

70 (5) Imports motor fuel into this state in contravention of
71 this article;

72 (6) Conspires with any other person or persons to engage in
73 an act, plan, or scheme to defraud this state of motor fuels tax
74 proceeds;

75 (7) Uses in excess of twenty-five gallons of any dyed diesel
76 fuel for a use that the user knows or has reason to know is a
77 taxable use of the motor fuel, or sells in excess of twenty-five
78 gallons of any dyed diesel fuel to a person who the seller knows
79 or has reason to know will use the motor fuel for a taxable
80 purpose;

81 (8) Alters or attempts to alter the strength or composition of
82 any dye or marker in any dyed diesel fuel intended to be used
83 for a taxable purpose; or

84 (9) Fails to remit to the commissioner any tax levied
85 pursuant to this article, if the person has added, or represented
86 that he or she has added, the tax to the sales price for the motor
87 fuel and has collected the amount of the tax.

88 (c) Each offense is subject to a separate criminal penalty.

**§11-14C-42. Unlawful importing, transportation, delivery, stor-
age or sale of motor fuel; sale to enforce assess-
ment.**

1 (a) Upon the discovery of any motor fuel illegally imported
2 into, or illegally transported, delivered, stored or sold in, this
3 state, the commissioner shall order the tank or other storage
4 receptacle in which the motor fuel is located to be seized and
5 locked or sealed until the tax, interest, penalties and additions
6 levied under this article are assessed and paid.

7 (b) If the assessment for the tax is not paid within thirty
8 days, the commissioner is hereby authorized, in addition to the
9 other remedies authorized in this article, to sell the motor fuel
10 and use the proceeds of the sale to satisfy the assessment due,
11 with any funds that exceed the assessment and costs of the sale
12 being returned to the owner of the motor fuel: *Provided*, That
13 the sale of seized property be conducted in accordance with the
14 requirements established in article ten of this chapter.

15 (c) All motor fuel and any property, tangible or intangible,
16 which is found upon the person or in any vehicle which the
17 person is using, including the vehicle itself, to aid the person in
18 the transportation or sale of illegally transported, delivered,
19 stored, sold, imported or acquired motor fuel, and any property
20 found in the immediate vicinity of any place where the illegally
21 transported, delivered, stored, sold, imported or acquired motor
22 fuel is located, including motor vehicles, tanks, and other
23 storage devices, used to aid in the illegal transportation or sale
24 of motor fuel, is considered contraband and shall be forfeited to
25 this state.

§11-14C-43. Record-keeping requirements.

1 (a) Each person required to be licensed under section ten of
2 this article and each bulk user and retailer shall keep and
3 maintain all records pertaining to motor fuel received, pro-
4 duced, manufactured, refined, compounded, used, sold or
5 delivered, together with delivery tickets, invoices, bills of
6 lading, and other pertinent records and papers as required by the
7 commissioner for the reasonable administration of this article.

8 (b) The records required by this section to be retained shall
9 be kept and maintained for a period to include the commis-
10 sioner's current calendar year and the previous three calendar
11 years.

§11-14C-44. Inspection of records.

1 (a) The commissioner may, during the usual business hours
2 of the day, examine records, books, papers, storage tanks and
3 any other equipment of any person required to maintain records
4 for the purpose of ascertaining the quantity of motor fuel
5 received, produced, manufactured, refilled, compounded, used,
6 sold, shipped, or delivered, to verify the truth and accuracy of
7 any statement, report or return or to ascertain whether or not the
8 tax levied by this article has been paid.

9 (b) If a person required to maintain records is open for
10 business during hours which the commissioner may not
11 consider usual business hours, the commissioner may examine
12 the person's books and records during the person's normal
13 business hours, which are those hours when the person is open
14 for business at any of the person's places of business. If the
15 person does not maintain the books and records on the pre-
16 mises, the commissioner may inspect the books and records
17 where they are maintained, irrespective of the working hours at
18 the location, as long as one of the person's places of business
19 maintains hours at the time of day during which the commis-
20 sioner asserts his or her inspection powers.

21 (c) While performing inspections authorized by section
22 forty-five of this article, the commissioner may also inspect the
23 books and records kept to determine any motor fuel tax liability
24 under this article.

§11-14C-45. Authority to inspect.

1 (a) The commissioner, upon presenting appropriate
2 credentials to the owner, operator, or agent in charge, is
3 authorized to enter any place and to conduct inspections in
4 accordance with this section. Inspections shall be performed in
5 a reasonable manner and at times that are reasonable under the
6 circumstances, taking into consideration the normal business
7 hours of the place to be inspected.

8 (b) Inspections may be conducted at any place where
9 taxable motor fuel or motor fuel dyes or markers are, or may be,
10 produced, altered, or stored, or at any site where evidence of
11 production, alteration, or storage is discovered.

12 (c) The commissioner may physically inspect, examine, and
13 otherwise search any tank, reservoir, or other container that can
14 or may be used for the production, storage, or transportation of
15 motor fuel, motor fuel dyes or markers. Inspection may also be
16 made of any equipment used for, or in connection with, the
17 production, storage, or transportation of motor fuel, motor fuel
18 dyes or markers, including equipment used for the dyeing or
19 marking of motor fuel.

20 (d) The commissioner may stop, inspect and issue citations
21 to operators of motor vehicles for violations of this article at
22 sites where motor fuel is, or may be, produced, stored, or
23 loaded into or consumed by motor vehicles. The commissioner
24 may enter into agreements with other agencies of this state to
25 provide assistance in stopping and inspecting motor vehicles for
26 violations of this article.

27 (e) Inspections may occur at any terminal, motor fuel
28 storage facility that is not a terminal, retail motor fuel facility,
29 highway rest stop, and designated inspection site.

30 (f) The commissioner may, on the premises or at a desig-
31 nated inspection site, take and remove samples of motor fuel in

32 reasonable quantities as necessary to determine the composition
33 of the motor fuel.

34 (g) Nothing contained in this section is construed to
35 prohibit the issuance of a citation for the violation of the
36 provisions of this article on the open highway or other than the
37 spot check areas where the violation of this article is discovered
38 when the motor vehicle is lawfully stopped for any other
39 criminal violation of the laws of this state.

§11-14C-46. Marking requirements for dyed diesel fuel storage facilities.

1 (a) A person who is a retailer of dyed diesel fuel or who
2 stores dyed diesel fuel for use by that person or another person
3 shall mark each visible storage tank and each dispensing device
4 with the phrase "Dyed Diesel Fuel, Nontaxable Use Only,
5 Penalty for Taxable Use," or a similar phrase that clearly
6 indicates that the diesel fuel is not to be used to operate a
7 highway vehicle.

8 (b) The marking requirements of this section shall not apply
9 to a storage facility that contains fuel used only in a heating,
10 crop-drying, or manufacturing process, and is installed in a
11 manner that makes use of the fuel for any other purpose
12 improbable.

§11-14C-47. Disposition of tax collected.

1 (a) The commissioner, for the administration, auditing and
2 enforcement of this article, is authorized to retain and expend
3 one half of one percent of the tax collected pursuant to the
4 provisions of this article: *Provided*, That in any fiscal year in
5 which the tax collected pursuant to the provisions of this article
6 exceed three hundred million dollars, the commissioner is
7 authorized to retain and expend for the administration, auditing
8 and enforcement of this article an additional one per cent of the

9 tax in excess of the three hundred million dollars that is
10 collected.

11 (b) All remaining tax collected under the provisions of this
12 article after deducting the amount of any refunds lawfully paid
13 shall be paid into the state road fund and used only for the
14 purpose of construction, reconstruction, maintenance and repair
15 of highways, matching of federal moneys available for highway
16 purposes and payment of the interest and sinking fund obliga-
17 tions on state bonds issued for highway purposes.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18. Tax on gasoline and special fuel; section repealed January 1, 2004.

§11-15-18b. Tax on motor fuel effective January 1, 2004.

§11-15-18. Tax on gasoline and special fuel; section repealed January 1, 2004.

1 (a) *General.* — All sales of gasoline or special fuel by
2 distributors or importers, except when to another distributor for
3 resale in this state, when delivery is made in this state, is
4 subject to the tax imposed by this article, notwithstanding any
5 provision of this article to the contrary. Sales of gasoline or
6 special fuel by a person who paid the tax imposed by this article
7 on his or her purchases of fuel, shall not thereafter be again
8 taxed under the provisions of this article. This section is
9 construed so that all gallons of gasoline or special fuel sold and
10 delivered, or delivered, in this state are taxed one time.

11 (b) *Measure of tax.* — The measure of tax on sales of
12 gasoline or special fuel by distributors or importers is the
13 average wholesale price as defined and determined in subsec-
14 tion (c), section thirteen, article fifteen-a of this chapter. For
15 purposes of maintaining revenue for highways, and recognizing
16 that the tax imposed by this article is generally imposed on
17 gross proceeds from sales to ultimate consumers, whereas the
18 tax on gasoline and special fuel is imposed on the average

19 wholesale price of gasoline and special fuel; in no case, for the
20 purposes of taxation under this article, shall the average
21 wholesale price be considered to be less than ninety-seven cents
22 per gallon of gasoline or special fuel for all gallons of gasoline
23 and special fuel sold during the reporting period, notwithstand-
24 ing any provision of this article to the contrary.

25 (c) *Definitions.* — For purposes of this section:

26 (1) “Aircraft” includes any airplane or helicopter that lands
27 in this state on a regular or routine basis, and transports
28 passengers or freight.

29 (2) “Aircraft fuel” means gasoline and special fuel suitable
30 for use in any aircraft engine.

31 (3) “Distributor” means and includes every person:

32 (A) Who produces, manufactures, processes or otherwise
33 alters gasoline or special fuel in this state for use or for sale;

34 (B) Who engages in this state in the sale of gasoline or
35 special fuel for the purpose of resale or for distribution; or

36 (C) Who receives gasoline or special fuel into the cargo
37 tank of a tank wagon in this state for use or sale by the person.

38 (4) “Gasoline” means and includes any product commonly
39 or commercially known as gasoline, regardless of classification,
40 suitable for use as fuel in an internal combustion engine, except
41 special fuel as defined in this section, including any product
42 obtained by blending together any one or more products, with
43 or without other products, if the resultant product is capable of
44 the same use.

45 (5) “Importer” means and includes every person, resident
46 or nonresident, other than a distributor, who receives gasoline
47 or special fuel outside this state for use, sale or consumption

48 within this state, but shall not include the fuel in the supply tank
49 of a motor vehicle that is not a motor carrier.

50 (6) "Motor carrier" means and includes: (A) Any passenger
51 vehicle which has seats for more than nine passengers in
52 addition to the driver, any road tractor, tractor truck or any
53 truck having more than two axles, which is operated or caused
54 to be operated, by any person on any highway in this state using
55 gasoline or special fuel; and (B) any aircraft, barge or other
56 watercraft or locomotive transporting passengers or freight in
57 or through this state.

58 (7) "Motor vehicle" means and includes automobiles, motor
59 carriers, motor trucks, motorcycles and all other vehicles or
60 equipment, engines or machines which are operated or pro-
61 pelled by combustion of gasoline or special fuel.

62 (8) "Retail dealer of gasoline or special fuel" means and
63 includes any person not a distributor, who sells gasoline or
64 special fuel from a fixed location in this state to users.

65 (9) "Special fuel" means and includes any gas or liquid,
66 other than gasoline, used or suitable for use as fuel in an
67 internal combustion engine. The term "special fuel" includes
68 products commonly known as natural or casinghead gasoline
69 and includes gasoline and special fuel for heating any private
70 residential dwelling, building or other premises; but shall not
71 include any petroleum product or chemical compound such as
72 alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not
73 commonly used nor practicably suited for use as fuel in an
74 internal combustion engine.

75 (10) "Supply tank" means any receptacle on a motor
76 vehicle from which gasoline or special fuel is supplied for the
77 propulsion of the vehicle or equipment located thereon,
78 exclusive of a cargo tank. A supply tank includes a separate
79 compartment of a cargo tank used as a supply tank, and any

80 auxiliary tank or receptacle of any kind or cargo tank, from
81 which gasoline or special fuel is supplied for the propulsion of
82 the vehicle, whether or not the tank or receptacle is directly
83 connected to the fuel supply line of the vehicle.

84 (11) "Tank wagon" means and includes any motor vehicle
85 or vessel with a cargo tank or cargo tanks ordinarily used for
86 making deliveries of gasoline or special fuel, or both, for sale
87 or use.

88 (12) "Taxpayer" means any person liable for the tax
89 imposed by this article.

90 (13) "User" means any person who purchases gasoline or
91 special fuel for use or consumption.

92 (d) *Tax due.* — The tax on sales of gasoline and special fuel
93 shall be paid by each taxpayer on or before the twenty-fifth day
94 of each month, by check, bank draft, certified check or money
95 order, payable to the tax commissioner for the amount of tax
96 due for the preceding month, notwithstanding any provision of
97 this article to the contrary.

98 (e) *Monthly return.* — On or before the twenty-fifth day of
99 each month, the taxpayer shall make and file a return for the
100 preceding month showing the information as the tax commis-
101 sioner requires, notwithstanding any provision of this article to
102 the contrary.

103 (f) *Compliance.* — To facilitate ease of administration and
104 compliance by taxpayers, the tax commissioner may require
105 distributors, importers and other persons liable for the tax
106 imposed by this article on sales of gasoline or special fuel, to
107 file a combined return and make a combined payment of the tax
108 due under this article on sales of gasoline and special fuel, and
109 the tax due under article fourteen of this chapter, on gasoline
110 and special fuel. In order to encourage use of a combined return

111 each month and the making of a single payment each month for
112 both taxes, the due date of the return and tax due under article
113 fourteen of this chapter is hereby changed from the last day of
114 each month to the twenty-fifth day of each month, notwith-
115 standing any provision in article fourteen of this chapter to the
116 contrary.

117 (g) *Dedication of tax to highways.* — All tax collected
118 under the provisions of this section after deducting the amount
119 of any refunds lawfully paid, shall be deposited in the “road
120 fund” in the state treasurer’s office, and used only for the
121 purpose of construction, reconstruction, maintenance and repair
122 of highways, and payment of principal and interest on state
123 bonds issued for highway purposes: *Provided*, That notwith-
124 standing any provision to the contrary, any tax collected on the
125 sale of aircraft fuel shall be deposited in the state treasurer’s
126 office and transferred to the state aeronautical commission to be
127 used for the purpose of matching federal funds available for the
128 reconstruction, maintenance and repair of public airports and
129 airport runways.

130 (h) *Construction.* — This section is not construed as taxing
131 any sale of gasoline or special fuel which this state is prohibited
132 from taxing under the constitution of this state or the constitu-
133 tion or laws of the United States.

134 (i) *Effective date.* —

135 This section shall have no force or effect after the thirty-
136 first day of December, two thousand three: *Provided*, That tax
137 liabilities arising for periods ending before the first day of
138 January, two thousand four, shall be determined, paid, adminis-
139 tered, assessed and collected as if this section had not been
140 repealed, and the rights and duties of the taxpayer and the state
141 of West Virginia are fully and completely preserved.

§11-15-18b. Tax on motor fuel effective January 1, 2004.

1 (a) *General.* — Effective the first day of January, two
2 thousand four, all sales of motor fuel subject to the flat rate of
3 the tax imposed by section five, article fourteen-c of this
4 chapter is subject to the tax imposed by this article which shall
5 comprise the variable component of the tax imposed by section
6 five, article fourteen-c of this chapter, and be collected and
7 remitted at the time the tax imposed by section five, article
8 fourteen-c of this chapter is remitted. Sales of motor fuel upon
9 which the tax imposed by this article has been paid shall not
10 thereafter be again taxed under the provisions of this article.
11 This section is construed so that all gallons of motor fuel sold
12 and delivered, or delivered, in this state are taxed one time.

13 (b) *Measure of tax.* — The measure of tax imposed by this
14 article on sales of motor fuel is the average wholesale price as
15 defined and determined in section five, article fourteen-c of this
16 chapter. For purposes of maintaining revenue for highways, and
17 recognizing that the tax imposed by this article is generally
18 imposed on gross proceeds from sales to ultimate consumers,
19 whereas the tax on motor fuel herein is imposed on the average
20 wholesale price of the motor fuel; in no case, for the purposes
21 of taxation under this article, shall the average wholesale price
22 be determined to be less than ninety-seven cents per gallon of
23 motor fuel for all gallons of motor fuel sold during the reporting
24 period, notwithstanding any provision of this article to the
25 contrary.

26 (c) *Definitions.* — For purposes of this article, the terms
27 “gasoline” and “special fuel” are defined as provided in section
28 two, article fourteen-c of this chapter. Other terms used in this
29 section have the same meaning as when used in a similar
30 context in article fourteen-c of the chapter.

31 (d) *Tax return and tax due.* — The tax imposed by this
32 article on sales of motor fuel shall be paid by each taxpayer on
33 or before the last day of the calendar month by check, bank

34 draft, certified check or money order payable to the tax com-
35 missioner for the amount of tax due for the preceding month,
36 notwithstanding any provision of this article to the contrary:
37 *Provided*, That the commissioner may require all or certain
38 taxpayers to file tax returns and payments electronically. The
39 return required by the commissioner shall accompany the
40 payment of tax: *Provided, however*, That if no tax is due, the
41 return required by the commissioner shall be completed and
42 filed on or before the last day of the month.

43 (e) *Compliance*. — To facilitate ease of administration and
44 compliance by taxpayers, the tax commissioner shall require
45 persons liable for the tax imposed by this article on sales of
46 motor fuel to file a combined return and make a combined
47 payment of the tax due under this article on sales of motor fuel,
48 and the tax due under article fourteen-c of this chapter, on
49 motor fuel. In order to encourage use of a combined return each
50 month and the making of a single payment each month for both
51 taxes, the due date of the return and tax due under article
52 fourteen-c of this chapter is the last day of each month, notwith-
53 standing any provision in article fourteen-c of this chapter to
54 the contrary.

55 (f) *Dedication of tax to highways*. — All tax collected
56 under the provisions of this section after deducting the amount
57 of any refunds lawfully paid, shall be deposited in the “road
58 fund” in the state treasurer’s office, and used only for the
59 purpose of construction, reconstruction, maintenance and repair
60 of highways, and payment of principal and interest on state
61 bonds issued for highway purposes: *Provided*, That notwith-
62 standing any provision to the contrary, any tax collected on the
63 sale of aviation fuel shall be deposited in the state treasurer’s
64 office and transferred to the state aeronautical commission to be
65 used for the purpose of matching federal funds available for the
66 reconstruction, maintenance and repair of public airports and
67 airport runways.

68 (g) *Construction*. — This section is not construed as taxing
69 any sale of motor fuel which this state is prohibited from taxing
70 under the constitution of this state or the constitution or laws of
71 the United States.

72 (h) *Effective date*. — The provisions of this section take
73 effect on the first day of January, two thousand four.

ARTICLE 15A. USE TAX.

§11-15A-13. Tax on gasoline and special fuel; section repealed January 1, 2004.

§11-15A-13a. Tax on motor fuel effective January 1, 2004.

§11-15A-13. Tax on gasoline and special fuel; section repealed January 1, 2004.

1 (a) *Imposition of tax*. —

2 (1) *On deliveries in this state*. — Gasoline or special fuel
3 furnished or delivered within this state to consumers or users is
4 subject to tax at the rate imposed by section two of this article:
5 *Provided*, That the amount of tax due under section two shall in
6 no event be less than five percent of the average wholesale
7 price of gasoline and special fuel and with the price to, in no
8 case, be determined to be less than ninety-seven cents per
9 gallon for all gallons of gasoline and special fuel taxable under
10 section two of this article.

11 (2) *On purchases out-of-state*. — An excise tax is hereby
12 imposed on the use or consumption in this state of gasoline or
13 special fuel purchased outside this state at the rate of five
14 percent of the average wholesale price of gasoline or special
15 fuel, as determined under subsection (c), notwithstanding any
16 provision of this article to the contrary: *Provided*, That gasoline
17 or special fuel contained in the supply tank of a motor vehicle
18 that is not a motor carrier is not taxable, except that gasoline or
19 special fuel imported in the supply tank or auxiliary tank of
20 construction equipment, mining equipment, track maintenance

21 equipment or other similar equipment, is taxed in the same
22 manner as that in the supply tank of a motor carrier.

23 (b) *Definitions.* — Terms used in this section have the same
24 meaning as when used in a comparable context in section
25 eighteen, article fifteen of this chapter.

26 (c) *Determination of average wholesale price.* —

27 (1) To simplify determining the average wholesale price of
28 all gasoline and special fuel, the tax commissioner shall,
29 effective with the period beginning the first day of the month of
30 the effective date of this section and each first day of January,
31 annually, thereafter, determine the average wholesale price of
32 gasoline and special fuel for each annual period, on the basis of
33 sales data gathered for the preceding period of the first day of
34 July through the thirty-first day of October. Notification of the
35 average wholesale price of gasoline and special fuel shall be
36 given by the tax commissioner at least thirty days in advance of
37 each first day of January, annual period, by filing notice of the
38 average wholesale price in the state register, and by other
39 means as the tax commissioner considers reasonable: *Provided,*
40 That notice of the average wholesale price of gasoline and
41 special fuel for the first period shall be timely given if filed in
42 the state register on the effective date of this section.

43 (2) The “average wholesale price” means the single,
44 statewide average per gallon wholesale price, rounded to the
45 third decimal (thousandth of a cent), exclusive of state and
46 federal excise taxes on each gallon of gasoline or diesel fuel, as
47 determined by the tax commissioner from information fur-
48 nished by distributors of gasoline or special fuel in this state, or
49 any other information regarding wholesale selling prices as the
50 tax commissioner may gather, or a combination of information:
51 *Provided,* That in no event shall the average wholesale price be
52 determined to be less than ninety-seven cents per gallon of
53 gasoline or special fuel.

54 (3) All actions of the tax commissioner in acquiring data
55 necessary to establish and determine the average wholesale
56 price of gasoline and special fuel, in providing notification of
57 his or her determination prior to the effective date of any
58 change in rate, and in establishing and determining the average
59 wholesale price of fuel, may be made by the tax commissioner
60 without compliance with the provisions of article three, chapter
61 twenty-nine-a of this code.

62 (4) In any administrative or court proceeding brought to
63 challenge the average whole price of gasoline and special fuel
64 as determined by the tax commissioner, his or her determina-
65 tion is presumed to be correct and shall not be set aside unless
66 it is clearly erroneous.

67 (d) *Computation of tax due from motor carriers.* — Every
68 person who operates or causes to be operated a motor carrier in
69 this state shall pay the tax imposed by this section on the
70 average wholesale price of all gallons of gasoline or special fuel
71 used in the operation of any motor carrier within this state,
72 under the following rules:

73 (1) The total amount of gasoline or special fuel used in the
74 operation of the motor carrier within this state is that proportion
75 of the total amount of gasoline and special fuel used in any
76 motor carrier's operations within and without this state, that the
77 total number of miles traveled within this state bears to the total
78 number of miles traveled within and without this state.

79 (2) A motor carrier shall first determine the gross amount
80 of tax due under this section on the average wholesale value,
81 determined under subsection (c) of this section, of all gasoline
82 and special fuel used in the operation of the motor carrier
83 within this state during the preceding quarter, as if all gasoline
84 and special fuel had been purchased outside this state.

85 (3) Next, the taxpayer shall determine the total tax paid
86 under article fifteen of this chapter on all gasoline and special
87 fuel purchased in this state for use in the operation of the motor
88 carrier.

89 (4) The difference between (2) and (3) is the amount of tax
90 due under this article when (2) is greater than (3), or the amount
91 to be refunded or credited to the motor carrier when (3) is
92 greater than (2), which refund or credit is allowed in the same
93 manner and under the same conditions as a refund or credit is
94 allowed for the tax imposed by article fourteen-a of this
95 chapter.

96 (e) *Return and payment of tax.* — Tax due under this article
97 on the uses or consumption in this state of gasoline or special
98 fuel shall be paid by each taxpayer on or before the twenty-fifth
99 day of January, April, July and October of each year, notwith-
100 standing any provision of this article to the contrary, by check,
101 bank draft, certified check or money order, payable to the tax
102 commissioner, for the amount of tax due for the preceding
103 quarter. Every taxpayer shall make and file with his or her
104 remittance, a return showing the information the tax commis-
105 sioner requires.

106 (f) *Compliance.* — To facilitate ease of administration and
107 compliance by taxpayers, the tax commissioner may require
108 motor carriers liable for the taxes imposed by this article on the
109 use of gasoline or special fuel in the operation of motor carriers
110 within this state, and the tax imposed by article fourteen-a of
111 this chapter on gallons of fuel, to file a combined return and
112 make a combined payment of the tax due under this article and
113 article fourteen-a of this chapter on the fuel. In order to
114 encourage use of a combined return and the making of a single
115 payment each quarter for both taxes, the due date of the return
116 and tax due under article fourteen-a of this chapter is hereby
117 changed from the last day of January, April, July and October

118 of each calendar year, to the twenty-fifth day of each of those
119 months, notwithstanding any provisions in article fourteen-a of
120 this chapter to the contrary.

121 (g) *Dedication of tax to highways.* — All tax collected
122 under the provisions of this section after deducting the amount
123 of any refunds lawfully paid shall be deposited in the “road
124 fund” in the state treasurer’s office, and used only for the
125 purpose of construction, reconstruction, maintenance and repair
126 of highways, and payment of principal and interest on state
127 bonds issued for highway purposes.

128 (h) *Construction.* — The tax imposed by this article on the
129 use of gasoline or special fuel in this state is not construed as
130 taxing any gasoline or special fuel which the state is prohibited
131 from taxing under the constitution of this state or the constitu-
132 tion or laws of the United States.

133 (i) *Effective date.* —

134 This section shall have no force or effect after the thirty-
135 first day of December, two thousand three: *Provided*, That tax
136 liabilities arising for periods ending before the first day of
137 January, two thousand four, shall be determined, paid, adminis-
138 tered, assessed and collected as if this section had not been
139 repealed, and the rights and duties of the taxpayer and the state
140 of West Virginia are fully and completely preserved.

141 (j) *Validation.* — Inasmuch as there is currently litigation
142 challenging the lawfulness of this section in the situation where
143 a motor carrier purchases gasoline or special fuel in another
144 state paying to that other state a sales tax thereon and then
145 consumes that gasoline or special fuel in its operation of a
146 motor carrier in this state, without being statutorily allowed a
147 credit for the sales tax against the tax imposed by this article
148 with respect to the gallonage of tax paid fuel consumed in this
149 state; and inasmuch as section ten-a of this article reestablishes

150 the allowance of a credit and makes the allowance effectively
151 retroactive and applicable to gasoline and special fuel con-
152 sumed in this state after the thirtieth day of June, one thousand
153 nine hundred eighty-five, the purported constitutional infirmity
154 is cured. To avoid any question about whether this section was
155 in effect subsequent to the thirtieth day of June, one thousand
156 nine hundred eighty-five, this section is reenacted and expressly
157 made retroactive to the first day of July, one thousand nine
158 hundred eighty-five, and the tax commissioner shall not refund
159 or credit any tax previously paid under this section due to a
160 claim that the tax was not lawfully imposed subsequent to the
161 thirtieth day of June, one thousand nine hundred eighty-five.

§11-15A-13a. Tax on motor fuel effective January 1, 2004.

1 (a) *Imposition of tax.* —

2 (1) *On deliveries in this state.* — Effective the first day of
3 January, two thousand four, all motor fuel furnished or deliv-
4 ered within this state which is subject to the flat rate of the tax
5 imposed by section five, article fourteen-c of this chapter is
6 subject to the tax imposed by this article which shall comprise
7 the variable component of the tax imposed by the said section
8 five, article fourteen-c, and shall be collected and remitted at
9 the time the tax imposed by the said section five, article
10 fourteen-c is remitted: *Provided*, That the amount of tax due
11 under this article shall in no event be less than five percent of
12 the average wholesale price of motor fuel as determined in
13 accordance with said section five, article fourteen-c.

14 (2) *On purchases out-of-state subject to motor fuel tax.* —
15 Effective the first day of January, two thousand four, an excise
16 tax is hereby imposed on the importation into this state of motor
17 fuel purchased outside this state when the purchase is subject to
18 the flat rate of the tax imposed by section five, article four-
19 teen-c of this chapter: *Provided*, That the rate of the tax due

20 under this article shall in no event be less than five percent of
21 the average wholesale price of the motor fuel, as determined in
22 accordance with said section five, article fourteen-c: *Provided,*
23 *however,* That the motor fuel subject to the tax imposed by this
24 article shall comprise the variable component of the tax
25 imposed by the said section five, article fourteen-c, and shall be
26 collected and remitted by the seller at the time the seller remits
27 the tax imposed by the said section five, article fourteen-c.

28 (3) *On other purchases out-of-state.* — An excise tax is
29 hereby imposed on the use or consumption in this state of motor
30 fuel purchased outside this state at the rate of five percent of the
31 average wholesale price of the motor fuel, as determined in
32 accordance with section five, article fourteen-c of this chapter:
33 *Provided,* That motor fuel contained in the fuel supply tank of
34 a motor vehicle that is not a motor carrier shall not be taxable,
35 except that motor fuel imported in the fuel supply tank or
36 auxiliary tank of construction equipment, mining equipment,
37 track maintenance equipment or other similar equipment, shall
38 be taxed in the same manner as that in the fuel supply tank of
39 a motor carrier.

40 (b) *Definitions.* — For purposes of this article, the terms
41 “gasoline” and “special fuel” are defined as provided in section
42 two, article fourteen-c of this chapter. Other terms used in this
43 section have the same meaning as when used in a similar
44 context in article fourteen-c of this chapter.

45 (c) *Computation of tax due from motor carriers.* — Every
46 person who operates or causes to be operated a motor carrier in
47 this state shall pay the tax imposed by this section on the
48 average wholesale price of all gallons of motor fuel used in the
49 operation of any motor carrier within this state, under the
50 following rules:

51 (1) The total amount of motor fuel used in the operation of
52 the motor carrier within this state is that proportion of the total
53 amount of motor fuel used in any motor carrier's operations
54 within and without this state, that the total number of miles
55 traveled within this state bears to the total number of miles
56 traveled within and without this state.

57 (2) A motor carrier shall first determine the gross amount
58 of tax due under this section on the average wholesale value,
59 determined under section five, article fourteen-c of this chapter,
60 of all motor fuel used in the operation of the motor carrier
61 within this state during the preceding quarter, as if all gasoline
62 and special fuel had been purchased outside this state.

63 (3) Next, the taxpayer shall determine the total tax paid
64 under article fifteen of this chapter on all motor fuel purchased
65 in this state for use in the operation of the motor carrier.

66 (4) The difference between (2) and (3) is the amount of tax
67 due under this article when (2) is greater than (3), or the amount
68 to be refunded or credited to the motor carrier when (3) is
69 greater than (2), which refund or credit is allowed in the same
70 manner and under the same conditions as a refund or credit is
71 allowed for the tax imposed by article fourteen-a of this
72 chapter.

73 (d) *Return and payment of tax.* — Tax due under this article
74 on the uses or consumption in this state of motor fuel shall be
75 paid by each taxpayer on or before the twenty-fifth day of
76 January, April, July and October of each year, notwithstanding
77 any provision of this article to the contrary, by check, bank
78 draft, certified check or money order, payable to the tax
79 commissioner, for the amount of tax due for the preceding
80 quarter: *Provided*, That the tax due under this article that
81 comprises the variable component of the tax due under article
82 fourteen-c of this chapter is due on the last day of the month.

83 Every taxpayer shall make and file with his or her remittance,
84 a return showing the information the tax commissioner requires.

85 (e) *Compliance.* — To facilitate ease of administration and
86 compliance by taxpayers, the tax commissioner shall require
87 motor carriers liable for the taxes imposed by this article on the
88 use of motor fuel in the operation of motor carriers within this
89 state, and the tax imposed by article fourteen-a of this chapter
90 on such gallons of motor fuel, to file a combined return and
91 make a combined payment of the tax due under this article and
92 article fourteen-a of this chapter on the fuel. In order to
93 encourage use of a combined return and the making of a single
94 payment each quarter for both taxes, the due date of the return
95 and tax due under article fourteen-a of this chapter is the last
96 day of January, April, July and October of each calendar year.

97 (f) *Dedication of tax to highways.* — All tax collected
98 under the provisions of this section after deducting the amount
99 of any refunds lawfully paid shall be deposited in the “road
100 fund” in the state treasurer’s office, and used only for the
101 purpose of construction, reconstruction, maintenance and repair
102 of highways, and payment of principal and interest on state
103 bonds issued for highway purposes.

104 (g) *Construction.* — The tax imposed by this article on the
105 use of motor fuel in this state is not construed as taxing any
106 motor fuel which the state is prohibited from taxing under the
107 constitution of this state or the constitution or laws of the
108 United States.

109 (h) *Effective date.* — The provisions of this section take
110 effect the first day of January, two thousand four.

CHAPTER 233

(Com. Sub. for H. B. 2733 — By Delegates Craig,
Morgan, Campbell, Amores and Stalnaker)

[Passed March 7, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal investigation and special audits divisions of state tax division; and increasing amount of unencumbered funds in special revenue account for those divisions that is not transferred to general fund at end of fiscal year.

Be it enacted by the Legislature of West Virginia:

That section two-a, article nine, 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 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation division established; funding of same.

- 1 (a) *Criminal investigation division.* — A criminal investiga-
- 2 tion division consisting of no more than twelve investigators, of
- 3 which one investigator shall serve as division director, plus
- 4 necessary support staff, all of whom are exempt from the
- 5 classified service, is hereby established in the state tax division
- 6 for the purpose of assuring compliance with laws and rules
- 7 pertaining to the taxes, fees or credits administered under article

8 ten of this chapter, including, but not limited to, the provisions
9 of articles twenty, twenty-one and twenty-three, chapter
10 forty-seven of this code, but not including income taxes,
11 imposed on individuals by article twenty-one of this chapter.

12 (b) *Special audits division.* — A special audits division
13 consisting of no more than eight tax examiners, plus necessary
14 support staff, all of whom are covered by the classified service,
15 is hereby established in the auditing section of the state tax
16 division for purposes of assuring compliance with laws and
17 rules pertaining to taxes, fees or credits administered under
18 article ten of this chapter, including, but not limited to, the
19 provisions of articles twenty, twenty-one and twenty-three,
20 chapter forty-seven of this code, but not including income taxes
21 imposed on individuals by article twenty-one of this chapter.

22 (c) The Legislature hereby finds that the enforcement of the
23 laws and rules pertaining to the taxes, fees or credits adminis-
24 tered under article ten of this chapter, as are applicable to
25 persons whose residence or principal place of business is
26 outside of the state of West Virginia, requires greater efforts
27 and investigation than required for resident persons subject
28 thereto, and does further find that there is a greater rate of
29 noncompliance with said laws and rules by nonresident persons.
30 Therefore, the criminal investigation division and the special
31 audits division created in subsections (a) and (b) of this section
32 are hereby directed to expend a significant amount of their
33 efforts to ensure compliance with the laws and rules pertaining
34 to taxes, fees or credits administered under article ten of this
35 chapter in accordance with the authority provided in this
36 section, by persons whose residence or principal place of
37 business is located outside the state of West Virginia.

38 (d) *Deposits of certain fees.* — Charitable bingo fees
39 imposed by article twenty, chapter forty-seven of this code;
40 charitable raffle fees imposed by article twenty-one of said

41 chapter; and charitable raffle boards and games fees imposed by
42 article twenty-three of said chapter in an amount not to exceed
43 the amount appropriated by the Legislature in any fiscal year
44 shall be deposited in a special revenue account established in
45 the office of the treasurer. The special revenue account shall be
46 used to support compliance expenditures relating to the
47 establishment, operation, maintenance and support of the
48 criminal investigation division established in subsection (a) of
49 this section and the special audits division established in
50 subsection (b) of this section. The expenditures may include,
51 but shall not be limited to, employee compensation, equipment,
52 office supplies and travel expenses. On the last day of each
53 fiscal year, unencumbered funds in the special revenue account
54 in excess of one hundred fifty thousand dollars shall be trans-
55 ferred to the general revenue fund.

56 (e) *Investigators.* — Investigators employed in the criminal
57 investigation division shall have a background in accounting or
58 law enforcement or related fields pursuant to article twenty-
59 nine, chapter thirty of this code, or its equivalent. Any investi-
60 gator designated by the tax commissioner shall have all the
61 lawful powers delegated to members of the division of public
62 safety except the power to carry firearms and shall have the
63 authority to enforce the provisions of this article and the
64 criminal provisions of any other article of this code to which
65 this article applies, in any county or municipality of this state.
66 The tax commissioner shall establish additional standards as he
67 or she considers applicable or necessary. Any employee shall,
68 before entering upon the discharge of his or her duties, execute
69 a bond with security in the sum of three thousand five hundred
70 dollars, payable to the state of West Virginia, conditioned for
71 the faithful performance of the employee's duties and the bond
72 shall be approved as to form by the attorney general and shall
73 be filed with the secretary of state for preservation in that
74 office. The division of public safety, any county sheriff or
75 deputy sheriff and any municipal police officer upon request by

76 the tax commissioner is hereby authorized to assist the tax
77 commissioner in enforcing the provisions of this article and any
78 criminal penalty provision of any article of this code to which
79 this article applies.

80 (f) *Class A license plates.* — Notwithstanding the provi-
81 sions of article three, chapter seventeen-a of this code, upon
82 application by the tax commissioner and payment of fees, the
83 commissioner of motor vehicles shall issue a maximum of
84 twenty Class A license plates to be used on state owned or
85 leased vehicles assigned to investigators employed in the
86 criminal investigation division.

87 (g) *Reports.* — On the first day of July of each year,
88 beginning in the year one thousand nine hundred ninety-four,
89 the tax commissioner shall present a written report to the joint
90 committee on government operations on the division's compli-
91 ance with the provisions of this section, including, but not
92 limited to, activities of the divisions created by this section and
93 disbursement of funding.

CHAPTER 234

(H. B. 3095 — By Delegates Craig, Foster, Amores,
Kominar, Morgan, Smirl and Pino)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-v, relating to disclosure of certain tax information by tax commissioner to state treasurer for purpose of disposing of abandoned, unclaimed

or uncashed tax refund checks; specifying that information so disclosed shall be used by treasurer only for purpose of administering and implementing return, recovery and disposition of abandoned or unclaimed property; specifying that treasurer shall treat information so obtained as records of abandoned property; specifying to whom and how certain information may be disclosed by treasurer; and specifying that tax information disclosed to treasurer remains otherwise confidential in accordance with state law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5v. Disclosure of tax information to the treasurer for return, recovery and disposition of unclaimed and abandoned property.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if the information resides in tax division databases, the
3 tax commissioner shall disclose to the state treasurer the name,
4 last known address and social security number, or federal
5 employer identification number, as applicable, of persons or
6 businesses, including joint or combined filers, to which tax
7 refund checks have been issued by this state, which checks have
8 gone unclaimed or uncashed for a period of more than six
9 months after the issuance date of the check. Notwithstanding
10 any provision of this code to the contrary, if the information is
11 included in a tax division database, the tax commissioner shall
12 disclose to the state treasurer the date, check number, warrant
13 number, transaction identification number, invoice number, and
14 amount of any such unclaimed or uncashed refund check, and
15 the tax commissioner's confirmation or denial of confirmation,

16 as applicable, that the tax refund is currently due and payable
17 to the payee or payees to whom the unclaimed or uncashed
18 check was originally issued.

19 (b) Disclosure of this information shall begin as soon as
20 practicable after the effective date of this section on such
21 schedule and under such arrangements as the treasurer and the
22 tax commissioner may agree. Information so disclosed shall be
23 used by the treasurer only for the purpose of administering and
24 implementing the return, recovery and disposition of abandoned
25 or unclaimed property in accordance with the provisions of
26 article eight, chapter thirty-six of this code.

27 (c) The treasurer as administrator for unclaimed property
28 shall treat information obtained in accordance with this section
29 as records of abandoned property in accordance with article
30 eight, chapter thirty-six of this code, and shall use the informa-
31 tion to facilitate locating owners of unclaimed tax refunds.
32 Notwithstanding any provision of this code to the contrary, the
33 treasurer may disclose any or all of the information to an owner,
34 his or her personal representative, next of kin, attorney at law
35 or a person entitled to inherit from the owner.

36 (d) Of the information received by the treasurer under this
37 section, only the name, city and state of the last known address
38 of the payee or payees to whom the unclaimed or uncashed
39 check was originally issued may be published by the treasurer,
40 and only for the purpose of returning, recovering or disposing
41 of unclaimed tax refunds. Tax information disclosed pursuant
42 to this section to the treasurer shall remain confidential as
43 provided by section five-d of this article, except to the extent
44 disclosure is allowed under this section. The provisions of this
45 section may not be construed to preclude or limit disclosure of
46 tax information authorized by other provisions of this code.

CHAPTER 235

(Com. Sub. for H. B. 2902 — By Delegates Craig,
Morgan and Campbell)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-w, relating to confidentiality and disclosure of information set forth in oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a, of said chapter eleven; setting forth exceptions to confidentiality; providing that confidentiality of such information does not prohibit publication or release of summary statistical information derived from oil and gas combined reporting forms; authorizing disclosure of oil and gas combined reporting form information to county assessors, department of environmental protection and public service commission; relating to the confidentiality and nondisclosure of other information reported under article thirteen-a of said chapter eleven; and, establishing criminal penalties for the unlawful disclosure of confidential information obtained from the oil and gas combined reporting form.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5w. Confidentiality and disclosure of information set forth in the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter to county assessors, the department of environmental protection and to the public service commission; offenses; penalties.

1 (a) *Confidentiality of certain information reported on the*
2 *oil and gas combined reporting form, exception.* — The
3 following information provided by or on behalf of any person
4 or entity on the oil and gas combined reporting form specified
5 in subsection (d), section three-a, article thirteen-a of this
6 chapter is confidential:

7 (1) The natural resources account number (NRA);

8 (2) Total gross revenue for oil or gas or both;

9 (3) Working interest revenue for oil or gas or both;

10 (4) The name and address of the owner of a working
11 interest or override royalty interest in the well;

12 (5) The ownership interest held by the owner of a working
13 interest or override royalty interest in the well, expressed as a
14 percentage or decimal equivalent, of total ownership of each
15 listed owner; and

16 (6) The income of any owner.

17 Such information is exempt from disclosure under section
18 four, article one, chapter twenty-nine-b of this code, and shall
19 be kept, held and maintained as confidential except to the extent
20 the information is disclosable under subsections (b) and (c) of
21 this section.

22 (b) *Disclosure to county assessors, department of environ-*
23 *mental protection and public service commission authorized.*

24 —Notwithstanding the provisions of section five-d, article ten
25 of this chapter to the contrary, and notwithstanding any other
26 provision of this code to the contrary, the tax commissioner
27 may disclose the oil and gas combined reporting form specified
28 in subsection (d), section three-a, article thirteen-a of this
29 chapter, and information set forth thereon to county assessors,
30 the department of environmental protection and the public
31 service commission for the purpose of administering and
32 implementing the assessment, administrative, oversight and
33 regulatory functions and responsibilities with which they are
34 charged by law.

35 (c) *Release and publication of information.* —

36 (1) *Statistical and aggregate information.* — This section
37 shall not be construed to prohibit the publication or release of
38 summary statistical information derived from the oil and gas
39 combined reporting form, including summary statistical
40 information derived from the items specified in subsection (a)
41 of this section. Publication or release of such summary statisti-
42 cal information is authorized in the form of aggregated statis-
43 tics, maps, articles, reports or professional talks, or in other
44 forms, provided it is presented in accordance with generally
45 accepted practices and in a manner so as to preclude the
46 identification of particular oil and gas combined report filers
47 and to preclude derivation or determination of information
48 specified in subsection (a) of this section about particular oil
49 and gas combined report filers.

50 (2) *Release and publication of certain information.* —
51 Notwithstanding the provisions of this section to the contrary
52 and notwithstanding any other provision of this code to the
53 contrary, the tax commissioner, county assessors, the depart-
54 ment of environmental protection, and the public service
55 commission may publish or publicly release information
56 provided by or on behalf of any person or entity in the oil and

57 gas combined reporting form except for the information
58 specified as confidential in subsection (a) of this section.

59 (d) *Penalty of unlawful disclosure.* — Any state, county or
60 governmental subdivision employee or representative (includ-
61 ing, but not limited to, any county assessor or any employee or
62 representative of the West Virginia department of environmen-
63 tal protection or the West Virginia public service commission),
64 who violates this section by making an unlawful or unautho-
65 rized disclosure of confidential information that is reported on
66 the oil and gas combined reporting form is guilty of a misde-
67 meanor and, upon conviction thereof, shall be fined not more
68 than one thousand dollars or confined in the county or regional
69 jail for not more than one year, or both fined and confined, and
70 shall be assessed the cost of prosecution. As used in this
71 section, the term “state, county or governmental subdivision
72 employee or representative” includes, but is not limited to, any
73 current or former state, county or municipal employee, officer,
74 or commission or board member, and any state, county or
75 municipal agency, institution, organization, contractor or
76 subcontractor and any principal, officer, agent or employee
77 thereof.

CHAPTER 236

(H. B. 3027— By Delegates Pethtel, Stemple, Amores,
Varner, Kominar and Craig)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-x, relating

to authorizing the tax commissioner to waive tax, interest and penalties in specified circumstances which are otherwise imposed on uncompensated members of the governing board or board of directors of certain tax exempt organizations that result from liabilities of the tax exempt organization being attributed to those members; specifying manner and forum for appeals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5x. Waiver of derivative tax, interest and penalty imposed on board members or directors of charitable and tax exempt organizations imposed on innocent governing board resulting from defaults or delinquencies of the organization.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the tax commissioner may waive imposition of
3 derivative tax liabilities and associated interest and penalties on
4 one or more uncompensated members of the governing board
5 or of the board of directors on an organization qualified and
6 classified as a tax exempt organization under section 501 (c) (3)
7 or section 501 (c) (4) of the Internal Revenue Code of 1986, as
8 amended.

9 (b)(1) For purposes of this section, the term “derivative
10 liabilities” means liabilities of the tax exempt organization for
11 any tax administered under this article, including, but not
12 limited to, employee personal income tax withholding trust
13 fund tax remittance liabilities and consumers sales and service
14 tax trust fund tax remittance liabilities, that are attributed by
15 law to one or more members of the governing board or board of

16 directors of the tax exempt organization so as to become
17 personal liabilities of that member or members.

18 (2) For purposes of this section a member is uncompensated
19 if the member is not paid or otherwise remunerated directly or
20 indirectly:

21 (A) For service on the governing board or board of direc-
22 tors;

23 (B) For any other service rendered to the tax exempt
24 organization;

25 (C) For service to any entity affiliated with the tax exempt
26 organization; or

27 (D) For any sale of real or tangible personal property or
28 intangible personal property during the preceding calendar year
29 to the tax exempt organization or to any person, entity or
30 organization affiliated with the tax exempt organization.

31 (3) Reimbursement of actual expenses incurred to carry out
32 the duties and responsibilities of board membership shall not be
33 treated as compensation.

34 (4) Compensation paid to a person or organization having
35 a relationship to the member that is specified in section 267(b)
36 of the Internal Revenue Code of 1986, as amended, constitutes
37 compensation to the member for purposes of this section.

38 (c) The tax commissioner may only issue the waiver
39 authorized by this section if the tax commissioner determines
40 that:

41 (1) The board member or members were misled, defrauded
42 or deceived as to the accrual or existence of unpaid tax liabili-

43 ties owed by the tax exempt organization, and had no reason to
44 know of the accrual or existence of the liabilities owed;

45 (2) The board member or members took no active role in
46 the day-to-day management of the tax exempt organization and
47 the tax liability resulted from a computational or clerical error
48 or good faith reliance on erroneous professional advice which
49 the member or members could not have reasonably discovered
50 through the exercise of due diligence; or

51 (3) The board member or members reasonably believed that
52 the tax had been paid or accumulated for payment and the
53 amounts believed to have been so paid or accumulated were in
54 fact lost, stolen, destroyed or otherwise rendered irretrievable,
55 without the acquiescence or consent of the member or mem-
56 bers.

57 (d) The petition for a waiver under this section shall be
58 made in writing and filed with the tax commissioner in that
59 form and pursuant to those procedures as the tax commissioner
60 may prescribe.

61 (e) Any controversy arising pursuant to this section shall be
62 resolved through an appeal to the office of tax appeals in
63 accordance with the provisions of article ten-a of this chapter.
64 The issuance of a waiver under this section is within the
65 discretion of the tax commissioner and the tax commissioner's
66 determination shall not be overturned absent a showing of
67 abuse of discretion.

68 (f) This section shall not be interpreted as restricting the
69 authority of the tax commissioner to otherwise compromise,
70 assess, correct, adjust or reassess any amount of tax, interest or
71 penalty determined to be due under this article.

CHAPTER 237

(H. B. 3077 — By Delegates Craig, Morgan,
Campbell, Amores and Stalnaker)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia tax procedure and administration act; and authorizing tax commissioner to enter into agreements with Internal Revenue Service for offsetting tax refunds against tax liabilities.

Be it enacted by the Legislature of West Virginia:

That section eleven, article ten, 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 10. PROCEDURE AND ADMINISTRATION.

§11-10-11. Collection of tax.

- 1 (a) *General.* — The tax commissioner shall collect the
- 2 taxes, additions to tax, penalties and interest imposed by this
- 3 article or any of the other articles of this chapter to which this
- 4 article is applicable. In addition to all other remedies available
- 5 for the collection of debts due this state, the tax commissioner
- 6 may proceed by foreclosure of the lien provided in section
- 7 twelve, or by levy and distraint under section thirteen.

8 (b) *Prerequisite to final settlement of contracts with*
9 *nonresident contractor; user personally liable.*

10 (1) Any person contracting with a nonresident contractor
11 subject to the taxes imposed by articles thirteen, twenty-one and
12 twenty-four of this chapter, shall withhold payment, in the final
13 settlement of the contract, of a sufficient amount, not exceeding
14 six percent of the contract price, as will in the person's opinion
15 be sufficient to cover the taxes, until the receipt of a certificate
16 from the tax commissioner to the effect that the above refer-
17 enced taxes imposed against the nonresident contractor have
18 been paid or provided for.

19 (2) If any person shall fail to withhold as provided in
20 subdivision (1) of this subsection, that person is personally
21 liable for the payment of all taxes attributable to the contract,
22 not to exceed six percent of the contract price. The taxes
23 attributable shall be recoverable by the tax commissioner by
24 appropriate legal proceedings, which may include issuance of
25 an assessment under this article.

26 (c) *Prerequisite for issuance of certificate of dissolution or*
27 *withdrawal of corporation.* — The secretary of state shall
28 withhold the issuance of any certificate of dissolution or
29 withdrawal in the case of any corporation organized under the
30 laws of this state, or organized under the laws of another state
31 and admitted to do business in this state, until the receipt of a
32 certificate from the tax commissioner to the effect that every
33 tax administered under this article imposed against any corpora-
34 tion has been paid or provided for, or that the applicant is not
35 liable for any tax administered under this article.

36 (d) *Prerequisite to final settlement of contract with this*
37 *state or political subdivision; penalty.* — All state, county,
38 district and municipal officers and agents making contracts on
39 behalf of this state or any political subdivision thereof shall

40 withhold payment, in the final settlement of any contract, until
41 the receipt of a certificate from the tax commissioner to the
42 effect that the taxes imposed by articles thirteen, twenty-one
43 and twenty-four of this chapter against the contractor have been
44 paid or provided for. If the transaction embodied in the contract
45 or the subject matter of the contract is subject to county or
46 municipal business and occupation tax, then the payment shall
47 also be withheld until receipt of a release from the county or
48 municipality to the effect that all county or municipal business
49 and occupation taxes levied or accrued against the contractor
50 have been paid. Any official violating this section is subject to
51 a civil penalty of one thousand dollars, recoverable as a debt in
52 a civil action brought by the tax commissioner.

53 (e) *Limited effect of tax commissioner's certificates.* — The
54 certificates of the tax commissioner provided for in subsections
55 (b), (c) and (d) of this section shall not bar subsequent investi-
56 gations, assessments, refunds and credits with respect to the
57 taxpayer.

58 (f) *Payment when person sells out or quits business;*
59 *liability of successor; lien.*

60 (1) If any person subject to any tax administered under this
61 article sells out his, her or its business or stock of goods, or
62 ceases doing business, any tax, additions to tax, penalties and
63 interest imposed by this article or any of the other articles of
64 this chapter to which this article is applicable shall become due
65 and payable immediately and that person shall, within thirty
66 days after selling out his, her or its business or stock of goods
67 or ceasing to do business, make a final return or returns and pay
68 any tax or taxes which are due. The unpaid amount of any tax
69 is a lien upon the property of that person.

70 (2) The successor in business of any person who sells out
71 his, her or its business or stock of goods, or ceases doing

72 business, is personally liable for the payments of tax, additions
73 to tax, penalties and interest unpaid after expiration of the
74 thirty-day period allowed for payment: *Provided*, That if the
75 business is purchased in an arms-length transaction, and if the
76 purchaser withholds so much of the consideration for the
77 purchase as will satisfy any tax, additions to tax, penalties and
78 interest which may be due until the seller produces a receipt
79 from the tax commissioner evidencing the payment thereof, the
80 purchaser is not personally liable for any taxes attributable to
81 the former owner of the business unless the contract of sale
82 provides for the purchaser to be liable for some or all of the
83 taxes. The amount of tax, additions to tax, penalties and interest
84 for which the successor is liable is a lien on the property of the
85 successor, which shall be enforced by the tax commissioner as
86 provided in this article.

87 (g) *Priority in distribution of estate or property in receiver-*
88 *ship; personal liability of fiduciary.* — All taxes due and unpaid
89 under this article shall be paid from the first money available
90 for distribution, voluntary or compulsory, in receivership,
91 bankruptcy or otherwise, of the estate of any person, firm or
92 corporation, in priority to all claims, except taxes and debts due
93 the United States which under federal law are given priority
94 over the debts and liens created by this article. Any trustee,
95 receiver, administrator, executor or person charged with the
96 administration of an estate who violates the provisions of this
97 section is personally liable for any taxes accrued and unpaid
98 under this article, which are chargeable against the person, firm
99 or corporation whose estate is in administration.

100 (h) *Injunction.* — If the taxpayer fails for a period of more
101 than sixty days to fully comply with any of the provisions of
102 this article or of any other article of this chapter to which this
103 article is applicable, the tax commissioner may institute a
104 proceeding to secure an injunction to restrain the taxpayer from
105 doing business in this state until the taxpayer fully complies

106 with the provisions of this article or any other articles. No bond
107 is required of the tax commissioner in any action instituted
108 under this subsection.

109 (i) *Costs.* — In any proceeding under this section, upon
110 judgment or decree for the tax commissioner, he or she shall be
111 awarded his or her costs.

112 (j) *Refunds; credits; right to offset.*

113 (1) Whenever a taxpayer has a refund or credit due it for an
114 overpayment of any tax administered under this article, the tax
115 commissioner may reduce the amount of the refund or credit by
116 the amount of any tax administered under this article, whether
117 it be the same tax or any other tax, which is owed by the same
118 taxpayer, and collectible as provided in subsection (a) of this
119 section.

120 (2) The tax commissioner may enter into agreements with
121 the Internal Revenue Service that provide for offsetting state tax
122 refunds against federal tax liabilities; offsetting federal tax
123 refunds against state tax liabilities; and establishing the amount
124 of the offset fee per transaction which both agencies may
125 charge each other: *Provided*, That offsets under subdivision (1)
126 of this subsection shall occur prior to offset under this subdivi-
127 sion. At the times moneys are received as a result of an offset
128 of a taxpayer's federal tax refund under the provisions of
129 section 6402(e) of the Internal Revenue Code, the taxpayer is
130 given credit against state tax liability for the amount of the
131 offset less a deduction for the offset fee imposed by the Internal
132 Revenue Service.

133 (k) *Spouse relieved of liability in certain cases.*

134 (1) *In general.* — Under regulations prescribed by the tax
135 commissioner, if:

136 (A) A joint personal income tax return has been made for
137 a taxable year;

138 (B) On the return there is a substantial understatement of
139 tax attributable to grossly erroneous items of one spouse;

140 (C) The other spouse establishes that in signing the return
141 he or she did not know, and had no reason to know, that there
142 was a substantial understatement; and

143 (D) Taking into account all the facts and circumstances, it
144 is inequitable to hold the other spouse liable for the deficiency
145 in tax for the taxable year attributable to the substantial
146 understatement, then the other spouse is relieved of any liability
147 for tax, including interest, additions to tax, and other amounts
148 for the taxable year to the extent the liability is attributable to
149 the substantial understatement.

150 (2) *Grossly erroneous items.* — For purposes of this
151 subsection, the term “grossly erroneous items” means, with
152 respect to any spouse:

153 (A) Any item of gross income attributable to a spouse
154 which is omitted from gross income; and

155 (B) Any claim of a deduction, credit, or basis by a spouse
156 in an amount for which there is no basis in fact or law.

157 (3) *Substantial understatement.* — For purposes of this
158 subsection, the term “substantial understatement” means any
159 understatement, as defined in regulations prescribed by the tax
160 commissioner which exceed five hundred dollars.

161 (4) *Understatement must exceed specified percentage of*
162 *spouse’s income.*

163 (A) *Adjusted gross income of \$20,000 or less.* — If the
164 spouse's adjusted gross income for the preadjustment year is
165 twenty thousand dollars or less, this subsection applies only if
166 the liability described in paragraph (1) of this subsection is
167 greater than ten percent of the adjusted gross income.

168 (B) *Adjusted gross income of more than twenty thousand*
169 *dollars.* — If the spouse's adjusted gross income for the
170 preadjustment year is more than twenty thousand dollars,
171 subparagraph (A) of this subdivision is applied by substituting
172 "twenty-five percent" for "ten percent."

173 (C) *Preadjustment year.* — For purposes of this paragraph,
174 the term "preadjustment year" means the most recent taxable
175 year of the spouse ending before the date the deficiency notice
176 is mailed.

177 (D) *Computation of spouse's adjusted gross income.* — If
178 the spouse is married to another spouse at the close of the
179 preadjustment year, the spouse's adjusted gross income shall
180 include the income of the new spouse whether or not they file
181 a joint return.

182 (E) *Exception for omissions from gross income.* — This
183 paragraph shall not apply to any liability attributable to the
184 omission of an item from gross income.

185 (5) *Adjusted gross income.* — For purposes of this subsec-
186 tion, the term "adjusted gross income" means the West Virginia
187 adjusted gross income of the taxpayer, determined under article
188 twenty-one of this chapter.

CHAPTER 238

**(S. B. 531 — By Senators Ross, Edgell, White, Unger, Love,
Plymale, Minear, Helmick, Prezioso, McCabe, Dempsey,
Boley, Caldwell, Weeks and Minard)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the consumers sales and service tax; clarifying that payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer, distributor or other third-party marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement are excepted from the tax; providing an expansion of the current exemption for casual and occasional sales by volunteer fire departments and volunteer school support groups from six to eighteen sales per year; and providing an exemption for certain lodging franchise assessed fees from the consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-2. Definitions.

§11-15-9. Exemptions.

***§11-15-2. Definitions.**

1 (a) *General.* — When used in this article and article fifteen-
2 a of this chapter, words defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature.

7 (b) *Definitions.* —

8 (1) “Business” includes all activities engaged in or caused
9 to be engaged in with the object of gain or economic benefit,
10 direct or indirect, and all activities of the state and its political
11 subdivisions which involve sales of tangible personal property
12 or the rendering of services when those service activities
13 compete with or may compete with the activities of other
14 persons.

15 (2) “Communication” means all telephone, radio, light,
16 light wave, radio telephone, telegraph and other communication
17 or means of communication, whether used for voice communi-
18 cation, computer data transmission or other encoded symbolic
19 information transfers and includes commercial broadcast radio,
20 commercial broadcast television and cable television.

21 (3) “Contracting”:

22 (A) *In general.* — “Contracting” means and includes the
23 furnishing of work, or both materials and work, for another (by
24 a sole contractor, general contractor, prime contractor, subcon-
25 tractor or construction manager) in fulfillment of a contract for
26 the construction, alteration, repair, decoration or improvement
27 of a new or existing building or structure, or any part thereof,
28 or for removal or demolition of a building or structure, or any

* **CLERK’S NOTE:** This section was also amended by HB 3014 (Chapter 146),
which passed prior to this act.

29 part thereof, or for the alteration, improvement or development
30 of real property. Contracting also includes services provided by
31 a construction manager so long as the project for which the
32 construction manager provides the services results in a capital
33 improvement to a building or structure or to real property.

34 (B) *Form of contract not controlling.* — An activity that
35 falls within the scope of the definition of contracting constitutes
36 contracting regardless of whether the contract governing the
37 activity is written or verbal and regardless of whether it is in
38 substance or form a lump sum contract, a cost-plus contract, a
39 time and materials contract, whether or not open-ended, or any
40 other kind of construction contract.

41 (C) *Special rules.* — For purposes of this definition:

42 (i) The term “structure” includes, but is not limited to,
43 everything built up or composed of parts joined together in
44 some definite manner and attached or affixed to real property
45 or which adds utility to real property or any part thereof or
46 which adds utility to a particular parcel of property and is
47 intended to remain there for an indefinite period of time;

48 (ii) The term “alteration” means, and is limited to, alter-
49 ations which are capital improvements to a building or structure
50 or to real property;

51 (iii) The term “repair” means, and is limited to, repairs
52 which are capital improvements to a building or structure or to
53 real property;

54 (iv) The term “decoration” means, and is limited to,
55 decorations which are capital improvements to a building or
56 structure or to real property;

57 (v) The term “improvement” means, and is limited to,
58 improvements which are capital improvements to a building or
59 structure or to real property;

60 (vi) The term “capital improvement” means improvements
61 that are affixed to or attached to and become a part of a building
62 or structure or the real property or which add utility to real
63 property, or any part thereof, and that last or are intended to be
64 relatively permanent. As used herein, “relatively permanent”
65 means lasting at least a year in duration without the necessity
66 for regularly scheduled recurring service to maintain the capital
67 improvement. “Regular recurring service” means regularly
68 scheduled service intervals of less than one year;

69 (vii) Contracting does not include the furnishing of work,
70 or both materials and work, in the nature of hookup, connection,
71 installation or other services if the service is incidental to the
72 retail sale of tangible personal property from the service
73 provider’s inventory: *Provided*, That the hookup, connection or
74 installation of the foregoing is incidental to the sale of the same
75 and performed by the seller thereof or performed in accordance
76 with arrangements made by the seller thereof. Examples of
77 transactions that are excluded from the definition of contracting
78 pursuant to this subdivision include, but are not limited to, the
79 sale of wall-to-wall carpeting and the installation of
80 wall-to-wall carpeting, the sale, hookup and connection of
81 mobile homes, window air conditioning units, dishwashers,
82 clothing washing machines or dryers, other household appli-
83 ances, drapery rods, window shades, venetian blinds, canvas
84 awnings, free-standing industrial or commercial equipment and
85 other similar items of tangible personal property. Repairs made
86 to the foregoing are within the definition of contracting if the
87 repairs involve permanently affixing to or improving real
88 property or something attached thereto which extends the life
89 of the real property or something affixed thereto or allows or

90 intends to allow the real property or thing permanently attached
91 thereto to remain in service for a year or longer; and

92 (viii) The term “construction manager” means a person who
93 enters into an agreement to employ, direct, coordinate or
94 manage design professionals and contractors who are hired and
95 paid directly by the owner or the construction manager. The
96 business activities of a “construction manager” as defined in
97 this subdivision constitute contracting, so long as the project for
98 which the construction manager provides the services results in
99 a capital improvement to a building or structure or to real
100 property.

101 (4) “Directly used or consumed” in the activities of
102 manufacturing, transportation, transmission, communication or
103 the production of natural resources means used or consumed in
104 those activities or operations which constitute an integral and
105 essential part of the activities, as contrasted with and distin-
106 guished from those activities or operations which are simply
107 incidental, convenient or remote to the activities.

108 (A) Uses of property or consumption of services which
109 constitute direct use or consumption in the activities of manu-
110 facturing, transportation, transmission, communication or the
111 production of natural resources include only:

112 (i) In the case of tangible personal property, physical
113 incorporation of property into a finished product resulting from
114 manufacturing production or the production of natural re-
115 sources;

116 (ii) Causing a direct physical, chemical or other change
117 upon property undergoing manufacturing production or
118 production of natural resources;

119 (iii) Transporting or storing property undergoing transporta-
120 tion, communication, transmission, manufacturing production
121 or production of natural resources;

122 (iv) Measuring or verifying a change in property directly
123 used in transportation, communication, transmission, manufac-
124 turing production or production of natural resources;

125 (v) Physically controlling or directing the physical move-
126 ment or operation of property directly used in transportation,
127 communication, transmission, manufacturing production or
128 production of natural resources;

129 (vi) Directly and physically recording the flow of property
130 undergoing transportation, communication, transmission,
131 manufacturing production or production of natural resources;

132 (vii) Producing energy for property directly used in
133 transportation, communication, transmission, manufacturing
134 production or production of natural resources;

135 (viii) Facilitating the transmission of gas, water, steam or
136 electricity from the point of their diversion to property directly
137 used in transportation, communication, transmission, manufac-
138 turing production or production of natural resources;

139 (ix) Controlling or otherwise regulating atmospheric
140 conditions required for transportation, communication, trans-
141 mission, manufacturing production or production of natural
142 resources;

143 (x) Serving as an operating supply for property undergoing
144 transmission, manufacturing production or production of
145 natural resources, or for property directly used in transportation,
146 communication, transmission, manufacturing production or
147 production of natural resources;

148 (xi) Maintaining or repairing of property, including
149 maintenance equipment, directly used in transportation,
150 communication, transmission, manufacturing production or
151 production of natural resources;

152 (xii) Storing, removal or transportation of economic waste
153 resulting from the activities of manufacturing, transportation,
154 communication, transmission or the production of natural
155 resources;

156 (xiii) Engaging in pollution control or environmental
157 quality or protection activity directly relating to the activities of
158 manufacturing, transportation, communication, transmission or
159 the production of natural resources and personnel, plant,
160 product or community safety or security activity directly
161 relating to the activities of manufacturing, transportation,
162 communication, transmission or the production of natural
163 resources; or

164 (xiv) Otherwise using as an integral and essential part of
165 transportation, communication, transmission, manufacturing
166 production or production of natural resources.

167 (B) Uses of property or services which do not constitute
168 direct use or consumption in the activities of manufacturing,
169 transportation, transmission, communication or the production
170 of natural resources include, but are not limited to:

171 (i) Heating and illumination of office buildings;

172 (ii) Janitorial or general cleaning activities;

173 (iii) Personal comfort of personnel;

174 (iv) Production planning, scheduling of work or inventory
175 control;

176 (v) Marketing, general management, supervision, finance,
177 training, accounting and administration; or

178 (vi) An activity or function incidental or convenient to
179 transportation, communication, transmission, manufacturing
180 production or production of natural resources, rather than an
181 integral and essential part of these activities.

182 (5) "Directly used or consumed" in the activities of gas
183 storage, the generation or production or sale of electric power,
184 the provision of a public utility service or the operation of a
185 utility business means used or consumed in those activities or
186 operations which constitute an integral and essential part of
187 those activities or operation, as contrasted with and distin-
188 guished from activities or operations which are simply inciden-
189 tal, convenient or remote to those activities.

190 (A) Uses of property or consumption of services which
191 constitute direct use or consumption in the activities of gas
192 storage, the generation or production or sale of electric power,
193 the provision of a public utility service or the operation of a
194 utility business include only:

195 (i) Tangible personal property, custom software or services,
196 including equipment, machinery, apparatus, supplies, fuel and
197 power and appliances, which are used immediately in produc-
198 tion or generation activities and equipment, machinery,
199 supplies, tools and repair parts used to keep in operation exempt
200 production or generation devices. For purposes of this subsec-
201 tion, production or generation activities shall commence from
202 the intake, receipt or storage of raw materials at the production
203 plant site;

204 (ii) Tangible personal property, custom software or
205 services, including equipment, machinery, apparatus, supplies,
206 fuel and power, appliances, pipes, wires and mains, which are
207 used immediately in the transmission or distribution of gas,

208 water and electricity to the public, and equipment, machinery,
209 tools, repair parts and supplies used to keep in operation exempt
210 transmission or distribution devices, and these vehicles and
211 their equipment as are specifically designed and equipped for
212 those purposes are exempt from the tax when used to keep a
213 transmission or distribution system in operation or repair. For
214 purposes of this subsection, transmission or distribution
215 activities shall commence from the close of production at a
216 production plant or wellhead when a product is ready for
217 transmission or distribution to the public and shall conclude at
218 the point where the product is received by the public;

219 (iii) Tangible personal property, custom software or
220 services, including equipment, machinery, apparatus, supplies,
221 fuel and power, appliances, pipes, wires and mains, which are
222 used immediately in the storage of gas or water, and equipment,
223 machinery, tools, supplies and repair parts used to keep in
224 operation exempt storage devices;

225 (iv) Tangible personal property, custom software or
226 services used immediately in the storage, removal or transporta-
227 tion of economic waste resulting from the activities of gas
228 storage, the generation or production or sale of electric power,
229 the provision of a public utility service or the operation of a
230 utility business;

231 (v) Tangible personal property, custom software or services
232 used immediately in pollution control or environmental quality
233 or protection activity or community safety or security directly
234 relating to the activities of gas storage, generation or production
235 or sale of electric power, the provision of a public utility service
236 or the operation of a utility business.

237 (B) Uses of property or services which would not constitute
238 direct use or consumption in the activities of gas storage,
239 generation or production or sale of electric power, the provision

240 of a public utility service or the operation of a utility business
241 include, but are not limited to:

242 (i) Heating and illumination of office buildings;

243 (ii) Janitorial or general cleaning activities;

244 (iii) Personal comfort of personnel;

245 (iv) Production planning, scheduling of work or inventory
246 control;

247 (v) Marketing, general management, supervision, finance,
248 training, accounting and administration; or

249 (vi) An activity or function incidental or convenient to the
250 activities of gas storage, generation or production or sale of
251 electric power, the provision of public utility service or the
252 operation of a utility business.

253 (6) "Gas storage" means the injection of gas into a storage
254 reservoir or the storage of gas for any period of time in a
255 storage reservoir or the withdrawal of gas from a storage
256 reservoir engaged in by businesses subject to the business and
257 occupation tax imposed by sections two and two-e, article
258 thirteen of this chapter.

259 (7) "Generating or producing or selling of electric power"
260 means the generation, production or sale of electric power
261 engaged in by businesses subject to the business and occupation
262 tax imposed by section two, two-d, two-m or two-n, article
263 thirteen of this chapter.

264 (8) "Gross proceeds" means the amount received in money,
265 credits, property or other consideration from sales and services
266 within this state, without deduction on account of the cost of
267 property sold, amounts paid for interest or discounts or other

268 expenses whatsoever. Losses may not be deducted, but any
269 credit or refund made for goods returned may be deducted.

270 (9) "Includes" and "including", when used in a definition
271 contained in this article, does not exclude other things otherwise
272 within the meaning of the term being defined.

273 (10) "Manufacturing" means a systematic operation or
274 integrated series of systematic operations engaged in as a
275 business or segment of a business which transforms or converts
276 tangible personal property by physical, chemical or other means
277 into a different form, composition or character from that in
278 which it originally existed.

279 (11) "Person" means any individual, partnership, associa-
280 tion, corporation, limited liability company, limited liability
281 partnership or any other legal entity, including this state or its
282 political subdivisions or an agency of either, or the guardian,
283 trustee, committee, executor or administrator of any person.

284 (12) "Personal service" includes those: (A) Compensated
285 by the payment of wages in the ordinary course of employment;
286 and (B) Rendered to the person of an individual without, at the
287 same time, selling tangible personal property, such as nursing,
288 barbering, shoe shining, manicuring and similar services.

289 (13) Production of natural resources.

290 (A) "Production of natural resources" means, except for oil
291 and gas, the performance, by either the owner of the natural
292 resources or another, of the act or process of exploring, devel-
293 oping, severing, extracting, reducing to possession and loading
294 for shipment and shipment for sale, profit or commercial use of
295 any natural resource products and any reclamation, waste
296 disposal or environmental activities associated therewith and
297 the construction, installation or fabrication of ventilation
298 structures, mine shafts, slopes, boreholes, dewatering structures,

299 including associated facilities and apparatus, by the producer or
300 others, including contractors and subcontractors, at a coal mine
301 or coal production facility.

302 (B) For the natural resources oil and gas, “production of
303 natural resources” means the performance, by either the owner
304 of the natural resources, a contractor or a subcontractor, of the
305 act or process of exploring, developing, drilling,
306 well-stimulation activities such as logging, perforating or
307 fracturing, well-completion activities such as the installation of
308 the casing, tubing and other machinery and equipment and any
309 reclamation, waste disposal or environmental activities associ-
310 ated therewith, including the installation of the gathering
311 system or other pipeline to transport the oil and gas produced or
312 environmental activities associated therewith and any service
313 work performed on the well or well site after production of the
314 well has initially commenced.

315 (C) All work performed to install or maintain facilities up
316 to the point of sale for severance tax purposes is included in the
317 “production of natural resources” and subject to the direct use
318 concept.

319 (D) “Production of natural resources” does not include the
320 performance or furnishing of work, or materials or work, in
321 fulfillment of a contract for the construction, alteration, repair,
322 decoration or improvement of a new or existing building or
323 structure, or any part thereof, or for the alteration, improvement
324 or development of real property, by persons other than those
325 otherwise directly engaged in the activities specifically set forth
326 in this subdivision (13) as “production of natural resources”.

327 (14) “Providing a public service or the operating of a utility
328 business” means the providing of a public service or the
329 operating of a utility by businesses subject to the business and

330 occupation tax imposed by sections two and two-d, article
331 thirteen of this chapter.

332 (15) "Purchaser" means a person who purchases tangible
333 personal property, custom software or a service taxed by this
334 article.

335 (16) "Sale", "sales" or "selling" includes any transfer of the
336 possession or ownership of tangible personal property or
337 custom software for a consideration, including a lease or rental,
338 when the transfer or delivery is made in the ordinary course of
339 the transferor's business and is made to the transferee or his or
340 her agent for consumption or use or any other purpose. "Sale"
341 also includes the furnishing of a service for consideration.

342 (17) "Service" or "selected service" includes all nonprofes-
343 sional activities engaged in for other persons for a consider-
344 ation, which involve the rendering of a service as distinguished
345 from the sale of tangible personal property or custom software,
346 but does not include contracting, personal services or the
347 services rendered by an employee to his or her employer or any
348 service rendered for resale: *Provided*, That the term "service"
349 or "selected service" does not include payments received by a
350 vendor of tangible personal property as an incentive to sell a
351 greater volume of such tangible personal property under a
352 manufacturer's, distributor's or other third-party's marketing
353 support program, sales incentive program, cooperative advertis-
354 ing agreement or similar type of program or agreement, and
355 these payments are not considered to be payments for a
356 "service" or "selected service" rendered, even though the
357 vendor may engage in attendant or ancillary activities associ-
358 ated with the sales of tangible personal property as required
359 under the programs or agreements.

360 (18) "Streamlined sales and use tax agreement" or "agree-
361 ment", when used in this article, shall have the same meaning

362 as when used in article fifteen-b of this chapter, except when
363 the context in which the word "agreement" is used clearly
364 indicates that a different meaning is intended by the Legisla-
365 ture.

366 (19) "Tax" includes all taxes, additions to tax, interest and
367 penalties levied under this article or article ten of this chapter.

368 (20) "Tax commissioner" means the state tax commissioner
369 or his or her delegate. The term "delegate" in the phrase "or his
370 or her delegate", when used in reference to the tax commis-
371 sioner, means any officer or employee of the state tax division
372 duly authorized by the tax commissioner directly, or indirectly
373 by one or more redelegations of authority, to perform the
374 functions mentioned or described in this article or rules
375 promulgated for this article.

376 (21) "Taxpayer" means any person liable for the tax
377 imposed by this article or additions to tax, penalties and interest
378 imposed by article ten of this chapter.

379 (22) "Transmission" means the act or process of causing
380 liquid, natural gas or electricity to pass or be conveyed from
381 one place or geographical location to another place or geo-
382 graphical location through a pipeline or other medium for
383 commercial purposes.

384 (23) "Transportation" means the act or process of convey-
385 ing, as a commercial enterprise, passengers or goods from one
386 place or geographical location to another place or geographical
387 location.

388 (24) "Ultimate consumer" or "consumer" means a person
389 who uses or consumes services or personal property.

390 (25) "Vendor" means any person engaged in this state in
391 furnishing services taxed by this article or making sales of

392 tangible personal property or custom software. “Vendor” and
393 “seller” are used interchangeably in this article.

394 (c) *Additional definitions.* — Other terms used in this article
395 are defined in article fifteen-b of this chapter, which definitions
396 are incorporated by reference into article fifteen of this chapter.
397 Additionally, other sections of this article may define terms
398 primarily used in the section in which the term is defined.

§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 exemption
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 fundraisers, 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 fundraisers 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
33 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 fundraisers sponsored by a corporation or organization which
169 is exempt, under subdivision (6) of this subsection, from
170 payment of the tax imposed by this article on its purchases
171 when the fundraisers 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: *Provided*, That sales for volunteer fire departments and
175 volunteer school support groups, with duration of events being
176 no more than eighty-four consecutive hours at a time, which are
177 held no more than eighteen times in a twelve-month period for
178 the purposes of this subdivision are considered “casual and

179 occasional sales not conducted in a repeated manner or in the
180 ordinary course of repetitive and successive transactions of a
181 like character"; and

182 (B) The provisions of this subdivision apply to sales made
183 after the thirtieth day of June, one thousand nine hundred
184 eighty-nine;

185 (15) Sales of property or services to a school which has
186 approval from the board of trustees of the university system of
187 West Virginia or the board of directors of the state college
188 system to award degrees, which has its principal campus in this
189 state and which is exempt from federal and state income taxes
190 under Section 501(c)(3) of the Internal Revenue Code of 1986,
191 as amended: *Provided*, That sales of gasoline and special fuel
192 are taxable;

193 (16) Sales of mobile homes to be used by purchasers as
194 their principal year-round residence and dwelling: *Provided*,
195 That these mobile homes are subject to tax at the three-percent
196 rate;

197 (17) Sales of lottery tickets and materials by licensed
198 lottery sales agents and lottery retailers authorized by the state
199 lottery commission, under the provisions of article twenty-two,
200 chapter twenty-nine of this code;

201 (18) Leases of motor vehicles titled pursuant to the provi-
202 sions of article three, chapter seventeen-a of this code to lessees
203 for a period of thirty or more consecutive days. This exemption
204 applies to leases executed on or after the first day of July, one
205 thousand nine hundred eighty-seven, and to payments under
206 long-term leases executed before that date for months of the
207 lease beginning on or after that date;

208 (19) Notwithstanding the provisions of section eighteen of
209 this article or any other provision of this article to the contrary,

210 sales of propane to consumers for poultry house heating
211 purposes, with any seller to the consumer who may have prior
212 paid the tax in his or her price, to not pass on the same to the
213 consumer, but to make application and receive refund of the tax
214 from the tax commissioner pursuant to rules which are promul-
215 gated after being proposed for legislative approval in accor-
216 dance with chapter twenty-nine-a of this code by the tax
217 commissioner;

218 (20) Any sales of tangible personal property or services
219 purchased after the thirtieth day of September, one thousand
220 nine hundred eighty-seven, and lawfully paid for with food
221 stamps pursuant to the federal food stamp program codified in
222 7 U. S. C. §2011, *et seq.*, as amended, or with drafts issued
223 through the West Virginia special supplement food program for
224 women, infants and children codified in 42 U. S. C. §1786;

225 (21) Sales of tickets for activities sponsored by elementary
226 and secondary schools located within this state;

227 (22) Sales of electronic data processing services and related
228 software: *Provided*, That, for the purposes of this subdivision,
229 “electronic data processing services” means: (A) The process-
230 ing of another’s data, including all processes incident to
231 processing of data such as keypunching, keystroke verification,
232 rearranging or sorting of previously documented data for the
233 purpose of data entry or automatic processing and changing the
234 medium on which data is sorted, whether these processes are
235 done by the same person or several persons; and (B) providing
236 access to computer equipment for the purpose of processing
237 data or examining or acquiring data stored in or accessible to
238 the computer equipment;

239 (23) Tuition charged for attending educational summer
240 camps;

241 (24) Dispensing of services performed by one corporation,
242 partnership or limited liability company for another corpora-
243 tion, partnership or limited liability company when the entities
244 are members of the same controlled group or are related
245 taxpayers as defined in Section 267 of the Internal Revenue
246 Code. "Control" means ownership, directly or indirectly, of
247 stock, equity interests or membership interests possessing fifty
248 percent or more of the total combined voting power of all
249 classes of the stock of a corporation, equity interests of a
250 partnership or membership interests of a limited liability
251 company entitled to vote or ownership, directly or indirectly, of
252 stock, equity interests or membership interests possessing fifty
253 percent or more of the value of the corporation, partnership or
254 limited liability company;

255 (25) Food for the following are exempt:

256 (A) Food purchased or sold by a public or private school,
257 school-sponsored student organizations or school-sponsored
258 parent-teacher associations to students enrolled in the school or
259 to employees of the school during normal school hours; but not
260 those sales of food made to the general public;

261 (B) Food purchased or sold by a public or private college or
262 university or by a student organization officially recognized by
263 the college or university to students enrolled at the college or
264 university when the sales are made on a contract basis so that
265 a fixed price is paid for consumption of food products for a
266 specific period of time without respect to the amount of food
267 product actually consumed by the particular individual contract-
268 ing for the sale and no money is paid at the time the food
269 product is served or consumed;

270 (C) Food purchased or sold by a charitable or private
271 nonprofit organization, a nonprofit organization or a govern-

272 mental agency under a program to provide food to low-income
273 persons at or below cost;

274 (D) Food sold by a charitable or private nonprofit organiza-
275 tion, a nonprofit organization or a governmental agency under
276 a program operating in West Virginia for a minimum of five
277 years to provide food at or below cost to individuals who
278 perform a minimum of two hours of community service for
279 each unit of food purchased from the organization;

280 (E) Food sold in an occasional sale by a charitable or
281 nonprofit organization, including volunteer fire departments
282 and rescue squads, if the purpose of the sale is to obtain revenue
283 for the functions and activities of the organization and the
284 revenue obtained is actually expended for that purpose;

285 (F) Food sold by any religious organization at a social or
286 other gathering conducted by it or under its auspices, if the
287 purpose in selling the food is to obtain revenue for the functions
288 and activities of the organization and the revenue obtained from
289 selling the food is actually used in carrying out those functions
290 and activities: *Provided*, That purchases made by the organiza-
291 tions are not exempt as a purchase for resale;

292 (G) Food sold after the thirty-first day of July, two thousand
293 two, by volunteer fire departments and rescue squads that are
294 exempt from federal income taxes under Section 501(c)(3) or
295 (c)(4) of the Internal Revenue Code of 1986, as amended, when
296 the purpose of the sale is to obtain revenue for the functions and
297 activities of the organization and the revenue obtained is
298 exempt from federal income tax and actually expended for that
299 purpose;

300 (26) Sales of food by little leagues, midget football leagues,
301 youth football or soccer leagues, band boosters or other school
302 or athletic booster organizations supporting activities for grades
303 kindergarten through twelve and similar types of organizations,

304 including scouting groups and church youth groups, if the
305 purpose in selling the food is to obtain revenue for the functions
306 and activities of the organization and the revenues obtained
307 from selling the food is actually used in supporting or carrying
308 on functions and activities of the groups: *Provided*, That the
309 purchases made by the organizations are not exempt as a
310 purchase for resale;

311 (27) Charges for room and meals by fraternities and
312 sororities to their members: *Provided*, That the purchases made
313 by a fraternity or sorority are not exempt as a purchase for
314 resale;

315 (28) Sales of or charges for the transportation of passengers
316 in interstate commerce;

317 (29) Sales of tangible personal property or services to any
318 person which this state is prohibited from taxing under the laws
319 of the United States or under the constitution of this state;

320 (30) Sales of tangible personal property or services to any
321 person who claims exemption from the tax imposed by this
322 article or article fifteen-a of this chapter pursuant to the
323 provision of any other chapter of this code;

324 (31) Charges for the services of opening and closing a
325 burial lot;

326 (32) Sales of livestock, poultry or other farm products in
327 their original state by the producer of the livestock, poultry or
328 other farm products or a member of the producer's immediate
329 family who is not otherwise engaged in making retail sales of
330 tangible personal property; and sales of livestock sold at public
331 sales sponsored by breeders or registry associations or livestock
332 auction markets: *Provided*, That the exemptions allowed by this
333 subdivision apply to sales made on or after the first day of July,
334 one thousand nine hundred ninety, and may be claimed without

335 presenting or obtaining exemption certificates: *Provided,*
336 *however,* That the farmer shall maintain adequate records;

337 (33) Sales of motion picture films to motion picture
338 exhibitors for exhibition if the sale of tickets or the charge for
339 admission to the exhibition of the film is subject to the tax
340 imposed by this article and sales of coin-operated video arcade
341 machines or video arcade games to a person engaged in the
342 business of providing the machines to the public for a charge
343 upon which the tax imposed by this article is remitted to the tax
344 commissioner: *Provided,* That the exemption provided in this
345 subdivision applies to sales made on or after the first day of
346 July, one thousand nine hundred ninety, and may be claimed by
347 presenting to the seller a properly executed exemption certifi-
348 cate;

349 (34) Sales of aircraft repair, remodeling and maintenance
350 services when the services are to an aircraft operated by a
351 certified or licensed carrier of persons or property, or by a
352 governmental entity, or to an engine or other component part of
353 an aircraft operated by a certificated or licensed carrier of
354 persons or property, or by a governmental entity and sales of
355 tangible personal property that is permanently affixed or
356 permanently attached as a component part of an aircraft owned
357 or operated by a certificated or licensed carrier of persons or
358 property, or by a governmental entity, as part of the repair,
359 remodeling or maintenance service and sales of machinery,
360 tools or equipment, directly used or consumed exclusively in
361 the repair, remodeling or maintenance of aircraft, aircraft
362 engines or aircraft component parts, for a certificated or
363 licensed carrier of persons or property, or for a governmental
364 entity;

365 (35) Charges for memberships or services provided by
366 health and fitness organizations relating to personalized fitness
367 programs;

368 (36) Sales of services by individuals who baby-sit for a
369 profit: *Provided*, That the gross receipts of the individual from
370 the performance of baby-sitting services do not exceed five
371 thousand dollars in a taxable year;

372 (37) Sales of services after the thirtieth day of June, one
373 thousand nine hundred ninety-seven, by public libraries or by
374 libraries at academic institutions or by libraries at institutions
375 of higher learning;

376 (38) Commissions received after the thirtieth day of June,
377 one thousand nine hundred ninety-seven, by a manufacturer's
378 representative;

379 (39) Sales of primary opinion research services after the
380 thirtieth day of June, one thousand nine hundred ninety-seven,
381 when:

382 (A) The services are provided to an out-of-state client;

383 (B) The results of the service activities, including, but not
384 limited to, reports, lists of focus group recruits and compilation
385 of data are transferred to the client across state lines by mail,
386 wire or other means of interstate commerce, for use by the
387 client outside the state of West Virginia; and

388 (C) The transfer of the results of the service activities is an
389 indispensable part of the overall service.

390 For the purpose of this subdivision, the term "primary
391 opinion research" means original research in the form of
392 telephone surveys, mall intercept surveys, focus group research,
393 direct mail surveys, personal interviews and other data collec-
394 tion methods commonly used for quantitative and qualitative
395 opinion research studies;

396 (40) Sales of property or services after the thirtieth day of
397 June, one thousand nine hundred ninety-seven, to persons
398 within the state when those sales are for the purposes of the
399 production of value-added products: *Provided*, That the
400 exemption granted in this subdivision applies only to services,
401 equipment, supplies and materials directly used or consumed by
402 those persons engaged solely in the production of value-added
403 products: *Provided, however*, That this exemption may not be
404 claimed by any one purchaser for more than five consecutive
405 years, except as otherwise permitted in this section.

406 For the purpose of this subdivision, the term “value-added
407 product” means the following products derived from processing
408 a raw agricultural product, whether for human consumption or
409 for other use: For purposes of this subdivision, the following
410 enterprises qualify as processing raw agricultural products into
411 value-added products: Those engaged in the conversion of:

412 (A) Lumber into furniture, toys, collectibles and home
413 furnishings;

414 (B) Fruits into wine;

415 (C) Honey into wine;

416 (D) Wool into fabric;

417 (E) Raw hides into semifinished or finished leather prod-
418 ucts;

419 (F) Milk into cheese;

420 (G) Fruits or vegetables into a dried, canned or frozen
421 product;

422 (H) Feeder cattle into commonly accepted slaughter
423 weights;

424 (I) Aquatic animals into a dried, canned, cooked or frozen
425 product; and

426 (J) Poultry into a dried, canned, cooked or frozen product;

427 (41) After the thirtieth day of June, one thousand nine
428 hundred ninety-seven, sales of music instructional services by
429 a music teacher and artistic services or artistic performances of
430 an entertainer or performing artist pursuant to a contract with
431 the owner or operator of a retail establishment, restaurant, inn,
432 bar, tavern, sports or other entertainment facility or any other
433 business location in this state in which the public or a limited
434 portion of the public may assemble to hear or see musical
435 works or other artistic works be performed for the enjoyment of
436 the members of the public there assembled when the amount
437 paid by the owner or operator for the artistic service or artistic
438 performance does not exceed three thousand dollars: *Provided*,
439 That nothing contained herein may be construed to deprive
440 private social gatherings, weddings or other private parties from
441 asserting the exemption set forth in this subdivision. For the
442 purposes of this exemption, artistic performance or artistic
443 service means and is limited to the conscious use of creative
444 power, imagination and skill in the creation of aesthetic
445 experience for an audience present and in attendance and
446 includes, and is limited to, stage plays, musical performances,
447 poetry recitations and other readings, dance presentation,
448 circuses and similar presentations and does not include the
449 showing of any film or moving picture, gallery presentations of
450 sculptural or pictorial art, nude or strip show presentations,
451 video games, video arcades, carnival rides, radio or television
452 shows or any video or audio taped presentations or the sale or
453 leasing of video or audio tapes, airshows, or any other public
454 meeting, display or show other than those specified herein:
455 *Provided, however*, That nothing contained herein may be
456 construed to exempt the sales of tickets from the tax imposed in
457 this article. The state tax commissioner shall propose a legisla-

458 tive rule pursuant to article three, chapter twenty-nine-a of this
459 code establishing definitions and eligibility criteria for asserting
460 this exemption which is not inconsistent with the provisions set
461 forth herein: *Provided further*, That nude dancers or strippers
462 may not be considered as entertainers for the purposes of this
463 exemption;

464 (42) After the thirtieth day of June, one thousand nine
465 hundred ninety-seven, charges to a member by a membership
466 association or organization which is exempt from paying
467 federal income taxes under Section 501(c)(3) or (c)(6) of the
468 Internal Revenue Code of 1986, as amended, for membership
469 in the association or organization, including charges to mem-
470 bers for newsletters prepared by the association or organization
471 for distribution primarily to its members, charges to members
472 for continuing education seminars, workshops, conventions,
473 lectures or courses put on or sponsored by the association or
474 organization, including charges for related course materials
475 prepared by the association or organization or by the speaker or
476 speakers for use during the continuing education seminar,
477 workshop, convention, lecture or course, but not including any
478 separate charge or separately stated charge for meals, lodging,
479 entertainment or transportation taxable under this article:
480 *Provided*, That the association or organization pays the tax
481 imposed by this article on its purchases of meals, lodging,
482 entertainment or transportation taxable under this article for
483 which a separate or separately stated charge is not made. A
484 membership association or organization which is exempt from
485 paying federal income taxes under Section 501(c)(3) or (c)(6)
486 of the Internal Revenue Code of 1986, as amended, may elect
487 to pay the tax imposed under this article on the purchases for
488 which a separate charge or separately stated charge could apply
489 and not charge its members the tax imposed by this article or
490 the association or organization may avail itself of the exemption
491 set forth in subdivision (9) of this subsection relating to
492 purchases of tangible personal property for resale and then

493 collect the tax imposed by this article on those items from its
494 member;

495 (43) Sales of governmental services or governmental
496 materials after the thirtieth day of June, one thousand nine
497 hundred ninety-seven, by county assessors, county sheriffs,
498 county clerks or circuit clerks in the normal course of local
499 government operations;

500 (44) Direct or subscription sales by the division of natural
501 resources of the magazine currently entitled "Wonderful West
502 Virginia" and by the division of culture and history of the
503 magazine currently entitled "Goldenseal" and the journal
504 currently entitled "West Virginia History";

505 (45) Sales of soap to be used at car wash facilities;

506 (46) Commissions received by a travel agency from an
507 out-of-state vendor;

508 (47) The service of providing technical evaluations for
509 compliance with federal and state environmental standards
510 provided by environmental and industrial consultants who have
511 formal certification through the West Virginia department of
512 environmental protection or the West Virginia bureau for public
513 health or both. For purposes of this exemption, the service of
514 providing technical evaluations for compliance with federal and
515 state environmental standards includes those costs of tangible
516 personal property directly used in providing such services that
517 are separately billed to the purchaser of such services and on
518 which the tax imposed by this article has previously been paid
519 by the service provider;

520 (48) Sales of tangible personal property and services by
521 volunteer fire departments and rescue squads that are exempt
522 from federal income taxes under Section 501(c)(3) or (c)(4) of
523 the Internal Revenue Code of 1986, as amended, during fund-

524 raising activities held after the thirty-first day of July, two
525 thousand two, if the sole purpose of the sale is to obtain revenue
526 for the functions and activities of the organization and the
527 revenue obtained is exempt from federal income tax and
528 actually expended for that purpose;

529 (49) Lodging franchise fees, including royalties, marketing
530 fees, reservation system fees or other fees assessed after the
531 first day of December, one thousand nine hundred ninety-seven,
532 that have been or may be imposed by a lodging franchiser as a
533 condition of the franchise agreement; and

534 (50) Sales of the regulation size United States flag and the
535 regulation size West Virginia flag for display.

536 (b) *Refundable exemptions.* — Any person having a right or
537 claim to any exemption set forth in this subsection shall first
538 pay to the vendor the tax imposed by this article and then apply
539 to the tax commissioner for a refund or credit, or as provided in
540 section nine-d of this article, give to the vendor his or her West
541 Virginia direct pay permit number. The following sales of
542 tangible personal property and services are exempt from tax as
543 provided in this subsection:

544 (1) Sales of property or services to bona fide charitable
545 organizations who make no charge whatsoever for the services
546 they render: *Provided*, That the exemption granted in this
547 subdivision applies only to services, equipment, supplies, food,
548 meals and materials directly used or consumed by these
549 organizations and does not apply to purchases of gasoline or
550 special fuel;

551 (2) Sales of services, machinery, supplies and materials
552 directly used or consumed in the activities of manufacturing,
553 transportation, transmission, communication, production of
554 natural resources, gas storage, generation or production or
555 selling electric power, provision of a public utility service or the
556 operation of a utility service or the operation of a utility

557 business, in the businesses or organizations named in this
558 subdivision and does not apply to purchases of gasoline or
559 special fuel;

560 (3) Sales of property or services to nationally chartered
561 fraternal or social organizations for the sole purpose of free
562 distribution in public welfare or relief work: *Provided*, That
563 sales of gasoline and special fuel are taxable;

564 (4) Sales and services, fire fighting or station house
565 equipment, including construction and automotive, made to any
566 volunteer fire department organized and incorporated under the
567 laws of the state of West Virginia: *Provided*, That sales of
568 gasoline and special fuel are taxable; and

569 (5) Sales of building materials or building supplies or other
570 property to an organization qualified under Section 501(c)(3) or
571 (c)(4) of the Internal Revenue Code of 1986, as amended,
572 which are to be installed in, affixed to or incorporated by the
573 organization or its agent into real property or into a building or
574 structure which is or will be used as permanent low-income
575 housing, transitional housing, an emergency homeless shelter,
576 a domestic violence shelter or an emergency children and youth
577 shelter if the shelter is owned, managed, developed or operated
578 by an organization qualified under Section 501(c)(3) or (c)(4)
579 of the Internal Revenue Code of 1986, as amended.

CHAPTER 239

(S. B. 107 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-g, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales and service tax; and creating exemption for purchases of back-to-school clothing and school supplies by consumers during three-day period in August, two thousand three.

Be it enacted by the Legislature of West Virginia:

That section nine-g, 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.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand three.

1 (a) The sale of an article of clothing or footwear designed
2 to be worn on or about the human body and the sale of school
3 supplies, such as pens, pencils, binders, notebooks, reference
4 books, book bags, lunch boxes, computers, computer accesso-
5 ries and calculators, is exempted from the taxes imposed by this
6 article if:

7 (1) The sales price of the article or school supply, except
8 for a computer or computer accessory, is less than one hundred
9 dollars;

10 (2) The sales price of a computer is less than seven hundred
11 fifty dollars after credit for any manufacturer's rebate or
12 computer accessory is less than one hundred dollars after credit
13 for any manufacturer's rebate; and

14 (3) The sale takes place during a period beginning at 12:01
15 a.m. eastern daylight time on the first Friday in August, two
16 thousand three, and ending at 12 midnight eastern daylight time
17 on the following Sunday in August, two thousand three.

- 18 (b) This section does not apply to:
- 19 (1) Any special clothing or footwear that is primarily
20 designed for athletic activity or protective use and that is not
21 normally worn except when used for the athletic activity or
22 protective use for which it is designed;
- 23 (2) Accessories, including jewelry, handbags, luggage,
24 umbrellas, wallets, watches and similar items carried on or
25 about the human body, without regard to whether worn on the
26 body in a manner characteristic of clothing;
- 27 (3) The rental of clothing, footwear or school supplies;
- 28 (4) Furniture; and
- 29 (5) Tangible personal property for use in a trade or busi-
30 ness.

CHAPTER 240

(S. B. 462 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 26, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and updating effective date.

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 on or after the fifteenth day of March,
10 two thousand two, but prior to the first day of January, two
11 thousand three, shall be given effect in determining the taxes
12 imposed by this article to the same extent those changes are
13 allowed for federal income tax purposes, whether the changes
14 are retroactive or prospective, but no amendment to the laws of
15 the United States made on or after the first day of January, two
16 thousand three, 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 twenty-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 twenty-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 three are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that began prior to the fifteenth day of March, two
36 thousand two, the law in effect for each of those years shall be
37 fully preserved as to that year except as provided in this section.

38 (e) For purposes of the refundable credit allowed to a low
39 income senior citizen for property tax paid on his or her
40 homestead in this state, the term “laws of the United States” as
41 used in subsection (a) of this section means and includes the
42 term “low income” as defined in subsection (b), section twenty-
43 one of this article and as reflected in the poverty guidelines
44 updated periodically in the federal register by the U. S. depart-
45 ment of health and human services under the authority of 42 U.
46 S. C. 9902(2).

CHAPTER 241

(S. B. 461 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 26, 2003; 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 West Virginia corporation net income tax

act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

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 on or after the fifteenth day of March,
11 two thousand two, but prior to the first day of January, two
12 thousand three, shall be given effect in determining the taxes
13 imposed by this article to the same extent those changes are
14 allowed for federal income tax purposes, whether the changes
15 are retroactive or prospective, but no amendment to the laws of
16 the United States made on or after the first day of January, two
17 thousand three, 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 of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the

24 federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes 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 three are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that began prior to the fifteenth day of March, two
35 thousand two, the law in effect for each of those years shall be
36 fully preserved as to that year, except as provided in this
37 section.

CHAPTER 242

(Com. Sub. for S. B. 534 — By Senators Minard,
Jenkins, Sharpe, Minear and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-six, relating to third-party administrators; requiring licensing of third-party administrators; requiring all third-party administrators to obtain certificates of authority; defining terms; disposition of premiums and claim payments received by the administrator; requiring administrator to maintain certain information; requiring advertising be ap-

proved; setting forth responsibilities of the insurer; providing for the collection of premiums and payment of claims; administrator compensation; notices and disclosures; nonresident and home state certificate of authority; denial, suspension or revocation of certificate of authority; authority to propose rules; requiring third-party administrators to have written contracts with their insurers; and requiring third-party administrators to provide the commission with certain disclosures.

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-six, to read as follows:

ARTICLE 46. THIRD-PARTY ADMINISTRATOR ACT.

- §33-46-1. Short title.
- §33-46-2. Definitions.
- §33-46-3. Written agreement necessary.
- §33-46-4. Payment to administrator.
- §33-46-5. Maintenance of information.
- §33-46-6. Approval of advertising.
- §33-46-7. Responsibilities of the insurer.
- §33-46-8. Premium collection and payment of claims.
- §33-46-9. Compensation to the administrator.
- §33-46-10. Notice to covered individuals; disclosure of charges and fees.
- §33-46-11. Delivery of materials to covered individuals.
- §33-46-12. Home state certificate of authority or license.
- §33-46-13. Registration requirement.
- §33-46-14. Nonresident administrator.
- §33-46-15. Fees and charges.
- §33-46-16. Annual report and filing fee.
- §33-46-17. Grounds for denial, suspension or revocation of license.
- §33-46-18. Exemption for administrators of public health programs.
- §33-46-19. Unauthorized business.
- §33-46-20. Commissioner authorized to propose rules.

§33-46-1. Short title.

- 1 This article may be cited as the “Third-Party Administrator
- 2 Act”.

§33-46-2. Definitions.

1 (a) “Administrator” or “third-party administrator” means a
2 person who directly or indirectly underwrites or collects
3 charges or premiums from, or adjusts or settles claims on
4 residents of this state, in connection with life, annuity or
5 accident and sickness coverage offered or provided by an
6 insurer, except any of the following:

7 (1) An employer, or a wholly owned direct or indirect
8 subsidiary of an employer, on behalf of its employees or the
9 employees of one or more subsidiaries or affiliated corporations
10 of the employer;

11 (2) A union on behalf of its members;

12 (3) An insurer that is licensed to transact insurance in this
13 state with respect to a policy lawfully issued and delivered in
14 and pursuant to the laws of this state or another state including:

15 (A) A health service corporation licensed under article
16 twenty-four of this chapter;

17 (B) A health care corporation licensed under article twenty-
18 five of this chapter;

19 (C) A health maintenance organization licensed under
20 article twenty-five-a of this chapter; and

21 (D) A prepaid limited health service organization licensed
22 under article twenty-five-d of this chapter.

23 (4) An insurance producer licensed to sell life, annuities or
24 health coverage in this state whose activities are limited
25 exclusively to the sale of insurance;

26 (5) A creditor on behalf of its debtors with respect to
27 insurance covering a debt between the creditor and its debtors;

28 (6) A trust and its trustees, agents and employees acting
29 pursuant to the trust established in conformity with 29 U. S. C.
30 Section 186;

31 (7) A trust exempt from taxation under Section 501(a) of
32 the Internal Revenue Code, its trustees and employees acting
33 pursuant to the trust, or a custodian and the custodian's agents
34 or employees acting pursuant to a custodian account which
35 meets the requirements of Section 401(f) of the Internal
36 Revenue Code;

37 (8) A credit union or a financial institution that is subject to
38 supervision or examination by federal or state banking authori-
39 ties, or a mortgage lender, to the extent they collect and remit
40 premiums to licensed insurance producers or to limited lines
41 producers or authorized insurers in connection with loan
42 payments;

43 (9) A credit card issuing company that advances for and
44 collects insurance premiums or charges from its credit card
45 holders who have authorized collection;

46 (10) A person who adjusts or settles claims in the normal
47 course of that person's practice or employment as an attorney
48 at law and who does not collect charges or premiums in
49 connection with life, annuity or accident and sickness coverage;

50 (11) An adjuster licensed by this state whose activities are
51 limited to adjustment of claims;

52 (12) A person licensed as a managing general agent in this
53 state whose activities are limited exclusively to the scope of
54 activities conveyed under that license; or

55 (13) An administrator who is affiliated with an insurer and
56 who only performs the contractual duties, between the adminis-
57 trator and the insurer, of an administrator for the direct and

58 assumed business of the affiliated insurer. The insurer is
59 responsible for the acts of the administrator and is responsible
60 for providing all of the administrator's books and records to the
61 insurance commissioner, upon a request from the insurance
62 commissioner. For purposes of this subdivision, "insurer"
63 means a licensed insurance company, prepaid hospital or
64 medical care plan, health maintenance organization or a health
65 care corporation.

66 (b) "Affiliate or affiliated" means an entity or person who
67 directly or indirectly through one or more intermediaries,
68 controls or is controlled by, or is under common control with,
69 a specified entity or person.

70 (c) "Commissioner" means the insurance commissioner of
71 this state.

72 (d) "Control", "controlling", "controlled by" and "under
73 common control with" mean the possession, direct or indirect,
74 of the power to direct or cause the direction of the management
75 and policies of a person, whether through the ownership of
76 voting securities, by contract other than a commercial contract
77 for goods or nonmanagement services, or otherwise, unless the
78 power is the result of an official position with or corporate
79 office held by the person. Control shall be presumed to exist if
80 any person, directly or indirectly, owns, controls, holds with the
81 power to vote or holds proxies representing ten percent or more
82 of the voting securities of any other person. This presumption
83 may be rebutted by a showing made in the manner provided by
84 the West Virginia insurance holding company systems act that
85 control does not exist in fact. The commissioner may deter-
86 mine, after furnishing all persons in interest notice and opportu-
87 nity to be heard and making specific findings of fact to support
88 the determination that control exists in fact, notwithstanding the
89 absence of a presumption to that effect.

90 (e) "GAAP" means United States generally accepted
91 accounting principles consistently applied.

92 (f) "Home state" means the District of Columbia and any
93 state or territory of the United States in which an administrator
94 is incorporated or maintains its principal place of business. If
95 neither the state in which the administrator is incorporated, nor
96 the state in which it maintains its principal place of business has
97 adopted the national association of insurance commissioners'
98 model third party administrator act or a substantially similar
99 law governing administrators, the administrator may declare
100 another state, in which it conducts business, to be its "home
101 state".

102 (g) "Insurance producer" means a person who sells, solicits
103 or negotiates a contract of insurance as those terms are defined
104 in this article.

105 (h) "Insurer" means a person undertaking to provide life,
106 annuity or accident and sickness coverage or self-funded
107 coverage under a governmental plan or church plan in this state.
108 For the purposes of this article, insurer includes an employer,
109 a licensed insurance company, a prepaid hospital or medical
110 care plan, health maintenance organization or a health care
111 corporation.

112 (i) "Negotiate" means the act of conferring directly with or
113 offering advice directly to a purchaser or prospective purchaser
114 of a particular contract of insurance concerning any of the
115 substantive benefits, terms or conditions of the contract,
116 provided that the person engaged in that act either sells insur-
117 ance or obtains insurance from insurers for purchasers.

118 (j) "Nonresident administrator" means a person who is
119 applying for licensure or is licensed in any state other than the
120 administrator's home state.

121 (k) "Person" means an individual or a business entity.

122 (l) "Sell" means to exchange a contract of insurance by any
123 means, for money or its equivalent, on behalf of an insurance
124 company.

125 (m) "Solicit" means attempting to sell insurance or asking
126 or urging a person to apply for a particular kind of insurance
127 from a particular company.

128 (n) "Underwrites" or "underwriting" means, but is not
129 limited to, the acceptance of employer or individual applica-
130 tions for coverage of individuals in accordance with the written
131 rules of the insurer or self-funded plan; and the overall planning
132 and coordinating of a benefits program.

133 (o) "Uniform application" means the current version of the
134 national association of insurance commissioners uniform
135 application for third-party administrators.

§33-46-3. Written agreement necessary.

1 (a) No administrator may act as such without a written
2 agreement between the administrator and the insurer and the
3 written agreement shall be retained as part of the official
4 records of both the insurer and the administrator for the
5 duration of the agreement and for ten years thereafter. The
6 agreement shall contain all provisions required by this statute,
7 except insofar as those requirements do not apply to the
8 functions performed by the administrator.

9 (b) The written agreement shall include a statement of
10 duties that the administrator is expected to perform on behalf of
11 the insurer and the lines, classes or types of insurance which the
12 administrator is to be authorized to administer. The agreement
13 shall make provision with respect to underwriting or other
14 standards pertaining to the business underwritten by the insurer.

15 (c) The insurer or administrator may, with written notice,
16 terminate the written agreement for cause as provided in the
17 agreement. The insurer may suspend the underwriting authority
18 of the administrator during the pendency of any dispute
19 regarding the cause for termination of the written agreement.
20 The insurer shall fulfill any lawful obligations with respect to
21 policies affected by the written agreement, regardless of any
22 dispute between the insurer and the administrator.

§33-46-4. Payment to administrator.

1 If an insurer uses the services of an administrator, the
2 payment to the administrator of any premiums or charges for
3 insurance by or on behalf of the insured party shall be consid-
4 ered to have been received by the insurer and the payment of
5 return premiums or claim payments forwarded by the insurer to
6 the administrator shall not be considered to have been paid to
7 the insured party or claimant until the payments are received by
8 the insured party or claimant. Nothing in this section limits any
9 right of the insurer against the administrator resulting from the
10 failure of the administrator to make payments to the insurer,
11 insured parties or claimants.

§33-46-5. Maintenance of information.

1 (a) An administrator shall maintain and make available to
2 the insurer complete books and records of all transactions
3 performed on behalf of the insurer. The books and records shall
4 be maintained in accordance with prudent standards of insur-
5 ance recordkeeping and shall be maintained for a period of not
6 less than ten years from the date of their creation.

7 (b) The commissioner shall have access to books and
8 records maintained by an administrator for the purposes of
9 examination, audit and inspection. Any documents, materials or
10 other information in the possession or control of the commis-
11 sioner that is furnished by an administrator, insurer, insurance

12 producer or an employee or agent thereof acting on behalf of
13 the administrator, insurer or insurance producer, or obtained by
14 the commissioner in an investigation is confidential by law and
15 privileged, is not subject to chapter twenty-nine-b of this code,
16 is not subject to subpoena and is not subject to discovery or
17 admissible as evidence in any private civil action. However, the
18 commissioner may use the documents, materials or other
19 information in the furtherance of any regulatory or legal action
20 brought as a part of the commissioner's official duties.

21 (c) Neither the commissioner nor any person who received
22 documents, materials or other information while acting under
23 the authority of the commissioner shall be permitted or required
24 to testify in any private civil action concerning any confidential
25 documents, materials or information subject to subsection (b)
26 of this section.

27 (d) In order to assist in the performance of his or her duties,
28 the commissioner may:

29 (1) Share documents, materials or other information,
30 including the confidential and privileged documents, materials
31 or information subject to subsection (b) of this section, with
32 other state, federal and international regulatory agencies, with
33 the national association of insurance commissioners, its
34 affiliates or subsidiaries and with state, federal and international
35 law-enforcement authorities, provided that the recipient agrees
36 to maintain the confidentiality and privileged status of the
37 document, material or other information;

38 (2) Receive documents, materials or information, including
39 otherwise confidential and privileged documents, materials or
40 information, from the national association of insurance com-
41 missioners, its affiliates or subsidiaries and from regulatory and
42 law-enforcement officials of other foreign or domestic jurisdic-
43 tions and shall maintain as confidential or privileged any

44 document, material or information received with notice or the
45 understanding that it is confidential or privileged under the laws
46 of the jurisdiction that is the source of the document, material
47 or information; and

48 (3) Enter into agreements governing the sharing and use of
49 information consistent with this subsection.

50 (e) No waiver of any applicable privilege or claim of
51 confidentiality in the documents, materials or information shall
52 occur as a result of disclosure to the commissioner under this
53 section or as a result of sharing as authorized in subsection (d)
54 of this section.

55 (f) Nothing in this article prohibits the commissioner from
56 releasing final, adjudicated actions, including for cause termina-
57 tions, that are open to public inspection pursuant to chapter
58 twenty-nine-b of this code to a database or other clearinghouse
59 service maintained by the national association of insurance
60 commissioners, its affiliates or subsidiaries.

61 (g) The insurer owns the records generated by the adminis-
62 trator pertaining to the insurer; however, the administrator shall
63 retain the right to continuing access to books and records to
64 permit the administrator to fulfill all of its contractual obliga-
65 tions to insured parties, claimants and the insurer.

66 (h) In the event the insurer and the administrator cancel
67 their agreement, the administrator may, by written agreement
68 with the insurer, transfer all records to a new administrator
69 rather than retain them for ten years notwithstanding the
70 provisions of subsection (a) of this section. In those cases, the
71 new administrator shall acknowledge, in writing, that it is
72 responsible for retaining the records of the prior administrator
73 as required in subsection (a) of this section.

§33-46-6. Approval of advertising.

1 An administrator may use only advertising pertaining to the
2 business underwritten by an insurer that has been approved in
3 writing by the insurer in advance of its use.

§33-46-7. Responsibilities of the insurer.

1 (a) If an insurer uses the services of an administrator, the
2 insurer is responsible for determining the benefits, premium
3 rates, underwriting criteria and claims payment procedures
4 applicable to the coverage and for securing reinsurance, if any.
5 The rules pertaining to these matters shall be provided, in
6 writing, by the insurer to the administrator. The responsibilities
7 of the administrator as to any of these matters shall be set forth
8 in the written agreement between the administrator and the
9 insurer.

10 (b) It is the sole responsibility of the insurer to provide for
11 competent administration of its programs.

12 (c) In cases where an administrator administers benefits for
13 more than one hundred certificate holders on behalf of an
14 insurer, the insurer shall, at least semiannually, conduct a
15 review of the operations of the administrator. At least one
16 review shall be an on-site audit of the operations of the admin-
17 istrator.

18 (d) For purposes of this section, "insurer" means a licensed
19 insurance company, prepaid hospital or medical care plan,
20 health maintenance organization or a health care corporation.

§33-46-8. Premium collection and payment of claims.

1 (a) All insurance charges or premiums collected by an
2 administrator on behalf of or for an insurer, and the return of
3 premiums received from that insurer, shall be held by the
4 administrator in a fiduciary capacity. The funds shall be
5 immediately remitted to the person entitled to them or shall be

6 deposited promptly in a fiduciary account established and
7 maintained by the administrator in a federally or state-insured
8 financial institution. The written agreement between the
9 administrator and the insurer shall provide for the administrator
10 to periodically render an accounting to the insurer detailing all
11 transactions performed by the administrator pertaining to the
12 business underwritten by the insurer.

13 (b) If charges or premiums deposited in a fiduciary account
14 have been collected on behalf of or for one or more insurers, the
15 administrator shall keep records clearly recording the deposits
16 in and withdrawals from the account on behalf of each insurer.
17 The administrator shall keep copies of all the records and, upon
18 request of an insurer, shall furnish the insurer with copies of the
19 records pertaining to the deposits and withdrawals.

20 (c) The administrator shall not pay any claim by withdraw-
21 als from a fiduciary account in which premiums or charges are
22 deposited. Withdrawals from the account shall be made as
23 provided in the written agreement between the administrator
24 and the insurer. The written agreement shall address, but not be
25 limited to, the following:

26 (1) Remittance to an insurer entitled to remittance;

27 (2) Deposit in an account maintained in the name of the
28 insurer;

29 (3) Transfer to and deposit in a claims-paying account, with
30 claims to be paid as provided for in subsection (d) of this
31 section;

32 (4) Payment to a group policyholder for remittance to the
33 insurer entitled to the remittance;

34 (5) Payment to the administrator of its commissions, fees
35 or charges; and

36 (6) Remittance of return premium to the person or persons
37 entitled to the return premium.

38 (d) All claims paid by the administrator from funds
39 collected on behalf of or for an insurer shall be paid only on
40 drafts or checks of and as authorized by the insurer.

§33-46-9. Compensation to the administrator.

1 (a) An administrator may not enter into an agreement or
2 understanding with an insurer in which the effect is to make the
3 amount of the administrator's commissions, fees or charges
4 contingent upon savings effected in the adjustment, settlement
5 and payment of losses covered by the insurer's obligations. This
6 provision shall not prohibit an administrator from receiving
7 performance-based compensation for providing hospital or
8 other auditing services.

9 (b) This section shall not prevent the compensation of an
10 administrator from being based on premiums or charges
11 collected or the number of claims paid or processed.

§33-46-10. Notice to covered individuals; disclosure of charges and fees.

1 (a) When the services of an administrator are used, the
2 administrator shall provide a written notice approved by the
3 insurer to covered individuals advising them of the identity of,
4 and relationship among, the administrator, the policyholder and
5 the insurer.

6 (b) When an administrator collects funds, the reason for
7 collection of each item shall be identified to the insured party
8 and each item shall be shown separately from any premium.
9 Additional charges may not be made for services to the extent
10 the services have been paid for by the insurer.

11 (c) The administrator shall disclose to the insurer all
12 charges, fees and commissions received from all services in
13 connection with the provision of administrative services for the
14 insurer, including any fees or commissions paid by insurers
15 providing reinsurance.

§33-46-11. Delivery of materials to covered individuals.

1 Any policies, certificates, booklets, termination notices or
2 other written communications delivered by the insurer to the
3 administrator for delivery to insured parties or covered individ-
4 uals shall be delivered by the administrator promptly after
5 receipt of instructions from the insurer to deliver them.

§33-46-12. Home state certificate of authority or license.

1 (a) Prior to conducting business in West Virginia an
2 administrator or third-party administrator must be licensed in
3 accordance with the requirements of this article.

4 (b) If West Virginia is a person's home state, then the
5 person may apply for licensure in this state by filing a uniform
6 application with the insurance commissioner. The application
7 shall include or be accompanied by the following information
8 and documents:

9 (1) All basic organizational documents of the applicant,
10 including any articles of incorporation, articles of association,
11 partnership agreement, trade name certificate, trust agreement,
12 shareholder agreement and other applicable documents and all
13 amendments to the documents;

14 (2) The bylaws, rules, regulations or similar documents
15 regulating the internal affairs of the applicant;

16 (3) National association of insurance commissioners'
17 biographical affidavits for the individuals who are responsible
18 for the conduct of affairs of the applicant, including all mem-

19 bers of the board of directors, board of trustees, executive
20 committee or other governing board or committee; the principal
21 officers in the case of a corporation or the partners or members
22 in the case of a partnership, association or limited liability
23 company; any shareholders or member holding directly or
24 indirectly ten percent or more of the voting stock, voting
25 securities or voting interest of the applicant; and any other
26 person who exercises control or influence over the affairs of the
27 applicant;

28 (4) Audited annual financial statements or reports for the
29 two most recent fiscal years that prove that the applicant has a
30 positive net worth. If the applicant has been in existence for less
31 than two fiscal years, the application shall include financial
32 statements or reports, certified by an officer of the applicant and
33 prepared in accordance with GAAP, for any completed fiscal
34 years and for any month during the current fiscal year for which
35 the financial statements or reports have been completed. An
36 audited financial/annual report prepared on a consolidated basis
37 shall include a columnar consolidating or combining worksheet
38 that shall be filed with the report and include the following:

39 (A) Amounts shown on the consolidated audited financial
40 report;

41 (B) Amounts for each entity stated separately; and

42 (C) Explanations of consolidating and eliminating entries.

43 The applicant shall also include any other information
44 required by the commissioner in order to review the current
45 financial condition of the applicant;

46 (5) A statement describing the business plan including
47 information on staffing levels and activities proposed in this
48 state and nationwide. The plan shall provide details setting forth
49 the applicant's capability for providing a sufficient number of

50 experienced and qualified personnel in the areas of claims
51 processing, recordkeeping and underwriting; and

52 (6) Any other pertinent information required by the
53 commissioner.

54 (c) An administrator licensed or applying for licensure
55 under this section shall make available for inspection by the
56 commissioner copies of all contracts with insurers or other
57 persons using the services of the administrator.

58 (d) An administrator licensed or applying for licensure
59 under this section shall produce its accounts, records and files
60 for examination and make its officers available to give informa-
61 tion with respect to its affairs as often as reasonably required by
62 the commissioner.

63 (e) The commissioner may refuse to issue a certificate of
64 authority or license if the commissioner determines that the
65 administrator, or any individual responsible for the conduct of
66 affairs of the administrator, is not competent, trustworthy,
67 financially responsible or of good personal and business
68 reputation or has had an insurance or an administrator certifi-
69 cate of authority or license denied or revoked for cause by any
70 jurisdiction, or if the commissioner determines that any of the
71 grounds set forth in section seventeen of this article exists with
72 respect to the administrator.

73 (f) A certificate of authority or license issued under this
74 section shall remain valid, unless surrendered, suspended or
75 revoked by the commissioner, for as long as the administrator
76 continues in business in this state and remains in compliance
77 with this article.

78 (g) An administrator licensed or applying for licensure
79 under this section shall immediately notify the commissioner of
80 any material change in its ownership, control or other fact or

81 circumstance affecting its qualification for a certificate of
82 authority or license in this state.

83 (h) An administrator licensed or applying for a home state
84 certificate of authority/license that administers or will adminis-
85 ter governmental or church self-insured plans in its home state
86 or any other state shall maintain a surety bond for the use and
87 benefit of the home state commissioner and the insurance
88 regulatory authority of any additional state in which the
89 administrator is authorized to conduct business and cover
90 individuals and persons who have remitted premiums or
91 insurance charges or other moneys to the administrator in the
92 course of the administrator's business in the lessor of the
93 following amounts:

94 (1) One hundred thousand dollars; or

95 (2) Ten percent of the aggregate total amount of self-funded
96 coverage under church plans or governmental plans handled in
97 the administrator's home state and all additional states in which
98 the administrator is authorized to conduct business.

§33-46-13. Registration requirement.

1 A person who directly or indirectly underwrites, collects
2 charges or premiums from, or adjusts or settles claims on
3 residents of this state, in connection with life, annuity or
4 accident and sickness coverage provided by a self-funded plan
5 other than a governmental or church plan shall register with the
6 commissioner annually, verifying its status as in this article
7 described.

§33-46-14. Nonresident administrator.

1 (a) Unless an administrator has obtained a home state
2 license in this state under section twelve of this article, any
3 administrator who performs administrator duties in this state

4 shall obtain a nonresident administrator license in accordance
5 with this section by filing with the commissioner the uniform
6 application, accompanied by a letter of certification. In lieu of
7 requiring an administrator to file a letter of certification with
8 the uniform application, the commissioner may verify the
9 nonresident administrator's home state certificate of authority
10 or license status through an electronic database maintained by
11 the national association of insurance commissioners, its
12 affiliates or subsidiaries.

13 (b) An administrator is not eligible for a nonresident
14 administrator license under this section if it does not hold a
15 certificate of authority or license as a resident in a home state
16 that has adopted the national association of insurance commis-
17 sioners' model third-party administrator act or a substantially
18 similar law governing administrators.

19 (c) Except as provided in subsections (b) and (h) of this
20 section, the commissioner shall issue to the administrator a
21 nonresident administrator license promptly upon receipt of a
22 complete application and the application fee.

23 (d) Unless notified by the commissioner that the commis-
24 sioner is able to verify the nonresident administrator's home
25 state certificate of authority or license status through an
26 electronic database maintained by the national association of
27 insurance commissioners, its affiliates or subsidiaries, each
28 nonresident administrator shall annually file a statement that its
29 home state administrator certificate of authority or license
30 remains in force and has not been revoked or suspended by its
31 home state during the preceding year.

32 (e) At the time of filing the statement required under
33 subsection (d) of this section or, if the commissioner has
34 notified the nonresident administrator that the commissioner is
35 able to verify the nonresident administrator's home state

36 certificate of authority or license status through an electronic
37 database, on or before the first day of October, the nonresident
38 administrator shall pay the fee set forth in section fifteen of this
39 article.

40 (f) An administrator licensed or applying for licensure
41 under this section shall produce its accounts, records and files
42 for examination and make its officers available to give informa-
43 tion with respect to its affairs as often as reasonably required by
44 the commissioner.

45 (g) A nonresident administrator is not required to hold a
46 nonresident administrator license in this state if the administra-
47 tor's duties in this state are limited to the administration of a
48 group policy or plan of insurance and no more than a total of
49 one hundred lives for all plans reside in this state. This subsec-
50 tion applies only to multistate administrators. The administrator
51 must be licensed in its home state regardless of the number of
52 lives under a group policy or plan.

53 (h) The commissioner may refuse to issue a nonresident
54 administrator license, or may delay the issuance of a nonresi-
55 dent administrator license, if the commissioner determines that,
56 due to events or information obtained subsequent to the home
57 state's licensure of the administrator, the nonresident adminis-
58 trator cannot satisfy the requirements of this article or that
59 grounds exist for the home state's revocation or suspension of
60 the administrator's home state certificate of authority or license.
61 In that event, the commissioner shall give written notice of its
62 determination to the commissioner of the home state and the
63 commissioner may delay the issuance of a nonresident adminis-
64 trator license to the nonresident administrator until such time,
65 if at all, that the commissioner determines that the administrator
66 can satisfy the requirements of this article and that no grounds
67 exist for the home state's revocation or suspension of the
68 administrator's home state certificate of authority or license.

§33-46-15. Fees and charges.

1 Except where it is otherwise specially provided, the
2 commissioner shall assess third-party administrators the
3 following fees: For annual fee for each license, two
4 hundred dollars; for receiving and filing annual reports,
5 one hundred dollars; for filing a certified copy of articles
6 of incorporation, fifty dollars; for filing a copy of its
7 charter, fifty dollars; for filing statements preliminary to
8 admission, one hundred dollars; for filing any additional
9 paper required by law or furnishing copies of the additional
10 paper, one dollar; and for every copy of a report or certifi-
11 cate of condition of administrator to be filed in any other
12 state, twenty-five dollars. The commissioner may by rule
13 set reasonable charges for printed forms for the annual
14 statements required by law. He or she may sell at cost
15 publications purchased by, or printed on behalf of the
16 commissioner. All fees and moneys collected shall be used
17 for the purposes set forth in section thirteen, article three of
18 this chapter.

§33-46-16. Annual report and filing fee.

1 (a) Each administrator licensed under section twelve of this
2 article shall file an annual report for the preceding calendar year
3 with the commissioner on or before the first day of July of each
4 year or within an extension of time granted by the commis-
5 sioner for good cause. The annual report shall include an
6 audited financial statement performed by an independent
7 certified public accountant. An audited financial/annual report
8 prepared on a consolidated basis shall include a columnar
9 consolidating or combining worksheet that shall be filed with
10 the report and include the following:

11 (1) Amounts shown on the consolidated audited financial
12 report;

13 (2) Amounts for each entity stated separately; and

14 (3) Explanations of consolidating and eliminating entries.

15 The report shall be in the form and contain any matters
16 prescribed by the commissioner and shall be verified by at least
17 two officers of the administrator.

18 (b) The annual report shall include the complete names and
19 addresses of all insurers with which the administrator had
20 agreements during the preceding fiscal year.

21 (c) At the time of filing its annual report, the administrator
22 shall pay the filing fee provided in section fifteen of this article.

23 (d) The commissioner shall review the most recently filed
24 annual report of each administrator on or before the first day of
25 September of each year. Upon completion of its review, the
26 commissioner shall either:

27 (1) Issue a certification to the administrator that the annual
28 report shows that the administrator has a positive net worth as
29 evidenced by audited financial statements and is currently
30 licensed and in good standing, or noting any deficiencies found
31 in that annual report and financial statements; or

32 (2) Update any electronic database maintained by the
33 national association of insurance commissioners, its affiliates
34 or subsidiaries, indicating the annual report shows that the
35 administrator has a positive net worth as evidenced by audited
36 financial statements and is in compliance with existing law, or
37 noting any deficiencies found in the annual report.

§33-46-17. Grounds for denial, suspension or revocation of license.

1 (a) The license of an administrator shall be denied, sus-
2 pended or revoked if the commissioner finds that the adminis-
3 trator:

4 (1) Is in an unsound financial condition;

5 (2) Is using methods or practices in the conduct of its
6 business that render its further transaction of business in this
7 state hazardous or injurious to insured persons or the public; or

8 (3) Has failed to pay any judgment rendered against it in
9 this state within sixty days after the judgment has become final.

10 (b) The commissioner may deny, suspend or revoke the
11 license of an administrator if the commissioner finds that the
12 administrator:

13 (1) Has violated any lawful rule or order of the commis-
14 sioner or any provision of the insurance laws of this state;

15 (2) Has refused to be examined or to produce its accounts,
16 records and files for examination, or if any individual responsi-
17 ble for the conduct of affairs of the administrator, including
18 members of the board of directors, board of trustees, executive
19 committee or other governing board or committee; the principal
20 officers in the case of a corporation or the partners or members
21 in the case of a partnership, association or limited liability
22 company; any shareholder or member holding directly or
23 indirectly ten percent or more of the voting stock, voting
24 securities or voting interest of the administrator; and any other
25 person who exercises control or influence over the affairs of the
26 administrator; has refused to give information with respect to
27 its affairs; or has refused to perform any other legal obligation
28 as to an examination, when required by the commissioner;

29 (3) Has, without just cause, refused to pay proper claims or
30 perform services arising under its contracts or has, without just
31 cause, caused covered individuals to accept less than the
32 amount due them or caused covered individuals to employ
33 attorneys or bring suit against the administrator to secure full
34 payment or settlement of their claims;

35 (4) At any time fails to meet any qualification for which
36 issuance of the license could have been refused had the failure
37 then existed and been known to the commissioner;

38 (5) Or any of the individuals responsible for the conduct of
39 its affairs, including members of the board of directors, board
40 of trustees, executive committee or other governing board or
41 committee; the principal officers in the case of a corporation or
42 the partners or members in the case of a partnership, association
43 or limited liability company; any shareholder or member
44 holding directly or indirectly ten percent or more of its voting
45 stock, voting securities or voting interest; and any other person
46 who exercises control or influence over its affairs has been
47 convicted of, or has entered a plea of guilty or nolo contendere
48 to, a felony without regard to whether the adjudication was
49 withheld;

50 (6) Is under suspension or revocation in another state; or

51 (7) Has failed to timely file its annual report pursuant to
52 section sixteen of this article, if a resident administrator, or its
53 statement and filing fee, as applicable, pursuant to subsections
54 (d) and (e), section fourteen of this article if a nonresident
55 administrator.

56 (c) The commissioner may, in his or her discretion and
57 without advance notice or hearing, immediately suspend the
58 license of an administrator if the commissioner finds that one
59 or more of the following circumstances exist:

60 (1) The administrator is insolvent or impaired;

61 (2) A proceeding for receivership, conservatorship, rehabil-
62 itation or other delinquency proceeding regarding the adminis-
63 trator has been commenced in any state; or

64 (3) The financial condition or business practices of the
65 administrator otherwise pose an imminent threat to the public
66 health, safety or welfare of the residents of this state.

67 (d) If the commissioner finds that one or more grounds
68 exist for the suspension or revocation of a license issued under
69 this article, in any case except where that action is not manda-
70 tory, the commissioner may, in lieu of suspension or revocation,
71 by order require the administrator to pay to the state of West
72 Virginia a penalty in a sum not exceeding ten thousand dollars
73 and upon the failure of the administrator to pay the penalty
74 within thirty days after notice of the penalty, the commissioner
75 may revoke or suspend the license of the administrator.

76 (e) When any license has been revoked or suspended or
77 renewal of the license refused, the commissioner may reissue,
78 terminate the suspension or renew the license when he or she is
79 satisfied that the conditions causing the revocation, suspension
80 or refusal to renew have ceased to exist and are unlikely to
81 recur.

**§33-46-18. Exemption for administrators of public health pro-
grams.**

1 Programs supervised by the department of health and
2 human resources, pursuant to chapter nine of this code; the
3 public employees insurance agency, pursuant to articles sixteen
4 and sixteen-c, chapter five of this code; and the department of
5 administration, pursuant to article sixteen-b, chapter five of this
6 code, are exempted from the provisions of this article. Third-
7 party administrators who administer the above-referenced

- 8 programs are exempt from the provisions of this article with
9 respect to these specific programs only.

§33-46-19. Unauthorized business.

- 1 The unauthorized conduct of the business of an administra-
2 tor shall be treated as unauthorized insurance business and shall
3 be subject to the same criminal and civil penalties as provided
4 in article forty-four for violation of the unauthorized insurers
5 act.

§33-46-20. Commissioner authorized to propose rules.

- 1 The insurance commissioner may propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code that are necessary to
4 effectuate this article.

CHAPTER 243

**(S. B. 105 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 7, 2003; in effect May 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the tax on tobacco products; and increasing the rate of the tax on cigarettes from seventeen cents to fifty-five cents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report; discount.

§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 levied and imposed on sales of cigarettes at the rate of
4 fifty-five cents on each twenty cigarettes or in like ratio on any
5 part 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
10 than cigarettes, tobacco products at a rate equal to seven percent
11 of 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.

18 (c) *Effective date.* — The changes set forth herein to this
19 section and section four of this article shall become effective
20 the first day of May, two thousand three.

§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; 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 or cigarette tax stamps, upon which the tax or any
14 portion of the tax has been previously paid, shall take a physical
15 inventory and shall file a report of the inventory with the tax
16 commissioner, in the format required by the tax commissioner,
17 within thirty days after the inventory and shall pay to the tax
18 commissioner any additional tax due under an increased rate in
19 accordance with the following schedule:

20 (1) One-third at the time of filing the report;

21 (2) One-third not later than sixty days after the effective
22 date of the rate change; and

23 (3) One-third not later than ninety days after the effective
24 date of the rate change.

25 A discount of four percent shall be allowed on all tax due
26 for persons who pay additional tax under this section.

27 (c) Imposition of the tax on tobacco products other than
28 cigarettes shall be treated as a change in rate on the effective
29 date of the tax.

CHAPTER 244

(H. B. 3045 — By Mr. Speaker, Mr. Kiss)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating generally to implementation of master tobacco settlement agreement; providing allocable share cap on payments by non-participating manufacturers and as to such providing special severability rule and date for implementation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9B-3. Requirements.

§16-9B-4. Special severability rule; implementation date.

§16-9B-3. Requirements.

- 1 Any tobacco product manufacturer selling cigarettes to
- 2 consumers within the state (whether directly or through a
- 3 distributor, retailer or similar intermediary or intermediaries)

4 after the date of enactment of this article shall do one of the
5 following:

6 (a) Become a participating manufacturer (as that term is
7 defined in section II(jj) of the master settlement agreement) and
8 generally perform its financial obligations under the master
9 settlement agreement; or

10 (b) (1) Place into a qualified escrow fund by the fifteenth
11 day of April of the year following the year in question the
12 following amounts, adjusted for inflation:

13 (A) For the year one thousand nine hundred ninety-nine:
14 \$.0094241 per unit sold after the date of enactment of this
15 article;

16 (B) For the year two thousand: \$.0104712 per unit sold;

17 (C) For each of the years two thousand one and two
18 thousand two: \$.0136125 per unit sold;

19 (D) For each of the years two thousand three through two
20 thousand six: \$.0167539 per unit sold; and

21 (E) For the year two thousand seven or each year thereafter:
22 \$.0188482 per unit sold.

23 (2) A tobacco product manufacturer that places funds into
24 escrow pursuant to this subsection shall receive the interest or
25 other appreciation on such funds as earned. Such funds them-
26 selves shall be released from escrow only under the following
27 circumstances:

28 (A) To pay a judgment or settlement on any released claim
29 brought against such tobacco product manufacturer by the state
30 or any releasing party located or residing in the state. Funds
31 shall be released from escrow under this paragraph: (i) In the

32 order in which they were placed into escrow; and (ii) only to the
33 extent and at the time necessary to make payments required
34 under such judgment or settlement;

35 (B) To the extent that a tobacco product manufacturer
36 establishes that the amount it was required to place into escrow
37 on account of units sold in the state in a particular year was
38 greater than the master tobacco settlement agreement payments,
39 as determined pursuant to section IX(i) of that agreement,
40 including after final determination of all adjustments, that such
41 manufacturer would have been required to make on account of
42 such units sold had it been a participating manufacturer, the
43 excess shall be released from escrow and revert back to such
44 tobacco product manufacturer; or

45 (C) To the extent not released from escrow under paragraph
46 (A) or (B) of this subdivision, funds shall be released from
47 escrow and revert back to the tobacco product manufacturer
48 twenty-five years after the date on which they were placed into
49 escrow.

50 (3) Each tobacco product manufacturer that elects to place
51 funds into escrow pursuant to this subsection shall annually
52 certify to the attorney general that it is in compliance with this
53 subsection. The attorney general may bring a civil action on
54 behalf of the state against any tobacco product manufacturer
55 that fails to place into escrow the funds required under this
56 section. Any tobacco product manufacturer that fails in any year
57 to place into escrow the funds required under this section shall:

58 (A) Be required within fifteen days to place such funds into
59 escrow as shall bring it into compliance with this section. The
60 court, upon a finding of a violation of this subsection, may
61 impose a civil penalty, to be paid to the general fund of the
62 state, in an amount not to exceed five percent of the amount
63 improperly withheld from escrow per day of the violation and

64 in a total amount not to exceed one hundred percent of the
65 original amount improperly withheld from escrow;

66 (B) In the case of a knowing violation, be required within
67 fifteen days to place such funds into escrow as shall bring it into
68 compliance with this section. The court, upon a finding of a
69 knowing violation of this subsection, may impose a civil
70 penalty, to be paid to the general fund of the state, in an amount
71 not to exceed fifteen percent of the amount improperly withheld
72 from escrow per day of the violation and in a total amount not
73 to exceed three hundred percent of the original amount improperly
74 withheld from escrow; and

75 (C) In the case of a second knowing violation, be prohibited
76 from selling cigarettes to consumers within the state (whether
77 directly or through a distributor, retailer or similar intermediary)
78 for a period not to exceed two years.

79 Each failure to make an annual deposit required under this
80 section shall constitute a separate violation.

§16-9B-4. Special severability rule; implementation date.

1 (a) *Section three severability rule.* —

2 (1) If the act amending section three of this article in the
3 year two thousand three, or any portion of the amendment to
4 paragraph (B), subdivision (2), subsection (b), section three of
5 this article, made by that act, is held by a court of competent
6 jurisdiction to be unconstitutional, then such paragraph (B)
7 shall be deemed to be repealed in its entirety.

8 (2) If after application of subsection (a) of this section, a
9 court of competent jurisdiction thereafter holds subdivision (2),
10 subsection (b) of said section three to be unconstitutional, then
11 section three as amended in the year two thousand three shall be
12 deleted in its entirety and section three as enacted in the year

13 one thousand nine hundred ninety-nine, shall be restored as if
14 no amendments had been made to section three in the year two
15 thousand three. Neither any holding of unconstitutionality nor
16 the repeal of paragraph (B), subdivision (2), subsection (b),
17 section three of this article shall affect, impair or invalidate any
18 other portion of section three, or the application of section three
19 to any other person or circumstance, and such remaining
20 portions of section three shall at all times continue in full force
21 and effect.

22 (b) *Implementation date.* – The amendments to section
23 three of this article in the year two thousand three shall not take
24 effect until thirty days after the earlier of:

25 (1) All states that share a common border with this state
26 enacting similar amendments to their laws implementing the
27 master tobacco settlement agreement; or

28 (2) Thirty three states, including this state, enacting similar
29 amendments to their laws implementing the master tobacco
30 settlement agreement.

CHAPTER 245

(Com. Sub. for H. B. 3046 — By Mr. Speaker, Mr. Kiss)

[Passed March 7, 2003; 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 nine-d, all relating generally to facilitating and enforcing compliance with tobacco master

settlement agreement and with laws implementing that agreement; imposing civil and criminal penalties for failure to comply; and specifying internal effective dates.

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 nine-d, all to read as follows:

ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

- §16-9D-1. Findings and purpose.
- §16-9D-2. Definitions.
- §16-9D-3. Certifications; directory; tax stamps.
- §16-9D-4. Certification of tobacco product manufacturer wanting to sell product in this state for the first time.
- §16-9D-5. Agent for service of process.
- §16-9D-6. Reporting of information; escrow installments.
- §16-9D-7. Electronic filing of quarterly reports.
- §16-9D-8. Penalties and other remedies.
- §16-9D-9. Miscellaneous provisions.
- §16-9D-10. Effective date; implementation.

§16-9D-1. Findings and purpose.

- 1 The Legislature finds that violations of article nine-b of this
- 2 chapter threaten the integrity of the tobacco master settlement
- 3 agreement, the fiscal soundness of the state, and the public
- 4 health. The Legislature finds that enacting procedural enhance-
- 5 ments will help prevent violations and aid enforcement of
- 6 article nine-b of this chapter and thereby safeguard the master
- 7 settlement agreement, the fiscal soundness of the state, and the
- 8 public health.

§16-9D-2. Definitions.

- 1 (a) "Brand Family" means all styles of cigarettes sold under
- 2 the same trade mark and differentiated from one another by
- 3 means of additional modifiers or descriptors, including, but not

4 limited to, “menthol,” “lights,” “kings,” and “100s” and
5 includes any brand name (alone or in conjunction with any
6 other word), trademark, logo, symbol, motto, selling message,
7 recognizable pattern of colors, or any other indicia of product
8 identification identical or similar to, or identifiable with, a
9 previously known brand of cigarettes.

10 (b) “Cigarette” has the same meaning as in section two,
11 article nine-b of this chapter.

12 (c) “Commissioner” means the duly appointed head of the
13 agency responsible for collection of the excise tax on cigarettes.

14 (d) “Distributor” means a person, wherever resident or
15 located, who purchases nontax-paid cigarettes and stores, sells,
16 or otherwise disposes of the cigarettes.

17 (e) “Master tobacco settlement agreement” has the same
18 meaning as that term is defined in section two, article nine-b of
19 this chapter.

20 (f) “Nonparticipating manufacturer” means any tobacco
21 product manufacturer that is not a participating manufacturer.

22 (g) “Participating manufacturer” has the meaning given that
23 term in section II(jj) of the master settlement agreement and all
24 amendments to the master settlement.

25 (h) “Qualified escrow fund” has the same meaning as that
26 term is defined in section two, article nine-b of this chapter.

27 (i) “Stamping agent” includes any distributor or other
28 person that is authorized to affix tax stamps to packages or
29 other containers of cigarettes under article seventeen, chapter
30 eleven of this code, or any person that is required to pay the
31 excise tax imposed on cigarettes pursuant to article seventeen
32 of said chapter eleven.

33 (j) "Tobacco product manufacturer" has the same meaning
34 as that term is defined in section two, article nine-b of this
35 chapter.

36 (k) "Units sold" has the same meaning as that term is
37 defined in section two, article nine-b of this chapter.

§16-9D-3. Certifications; directory; tax stamps.

1 (a) *Certification.* – Every tobacco product manufacturer
2 whose cigarettes are sold in this state, whether directly or
3 through a distributor, retailer or similar intermediary or
4 intermediaries, shall execute and deliver in the manner pre-
5 scribed by the commissioner a certification to the commissioner
6 and the attorney general, no later than the thirtieth day of April
7 each year, certifying under penalty of perjury that, as of the date
8 of the certification, the tobacco product manufacturer either is
9 a participating manufacturer or is in full compliance with article
10 nine-b of this chapter, including payment of all quarterly
11 installment payments required by section six of this article.

12 (1) A participating manufacturer shall include in its
13 certification a list of its brand families. The participating
14 manufacturer shall update the list thirty calendar days prior to
15 any addition to or modification of its brand families by execut-
16 ing and delivering a supplemental certification to the commis-
17 sioner and the attorney general.

18 (2) A nonparticipating manufacturer shall include in its
19 certification:

20 (A) A list of all of its brand families and the number of
21 units sold for each brand family that were sold in this state
22 during the preceding calendar year;

23 (B) A list of all of its brand families that have been sold in
24 this state at any time during the current calendar year, indicat-

25 ing, by an asterisk, any brand family sold in this state during the
26 preceding calendar year that is no longer being sold in this state
27 as of the date of the certification; and

28 (C) Identification, by name and address, of any other
29 manufacturer of the brand families in the preceding calendar
30 year. The nonparticipating manufacturer shall update the list
31 thirty calendar days prior to any addition to or modification of
32 its brand families by executing and delivering a supplemental
33 certification to the commissioner and the attorney general.

34 (3) In the case of a nonparticipating manufacturer, the
35 certification shall further certify:

36 (A) That the nonparticipating manufacturer is registered to
37 do business in this state or has appointed a resident agent for
38 service of process and provided notice thereof as required by
39 section four of this article;

40 (B) That the nonparticipating manufacturer has: (i) Estab-
41 lished and continues to maintain a qualified escrow fund; and
42 (ii) has executed a qualified escrow agreement that has been
43 reviewed and approved by the attorney general and that governs
44 the qualified escrow fund;

45 (C) That the nonparticipating manufacturer is in full
46 compliance with article nine-b of this chapter and this article,
47 and any rules promulgated pursuant to either article; and

48 (D) The name, address and telephone number of the
49 financial institution where the nonparticipating manufacturer
50 has established the qualified escrow fund required by article
51 nine-b of this chapter and all rules promulgated thereto, and:

52 (i) The account number of the qualified escrow fund and
53 sub-account number for the state of West Virginia;

54 (ii) The amount the nonparticipating manufacturer placed
55 in escrow fund for cigarettes sold in this state during the
56 preceding calendar year, the date and amount of each deposit,
57 and any evidence or verification considered necessary by the
58 attorney general to confirm the information certified under this
59 paragraph; and

60 (iii) The amount and date of any withdrawal or transfer of
61 funds the nonparticipating manufacturer made at any time from
62 the qualified escrow fund or from any other qualified escrow
63 fund into which it ever made escrow payments pursuant to
64 article nine-b of this chapter and all rules promulgated thereto.

65 (4) A tobacco product manufacturer may not include a
66 brand family in its certification unless:

67 (A) In the case of a participating manufacturer, the partici-
68 pating manufacturer affirms that the brand family is to be
69 considered to be its cigarettes for purposes of calculating its
70 payments under the master settlement agreement for the
71 relevant year, in the volume and shares determined pursuant to
72 the master settlement agreement; and

73 (B) In the case of a nonparticipating manufacturer, the
74 nonparticipating manufacturer affirms that the brand family is
75 to be considered to be its cigarettes for purposes of article nine-
76 b of this chapter. Nothing in this section shall be construed as
77 limiting or otherwise affecting this state's right to maintain that
78 a brand family constitutes cigarettes of a different tobacco
79 product manufacturer for purposes of calculating payments
80 under the master settlement agreement or for purposes of article
81 nine-b of this chapter.

82 (5) Tobacco product manufacturers shall maintain all
83 invoices and documentation of sales and any other information
84 relied upon for the certification for a period of five years, unless

85 otherwise required by law to maintain them for a greater period
86 of time.

87 (b) *Directory of cigarettes approved for stamping and sale.*
88 – The commissioner shall develop and publish on the tax
89 division's website a directory listing all tobacco product
90 manufacturers that have provided current and accurate certifica-
91 tions conforming to the requirements of subsection (a) of this
92 section and all brand families that are listed in the certifications,
93 except as provided in subdivisions (1) and (2) of this subsec-
94 tion.

95 (1) The commissioner shall not include or retain in the
96 directory the name or brand families of any nonparticipating
97 manufacturer that has failed to provide the required certification
98 or whose certification the commissioner or the attorney general
99 determines is not in compliance with subdivisions (2) and (3),
100 subsection (a) of this section, unless the commissioner has
101 determined that the violation has been cured to the satisfaction
102 of the commissioner and the attorney general.

103 (2) Neither a tobacco product manufacturer nor brand
104 family shall be included or retained in the directory if the
105 attorney general concludes in the case of a nonparticipating
106 manufacturer, that:

107 (A) Any escrow payment required pursuant to article nine-b
108 of this chapter for any period for any brand family, whether or
109 not listed by the nonparticipating manufacturer, has not been
110 fully paid into a qualified escrow fund governed by a qualified
111 escrow agreement that has been approved by the attorney
112 general of this state, or

113 (B) Any outstanding final judgment, including interest on
114 the judgment, for violations of article nine-b of this chapter has
115 not been fully satisfied for the brand family and the nonpartici-
116 pating manufacturer.

117 (3) The tax commissioner shall update the directory as
118 necessary in order to correct mistakes and to add or remove a
119 tobacco product manufacturer or brand family.

120 (A) The commissioner may not remove any manufacturer
121 or brand family from the directory unless the manufacturer and
122 all distributors and other stamping agents registered under
123 article twelve, chapter eleven of this code, have been given at
124 least seven days' prior notice of the intended removal by
125 electronic mail or first class mail the notices shall be e-mailed
126 or posted to the addresses provided by the manufacturers,
127 distributors or other stamping agents for this purpose.

128 (B) The commissioner shall transmit by email or other
129 practicable means to each distributor or other stamping agent
130 registered under article twelve, chapter eleven of this code, to
131 affix West Virginia tax stamps to cigarettes notice of any
132 addition to or removal from the directory of any tobacco
133 product manufacturer or brand family.

134 (C) Failure of a manufacturer, distributor or other stamping
135 agent to receive notice under paragraph (A) or (B), subdivision
136 (3), subsection (b) of this section, or failure of the state to
137 provide notice of any addition to or removal from the directory
138 shall not relieve the distributor or other stamping agent of its
139 obligations under this article.

140 (4) Every tobacco product manufacturer selling cigarettes
141 in this state and every distributor or other stamping agent
142 affixing West Virginia tax stamps to packages of cigarettes for
143 sale in this state shall provide and update as necessary an
144 electronic mail address to the commissioner for the purpose of
145 receiving any notifications required by this article.

146 (c) *Prohibition against stamping or sale of cigarettes not on*
147 *the directory.* – It is unlawful for any person:

148 (1) To affix a stamp to a package or other container of
149 cigarettes of a tobacco product manufacturer or brand family
150 not included in the directory; or

151 (2) To sell, offer, or possess for sale in this state, cigarettes
152 of a tobacco product manufacturer or brand family not included
153 in the directory, except as follows:

154 (A) This subsection shall not prohibit a distributor or other
155 stamping agent from possessing unstamped containers of
156 cigarettes held in inventory for delivery to, or for sale in,
157 another state; and

158 (B) A person purchasing cigarettes for resale shall not be in
159 violation of this subsection if, at the time the cigarettes were
160 purchased, the manufacturer and brand families of the cigarettes
161 are included in the directory maintained by the tax commis-
162 sioner and the cigarettes are otherwise lawfully stamped and
163 sold within thirty days after the date of the notice provided
164 under paragraph (A), subdivision (3), subsection (b) of this
165 section.

**§16-9D-4. Certification of tobacco product manufacturer wanting
to sell product in this state for the first time.**

1 (a) A tobacco product manufacturer whose cigarettes have
2 not previously been sold in this state, whether directly or
3 through a distributor, retailer or similar intermediary or
4 intermediaries, shall, at least thirty calendar days before
5 beginning to sell its cigarettes in this state, make the certifica-
6 tion required by section three of this article. In addition to the
7 information required by section three, the manufacturer shall
8 include the following information in its certification:

9 (1) If the tobacco product manufacturer is a partnership,
10 limited liability company, corporation, association or other
11 business entity, the following where applicable:

12 (A) The names and addresses of every partner, member,
13 officer, resident agent, director or person performing a function
14 similar to a director;

15 (B) The names and addresses of any person owning of
16 record a ten percent or greater equity interest in the tobacco
17 product manufacturer; and

18 (C) A list of all names under which the tobacco manufac-
19 turer, or any partner, member, officer, resident agent, director,
20 or person owning a ten percent or greater equity interest in the
21 tobacco manufacturer, previously did business as a tobacco
22 product manufacturer in the United States within the five-year
23 period preceding the date of submission of the certification; and

24 (2) A statement of whether the tobacco product manufac-
25 turer, or any partner, member, officer, resident agent, director,
26 or person owning a ten percent or greater equity interest in the
27 tobacco manufacturer, or in any subsidiary, affiliate or persons
28 controlled by or under common control with the tobacco
29 manufacturer, has ever been an officer, partner, director or
30 person owning a ten percent or greater equity interest in a
31 tobacco product manufacturer that ever defaulted in fully
32 funding the escrow account required by article nine-b of this
33 chapter in the five-year period prior to the date of submission
34 of the certification under this section and, if so, a brief explana-
35 tion of the facts involved.

§16-9D-5. Agent for service of process.

1 (a) *Requirement for agent for service of process.*

2 (1) Any nonresident or foreign nonparticipating manufac-
3 turer that has not registered to do business in this state as a
4 foreign corporation or business entity shall, as a condition
5 precedent to having its brand families included or retained in
6 the directory, appoint and continually engage without interrup-

7 tion the services of an agent in this state, or in the United States,
8 to act as agent for the service of process on whom all process,
9 and any action or proceeding against it concerning or arising
10 out of the enforcement of this article and article nine-b of this
11 chapter, may be served in any manner authorized by law. The
12 service constitutes legal and valid service of process on the
13 nonparticipating manufacturer. The nonparticipating manufac-
14 turer shall provide the name, address, phone number and proof
15 of the appointment and availability of the agent to the satisfac-
16 tion of the commissioner and the attorney general.

17 (2) Any nonresident stamping agent authorized to affix
18 stamps to packages of cigarettes evidencing payment of the tax
19 levied by article seventeen, chapter eleven of this code, on
20 cigarettes to be sold in this state that has not registered to do
21 business in this state as a foreign corporation or business entity
22 shall, as a condition precedent to being authorized to affix West
23 Virginia tax stamps, appoint and continually engage without
24 interruption the services of an agent in this state, or in the
25 United States, to act as agent for the service of process on
26 whom all process, and any action or proceeding against it
27 concerning or arising out of the enforcement of this article and
28 article nine-b of this chapter, may be served in any manner
29 authorized by law. The service constitutes legal and valid
30 service of process on the nonresident stamping agent. The
31 nonresident stamping agent shall provide the name, address,
32 phone number and proof of the appointment and availability of
33 the agent to the satisfaction of the commissioner and the
34 attorney general.

35 (b) The nonparticipating manufacturer or the nonresident
36 stamping agent shall provide written notice to the commissioner
37 and the attorney general thirty calendar days prior to termina-
38 tion of the authority of an agent and shall further provide proof
39 to the satisfaction of the attorney general of the appointment of
40 a new agent no less than five calendar days prior to the termina-

41 tion of an existing agent appointment. In the event an agent
42 terminates an agency appointment, the nonparticipating
43 manufacturer, or nonresident stamping agent, as the case may
44 be, shall notify the commissioner and attorney general in
45 writing of the termination within five calendar days and shall
46 include proof to the satisfaction of the attorney general of the
47 appointment of a new agent.

48 (c) Any nonparticipating manufacturer and any non-resident
49 stamping agent whose cigarettes are sold in this state, who has
50 not appointed and engaged an agent as required by this section,
51 shall be considered to have appointed the secretary of state of
52 West Virginia as the agent and may be proceeded against in the
53 courts of this state by service of process upon the secretary of
54 state: *Provided*, That the appointment of the secretary of state
55 as the agent of the manufacturer or the nonresident stamping
56 agent shall not satisfy the condition precedent for having the
57 brand families of the nonparticipating manufacturer included or
58 retained in the directory.

§16-9D-6. Reporting of information; escrow installments.

1 (a) *Reporting by distributors and other stamping agents.*—

2 (1) Not later than twenty calendar days after the end of each
3 calendar quarter, and more frequently if directed by the
4 commissioner, each distributor or stamping agent shall submit
5 information required by the commissioner to facilitate compli-
6 ance with this article, including, but not limited to, a list by
7 brand family of the total number of cigarettes of nonparticipat-
8 ing manufacturers, or in the case of roll your own, the equiva-
9 lent stick count, for which the distributor or other stamping
10 agent affixed West Virginia stamps and sold in West Virginia
11 during the previous calendar quarter or otherwise paid the tax
12 due for the cigarettes.

13 (2) The distributor or stamping agent shall maintain, and
14 make available to the commissioner, all invoices and documen-
15 tation of sales of all nonparticipating manufacturer cigarettes
16 sold in West Virginia and any other information relied upon in
17 reporting to the commissioner for a period of five years.

18 (b) *Disclosure of information.* – The commissioner may
19 disclose to the attorney general of this state any information
20 received under this article and requested by the attorney general
21 for purposes of determining compliance with and enforcing the
22 provisions of this article. The commissioner and the attorney
23 general shall share with each other the information received
24 under this article, and may share the information with other
25 federal, state or local agencies only for purposes of enforcement
26 of this article, article nine-b of this chapter, or corresponding
27 laws of other states.

28 (c) *Verification of qualified escrow fund.* – The attorney
29 general may require at any time from the nonparticipating
30 manufacturer proof, from the financial institution in which the
31 manufacturer has established a qualified escrow fund for the
32 purpose of compliance with article nine-b of this chapter, of the
33 amount of money in the fund, exclusive of interest, the amount
34 and date of each deposit to the qualified escrow fund, and the
35 amount and date of each withdrawal from the fund.

36 (d) *Requests for additional information.* – In addition to the
37 information required to be submitted pursuant to this section,
38 the attorney general may require a stamping agent, distributor
39 or tobacco product manufacturer to submit any additional
40 information including, but not limited to, samples of the
41 packaging or labeling of each brand family, that is necessary to
42 enable the attorney general to determine whether a tobacco
43 product manufacturer is in compliance with this article.

44 (e) *Quarterly escrow installments.* – To promote compli-
45 ance with the provisions of this article, a tobacco product
46 manufacturer subject to the requirements of subdivision (2),
47 subsection (a), section three of this article, who, in the opinion
48 of the attorney general, materially defaults in fully funding its
49 escrow account timely and then cures the default shall make
50 escrow deposits for the calendar year during which the default
51 was cured and ensuing calendar years in quarterly installments
52 during the year in which the sales covered by such deposits are
53 made. The attorney general may require production of informa-
54 tion sufficient to enable the attorney general to determine the
55 adequacy of the amount of the installment deposit.

§16-9D-7. Electronic filing of quarterly reports.

1 (a) *Electronic filing required.* - After the first day of
2 September, two thousand three, the quarterly reports required
3 by section six of this article from distributors and stamping
4 agents shall be electronically filed with the tax commissioner.

5 (b) *“Filed Electronically” defined.* - For purposes of this
6 section, “filing electronically” means the filing of a report or
7 other document by any electronic medium acceptable to the tax
8 commissioner including, but not limited to, the filing of reports
9 and other documents by electronic data interchange, or by use
10 of the Internet for web-based filing or other technology
11 specified by the tax commissioner by a procedural rule promul-
12 gated as provided in article three, chapter twenty-nine-a of this
13 code.

14 (c) *Signature requirements.* - The signature requirement for
15 all reports required to be filed under this article will be met if
16 the submission is made pursuant to the tax commissioner’s
17 procedural rule.

18 (d) *Standards.* - The tax commissioner shall give due regard
19 to developing uniform standards for formats as adopted by the

20 American National Standards Institute for encryption and filer
21 authentication to ensure that the report information is kept
22 confidential.

§16-9D-8. Penalties and other remedies.

1 (a) *Revocation of business registration certificate and civil*
2 *money penalty.* – In addition to or in lieu of any other civil or
3 criminal remedy provided by law, upon a determination that a
4 distributor, stamping agent or any other person has violated
5 subsection (c), section three of this article, or any rule adopted
6 pursuant thereto, the commissioner may revoke or suspend the
7 business registration certificate of the distributor, stamping
8 agent or other person in the manner provided by article twelve,
9 chapter eleven of this code. Each stamp affixed and each sale or
10 offer to sell cigarettes in violation of subsection (c), section
11 three of this article constitutes a separate violation. The
12 commissioner may also impose a civil penalty in an amount not
13 to exceed the greater of five hundred percent of the retail value
14 of the cigarettes or five thousand dollars upon a determination
15 of violation of subsection (c), section three of this article or any
16 rules adopted pursuant thereto. The penalty shall be imposed
17 and collected in the manner that tax is assessed and collected
18 under article ten, chapter eleven of this code. The amount of
19 penalty collected shall be deposited in the tobacco control
20 special fund created in section nine of this article.

21 (b) *Contraband and seizure.* – Any cigarettes that have
22 been sold, offered for sale, or possessed for sale, in this state, in
23 violation of subsection (c), section three of this article, shall be
24 considered contraband under article seventeen, chapter eleven
25 of this code and the cigarettes are subject to seizure and
26 forfeiture as provided in article seventeen, and all cigarettes
27 seized and forfeited shall be destroyed and not resold: *Provided,*
28 That this subsection shall not prohibit a stamping agent or

29 distributor from possessing unstamped containers of cigarettes
30 held in inventory for delivery to, or for sale in, another state.

31 (c) *Injunction.* – The attorney general, on behalf of the
32 commissioner, may seek an injunction to restrain a threatened
33 or actual violation of subsection (c), section three of this article,
34 subsection (a), section five of this article, or subsection (d) of
35 said section five, by a distributor, stamping agent or other
36 person and to compel the distributor, stamping agent or other
37 person to comply with these subsections: *Provided*, That this
38 subsection shall not prohibit a stamping agent or distributor
39 from possessing unstamped containers of cigarettes held in
40 inventory for delivery to, or for sale in, another state. In any
41 action brought pursuant to this section, the state is entitled to
42 recover the costs of investigation, costs of the action and
43 reasonable attorney fees.

44 (d) *Unlawful sale and distribution.* – It is unlawful for a
45 person to:

46 (1) sell or distribute cigarettes; or

47 (2) acquire, hold, own, possess, transport, import, or cause
48 to be imported cigarettes that the person knows or should know
49 are intended for distribution or sale in this state in violation of
50 subsection (c), section three of this article. A violation of this
51 subsection shall be a misdemeanor punishable as provided in
52 section nineteen-a, article seventeen, chapter eleven of this
53 code.

54 (e) *Unfair trade practice.* – A person who violates subsec-
55 tion (c), section three of this article, engages in an unfair and
56 deceptive trade practice in violation of article six, chapter forty-
57 six-a of this code.

§16-9D-9. Miscellaneous provisions.

1 (a) *Notice and review of determination.* – A determination
2 of the commissioner or the attorney general to not include or to
3 remove from the directory a brand family or tobacco product
4 manufacturer is subject to review in the manner prescribed by
5 article ten-a, chapter eleven of this code, by filing a petition for
6 review with the office of tax appeals within thirty days of
7 receipt of the commissioner's written determination to not
8 include or to remove the brand family or tobacco product
9 manufacturer from the directory. A determination not to list in,
10 or to remove from, the directory any brand family or tobacco
11 product manufacturer shall not be stayed during the pendency
12 of appeal procedure.

13 (b) *Applicants for business registration certificate.* – No
14 person shall be issued a business registration certificate under
15 article twelve, chapter eleven of this code or granted a renewal
16 of its business registration certificate to act as a distributor or
17 stamping agent unless the person has certified in writing, under
18 penalty of perjury, that the person will comply fully with this
19 article.

20 (c) *Promulgation of rules.* – The commissioner and the
21 attorney general may separately promulgate any procedural,
22 interpretive and legislative rules in the manner provided in
23 article three, chapter twenty-nine-a of this code, each considers
24 necessary to effect the purposes of this article.

25 (d) *Recovery of costs and fees by attorney general.* – In any
26 action brought by the state to enforce this article, the state is
27 entitled to recover the costs of investigation, expert witness
28 fees, costs of the action and reasonable attorney fees.

29 (e) *Disgorgement of profits for violations of this article.* –
30 If a court determines that a person has violated this article, the
31 court shall order any profits, gain, gross receipts or other
32 benefit from the violation to be disgorged and paid to the state

33 treasurer for deposit in the “tobacco control special fund”,
34 which is created in the state treasury. Expenditures from the
35 fund are to be made in accordance with appropriation by the
36 Legislature and in accordance with the provisions of article
37 three, chapter twelve of this code and upon the fulfillment of
38 the provisions set forth in article two, chapter five-a of this
39 code. Unless otherwise expressly provided, the remedies or
40 penalties provided by this article are cumulative to each other
41 and to the remedies or penalties available under all other laws
42 of this state.

43 (f) *Construction and severability.*

44 (A) If a court of competent jurisdiction finds that the
45 provisions of this article and of article nine-b of this chapter
46 conflict and cannot be harmonized, then the provisions of
47 article nine-b control.

48 (B) If any section, subsection, subdivision, paragraph,
49 sentence, clause or phrase of this article causes article nine-b of
50 this chapter to no longer constitute a qualifying or model
51 statute, as those terms are defined in the master settlement
52 agreement, then that portion of this article is not valid.

53 (C) If any section, subsection, subdivision, paragraph,
54 sentence, clause or phrase of this article is for any reason held
55 to be invalid, unlawful or unconstitutional, that decision shall
56 not affect the validity of the remaining portions of this article
57 or any part thereof.

§16-9D-10. Effective date; implementation.

1 (a) If this act of the Legislature takes effect ninety days
2 from passage, the first certification by a tobacco product
3 manufacturer described in subsection (a), section three of this
4 article, shall be due the first day of July, two thousand three,
5 covering the two thousand two calendar year, and the additional

6 information required by section three for the current calendar
7 year up to the date of the certification; and the directory
8 described in subsection (b), section three of this article, is
9 published in the state register by the fifteenth day of August,
10 two thousand three, and made available on the tax commis-
11 sioner's web page by the fifteenth day of October, two thousand
12 three.

13 (b) If this act of the Legislature is in effect from passage,
14 the first certification by a tobacco product manufacturer
15 described in subsection (a), section three of this article, is due
16 the first day of May, two thousand three, covering the two
17 thousand two calendar year, and the additional information
18 required by section three for the current calendar year up to the
19 date of the certification; and the directory described in subsec-
20 tion (b), section three of this article, shall be published in the
21 state register by the fifteenth day of June, two thousand three,
22 and made available on the tax commissioner's web page by the
23 fifteenth day of August, two thousand three.

24 (c) If this act of the Legislature takes effect the first day of
25 July, two thousand three, the first certification by a tobacco
26 product manufacturer described in subsection (a), section three
27 of this article, is due the first day of July, two thousand three,
28 covering the two thousand two calendar year, and the additional
29 information required by section three for the current calendar
30 year up to the date of the certification; and the directory
31 described in subsection (b), section three of this article, shall be
32 published in the state register by the fifteenth day of August,
33 two thousand three, and made available on the tax commis-
34 sioner's web page by the fifteenth day of October, two thousand
35 three.

CHAPTER 246

(H. B. 2748 — By Delegates Perdue and Hatfield)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated articles nine-e and nine-f, all relating to restricting delivery sales of tobacco products and prohibiting possession of counterfeit cigarettes; defining terms; specifying requirements for verification of age and identity of purchasers; requiring notices to consumers; establishing requirements for shipping and shippers; establishing requirements for registration and reporting to the department of tax and revenue; requiring payment of taxes; providing for forfeiture of tobacco products and personal property; prohibiting the possession or sale of counterfeit cigarettes; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

9E. Delivery Sales of Tobacco.

9F. Counterfeit Cigarettes.

ARTICLE 9E. DELIVERY SALES OF TOBACCO.

§16-9E-1. Definitions.

§16-9E-2. Requirements for delivery sales.

§16-9E-3. Age verification requirements.

§16-9E-4. Shipping requirements.

§16-9E-5. Registration and reporting requirements.

§16-9E-6. Collection of taxes.

§16-9E-7. Penalties.

§16-9E-8. Enforcement.

§16-9E-1. Definitions.

1 For purposes of this article:

2 (a) “Adult” means a person who is at least the legal
3 minimum purchase age, as defined by section two, article nine-
4 a of this chapter.

5 (b) “Consumer” means an individual who does not hold a
6 business registration certificate in this state for the business of
7 selling tobacco products as a wholesale or retail dealer.

8 (c) “Delivery sale” means any sale of cigarettes to a
9 consumer in this state where either: (1) The purchaser submits
10 the order for such sale by means of a telephonic or other
11 method of voice transmission, the mails or any other delivery
12 service, or the internet or other online service; or (2) the
13 cigarettes are delivered by use of the mails or a delivery
14 service. A sale of cigarettes shall be a delivery sale regardless
15 of whether or not the seller is located within this state. A sale of
16 cigarettes not for personal consumption to a person who holds
17 a business registration certificate as a wholesale dealer or a
18 retail dealer shall not be a delivery sale.

19 (d) “Delivery service” means any person who is engaged in
20 the commercial delivery of letters, packages, or other contain-
21 ers.

22 (e) “Department” means the state tax department.

23 (f) "Legal minimum purchase age" is at least eighteen years
24 of age as defined by section two, article nine-a of this chapter
25 for the purchase of cigarettes in this state.

26 (g) "Mails" or "mailing" means the shipment of cigarettes
27 through the United States postal service.

28 (h) "Shipping container" means a container in which
29 cigarettes are shipped in connection with a delivery sale.

30 (i) "Shipping documents" means bills of lading, airbills, or
31 any other documents used to evidence the undertaking by a
32 delivery service to deliver letters, packages, or other containers.

16-9E-2. Requirements for delivery sales.

1 (a) No person shall make a delivery sale of cigarettes to any
2 individual who is under the legal minimum purchase age in this
3 state.

4 (b) Each person accepting a purchase order for a delivery
5 sale shall comply with:

6 (1) The age verification requirements set forth in section
7 three of this article;

8 (2) The disclosure requirements set forth in subdivision (3),
9 subsection (a), section three of this article;

10 (3) The shipping requirements set forth in section four of
11 this article;

12 (4) The registration and reporting requirements set forth in
13 section five of this article;

14 (5) The tax collection requirements set forth in section six
15 of this article; and

16 (6) All other laws of this state generally applicable to sales
17 of cigarettes that occur entirely within this state, including, but
18 not limited to, those laws imposing: (i) Excise taxes; (ii) sales
19 taxes; (iii) license and revenue-stamping requirements; and (iv)
20 escrow or other payment obligations.

§16-9E-3. Age verification requirements.

1 (a) No person shall mail, ship, or otherwise deliver ciga-
2 rettes in connection with a delivery sale unless prior to the first
3 delivery sale to a consumer, the person:

4 (1) Obtains from the prospective consumer a certification
5 that includes a reliable confirmation that the consumer is at
6 least the legal minimum purchase age and a statement signed by
7 the prospective consumer in writing that certifies the prospec-
8 tive consumer's address and that the consumer is at least
9 eighteen years of age. The statement shall also confirm: (i) That
10 the prospective consumer understands that it is illegal to sign
11 another person's name to the certification; (ii) that the sale of
12 cigarettes to individuals under the legal minimum purchase age
13 is illegal; and (iii) that the purchase of cigarettes by individuals
14 under the legal minimum purchase age is illegal under the laws
15 of this state;

16 (2) Verifies the information contained in the certification
17 provided by the prospective consumer against an appropriate
18 database of government records available to the distributor or
19 seller, or obtains simultaneous with the certificate as provided
20 for in subdivision (1), a photocopy or other image of the valid,
21 government-issued identification stating the date of birth or age
22 of the individual placing the order;

23 (3) Sends to the prospective consumer, via e-mail or other
24 means, a notice that contains: (A) A prominent and clearly
25 legible statement that cigarette sales to a consumer below the
26 legal minimum purchase age is illegal; (B) a prominent and

27 clearly legible statement that consists of one of the warnings set
28 forth in section 4(a)(1) of the federal Cigarette Labeling and
29 Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly
30 basis; (C) a prominent and clearly legible statement that sales
31 of cigarettes are restricted to those consumers who provide
32 verifiable proof of age in accordance with section three of this
33 article; and (D) a prominent and clearly legible statement that
34 cigarette sales are subject to excise and sales taxes in this state,
35 and an explanation of how such taxes have been, or are to be,
36 paid with respect to the delivery sale.

37 (4) In the case of an order for cigarettes pursuant to an
38 advertisement on the internet, receives payment for the delivery
39 sale from the prospective consumer by a credit or debit card or
40 check that has been issued in the consumer's name.

41 (b) Persons accepting purchase orders for delivery sales
42 may request that prospective consumers provide their e-mail
43 addresses.

§16-9E-4. Shipping requirements.

1 (a) Each person who mails, ships, or otherwise delivers
2 cigarettes in connection with a delivery sale:

3 (1) Shall include as part of the bill of lading or other
4 shipping documents a clear and conspicuous statement provid-
5 ing as follows: "Cigarettes: West Virginia Law Prohibits
6 Shipping to Individuals Under 18, and Requires the Payment of
7 all Applicable Taxes";

8 (2) Shall use a method of mailing, shipping, or delivery that
9 obligates the delivery service to require: (i) The consumer
10 placing the purchase order for the delivery sale, or another adult
11 of legal minimum purchase age, to sign to accept delivery of the
12 shipping container; and (ii) proof, in the form of a valid,
13 government-issued identification bearing a photograph of the

14 individual who signs to accept delivery of the shipping con-
15 tainer, demonstrating that he is either the addressee or another
16 adult of legal minimum purchase age; and

17 (3) Shall provide to the delivery service retained for such
18 delivery sale evidence of full compliance with section seven of
19 this article.

20 (b) A delivery service shall be in violation of this article if
21 it: (1) Ships or otherwise delivers cigarettes in connection with
22 a delivery sale without first receiving evidence of compliance
23 with section seven of this article; or (2) fails to comply with the
24 requirements described in subsection (a) or described in section
25 six of this article:

26 (1) When obligated to do so under a method of shipping or
27 delivery;

28 (2) When delivering any container pursuant to shipping
29 documents containing the statement described in subdivision
30 (1), subsection (a) of this section; or

31 (3) When delivering any container that the delivery service
32 otherwise has reason to know contains cigarettes.

33 (c) If the person accepting a purchase order for a delivery
34 sale delivers the cigarettes without using a delivery service, that
35 person shall comply with all requirements of this article
36 applicable to a delivery service and shall be in violation of the
37 provisions of this article upon failure to comply with the
38 requirements.

§16-9E-5. Registration and reporting requirements.

1 (a) Prior to making delivery sales or mailing, shipping, or
2 otherwise delivering cigarettes in connection with any such
3 sales, every person shall file with the department a statement

4 setting forth the seller's name, trade name, and the address of
5 the seller's principal place of business and any other place of
6 business.

7 (b) Not later than the tenth day of each calendar month,
8 each person that has made a delivery sale or mailed, shipped, or
9 otherwise delivered cigarettes in connection with any such sale
10 during the previous calendar month shall file with the depart-
11 ment a memorandum or a copy of the invoice that provides for
12 each and every delivery sale:

13 (1) The name and address of the consumer to whom the
14 delivery sale was made;

15 (2) The brand or brands of the cigarettes that were sold in
16 the delivery sale; and

17 (3) The quantity of cigarettes that were sold in the delivery
18 sale.

19 (c) Any person that satisfies the requirements of 15 U.S.C.
20 §376 shall be deemed to satisfy the requirements of this section.

§16-9E-6. Collection of taxes.

1 Each person accepting a purchase order for a delivery sale
2 shall collect and remit to the department all cigarette taxes
3 imposed by this state with respect to such delivery sale, except
4 that the collection and remission shall not be required to the
5 extent the person has obtained proof, in the form of the pres-
6 ence of applicable tax stamps or otherwise, that the taxes
7 already have been paid to this state.

§16-9E-7. Penalties.

1 (a) Except as otherwise provided in this section, a first
2 violation of any provision of this article shall be a misdemeanor

3 and punishable by a fine of five hundred dollars or five times
4 the retail value of the cigarettes involved, whichever is greater.

5 (b) Any person who knowingly violates any provision of
6 this article, or who knowingly and falsely submits a certifica-
7 tion under section three of this article in another person's name,
8 shall be guilty of a misdemeanor, be fined one thousand dollars
9 or ten times the retail value of the cigarettes involved, which-
10 ever is greater, or confined not more than six months, or both.

11 (c) Any person failing to collect or remit to the department
12 any tax required in connection with a delivery sale shall be
13 assessed, in addition to any other penalty, a penalty of five
14 times the retail value of the cigarettes involved.

15 (d) Any cigarettes sold or attempted to be sold in a delivery
16 sale that does not meet the requirements of this article shall be
17 forfeited to this state and destroyed. All fixtures, equipment,
18 and all other materials and personal property on the premises of
19 any person who, with the intent to defraud this state, violates
20 any of the requirements of this article, shall be forfeited to this
21 state.

§16-9E-8. Enforcement.

1 For violations of this article resulting in a delivery of
2 tobacco products in this state, the prosecuting attorney of the
3 county where the delivery is made shall have the power to
4 prosecute the violation and to bring any action necessary to
5 prevent further violations. The attorney general or any person
6 who holds a valid permit under 26 U.S.C. § 5712 may bring any
7 actions required to enforce all other requirements of this article
8 and to prevent all other violations of its provisions.

ARTICLE 9F. COUNTERFEIT CIGARETTES.

§16-9F-1. Definition.

§16-9F-2. Prohibition of counterfeit cigarettes.

§16-9F-3. Penalties.

§16-9F-4. Enforcement.

§16-9F-1. Definition.

1 As used in this article, “counterfeit cigarettes” means
2 cigarettes that: (a) Have false manufacturing labels; (b) are not
3 manufactured by the manufacturer indicated on the container;
4 or (c) have a false tax stamp affixed to the container.

§16-9F-2. Prohibition of counterfeit cigarettes.

1 It shall be unlawful for any person to knowingly possess or
2 sell counterfeit cigarettes, and all counterfeit cigarettes and the
3 equipment, materials and personal property used in substantial
4 connection with a knowing violation of this article may be
5 seized and destroyed by any law-enforcement agency of this
6 state.

§16-9F-3. Penalties.

1 (a) Any person who knowingly violates the provisions of
2 this article with a total quantity of less than two cartons of
3 cigarettes shall, for the first offense, be punished by a civil
4 penalty of no more than one thousand dollars, and for a second
5 or subsequent offense involving a total quantity of less than two
6 cartons of cigarettes shall be punished by a civil penalty of no
7 more than five thousand dollars and the revocation for a period
8 of six months of any business held by the person.

9 (b) Any person who knowingly violates the provisions of
10 this article with a total quantity of two or more cartons of
11 cigarettes shall, for the first offense, be punished by a civil
12 penalty of no more than two thousand dollars, and for a second
13 or subsequent offense involving a total quantity of two or more
14 cartons of cigarettes shall be punished by a civil penalty of no
15 more than fifty thousand dollars and the revocation for a period

16 of one year of any business registration certificate held by the
17 person.

§16-9F-4. Enforcement.

1 The attorney general, the prosecuting attorney for the
2 county in which counterfeit cigarettes are found or any person
3 who holds a valid permit under 26 U.S.C. § 5712 may bring an
4 action in the circuit court of that county to prevent or restrain
5 violations of this article by any person, or any person control-
6 ling that person.

CHAPTER 247

(H. B. 3199 — By Delegate Perdue)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article two-c, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reduced telephone service rates for qualified low-income residential consumers; updating terms; expanding the scope of qualified persons; including additional categories of tel-assistance services; providing for additional rules and emergency rules; providing for agreements regarding revenue deficiencies; and allocating revenue deficiencies among eligible telecommunications carriers.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article two-c, chapter twenty-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 2C. REDUCED RATES FOR CERTAIN LOW-INCOME RESIDENTIAL CUSTOMERS OF TELEPHONE SERVICE.

§24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.

§24-2C-2. Tel-assistance; definitions.

§24-2C-3. Monthly rate set by public service commission; prohibited and permissible charges.

§24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.

§24-2C-5. Recovery of revenue deficiencies.

§24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.

1 (a) The Legislature finds that universal telephone service
2 contributes to the state's economic, social and political integra-
3 tion and development. The preservation of universal telephone
4 service is therefore of utmost importance to the state and its
5 citizens.

6 (b) Recent changes in the telecommunications industry,
7 however, both in its structure and in the national policy which
8 governs it, have begun to exert a general, upward pressure on
9 the rates for basic telephone service. Although neither the
10 extent to which basic telephone rates may rise in the future, nor
11 the effect of any such future increases on the general
12 affordability of telephone service can be ascertained at this
13 time, the Legislature finds that anticipatory action should
14 nonetheless be taken to preserve the universal telephone service
15 which has been substantially achieved in this state.

16 (c) All eligible telecommunications carriers providing local
17 exchange dial access line service subject to the jurisdiction of
18 the public service commission shall file with the commission
19 tariffs providing for the offering of a new class of basic
20 residential service, at a special reduced rate, to certain low-

21 income households. Such tariffs shall be filed after the adoption
22 of the rules mandated by subsections (b) and (c), section four of
23 this article.

§24-2C-2. Tel-assistance; definitions.

1 For purposes of this article, the following terms apply:

2 (a) "Eligible telecommunications carrier" means a common
3 carrier that offers telephone services that are supported by
4 federal universal service support mechanism, advertises the
5 availability of such services and the charges for the services
6 using media of general distribution, and that otherwise is
7 qualified as an eligible telecommunications carrier pursuant to
8 the provisions of 47 U.S.C. Section 214.

9 (b) "Qualifying low-income consumer" means a consumer
10 who is a recipient of Medicaid, food stamps, supplemental
11 security income, federal public housing assistance, low-income
12 home energy assistance program benefits, temporary assistance
13 to needy families benefits or other income-related state or
14 federal programs.

15 (c) "Tel-assistance service" means a wholly measured or
16 message individual, residential local exchange dial access line
17 offered through the provisions of this article and that provides
18 for an allowance for usage not to exceed two dollars in value.

19 (d) "Usage" means the local exchange service and the long
20 distance service provided by the eligible telecommunications
21 carrier furnishing the tel-assistance service.

§24-2C-3. Monthly rate set by public service commission; prohibited and permissible charges.

1 (a) The monthly rate for tel-assistance service shall be set
2 initially by the commission at the lower of: (1) The lowest
3 priced service available to the consumer at the time of his or her

4 application; or (2) seven dollars and fifty cents. All usage
5 exceeding two dollars in value shall be charged for at the
6 otherwise applicable tariff rate. No other local voice telephone
7 service may be provided to the dwelling place of a tel-assis-
8 tance consumer, nor may individual line foreign zone or foreign
9 exchange service be provided to a tel-assistance consumer. An
10 eligible telecommunications carrier may not impose an order
11 processing charge or line charge when an existing consumer
12 who is eligible for tel-assistance service changes to such
13 service, nor may any charge be made when a tel-assistance
14 service consumer loses his or her eligibility and changes to
15 another class of residential service: *Provided*, That charges for
16 the initial installation of service for a new consumer, or charges
17 for moving a consumer's service from one dwelling place to
18 another shall be made at the otherwise applicable tariff rate.

19 (b) The commission may, upon having set the rate initially
20 for tel-assistance service as herein provided, change such rate
21 from time to time upon a finding that is reasonable to do so, and
22 may, in connection therewith increase or decrease the amount
23 of local service usage provided as a part thereof.

**§24-2C-4. Availability of tel-assistance service; determination of
eligibility; promulgation of rules.**

1 (a) All eligible telecommunications carriers shall make tel-
2 assistance services available to qualified low-income consum-
3 ers pursuant to tariffs or agreements filed with and approved by
4 the public service commission.

5 (b) Insofar as permitted under federal law, eligible telecom-
6 munications carriers may file with the public service commis-
7 sion tariffs or agreements that, without limitation, offer tel-
8 assistance service which includes a broader group of services,
9 or make tel-assistance service available to a broader group of
10 low-income residential consumers.

11 (c) The public service commission shall establish rules to
12 implement the provisions of this article. The rules shall include,
13 but not be limited to, procedures governing the application for
14 and the provision of tel-assistance service; the determination,
15 calculation and certification of the revenue deficiency resulting
16 from the provision of tel-assistance service; criteria for estab-
17 lishing maximum levels of revenue deficiencies that may be
18 claimed; establishing the methods by which telephone utilities
19 shall maintain records pertaining to such deficiency and the
20 methods by which such deficiency shall be calculated; and
21 providing for alternate methodologies to simplify the record
22 keeping of the eligible telecommunications carriers. The rules
23 shall be promulgated pursuant to section seven, article one of
24 this chapter and adopted within one hundred twenty days of the
25 effective date of this article. The public service commission
26 shall timely amend the rules thereafter as may be required by
27 any provision of state or federal law.

28 (d) The department of health and human resources shall
29 propose rules for legislative approval in accordance with the
30 provisions of article three, chapter twenty-nine-a of this code to
31 establish, procedures to inform eligible telecommunications
32 carriers of the eligibility of applicants for tel-assistance service,
33 to assist applicants for tel-assistance service in proving their
34 eligibility therefor, to determine on a continuing basis the
35 eligibility of persons receiving tel-assistance service, and
36 communicate such determinations to the eligible telecommuni-
37 cations carriers. Initially, rules shall be adopted and filed in the
38 state register within one hundred twenty days of the effective
39 date of this article and shall not otherwise be subject to the
40 requirements of chapter twenty-nine-a of this code. Rules
41 promulgated pursuant to this subsection shall become effective
42 immediately upon filing in the state register and remain in
43 effect until supplanted by legislative rules promulgated pursu-
44 ant to chapter twenty-nine-a of this code.

45 (e) The secretary of the department of health and human
46 resources or the public service commission may propose
47 emergency rules for legislative approval in accordance with the
48 provisions of article three, chapter twenty-nine-a of this code to
49 implement additional provisions of this article as may be
50 required.

§24-2C-5. Recovery of revenue deficiencies.

1 (a) In order to provide the special reduced rate mandated by
2 section one of this article and still maintain the integrity of the
3 earnings of the eligible telecommunications carriers offering
4 tel-assistance service, the commission shall determine, upon
5 application by any affected eligible telecommunications carrier,
6 that eligible telecommunications carrier's revenue deficiency
7 for the eligible telecommunications carrier's taxable year
8 resulting from the special reduced rates. Upon determining any
9 eligible telecommunications carrier's revenue deficiency, the
10 commission shall issue an order certifying the amount of that
11 deficiency. Certified revenue deficiencies shall thereafter be
12 recovered by the affected eligible telecommunications carrier
13 as follows:

14 (1) An eligible telecommunications carrier's certified
15 revenue deficiency, if any, resulting from the provision of tel-
16 assistance service shall be allowed as a tax credit against the
17 liability of the eligible telecommunications carrier pursuant to
18 the provisions of article thirteen-g, chapter eleven of this code.

19 (2) After allowance of such a tax credit pursuant to the
20 provisions of article thirteen-g, chapter eleven of this code, an
21 eligible telecommunications carrier's remaining certified
22 revenue deficiency, if any, resulting from the provision of tel-
23 assistance service shall be allowed as a tax credit against the
24 liability of the eligible telecommunications carrier pursuant to
25 the provisions of section eleven-a, article twenty-four, chapter
26 eleven of this code.

27 (b) An eligible telecommunications carrier's revenue
28 deficiency under the provisions of section five of this article
29 shall be limited to the amounts generated from providing tel-
30 assistance service to qualified low-income consumers who are
31 either disabled or age sixty or older. The agreements or tariffs
32 required by this article shall specify the methodology by which
33 the eligible telecommunications carrier will calculate the
34 revenue deficiency, and may include a provision to freeze the
35 revenue deficiency at certain levels as determined by the public
36 service commission. No such agreement or tariff by an eligible
37 telecommunications carrier may be effective unless first
38 approved by the public service commission.

39 (c) In determining such revenue deficiency in the case of
40 resale of tel-assistance service, the commission shall allocate
41 the revenue deficiency between the eligible telecommunications
42 carrier that physically provided the tel-assistance line, and the
43 eligible telecommunications carrier that provided the tel-
44 assistance service at retail to an eligible consumer. Such
45 allocation shall be based on the wholesale resale discount
46 applicable to such tel-assistance service.

CHAPTER 248

**(Com. Sub. for H. B. 2865 — By Mr. Speaker, Mr. Kiss, and Delegates
Browning, Staton, Beane, H. White, Stalnaker and G. White)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article three,
chapter sixty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to crimes against
property; and increasing penalties for damaging or destroying real

or personal property owned by a railroad company or public utility or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

1 (a) Any person who knowingly and willfully damages or
2 destroys any real or personal property owned by a railroad
3 company or public utility company, or any real or personal
4 property used for producing, generating, transmitting, distribut-
5 ing, treating or collecting electricity, natural gas, water,
6 wastewater, stormwater, telecommunications or cable service,
7 is guilty of a misdemeanor and, upon conviction thereof, shall
8 be fined not more than two thousand dollars, or confined in the
9 county or regional jail not more than one year, or both.

10 (b) Any person who knowingly and willfully damages or
11 destroys any real or personal property owned by a railroad
12 company or public utility company, or any real or personal
13 property used for producing, generating, transmitting, distribut-
14 ing, treating or collecting electricity, natural gas, water,
15 wastewater, stormwater, telecommunications or cable service

16 causing serious bodily injury to another is guilty of a felony
17 and, upon conviction thereof, shall be fined not less than five
18 thousand dollars nor more than fifty thousand dollars, or
19 confined in a state correctional facility not less than one nor
20 more than five years, or both.

21 (c) Nothing in this section may be construed to limit or
22 restrict the ability of an entity referred to in subsection (a) or (b)
23 of this section or a property owner or other person who has
24 been damaged or injured as a result of a violation of this section
25 from seeking recovery for damages arising from violation of
26 this section.

CHAPTER 249

(Com. Sub. for H. B. 2835 — By Delegates Ennis, Manchin,
Poling, Shelton, Tucker, Smirl and Wakim)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating to establishing a special revenue fund to receive gifts and donations for the support of veterans facilities; authorized expenditures; renaming a special revenue fund and clarifying its purpose; and removing a statement implying restraints on funds to repay bonds.

Be it enacted by the Legislature of West Virginia:

That article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding

thereto a new section, designated section eleven; and that section nine-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter

9A. Veterans Affairs.

29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

§9A-1-11. Establishment of veterans facilities support fund; authorized expenditures.

1 There is hereby created in the state treasury a special
2 revenue fund to be designated and known as the veterans
3 facilities support fund. All interest or other returns earned on
4 the investment of the moneys in the fund shall be credited to the
5 fund. Funds paid into the account shall be derived from the
6 following sources: (1) Any gift, grant, bequest, endowed fund
7 or donation which may be received by any veterans facility
8 created by statute from any governmental entity or unit or any
9 person, firm, foundation or corporation; and (2) all interest or
10 other return on investment accruing to the fund. Moneys in the
11 fund are to be used for the operational costs of any veterans
12 facility created by statute or as otherwise designated or speci-
13 fied by the donor. Any balance including accrued interest or
14 other earnings in this special fund at the end of any fiscal year
15 shall not revert to the general revenue fund but shall remain in
16 the fund for use by the director of the division of veterans
17 affairs for any operational costs of any veterans facility created
18 by statute or as otherwise designated or specified by the donor.

**CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.**

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 (c) 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 upon the effective date of the enactment
11 of this section in two thousand two, the Legislature may make
12 appropriations from this fund for architectural and other project
13 costs associated with construction, operational costs, and for
14 payment of principal and interest for revenue bonds issued
15 under provisions of section seven, article twenty-nine-a, chapter
16 sixteen of this code: *Provided*, That once the payment of the
17 principal and interest, any required operational costs, and
18 architectural and other project costs associated with construc-
19 tion are paid in full for the construction and operation of the
20 initial veterans skilled nursing facility, the Legislature may
21 appropriate from the fund created under this section moneys for
22 the construction, including the architectural fees and other
23 associated costs, equipping and operation of additional skilled
24 nursing facilities for veterans of the armed forces of the United
25 States military: *Provided, however*, That after the payment of
26 the above-mentioned items, the Legislature may appropriate
27 any excess funds to the general revenue fund.

28 (c) There is hereby created in the state treasury a special
29 revenue fund designated and known as the veterans lottery fund
30 which shall consist of all revenues derived from the veterans
31 benefit game, and any appropriations to the fund by the
32 Legislature and all interest or other returns earned from
33 investment of the fund.

34 (d) There is hereby created in the state treasury a special
35 revenue fund designated and known as the veterans nursing
36 home building fund which shall consist of all funds for the
37 architectural and other project costs related to the construction
38 of the veteran's nursing home. These funds shall be transferred
39 from the veterans lottery fund to the veterans nursing home
40 building fund upon written request of the director of the
41 division of veterans affairs to the investment management
42 board and the state treasurer. Following the selection of the
43 architect, the director shall certify the estimated total cost of the
44 architect and associated costs to the joint committee on govern-
45 ment and finance prior to the transfer of funds. If funds trans-
46 ferred exceed the estimated costs certified to the joint commit-
47 tee, the director shall certify the additional costs to the joint
48 committee.

49 (e) The commission shall change the design or theme of the
50 veterans benefit game regularly so that the game remains
51 competitive with the other instant lottery scratch-off games
52 offered by the commission. The tickets for the instant lottery
53 game created in this section shall clearly state that the profits
54 derived from the game are being used to benefit veterans in this
55 state.

CHAPTER 250

**(Com. Sub. for S. B. 494 — By Senators Hunter, Unger, Oliverio,
Caldwell, Minard, Dempsey, Kessler, Weeks, Rowe, McCabe,
Bowman, Prezioso, White, Love, Jenkins, Boley, Deem,
Sharpe, Plymale, Helmick, Edgell, Chafin, Bailey,
Fanning, Ross, Smith, Minear, Facemyer,
Guills and Tomblin, Mr. President)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-four-f, relating to authorizing the public service commission to regulate transactions between cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States department of veterans' affairs grave markers at the graves of deceased veterans; legislative findings; exemptions; enforcement of orders; judicial review; and designation of the affected cemeteries as outside the purview of utility regulation.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 24F. VETERANS' GRAVE MARKERS.

ARTICLE 1. VETERANS' GRAVE MARKERS.

- §24F-1-1. Legislative findings.
- §24F-1-2. Powers and duties.
- §24F-1-3. Cemeteries and companies that set and install memorial monument markers affected by rate regulation for setting of department of veterans' affairs grave markers.
- §24F-1-4. Enforcement powers.
- §24F-1-5. Review of final orders of commission.
- §24F-1-6. Cemeteries and companies that set and install memorial monument markers not regulated as utilities.

§24F-1-1. Legislative findings.

- 1 (a) The Legislature finds that it is in the public interest to
- 2 regulate transactions between cemeteries, companies that set
- 3 and install memorial monument markers and veterans in the
- 4 fees and total charges for the setting of United States depart-
- 5 ment of veterans' affairs grave markers at the graves of
- 6 deceased United States armed forces veterans by authorizing

7 the public service commission to regulate the fees and total
8 charges.

9 (b) The Legislature further finds that the public service
10 commission is the appropriate agency to determine the reason-
11 able rates as charged by these cemeteries and companies that set
12 and install memorial monument markers for the setting of these
13 markers.

§24F-1-2. Powers and duties.

1 (a) In addition to its other powers and duties, the public
2 service commission may determine, establish and modify, in a
3 manner that it considers appropriate, the fees and total charges
4 imposed by cemeteries and companies that set and install
5 memorial monument markers for the setting of United States
6 department of veterans' affairs grave markers at the graves of
7 deceased United States armed forces veterans.

8 If the commission establishes fees and total charges as
9 authorized by this section, it shall establish:

10 (1) A maximum fee schedule to be designated "the perma-
11 nent endowment care fund" which represents the costs to a
12 cemetery for the perpetual care of the grave marker; and

13 (2) A maximum fee schedule to be designated as "the
14 regional installation fees" which represents the costs of
15 installation of the veteran grave marker.

16 Any fees established under this section shall consider
17 regional market forces and may consider classes of veterans'
18 markers or any other relevant conditions. The fees described in
19 this section, when added together, shall be designated as the
20 "total charges" permitted for the installation of a veterans'
21 affairs memorial marker. No other fees, charges or other costs

22 may be assessed to the veterans' estate or family for the
23 installation or maintenance of the veterans' grave marker.

24 (b) Any fees and total charges established by the public
25 service commission may only apply to the installation of
26 memorial markers that are provided to the veteran without
27 charge by the U. S. government upon application.

§24F-1-3. Cemeteries and companies that set and install memorial monument markers affected by rate regulation for setting of department of veterans' affairs grave markers.

1 Unless otherwise exempted in accordance with section six,
2 article five-a, chapter thirty-five of this code, all cemeteries,
3 cemetery associations, cemetery companies and perpetual care
4 cemetery companies, irrespective of how each may be defined
5 in articles five, five-a and five-b, chapter thirty-five of this
6 code, and companies that set and install memorial monument
7 markers fall within the purview of the regulatory powers
8 exercised by the public service commission in accordance with
9 this chapter.

§24F-1-4. Enforcement powers.

1 The public service commission may compel obedience to
2 its lawful orders, as issued pursuant to this chapter, by manda-
3 mus or injunction or other proper proceedings in the name of
4 the state in any circuit court having jurisdiction of the parties or
5 of the subject matter, or the supreme court of appeals direct,
6 and the proceedings shall have priority over all pending cases.

§24F-1-5. Review of final orders of commission.

1 Any party feeling aggrieved by the entry of a final order by
2 the commission, which affects that party, may present a petition
3 in writing to the supreme court of appeals, or to a judge thereof

4 in vacation, within thirty days after the entry of the order
5 praying for the suspension of the final order. The applicant shall
6 deliver a copy of the petition to the secretary of the commission
7 on or before the date the petition is presented to the court or the
8 judge and the secretary shall promptly file with the clerk of the
9 court all papers, documents, evidence and other records
10 constituting the complete record in the case or certified copies
11 of the records that were before the commission at the time of
12 the entry of the order which is appealed. The court or judge
13 shall fix a time for the hearing on the application, but the
14 hearing, unless by agreement of the parties, may not be held
15 sooner than five days after its presentation; and notice of the
16 time and place of the hearing shall be immediately delivered to
17 the secretary of the commission. The commission may be
18 represented at the hearing by one or more of its members or by
19 counsel. After hearing the appeal, if the court or judge is of the
20 opinion that an order suspending order should be issued, the
21 court or the judge may require bond, upon reasonable condi-
22 tions and in reasonable penalty, and impose terms and condi-
23 tions upon the petitioner that are just and reasonable. Before the
24 day fixed for the final hearing, the commission shall file a
25 written statement of its reasons for the entry of the order with
26 the court. After arguments by counsel, the court shall decide the
27 matter in controversy.

**§24F-1-6. Cemeteries and companies that set and install memo-
rial monument markers not regulated as utilities.**

1 No provision of this chapter may be construed to grant the
2 public service commission the power to regulate an affected
3 cemetery or a company that sets and installs memorial monu-
4 ment markers as a utility.

CHAPTER 251

(S. B. 649 — By Senators McCabe, Facemyer, Bowman, Fanning, Helmick, McKenzie, Minard, Minear, Plymale and Prezioso)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and six, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article fifteen-a, chapter thirty-one of said code by adding thereto a new section, designated section seventeen-a, all relating to providing for the use of waste tire remediation funds to finance infrastructure projects relating to waste tire processing facilities which have a capital cost of not less than three hundred million dollars.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 17. Roads and Highways.**
- 31. Corporations.**

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

1 (a) The division of highways shall administer all funds
2 made available to the division for remediation of waste tire
3 piles and for the proper disposal of waste tires removed from
4 waste tire piles. The commissioner of the division of highways
5 may: (i) Propose for legislative promulgation in accordance
6 with article three, chapter twenty-nine-a of this code emergency
7 and legislative rules necessary to implement the provisions of
8 this article; and (ii) administer all funds appropriated by the
9 Legislature to carry out the requirements of this article and any
10 other funds from whatever source, including, but not limited to,
11 federal, state or private grants.

12 (b) The commissioner also has the following powers:

13 (1) To apply and carry out the provisions of this article and
14 the rules promulgated under this article.

15 (2) To investigate, from time to time, the operation and
16 effect of this article and of the rules promulgated under this
17 article and to report his or her findings and recommendations to
18 the Legislature and the governor.

19 (c) The provisions of articles two-a and four of this chapter
20 and the policy, rules, practices and procedures under those
21 articles shall be followed by the commissioner in carrying out
22 the purposes of this article.

23 (d) On or before the first day of June, two thousand one, the
24 commissioner shall determine the location, approximate size
25 and potential risk to the public of all waste tire piles in the state
26 and establish, in descending order, a waste tire remediation list.

27 (e) The commissioner may contract with the department of
28 health and human resources and/or the division of corrections
29 to remediate or assist in remediation of waste tire piles through-
30 out the state. Use of available department of health and human
31 resources and the division of corrections work programs shall
32 be given priority status in the contract process so long as such
33 programs prove a cost-effective method of remediating waste
34 tire piles.

35 (f) Waste tire remediation shall be stopped and the division
36 of environmental protection notified upon the discovery of any
37 potentially hazardous material at a remediation site. The
38 division of environmental protection shall respond to the
39 notification in accordance with the provisions of article
40 eighteen, chapter twenty-two of this code.

41 (g) The commissioner may establish a tire disposal program
42 within the division to provide for a cost effective and efficient
43 method to accept passenger car and light truck waste tires at
44 such division of highways county headquarters as have suffi-
45 cient space for temporary storage of waste tires and personnel
46 to accept and handle waste tires. The commissioner may pay a
47 fee for each tire an individual West Virginia resident or West
48 Virginia business brings to the division. The commissioner may
49 establish a limit on the number of tires an individual or business
50 may be paid for during any calendar month. The commissioner
51 may in his or her discretion authorize commercial businesses to
52 participate in the collection program: *Provided*, That no person
53 or business who has a waste tire pile subject to remediation
54 under this article may participate in this program.

55 (h) The commissioner may pledge not more than two and
56 one-half million dollars annually of the moneys appropriated,
57 deposited or accrued in the A. James Manchin fund created by
58 section six, article twenty-four of this chapter, to the payment
59 of debt service, including the funding of reasonable reserves, on

60 bonds issued by the water development authority pursuant to
61 section seven-a, article fifteen-a, chapter thirty-one of this code
62 to finance infrastructure projects relating to waste tire process-
63 ing facilities located in this state: *Provided*, That a waste tire
64 processing facility shall be determined by the solid waste
65 management board, established pursuant to the provisions of
66 article three, chapter twenty-two-c of this code, to meet all
67 applicable federal and state environmental laws and rules and
68 regulations and to aid the state in efforts to promote and
69 encourage recycling and use of constituent component parts of
70 waste tires in an environmentally sound manner: *Provided*,
71 *however*, That the waste tire processing facility shall have a
72 capital cost of not less than three hundred million dollars, and
73 the council for community and economic development shall
74 determine that the waste tire processing facility is a viable
75 economic development project of benefit to the state's econ-
76 omy.

**§17-24-6. Creation of the A. James Manchin fund; proceeds
from sale of waste tires; fee on issuance of certifi-
cate of title; performance review.**

1 (a) There is hereby created in the state treasury a special
2 revenue fund known as the "A. James Manchin Fund". All
3 moneys appropriated, deposited or accrued in this fund shall be
4 used exclusively for remediation of waste tire piles as required
5 by this article for the tire disposal program established under
6 section four of this article or for the purposes of subsection (h),
7 section four of this article or for the purposes of subsection (c),
8 section five of this article. The fund shall consist of the pro-
9 ceeds from the sale of waste tires; fees collected by the division
10 of motor vehicles as provided for in section sixteen, article ten,
11 chapter seventeen-a of this code; any federal, state or private
12 grants; legislative appropriations; loans; and any other funding
13 source available for waste tire remediation. Any balance
14 remaining in the fund at the end of any state fiscal year shall not

15 revert to the state treasury, but shall remain in this fund and be
16 used only in a manner consistent with the requirements of this
17 article.

18 (b) No further collections or deposits shall be made after
19 the commissioner certifies to the governor and the Legislature
20 that the remediation of all waste tire piles that were determined
21 by the commissioner to exist on the first day of June, two
22 thousand one, has been completed and that all infrastructure
23 bonds issued by the water development authority pursuant to
24 section seventeen-a, article fifteen-a of chapter thirty-one of this
25 code have been paid in full or legally defeased.

26 (c) The joint committee on government operations shall,
27 pursuant to authority granted in article ten, chapter four of this
28 code, conduct a preliminary performance review of the divi-
29 sion's compliance with the waste tire remediation mandated in
30 this article; whether the purposes of this article have been met;
31 and whether it is appropriate to terminate this program. In
32 conducting such preliminary performance review, the commit-
33 tee shall follow the guidelines established in this article. A
34 preliminary review shall be completed on or before the first day
35 of January, two thousand four.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin fund.

1 Notwithstanding any other provision of this code to the
2 contrary, the water development authority may issue, in
3 accordance with the provisions of section seventeen of this
4 article, infrastructure revenue bonds payable from the A. James
5 Manchin fund created by section six, article twenty-four,

- 6 chapter seventeen of this code and such other sources as may be
7 legally pledged for such purposes other than the West Virginia
8 infrastructure revenue debt service fund created by section
9 seventeen of this article.

CHAPTER 252

**(Com. Sub. for S. B. 170 — By Senators Kessler, Prezioso, Ross,
Minard, Sharpe, Unger, Plymale, Weeks, Oliverio, Boley,
Facemyer, Love, Bailey, Minear, Harrison, McKenzie,
Sprouse, Bowman, Edgell, Deem, Guills, Dempsey,
Helmick, Hunter, Fanning and Smith)**

[Passed February 24, 2003; 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 two-i, relating to creating a women's right to know act; requiring informed consent for an abortion to be performed; requiring certain information to be supplied to women considering abortion; establishing minimum waiting period for abortions after having been supplied information; exception for a medical emergency; requiring physicians to report abortion statistics; requiring the secretary of the department of health and human resources to publish information and develop a website on alternatives to abortion; protecting privacy in court proceedings; exempting certain information from disclosure under the freedom of information act; administrative remedies; civil remedies; and penalties.

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 two-i, to read as follows:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

- §16-2I-1. Definitions.
- §16-2I-2. Informed consent.
- §16-2I-3. Printed information.
- §16-2I-4. Internet website.
- §16-2I-5. Procedure in case of medical emergency.
- §16-2I-6. Protection of privacy in court proceedings.
- §16-2I-7. Reporting requirements.
- §16-2I-8. Administrative remedies.
- §16-2I-9. Civil remedies.
- §16-2I-10. Severability.

§16-2I-1. Definitions.

1 For the purposes of this article, the words or phrases
2 defined in this section have these meanings ascribed to them.

3 (a) "Abortion" means the use or prescription of any
4 instrument, medicine, drug or any other substance or device
5 intentionally to terminate the pregnancy of a female known to
6 be pregnant with an intention other than to increase the proba-
7 bility of a live birth, to preserve the life or health of the child
8 after live birth or to remove a dead embryo or fetus.

9 (b) "Attempt to perform an abortion" means an act, or an
10 omission of a statutorily required act, that, under the circum-
11 stances as the actor believes them to be, constitutes a substantial
12 step in a course of conduct planned to culminate in the perfor-
13 mance of an abortion in West Virginia in violation of this
14 article.

15 (c) "Medical emergency" means any condition which, on
16 the basis of a physician's good-faith clinical judgment, so
17 complicates the medical condition of a pregnant female as to
18 necessitate the immediate termination of her pregnancy to avert

19 her death or for which a delay will create serious risk of
20 substantial and irreversible impairment of a major bodily
21 function.

22 (d) "Physician" means any medical or osteopathic doctor
23 licensed to practice medicine in this state.

24 (e) "Probable gestational age of the embryo or fetus" means
25 what, in the judgment of the physician, will with reasonable
26 probability be the gestational age of the embryo or fetus at the
27 time the abortion is planned to be performed.

28 (f) "Stable internet website" means a website that, to the
29 extent reasonably practicable, is safeguarded from having its
30 content altered other than by the department of health and
31 human resources.

§16-2I-2. Informed consent.

1 No abortion may be performed in this state except with the
2 voluntary and informed consent of the female upon whom the
3 abortion is to be performed. Except in the case of a medical
4 emergency, consent to an abortion is voluntary and informed if,
5 and only if:

6 (a) The female is told the following, by telephone or in
7 person, by the physician or the licensed health care professional
8 to whom the responsibility has been delegated by the physician
9 who is to perform the abortion at least twenty-four hours before
10 the abortion:

11 (1) The particular medical risks associated with the
12 particular abortion procedure to be employed, including, when
13 medically accurate, the risks of infection, hemorrhage, danger
14 to subsequent pregnancies and infertility;

15 (2) The probable gestational age of the embryo or fetus at
16 the time the abortion is to be performed; and

17 (3) The medical risks associated with carrying her child to
18 term.

19 The information required by this subsection may be
20 provided by telephone without conducting a physical examina-
21 tion or tests of the patient, in which case the information
22 required to be provided may be based on facts supplied by the
23 female to the physician or other licensed health care profes-
24 sional to whom the responsibility has been delegated by the
25 physician and whatever other relevant information is reasonably
26 available to the physician or other licensed health care profes-
27 sional to whom the responsibility has been delegated by the
28 physician. It may not be provided by a tape recording, but must
29 be provided during a consultation in which the physician or
30 licensed health care professional to whom the responsibility has
31 been delegated by the physician is able to ask questions of the
32 female and the female is able to ask questions of the physician
33 or the licensed health care professional to whom the responsi-
34 bility has been delegated by the physician.

35 If a physical examination, tests or the availability of other
36 information to the physician or other licensed health care
37 professional to whom the responsibility has been delegated by
38 the physician subsequently indicate, in the medical judgment of
39 the physician or the licensed health care professional to whom
40 the responsibility has been delegated by the physician, a
41 revision of the information previously supplied to the patient,
42 that revised information may be communicated to the patient at
43 any time prior to the performance of the abortion procedure.

44 Nothing in this section may be construed to preclude
45 provision of required information in a language understood by
46 the patient through a translator.

47 (b) The female is informed, by telephone or in person, by
48 the physician who is to perform the abortion, or by an agent of

49 the physician, at least twenty-four hours before the abortion
50 procedure:

51 (1) That medical assistance benefits may be available for
52 prenatal care, childbirth and neonatal care through governmen-
53 tal or private entities;

54 (2) That the father, if his identity can be determined, is
55 liable to assist in the support of her child based upon his ability
56 to pay even in instances in which the father has offered to pay
57 for the abortion; and

58 (3) That she has the right to review the printed materials
59 described in section three of this article, that these materials are
60 available on a state-sponsored website and the website address.

61 The physician or an agent of the physician shall orally
62 inform the female that the materials have been provided by the
63 state of West Virginia and that they describe the embryo or
64 fetus and list agencies and entities which offer alternatives to
65 abortion.

66 If the female chooses to view the materials other than on
67 the website, then they shall either be provided to her at least
68 twenty-four hours before the abortion or mailed to her at least
69 seventy-two hours before the abortion by first class mail in an
70 unmarked envelope.

71 The information required by this subsection may be
72 provided by a tape recording if provision is made to record or
73 otherwise register specifically whether the female does or does
74 not choose to have the printed materials given or mailed to her.

75 (c) The female shall certify in writing, prior to the abortion,
76 that the information described in subsections (a) and (b) of this
77 section has been provided to her and that she has been informed

78 of her opportunity to review the information referred to in
79 subdivision (3), subsection (b) of this section.

80 (d) Prior to performing the abortion procedure, the physi-
81 cian who is to perform the abortion or the physician's agent
82 shall obtain a copy of the executed certification required by the
83 provisions of subsection (c) of this section.

§16-2I-3. Printed information.

1 (a) Within ninety days of the effective date of this article,
2 the secretary of the department of health and human resources
3 shall cause to be published, in English and in each language
4 which is the primary language of two percent or more of the
5 state's population, as determined by the most recent decennial
6 census performed by the U. S. census bureau, and shall cause to
7 be available on the website provided for in section four of this
8 article the following printed materials in such a way as to
9 ensure that the information is easily comprehensible:

10 (1) Geographically indexed materials designed to inform
11 the reader of public and private agencies and services available
12 to assist a female through pregnancy, upon childbirth and while
13 the child is dependent, including adoption agencies, which shall
14 include a comprehensive list of the agencies available, a
15 description of the services they offer and a description of the
16 manner, including telephone numbers. At the option of the
17 secretary of health and human resources, a 24-hour-a-day
18 telephone number may be established with the number being
19 published in such a way as to maximize public awareness of its
20 existence which may be called to obtain a list and description
21 of agencies in the locality of the caller and of the services they
22 offer; and

23 (2) Materials designed to inform the female of the probable
24 anatomical and physiological characteristics of the embryo or
25 fetus at two-week gestational increments from the time when a

26 female can be known to be pregnant to full term, including any
27 relevant information on the possibility of the embryo or fetus's
28 survival and pictures or drawings representing the development
29 of an embryo or fetus at two-week gestational increments:
30 *Provided*, That any such pictures or drawings must contain the
31 dimensions of the embryo or fetus and must be realistic and
32 appropriate for the stage of pregnancy depicted. The materials
33 shall be objective, nonjudgmental and designed to convey only
34 accurate scientific information about the embryo or fetus at the
35 various gestational ages. The material shall also contain
36 objective information describing the methods of abortion
37 procedures commonly employed, the medical risks commonly
38 associated with each procedure, the possible detrimental
39 psychological effects of abortion and the medical risks com-
40 monly associated with carrying a child to term.

41 (b) The materials referred to in subsection (a) of this section
42 shall be printed in a typeface large enough to be clearly legible.
43 The website provided for in section four of this article shall be
44 maintained at a minimum resolution of seventy dots per inch.
45 All pictures appearing on the website shall be a minimum of
46 200 x 300 pixels. All letters on the website shall be a minimum
47 of eleven-point font. All information and pictures shall be
48 accessible with an industry standard browser requiring no
49 additional plug-ins.

50 (c) The materials required under this section shall be
51 available at no cost from the department of health and human
52 resources upon request and in appropriate numbers to any
53 person, facility or hospital.

§16-2I-4. Internet website.

1 Within ninety days of the effective date of this article, the
2 secretary of the department of health and human resources shall
3 develop and maintain a stable internet website to provide the
4 information required to be provided pursuant to the provisions

5 of section three of this article. No information regarding
6 persons visiting the website may be collected or maintained.
7 The secretary of the department of health and human resources
8 shall monitor the website on a daily basis to prevent and correct
9 tampering.

§16-2I-5. Procedure in case of medical emergency.

1 When a medical emergency compels the performance of an
2 abortion, the physician shall inform the female, prior to the
3 abortion if possible, of the medical indications supporting the
4 physician's judgment that an abortion is necessary to avert her
5 death or that a 24-hour delay will create serious risk of substan-
6 tial and irreversible impairment of a major bodily function.

§16-2I-6. Protection of privacy in court proceedings.

1 In every civil or criminal proceeding or action brought
2 under this article, the court shall rule whether the anonymity of
3 any female upon whom an abortion has been performed or
4 attempted shall be preserved from public disclosure if she does
5 not give her consent to such disclosure. The court, upon motion
6 or sua sponte, shall make such a ruling and, upon determining
7 that her anonymity should be preserved, shall issue orders to the
8 parties, witnesses and counsel and shall direct the sealing of the
9 record and exclusion of individuals from courtrooms or hearing
10 rooms to the extent necessary to safeguard her identity from
11 public disclosure. Each such order shall be accompanied by
12 specific written findings explaining why the anonymity of the
13 female should be preserved from public disclosure, why the
14 order is essential to that end, how the order is narrowly tailored
15 to serve that interest and why no reasonable, less restrictive
16 alternative exists. In the absence of written consent of the
17 female upon whom an abortion has been performed or at-
18 tempted, anyone, other than a public official, who brings an
19 action under section nine of this article shall do so under a

20 pseudonym. This section may not be construed to conceal the
21 identity of the plaintiff or of witnesses from the defendant.

§16-2I-7. Reporting requirements.

1 (a) Within ninety days of the effective date of this article,
2 the secretary of the department of health and human resources
3 shall prepare a reporting form for physicians containing a
4 reprint of this article and listing:

5 (1) The number of females to whom the information
6 described in subsection (a), section two of this article was
7 provided;

8 (2) The number of females to whom the physician or an
9 agent of the physician provided the information described in
10 subsection (b), section two of this article;

11 (3) The number of females who availed themselves of the
12 opportunity to obtain a copy of the printed information de-
13 scribed in section three of this article other than on the website;

14 (4) The number of abortions performed in cases involving
15 medical emergency; and

16 (5) The number of abortions performed in cases not
17 involving a medical emergency.

18 (b) The secretary of the department of health and human
19 resources shall ensure that copies of the reporting forms
20 described in subsection (a) of this section are provided:

21 (1) Within one hundred twenty days after the effective date
22 of this article to all physicians licensed to practice in this state;

23 (2) To each physician who subsequently becomes newly
24 licensed to practice in this state, at the same time as official

25 notification to that physician that the physician is so licensed;
26 and

27 (3) By the first day of December of each year, other than
28 the calendar year in which forms are distributed in accordance
29 with subdivision (1) of this subsection, to all physicians
30 licensed to practice in this state.

31 (c) By the twenty-eighth day of February of each year
32 following a calendar year in any part of which this act was in
33 effect, each physician who provided, or whose agent provided,
34 information to one or more females in accordance with section
35 two of this article during the previous calendar year shall
36 submit to the secretary of the department of health and human
37 resources a copy of the form described in subsection (a) of this
38 section with the requested data entered accurately and com-
39 pletely.

40 (d) Reports that are not submitted by the end of a grace
41 period of thirty days following the due date are subject to a late
42 fee of five hundred dollars for each additional thirty-day period
43 or portion of a thirty-day period they are overdue. Any physi-
44 cian required to report in accordance with this section who has
45 not submitted a report, or has submitted only an incomplete
46 report, more than one year following the due date may, in an
47 action brought by the secretary of the department of health and
48 human resources, be directed by a court of competent jurisdic-
49 tion to submit a complete report within a period stated by court
50 order or be subject to sanctions for civil contempt.

51 (e) By the first day of August of each year, the secretary of
52 the department of health and human resources shall issue a
53 public report providing statistics for the previous calendar year
54 compiled from all of the reports covering that year submitted in
55 accordance with this section for each of the items listed in
56 subsection (a) of this section. Each report shall also provide the
57 statistics for all previous calendar years, adjusted to reflect any

58 additional information from late or corrected reports. The
59 secretary of the department of health and human resources shall
60 prevent any of the information from being included in the
61 public reports that could reasonably lead to the identification of
62 any physician who performed or treated an abortion, or any
63 female who has had an abortion, in accordance with subsection
64 (a), (b) or (c) of this section. Any information that could
65 reasonably lead to the identification of any physician who
66 performed or treated an abortion, or any female who has had an
67 abortion, in accordance with subsection (a), (b) or (c) of this
68 section is exempt from disclosure under the freedom of
69 information act, article one, chapter twenty-nine-b of this code.

70 (f) The secretary of the department of health and human
71 resources may propose rules for legislative approval in accor-
72 dance with the provisions of article three, chapter twenty-nine-a
73 of this code which alter the dates established by subdivision (3),
74 subsection (b) of this section or subsection (c) or (e) of this
75 section or consolidate the forms or reports described in this
76 section with other forms or reports to achieve administrative
77 convenience or fiscal savings or to reduce the burden of
78 reporting requirements, so long as reporting forms are sent to
79 all licensed physicians in the state at least once every year and
80 the report described in subsection (e) of this section is issued at
81 least once every year.

§16-2I-8. Administrative remedies.

1 (a) Any person or entity may make a complaint to the
2 licensing board, if any, of a person whose conduct is regulated
3 by the provisions of this article and may charge such person
4 with a violation of this article.

5 (b) Any physician or agent thereof who willfully violates
6 the provisions of this article is subject to sanctions by the
7 licensing board governing his or her profession. For the first
8 violation, the licensing board shall issue a written reprimand to

9 the violator. For the second violation, the licensing board shall
10 revoke the violator's license.

11 (c) No penalty or civil liability may be assessed for failure
12 to comply with paragraph (3), subsection (b), section two of this
13 article or that portion of subsection (c) of said section requiring
14 a written certification that the female has been informed of her
15 opportunity to review the information referred to in paragraph
16 (3), of subsection (b) of said section unless the department of
17 health and human resources has made the printed materials
18 available at the time the physician or the licensed health care
19 professional to whom the responsibility has been delegated by
20 the physician is required to inform the female of her right to
21 review them.

§16-2I-9. Civil remedies.

1 Any person upon whom an abortion has been attempted or
2 performed without section two of this article having been
3 complied with may maintain an action against the person who
4 attempted to perform or did perform the abortion with a
5 knowing or consciously, subjectively and deliberately formed
6 intention to violate this article for compensatory damages. If the
7 person upon whom an abortion has been attempted or per-
8 formed without section two of this article having been complied
9 with is a minor, the legal guardian of the minor may maintain
10 an action against the person who attempted to perform or did
11 perform the abortion with a knowing or consciously, subjec-
12 tively and deliberately formed intention to violate this article
13 for compensatory damages.

§16-2I-10. Severability.

1 If any one or more provision, section, subsection, sentence,
2 clause, phrase or word of this article or the application thereof
3 to any person or circumstance is found to be unconstitutional,
4 the same is hereby declared to be severable and the balance of

5 this article shall remain effective notwithstanding such uncon-
6 stitutionality. The Legislature hereby declares that it would
7 have passed this article, and each provision, section, subsection,
8 sentence, clause, phrase or word thereof, irrespective of the fact
9 that any one or more provision, section, subsection, sentence,
10 clause, phrase or word be declared unconstitutional.

CHAPTER 253

(S. B. 626 — By Senator Prezioso)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-one, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, sixteen and nineteen of said article, all relating to the “West Virginia Works Act”; repealing rainy day fund; amending short title throughout article; revising legislative findings and purpose; eliminating performance-based measures for evaluating the program; redefining terms; striking out provision that the secretary shall ensure availability of support services to help meet program’s requirements; reducing period of exemption from work requirement for beneficiaries with newborn children; requiring beneficiaries to participate in family assessments; providing that personal responsibility contract is defined by time limits, availability of support services, program work requirements and family assessments; eliminating consideration of participants’ challenges in meeting program requirements for purposes of the personal responsibility contract; deleting guidelines for developing individualized personal responsibility contracts and authorizing secretary to define contracts by rule instead; retaining cash

incentive for married beneficiaries; reducing child support pass-through by fifty percent; providing sanctions for breach of contract by beneficiary; providing for reduction of benefits rather than revocation; providing for good cause exceptions to imposition of sanctions; reducing the period of benefit termination; reducing the period for obtaining diversionary assistance; and deleting provision that at-risk families may retain a portion of cash assistance when earnings are below the federal poverty guideline.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. WV WORKS ACT.

- §9-9-1. Short title.
- §9-9-2. Legislative findings; purpose.
- §9-9-3. Definitions.
- §9-9-4. Authorization for program.
- §9-9-5. WV works program fund.
- §9-9-6. Program participation.
- §9-9-7. Work requirements.
- §9-9-8. Exemptions.
- §9-9-9. Personal responsibility contract.
- §9-9-10. Participation limitation; exceptions.
- §9-9-11. Breach of contract; notice; sanctions.
- §9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
- §9-9-13. Subsidized employment.
- §9-9-14. Transitional assistance.
- §9-9-16. Intergovernmental coordination.
- §9-9-19. Legislative oversight.

§9-9-1. Short title.

- 1 This article may be cited as the “WV Works Act”.

§9-9-2. Legislative findings; purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The entitlement of any person to receive federal-state
3 cash assistance is hereby discontinued;

4 (2) At-risk families are capable of becoming self-support-
5 ing;

6 (3) An assistance program should both expect and assist a
7 parent and caretaker-relatives in at-risk families to support their
8 dependent children and children for which they are caretakers;

9 (4) Every parent or caretaker-relative can exhibit responsi-
10 ble patterns of behavior so as to be a positive role model;

11 (5) Every parent or caretaker-relative who receives cash
12 assistance has a responsibility to participate in an activity to
13 help them prepare for, obtain and maintain gainful employment;

14 (6) For a parent or caretaker-relative who receives cash
15 assistance and for whom full-time work is not feasible, partici-
16 pation in some activity is required to further himself or herself,
17 his or her family or his or her community;

18 (7) The state should promote the value of work and the
19 capabilities of individuals;

20 (8) Job development efforts should enhance the employ-
21 ment opportunities of participants;

22 (9) Education is the key to achieving and maintaining
23 life-long self-sufficiency; and

24 (10) An assistance program should be structured to achieve
25 a clear set of outcomes; deliver services in an expedient,

26 effective and efficient manner; and maximize community
27 support for participants.

28 (b) The goals of the program are to achieve more efficient
29 and effective use of public assistance funds; reduce dependency
30 on public programs by promoting self-sufficiency; and structure
31 the assistance programs to emphasize employment and personal
32 responsibility. The success of the program is to be evaluated on
33 the following activities, including, but not limited to, the
34 following: Job entry, job retention, federal work participation
35 requirements and completion of educational activities.

§9-9-3. Definitions.

1 In addition to the rules for the construction of statutes in
2 section ten, article two, chapter two of this code and the words
3 and terms defined in section two, article one of this chapter,
4 unless a different meaning appears from the context:

5 (a) "At-risk family" means a group of persons living in the
6 same household, living below the federally designated poverty
7 level, lacking the resources to become self-supporting and
8 consisting of a dependent minor child or children living with a
9 parent, stepparent or caretaker-relative; an "at-risk family" may
10 include an unmarried minor parent and his or her dependent
11 child or children who live in an adult-supervised setting;

12 (b) "Beneficiary" or "participant" means any parent or
13 caretaker-relative in an at-risk family who receives cash
14 assistance for himself or herself and family members;

15 (c) "Cash assistance" means temporary assistance for needy
16 families;

17 (d) "Challenge" means any fact, circumstance or situation
18 that prevents a person from becoming self-sufficient or from
19 seeking, obtaining or maintaining employment of any kind,

20 including physical or mental disabilities, lack of education,
21 testing, training, counseling, child care arrangements, transpor-
22 tation, medical treatment or substance abuse treatment;

23 (e) "Community or personal development" means activities
24 designed or intended to eliminate challenges to participation in
25 self-sufficiency activities. These activities are to provide
26 community benefit and enhance personal responsibility,
27 including, but not limited to, classes or counseling for learning
28 life skills or parenting, dependent care, job readiness, volunteer
29 work, participation in sheltered workshops or substance abuse
30 treatment;

31 (f) "Department" means the state department of health and
32 human resources;

33 (g) "Education and training" means hours spent regularly
34 attending and preparing for classes in any approved course of
35 schooling or training;

36 (h) "Family assessments" means evaluation of the follow-
37 ing: Work skills, prior work experience, employability, educa-
38 tion and challenges to becoming self-sufficient such as mental
39 health and physical health issues along with lack of transporta-
40 tion and child care;

41 (i) "Income" means money received by any member of an
42 at-risk family which can be used at the discretion of the
43 household to meet its basic needs: *Provided*, That income does
44 not include:

45 (1) Supplemental security income paid to any member or
46 members of the at-risk family;

47 (2) Earnings of minor children;

48 (3) Payments received from earned income tax credit or tax
49 refunds;

50 (4) Earnings deposited in an individual development
51 account approved by the department;

52 (5) Any educational grant or scholarship income regardless
53 of source; or

54 (6) Any moneys specifically excluded from countable
55 income by federal law;

56 (j) "Personal responsibility contract" means a written
57 agreement entered into by the department and a beneficiary for
58 purposes of participation in the WV works program;

59 (k) "Secretary" means the secretary of the state department
60 of health and human resources;

61 (l) "Subsidized employment" means employment with
62 earnings provided by an employer who receives a subsidy from
63 the department for the creation and maintenance of the employ-
64 ment position;

65 (m) "Support services" includes, but is not limited to, the
66 following services: Child care; medicaid; transportation
67 assistance; information and referral; resource development
68 services which includes assisting families to receive child
69 support and supplemental security income; family support
70 services which includes parenting, budgeting and family
71 planning; relocation assistance; and mentoring services;

72 (n) "Transitional assistance" may include medical assis-
73 tance, food stamp assistance, child care and supportive services
74 as defined by the secretary and as funding permits;

75 (o) "Unsubsidized employment" means employment with
76 earnings provided by an employer who does not receive a
77 subsidy from the department for the creation and maintenance
78 of the employment position;

79 (p) “Work” means unsubsidized employment, subsidized
80 employment, work experience, community or personal develop-
81 ment and education and training; and

82 (q) “Work experience” means unpaid structured work
83 activities that are provided in an environment where perfor-
84 mance expectations are similar to those existing in unsubsidized
85 employment and which provide training in occupational areas
86 that can realistically be expected to lead to unsubsidized
87 employment.

§9-9-4. Authorization for program.

1 (a) The secretary shall conduct the WV works program in
2 accordance with this article and any applicable regulations
3 promulgated by the secretary of the federal department of
4 health and human services in accordance with federal block-
5 grant funding or similar federal funding stream. This program
6 shall expend only the funds appropriated by the Legislature to
7 establish and operate the program or any other funds available
8 to the program; establish administrative due process procedures
9 for reduction or termination proceedings; and implement any
10 other procedures necessary to accomplish the purpose of this
11 article.

12 (b) The WV works program authorized pursuant to this
13 article does not create an entitlement to that program or any
14 services offered within that program, unless entitlement is
15 created pursuant to a federal law or regulation. The WV works
16 program and each component of that program established by
17 this article or the expansion of any component established
18 pursuant to federal law or regulation is subject to the annual
19 appropriation of funds by the Legislature.

20 (c) Copies of all rules proposed pursuant to authority
21 granted in this article by the secretary shall be filed with the
22 legislative oversight commission on health and human re-

23 sources accountability established pursuant to article twenty-
24 nine-e, chapter sixteen of this code.

§9-9-5. WV works program fund.

1 There is continued a special account within the state
2 treasury to be known as the "WV Works Program Fund".
3 Expenditures from the fund shall be used exclusively to meet
4 the necessary expenditures of the program, including wage
5 reimbursements to participating employers, temporary assis-
6 tance to needy families, payments for support services,
7 employment-related child care payments, transportation
8 expenses and administrative costs directly associated with the
9 operation of the program. Moneys paid into the account shall be
10 from specific annual appropriations of funds by the Legislature.

§9-9-6. Program participation.

1 (a) Unless otherwise noted in this article, all adult benefi-
2 ciaries of cash assistance shall participate in the WV works
3 program in accordance with the provisions of this article. The
4 level of participation, services to be delivered and work
5 requirements shall be defined through rules established by the
6 secretary.

7 (b) Any individual exempt under the provisions of section
8 eight of this article may participate in the activities and pro-
9 grams offered through the WV works program.

10 (c) Support services other than cash assistance through the
11 WV works program may be provided to at-risk families to assist
12 in meeting the work requirements or to eliminate the need for
13 cash assistance.

14 (d) Cash assistance through the WV works program may be
15 provided to an at-risk family if the combined family income, as
16 defined in subsection (h), section three of this article, is below

17 the income test levels established by the department: *Provided,*
18 That any adult member of an at-risk family who receives
19 supplemental security income shall be excluded from the
20 benefit group: *Provided, however,* That, within the limits of
21 funds appropriated therefor, an at-risk family that includes a
22 married man and woman and dependent children of either one
23 or both may receive an additional cash assistance benefit in an
24 amount of one hundred dollars or less: *Provided further,* That
25 an at-risk family shall receive an additional cash assistance
26 benefit in the amount of twenty-five dollars regardless of the
27 amount of child support collected in a month on behalf of a
28 child or children of the at-risk family, as allowed by federal
29 law.

§9-9-7. Work requirements.

1 (a) Unless otherwise exempted by the provisions of section
2 eight of this article, the WV works program shall require that
3 anyone who possesses a high school diploma, or its equivalent,
4 or anyone who is of the age of twenty years or more, to work or
5 attend an educational or training program for at least the
6 minimum number of hours per week required by federal law
7 under the work participation rate requirements for all families
8 in order to receive any form of cash assistance. Participation in
9 any education or training activity, as defined in section three of
10 this article, shall be counted toward satisfaction of the work
11 requirement imposed by this section to the extent permissible
12 under federal law and regulation: *Provided,* That the participant
13 demonstrates adequate progress toward completion of the
14 program: *Provided, however,* That participants who are enrolled
15 in post-secondary courses leading to a two- or four-year degree
16 may be required to engage in no more than ten hours per week
17 of federally defined work activities, unless the department
18 certifies that allowing education to count toward required work
19 activities would affect the state's ability to meet federal work
20 participation rates. In accordance with federal law or regulation,

21 the work, education and training requirements of this section
22 are waived for any qualifying participant with a child under six
23 years of age if the participant is unable to obtain appropriate
24 and available child care services.

25 (b) The department and representatives of all college and
26 university systems of West Virginia shall develop and imple-
27 ment a plan to use and expand the programs available at the
28 state's community and technical colleges, colleges and univer-
29 sities to assist beneficiaries or participants who are enrolled or
30 wish to become enrolled in two and four-year degree programs
31 of post-secondary education to meet the work requirements of
32 this section.

§9-9-8. Exemptions.

1 The secretary shall establish by rule categories of persons
2 exempt, but the exemption applies only to the work require-
3 ments of the program: *Provided*, That a person who is exempt
4 from the work requirements may nevertheless participate
5 voluntarily in work activities. The categories of exemption shall
6 include, but are not limited to, the following:

7 (a) A parent caring for a dependent child with a
8 life-threatening illness;

9 (b) Individuals over the age of sixty years;

10 (c) Full-time students who are less than twenty years of age
11 and are pursuing a high school diploma or its equivalent;

12 (d) Persons with a physical or mental incapacity or persons
13 suffering from a temporary debilitating injury lasting more than
14 thirty days, as defined by the secretary;

15 (e) Relatives providing in-home care for an individual who
16 would otherwise be institutionalized; and

17 (f) Any beneficiary who has a child in his or her at-risk
18 family which has not attained twelve months of age, for a
19 period of six months, and for a period of six months upon the
20 birth of any additional child: *Provided*, That no more than one
21 beneficiary in an at-risk family may be exempt at the same
22 time.

§9-9-9. Personal responsibility contract.

1 (a) (1) Every eligible adult beneficiary shall participate in
2 a program orientation, family assessments and in the develop-
3 ment, and subsequent revisions, of a personal responsibility
4 contract. The contract shall be defined based on the program
5 time limits, support services available, work requirements and
6 family assessments.

7 (2) The participant's contract shall include the following
8 requirements: That the participant develop and maintain, with
9 the appropriate health care provider, a schedule of preventive
10 care for his or her dependent child or children, including routine
11 examinations and immunizations; assurance of school atten-
12 dance for school-age children under his or her care; assurance
13 of properly supervised child care, including after-school care;
14 establishment of paternity or active pursuit of child support, or
15 both, if applicable and if considered necessary; and nutrition or
16 other counseling, parenting or family-planning classes.

17 (3) If the participant is a teenage parent, he or she may
18 work, but the contract shall include the requirements that the
19 participant:

20 (A) Remain in an educational activity to complete high
21 school, obtain a general equivalency diploma or obtain voca-
22 tional training and make satisfactory scholastic progress;

23 (B) Attend parenting classes or participate in a mentorship
24 program, or both, if appropriate; and

25 (C) Live at home with his or her parent or guardian or in
26 some other adult-supervised arrangements if he or she is an
27 unemancipated minor.

28 (4) If the participant is under the age of twenty years and
29 does not have a high school diploma or its equivalent, the
30 contract shall include requirements to participate in mandatory
31 education or training which, if the participant is unemployed,
32 may include a return to high school, with satisfactory scholastic
33 progress required.

34 (b) In order to receive cash assistance, the participant shall
35 enter into a personal responsibility contract. If the participant
36 refuses to sign the personal responsibility contract, the partici-
37 pant and family members are ineligible to receive cash assis-
38 tance: *Provided*, That a participant who alleges that the terms
39 of a personal responsibility contract are inappropriate based on
40 his or her individual circumstances may request and shall be
41 provided a fair and impartial hearing in accordance with
42 administrative procedures established by the department and
43 due process of law. A participant who signs a personal responsi-
44 bility contract or complies with a personal responsibility
45 contract does not waive his or her right to request and receive
46 a hearing under this subsection.

47 (c) Personal responsibility contracts shall be drafted by the
48 department on a case-by-case basis; take into consideration the
49 individual circumstances of each beneficiary; reviewed and
50 reevaluated periodically, but not less than on an annual basis;
51 and, in the discretion of the department, amended on a periodic
52 basis.

§9-9-10. Participation limitation; exceptions.

1 The length of time a participant may receive cash assistance
2 through the WV works program may not exceed a period longer

3 than sixty months, except in circumstances as defined by the
4 secretary.

§9-9-11. Breach of contract; notice; sanctions.

1 (a) The department may terminate cash assistance benefits
2 to an at-risk family if it finds any of the following:

3 (1) Fraud or deception by the beneficiary in applying for or
4 receiving program benefits;

5 (2) A substantial breach by the beneficiary of the require-
6 ments and obligations set forth in the personal responsibility
7 contract and any amendments or addenda to the contract; or

8 (3) A violation by the beneficiary of any provision of the
9 personal responsibility contract or any amendments or addenda
10 to the contract, this article, or any rule promulgated by the
11 secretary pursuant to this article.

12 (b) In the event the department determines that benefits
13 received by the beneficiary are subject to reduction or termina-
14 tion, written notice of the reduction or termination and the
15 reason for the reduction or termination shall be deposited in the
16 United States mail, postage prepaid and addressed to the
17 beneficiary at his or her last known address at least thirteen
18 days prior to the termination or reduction. The notice shall state
19 the action being taken by the department and grant to the
20 beneficiary a reasonable opportunity to be heard at a fair and
21 impartial hearing before the department in accordance with
22 administrative procedures established by the department and
23 due process of law.

24 (c) In any hearing conducted pursuant to the provisions of
25 this section, the beneficiary has the burden of proving that his
26 or her benefits were improperly reduced or terminated and shall
27 bear his or her own costs, including attorneys fees.

28 (d) The secretary shall determine by rule what constitutes
29 de minimis violations and those violations subject to sanctions
30 and maximum penalties. In the event the department finds that
31 a beneficiary has violated any provision of this article, of his or
32 her personal responsibility contract or any amendment or
33 addenda to the contract, or any applicable department rule, the
34 department shall impose sanctions against the beneficiary as
35 follows:

36 (1) For the first violation, a one-third reduction of benefits
37 for three months;

38 (2) For a second violation, a two-thirds reduction of
39 benefits for three months;

40 (3) For a third or subsequent violation, a total termination
41 of benefits for three months.

42 (e) For any sanction imposed pursuant to subsection (d) of
43 this section, if the beneficiary is found to have good cause for
44 noncompliance, as defined by the secretary, the reduction or
45 termination in benefits shall not be imposed and the violation
46 shall not count in determining the level of sanction to be
47 imposed for any future violation. Once a reduction in benefits
48 is in effect, it shall remain in effect for the designated time
49 period: *Provided*, That if a participant incurs a subsequent
50 sanction before the sanction for a previous violation has
51 expired, the sanctions shall run concurrently: *Provided*,
52 *however*, That if a third violation occurs before the period for
53 a previous sanction has expired, benefits shall be terminated
54 and may not be reinstated until the three-month termination
55 period has expired.

**§9-9-12. Diversionary assistance allowance in lieu of monthly
cash assistance.**

1 (a) In order to encourage at-risk families not to apply for
2 ongoing monthly cash assistance from the state, the secretary
3 may issue one-time diversionary assistance allowances to
4 families in an amount not to exceed the equivalent of three
5 months of cash assistance in order to enable the families to
6 become immediately self-supporting.

7 (b) The secretary shall establish by rule the standards to be
8 considered in making diversionary assistance allowances.

9 (c) Nothing in this section may be construed to require that
10 the department or any assistance issued pursuant to this section
11 be subject to any of the provisions of chapter thirty-one or
12 chapter forty-six-a of this code.

§9-9-13. Subsidized employment.

1 (a) To the extent that resources are available, an employer
2 may be paid a subsidy by the department to employ a parent or
3 caretaker-relative of an at-risk family if the employer agrees to
4 hire the WV works program participant at the end of the
5 subsidized period. If the employer does not hire the participant
6 at the end of the subsidized period, the program may not use
7 that employer for subsidized employment for the next twelve
8 months.

9 (b) If the department determines that an employer has
10 demonstrated a pattern of discharging employees hired pursuant
11 to the provisions of this section subsequent to the expiration of
12 the subsidized period without good cause, the employer shall no
13 longer be eligible for participation in the subsidized employ-
14 ment program for a period to be determined by the department.

§9-9-14. Transitional assistance.

1 The WV works program may provide transitional assistance
2 in the form of supportive services.

§9-9-16. Intergovernmental coordination.

1 (a) The commissioner of the bureau of employment
2 programs and the superintendent of the department of education
3 shall assist the secretary in the establishment of the WV works
4 program. Before implementation of this program, each depart-
5 ment shall address in its respective plan the method in which its
6 resources will be devoted to facilitate the identification of or
7 delivery of services for participants and shall coordinate its
8 respective programs with the department in the provision of
9 services to participants and their families. Each county board of
10 education shall designate a person to coordinate with the local
11 department of health and human resources office the board's
12 services to participant families and that person shall work to
13 achieve coordination at the local level.

14 (b) The secretary and the superintendent shall develop a
15 plan for program implementation to occur with the use of
16 existing state facilities and county transportation systems within
17 the project areas whenever practicable. This agreement shall
18 include, but not be limited to, the use of buildings, grounds and
19 buses. Whenever possible, the supportive services, education
20 and training programs should be offered at the existing school
21 facilities.

22 (c) The commissioner shall give priority to participants of
23 the WV works program within the various programs of the
24 bureau of employment programs. The secretary and the
25 commissioner shall develop reporting and monitoring mecha-
26 nisms between their respective agencies.

§9-9-19. Legislative oversight.

1 The legislative oversight commission on health and human
2 resources accountability is charged with immediate and
3 ongoing oversight of the program created by this article. This
4 commission shall study, review and examine the work of the

5 program, the department and its staff; study, review and
6 examine all rules proposed by the department; and monitor the
7 development and implementation of the WV works program.
8 The commission shall review and make recommendations to the
9 Legislature and the legislative rule-making review committee
10 regarding any plan, policy or rule proposed by the secretary, the
11 department or the program.

CHAPTER 254

(H. B. 3050 — By Delegates Manuel, Tabb and Doyle)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to convey a parcel of county-owned land to the Jefferson County Fair Association after authorization by a majority vote of the county commission of Jefferson County; and requiring reversionary rights provision.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to convey land to the Jefferson County Fair Association.

1 (a) The Legislature finds that:

2 (1) An adequate site is necessary for the citizens of Jeffer-
3 son County to conduct a county fair to enable youth and adults
4 to exhibit livestock, horticultural products, agricultural products
5 and home economic skills;

6 (2) Transfers of property, real or personal, made by county
7 commissions to any person, organization or corporation for the
8 furtherance of county fair activities promotes the cultural and
9 educational welfare of the public and, therefore, is a public
10 purpose; and

11 (3) Transfers and conveyances of real property by county
12 commissions are authorized without legislative approval, by
13 article three, chapter seven of the code of West Virginia, as
14 amended.

15 (b) Therefore, the Legislature declares that the county
16 commission of Jefferson County is hereby authorized and
17 empowered to transfer and convey unto the Jefferson County
18 Fair Association the tract or parcel of land described in subsec-
19 tion (c), after the county commission of Jefferson County has
20 approved such transfer and conveyance by a majority vote of
21 the commission.

22 (c) The tract or parcel of land situate in Middleway District,
23 Jefferson County, West Virginia, to the north of West Virginia
24 County Route 15 (Leetown Road), approximately 0.5 mile east
25 of its intersection with WV Co. Rte. 6, on the waters of
26 Hopewell Run, more particularly described as follows:

27 Beginning at (200) a found No. 5 Capped Rebar (Shepp),
28 corner in the line of the Jefferson County Volunteer Fireman
29 Association (D.B. 346, P. 603) and to the Jefferson County Fair
30 Association (D.B. 754, P. 48), thence leaving the Jefferson
31 County Volunteer Fireman Association and with the Jefferson
32 County Fair Association in part and finally with a 13.457 acre
33 Lease Parcel of the Overseers of the Poor of Jefferson County
34 (now the Jefferson County Commission, Lease recorded in D.B.
35 931, P. 581) N 65°00'00" W, 1367.26', passing (211) a Set No.
36 5 Capped Rebar at 931.09', corner to the above mentioned
37 Lease Parcel, to (347) a Set No. 5 Capped Rebar, corner to the
38 above mentioned Lease Parcel; thence again with the Lease

39 Parcel S $26^{\circ} 58' 25''$ W, 182.62', to (216) a Set No. 5 Capped
40 Rebar, corner to the Lease Parcel and to the Jefferson County
41 Solid Waste Authority (D.B. 778, P. 630), said corner being
42 located N $26^{\circ} 58' 25''$ E, 1183.82', from (472) a Set No. 5
43 Capped Rebar; thence leaving the Lease Parcel and with the
44 Jefferson County Solid Waste Authority N $22^{\circ} 17' 06''$ W,
45 166.82', to (38) a Found No. 5 Capped Rebar (Shepp) corner to
46 the Jefferson County Solid Waste Authority (D.B. 778, P. 630)
47 and to other lands of the Jefferson County Solid Waste Author-
48 ity (D.B. 665., P. 201); thence with said other lands of the
49 Jefferson County Solid Waste Authority (D.B. 665, P.201) N
50 $32^{\circ} 53' 05''$ E, 1147.92', to (34) a Found No. 5 Capped Rebar
51 (Shepp), corner to the Jefferson County Solid Waste Authority
52 (D.B. 665, P. 201) and to Tabb (D.B. 770, P. 581); thence with
53 Tabb S $55^{\circ} 03' 35''$ E, 1440.31', to (345) a Set No. 5 Capped
54 Rebar, corner to Tabb and the aforementioned Jefferson County
55 Volunteer Fireman Association, thence with the Jefferson
56 County Volunteer Fireman Association S $30^{\circ} 34' 53''$ W,
57 822.99', to (200) the Point of Beginning containing 32.145
58 acres, more or less, as surveyed by Appalachian Surveys of
59 West Virginia, L.L.C., in May, 2001, and as shown on the Plat
60 of Survey.

61 Being a part of the property conveyed to the Overseers of
62 the Poor of Jefferson County (now the Jefferson County
63 Commission), by deed of record in the office of the clerk of the
64 county commission of Jefferson County in Deed Book 38 at
65 page 24.

66 (d) Any proper conveyance made by the county commis-
67 sion of Jefferson County transferring ownership of the tract or
68 parcel of land, described in subsection (c), to the Jefferson
69 County Fair Association shall contain a provision that owner-
70 ship of the tract or parcel of land, described in subsection (c),
71 shall revert to the county commission of Jefferson County
72 should the land cease to be used for the purpose of conducting
73 a county fair.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2003

CHAPTER 1

**(H. B. 101 — By Delegates Michael, Doyle, Leach,
Mezzatesta, Warner and Hall)**

[Passed March 16, 2003; 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, from the state department of education-state aid to schools, fund 0317, fiscal year 2003, organization 0402, state fund, general revenue, to the state department of education, fund 0313, fiscal year 2003, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the state department of education-state aid to schools, fund 0317, fiscal year 2003, organization 0402, be amended and reduced in the line item as follows:

1 TITLE II-APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF EDUCATION**

4 *37—State Department of Education-*

5 *State Aid to Schools*

6 (WV Code Chapters 18 and 18A)

7 Fund 0317 FY 2003 Org 0402

8			General
9		Act-	Revenue
10		ivity	Funds
11	14 School Building Authority	453	\$ 707,000

12 And, that the items of the total appropriations from the state
 13 fund, general revenue, to the state department of education,
 14 fund 0313, fiscal year 2003, organization 0402, be amended and
 15 increased in the line item as follows:

16 TITLE II-APPROPRIATIONS.

17 **Section 1. Appropriations from general revenue.**

18 **DEPARTMENT OF EDUCATION**

19 *35—State Department of Education-*

20 (WV Code Chapters 18 and 18A)

21	Fund <u>0313</u> FY <u>2003</u> Org <u>0402</u>		
22			General
23		Act-	Revenue
24		ivity	Funds
25	4	Unclassified (R)	099 \$ 707,000

26 Any unexpended balance remaining in the appropriation for
27 Unclassified (fund 0313, activity 099) at the close of the fiscal
28 year 2003 is hereby reappropriated for expenditure during the
29 fiscal year 2004.

30 The purpose of this supplementary appropriation bill is to
31 supplement, amend, reduce and increase items of existing
32 appropriations in the aforesaid accounts for the designated
33 spending units. The funds are for expenditure during the fiscal
34 year two thousand three with no new money being appropri-
35 ated.

CHAPTER 2

(H. B. 102 — By Delegates Michael, Doyle, Leach,
Mezzatesta, Warner and Hall)

[Passed March 16, 2003; 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 three, in the amount of two million dollars from the premium tax savings fund, fund 2367, fiscal year 2003, organization 0218, and making a supplementary appropria-

tion of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of education and the arts-state board of rehabilitation-division of rehabilitation services, fund 0310, fiscal year 2003, organization 0932, and to the bureau of commerce-West Virginia development office, fund 0256, fiscal year 2003, organization 0307.

WHEREAS, The Legislature finds that the account balance in the premium tax savings fund, fund 2367, fiscal year 2003, organization 0218 exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the premium tax savings fund, fund 2367, fiscal year 2003, organization 0218 be decreased by expiring the amount of two million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the department of education and the arts-state board of rehabilitation-division of rehabilitation services, fund 0310, fiscal year 2003, organization 0932, be supplemented and amended by establishing a new line-item and increasing the total appropriation as follows:

1

TITLE II—APPROPRIATIONS.

2

Section. 1. Appropriations from general revenue

3 **DEPARTMENT OF EDUCATION AND THE ARTS**4 *45-State Board of Rehabilitation*5 *Division of Rehabilitation Services*

6 (WV Code Chapter 18)

7 Fund 0310 FY 2003 Org 0932

8							General
9							Revenue
10							Funds

11	11a	Capital Improvements - Surplus (R)	.	661	\$	550,000	
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12 Any unexpended balance remaining in the appropriation for
13 Capital Improvements - Surplus (fund 0310, activity 661) at the
14 close of fiscal year 2003 is hereby reappropriated for expendi-
15 ture during the fiscal year 2004.

16 And that the total appropriation for fiscal year ending the
17 thirtieth day of June, two thousand three, to the bureau of
18 commerce - West Virginia development office, fund 0256,
19 fiscal year 2003, organization 0307 be supplemented and
20 amended by increasing the total appropriations as follows:

21 **Section. 1. Appropriations from General Revenue.**22 **BUREAU OF COMMERCE**23 *73-West Virginia Development Office*

24 (WV Code Chapter 5B)

25 Fund 0256 FY 2003 Org 0307

							General Revenue Funds
26							
27						Act-	
28						ivity	
29	12	Mid-Atlantic Aerospace Complex -					
30		Surplus (R)	257	\$			200,000
31	38	Local Economic Development					
32	39	Assistance - Surplus (R)	266				1,250,000
33		Any unexpended balance remaining in the appropriation for					
34		Mid-Atlantic Aerospace Complex - Surplus (fund 0256, activity					
35		257) and Local Economic Development Assistance - Surplus					
36		(fund 0256, activity 266) at the close of fiscal year 2003 is					
37		hereby reappropriated for expenditure during the fiscal year					
38		2004.					
39		The purpose of this supplementary appropriation bill is to					
40		supplement, amend, decrease and increase items of existing					
41		appropriations in the aforesaid accounts for expenditure during					
42		the fiscal year two thousand three.					

CHAPTER 3

(H. B. 103 — By Delegates Michael, Doyle, Leach,
Mezzatesta, Warner and Hall)

[Passed March 16, 2003; 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 three, in the amount of three million three hundred fifty thousand dollars from the abandoned property

claims trust, fund 1324, fiscal year 2003, organization 1300, and making supplementary appropriations of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, to the governor's office, fund 0101, fiscal year 2003, organization 0100; and to the state department of education, fund 0313, fiscal year 2003, organization 0402; all for expenditure during the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature finds that the account balance in the abandoned property claims trust, fund 1324, fiscal year 2003, organization 1300, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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 three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, in the abandoned property claims trust, fund 1324, fiscal year 2003, organization 1300, be decreased by expiring the amount of three million three hundred fifty thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the governor's office, fund 0101, fiscal year 2003, organization 0100 be increased in the line item as follows:

1

TITLE II-APPROPRIATIONS.

2

Section 1. Appropriations from general revenue.

2056

APPROPRIATIONS

[Ch. 3

3

EXECUTIVE

4

5—Governor's Office

5

(WV Code Chapter 5)

6

Fund 0101 FY 2003 Org 0100

7

General

8

Act-

Revenue

9

ivity

Funds

10 10 Southern Governors' Association

11 - Surplus 962 \$ 150,000

12 Any unexpended balances remaining in the appropriations
13 for Southern Governors' Association - Surplus (fund 0101,
14 activity 962) at the close of the fiscal year 2003 are hereby
15 reappropriated for expenditure during the fiscal year 2004.

16 And, that the total appropriation for the fiscal year ending
17 the thirtieth day of June, two thousand three, to the state
18 department of education, fund 0313, fiscal year 2003, organiza-
19 tion 0402 be increased in the new line items as follows:

20

TITLE II-APPROPRIATIONS.

21

Section 1. Appropriations from general revenue.

22

DEPARTMENT OF EDUCATION

23

35—State Department of Education-

24

(WV Code Chapters 18 and 18A)

25

Fund 0313 FY 2003 Org 0402

26					General
27				Act-	Revenue
28				ivity	Funds
29	33a	Computer Basic Skills - Surplus . .	965	\$	1,000,000
30	33b	S.U.C.C.E.S.S - Surplus	964	\$	1,000,000
31	33c	Wyoming and McDowell			
32	33d	County Flood Reparations			
33	33e	- Surplus	963	\$	1,200,000

34 Any unexpended balances remaining in the appropriations
35 for Computer Basic Skills - Surplus (fund 0313, activity 965),
36 S.U.C.C.E.S.S. - Surplus (fund 0313, activity 964), and
37 Wyoming and McDowell County Flood Reparations - Surplus
38 (fund 0313, activity 963) at the close of the fiscal year 2003 are
39 hereby reappropriated for expenditure during the fiscal year
40 2004.

41 The purpose of this supplementary appropriation bill is to
42 supplement, amend, expire, reduce and increase items of
43 existing appropriations in the aforesaid accounts for the
44 designated spending units. The funds are for expenditure during
45 the fiscal year two thousand three with no new money being
46 appropriated.



CHAPTER 4

(H. B. 104 — By Delegates Michael, Doyle, Leach,
Mezzatesta, Warner and Hall)

[Passed March 16, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the balance of moneys remaining as an unappropriated balance in lottery net profits to the West Virginia development office-division of tourism, fund 3067, fiscal year 2003, organization 0304, the state department of education, fund 3951, fiscal year 2003, organization 0402, the educational broadcasting authority—lottery education fund, fund 3587, fiscal year 2003, organization 0439, and the higher education policy commission—lottery education—higher education policy commission—control account, fund 4925, fiscal year 2003, organization 0441, all supplementing, amending and increasing the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in lottery net profits, including that designated in the governor's lottery fund statement of revenues as "reserve for cash flow/contingencies," available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from lottery net profits to the West Virginia development office-division of tourism, fund 3067, fiscal year 2003, organization 0304, be amended and increased in the existing and new line items as follows:

1 TITLE II-APPROPRIATIONS.

2 **Section 4. Appropriations from lottery net profits.**

3 222—*West Virginia Development Office—*

4 *Division of Tourism*

5 (WV Code Chapter 5B)

6 Fund 3067 FY 2003 Org 0304

7		Act-	Lottery
8		ivity	Funds
9	8 Tourism-Special Projects(R).	859	\$1,000,000
10	8a Hatfield-McCoy Recreational Trail(R) .	960	500,000
11	8b Stonewall Jackson State Park (R).	959	5,000,000

12 Any unexpended balances remaining in the appropriations
13 for Tourism-Special Projects (fund 3067, activity 859),
14 Hatfield-McCoy Recreational Trail (fund 3067, activity 960),
15 and Stonewall Jackson State Park (fund 3067, activity 959) at
16 the close of the fiscal year 2003 are hereby reappropriated for
17 expenditure during the fiscal year 2004.

18 And, that the items of the total appropriations from lottery
19 net profits to the state department of education, fund 3951,
20 fiscal year 2003, organization 0402, be amended and increased
21 in the existing and new line items as follows:

22 TITLE II-APPROPRIATIONS.

23 Section 4. Appropriations from lottery net profits.

24 224—*State Department of Education*

25 (WV Code Chapters 18 and 18A)

26 Fund 3951 FY 2003 Org 0402

27		Act-	Lottery
28		ivity	Funds
29	1 Unclassified (R)	099	\$ 700,000
30	2 Teachers' Retirement System (R) . . .	019	1,000,000
31	28a Traditional Increased Enrollment -		
32	28b 5 years through 12 th grade (R) . . .	997	1,900,000

33 Any unexpended balances remaining in the appropriations
 34 for Unclassified (fund 3951, activity 099), Teachers' Retirement System (fund 3951, activity 019), and Traditional Increased Enrollment - 5 years through 12th grade (fund 3951, activity 997) at the close of the fiscal year 2003 are hereby
 38 reappropriated for expenditure during the fiscal year 2004.

39 And, that the items of the total appropriations from lottery
 40 net profits to the educational broadcasting authority—lottery
 41 education fund, fund 3587, fiscal year 2003, organization 0439,
 42 be amended and increased in the new line item as follows:

43 TITLE II-APPROPRIATIONS.

44 **Section 4. Appropriations from lottery net profits.**

45 229—*Educational Broadcasting Authority—*

46 *Lottery Education Fund*

47 (WV Code Chapter 10)

48 Fund 3587 FY 2003 Org 0439

49		Act-	Lottery
50		ivity	Funds
51	3a Lease Revenue Bonds	646	\$ 1,300,000

52 Any unexpended balances remaining in the appropriations
 53 for Lease Revenue Bonds (fund 3587, activity 646) at the close
 54 of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

56 And, that the items of the total appropriations from lottery
 57 net profits to the higher education policy commission—lottery
 58 education—higher education policy commission—control

59 account, fund 4925, fiscal year 2003, organization 0441, be
60 amended and increased in the new line items as follows:

61 TITLE II-APPROPRIATIONS.

62 **Section 4. Appropriations from lottery net profits.**

63 *231—Higher Education Policy Commission—*

64 *Lottery Education—*

65 *Higher Education Policy Commission—*

66 *Control Account*

67 (WV Code Chapters 18B and 18C)

68 Fund 4925 FY 2003 Org 0441

69		Act-	Lottery
70		ivity	Funds
71	30a West Virginia State College		
72	Land Grant Match (R)	956	\$ 1,200,000
73	30b Glenville State College (R)	428	400,000

74 Any unexpended balances remaining in the appropriations
75 for West Virginia State Land Grant Match (fund 4925, activity
76 956) and Glenville State College (fund 4925, activity 428) at
77 the close of the fiscal year 2003 are hereby reappropriated for
78 expenditure during the fiscal year 2004.

79 The purpose of this supplementary appropriation bill is to
80 increase items of appropriations in the aforesaid accounts for
81 the designated spending units.

CHAPTER 5

**(H. B. 105 — By Delegates Michael, Doyle, Leach,
Mezzatesta, Warner and Hall)**

[Passed March 16, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state excess lottery revenue fund, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of seventeen million one hundred thousand dollars from the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307; and transferring funds in the amount of eight million one hundred thousand dollars to the balance of the revenue shortfall reserve fund, fund 2038, fiscal year 2003, organization 0201.

WHEREAS, The Legislature finds that the fund balance in the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

- 1 That the balance of funds available for expenditure in the
- 2 fiscal year ending the thirtieth day of June, two thousand three,
- 3 in the economic development authority - economic develop-
- 4 ment project fund, fund 3167, fiscal year 2003, organization
- 5 0307, be decreased by expiring the amount of seventeen million
- 6 one hundred thousand dollars to the unappropriated balance in
- 7 the state excess lottery revenue fund.

8 And, that from the unappropriated balance of the state
9 excess lottery revenue fund, eight million one hundred thousand
10 dollars be transferred to the balance of the revenue shortfall
11 reserve fund, fund 2038, fiscal year 2003, organization 0201.

12 The purpose of this supplemental appropriation is to expire
13 funds to the unappropriated balance in the state excess lottery
14 revenue fund from the economic development authority -
15 economic development project fund, fund 3167, fiscal year
16 2003, organization 0307; and to transfer funds to the revenue
17 shortfall reserve fund, fund 2038, fiscal year 2003, organization
18 0201 from the unappropriated balance in the state excess lottery
19 revenue fund.

LEGISLATURE OF WEST VIRGINIA

**CONSTITUTIONAL
AMENDMENTS**

SECOND EXTRAORDINARY SESSION, 2002

HOUSE JOINT RESOLUTION 201

**(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Adopted by the Legislature July 15, 2002.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eight-a, relating to the issuance of bonds and other obligations by counties and municipalities; authorizing counties and municipalities to issue bonds and other obligations; providing that the bonds and other obligations be paid from certain revenues generated by increased property values

in the project or development area; numbering and designating the proposed amendment; and providing a summarized statement of the purpose of the proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand two, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eight-a, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§8a. Issuance of bonds or other obligations payable from property taxes on increases in value due to economic development or redevelopment projects in counties and municipalities.

1 Notwithstanding any other provision of this Constitution to
2 the contrary, the Legislature by general law may authorize the
3 issuance of revenue bonds or other obligations by counties and
4 municipalities to assist in financing qualified economic
5 development or redevelopment projects that benefit public
6 health, welfare and safety subject to conditions, restrictions or
7 limitations as the Legislature may prescribe by general law.

8 The bonds or other obligations are payable from property
9 tax revenues generated by the increases in value of property
10 located within the development or redevelopment project area
11 or district due to capital investment in the project. The Legisla-
12 ture shall prescribe by general law the manner in which these
13 increases are determined.

14 The term for any bonds or other obligations issued may not
15 exceed thirty tax years. The bonds or other obligations may not
16 be deemed to be general obligations of the issuing county or

17 municipality or of this state. The bonds or other obligations
18 may provide for the pledge of any other funds as the owner of
19 the improvements may by contract or otherwise be required to
20 pay. Upon payment in full of the bonds, the increased tax
21 revenues shall revert to the levying bodies authorized under the
22 provisions of this Constitution to receive the revenues. The
23 bonds or other obligations may not be paid from excess levy,
24 bond levy or other special levy revenues.

25 *Resolved further*, That in accordance with the provisions of
26 article eleven, chapter three of the code of West Virginia, one
27 thousand nine hundred thirty-one, as amended, this proposed
28 amendment is hereby numbered "Amendment No. 1" and
29 designated as the "County and Municipal Option Economic
30 Development Amendment", and the purpose of the proposed
31 amendment is summarized as follows: "To amend the State
32 Constitution to permit the Legislature by general law to
33 authorize county commissions and municipalities to use a new
34 economic development tool to help create jobs. This tool will
35 permit county commissions and municipalities to assist in
36 financing economic development or redevelopment projects by
37 redirecting specific new property tax revenues from an ap-
38 proved project, or project area or district. These redirected
39 revenues will be used to pay-off revenue bonds or other
40 obligations issued to finance some or all of the cost of the
41 project. This amendment authorizes the financing of some or all
42 of the cost of qualified economic development and redevel-
43 opment projects through issuance of county and municipal
44 revenue bonds or other obligations, payable from property taxes
45 assessed on the enhanced value of property located in the
46 economic development or redevelopment project area or
47 district. This proposed amendment does not apply to taxes from
48 excess levies, bond levies or other special levies. Upon pay-
49 ment-in-full of the bonds or other obligations, the property tax
50 revenues revert to the appropriate levying bodies. The term of
51 the bonds or other obligations may not exceed thirty years."

HOUSE JOINT RESOLUTION 202

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Adopted by the Legislature July 16, 2002.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eleven, relating to county and municipal excess levies; increasing from three to five the number of years of an excess levy; numbering and designating the proposed amendment; and providing a summarized statement of the purpose of the amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand two, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§11. County and municipal excess levy amendment.

- 1 Notwithstanding any other provision of this Constitution to
- 2 the contrary, the maximum rates authorized and allocated by
- 3 law for tax levies on the several classes of property by county
- 4 commissions and municipalities may be increased in any county

5 or municipality, as provided in section one of this article, for a
6 period not to exceed five years.

7 *Resolved further*, That in accordance with the provisions of
8 article eleven, chapter three of the code of West Virginia, one
9 thousand nine hundred thirty-one, as amended, such proposed
10 amendment is hereby numbered "Amendment No. 2" and
11 designated as the "Equalizing Number of Years of Excess
12 Levies Amendment" and the purpose of the proposed amend-
13 ment is summarized as follows: "The purpose of this amend-
14 ment is to allow county and municipal governments to propose
15 excess levies for the same time periods as boards of education,
16 which is up to five years."

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2002

CHAPTER 1

**(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 17, 2002; 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 three, to the department of agriculture - agriculture fees fund, fund 1401, fiscal year 2003, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - agriculture fees fund, fund 1401, fiscal year 2003, organization 1400, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 1401, fiscal year 2003, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **EXECUTIVE**

4 *99—Department of Agriculture—*

5 *Agriculture Fees Fund*

6 (WV Code Chapter 19)

7 Fund 1401 FY 2003 Org 1400

			Act- ivity	Other Funds
10	1	Personal Services	001	\$ 110,000
11	3	Employee Benefits	010	25,000
12	4	Unclassified	099	795,543

13 The purpose of this supplementary appropriation bill is to
 14 supplement and increase items of appropriations in the afore-
 15 said account for the designated spending unit for expenditure
 16 during the fiscal year two thousand three.

CHAPTER 2

**(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 17, 2002; 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 three, in the miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2003, organization 0907, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2003, organization 0907, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 8520, fiscal year 2003, organization 0907, be supplemented and amended by increasing the total appropriation as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 *211-West Virginia Board of Examiners*

5 *for Registered Professional Nurses*

6 (WV Code Chapter 30)

7 Fund 8520 FY 2003 Org 0907

8		Act-	Other
9		ivity	Funds
10	1 Unclassified-Total	096	\$ 118,595

11 The purpose of this supplementary appropriation bill is to
 12 supplement and increase items of appropriations in the afore-
 13 said account for the designated spending unit for expenditure
 14 during the fiscal year two thousand three.

CHAPTER 3

(S. B. 3003 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

[Passed September 17, 2002; 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 three, to a new item of appropriation designated to the department of health and human resources - West Virginia health care authority, fund 8851, fiscal year 2003, organization

0507, supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF HEALTH**
4 **AND HUMAN RESOURCES**

5 *263a—West Virginia Health Care Authority*

6 (WV Code Chapter 16)

7 Fund 8851 FY 2003 Org 0507

		Act-	Federal
		ivity	Funds
10 1	Unclassified - Total	096	\$ 1,197,074

11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for fiscal year ending
13 the thirtieth day of June, two thousand three, by providing for
14 a new item of appropriation to be established therein to appro-

- 15 priate federal funds for the designated spending unit for
16 expenditure during the fiscal year two thousand three.

CHAPTER 4

**(S. B. 3004 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 17, 2002; 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 three, in the amount of two million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; in the amount of ten million dollars from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and in the amount of eight million three hundred seventy-one thousand seven hundred seventeen dollars from the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, 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 three, to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511 and 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 three, to the department of health and human resources - division of human services, fund 8722, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature finds that the account balances in the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of two million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; the amount of ten million dollars from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and the amount of eight million three hundred seventy-one thousand seven hundred seventeen dollars from the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, be decreased by expiring the above amounts to the unappropriated surplus balance of the state fund, general revenue and that the total appropriation for the fiscal year two thousand three, to fund 0403, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF HEALTH**
4 **AND HUMAN RESOURCES**

5 *51—Division of Human Services*

2078

APPROPRIATIONS

[Ch. 4

6

(WV Code Chapters 9, 48 and 49)

7

Fund 0403 FY 2003 Org 0511

8

9

10

Act-
ivity

**General
Revenue
Funds**

11 8 Medical Services - Surplus 633 \$ 20,371,717

12 That the total appropriation for the fiscal year ending the
13 thirtieth day of June, two thousand three, to fund 8722, fiscal
14 year 2003, organization 0511, be supplemented and amended
15 by increasing the total appropriation as follows:

16

TITLE II—APPROPRIATIONS.

17

Sec. 6. Appropriations of federal funds.

18

19

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

20

265—Division of Human Services

21

(WV Code Chapters 9, 48 and 49)

22

Fund 8722 FY 2003 Org 0511

23

24

Act-
ivity

**Federal
Funds**

25 1 Unclassified - Total 096 \$ 120,000,000

26 The purpose of this supplementary appropriation bill is to
27 supplement, decrease and increase items of appropriations in
28 the aforesaid accounts for the designated spending unit for
29 expenditure during the fiscal year two thousand three.

CHAPTER 5

**(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 17, 2002; 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 joint expenses, fund 0175, fiscal year 2003, organization 2300; and to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 three, to joint expenses, fund 0175, fiscal year 2003, organization 2300, be supplemented and amended by decreasing the appropriation as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **LEGISLATIVE**

4 *3—Joint Expenses*

5 (WV Code Chapter 4)

6 Fund 0175 FY 2003 Org 2300

7 9 Tax Reduction and Federal Funding

8 10 Increased Compliance

9 11 (TRAFFIC) (R) 642 \$ 1,000,000

10 That the total appropriation for the fiscal year ending the
11 thirtieth day of June, two thousand three, to the department of
12 health and human resources - division of human services, fund
13 0403, fiscal year 2003, organization 0511, be supplemented and
14 amended by increasing the total appropriation as follows:

15 TITLE II—APPROPRIATIONS.

16 Section 1. Appropriations from general revenue.

17 DEPARTMENT OF HEALTH
18 AND HUMAN RESOURCES

19 *51—Division of Human Services*

20 (WV Code Chapters 9, 48 and 49)

21 Fund 0403 FY 2003 Org 0511

22 8 Medical Services 189 \$ 1,000,000

23 The purpose of this supplementary appropriation bill is to
24 supplement, amend, reduce and increase items of appropriations
25 in the aforesaid accounts for the designated spending units. The
26 funds are for expenditure during the fiscal year two thousand
27 three with no new money being appropriated.

CHAPTER 6

**(S. B. 3006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 17, 2002; 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 bureau of senior services, fund 5405, fiscal year 2003, organization 0508, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the lottery net profits, dated the seventeenth day of September, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand two, and further included the estimate of revenues for the fiscal year two thousand three, less regular appropriations for the fiscal year two thousand three; 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 three; 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 three, to fund 5405, fiscal year 2003, organization 0508, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 4. Appropriations from lottery net profits.**3 *230—Bureau of Senior Services*

4 (WV Code Chapter 29)

5 Fund 5405 FY 2003 Org 0508

6		Act-	Lottery
7		ivity	Funds

8	12	Senior Services Medicaid Transfer . .	871	\$ 18,628,283
---	----	---------------------------------------	-----	---------------

9 The purpose of this supplementary appropriation bill is to
10 supplement and increase items of appropriations in the afore-
11 said account for the designated spending unit for expenditure
12 during the fiscal year two thousand three.

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, 2003

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2001	80	2529	134	2779	213
2003	120	2534	185	2794	59
2050	20	2554	214	2797	156
2051	98	2555	95	2799	136
2077	148	2556	123	2802	186
2083	92	2592	137	2803	228
2092	84	2599	139	2814	159
2094	172	2603	138	2818	81
2110	102	2615	141	2829	223
2118	191	2625	140	2830	215
2122	147	2648	143	2831	204
2190	153	2669	111	2835	249
2224	96	2675	119	2840	110
2239	188	2694	8	2847	135
2240	170	2696	7	2864	219
2285	171	2700	175	2865	248
2301	16	2702	130	2868	13
2357	5	2705	78	2870	180
2359	106	2714	103	2878	165
2406	1	2715	125	2879	202
2441	55	2733	233	2881	150
2443	53	2748	246	2882	151
2477	230	2750	209	2888	226
2480	51	2751	206	2889	227
2486	200	2752	210	2891	109
2500	85	2753	18	2902	235
2511	154	2763	160	2910	14
2512	168	2764	121	2916	224
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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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2953	173	3050	254	3203	15
2961	90	3056	152	3204	21
2965	19	3062	187	3205	22
2972	166	3068	184	3206	23
2975	190	3070	101	3207	24
2983	193	3077	237	3208	25
2984	192	3084	62	3209	26
3009	108	3089	178	3210	27
3011	105	3093	99	3211	28
3014	146	3095	234	3212	29
3016	118	3104	196	3214	30
3018	64	3108	76	3215	31
3019	66	3109	194	3216	32
3027	236	3117	74	3217	33
3037	164	3155	107	3218	34
3045	244	3195	198		
3046	245	3199	247		

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, 2003**SENATE BILLS**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
39	104	283	222	416	229
52	162	284	203	417	199
56	127	287	142	418	207
95	161	316	144	422	181
105	243	336	112	424	77
107	239	337	3	428	67
112	11	338	116	430	4
162	158	342	157	432	82
163	212	352	133	436	182
164	205	354	75	440	73
165	201	356	129	443	89
166	221	357	126	447	169
170	252	358	124	450	50
178	86	364	63	453	87
180	94	375	174	455	189
182	61	381	179	461	241
189	57	383	12	462	240
190	52	384	69	469	217
191	58	387	145	470	216
192	56	388	155	471	225
204	149	390	70	485	132
205	17	400	122	486	131
206	93	404	195	488	128
213	83	405	113	493	6
215	35	412	183	494	250
281	218	414	177	496	232
282	211	415	220	505	163

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, 2003**SENATE BILLS****Page Two**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
510	115	635	65	649	251
522	91	636	2	651	197
531	238	637	36	652	114
534	242	638	37	654	79
535	10	639	38	655	231
558	88	640	39	657	60
583	68	641	40	658	45
589	71	642	41	659	46
608	117	643	42	660	47
611	176	644	43	661	48
626	253	645	44	662	49
627	9	646	97		
634	167	648	100		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

Regular Session, 2003

House Bills = 4 Digits

Senate Bills = 2, 3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	2406	35	215	69	384
2	636	36	637	70	390
3	337	37	638	71	589
4	430	38	639	72	2948
5	2357	39	640	73	440
6	493	40	641	74	3117
7	2696	41	642	75	354
8	2694	42	643	76	3108
9	627	43	644	77	424
10	535	44	645	78	2705
11	112	45	658	79	654
12	383	46	659	80	2001
13	2868	47	660	81	2818
14	2910	48	661	82	432
15	3203	49	662	83	213
16	2301	50	450	84	2092
17	205	51	2480	85	2500
18	2753	52	190	86	178
19	2965	53	2443	87	453
20	2050	54	2514	88	558
21	3204	55	2441	89	443
22	3205	56	192	90	2961
23	3206	57	189	91	522
24	3207	58	191	92	2083
25	3208	59	2794	93	206
26	3209	60	657	94	180
27	3210	61	182	95	2555
28	3211	62	3084	96	2224
29	3212	63	364	97	646
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105.....	3011	146.....	3014	187.....	3062
106.....	2359	147.....	2122	188.....	2239
107.....	3155	148.....	2077	189.....	455
108.....	3009	149.....	204	190.....	2975
109.....	2891	150.....	2881	191.....	2118
110.....	2840	151.....	2882	192.....	2984
111.....	2669	152.....	3056	193.....	2983
112.....	336	153.....	2190	194.....	3109
113.....	405	154.....	2511	195.....	404
114.....	652	155.....	388	196.....	3104
115.....	510	156.....	2797	197.....	651
116.....	338	157.....	342	198.....	3195
117.....	608	158.....	162	199.....	417
118.....	3016	159.....	2814	200.....	2486
119.....	2675	160.....	2763	201.....	165
120.....	2003	161.....	95	202.....	2879
121.....	2764	162.....	52	203.....	284
122.....	400	163.....	505	204.....	2831
123.....	2556	164.....	3037	205.....	164
124.....	358	165.....	2878	206.....	2751
125.....	2715	166.....	2972	207.....	418
126.....	357	167.....	634	208.....	2778
127.....	56	168.....	2512	209.....	2750
128.....	488	169.....	447	210.....	2752
129.....	356	170.....	2240	211.....	282
130.....	2702	171.....	2285	212.....	163
131.....	486	172.....	2094	213.....	2779
132.....	485	173.....	2953	214.....	2554
133.....	352	174.....	375	215.....	2830
134.....	2529	175.....	2700	216.....	470
135.....	2847	176.....	611	217.....	469
136.....	2799	177.....	414	218.....	281
137.....	2592	178.....	3089	219.....	2864
138.....	2603	179.....	381	220.....	415
139.....	2599	180.....	2870	221.....	166
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141.....	2615	182.....	436	223.....	2829
142.....	287	183.....	412	224.....	2916
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228.....	2803	238.....	531	247.....	3199
229.....	416	239.....	107	248.....	2865
230.....	2477	240.....	462	249.....	2835
231.....	655	241.....	461	250.....	494
232.....	496	242.....	534	251.....	649
233.....	2733	243.....	105	252.....	170
234.....	3095	244.....	3045	253.....	626
235.....	2902			254.....	3050

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2003

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
101	1	103	3	104	4
102	2			105	5

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2003

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	101	3	103	4	104
2	102			5	105

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Third Extraordinary Session, 2002

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
3001	1	3003	3	3005	5
3002	2	3004	4	3006	6

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Third Extraordinary Session, 2002

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
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2	3002	4	3004	6	3006

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3	1	9	SB648	826
3	1	20	SB648	830

*Indicates new chapter, article or section

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