

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2004
Constitutional Amendment, 2004
First Extraordinary Session, 2004
Second Extraordinary Session, 2004

Volume II
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Chapters 1-13
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CHAPTER 140

(S. B. 479 — By Senators Minard and Jenkins)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-3-7 of the code of West Virginia, 1931, as amended, relating to licensing foreign insurers; and exemption from certain other statutory provisions.

Be it enacted by the Legislature of West Virginia:

That §33-3-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-7. Issuance of license to transact insurance; kinds of insurance authorized to be transacted.

1 (a) Upon receiving the application and supporting docu-
2 ments required by section four of this article, if the commis-
3 sioner is satisfied that an insurer has complied with the terms of
4 its charter and the provisions of this chapter and other laws of
5 this state and that such insurer is solvent and will transact
6 insurance in a legal, proper and just manner, he or she may
7 issue to such insurer a license authorizing it to transact insur-
8 ance in this state. Such license may authorize an insurer which
9 otherwise qualifies therefor to transact life and/or accident and
10 sickness insurance or an insurer other than a life insurer to
11 transact any of the kinds of insurance other than life for which
12 it otherwise qualifies. However, as to any life insurer which,
13 immediately prior to the effective date of this chapter, lawfully
14 held a license granting to it the right to transact in West

15 Virginia additional kinds of insurance other than life and
16 accident and sickness, the commissioner may continue to
17 license said insurer to transact the same kinds of insurance as
18 those specified in such prior license so long as such insurer is
19 otherwise in compliance with this chapter.

20 (b) A foreign insurer that obtains a license pursuant to the
21 provisions of this section may transact the business of insurance
22 in this state without obtaining the certificate of authority from
23 the secretary of state otherwise required by the provisions of
24 section 1501, article fifteen, chapter thirty-one-d of this code.

CHAPTER 141

**(Com. Sub. for H. B. 4303 — By Delegates H. White,
G. White, Azinger, Frich and Hrutkay)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §33-12-26 of the code of West Virginia, 1931, as amended; to amend and reenact §33-3-33 of said code; to amend and reenact §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code; to amend and reenact §33-12C-24 of said code; to amend and reenact §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code; and to amend said code by adding thereto a new section, designated §33-37-8, all relating to insurance generally; bringing provisions into compliance with Gramm-Leach-Bliley; eliminating the residency restriction reporting requirement for surplus lines licensees remitting the insurance policy surcharge; defining subjects of insurance for which a license is required; increasing continuing education

requirements; allowing nonresidents to obtain a limited license for automobile rental coverage; licensing of managing general agents; providing for certain penalties for violations by managing general agents; requiring fees for licenser; eliminating renewal of service representative permits; repealing insurance vending machines; repealing and eliminating countersignature requirements, effective thirty-first day of December, two thousand; and, making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §33-12-26 of the code of West Virginia, 1931, as amended, be repealed; that §33-3-33 of said code be amended and reenacted; that §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code be amended and reenacted; that §33-12C-24 of said code be amended and reenacted; that §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-37-8, all to read as follows:

Article

- 3. Licensing, Fees and Taxation of Insurers.**
- 12. Insurance Producers and Solicitors.**
- 12C. Surplus Line.**
- 37. Managing General Agents.**

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

- 1 (a) For the purpose of providing additional revenue for
- 2 volunteer fire departments, part-volunteer fire departments,
- 3 certain retired teachers and the teachers retirement reserve fund,
- 4 there is hereby authorized and imposed on and after the first

5 day of July, one thousand nine hundred ninety-two, on the
6 policyholder of any fire insurance policy or casualty insurance
7 policy issued by any insurer, authorized or unauthorized, or by
8 any risk retention group, a policy surcharge equal to one
9 percent of the taxable premium for each such policy. For
10 purposes of this section, casualty insurance may not include
11 insurance on the life of a debtor pursuant to or in connection
12 with a specific loan or other credit transaction or insurance on
13 a debtor to provide indemnity for payments becoming due on a
14 specific loan or other credit transaction while the debtor is
15 disabled as defined in the policy. The policy surcharge may not
16 be subject to premium taxes, agent commissions or any other
17 assessment against premiums.

18 (b) The policy surcharge shall be collected and remitted to
19 the commissioner by the insurer, or in the case of surplus lines
20 coverage, by the surplus lines licensee, or if the policy is issued
21 by a risk retention group, by the risk retention group. The
22 amount required to be collected under this section shall be
23 remitted to the commissioner on a quarterly basis on or before
24 the twenty-fifth day of the month succeeding the end of the
25 quarter in which they are collected, except for the fourth quarter
26 for which the surcharge shall be remitted on or before the first
27 day of March of the succeeding year.

28 (c) Any person failing or refusing to collect and remit to the
29 commissioner any policy surcharge and whose surcharge
30 payments are not postmarked by the due dates for quarterly
31 filing is liable for a civil penalty of up to one hundred dollars
32 for each day of delinquency, to be assessed by the commis-
33 sioner. The commissioner may suspend the insurer, broker or
34 risk retention group until all surcharge payments and penalties
35 are remitted in full to the commissioner.

36 (d) One half of all money from the policy surcharge shall
37 be collected by the commissioner who shall disburse the money

38 received from the surcharge into a special account in the state
39 treasury, designated the "fire protection fund". The net proceeds
40 of this portion of the tax and the interest thereon, after appropri-
41 ation by the Legislature, shall be distributed quarterly on the
42 first day of the months of January, April, July and October to
43 each volunteer fire company or department on an equal share
44 basis by the state treasurer.

45 (1) Before each distribution date, the state fire marshal shall
46 report to the state treasurer the names and addresses of all
47 volunteer and part-volunteer fire companies and departments
48 within the state which meet the eligibility requirements
49 established in section eight-a, article fifteen, chapter eight of
50 this code.

51 (2) The remaining fifty percent of the moneys collected
52 shall be transferred to the teachers retirement system to be
53 disbursed according to the provisions of sections twenty-six-j,
54 twenty-six-k and twenty-six-l, article seven-a, chapter eighteen
55 of this code. Any balance remaining after the disbursements
56 authorized by this subdivision have been paid shall be paid by
57 the teachers retirement system into the teachers retirement
58 system reserve fund.

59 (e) The allocation, distribution and use of revenues pro-
60 vided in the fire protection fund are subject to the provisions of
61 sections eight-a and eight-b, article fifteen, chapter eight of this
62 code.

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§33-12-3. License required.

§33-12-8. Continuing education required.

§33-12-10. Fees.

§33-12-11. Countersignature.

§33-12-18. Individual insurance producer to deal only with licensed insurer or
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§33-12-23. Payment of commissions.

§33-12-27. Payment of commissions under assigned risk plan.

§33-12-28. Service representative permit.

§33-12-30. Termination of contractual relationship prohibited.

§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.

§33-12-32. Limited licenses for rental companies.

§33-12-3. License required.

1 (a) A person may not sell, solicit or negotiate insurance
2 covering subjects of insurance resident, located or to be
3 performed in this state for any class or classes of insurance
4 unless the person is licensed for that line of authority in
5 accordance with this article.

6 (b) No person shall in West Virginia act as or hold himself
7 or herself out to be an individual insurance producer or insur-
8 ance agency or solicitor unless then licensed therefor pursuant
9 to this article.

10 (c) No individual insurance producer, insurance agency or
11 solicitor or any representative or employee thereof shall solicit
12 or take application for, negotiate, procure or place for others
13 any kind of insurance or receive or share, directly or indirectly,
14 any commission or other valuable consideration arising from
15 the sale, solicitation or negotiation of any insurance contract for
16 which that person is not then licensed.

17 (d) No insurer shall accept any business from or pay any
18 commission to any individual insurance producer who does not
19 then hold an appointment as an individual insurance producer
20 for such insurer pursuant to this article.

§33-12-8. Continuing education required.

1 The purpose of this provision is to provide continuing
2 education under guidelines set up under the insurance commis-

3 sioner's office, with the guidelines to be set up under the board
4 of insurance agent education.

5 (a) This section applies to individual insurance producers
6 licensed to engage in the sale of the following types of insur-
7 ance:

8 (1) *Life*. — Life insurance coverage on human lives, includ-
9 ing benefits of endowment and annuities, and may include
10 benefits in the event of death or dismemberment by accident
11 and benefits for disability income;

12 (2) *Accident and health or sickness*. — Insurance coverage
13 for sickness, bodily injury or accidental death and may include
14 benefits for disability income;

15 (3) *Property*. — Property insurance coverage for the direct
16 or consequential loss or damage to property of every kind;

17 (4) *Casualty*. — Insurance coverage against legal liability,
18 including that for death, injury or disability or damage to real
19 or personal property;

20 (5) *Variable life and variable annuity products*. — Insur-
21 ance coverage provided under variable life insurance contracts
22 and variable annuities;

23 (6) *Personal lines*. — Property and casualty insurance
24 coverage sold to individuals and families for primarily noncom-
25 mercial purposes; and

26 (7) Any other line of insurance permitted under state laws
27 or regulations.

28 (b) This section does not apply to:

29 (1) Individual insurance producers holding limited line
30 credit insurance licenses for any kind or kinds of insurance

31 offered in connection with loans or other credit transactions or
32 insurance for which an examination is not required by the
33 commissioner, nor does it apply to any limited or restricted
34 license as the commissioner may exempt; and

35 (2) Individual insurance producers selling credit life or
36 credit accident and health insurance.

37 (c) (1) The board of insurance agent education as estab-
38 lished by section seven of this article shall develop a program
39 of continuing insurance education and submit the proposal for
40 the approval of the commissioner on or before the thirty-first
41 day of December of each year. No program may be approved by
42 the commissioner that includes a requirement that any individ-
43 ual insurance producer complete more than twenty-four hours
44 of continuing insurance education biennially. No program may
45 be approved by the commissioner that includes a requirement
46 that any of the following individual insurance producers
47 complete more than six hours of continuing insurance education
48 biennially:

49 (A) Individual insurance producers who sell only preneed
50 burial insurance contracts; and

51 (B) Individual insurance producers who engage solely in
52 telemarketing insurance products by a scripted presentation
53 which scripted presentation has been filed with and approved by
54 the commissioner.

55 (C) The biennium mandatory continuing insurance educa-
56 tion provisions of this section become effective on the reporting
57 period beginning the first day of July, two thousand six.

58 (2) The commissioner and the board, under standards
59 established by the board, may approve any course or program
60 of instruction developed or sponsored by an authorized insurer,
61 accredited college or university, agents' association, insurance

62 trade association or independent program of instruction that
63 presents the criteria and the number of hours that the board and
64 commissioner determine appropriate for the purpose of this
65 section.

66 (d) Individual insurance producers licensed to sell insurance
67 and who are not otherwise exempt shall satisfactorily complete
68 the courses or programs of instructions the commissioner may
69 prescribe.

70 (e) Every individual insurance producer subject to the
71 continuing education requirements shall furnish, at intervals
72 and on forms as may be prescribed by the commissioner,
73 written certification listing the courses, programs or seminars
74 of instruction successfully completed by the person. The
75 certification shall be executed by, or on behalf of, the organiza-
76 tion sponsoring the courses, programs or seminars of instruc-
77 tion.

78 (f) Any individual insurance producer failing to meet the
79 requirements mandated in this section and who has not been
80 granted an extension of time, with respect to the requirements,
81 or who has submitted to the commissioner a false or fraudulent
82 certificate of compliance shall have his or her license automati-
83 cally suspended and no further license may be issued to the
84 person for any kind or kinds of insurance until the person
85 demonstrates to the satisfaction of the commissioner that he or
86 she has complied with all of the requirements mandated by this
87 section and all other applicable laws or rules.

88 (g) The commissioner shall notify the individual insurance
89 producer of his or her suspension pursuant to subsection (f) of
90 this section by certified mail, return receipt requested, to the
91 last address on file with the commissioner pursuant to subsec-
92 tion (e), section nine of this article. Any individual insurance
93 producer who has had a suspension order entered against him

94 or her pursuant to this section may, within thirty calendar days
95 of receipt of the order, file with the commissioner a request for
96 a hearing for reconsideration of the matter.

97 (h) Any individual insurance producer who does not
98 satisfactorily demonstrate compliance with this section and all
99 other laws applicable thereto as of the last day of the biennium
100 following his or her suspension shall have his or her license
101 automatically canceled and is subject to the education and
102 examination requirements of section five of this article.

103 (i) The commissioner is authorized to hire personnel and
104 make reasonable expenditures considered necessary for
105 purposes of establishing and maintaining a system of continuing
106 education for insurers. The commissioner shall charge a fee of
107 twenty-five dollars to continuing education providers for each
108 continuing education course submitted for approval which shall
109 be used to maintain the continuing education system. The
110 commissioner may, at his or her discretion, designate an outside
111 administrator to provide all of or part of the administrative
112 duties of the continuing education system subject to direction
113 and approval by the commissioner. The fees charged by the
114 outside administrator shall be paid by the continuing education
115 providers. In addition to fees charged by the outside administra-
116 tor, the outside administrator shall collect and remit to the
117 commissioner the 25-dollar course submission fee.

§33-12-10. Fees.

1 The fee for an individual insurance producer's license shall
2 be twenty-five dollars, the fee for a solicitor's license shall be
3 twenty-five dollars and the fee for an insurance agency pro-
4 ducer license shall be two hundred dollars. The commissioner
5 shall receive the following fees from individual insurance
6 producers, solicitors and insurance agency producers: For
7 letters of certification, five dollars; for letters of clearance, ten

8 dollars; and for duplicate license, five dollars. All fees and
9 moneys so collected shall be used for the purposes set forth in
10 section thirteen, article three of this chapter.

§33-12-11. Countersignature.

1 No contract of insurance covering a subject of insurance,
2 resident, located or to be performed in this state, shall be
3 executed, issued or delivered by any insurer unless the contract
4 or, in the case of an interstate risk, a countersignature endorse-
5 ment carrying full information as to the West Virginia risk, is
6 signed or countersigned in writing by a licensed resident agent
7 of the insurer, except that excess line insurance shall be
8 countersigned by a duly licensed excess line broker. This
9 section does not apply to: Reinsurance; credit insurance; any
10 contract of insurance covering the rolling stock of any railroad
11 or covering any vessel, aircraft or motor carrier used in inter-
12 state or foreign commerce or covering any liability or other
13 risks incident to the ownership, maintenance or operation
14 thereof; any contract of insurance covering any property in
15 interstate or foreign commerce, or any liability or risks incident
16 thereto. Countersignature of a duly licensed resident agent of
17 the company originating a contract of insurance participated in
18 by other companies as cosureties or coindemnitors shall satisfy
19 all countersignature requirements in respect to such contract of
20 insurance: *Provided*, That the countersignature requirements of
21 this section shall no longer be required for any contract of
22 insurance executed, issued or delivered on or after the thirty-
23 first day of December, two thousand four.

**§33-12-18. Individual insurance producer to deal only with
licensed insurer or solicitor; appointment as
individual insurance producer required.**

1 (a) An individual insurance producer may not act as an
2 agent of an insurer unless the individual insurance producer

29 (2) If a partnership licensed as an insurance agency
30 producer, each partner satisfies the commissioner that he or she
31 meets the licensing qualifications as set forth in section six of
32 this article;

33 (3) If a corporation licensed as an insurance agency
34 producer, each officer, employee or any one or more stockhold-
35 ers owning, directly or indirectly, the controlling interest in the
36 corporation satisfies the commissioner that he or she meets the
37 licensing qualifications as set forth in section six of this article.
38 The requirements set forth in this subdivision do not apply to
39 clerical employees or other employees not directly engaged in
40 the selling or servicing of insurance;

41 (4) If a limited liability company licensed as an insurance
42 agency producer, each officer, employee or any one or more
43 members owning, directly or indirectly, the controlling interest
44 in a limited liability company satisfies the commissioner that he
45 or she meets the licensing qualifications as set forth in section
46 six of this article. The requirements set forth in this subdivision
47 do not apply to clerical employees or other employees not
48 directly engaged in the selling or servicing of insurance; and

49 (5) If any other business entity licensed as an insurance
50 agency producer, approval is granted by the commissioner.

51 (c) Subsections (a) and (b) of this section do not apply to
52 reinsurance nor to limited line credit insurance, limited lines
53 insurance, any contract of insurance covering the rolling stock
54 of any railroad or covering any vessel, aircraft or motor carrier
55 used in interstate or foreign commerce, any liability or other
56 risks incident to the ownership, maintenance or operation
57 thereof, any contract of insurance covering any property in
58 interstate or foreign commerce or any liability or risks incident
59 thereto.

60 (d) An insurance company or insurance producer may not
61 pay a commission, service fee, brokerage or other valuable
62 consideration to a person for selling, soliciting or negotiating
63 insurance in this state if that person is required to be licensed
64 under this article and is not so licensed.

65 (e) A person may not accept a commission, service fee,
66 brokerage or other valuable consideration for selling, soliciting
67 or negotiating insurance in this state if that person is required
68 to be licensed under this article and is not so licensed.

69 (f) Renewal or other deferred commissions may be paid to
70 a person for selling, soliciting or negotiating insurance in this
71 state if the person was required to be licensed under this article
72 at the time of the sale, solicitation or negotiation and was so
73 licensed at that time.

§33-12-27. Payment of commissions under assigned risk plan.

1 An insurer participating in a plan for assignment of
2 personal injury liability insurance or property damage liability
3 insurance on owner's automobiles or operators, which plan has
4 been approved by the commissioner, may pay a commission to
5 a qualified individual insurance producer who is licensed to act
6 as individual insurance producer for any insurer participating in
7 the plan when the individual insurance producer is designated
8 by the insured as the individual insurance producer of record
9 under an automobile assigned risk plan pursuant to which a
10 policy is issued under the plan and section eleven of this article
11 is not applicable thereto.

§33-12-28. Service representative permit.

1 Individual nonresidents of West Virginia, employed on
2 salary by an insurer, who enter the state to assist and advise
3 resident individual insurance producers in the solicitation,
4 negotiation, making or procuring of contracts of insurance on

5 risks resident, located or to be performed in West Virginia shall
6 obtain a service representative permit. The commissioner may,
7 upon receipt of a properly prepared application, issue the permit
8 without requiring a written examination therefor. On or after the
9 first day of July, two thousand four, no service representative
10 license will be issued which is not a renewal of an existing
11 license. The fee for a service representative permit shall be
12 twenty-five dollars and the permit shall expire at midnight on
13 the thirty-first day of March next following the date of issuance.
14 Issuance of a service representative permit may not entitle the
15 holder to countersign policies. The representative may not in
16 any manner sell, solicit, negotiate, make or procure insurance
17 in this state except when in the actual company of the licensed
18 resident individual producer whom he or she has been assigned
19 to assist. All fees collected under this section shall be used for
20 the purposes set forth in section thirteen, article three of this
21 chapter.

§33-12-30. Termination of contractual relationship prohibited.

1 No insurance company may cancel, refuse to renew or
2 otherwise terminate a written contractual relationship with any
3 individual insurance producer who has been employed or
4 appointed pursuant to that written contract by an insurance
5 company as a result of any analysis of a loss ratio resulting
6 from claims paid under the provisions of an endorsement for
7 uninsured and underinsured motor vehicle coverage issued
8 pursuant to the provisions of section thirty-one, article six of
9 this chapter, nor may any provision of that contract, including
10 the provisions for compensation therein, operate to deter or
11 discourage the individual insurance producer from selling and
12 writing endorsements for optional uninsured or underinsured
13 motor vehicle coverage.

**§33-12-31. Termination of contractual relationship; continuation
of certain commissions; exceptions.**

1 (a) In the event of a termination of a contractual relation-
2 ship between a duly licensed individual insurance producer and
3 an automobile insurer of private passenger automobiles who is
4 withdrawing from writing private passenger automobile
5 insurance within the state, the insurer shall pay the individual
6 insurance producer a commission, equal to the commission the
7 individual insurance producer would have otherwise been
8 entitled to under his or her contract with the insurer, for a
9 period of two years from the date of termination of the contrac-
10 tual relationship for those renewal policies that cannot other-
11 wise be canceled or nonrenewed pursuant to law, which policies
12 the individual insurance producer continues to service. The
13 insurer must continue the appointment of the individual
14 insurance producer for the duration of time the individual
15 insurance producer continues to service the business: *Provided,*
16 That this requirement shall not obligate the withdrawing insurer
17 to accept any new private passenger automobile insurance
18 within the state.

19 (b) Subsection (a) of this section does not apply to an
20 individual insurance producer who is an employee of the
21 insurer or an individual insurance producer as defined by article
22 twelve-a of this chapter or an individual insurance producer
23 who by contractual agreement either represents only one insurer
24 or group of affiliated insurers or who is required by contract to
25 submit risks to a specified insurer or group of affiliated insurers
26 prior to submitting them to others.

§33-12-32. Limited licenses for rental companies.

1 (a) *Purpose.* — This section authorizes the insurance
2 commissioner to issue limited licenses for the sale of automo-
3 bile rental coverage.

4 (b) *Definitions.* — The following words when used in this
5 section shall have the following meanings:

6 (1) "Authorized insurer" means an insurer that is licensed
7 by the commissioner to transact insurance in West Virginia.

8 (2) "Automobile rental coverage" or "rental coverage" is
9 insurance offered incidental to the rental of a vehicle as
10 described in this section.

11 (3) "Limited license" means the authorization by the
12 commissioner for a person to sell rental coverage as an individ-
13 ual insurance producer of an authorized insurer pursuant to the
14 provisions of this section without the necessity of individual
15 insurance producer prelicensing education, examination or
16 continuing education.

17 (4) "Limited licensee" is an individual resident of this state
18 or nonresident of this state who obtains a limited license.

19 (5) "Rental agreement" means any written agreement
20 setting forth the terms and conditions governing the use of a
21 vehicle provided by the rental company for rental or lease.

22 (6) "Rental company" means any person or entity in the
23 business of providing private motor vehicles to the public under
24 a rental agreement for a period not to exceed ninety days.

25 (7) "Renter" means any person obtaining the use of a
26 vehicle from a rental company under the terms of a rental
27 agreement for a period not to exceed ninety days.

28 (8) "Vehicle" or "rental vehicle" means a motor vehicle of
29 the private passenger type including passenger vans, minivans
30 and sport utility vehicles and of the cargo type, including cargo
31 vans, pick-up trucks and trucks with a gross vehicle weight of
32 twenty-six thousand pounds or less and which do not require
33 the operator to possess a commercial driver's license.

34 (9) "Rental period" means the term of the rental agreement.

35 (c) The commissioner may issue a limited license for the
36 sale of automobile rental coverage to an employee of a rental
37 company, who has satisfied the requirements of this section.

38 (d) As a prerequisite for issuance of a limited license under
39 this section, there shall be filed with the commissioner a written
40 application for a limited license, signed by the applicant, in a
41 form or forms and supplements thereto and containing any
42 information as the commissioner may prescribe. The limited
43 licensee shall pay to the insurance commissioner an annual fee
44 of twenty-five dollars.

45 (e) The limited licensee shall be appointed by the licensed
46 insurer or insurers for the sale of automobile rental coverage.
47 The employer of the limited licensee shall maintain at each
48 insurance sales location a list of the names and addresses of
49 employees which are selling insurance at the location.

50 (f) In the event that any provision of this section or applica-
51 ble provisions of the insurance code is violated by a limited
52 licensee or other employees operating under his or her direc-
53 tion, the commissioner may:

54 (1) After notice and a hearing, revoke or suspend a limited
55 license issued under this section in accordance with the
56 provisions of section thirteen, article two of this chapter; or

57 (2) After notice and hearing, impose any other penalties,
58 including suspending the transaction of insurance at specific
59 locations where applicable violations of the insurance code
60 have occurred, as the commissioner considers to be necessary
61 or convenient to carry out the purposes of this section.

62 (g) Any limited license issued under this section shall also
63 authorize any other employee working for the same employer
64 and at the same location as the limited licensee to act individu-
65 ally, on behalf and under the supervision of the limited licensee

66 with respect to the kinds of coverage authorized in this section.
67 In order to sell insurance products under this section at least one
68 employee who has obtained a limited license must be present at
69 each location where insurance is sold. All other employees
70 working at that location may offer or sell insurance consistent
71 with this section without obtaining a limited license. However,
72 the limited licensee shall directly supervise and be responsible
73 for the actions of all other employees at that location related to
74 the offer or sale of insurance as authorized by this section. No
75 limited licensee under this section may advertise, represent or
76 otherwise hold himself or herself or any other employees out as
77 licensed insurers or individual insurance producers.

78 (h) No automobile rental coverage insurance may be issued
79 by a limited licensee pursuant to this section unless:

80 (1) The rental period of the rental agreement does not
81 exceed ninety consecutive days; and

82 (2) At every rental location where rental agreements are
83 executed, brochures or other written material are readily
84 available to the prospective renter that:

85 (A) Summarize, clearly and correctly, the material terms of
86 coverage offered to renters, including the identity of the insurer;

87 (B) Disclose that the coverage offered by the rental
88 company may provide a duplication of coverage provided by a
89 renter's personal automobile insurance policy, homeowner's
90 insurance policy, personal liability insurance policy or other
91 source of coverage;

92 (C) State that the purchase by the renter of the kinds of
93 coverage specified in this section is not required in order to rent
94 a vehicle; and

95 (D) Describe the process for filing a claim in the event the
96 renter elects to purchase coverage.

97 (3) Any evidence of coverage on the face of the rental
98 agreement is disclosed to every renter who elects to purchase
99 the coverage.

100 (4) The limited licensee to sell automobile rental coverage
101 may offer or sell insurance only in connection with and
102 incidental to the rental of vehicles, whether at the rental office
103 or by preselection of coverage in a master, corporate, group
104 rental or individual agreements in any of the following general
105 categories:

106 (A) Personal accident insurance covering the risks of travel,
107 including, but not limited to, accident and health insurance that
108 provides coverage, as applicable, to renters and other rental
109 vehicle occupants for accidental death or dismemberment and
110 reimbursement for medical expenses resulting from an accident
111 that occurs during the rental period;

112 (B) Liability insurance (which may include uninsured and
113 underinsured motorist coverage whether offered separately or
114 in combination with other liability insurance) that provides
115 coverage, as applicable, to renters and other authorized drivers
116 of rental vehicles for liability arising from the operation of the
117 rental vehicle;

118 (C) Personal effects insurance that provides coverage,
119 applicable to renters and other vehicle occupants of the loss of,
120 or damage to, personal effects that occurs during the rental
121 period;

122 (D) Roadside assistance and emergency sickness protection
123 programs; and

124 (E) Any other travel or auto-related coverage that a rental
125 company offers in connection with and incidental to the rental
126 of vehicles.

127 (i) Each rental company for which an employee has
128 received a limited license pursuant to this section shall conduct
129 a training program in which its employees being trained shall
130 receive basic instruction about the kinds of coverage specified
131 in this section and offered for purchase by prospective renters
132 of rental vehicles: *Provided*, That limited licensees and employ-
133 ees working hereunder are not subject to the agent prelicensing
134 education, examination or continuing education requirements
135 of this article.

136 (j) Notwithstanding any other provision of this section or
137 any rule adopted by the commissioner, neither the rental
138 company, the limited licensee, nor the other employees working
139 with the limited licensee at the rental company shall be required
140 to treat moneys collected from renters purchasing such insur-
141 ance when renting vehicles as funds received in a fiduciary
142 capacity, provided that the charges for coverage shall be
143 itemized and be ancillary to a rental transaction. The sale of
144 insurance not in conjunction with a rental transaction is not
145 permitted.

ARTICLE 12C. SURPLUS LINE.

§33-12C-24. Countersignature requirements.

1 Surplus lines insurance shall be countersigned by a duly
2 licensed resident surplus lines licensee: *Provided*, That the
3 countersignature requirements imposed by this section shall no
4 longer be required for any surplus line of insurance executed,
5 issued or delivered after the thirty-first day of December, two
6 thousand four.

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

§33-37-2. Licensure.

§33-37-3. Required contract provisions.

§33-37-4. Duties of insurers.

§33-37-6. Penalties and liabilities.

§33-37-7. Rules and regulations.

§33-37-8. Effective date.

§33-37-1. Definitions.

1 For the purposes of this article:

2 (a) “Actuary” means a person who is a member in good
3 standing of the American academy of actuaries.

4 (b) “Home state” means the District of Columbia or any
5 state or territory of the United States in which a managing
6 general agent is incorporated or maintains its principal place of
7 business. If neither the state in which the managing general
8 agent is incorporated, nor the state in which the managing
9 general agent maintains its principal place of business has
10 adopted this article or a substantially similar law governing
11 managing general agents, the managing general agent may
12 declare another state in which it conducts business to be its
13 “home state”.

14 (c) “Insurer” means any person, firm, association or
15 corporation duly licensed in this state as an insurance company
16 pursuant to article three of this chapter. Insurer includes, but is
17 not limited to, any domestic insurer as defined in section six,
18 article one of this chapter and any foreign insurer as defined in
19 section seven of said article, including any stock insurer, mutual
20 insurer, reciprocal insurer, farmers’ mutual fire insurance
21 company, fraternal benefit society, hospital service corporation,
22 medical service corporation, dental service corporation, health
23 service corporation, health care corporation, health maintenance

24 organization, captive insurance company or risk retention
25 group.

26 (d) "Managing general agent" (MGA) means any person,
27 firm, association or corporation who:

28 (1) Manages all or part of the insurance business of an
29 insurer (including the management of a separate division,
30 department or underwriting office); and

31 (2) Acts as an agent for such insurer whether known as a
32 managing general agent, manager or other similar term who,
33 with or without the authority, either separately or together with
34 affiliates, produces, directly or indirectly, and underwrites an
35 amount of gross direct written premium equal to or more than
36 five percent of the policyholder surplus as reported in the last
37 annual statement of the insurer in any one quarter or year
38 together with one or more of the following activities related to
39 the business produced:

40 (A) Adjusts or pays claims in excess of ten thousand dollars
41 per claim; or

42 (B) Negotiates reinsurance on behalf of the insurer.

43 (3) Notwithstanding the above, the following persons are
44 not considered managing general agents for the purposes of this
45 article:

46 (A) An employee of the insurer;

47 (B) A U. S. manager of the United States branch of an alien
48 insurer;

49 (C) An underwriting manager which, pursuant to contract,
50 manages all or part of the insurance operations of the insurer,
51 is under common control with the insurer, subject to the holding

52 company regulatory act, and whose compensation is not based
53 on the volume of premiums written; and

54 (D) The attorney-in-fact authorized by and acting for the
55 subscribers of a reciprocal insurer or interinsurance exchange
56 under powers of attorney.

57 (e) "Person" means an individual or a business entity.

58 (f) "Underwrite" means the authority to accept or reject risk
59 on behalf of the insurer.

§33-37-2. Licensure.

1 (a) No domestic insurer may permit a person to act, and no
2 person may act, in the capacity of a managing general agent for
3 an insurer domiciled in this state unless such person is licensed
4 in this state to act as a managing general agent.

5 (b) No foreign or alien insurer may permit a person to act,
6 and no person may act, in the capacity of a managing general
7 agent representing an insurer unless the person is licensed in
8 this state to act as a managing general agent.

9 (c) No person may act in the capacity of a managing
10 general agent with respect to risks located in this state for an
11 insurer licensed in this state unless the person is a licensed
12 insurance producer in this state.

13 (d) The commissioner may license as a managing general
14 agent any individual or business entity that has complied with
15 the requirements of this article and any regulations concerning
16 licensure that may be promulgated by the commissioner. The
17 commissioner may refuse to issue a license, subject to the right
18 of the applicant to demand a hearing on the application, if the
19 commissioner believes the applicant, any person named on the
20 application or any member, principal, officer or director of the

21 applicant is not trustworthy or competent to act as a managing
22 general agent, or that any of the foregoing has given cause for
23 revocation or suspension of such license, or has failed to
24 comply with any prerequisite for issuance of such license.

25 (e) Any person seeking a license pursuant to subsection (d)
26 of this section shall apply for the license in a form acceptable
27 to the commissioner and shall pay to the commissioner a
28 nonrefundable application fee in an amount prescribed by the
29 commissioner. The application fee shall be not less than five
30 hundred dollars nor more than one thousand dollars. Every
31 licensed managing general agent shall pay to the commissioner
32 a nonrefundable annual renewal fee in an amount prescribed by
33 the commissioner. The renewal fee shall be not less than two
34 hundred dollars nor more than one thousand dollars. Between
35 the first day of May and the first day of June of the renewal
36 year, each licensed managing general agent shall submit to the
37 commissioner the renewal fee and a renewal application form
38 as prescribed by the commissioner. All fees shall be collected
39 by the commissioner, paid into the state treasury and placed to
40 the credit of the special revenue account provided for in section
41 thirteen, article three of this chapter. Each license issued
42 pursuant to this article expires at midnight on the thirtieth day
43 of June next following the day of issuance.

44 (f) The commissioner may require a bond in an amount
45 acceptable to him or her for the protection of the insurer.

46 (g) The commissioner may require a managing general
47 agent to maintain an errors and omissions policy that is
48 acceptable to the commissioner.

49 (h) Except where prohibited by state or federal law, by
50 submitting an application for license, the applicant shall be
51 deemed to have appointed the secretary of state as the agent for
52 service of process on the applicant in any action or proceeding

53 arising in this state out of or in connection with the exercise of
54 the license. The appointment of the secretary of state as agent
55 for service of process shall be irrevocable during the period
56 within which a cause of action against the applicant may arise
57 out of transactions with respect to subjects of insurance in this
58 state. Service of process on the secretary of state shall conform
59 to the provisions of section twelve, article four of this chapter.

60 (i) A person seeking licensure shall provide evidence, in a
61 form acceptable to the commissioner, of its appointments or
62 contracts as a managing general agent. The commissioner may
63 refuse to renew the license of a person that has not been
64 appointed by, or otherwise authorized to act for, an insurer as
65 a managing general agent.

§33-37-3. Required contract provisions.

1 No person, firm, association or corporation acting in the
2 capacity of a managing general agent may place business with
3 an insurer unless there is in force a written contract between the
4 parties which sets forth the responsibilities of each party and
5 where both parties share responsibility for a particular function,
6 specifies the division of such responsibilities and which
7 contains the following minimum provisions:

8 (a) The insurer may terminate the contract for cause upon
9 written notice to the managing general agent. The insurer may
10 suspend the underwriting authority of the managing general
11 agent during the pendency of any dispute regarding the cause
12 for termination.

13 (b) The managing general agent will render accounts to the
14 insurer detailing all transactions and remit all funds due under
15 the contract to the insurer on not less than a monthly basis.

16 (c) All funds collected for the account of an insurer will be
17 held by the managing general agent in a fiduciary capacity with

18 an FDIC-insured financial institution. This account shall be
19 used for all payments on behalf of the insurer. The managing
20 general agent may retain no more than three months estimated
21 claims payments and allocated loss adjustment expenses.

22 (d) Separate records of business written by the managing
23 general agent shall be maintained. The insurer shall have access
24 and right to copy all accounts and records related to its business
25 in a form usable by the insurer. The commissioner shall have
26 access to all books, bank accounts and records of the managing
27 general agent in a form usable to the commissioner.

28 (e) The contract may not be assigned, in whole or part, by
29 the managing general agent.

30 (f) The contract shall contain appropriate underwriting
31 guidelines including:

32 (1) The maximum annual premium volume;

33 (2) The basis of the rates to be charged;

34 (3) The types of risks which may be written;

35 (4) Maximum limits of liability;

36 (5) Applicable exclusions;

37 (6) Territorial limitations;

38 (7) Policy cancellation provisions; and

39 (8) The maximum policy period.

40 The insurer shall have the right to cancel or nonrenew any
41 policy of insurance subject to the applicable laws and rules
42 concerning the cancellation and nonrenewal of insurance
43 policies.

44 (g) If the contract permits the managing general agent to
45 settle claims on behalf of the insurer:

46 (1) All claims must be reported to the company in a timely
47 manner; and

48 (2) A copy of the claim file will be sent to the insurer at its
49 request or as soon as it becomes known that the claim:

50 (A) Has the potential to exceed an amount determined by
51 the commissioner or exceeds the limit set by the company,
52 whichever is less;

53 (B) Involves a coverage dispute;

54 (C) May exceed the managing general agents claims
55 settlement authority;

56 (D) Is open for more than six months; or

57 (E) Is closed by payment of an amount set by the commis-
58 sioner or an amount set by the company, whichever is less.

59 (3) All claims files will be the joint property of the insurer
60 and managing general agent. However, upon an order of
61 liquidation of the insurer, such files shall become the sole
62 property of the insurer or its estate. The managing general agent
63 shall have reasonable access to and the right to copy the files on
64 a timely basis.

65 (4) Any settlement authority granted to the managing
66 general agent may be terminated for cause upon the insurer's
67 written notice to the managing general agent or upon the
68 termination of the contract. The insurer may suspend the
69 settlement authority during the pendency of any dispute
70 regarding the cause for termination.

71 (h) Where electronic claims files are in existence, the
72 contract must address the timely transmission of the data
73 contained in such files.

74 (i) If the contract provides for a sharing of interim profits
75 by the managing general agent and the managing general agent
76 has the authority to determine the amount of the interim profits
77 by establishing loss reserves or controlling claim payments, or
78 in any other manner, interim profits will not be paid to the
79 managing general agent until one year after they are earned for
80 property insurance business and five years after they are earned
81 on casualty business and not until the profits have been verified
82 pursuant to section four of this article.

83 (j) The managing general agent may use only advertising
84 material pertaining to the business issued by an insurer that has
85 been approved in writing by the insurer in advance of its use.

86 (k) The managing general agent may not:

87 (1) Bind reinsurance or retrocessions on behalf of the
88 insurer, except that the managing general agent may bind
89 facultative reinsurance contracts pursuant to obligatory faculta-
90 tive agreements if the contract with the insurer contains
91 reinsurance underwriting guidelines including, for both
92 reinsurance assumed and ceded, a list of reinsurers with which
93 such automatic agreements are in effect, the coverages and
94 amounts or percentages that may be reinsured and commission
95 schedules;

96 (2) Commit the insurer to participate in insurance or
97 reinsurance syndicates;

98 (3) Appoint any individual insurance producer without
99 assuring that the individual insurance producer is lawfully
100 licensed to transact the type of insurance for which he or she is
101 appointed;

102 (4) Without prior approval of the insurer, pay or commit the
103 insurer to pay a claim over a specified amount, net of reinsur-
104 ance, which shall not exceed one percent of the insurer's
105 policyholder's surplus as of the thirty-first day of December of
106 the last completed calendar year;

107 (5) Collect any payment from a reinsurer or commit the
108 insurer to any claim settlement with a reinsurer without prior
109 approval of the insurer. If prior approval is given, a report must
110 be promptly forwarded to the insurer;

111 (6) Except as provided in subsection (g), section four of this
112 article, permit its subproducer to serve on the insurer's board of
113 directors;

114 (7) Jointly employ an individual who is employed with the
115 insurer; or

116 (8) Appoint a sub managing general agent.

§33-37-4. Duties of insurers.

1 (a) The insurer shall have on file an independent audited
2 financial statement or reports for the two most recent fiscal
3 years that provide that the managing general agent has a
4 positive net worth. If the managing general agent has been in
5 existence for less than two fiscal years the managing general
6 agent shall include financial statements or reports, certified by
7 an officer of the managing general agent and prepared in
8 accordance with generally accepted accounting procedures, for
9 any completed fiscal years, and for any month during the
10 current fiscal year for which financial statements or reports
11 have been completed. An audited financial/annual report
12 prepared on a consolidated basis shall include a columnar
13 consolidating or combining worksheet that shall be filed with
14 the report and include the following:

15 (1) Amounts shown on the consolidated audited financial
16 report shall be shown on the worksheet;

17 (2) Amounts for each entity shall be stated separately; and

18 (3) Explanations of consolidating and eliminating entries
19 shall be included.

20 (b) If a managing general agent establishes loss reserves,
21 the insurer shall annually obtain the opinion of an actuary in a
22 form consistent with the requirements for actuarial certifica-
23 tions as imposed upon the insurer by statute or rule of the
24 commissioner attesting to the adequacy of loss reserves
25 established for losses incurred and outstanding on business
26 produced by the managing general agent. This required actu-
27 ary's opinion is in addition to any other required loss reserve
28 certification.

29 (c) The insurer shall at least semiannually conduct an on-
30 site review of the underwriting and claims processing opera-
31 tions of the managing general agent.

32 (d) Binding authority for all reinsurance contracts or
33 participation in insurance or reinsurance syndicates shall rest
34 with an officer of the insurer who shall not be affiliated with the
35 managing general agent.

36 (e) Within thirty days of entering into or terminating a
37 contract with a managing general agent, the insurer shall
38 provide written notification to the commissioner. Notices of
39 entering into a contract with a managing general agent shall
40 include a statement of duties which the applicant is expected to
41 perform on behalf of the insurer, the lines of insurance for
42 which the applicant is to be authorized to act and any other
43 information the commissioner may request.

44 (f) An insurer shall review its books and records each
45 quarter to determine if any producer as defined by subsection
46 (c), section one of this article has become, by operation of
47 subsection (d) of said section, a managing general agent as
48 defined in that subsection. If the insurer determines that a
49 producer has become a managing general agent pursuant to the
50 above, the insurer shall promptly notify the producer and the
51 commissioner of such determination and the insurer and
52 producer must fully comply with the provisions of this article
53 within thirty days thereafter.

54 (g) An insurer shall not appoint to its board of directors an
55 officer, director, employee, subproducer or controlling share-
56 holder of its managing general agents. This subsection does not
57 apply to relationships governed by the Insurance Holding
58 Company Systems Regulatory Act or the Business Transacted
59 with Producer Controlled Property/Casualty Insurer Act.

§33-37-6. Penalties and liabilities.

1 (a) If the commissioner finds that the managing general
2 agent or any other person has violated any provision of this
3 article, or any rule or order promulgated thereunder, after a
4 hearing conducted in accordance with section thirteen, article
5 two of this chapter, the commissioner may order:

6 (1) For each separate violation, a penalty in an amount not
7 exceeding ten thousand dollars;

8 (2) Revocation or suspension of the producer's license;

9 (3) Reimbursement by the managing general agent of the
10 insurer, the rehabilitator or liquidator of the insurer for any
11 losses incurred by the insurer and its policyholders and credi-
12 tors caused by a violation of this article committed by the
13 managing general agent; and

14 (4) If it was found that because of any such violation that
15 the insurer has suffered any loss or damage, the commissioner
16 may maintain a civil action brought by or on behalf of the
17 insurer and its policyholders and creditors for recovery of
18 compensatory damages for the benefit of the insurer and its
19 policyholders and creditors or other appropriate relief.

20 (b) If an order of rehabilitation or liquidation of the insurer
21 has been entered pursuant to article ten of this chapter and the
22 receiver appointed under that order determines that the manag-
23 ing general agent or any other person has not materially
24 complied with this article, or any rule or order promulgated
25 thereunder, and the insurer suffered any loss or damage
26 therefrom, the receiver may maintain a civil action for recovery
27 of damages or other appropriate sanctions for the benefit of the
28 insurer.

29 (c) Nothing contained in this section shall affect the right of
30 the commissioner to impose any other penalties provided for in
31 this chapter.

32 (d) Nothing contained in this article is intended to or shall
33 in any manner limit or restrict the rights of policyholders,
34 claimants and creditors.

35 (e) The decision, determination or order of the commis-
36 sioner pursuant to subsection (a) of this section shall be subject
37 to judicial review pursuant to section fourteen, article two of
38 this chapter.

§33-37-7. Rules and regulations.

1 The commissioner is authorized to promulgate reasonable
2 rules for the implementation and administration of the provi-
3 sions of this article pursuant to chapter twenty-nine-a of this
4 code.

§33-37-8. Effective date.

1 This article shall take effect on the first day of July, two
2 thousand four. No insurer may continue to use the services of
3 a managing general agent on and after the first day of July, two
4 thousand four, except in compliance with this article.

CHAPTER 142

(S. B. 517 — By Senator Minard)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-7-9 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-13-30a of said code, all relating to the valuation of annuities; establishing minimum standards for the valuation of life insurance policies; and modifying the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That §33-7-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §33-13-30a of said code be amended and reenacted, all to read as follows:

Article

- 7. **Assets and Liabilities.**
- 13. **Life Insurance.**

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 the reserves specifying the mortality table or tables,
9 rate or rates of interest and methods (net level premium method
10 or other) used in the calculation of the reserves. In calculating
11 the reserves, he or she may use group methods and approximate
12 averages for fractions of a year or otherwise. In lieu of the
13 valuation of the reserves herein required of any foreign or alien
14 company, he or she may accept any valuation made, or caused
15 to be made, by the insurance supervisory official of any state or
16 other jurisdiction when the valuation complies with the mini-
17 mum standard herein provided and if the official of the state or
18 jurisdiction accepts as sufficient and for all valid legal purposes
19 the certificate of valuation of the commissioner when the
20 certificate states the valuation to have been made in a specified
21 manner according to which the aggregate reserves would be at
22 least as large as if they had been computed in the manner
23 prescribed by the law of that state or jurisdiction.

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

27 (1) *General.* — Every life insurance company doing
28 business in this state shall annually submit the opinion of a
29 qualified actuary as to whether the reserves and related actuarial
30 items held in support of the policies and contracts specified by
31 the commissioner by regulation are computed appropriately, are
32 based on assumptions which satisfy contractual provisions, are
33 consistent with prior reported amounts and comply with

34 applicable laws of this state. The commissioner, by regulation,
35 shall define the specifics of this opinion and add any other item
36 considered to be necessary to its scope.

37 (2) *Actuarial analysis of reserves and assets supporting the*
38 *reserves.* —

39 (A) Every life insurance company, except as exempted by
40 or pursuant to regulation, shall also annually include in the
41 opinion required by subdivision (1) of this subsection an
42 opinion of the same qualified actuary as to whether the reserves
43 and related actuarial items held in support of the policies and
44 contracts specified by the commissioner by regulation, when
45 considered in light of the assets held by the company with
46 respect to the reserves and related actuarial items, including, but
47 not limited to, the investment earnings on the assets and the
48 considerations anticipated to be received and retained under the
49 policies and contracts, make adequate provision for the com-
50 pany's obligations under the policies and contracts, including,
51 but not limited to, the benefits under and expenses associated
52 with the policies and contracts.

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

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

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

63 (B) If the insurance company fails to provide a supporting
64 memorandum at the request of the commissioner within a

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

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

75 (A) The opinion shall be submitted with the annual state-
76 ment reflecting the valuation of such reserve liabilities for each
77 year ending on or after the thirty-first day of December, one
78 thousand nine hundred ninety-five.

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

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

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

93 (E) For the purposes of this section, “qualified actuary”
94 means a member in good standing of the American academy of
95 actuaries who meets the requirements set forth in such regulations.

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

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

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

125 (d) *Computation of minimum standards.* — Except as
126 otherwise provided in subsections (e), (f) and (m) of this

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

145 (1) For all ordinary policies of life insurance issued on the
146 standard basis, excluding any disability and accidental death
147 benefits in such policies:

148 (A) The commissioner's 1941 standard ordinary mortality
149 table for policies issued prior to the operative date of subsection
150 (4a), section thirty, article thirteen of this chapter;

151 (B) The commissioner's 1958 standard ordinary mortality
152 table for policies issued on or after the operative date of
153 subsection (4a), section thirty, article thirteen of this chapter
154 and prior to the operative date of subsection (4c) of said
155 section: *Provided*, That for any category of policies issued on
156 female risks, all modified net premiums and present values
157 referred to in this section may be calculated according to an age
158 not more than six years younger than the actual age of the
159 insured; and

160 (C) For policies issued on or after the operative date of
161 subsection (4c), section thirty, article thirteen of this chapter:

162 (i) The commissioner's 1980 standard ordinary mortality
163 table; or

164 (ii) At the election of the company for any one or more
165 specified plans of life insurance, the commissioner's 1980
166 standard ordinary mortality table with ten-year select mortality
167 factors; or

168 (iii) Any ordinary mortality table adopted after the year one
169 thousand nine hundred eighty by the national association of
170 insurance commissioners that is approved by rule promulgated
171 by the commissioner for use in determining the minimum
172 standard of valuation for the policies.

173 (2) For all industrial life insurance policies issued on the
174 standard basis, excluding any disability and accidental death
175 benefits in the policies: The 1941 standard industrial mortality
176 table for policies issued prior to the operative date of subdivi-
177 sion (4), subsection (b), section thirty, article thirteen of this
178 chapter and for policies issued on or after the operative date, the
179 commissioner's 1961 standard industrial mortality table or any
180 industrial mortality table adopted after the year one thousand
181 nine hundred eighty by the national association of insurance
182 commissioners that is approved by rule promulgated by the
183 commissioner for use in determining the minimum standard of
184 valuation for the policies.

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

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

198 (5) For total and permanent disability benefits in or
199 supplementary to ordinary policies or contracts: For policies or
200 contracts issued on or after the first day of January, one
201 thousand nine hundred sixty-six, the tables of period two
202 disablement rates and the 1930 to 1950 termination rates of the
203 1952 disability study of the society of actuaries, with due regard
204 to the type of benefit or any tables of disablement rates and
205 termination rates adopted after the year one thousand nine
206 hundred eighty by the national association of insurance com-
207 missioners that are approved by rule promulgated by the
208 commissioner for use in determining the minimum standard of
209 valuation for the policies; for policies or contracts issued on or
210 after the first day of January, one thousand nine hundred sixty-
211 one, and prior to the first day of January, one thousand nine
212 hundred sixty-six, either such tables or, at the option of the
213 company, the Class (3) disability table (1926); and for policies
214 issued prior to the first day of January, one thousand nine
215 hundred sixty-one, the Class (3) disability table (1926).

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

219 (6) For accidental death benefits in or supplementary to
220 policies issued on or after the first day of January, one thousand
221 nine hundred sixty-six, the 1959 accidental death benefits table
222 or any accidental death benefits table adopted after the year one
223 thousand nine hundred eighty by the national association of

224 insurance commissioners, that is approved by rules promulgated
225 by the commissioner for use in determining the minimum
226 standard of valuation for such policies, for policies issued on or
227 after the first day of January, one thousand nine hundred sixty-
228 one, and prior to the first day of January, one thousand nine
229 hundred sixty-six, either such table or, at the option of the
230 company, the intercompany double indemnity mortality table;
231 and for policies issued prior to the first day of January, one
232 thousand nine hundred sixty-one, the intercompany double
233 indemnity mortality table. Either table shall be combined with
234 a mortality table for calculating the reserves for life insurance
235 policies.

236 (7) For group life insurance, life insurance issued on the
237 substandard basis and other special benefits: Tables as may be
238 approved by the commissioner.

239 (e) *Computation of minimum standard for annuities.* —
240 Except as provided in subsection (f) of this section, the mini-
241 mum standard for the valuation of all individual annuity and
242 pure endowment contracts issued on or after the operative date
243 of this subsection, as defined herein, and for all annuities and
244 pure endowments purchased on or after the operative date under
245 group annuity and pure endowment contracts shall be the
246 commissioner's reserve valuation methods defined in subsec-
247 tions (g) and (h) of this section and the following tables and
248 interest rates:

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

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

268 (3) For individual annuity and pure endowment contracts
269 issued on or after the sixth day of April, one thousand nine
270 hundred seventy-seven, other than single premium immediate
271 annuity contracts, excluding any disability and accidental death
272 benefits in the contracts: The 1971 individual annuity mortality
273 table or any individual annuity mortality table adopted after the
274 year one thousand nine hundred eighty by the national associa-
275 tion of insurance commissioners that is approved by regulation
276 promulgated by the commissioner for use in determining the
277 minimum standard of valuation for the contracts or any
278 modification of these tables approved by the commissioner and
279 five and one-half percent interest for single premium deferred
280 annuity and pure endowment contracts and four and one-half
281 percent interest for all other individual annuity and pure
282 endowment contracts;

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

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

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

311 (f) *Computation of minimum standard by calendar year of*
312 *issue.* —

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

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

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

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

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

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

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

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

336 (ii) For single premium immediate annuities and for annuity
337 benefits involving life contingencies arising from other annu-
338 ities with cash settlement options and from guaranteed interest
339 contracts with cash settlement options, $I = .03 + W^{\circledast} - .03$
340 where R1 is the lesser of R and .09, R2 is the greater of R and
341 .09, R is the reference interest rate defined in this subsection
342 and W is the weighting factor defined in this section;

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

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

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

362 (B) However, if the calendar year statutory valuation
363 interest rate for any life insurance policies issued in any
364 calendar year determined without reference to this sentence
365 differs from the corresponding actual rate for similar policies
366 issued in the immediately preceding calendar year by less than
367 one half of one percent, the calendar year statutory valuation
368 interest rate for such life insurance policies shall be equal to the
369 corresponding actual rate for the immediately preceding
370 calendar year. For purposes of applying the immediately
371 preceding sentence, the calendar year statutory valuation
372 interest rate for life insurance policies issued in a calendar year
373 shall be determined for the year one thousand nine hundred
374 eighty (using the reference interest rate defined for the year one
375 thousand nine hundred seventy-nine) and shall be determined
376 for each subsequent calendar year regardless of when subdivi-
377 sion (4), subsection (c), section thirty, article thirteen of this
378 chapter, as amended, becomes operative.

379 (3) *Weighting factors.* —

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

382 (i) Weighting Factors for Life Insurance:

383	Guarantee Duration (Years)	Weighting Factors
384	10 or less	.50
385	More than 10, but not more than 20	.45
386	More than 20	.35

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

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

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

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

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

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

413	Weighting Factor		
414	for Plan Type		
415	A	B	C1
416	.15	.25	.05

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

426	Weighting Factor		
427	for Plan Type		
428	A	B	C1
429	.05	.05	.05

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

440 (V) Plan type as used in the above tables is defined as
441 follows:

442 Plan Type A:

443 At any time policyholder may withdraw funds only: (1)
444 With an adjustment to reflect changes in interest rates or asset
445 values since receipt of the funds by the insurance company; or
446 (2) without such adjustment but in installments over five years
447 or more; or (3) as an immediate life annuity; or (4) no with-
448 drawal permitted;

449 Plan Type B:

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

458 Plan Type C:

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

465 (VI) A company may elect to value guaranteed interest
466 contracts with cash settlement options and annuities with cash
467 settlement options on either an issue-year basis or on a change
468 in fund basis. Guaranteed interest contracts with no cash
469 settlement options and other annuities with no cash settlement

470 options must be valued on an issue-year basis. As used in this
471 section, an issue-year basis of valuation refers to a valuation
472 basis under which the interest rate used to determine the
473 minimum valuation standard for the entire duration of the
474 annuity or guaranteed interest contract is the calendar year
475 valuation interest rate for the year of issue or year of purchase
476 of the annuity or guaranteed interest contract and the change in
477 fund basis of valuation refers to a valuation basis under which
478 the interest rate used to determine the minimum valuation
479 standard applicable to each change in the fund held under the
480 annuity or guaranteed interest contract is the calendar year
481 valuation interest rate for the year of the change in the fund.

482 (4) *Reference interest rate.* —

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

486 (i) For all life insurance, the lesser of the average over a
487 period of thirty-six months and the average over a period of
488 twelve months, ending on the thirtieth day of June of the
489 calendar year next preceding the year of issue, of the monthly
490 average of the composite yield on seasoned corporate bonds as
491 published by Moody's Investors Service, Inc.

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

500 (iii) For other annuities with cash settlement options and
501 guaranteed interest contracts with cash settlement options,

502 valued on a year of issue basis, except as stated in subparagraph
503 (ii) of this paragraph, with guarantee duration in excess of ten
504 years, the lesser of the average over a period of thirty-six
505 months and the average over a period of twelve months, ending
506 on the thirtieth day of June of the calendar year of issue or
507 purchase, of the monthly average of the composite yield on
508 seasoned corporate bonds as published by Moody's Investors
509 Service, Inc.

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

519 (v) For other annuities with no cash settlement options and
520 for guaranteed interest contracts with no cash settlement
521 options, the average over a period of twelve months, ending on
522 the thirtieth day of June of the calendar year of issue or pur-
523 chase, of the monthly average of the composite yield on
524 seasoned corporate bonds as published by Moody's Investors
525 Service, Inc.

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

534 (5) *Alternative method for determining reference interest*
535 *rates. —*

536 In the event that the monthly average of the composite yield
537 on seasoned corporate bonds is no longer published by Moody's
538 investors service, inc., or in the event that the national associa-
539 tion of insurance commissioners determines that the monthly
540 average of the composite yield on seasoned corporate bonds as
541 published by Moody's investors service, inc., is no longer
542 appropriate for the determination of the reference interest rate,
543 then an alternative method for determination of the reference
544 interest rate, which is adopted by the national association of
545 insurance commissioners and approved by regulation promul-
546 gated by the commissioner, may be substituted.

547 (g) *Reserve valuation method. —* Life insurance and
548 endowment benefits.

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

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

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

600 above comparison, the mortality and interest bases stated in
601 subsections (d) and (f) of this section shall be used.

602 Reserves according to the commissioners' reserve valuation
603 method for: (i) Life insurance policies providing for a varying
604 amount of insurance or requiring the payment of varying
605 premiums; (ii) group annuity and pure endowment contracts
606 purchased under a retirement plan or plan of deferred compen-
607 sation, established or maintained by an employer (including a
608 partnership or sole proprietorship) or by an employee organiza-
609 tion, or by both, other than a plan providing individual retire-
610 ment accounts or individual retirement annuities under section
611 408 of the Internal Revenue Code (26 U. S. C. §408) as now or
612 hereafter amended; (iii) disability and accidental death benefits
613 in all policies and contracts; and (iv) all other benefits, except
614 life insurance and endowment benefits in life insurance policies
615 and benefits provided by all other annuity and pure endowment
616 contracts, shall be calculated by a method consistent with the
617 principles of the preceding paragraphs of this section.

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

628 Reserves according to the commissioners' annuity reserve
629 method for benefits under annuity or pure endowment con-
630 tracts, excluding any disability and accidental death benefits in
631 such contracts, shall be the greatest of the respective excesses
632 of the present values, at the date of valuation, of the future

633 guaranteed benefits, including guaranteed nonforfeiture
634 benefits, provided for by such contracts at the end of each
635 respective contract year over the present value, at the date of
636 valuation, of any future valuation considerations derived from
637 future gross considerations, required by the terms of such
638 contract, that become payable prior to the end of such respec-
639 tive contract year.

640 The future guaranteed benefits shall be determined by using
641 the mortality table, if any, and the interest rate, or rates,
642 specified in the contracts for determining guaranteed benefits.
643 The valuation considerations are the portions of the respective
644 gross considerations applied under the terms of such contracts
645 to determine nonforfeiture values.

646 (i) *Minimum reserves.* —

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

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

659 (j) *Optional reserve calculation.* —

660 Reserves for all policies and contracts issued prior to the
661 effective date of this section may be calculated, at the option of
662 the company, according to any standards which produce greater
663 aggregate reserves for all policies and contracts than the

664 minimum reserves required by the laws in effect immediately
665 prior to such date.

666 Reserves for any category of policies, contracts or benefits
667 as established by the commissioner issued on or after the
668 effective date of this section may be calculated, at the option of
669 the company, according to any standards which produce greater
670 aggregate reserves for such category than those calculated
671 according to the minimum standard herein provided, but the
672 rate or rates of interest used for policies and contracts, other
673 than annuity and pure endowment contracts, shall not be higher
674 than the corresponding rate or rates of interest used in calculat-
675 ing any nonforfeiture benefits provided therein.

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

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

688 If in any contract year the gross premium charged by any
689 life insurance company on any policy or contract is less than the
690 valuation net premium for the policy or contract calculated by
691 the method used in calculating the reserve thereon but using the
692 minimum valuation standards of mortality and rate of interest,
693 the minimum reserve required for such policy or contract shall
694 be the greater of either the reserve calculated according to the
695 mortality table, rate of interest and method actually used for

696 such policy or contract or the reserve calculated by the method
697 actually used for such policy or contract but using the minimum
698 valuation standards of mortality and rate of interest and
699 replacing the valuation net premium by the actual gross
700 premium in each contract year for which the valuation net
701 premium exceeds the actual gross premium. The minimum
702 valuation standards of mortality and rate of interest referred to
703 in this section are those standards stated in subsections (d) and
704 (f) of this section: *Provided*, That for any life insurance policy
705 issued on or after the first day of January, one thousand nine
706 hundred eighty-five, for which the gross premium in the first
707 policy year exceeds that of the second year and for which no
708 comparable additional benefit is provided in the first year for
709 such excess and which provides an endowment benefit or a cash
710 surrender value or a combination thereof in an amount greater
711 than such excess premium, the foregoing provisions of this
712 subsection shall be applied as if the method actually used in
713 calculating the reserve for such policy were the method
714 described in subsection (g) of this section, ignoring the second
715 paragraph of said subsection.

716 The minimum reserve at each policy anniversary of such a
717 policy shall be the greater of the minimum reserve calculated in
718 accordance with subsection (g) of this section, including the
719 second paragraph of said section, and the minimum reserve
720 calculated in accordance with this subsection.

721 (l) *Reserve calculation.* — Indeterminate premium plans.

722 In the case of any plan of life insurance which provides for
723 future premium determination, the amounts of which are to be
724 determined by the insurance company based on then estimates
725 of future experience, or in the case of any plan of life insurance
726 or annuity which is of such a nature that the minimum reserves
727 cannot be determined by the methods described in subsections

728 (g), (h) and (k) of this section, the reserves which are held under
729 any such plan must:

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

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

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

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

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

750 (o) *Effective date.* — All acts and parts of acts inconsistent
751 with the provision of this section are hereby repealed as of the
752 effective date of this section. This section shall take effect the
753 first day of January, one thousand nine hundred ninety-six.

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

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

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

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, no contract of annuity, except as stated in
18 subsection (b) of this section, shall be delivered or issued for
19 delivery in this state unless it contains in substance the follow-
20 ing provisions or corresponding provisions which, in the
21 opinion of the commissioner, are at least as favorable to the
22 contract holder, upon cessation of payment of considerations
23 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) (1) The minimum values as specified in subsections (e),
63 (f), (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 subdivision:

67 (A) With respect to contracts providing for flexible
68 considerations, the minimum nonforfeiture amount at any time
69 at or prior to the commencement of any annuity payments shall
70 be equal to an accumulation up to the time at a rate of interest
71 of 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 (i) 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 (ii) 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 six, 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 (B) 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 (i) The portion of the net consideration for the first contract
112 year to be accumulated shall be the sum of sixty-five percent of
113 the net consideration for the first contract year plus twenty-two
114 and one-half percent of the excess of the net consideration for
115 the first contract year over the lesser of the net considerations
116 for the second and third contract years;

117 (ii) The annual contract charge shall be the lesser of: (1)
118 Thirty dollars; or (2) ten percent of the gross annual consider-
119 ation;

120 (C) 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 (D) This subdivision applies to contracts issued before the
128 first day of July, two thousand four, and may be applied by a
129 company on a contract-by-contract basis to contracts issued on
130 or after the first day of July, two thousand four, and before the
131 first day of July, two thousand six;

132 (2) The minimum values as specified in subsections (e), (f),
133 (g), (h) and (j) of any paid-up annuity, cash surrender or death
134 benefits available under an annuity contract shall be based upon
135 minimum nonforfeiture amounts as defined in this subdivision;

136 (A) (i) The minimum nonforfeiture amount at any time at
137 or prior to the commencement of any annuity payments shall be
138 equal to an accumulation up to such time at rates of interest as
139 indicated in paragraph (B) of this subdivision of the net
140 considerations (as hereinafter defined) paid prior to such time,
141 decreased by the sum of subparagraphs (I) through (IV) below:

142 (I) Any prior withdrawals from or partial surrenders of the
143 contract accumulated at rates of interest as indicated in para-
144 graph (B) of this subdivision;

145 (II) An annual contract charge of fifty dollars, accumulated
146 at rates of interest as indicated in paragraph (B) of this subdivi-
147 sion;

148 (III) Any premium tax paid by the company for the con-
149 tract, accumulated at rates of interest as indicated in subpara-
150 graph (ii), paragraph (B) of this subdivision; and

151 (IV) The amount of any indebtedness to the company on the
152 contract, including interest due and accrued;

153 (ii) The net considerations for a given contract year used to
154 define the minimum nonforfeiture amount shall be an amount
155 equal to eighty-seven and one-half percent of the gross consid-
156 erations credited to the contract during that contract year;

157 (B) The interest rate used in determining minimum
158 nonforfeiture amounts shall be an annual rate of interest
159 determined as the lesser of three percent per annum and the
160 following, which shall be specified in the contract if the interest
161 rate will be reset:

162 (i) The five-year constant maturity treasury rate reported by
163 the federal reserve as of a date, or average over a period,
164 rounded to the nearest 1/20th of one percent, specified in the
165 contract no longer than fifteen months prior to the contract

166 issue date or redetermination date under subparagraph (iv) of
167 this paragraph;

168 (ii) Reduced by one hundred twenty-five basis points;

169 (iii) Where the resulting interest rate is not less than one
170 percent; and

171 (iv) The interest rate shall apply for an initial period and
172 may be redetermined for additional periods. The
173 redetermination date, basis and period, if any, shall be stated in
174 the contract. The basis is the date or average over a specified
175 period that produces the value of the five-year constant maturity
176 treasury rate to be used at each redetermination date;

177 (C) During the period or term that a contract provides
178 substantive participation in an equity indexed benefit, it may
179 increase the reduction described in subparagraph (ii), paragraph
180 (B) of this subdivision by up to an additional one hundred basis
181 points to reflect the value of the equity index benefit. The
182 present value at the contract issue date, and at each
183 redetermination date thereafter, of the additional reduction may
184 not exceed the market value of the benefit. The commissioner
185 may require a demonstration that the present value of the
186 additional reduction does not exceed the market value of the
187 benefit. Lacking a determination that is acceptable to the
188 commissioner, the commissioner may disallow or limit the
189 additional reduction;

190 (D) The commissioner may adopt rules to implement the
191 provisions of this subsection and to provide for further adjust-
192 ments to the calculation of minimum nonforfeiture amounts for
193 contracts that provide substantive participation in an equity
194 index benefit and for other contracts that the commissioner
195 determines their adjustments are justified;

196 (E) This subdivision shall apply to contracts outstanding on
197 the first day of July, two thousand four, and may be applied by
198 a company on a contract-by-contract basis to any contract
199 issued after the first day of July, two thousand four, and before
200 the first day of July, two thousand six.

201 (e) Any paid-up annuity benefit available under a contract
202 shall be such that its present value on the date annuity payments
203 are to commence is at least equal to the minimum nonforfeiture
204 amount on that date. The present value shall be computed using
205 the mortality table, if any, and the interest rate specified in the
206 contract for determining the minimum paid-up annuity benefits
207 guaranteed in the contract.

208 (f) For contracts which provide cash surrender benefits, the
209 cash surrender benefits available prior to maturity may not be
210 less than the present value as of the date of surrender of that
211 portion of the maturity value of the paid-up annuity benefit
212 which would be provided under the contract at maturity arising
213 from consideration paid prior to the time of cash surrender
214 reduced by the amount appropriate to reflect any prior with-
215 draws from or partial surrenders of the contract, the present
216 value being calculated on the basis of an interest rate not more
217 than one percent higher than the interest rate specified in the
218 contract for accumulating the net considerations to determine
219 the maturity value, decreased by the amount of any indebted-
220 ness to the company on the contract, including interest due and
221 accrued, and increased by any existing additional amounts
222 credited by the company to the contract. In no event shall any
223 cash surrender benefit be less than the minimum nonforfeiture
224 amount at that time. The death benefit under the contracts shall
225 be at least equal to the cash surrender benefit.

226 (g) For contracts which do not provide cash surrender
227 benefits, the present value of any paid-up annuity benefit
228 available as a nonforfeiture option at any time prior to maturity

229 may not be less than the present value of that portion of the
230 maturity value of the paid-up annuity benefit provided under
231 the contract arising from considerations paid prior to the time
232 the contract is surrendered in exchange for, or changed to, a
233 deferred paid-up annuity, the present value being calculated for
234 the period prior to the maturity date on the basis of the interest
235 rate specified in the contract for accumulating the net consider-
236 ations to determine the maturity value and increased by any
237 existing additional amounts credited by the company to the
238 contract. For contracts which do not provide any death benefits
239 prior to the commencement of any annuity payments, the
240 present values shall be calculated on a basis of the interest rate
241 and the mortality table specified in the contract for determining
242 the maturity value of the paid-up annuity benefit. However, in
243 no event shall the present value of a paid-up annuity benefit be
244 less than the minimum nonforfeiture amount at that time.

245 (h) For the purpose of determining the benefits calculated
246 under subsections (f) and (g) of this section, in the case of
247 annuity contracts under which an election may be made to have
248 annuity payments commence at optional maturity dates, the
249 maturity date is considered to be the latest date for which
250 election is permitted by the contract, but is not considered to be
251 later than the anniversary of the contract next following the
252 annuitant's seventieth birthday or the tenth anniversary of the
253 contract, whichever is later.

254 (i) Any contract which does not provide cash surrender
255 benefits or does not provide death benefits at least equal to the
256 minimum nonforfeiture amount prior to the commencement of
257 any annuity payments shall include a statement in a prominent
258 place in the contract that the benefits are not provided.

259 (j) Any paid-up annuity, cash surrender or death benefits
260 available at any time, other than on the contract anniversary
261 under any contract with fixed scheduled considerations, shall be

262 calculated with allowance for the lapse of time and the payment
263 of any scheduled considerations beyond the beginning of the
264 contract year in which cessation of payment of considerations
265 under the contract occurs.

266 (k) For any contract which provides, within the same
267 contract by rider or supplemental contract provision, both
268 annuity benefits and life insurance benefits that are in excess of
269 the greater of cash surrender benefits or a return of the gross
270 considerations with interest, the minimum nonforfeiture
271 benefits shall be equal to the sum of the minimum nonforfeiture
272 benefits for the annuity portion and the minimum nonforfeiture
273 benefits, if any, for the life insurance portion computed as if
274 each portion were a separate contract. Notwithstanding the
275 provisions of subsections (e), (f), (g), (h) and (j) of this section,
276 additional benefits payable: (1) In the event of total and
277 permanent disability; (2) as reversionary annuity or deferred
278 reversionary annuity benefits; or (3) as other policy benefits
279 additional to life insurance, endowment and annuity benefits
280 and considerations for all the additional benefits shall be
281 disregarded in ascertaining the minimum nonforfeiture
282 amounts, paid-up annuity, cash surrender and death benefits
283 that may be required by this section. The inclusion of the
284 additional benefits may not be required in any paid-up benefits
285 unless the additional benefits separately would require mini-
286 mum nonforfeiture amounts, paid-up annuity, cash surrender
287 and death benefits.

288 (l) After the effective date of this section, any company
289 may file with the commissioner a written notice of its election
290 to comply with the provisions of this section after a specified
291 date before the second anniversary of the effective date of this
292 section. After the filing of the notice, then upon the specified
293 date which shall be the operative date of this section for the
294 company, this section shall become operative with respect to
295 annuity contracts thereafter issued by the company. If a

296 company makes no election, the operative date of this section
297 for the company is the second anniversary of the effective date
298 of this section.

299 (m) (1) During the period from the first day of July, two
300 thousand four, through the first day of July, two thousand six,
301 an insurer may elect on a contract-by-contract basis to apply the
302 provisions of either subdivision (1) or (2), subsection (d) of this
303 section to any annuity contract issued during that period of
304 time;

305 (2) The provisions of subdivision (1), subsection (d) of this
306 section expires the first day of July, two thousand six.

CHAPTER 143

(Com. Sub. for H. B. 2914 — By Delegates H. White,
Hrutkay and R. M. Thompson)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §33-10-27 of the code of West Virginia, 1931, as amended; to repeal §33-24-15, §33-24-16, §33-24-17, §33-24-18, §33-24-19, §33-24-21, §33-24-22, §33-24-23, §33-24-24, §33-24-25, §33-24-26, §33-24-27, §33-24-28, §33-24-29, §33-24-30, §33-24-31, §33-24-32, §33-24-33, §33-24-34, §33-24-35, §33-24-36, §33-24-37, §33-24-38, §33-24-39, §33-24-40, §33-24-41 and §33-24-42 of said code; to amend and reenact §33-10-1, §33-10-2, §33-10-3, §33-10-4, §33-10-10, §33-10-11, §33-10-13, §33-10-14, §33-10-18, §33-10-19a, §33-10-26, §33-10-28, §33-10-29, §33-10-30, §33-10-36, §33-10-38 and §33-10-39 of said code; to amend said code by adding thereto ten new sections, designated §33-10-4a, §33-10-4b, §33-10-4c, §33-10-4d, §33-10-4e, §33-10-

26a, §33-10-26b, §33-10-26c, §33-10-26d and §33-10-40; and to amend and reenact §33-24-14 of said code, all relating to the rehabilitation and liquidation of insurers subject to the regulatory authority of the West Virginia insurance commissioner; revising delinquency proceedings; clarifying what parties will be affected upon the effective date of the revisions; expanding the liquidators' powers; expediting hearings and appeals; modifying current state law relative to liquidation proceedings so as to create conformity with recent federal case law; and making numerous technical changes.

Be it enacted by the Legislature of West Virginia:

That §33-10-27 of the code of West Virginia, 1931, as amended, be repealed; that §33-24-15, §33-24-16, §33-24-17, §33-24-18, §33-24-19, §33-24-21, §33-24-22, §33-24-23, §33-24-24, §33-24-25, §33-24-26, §33-24-27, §33-24-28, §33-24-29, §33-24-30, §33-24-31, §33-24-32, §33-24-33, §33-24-34, §33-24-35, §33-24-36, §33-24-37, §33-24-38, §33-24-39, §33-24-40, §33-24-41 and §33-24-42 of said code be repealed; that §33-10-1, §33-10-2, §33-10-3, §33-10-4, §33-10-10, §33-10-11, §33-10-13, §33-10-14, §33-10-18, §33-10-19a, §33-10-26, §33-10-28, §33-10-29, §33-10-30, §33-10-36, §33-10-38 and §33-10-39 of said code be amended and reenacted; that said code be amended by adding thereto ten new sections, designated §33-10-4a, §33-10-4b, §33-10-4c, §33-10-4d, §33-10-4e, §33-10-26a, §33-10-26b, §33-10-26c, §33-10-26d and §33-10-40; and that §33-24-14 of said code be amended and reenacted, all to read as follows:

Article

10. Rehabilitation and Liquidation.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-1. Definitions.

§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.

- §33-10-3. Court's seizure order.
- §33-10-4. Injunctions and other orders.
- §33-10-4a. Commencement of formal delinquency proceeding.
- §33-10-4b. Return of summons and summary hearing.
- §33-10-4c. Proceedings for expedited trial, continuances, discovery, evidence.
- §33-10-4d. Decision and appeals.
- §33-10-4e. Confidentiality.
- §33-10-10. Order of rehabilitation.
- §33-10-11. Order of liquidation of domestic insurer.
- §33-10-13. Order of conservation or ancillary liquidation of foreign or alien insurers.
- §33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.
- §33-10-18. Proof of claims.
- §33-10-19a. Priority of distribution.
- §33-10-26. Voidable preferences and liens.
- §33-10-26a. Fraudulent transfers prior to petition.
- §33-10-26b. Recoupment from affiliates.
- §33-10-26c. Fraudulent transfer after petition.
- §33-10-26d. Claims of holders of void or voidable rights.
- §33-10-28. Setoffs.
- §33-10-29. Allowance of certain claims.
- §33-10-30. Time within which claims to be filed.
- §33-10-36. Early access to distribution.
- §33-10-38. Unclaimed and withheld funds; termination of proceedings.
- §33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.
- §33-10-40. Applicability of amendments.

§33-10-1. Definitions.

1 For the purpose of this article, the following definitions
2 shall apply:

3 (a) "Impairment" means a financial situation in which,
4 based upon the financial information which would be required
5 by this chapter for the preparation of the insurer's annual
6 statement, the assets of an insurer are less than the sum of all of
7 its liabilities and required reserves including any minimum
8 capital or surplus or both required of that insurer by this chapter
9 so as to maintain its authority to transact the kinds of business
10 or insurance it is so authorized to transact.

11 (b) "Insolvency" or "insolvent" means a financial situation
12 in which, based upon the financial information which would be
13 required by this chapter for the preparation of the insurer's
14 annual statement, the assets of the insurer are less than the sum
15 of all of its liabilities and required reserves.

16 (c) "Insurer" means any person, firm, corporation, associa-
17 tion or aggregation of persons doing an insurance business and
18 which is or has been subject to the insurance supervisory
19 authority of, or to liquidation, rehabilitation, reorganization or
20 conservation by, the commissioner or the equivalent insurance
21 supervisory official of another state. For purposes of this article,
22 all persons, corporations, associations or entities to whom this
23 article applies and which are subject to delinquency proceed-
24 ings commenced in this state shall be considered "insurers".

25 (d) "Delinquency proceeding" means any proceeding
26 commenced against an insurer pursuant to this article for the
27 purpose of liquidating, rehabilitating, reorganizing or conserv-
28 ing the insurer and any summary proceeding under section
29 thirty-six of this article. "Formal delinquency proceeding"
30 means any liquidation or rehabilitation proceeding.

31 (e) "State" means any state, district or territory of the
32 United States.

33 (f) "Foreign country" means any other jurisdiction not in
34 any state.

35 (g) "Domiciliary state" means the state in which an insurer
36 is incorporated or organized, or in the case of an alien insurer
37 as defined in section eight, article one of this chapter, the state
38 in which such insurer, having become authorized to do business
39 in such state, has at the commencement of delinquency pro-
40 ceedings, the largest amount of its assets held in trust and assets
41 held on deposit for the benefit of its policyholders or policy-
42 holders and creditors in the United States or its state of entry.

43 (h) “Ancillary state” means any state other than a domicili-
44 ary state.

45 (i) “Reciprocal state” means any state other than this state
46 in which in substance and effect the provisions of the uniform
47 insurers liquidation act, as defined in section twenty-one of this
48 article, are in force, and in which provisions are in force
49 requiring that the insurance commissioner or equivalent
50 insurance supervisory official be the receiver of a delinquent
51 insurer, and in which some provision exists for the avoidance
52 of fraudulent conveyances and preferential transfers.

53 (j) “General assets” means all property, real, personal or
54 otherwise, not specifically mortgaged, pledged, deposited or
55 otherwise encumbered for the security or benefit of specified
56 persons or a limited class or classes of persons and as to such
57 specifically encumbered property, the term includes all such
58 property or its proceeds in excess of the amount necessary to
59 discharge the sum or sums secured thereby. Assets held in trust
60 and assets held on deposit for the security or benefit of all
61 policyholders or all policyholders and creditors in more than a
62 single state shall be considered general assets.

63 (k) “Preferred claim” means any claim with respect to
64 which the terms of this article accord priority of payments from
65 the general assets of the insurer.

66 (l) “Special deposit claim” means any claim secured by a
67 deposit made pursuant to statute for the security or benefit of a
68 limited class or classes of persons, but not including any
69 general assets.

70 (m) “Secured claim” means any claim secured by mortgage,
71 trust deed, pledge, deposit as security, escrow, or otherwise, but
72 not including special deposit claim or claims against general
73 assets. The term also includes claims which more than four
74 months prior to the commencement of delinquency proceedings

75 in the state of the insurer's domicile have become liens upon
76 specific assets by reason of judicial process.

77 (n) "Receiver" means receiver, liquidator, rehabilitator or
78 conservator as the context may require.

79 (o) "Guaranty association" means the West Virginia
80 insurance guaranty association created by article twenty-six of
81 this chapter, the West Virginia life and health insurance
82 guaranty association act created by article twenty-six-a of this
83 chapter and any other similar entity now or hereafter created by
84 the Legislature of this state for the payment of claims of
85 insolvent insurers.

86 (p) "Foreign guaranty association" means any entities now
87 in existence in or hereafter created by the Legislature of any
88 other state that are similar to the entities described in subsection
89 (o) of this section.

90 (q) "Surplus" means the amount by which an insurer's
91 assets exceeds its liabilities and required reserves based upon
92 the financial information which would be required by this
93 chapter for the preparation of the insurer's annual statement.

94 (r) "Affiliate" or a person "affiliated with" a specific person
95 means a person that, directly or indirectly, through one or more
96 intermediaries, controls, or is controlled by, or is under com-
97 mon control with the person specified.

98 (s) "Control" means the possession, direct or indirect, of the
99 power to direct or cause the direction of the management and
100 policies of a person, whether through the ownership of voting
101 securities, by contract other than a commercial contract for
102 goods or nonmanagement services, or otherwise, unless the
103 power is the result of an official position with or corporate
104 office held by the person. Control shall be presumed to exist if
105 any person, directly or indirectly, owns, controls, holds with the

106 power to vote, or holds proxies representing ten percent or more
107 of the voting securities of any other person. This presumption
108 may be rebutted by a showing that control does not, in fact,
109 exist.

110 (t) "Transfer" means the sale and every other and different
111 mode, direct or indirect, of disposing of or of parting with
112 property or an interest therein, absolutely or conditionally,
113 voluntarily, by or without judicial proceedings. The retention of
114 a security title to property delivered to a debtor is considered a
115 transfer suffered by the debtor.

§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.

1 (a) The circuit courts of this state or the judges thereof in
2 vacation are vested with exclusive original jurisdiction of
3 delinquency proceedings under this article, and are authorized
4 to make all necessary and proper orders to carry out the
5 purposes of this article.

6 (b) The venue of delinquency proceedings against a
7 domestic insurer shall be in the circuit court of the county of the
8 insurer's principal place of business. The venue of such
9 proceedings against foreign insurers, alien insurers or domestic
10 insurers in which their principal place of business is outside of
11 the state of West Virginia shall be in the circuit court of
12 Kanawha County.

13 (c) With the exception of administrative supervision
14 pursuant to article thirty-four of this chapter, delinquency
15 proceedings pursuant to this article shall constitute the sole and
16 exclusive method of liquidating, rehabilitating, reorganizing or
17 conserving an insurer and no court shall entertain a petition for
18 the commencement of such proceedings unless the same has
19 been filed in the name of the state on the relation of the
20 insurance commissioner.

21 (d) An appeal shall lie to the West Virginia Supreme Court
22 of Appeals from an order granting or refusing rehabilitation,
23 liquidation or conservation and from every other order in
24 delinquency proceedings having the character of a final order
25 as to the particular portion of the proceedings embraced therein.
26 Appeals from orders granting or refusing rehabilitation,
27 liquidation or conservation shall be prosecuted pursuant to
28 section four-d of this article.

29 (e) At any time after an order is made under section ten or
30 eleven of this article, the commissioner may remove the
31 principal office of the insurer proceeded against to Kanawha
32 County. In the event of such removal, the court wherein the
33 proceeding was originally commenced shall, upon the applica-
34 tion of the commissioner, direct its clerk to transmit all the
35 pleadings, motions and other papers filed therein with such
36 clerk to the clerk of the circuit court of Kanawha County. The
37 proceeding shall thereafter be subject to the jurisdiction of the
38 Kanawha County circuit court and conducted in the same
39 manner as though it had been commenced in the Kanawha
40 County circuit court.

§33-10-3. Court's seizure order.

1 (a) The commissioner may file in the appropriate circuit
2 court of this state, as provided in section two of this article, a
3 petition alleging, with respect to a domestic insurer:

4 (1) That there exist any grounds that would justify a court
5 order for a formal delinquency proceeding against an insurer
6 under this act;

7 (2) That the interests of policyholders, creditors or the
8 public will be endangered by delay; and

9 (3) The contents of an order considered necessary by the
10 commissioner.

11 (b) Upon a filing under subsection (a) of this section, the
12 court may issue forthwith, ex parte and without a hearing, the
13 requested order which shall direct the commissioner to take
14 possession and control of all or a part of the assets, books,
15 accounts, documents and other records of an insurer and of the
16 premises occupied by it for transaction of its business; and until
17 further order of the court enjoin the insurer and its officers,
18 managers, agents and employees from disposition of its
19 property and from the transaction of its business except with the
20 written consent of the commissioner.

21 (c) The court shall specify in the order what its duration
22 shall be, which shall be the time as the court considers neces-
23 sary for the commissioner to ascertain the condition of the
24 insurer. On motion of either party or on its own motion, the
25 court may, from time to time, hold hearings as it considers
26 desirable after notice that it considers appropriate and may
27 extend, shorten or modify the terms of the seizure order. The
28 court shall vacate the seizure order if the commissioner fails to
29 commence a formal delinquency proceeding under this article
30 after having had a reasonable opportunity to do so. An order of
31 the court pursuant to a formal proceeding under this article shall
32 ipso facto vacate the seizure order.

33 (d) Entry of a seizure order under this section will not
34 constitute an anticipatory breach of any contract of the insurer.

35 (e) An insurer subject to an ex parte order under this section
36 may petition the court at any time after the issuance of the order
37 for a hearing and review of the order. The court shall hold the
38 hearing and review not more than fifteen days after the request.
39 Subject to the approval of the court, a hearing under this
40 subsection may be held privately in chambers if the insurer
41 proceeded against so requests.

42 (f) If, at any time after the issuance of such an order, it
43 appears to the court that any person whose interest is or will be
44 substantially affected by the order did not appear at the hearing
45 and has not been served, the court may order that notice be
46 given. An order that notice be given will not stay the effect of
47 any order previously issued by the court.

§33-10-4. Injunctions and other orders.

1 (a) Upon application by the commissioner for an order
2 under this article:

3 (1) The court may without notice issue an injunction
4 restraining the insurer, its officers, directors, stockholders,
5 members, subscribers, agents and all other persons from the
6 transaction of its business or the waste or disposition of its
7 property until further order of the court.

8 (2) The court may at any time during a proceeding under
9 this article issue other injunctions or orders as may be consid-
10 ered necessary to prevent interference with the commissioner
11 or the proceeding, or waste of the assets of the insurer, or the
12 commencement or prosecution of any actions, or the obtaining
13 of preferences, judgments, attachments or other liens, or the
14 making of any levy against the insurer or against its assets or
15 any part thereof.

16 (3) The court may order any managing general agent or
17 attorney in fact to release to the commissioner any books,
18 records, accounts, documents or other writings relating to the
19 business of such person: *Provided*, That any of the same or the
20 property of an agent or attorney shall be returned when no
21 longer necessary to the commissioner or at any time the court
22 after notice and hearing shall so direct.

23 (b) Any person having possession of and refusing to deliver
24 any of the books, records or assets of an insurer against whom

25 a seizure order has been issued by the court shall be guilty of a
26 misdemeanor and punishable by fine not exceeding one
27 thousand dollars or imprisoned not more than one year, or both
28 fine and imprisonment.

29 (c) Whenever the commissioner makes any seizure as
30 provided in section three of this article, it shall be the duty of
31 the sheriff of any county of this state, and of the police depart-
32 ment of any municipality therein, to furnish the commissioner,
33 upon demand, with such deputies, patrolmen or officers as may
34 be necessary to assist the commissioner in making and enforc-
35 ing any seizure.

36 (d) Notwithstanding any other provision of law, no bond
37 shall be required of the commissioner as a prerequisite for the
38 issuance of any injunction or restraining order pursuant to this
39 section.

§33-10-4a. Commencement of formal delinquency proceeding.

1 (a) Any formal delinquency proceeding against a person
2 shall be commenced by filing a petition in the name of the
3 commissioner.

4 (b) The petition shall state the grounds upon which the
5 proceeding is based and the relief requested, and may include
6 a prayer for restraining orders and injunctive relief as described
7 in section four of this article.

8 (c) Any petition that prays for a temporary restraining order
9 must be verified by the commissioner or the commissioner's
10 designee, but need not plead or prove irreparable harm or
11 inadequate remedy by law. The commissioner shall provide
12 only such notice as the court may require.

13 (d) If any temporary restraining order is prayed for:

14 (1) The court may issue an initial order containing the relief
15 requested;

16 (2) The order shall state the time and date of its issuance;

17 (3) The court shall set a time and date for the return of
18 summons, not more than ten days from the time and date of the
19 issuance of the initial order, at which time the person proceeded
20 against may appear before the court for a summary hearing;

21 (4) The order shall not continue in effect beyond the time
22 and date set for the return of summons, unless the court shall
23 expressly enter one or more orders extending the restraining
24 order; and

25 (5) The verified petition shall be filed with the clerk of the
26 circuit court and maintained as confidential, except for good
27 cause shown, until service of the petition and summons is
28 effected.

29 (e) If no temporary restraining order is requested, the court
30 shall cause a summons to be issued. The summons shall specify
31 a return date not more than thirty days after issuance and that an
32 answer to the petition must be filed at or before the return date.

33 (f) Service of process required pursuant to this article shall
34 be upon the person named in the petition in accordance with the
35 West Virginia rules of civil procedure.

§33-10-4b. Return of summons and summary hearing.

1 (a) The court shall hold a summary hearing at the time and
2 date for the return of summons.

3 (b) If a person is not served with the petition and summons
4 and fails to appear for the summary hearing, the court shall:

5 (1) Continue the summary hearing not more than ten days;

6 (2) Require the commissioner to make additional or
7 alternative attempts at service of the petition and summons
8 upon the person; and

9 (3) Extend any restraining order.

10 (c) Upon a showing of good faith efforts to effect service
11 upon a person who has failed to appear for a continued sum-
12 mary hearing, the court shall order notice of the petition to be
13 published. The order and notice shall specify a return date not
14 less than ten nor more than twenty days after the publication
15 and that the restraining order has been extended to the contin-
16 ued hearing date.

17 (d) If a person fails to appear for a summary hearing after
18 service of the summons, the court shall enter judgment in favor
19 of the commissioner against that person.

20 (e) A person who appears for the summary hearing shall
21 file its answer at the hearing and the court shall:

22 (1) Determine whether to extend any temporary restraining
23 orders pending final judgment; and

24 (2) Set the case for trial on a date not more than ten days
25 from the summary hearing.

26 (f) The court shall grant no continuance for filing an
27 answer.

**§33-10-4c. Proceedings for expedited trial, continuances, discov-
ery, evidence.**

1 (a) The court shall hear the case at the time and date set
2 forth for trial without a jury and without unnecessary delays. To
3 the extent not inconsistent with other laws or applicable rules,

4 the court shall give priority to the matter over all other matters.
5 To the extent otherwise authorized by law or applicable rules,
6 the court may assign the matter to other judges if necessary to
7 comply with the need for expedited proceedings under this
8 article.

9 (b) Continuances for trial shall be granted only in extreme
10 circumstances.

11 (c) The court shall receive as self-authenticated any of the
12 following when offered by the commissioner:

13 (1) Certified copies of the financial statements made by the
14 person; and

15 (2) Certified copies of examination reports of the person
16 made by or on behalf of the commissioner.

17 (d) The facts contained in any such examination report shall
18 be presumed to be true as of the date of the hearing if the
19 examination was made as of a date not more than two hundred
20 seventy days before the petition was filed. This presumption
21 shall be rebuttable and shall shift the burden of production and
22 persuasion.

23 (e) Discovery shall be limited to grounds alleged in the
24 petition, and shall be concluded on an expedited basis.

§33-10-4d. Decision and appeals.

1 (a) The court shall enter judgment within fifteen days or as
2 soon as practicable after the conclusion of the evidence.

3 (b) The judgment shall be final when entered. Any appeal
4 shall be prosecuted on an expedited basis and must be filed
5 within five days of entry. No request for reconsideration,
6 review or appeal and no posting of a bond shall dissolve or stay
7 the judgment.

§33-10-4e. Confidentiality.

1 (a) In all proceedings and judicial reviews under section
2 four of this article, all records of the insurer, other documents
3 and all insurance department files and court records and papers,
4 so far as they pertain to or are a part of the record of the
5 proceedings, shall be and remain confidential and all papers
6 filed with the clerk of the circuit court shall be held by the clerk
7 in a confidential file, except as is necessary to obtain compli-
8 ance with any order entered in connection with the proceedings,
9 unless and until:

10 (1) The circuit court, after hearing argument in chambers,
11 shall order otherwise;

12 (2) The insurer requests that the matter be made public; or

13 (3) The commissioner applies for an order under section ten
14 or eleven of this article.

15 (b) The commissioner may share documents, materials or
16 other information in his or her possession or control pertaining
17 to an insurer that is the subject of a proceeding under this article
18 with other state insurance departments, the national association
19 of insurance commissioners, and federal banking agencies in
20 accordance with section nineteen, article two of this chapter. No
21 waiver of any applicable privilege or claim of confidentiality
22 shall occur as a result of disclosure by the commissioner under
23 this section or as a result of sharing documents, materials or
24 other information pursuant to this subsection.

§33-10-10. Order of rehabilitation.

1 (a) An order to rehabilitate a domestic insurer or the United
2 States branch of an alien insurer having trustee assets in this
3 state shall direct the commissioner forthwith to take possession
4 of the assets of the insurer and to conduct the business thereof,

5 and to take such steps toward removal of the causes and
6 conditions which have made rehabilitation necessary as the
7 court may direct.

8 (b) If at any time the commissioner deems that further
9 efforts to rehabilitate the insurer would be useless, he or she
10 may apply to the court for an order of liquidation.

11 (c) The commissioner, or any interested person upon due
12 notice to the commissioner, at any time may apply to the court
13 for an order terminating the rehabilitation proceedings and
14 permitting the insurer to resume possession of its property and
15 the conduct of its business, but no such order shall be granted
16 except when, after a full hearing, the court has determined that
17 the purposes of the proceeding have been fully accomplished.

§33-10-11. Order of liquidation of domestic insurer.

1 (a) An order to liquidate the business of a domestic insurer
2 shall direct the commissioner forthwith to take possession of
3 the assets of the insurer, to liquidate its business, to deal with
4 the insurer's property and business in his or her own name as
5 insurance commissioner or in the name of the insurer, as the
6 court may direct, and to give notice to all creditors who may
7 have claims against the insurer to present their claims.

8 (b) The commissioner may apply for and secure an order
9 dissolving the corporate existence of a domestic insurer upon
10 his or her application for an order of liquidation of the insurer
11 or at any time after such order has been granted.

§33-10-13. Order of conservation or ancillary liquidation of foreign or alien insurers.

1 (a) An order to conserve the assets of a foreign or alien
2 insurer shall require the commissioner forthwith to take

3 possession of the assets of the insurer within this state and to
4 conserve it, subject to the further direction of the court.

5 (b) An order to liquidate the assets in this state of a foreign
6 insurer shall require the commissioner forthwith to take
7 possession of the assets of the insurer within this state and to
8 liquidate it subject to the orders of the court and with due regard
9 to the rights and powers of the domiciliary receiver, as provided
10 in this article.

**§33-10-14. Conduct of delinquency proceedings against domestic
or alien insurers.**

1 (a) Whenever under this article a receiver is to be appointed
2 in delinquency proceedings for a domestic or alien insurer, the
3 court shall appoint the insurance commissioner as the receiver.
4 The court shall order the commissioner forthwith to take
5 possession of the assets of the insurer and to administer the
6 same under the orders of the court.

7 (b) As domiciliary receiver, the commissioner shall be
8 vested by operation of law with the title to all the property,
9 contracts and rights of action and all of the books and records
10 of the insurer, wherever located, as of the date of entry of the
11 order directing him or her to rehabilitate or liquidate a domestic
12 insurer or to liquidate the United States branch of an alien
13 insurer domiciled in this state and he or she shall have the right
14 to recover the same and reduce the same to possession; except
15 that ancillary receivers in reciprocal states shall have, as to
16 assets located in their respective states, the rights and powers
17 which are prescribed in this section for ancillary receivers
18 appointed in this state as to assets located in this state.

19 (c) The recording of a certified copy of the order directing
20 possession to be taken in the office of the clerk of the county
21 commission of the county where the proceedings are pending
22 and in the office of the clerk of the county commission of any

23 county wherein the insurer has property or other assets,
24 recorded in the same manner as deeds to real property are
25 recorded, shall impart the same notice as would be imparted by
26 a deed, bill of sale or other evidence of title duly recorded or
27 filed.

28 (d) The commissioner as domiciliary receiver shall be
29 responsible for the proper administration of all assets coming
30 into his or her possession or control. The court may at any time
31 require a bond from the commissioner or his or her deputies if
32 considered desirable for the protection of the assets. The cost of
33 the bond shall be paid out of the assets of the insurer as a cost
34 of administration.

35 (e) Upon taking possession of the assets of an insurer, the
36 domiciliary receiver shall, subject to the direction of the court,
37 immediately proceed to conduct the business of the insurer or
38 to take such steps as are authorized by this article for the
39 purpose of rehabilitating, liquidating or conserving the affairs
40 or assets of the insurer.

41 (f) In connection with delinquency proceedings, the
42 commissioner may appoint one or more special deputy commis-
43 sioners of insurance to act for him or her and may employ such
44 counsel, clerks and assistants as he or she considers necessary.
45 The compensation of the special deputies, counsel, clerks or
46 assistants and all expenses of taking possession of the insurer
47 and of conducting the proceedings shall be fixed by the
48 receiver, subject to the approval of the court and shall be paid
49 out of the funds or assets of the insurer. In the event the
50 property of such person does not contain cash or liquid assets
51 sufficient to defray the cost of the service required to be
52 performed under the terms of this article, the commissioner
53 may pay the cost of the services first out of the commissioner's
54 closed estate fund account. If the moneys in the closed estate
55 fund account are insufficient to fully defray the cost of the

56 services required under the terms of this article, the commis-
57 sioner may pay the costs out of the commissioner's "operating
58 – additional fees" account. Any amount so paid from either
59 account shall be considered to be expenses of administration
60 and shall be repaid to the appropriate account out of the first
61 available moneys in the estate.

62 (g) Within the limits of duties imposed upon them, special
63 deputies shall possess all the powers given to and, in the
64 exercise of those powers, shall be subject to all of the duties
65 imposed upon the receiver with respect to such proceedings. All
66 transactions involving estate accounts shall be reconciled
67 quarterly by a special deputy commissioner appointed pursuant
68 to subsection (f) of this section and reported to the commis-
69 sioner. An annual audit of any special deputy commissioner
70 appointed under this section may be conducted, at the discretion
71 of the commissioner, by an independent, outside certified public
72 accountant. The cost of this audit shall be allocated among the
73 estates of the companies in conservation, rehabilitation or
74 liquidation on a basis of allocation established by the commis-
75 sioner.

§33-10-18. Proof of claims.

1 (a) All claims against an insurer against which delinquency
2 proceedings have begun shall set forth all of the following that
3 are applicable:

4 (1) In reasonable detail, the amount of the claim, or the
5 basis upon which the amount can be ascertained;

6 (2) The facts upon which the claim is based, including any
7 consideration given for it;

8 (3) The priorities asserted, if any;

9 (4) The identity and amount of any security on the claim;

10 (5) The payments made on the debt, if any; and

11 (6) A statement that the sum claimed is justly owing and
12 whether there is a right of setoff, counterclaim or defense to the
13 claim.

14 (b) All claims shall be verified by the affidavit of the
15 claimant, or someone authorized to act on his or her behalf and
16 having knowledge of the facts and shall be supported by any
17 documents as may be material thereto.

18 (c) All claims filed in this state shall be filed with the
19 receiver, whether domiciliary or ancillary, in this state on or
20 before the last date for filing as specified in this article.

21 (d) When a claim is denied, in whole or in part, by the
22 liquidator, written notice of the determination shall be given to
23 the claimant or his or her attorney by first class mail at the
24 address shown in the proof of claim. Within sixty days from the
25 mailing of the notice, the claimant may file his or her objections
26 with the liquidator. If no such filing is made, the claimant may
27 not further object to the determination.

28 (e) Whenever objections are filed with the liquidator and
29 the liquidator does not alter his or her denial of the claim as a
30 result of the objections, the liquidator shall ask the court for a
31 hearing as soon as practicable and give notice of the hearing by
32 first class mail to the claimant or his or her attorney and to any
33 other persons directly affected, not less than ten nor more than
34 thirty days before the date of the hearing. The matter may be
35 heard by the court or by a court-appointed referee who shall
36 submit findings of fact along with his or her recommendation.
37 Upon receipt of the report, the court shall fix a time for hearing
38 the claim and shall direct that the claimant or the receiver, as
39 the court shall specify, shall give such notice as the court shall
40 determine to any persons as shall appear to the court to be
41 interested therein. All such notices shall specify the time and

42 place of the hearing and shall concisely state the amount and
43 nature of the claim, the priorities asserted, if any, and the
44 recommendation of the receiver with reference thereto.

45 (f) At the hearing, all persons interested shall be entitled to
46 appear and the court shall enter an order allowing, allowing in
47 part, or disallowing the claim. Any such order shall be consid-
48 ered an appealable order.

§33-10-19a. Priority of distribution.

1 The priority of distribution of claims from the insurer's
2 estate shall be in accordance with the order in which each class
3 of claims is herein set forth. Every claim in each class shall be
4 paid in full or adequate funds retained for such payment before
5 the members of the next class receive any payment. No
6 subclasses may be established within any class. No claim by a
7 shareholder, policyholder or other creditor may be permitted to
8 circumvent the priority classes through the use of equitable
9 remedies. The order of distribution shall be:

10 (a) Class I. The costs and expenses of administration,
11 including, but not limited to, the following:

12 (1) The actual and necessary costs of preserving or recover-
13 ing the assets of the insurer;

14 (2) Compensation for all authorized services rendered in the
15 liquidation;

16 (3) Any necessary filing fees;

17 (4) The fees and mileage payable to witnesses;

18 (5) Reasonable attorney's fees and fees for other profes-
19 sional services rendered in the proceeding; and

20 (6) All expenses incurred by the department of insurance
21 arising out of the enforcement of chapter thirty-three and its
22 rules.

23 (b) Class II. All claims for refund of unearned premiums
24 under nonassessable policies and all claims of policyholders
25 including claims of the federal or any state or local government
26 as policyholders for losses incurred; third party claims of an
27 insolvent insurer; and all reasonable claims of the West
28 Virginia insurance guaranty associations and associations or
29 entities performing a similar function in other states.

30 (c) Class III. Claims of the federal government other than
31 as an insured policyholder.

32 (d) Class IV. Debts due to employees for compensation,
33 which may not exceed two months of monetary compensation
34 and must represent payment for services performed within six
35 months before the filing of the petition for liquidation, or, if
36 rehabilitation preceded liquidation, within one year before the
37 filing of the petition for rehabilitation. Principal officers and
38 directors shall not be entitled to the benefit of this priority
39 except as otherwise approved by the liquidator and the court.
40 This priority shall be in lieu of any other similar priority which
41 may be authorized by law as to wages or compensation of
42 employees.

43 (e) Class V. Claims of general creditors including claims of
44 ceding and assuming companies in their capacity as such.

45 (f) Class VI. Claims of any state or local government.
46 Claims, including those of any governmental body for a penalty
47 or forfeiture, shall be allowed in this class only to the extent of
48 the pecuniary loss sustained from the act, transaction or
49 proceeding out of which the penalty or forfeiture arose, with
50 reasonable and actual costs occasioned thereby. The remainder

51 of such claims shall be postponed to the class of claims under
52 subsection (h) of this section.

53 (g) Class VII. Claims filed late or any other claims other
54 than claims under subsection (h) of this section.

55 (h) Class VIII. Surplus or contribution notes, or similar
56 obligations and premium refunds on assessable policies.
57 Payments to members of domestic mutual corporations shall be
58 limited in accordance with law.

59 (i) Class IX. The claims of shareholders or other owners.

§33-10-26. Voidable preferences and liens.

1 (a) A preference is a transfer of any of the property of an
2 insurer to or for the benefit of a creditor, for or on account of an
3 antecedent debt, made or suffered by the insurer within one
4 year before the filing of a successful petition for liquidation
5 under this article, the effect of which transfer may be to enable
6 the creditor to obtain a greater percentage of this debt than
7 another creditor of the same class would have otherwise
8 received. If a liquidation order is entered while the insurer is
9 already subject to a rehabilitation order, then the transfers shall
10 be deemed preferences if made or suffered within one year
11 before the filing of the successful petition for rehabilitation, or
12 within two years before the filing of the successful petition for
13 liquidation, whichever time is shorter.

14 (b) Any preference may be avoided by the liquidator if the
15 insurer was insolvent at the time of the transfer; and

16 (1) The transfer was made within four months before the
17 filing of the petition; or

18 (2) The creditor receiving it or to be benefited thereby or
19 his or her agent acting with reference thereto had, at the time

20 when the transfer was made, reasonable cause to believe that
21 the insurer was insolvent or was about to become insolvent; or

22 (3) The creditor receiving it was an officer, or any em-
23 ployee or attorney or other person who was in fact in a position
24 of comparable influence in the insurer to an officer whether or
25 not he or she held such position, or any shareholder holding
26 directly or indirectly more than five percent of any class of any
27 equity security issued by the insurer, or any other person, firm,
28 corporation, association or aggregation of persons with whom
29 the insurer did not deal at arm's length.

30 (c) Where the preference is voidable, the liquidator may
31 recover the property or, if it has been converted, its value from
32 any person who has received or converted the property; except
33 where a bona fide purchaser or lienor has given less than fair
34 equivalent value, the purchaser or lienor shall have a lien upon
35 the property to the extent of the consideration actually given.
36 Where a preference by way of lien or security title is voidable,
37 the court may on due notice order the lien or title to be pre-
38 served for the benefit of the estate, in which event the lien or
39 title shall pass to the liquidator.

40 (d) A transfer under this section will be considered to have
41 been made as follows:

42 (1) A transfer of property other than real property shall be
43 deemed to be made or suffered when it becomes so far per-
44 fected that no subsequent lien obtainable by legal or equitable
45 proceedings on a simple contract could become superior to the
46 rights of the transferee.

47 (2) A transfer of real property shall be deemed to be made
48 or suffered when it becomes so far perfected that no subsequent
49 bona fide purchaser from the insurer could obtain rights
50 superior to the rights of the transferee.

51 (3) A transfer which creates an equitable lien will not be
52 deemed to be perfected if there are available means by which a
53 legal lien could be created.

54 (4) A transfer not perfected prior to the filing of a petition
55 for liquidation shall be deemed to be made immediately before
56 the filing of the successful petition.

57 (5) The provisions of this subsection apply whether or not
58 there are or were creditors who might have obtained liens or
59 persons who might have become bona fide purchasers.

60 (e)(1) A lien obtainable by legal or equitable proceedings
61 upon a simple contract is one arising in the ordinary course of
62 the proceedings upon the entry or docketing of a judgment or
63 decree, or upon attachment, garnishment, execution or like
64 process, whether before, upon or after judgment or decree and
65 whether before or upon levy. It does not include liens which
66 under applicable law are given a special priority over other liens
67 which are prior in time.

68 (2) A lien obtainable by legal or equitable proceedings
69 could become superior to the rights of a transferee, or a
70 purchaser could obtain rights superior to the rights of a trans-
71 feree within the meaning of subsection (d) of this section, if
72 such consequences would follow only from the lien or purchase
73 itself, or from the lien or purchase followed by any step wholly
74 within the control of the respective lienholder or purchaser,
75 with or without the aid of ministerial action by public officials.
76 A lien could not, however, become superior and such a pur-
77 chase could not create superior rights for the purpose of
78 subsection (d) of this section through any acts subsequent to the
79 obtaining of such a lien or subsequent to such a purchase which
80 require the agreement or concurrence of any third party or
81 which require any further judicial action or ruling.

82 (f) A transfer of property for or on account of a new and
83 contemporaneous consideration which is considered under
84 subsection (d) of this section to be made or suffered after the
85 transfer because of delay in perfecting it does not thereby
86 become a transfer for or on account of an antecedent debt if any
87 acts required by the applicable law to be performed in order to
88 perfect the transfer as against liens or bona fide purchasers'
89 rights are performed within twenty-one days or any period
90 expressly allowed by the law, whichever is less. A transfer to
91 secure a future loan, if such a loan is actually made, or a
92 transfer which becomes security for a future loan, shall have the
93 same effect as a transfer for or on account of a new and
94 contemporaneous consideration.

95 (g) If any lien deemed voidable under subsection (b) of this
96 section has been dissolved by the furnishing of a bond or other
97 obligation, the surety on which has been indemnified directly
98 or indirectly by the transfer of or the creation of a lien upon any
99 property of an insurer before the filing of a petition under this
100 article which results in a liquidation order, the indemnifying
101 transfer or lien shall also be considered voidable.

102 (h) The property affected by any lien considered voidable
103 under subsections (a), (b) and (g) of this section shall be
104 discharged from the lien and that property and any of the
105 indemnifying property transferred to or for the benefit of a
106 surety shall pass to the liquidator, except that the court may on
107 due notice order any such lien to be preserved for the benefit of
108 the estate and the court may direct that such conveyance be
109 executed as may be proper or adequate to evidence the title of
110 the liquidator.

111 (i) The circuit court shall have summary jurisdiction of any
112 proceeding by the liquidator to hear and determine the rights of
113 any parties under this section. Reasonable notice of any hearing
114 in the proceeding shall be given to all parties in interest,

115 including the obligee of a releasing bond or other like obliga-
116 tion. Where an order is entered for the recovery of indemnify-
117 ing property in kind or for the avoidance of an indemnifying
118 lien the court, upon application of any party in interest, shall in
119 the same proceeding ascertain the value of the property or lien
120 and if the value is less than the amount for which the property
121 is indemnity or than the amount of the lien, the transferee or
122 lienholder may elect to retain the property or lien upon payment
123 of its value, as ascertained by the court, to the liquidator within
124 such reasonable times as the court shall fix.

125 (j) The liability of the surety under a releasing bond or other
126 like obligation shall be discharged to the extent of the value of
127 the indemnifying property recovered or the indemnifying lien
128 nullified and avoided by the liquidator or where the property is
129 retained under subsection (i) of this section to the extent of the
130 amount paid to the liquidator.

131 (k) If a creditor has been preferred, and afterward in good
132 faith gives the insurer further credit without security of any
133 kind, for property which becomes a part of the insurer's estate,
134 the amount of the new credit remaining unpaid at the time of
135 the petition may be set off against the preference which would
136 otherwise be recoverable from him or her.

137 (l) If an insurer shall, directly or indirectly, within four
138 months before the filing of a successful petition for liquidation
139 under this article, or at any time in contemplation of a proceed-
140 ing to liquidate it, pay money or transfer property to an attor-
141 ney-at-law for services rendered or to be rendered, the transac-
142 tions may be examined by the court on its own motion or shall
143 be examined by the court on petition of the liquidator and shall
144 be held valid only to the extent of a reasonable amount to be
145 determined by the court and the excess may be recovered by the
146 liquidator for the benefits of the estate provided that where the
147 attorney is in a position of influence in the insurer or an affiliate

148 thereof payment of any money or the transfer of any property
149 to the attorney-at-law for services rendered or to be rendered
150 shall be governed by the provision of subdivision (3), subsec-
151 tion (b) of this section.

152 (m)(1) Every officer, manager, employee, shareholder,
153 member, subscriber, attorney or any other person acting on
154 behalf of the insurer who knowingly participates in giving any
155 preference when he or she has reasonable cause to believe the
156 insurer is or is about to become insolvent at the time of the
157 preference shall be personally liable to the liquidator for the
158 amount of the preference. It is permissible to infer that there is
159 a reasonable cause to so believe if the transfer was made within
160 four months before the date of filing of this successful petition
161 for liquidation.

162 (2) Every person receiving any property from the insurer or
163 the benefit thereof as a preference voidable under subsections
164 (a) and (b) of this section shall be personally liable therefor and
165 shall be bound to account to the liquidator.

166 (3) Nothing in this subsection shall prejudice any other
167 claim by the liquidator against any person.

§33-10-26a. Fraudulent transfers prior to petition.

1 (a) Every transfer made or suffered and every obligation
2 incurred by an insurer within one year prior to the filing of a
3 successful petition for rehabilitation or liquidation under this
4 article is fraudulent as to then existing and future creditors if
5 made or incurred without fair consideration, or with actual
6 intent to hinder, delay or defraud either existing or future
7 creditors. A transfer made or an obligation incurred by an
8 insurer ordered to be rehabilitated or liquidated under this
9 article, which is fraudulent under this section, may be avoided
10 by the receiver, except as to a person who in good faith is a

11 purchaser, lienor or obligee for a present fair equivalent value
12 and except that any purchaser, lienor or obligee, who in good
13 faith has given a consideration less than fair for such transfer,
14 lien or obligation, may retain the property, lien or obligation as
15 security for repayment. The court may, on due notice, order any
16 such transfer or obligation to be preserved for the benefit of the
17 estate and in that event, the receiver shall succeed to and may
18 enforce the rights of the purchaser, lienor or obligee.

19 (b) A transfer under this section will be considered to have
20 been made as follows:

21 (1) A transfer of property other than real property shall be
22 deemed to be made or suffered when it becomes so far per-
23 fected that no subsequent lien obtainable by legal or equitable
24 proceedings on a simple contract could become superior to the
25 rights of the transferee under subsection (e), section twenty-six
26 of this article.

27 (2) A transfer of real property shall be deemed to be made
28 or suffered when it becomes so far perfected that no subsequent
29 bona fide purchaser from the insurer could obtain rights
30 superior to the rights of the transferee.

31 (3) A transfer which creates an equitable lien shall not be
32 deemed to be perfected if there are available means by which a
33 legal lien could be created.

34 (4) Any transfer not perfected prior to the filing of a
35 petition for liquidation shall be deemed to be made immediately
36 before the filing of the successful petition.

37 (5) The provisions of this subsection apply whether or not
38 there are or were creditors who might have obtained any liens
39 or persons who might have become bona fide purchasers.

40 (c) Any transaction of the insurer with a reinsurer shall be
41 deemed fraudulent and may be avoided by the receiver under
42 subsection (a) of this section if:

43 (1) The transaction consists of the termination, adjustment
44 or settlement of a reinsurance contract in which the reinsurer is
45 released from any part of its duty to pay the originally specified
46 share of losses that had occurred prior to the time of the
47 transactions, unless the reinsurer gives a present fair equivalent
48 value for the release; and

49 (2) Any part of the transaction took place within one year
50 prior to the date of filing of the petition through which the
51 receivership was commenced.

52 (d) Every person receiving any property from the insurer or
53 any benefit thereof which is a fraudulent transfer under subsec-
54 tion (a) of this section shall be personally liable therefore and
55 shall be bound to account to the liquidator.

§33-10-26b. Recoupment from affiliates.

1 (a) If an order instituting a delinquency proceeding against
2 an insurer authorized to do business in this state is entered
3 under this article, the receiver appointed under the order has a
4 right to recover on behalf of the insurer from any affiliate that
5 controlled the insurer the amount of distributions, other than
6 stock dividends paid by the insurer on its capital stock, made at
7 any time during the five years preceding the petition for
8 liquidation, rehabilitation or conservation. This recovery is
9 subject to the limitations of subsections (b) through (g),
10 inclusive, of this section.

11 (b) No dividend is recoverable if the recipient shows that,
12 when paid, the distribution was lawful and reasonable and that
13 the insurer did not know and could not reasonably have known
14 that the distribution might adversely affect its solvency.

15 (c) The maximum amount recoverable under this section is
16 the amount needed, in excess of all other available assets, to
17 pay all claims under the receivership, reduced for each recipient
18 by any amount the recipient has already paid to receivers under
19 similar laws of other states.

20 (d) Any person who was an affiliate that controlled the
21 insurer at the time the distributions were paid is liable up to the
22 amount of distributions received. Any person who was an
23 affiliate that controlled the insurer at the time the distributions
24 were declared is liable up to the amount of distributions the
25 person would have received if the distributions had been paid
26 immediately. If two or more persons are liable regarding the
27 same distributions, they are jointly and severally liable.

28 (e) If any person liable under subsection (d) of this section
29 is insolvent, all affiliates that controlled that person at the time
30 the dividend was declared or paid are jointly and severally
31 liable for any resulting deficiency in the amount recovered from
32 the insolvent affiliate.

33 (f) This section does not reduce the personal liability of a
34 director under existing law.

35 (g) An action or proceeding under this section may not be
36 commenced after the earlier of:

37 (1) Two years after the appointment of a liquidator pursuant
38 to this article; or

39 (2) The date the rehabilitation or liquidation is terminated.

§33-10-26c. Fraudulent transfer after petition.

1 (a) After a petition for rehabilitation or liquidation has been
2 filed, a transfer of any of the real property of the insurer made
3 to a person acting in good faith shall be valid against the

4 receiver if made for a present fair equivalent value or, if not
5 made for a present fair equivalent value, then to the extent of
6 the present consideration actually paid therefore, for which
7 amount the transferee shall have a lien on the property so
8 transferred. The commencement of a proceeding in rehabilita-
9 tion or liquidation shall be constructive notice upon the
10 recording of a copy of the petition for or order of rehabilitation
11 or liquidation with the clerk of the county commission of the
12 county where any real property in question is located. The
13 exercise by a court of the United States or any state or jurisdic-
14 tion to authorize or effect a judicial sale of real property of the
15 insurer within any county in any state shall not be impaired by
16 the pendency of such a proceeding unless the copy is recorded
17 in the county prior to the consummation of the judicial sale.

18 (b) After a petition for rehabilitation or liquidation has been
19 filed and before either the receiver takes possession of the
20 property of the insurer or an order of rehabilitation or liquida-
21 tion is granted:

22 (1) A transfer of any of the property of the insurer, other
23 than real property, made to a person acting in good faith shall
24 be valid against the receiver if made for a present fair equiva-
25 lent value; or, if made for less than a present fair equivalent
26 value, then to the extent of the present consideration actually
27 paid therefore, for which amount the transferee shall have a lien
28 on the property so transferred;

29 (2) A person indebted to the insurer or holding property of
30 the insurer may, if acting in good faith, pay the indebtedness or
31 deliver the property, or any part thereof, to the insurer or upon
32 his or her order, with the same effect as if the petition were not
33 pending;

34 (3) A person having actual knowledge of the pending
35 rehabilitation or liquidation shall be considered not to act in
36 good faith;

37 (4) A person asserting the validity of a transfer under this
38 section shall have the burden of proof. Except as elsewhere
39 provided in this section, no transfer by or on behalf of the
40 insurer after the date of the petition for liquidation by any
41 person other than the liquidator shall be valid against the
42 liquidator.

43 (c) Every person receiving any property from the insurer or
44 any benefit thereof which is a fraudulent transfer under this
45 section shall be personally liable therefore and shall be bound
46 to account to the liquidator.

47 (d) Nothing in this article shall impair the negotiability of
48 currency or negotiable instruments.

§33-10-26d. Claims of holders of void or voidable rights.

1 (a) No claim of a creditor who has received or acquired a
2 preference, lien, conveyance, transfer, assignment or encum-
3 brance voidable under this article shall be allowed unless the
4 creditor surrenders the preference, lien, conveyance, transfer,
5 assignment or encumbrance. If the avoidance is effected by a
6 proceeding in which a final judgment has been entered, the
7 claim will not be allowed unless the money is paid or the
8 property is delivered to the liquidator within thirty days from
9 the date of entry of the final judgment, except that the court
10 having jurisdiction over the liquidation may allow further time
11 if there is an appeal or other continuation of the proceeding.

12 (b) A claim allowable under subsection (a) of this section
13 by reason of the avoidance, whether voluntary or involuntary,
14 of a preference, lien, conveyance, transfer, assignment or
15 encumbrance, may be filed as a late filing if filed within thirty
16 days from the date of the avoidance, or within the further time
17 allowed by the court under subsection (a) of this section. A
18 claimant having a late filed claim under this section may be

19 permitted by the liquidator to share in distribution as though the
20 claim were not late, to the extent that the payment will not
21 interfere with the orderly administration of the liquidation.

§33-10-28. Setoffs.

1 (a) In all cases of mutual debts or mutual credits between
2 the insurer and another person in connection with any action or
3 proceeding under this article, the credits and debts shall be set
4 off and the balance only shall be allowed or paid, except as
5 provided in subsection (b), below.

6 (b) No setoff may be allowed in favor of any such person
7 where:

8 (1) The obligation of the insurer to the person would not at
9 the date of the entry of any liquidation order or otherwise, as
10 provided in section twenty-five of this article, entitle him or her
11 to share as a claimant in the assets of the insurer;

12 (2) The obligation of the insurer to the person was pur-
13 chased by or transferred to the person with a view of its being
14 used as a setoff;

15 (3) The obligation of the person is to pay an assessment
16 levied against the members of a mutual insurer, or against the
17 subscribers of a reciprocal insurer, or is to pay a balance upon
18 the subscription to the capital stock of a stock insurer;

19 (4) The obligation of the insurer is owed to an affiliate of
20 such person, or any other entity or association other than the
21 person;

22 (5) The obligation of the person is owed to an affiliate of
23 the insurer, or any other entity or association other than the
24 insurer; or

25 (6) The obligations between the person and the insurer arise
26 from transactions by which the person or the insurer assumed
27 risk and obligations from the other party and ceded back
28 substantially the same risks and obligations except the receiver
29 may permit setoffs if in his or her discretion, a setoff is appro-
30 priate because of specific circumstances.

31 (c) Notwithstanding the provisions of subsection (b) of this
32 section, a setoff of sums due on obligations in the nature of
33 those set forth in subdivision (6), subsection (b) of this section
34 shall be allowed for those sums accruing from business written
35 where the contracts were entered into, renewed or extended
36 with the approval of the commissioner of insurance of the state
37 of domicile of the now insolvent insurer, when in the judgment
38 of such commissioner it was necessary to provide reinsurance
39 in order to prevent or mitigate a threatened impairment or
40 insolvency of a domiciliary insurer in connection with the
41 exercise of the commissioner's regulatory responsibilities.

42 (d) The provisions of this section shall supersede any
43 agreements or contractual provisions which might be construed
44 to enlarge the setoff rights of any person under any contract
45 with the insurer.

§33-10-29. Allowance of certain claims.

1 (a) No contingent claim may share in a distribution of the
2 assets of an insurer which has been adjudicated to be insolvent
3 by an order made pursuant to this article, except that such claim
4 shall be considered, if properly presented, and may be allowed
5 to share where:

6 (1) It does not prejudice the orderly administration of the
7 liquidation; or

8 (2) There is a surplus and the liquidation is thereafter
9 conducted upon the basis that the insurer is solvent.

10 (b) Where an insurer has been so adjudicated to be insol-
11 vent any person who has a cause of action against an insured of
12 the insurer under a policy issued by the insurer shall have the
13 right to file a claim in the liquidation proceeding, regardless of
14 the fact that the claim may be contingent and the claim may be
15 allowed:

16 (1) If it may be reasonably inferred from the proof pre-
17 sented upon the claim that such person would be able to obtain
18 a judgment upon the cause of action against the insured; and

19 (2) If such person furnishes suitable proof, unless the court
20 for good cause shown otherwise directs, that no further valid
21 claim against the insurer arising out of his or her cause of action
22 other than those already presented can be made; and

23 (3) If the total liability of the insurer to all claimants arising
24 out of the same act of its insured is no greater than its maximum
25 liability would be were it not in liquidation.

26 (c)(1) No judgment against such an insured taken after the
27 date of entry of the liquidation order may be considered in the
28 liquidation proceedings as evidence of liability, or of the
29 amount of damages, and no judgment against an insured taken
30 by default or by collusion prior to the entry of the liquidation
31 order may be considered as conclusive evidence in the liquida-
32 tion proceedings, either of the liability of the insured to the
33 person upon the cause of action or of the amount of damages to
34 which the person is therein entitled.

35 (2) A claim by a third party founded upon a policy may be
36 allowed without requiring the claim to be reduced to judgment,
37 provided it can be reasonably inferred from the proof presented
38 that the claimant would be able to obtain a judgment upon his
39 or her cause of action against the insured and that the judgment
40 would represent a liability of the insurer in liquidation under the
41 policy upon which the claim is founded.

42 (d) No claim of any secured claimant may be allowed at a
43 sum greater than the difference between the value of the claim
44 without security and the value of the security itself as of the
45 date of the entry of the order of liquidation or such other date
46 set by the court for determining rights and liabilities as pro-
47 vided in section twenty-five of this article unless the claimant
48 surrenders his or her security to the commissioner, in which
49 event the claim shall be allowed in the full amount for which it
50 is valued.

51 (e) Whenever a creditor, whose claim against an insurer is
52 secured, in whole or in part, by the undertaking of another
53 person, fails to prove and file that claim, the other person may
54 do so in the creditor's name and shall be subrogated to the
55 rights of the creditor, whether the claim has been filed by the
56 creditor or by the other person in the creditor's name, to the
57 extent that he or she discharges the undertaking. In the absence
58 of an agreement with the creditor to the contrary, the other
59 person shall not be entitled to any distribution, however, until
60 the amount paid to the creditor on the undertaking plus the
61 distributions paid on the claim from the insurer's estate to the
62 creditor equals the amount of the entire claim of the creditor.
63 Any excess received by the creditor shall be held by him or her
64 in trust for such other person. The term "other person", as used
65 in this section, is not intended to apply to a guaranty association
66 or foreign guaranty association.

67 (f) Unless such claim is filed in the manner and within the
68 time provided in sections eighteen and thirty of this article, it
69 shall not be entitled to filing or allowance and no action may be
70 maintained thereon. In the liquidation, pursuant to the provi-
71 sions of this article, of any domestic insurer which has issued
72 policies insuring the lives of persons, the commissioner shall,
73 within thirty days after the last day set for the filing of claims,
74 make a list of the persons who have not filed proofs of claim
75 with him or her and to whom, according to the books of the

76 insurer, there are amounts owing under such policies and he or
77 she shall set opposite the name of each person the amount so
78 owing to the person. Each person whose name appears upon the
79 list shall be considered to have duly filed, prior to the last day
80 set for the filing of claims, a claim for the amount set opposite
81 his or her name on the list.

82 (g)(1) Claims founded upon unliquidated or undetermined
83 demands must be filed within the time limit provided in this
84 article for the filing of claims, but claims founded upon such
85 demands shall not share in any distribution to creditors of a
86 person proceeded against under section nineteen-a of this article
87 until the claims have been definitely determined, proved and
88 allowed. Thereafter, the claims shall share ratably with other
89 claims of the same class in all subsequent distributions.

90 (2) An unliquidated or undetermined claim or demand
91 within the meaning of this article shall be considered to be any
92 claim or demand upon which a right of action has accrued at the
93 date of the order of liquidation and upon which the liability has
94 not been determined or the amount thereof liquidated.

95 (h) The commissioner may require, as a condition of
96 payment of the final liquidation dividend to a lender, or his or
97 her assignee, who has filed a claim for an unearned premium as
98 an assignee of the insured for valuable consideration:

99 (1) That such assignee of the insured shall assign to the
100 liquidator all his or her right, title and interest in any unsatisfied
101 debt of the insured to the assignee, pertaining to policies of the
102 insolvent insurer, remaining unpaid after crediting the final
103 liquidation dividend, if the amount of the unsatisfied debt is less
104 than one hundred dollars and one cent; and

105 (2) That all of the documents giving rise to the debt be
106 delivered to him or her.

107 (i) The commissioner may determine whether or not it will
108 be feasible to attempt to collect any assigned debt. If the
109 commissioner determines not to pursue collection of any such
110 debt, he or she shall file a declaration to that effect with the
111 liquidation court and be relieved of any further responsibility in
112 respect to the debt.

113 (j) As used in this section, “insured” means a natural person
114 who purchased insurance or coverage from the insolvent insurer
115 for personal, family, or household purposes.

§33-10-30. Time within which claims to be filed.

1 (a) If upon the granting of an order of liquidation under this
2 article or at any time thereafter during the liquidation proceed-
3 ing, the insurer shall not be clearly solvent, the court shall, after
4 notice and hearing as provided in this article, make an order
5 declaring the insurer to be insolvent. Thereupon regardless of
6 any prior notice which may have been given to creditors, the
7 commissioner shall notify all persons who may have claims
8 against the insurer and who have not filed proper proofs thereof
9 to present the same to him or her, at a place specified in the
10 notice, within four months from the date of entry of the order,
11 or if the commissioner shall certify that it is necessary, within
12 such longer time as the court shall prescribe. The last day for
13 filing of proofs of claims shall be specified in the notice and
14 notice shall be given in a manner to be determined by the court.

15 (b) Proofs of claim may be filed subsequent to the date
16 specified, but no such claim may share in the distribution of the
17 assets until all allowed claims, proofs of which have been filed
18 before said date, have been paid in full with interest, except as
19 provided in section twenty-six-d of this article.

§33-10-36. Early access to distribution.

1 (a) Within one hundred twenty days of a final determina-
2 tion of insolvency of an insurance company by the circuit court,
3 the commissioner shall make application to the court for
4 approval of a proposal to disburse assets out of the company's
5 marshaled assets, from time to time as such assets become
6 available, to the appropriate guaranty association having
7 obligations because of the insolvency. "Appropriate guaranty
8 association" means guaranty association and foreign guaranty
9 association as those terms are defined in section one of this
10 article. If the commissioner determines that there are insuffi-
11 cient assets to disburse, the application required by this section
12 shall be satisfied by a filing by the commissioner stating the
13 reasons for this determination.

14 (b) The proposal shall at least include provisions for:

15 (1) Reserving amounts for the payment of expenses of
16 administration and of claims falling within the priorities
17 established in section nineteen-a of this article but only with
18 respect to such priorities higher than that of the associations;

19 (2) Disbursement of the assets marshaled to date and
20 subsequent disbursement of assets as they become available;

21 (3) Equitable allocation of disbursements to each of the
22 associations entitled thereto;

23 (4) The securing by the commissioner from each of the
24 associations entitled to disbursements pursuant to this section
25 of an agreement to return to the commissioner such assets,
26 together with income earned on assets previously disbursed, as
27 may be required to pay claims of secured creditors and claims
28 falling within the priorities established in section nineteen-a of
29 this article but only with respect to such priorities higher than
30 that of the associations. No bond shall be required of any such
31 association; and

32 (5) A full report to be made by the association to the
33 commissioner accounting for all assets so disbursed to the
34 association, all disbursements made therefrom, any interest
35 earned by the association on such assets and any other matter as
36 the court may direct.

37 (c) The commissioner's proposal shall provide for disburse-
38 ments to the association in amounts estimated at least equal to
39 the claim payments made or to be made thereby for which the
40 association could assert a claim against the commissioner, and
41 shall further provide that if the assets available for disbursement
42 from time to time do not equal or exceed the amount of the
43 claim payments made or to be made by the association, then
44 disbursements shall be in the amount of available assets.

45 (d) Notice of the commissioner's application shall be given
46 to the associations in and to the commissioners of insurance of
47 each of the states. Any such notice shall be considered to have
48 been given when deposited in the United States mail, first class
49 postage prepaid, at least thirty days prior to submission of the
50 application to the court. Action on the application may be taken
51 by the court provided the notice required in this subsection has
52 been given and provided that the commissioner's proposal
53 complies with subdivisions (1) and (2), subsection (b) of this
54 section.

**§33-10-38. Unclaimed and withheld funds; termination of pro-
ceedings.**

1 (a) All unclaimed funds subject to distribution remaining in
2 the liquidator's hands when he or she is ready to apply to the
3 court for discharge, including the amount distributable to any
4 creditor, shareholder, member or other person who is unknown
5 or cannot be found, shall be deposited with the state treasurer
6 and shall be paid without interest to the person entitled thereto
7 or his or her legal representative upon proof satisfactory to the

8 state treasurer of his or her right thereto. Any amount on deposit
9 not claimed within six years from the discharge of the liquida-
10 tor shall be considered to have been abandoned and shall be
11 escheated to the state of West Virginia without formal escheat
12 proceedings and be deposited with the general fund.

13 (b) When all assets justifying the expense of collection and
14 distribution have been marshaled and distributed under this
15 article, the liquidator shall petition the circuit court to terminate
16 the liquidation proceeding and to close the estate and for other
17 relief as may be appropriate. Subject to approval of the circuit
18 court, after the completion of all post-closure activities for
19 which moneys were reserved, the liquidator is authorized to
20 deposit any remaining assets reserved for administrative
21 expenses incurred in the closing of the estate that may not be
22 practicably or economically distributed to claimants into a
23 segregated account to be known as the closed estate fund
24 account. The commissioner may thereafter use moneys held in
25 the account to fund the administrative expenses of proceedings
26 against insurers subject to this article that lack sufficient assets
27 to fund administration.

**§33-10-39. Immunity in receivership proceedings and representa-
tion of the special deputy supervisor.**

1 (a) No claim of any nature whatsoever that is directly
2 related to the receivership of an insurer shall arise against and
3 no liability shall be imposed upon, the insurance commissioner,
4 special deputy commissioner, or any person or entity acting as
5 a receiver of an insurer, including surety, in rehabilitation,
6 liquidation or conservation as a result of a court order issued on
7 or after the effective date of this article for any statement made
8 or actions taken or not taken in the good faith exercise of their
9 powers under law. However, this immunity shall not extend to
10 acts or omissions which are malicious or grossly negligent. This

11 qualified immunity extends to agents and employees of the
12 receiver.

13 (b) In any civil proceeding filed against a special deputy
14 commissioner appointed pursuant to this article, the special
15 deputy commissioner shall be entitled to be represented by the
16 attorney general.

§33-10-40. Applicability of amendments.

1 From and after the first day of July, two thousand four, any
2 delinquency proceeding commenced against an insurer for the
3 purpose of liquidating, rehabilitating, reorganizing or conserv-
4 ing the insurer shall be undertaken pursuant to this article. Any
5 delinquency proceeding pending against an insurer under this
6 article on the thirtieth day of June, two thousand four, will be
7 administered and concluded under the law in effect at the time
8 the delinquency proceeding was commenced.

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

§33-24-14. Delinquency proceedings.

1 From and after the first day of July, two thousand four, any
2 delinquency proceeding commenced against a corporation
3 subject to this article for the purpose of liquidating, rehabilitat-
4 ing, reorganizing or conserving the corporation shall be
5 considered to be a delinquency proceeding against an insurance
6 company and shall be undertaken pursuant to the provisions of
7 article ten of this chapter. Any delinquency proceeding pending
8 against a corporation subject to this article prior to the first day
9 of July, two thousand four, will be administered and concluded
10 under the law in effect at the time the delinquency proceeding
11 was commenced.

CHAPTER 144

(S. B. 450 — By Senator Minard)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §33-15A-8, §33-15A-9, §33-15A-10 and §33-15A-11, all relating to the regulation of long-term care insurance policies; defining terms; establishing extraterritorial jurisdiction; summarizing disclosure and performance standards for long-term care insurance; instituting and regulating an incontestability period; disclosing nonforfeiture benefits; providing the commissioner authority to promulgate regulations; providing penalties; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

That §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §33-15A-8, §33-15A-9, §33-15A-10 and §33-15A-11, all to read as follows:

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

- §33-15A-4. Definitions.
- §33-15A-5. Extraterritorial jurisdiction - Group long-term care insurance.
- §33-15A-6. Disclosure and performance standards for long-term care insurance.
- §33-15A-8. Incontestability period.
- §33-15A-9. Nonforfeiture benefits.

§33-15A-10. Authority to promulgate rules.

§33-15A-11. Penalties.

§33-15A-4. Definitions.

1 (a) “Long-term care insurance” means any insurance policy
2 or rider advertised, marketed, offered or designed to provide
3 coverage for not less than twelve consecutive months for each
4 covered person on an expense incurred, indemnity, prepaid or
5 other basis; for one or more necessary or medically necessary
6 diagnostic, preventive, therapeutic, rehabilitative, maintenance
7 or personal care services, provided in a setting other than an
8 acute care unit of a hospital. The term includes group and
9 individual, annuities and life insurance policies or riders that
10 provide directly or supplement long-term care insurance. The
11 term also includes a policy or rider that provides for payment of
12 benefits based upon cognitive impairment or the loss of
13 functional capacity. The term shall also include qualified long-
14 term care insurance contracts. Long-term care insurance may
15 be issued by insurers; fraternal benefit societies; nonprofit
16 health, hospital, and medical service corporations; prepaid
17 health plans; health maintenance organizations or any similar
18 organization to the extent they are otherwise authorized to issue
19 life or health insurance. Long-term care insurance shall not
20 include any insurance policy that is offered primarily to provide
21 basic medicare supplement coverage, basic hospital expense
22 coverage, basic medical-surgical expense coverage, hospital
23 confinement indemnity coverage, major medical expense
24 coverage, disability income or related asset-protection cover-
25 age, accident only coverage, specified disease or specified
26 accident coverage, or limited benefit health coverage. With
27 regard to life insurance, this term does not include life insur-
28 ance policies that accelerate the death benefit specifically for
29 one or more of the qualifying events of terminal illness, medical
30 conditions requiring extraordinary medical intervention or
31 permanent institutional confinement and that provide the option

32 of a lump-sum payment for those benefits and where neither the
33 benefits nor the eligibility for the benefits is conditioned upon
34 the receipt of long-term care. Notwithstanding any other
35 provision of this article, any product advertised, marketed or
36 offered as long-term care insurance shall be subject to the
37 provisions of this article.

38 (b) "Applicant" means:

39 (1) In the case of an individual long-term care insurance
40 policy, the person who seeks to contract for benefits; and

41 (2) In the case of a group long-term care insurance policy,
42 the proposed certificate holder.

43 (c) "Certificate" means, for the purposes of this article, any
44 certificate issued under a group long-term care insurance policy
45 delivered or issued for delivery in this state.

46 (d) "Commissioner" means the insurance commissioner of
47 this state.

48 (e) "Group long-term care insurance" means a long-term
49 care insurance policy that is delivered or issued for delivery in
50 this state and issued to:

51 (1) One or more employers or labor organizations, or to a
52 trust or to the trustees of a fund established by one or more
53 employers or labor organizations, or a combination thereof, for
54 employees or former employees or a combination thereof or for
55 members or former members or a combination thereof, of the
56 labor organizations; or

57 (2) Any professional, trade or occupational association for
58 its members or former or retired members, or combination
59 thereof, if the association:

60 (A) Is composed of individuals all of whom are or were
61 actively engaged in the same profession, trade or occupation;
62 and

63 (B) Has been maintained in good faith for purposes other
64 than obtaining insurance; or

65 (3) An association or a trust or the trustees of a fund
66 established, created or maintained for the benefit of members
67 of one or more associations. Prior to advertising, marketing or
68 offering the policy within this state, the association or associa-
69 tions, or the insurer of the association or associations, shall file
70 evidence with the commissioner that the association or associa-
71 tions have at the outset a minimum of one hundred persons and
72 have been organized and maintained in good faith for the
73 purposes other than that of obtaining insurance; have been in
74 active existence for at least one year; and have a constitution
75 and bylaws that provide that:

76 (A) The association or associations hold regular meetings
77 not less than annually to further purposes of the members;

78 (B) Except for credit unions, the association or associations
79 collect dues or solicit contributions from members; and

80 (C) The members have voting privileges and representation
81 on the governing board and committees.

82 Thirty days after the filing the association or associations
83 will be deemed to satisfy the organizational requirements,
84 unless the commissioner makes a finding that the association or
85 associations do not satisfy those organizational requirements.

86 (4) A group other than as described in subdivisions (1), (2)
87 and (3), subsection (e) of this section, subject to a finding by the
88 commissioner that:

89 (A) The issuance of the group policy is not contrary to the
90 best interest of the public;

91 (B) The issuance of the group policy would result in
92 economies of acquisition or administration; and

93 (C) The benefits are reasonable in relation to the premiums
94 charged.

95 (f) "Policy" means, for the purposes of this article, any
96 policy, contract, subscriber agreement, rider or endorsement
97 delivered or issued for delivery in this state by an insurer;
98 fraternal benefit society; nonprofit health, hospital, or medical
99 service corporation; prepaid health plan; health maintenance
100 organization or any similar organization.

101 (g) (1) "Qualified long-term care insurance contract" or
102 "federally tax qualified long-term care insurance contract"
103 means an individual or group insurance contract that meets the
104 requirements of Section 7702B(b) of the Internal Revenue Code
105 of 1986, as amended, as follows:

106 (A) The only insurance protection provided under the
107 contract is coverage of qualified long-term care services. A
108 contract shall not fail to satisfy the requirements of this
109 paragraph by reason of payments being made on a per diem or
110 other periodic basis without regard to the expenses incurred
111 during the period to which the payments relate;

112 (B) The contract does not pay or reimburse expenses
113 incurred for services or items to the extent that the expenses are
114 reimbursable under Title XVIII of the Social Security Act, as
115 amended, or would be so reimbursable but for the application
116 of a deductible or coinsurance amount. The requirements of
117 this paragraph do not apply to expenses that are reimbursable
118 under Title XVIII of the Social Security Act only as a second-
119 ary payor. A contract shall not fail to satisfy the requirements

120 of this paragraph by reason of payments being made on a per
121 diem or other periodic basis without regard to the expenses
122 incurred during the period to which the payments relate;

123 (C) The contract is guaranteed renewable, within the
124 meaning of Section 7702B(b)(1)(C) of the Internal Revenue
125 Code of 1986, as amended;

126 (D) The contract does not provide for a cash surrender
127 value or other money that can be paid, assigned, pledged as
128 collateral for a loan, or borrowed except as provided in para-
129 graph E of this subdivision;

130 (E) All refunds of premiums and all policyholder dividends
131 or similar amounts under the contract are to be applied as a
132 reduction in future premiums or to increase future benefits,
133 except that a refund on the event of death of the insured or a
134 complete surrender or cancellation of the contract cannot
135 exceed the aggregate premiums paid under the contract; and

136 (F) The contract meets the consumer protection provisions
137 set forth in Section 7702B(g) of the Internal Revenue Code of
138 1986, as amended.

139 (2) "Qualified long-term care insurance contract" or
140 "federally tax-qualified long-term care insurance contract" also
141 means the portion of a life insurance contract that provides
142 long-term care insurance coverage by rider or as part of the
143 contract and that satisfies the requirements of Sections
144 7702B(b) and (e) of the Internal Revenue Code of 1986, as
145 amended.

§33-15A-5. Extraterritorial jurisdiction - Group long-term care insurance.

1 No group long-term care insurance coverage may be
2 offered to a resident of this state under a group policy issued in

3 another state to a group described in subdivision (4), subsection
4 (e), section four of this article unless this state or another state
5 having statutory and regulatory long-term care insurance
6 requirements substantially similar to those adopted in this state
7 has made a determination that such requirements have been
8 met.

**§33-15A-6. Disclosure and performance standards for long-term
care insurance.**

1 (a) The commissioner may adopt rules that include stan-
2 dards for full and fair disclosure setting forth the manner,
3 content and required disclosures for the sale of long-term care
4 insurance policies, terms of renewability, initial and subsequent
5 conditions of eligibility, nonduplication of coverage provisions,
6 coverage of dependents, preexisting conditions, termination of
7 insurance, continuation or conversion, probationary periods,
8 limitations, exceptions, reductions, elimination periods,
9 requirements for replacement, recurrent conditions and defini-
10 tions of terms.

11 (b) No long-term care insurance policy may:

12 (1) Be canceled, nonrenewed or otherwise terminated on
13 the grounds of the age or the deterioration of the mental or
14 physical health of the insured individual or certificate holder;

15 (2) Contain a provision establishing a new waiting period
16 in the event existing coverage is converted to or replaced by a
17 new or other form within the same company, except with
18 respect to an increase in benefits voluntarily selected by the
19 insured individual or group policyholder; or

20 (3) Provide coverage for skilled nursing care only or
21 provide significantly more coverage for skilled care in a facility
22 than coverage for lower levels of care.

23 (c) Preexisting condition:

24 (1) No long-term care insurance policy or certificate other
25 than a policy or certificate thereunder issued to a group as
26 defined in subdivision (1), subsection (e), section four of this
27 article shall use a definition of “preexisting condition” that is
28 more restrictive than the following: Preexisting condition
29 means a condition for which medical advice or treatment was
30 recommended by, or received from, a provider of health care
31 services within six months preceding the effective date of
32 coverage of an insured person.

33 (2) No long-term care insurance policy or certificate other
34 than a policy or certificate thereunder issued to a group as
35 defined in subdivision (1), subsection (e), section four of this
36 article may exclude coverage for a loss or confinement that is
37 the result of a preexisting condition unless loss or confinement
38 begins within six months following the effective date of
39 coverage of an insured person.

40 (3) The commissioner may extend the limitation periods set
41 forth in subdivision (1) and (2), subsection (c) of this section as
42 to specific age group categories in specific policy forms upon
43 findings that the extension is in the best interest of the public.

44 (4) The definition of “preexisting condition” does not
45 prohibit an insurer from using an application form designed to
46 elicit the complete health history of an applicant, and, on the
47 basis of the answers on that application, from underwriting in
48 accordance with that insurer’s established underwriting
49 standards. Unless otherwise provided in the policy or certifi-
50 cate, a preexisting condition, regardless of whether it is
51 disclosed on the application, need not be covered until the
52 waiting period described in subdivision (2), subsection (c) of
53 this section expires. No long-term care insurance policy or
54 certificate may exclude or use waivers or riders of any kind to
55 exclude, limit or reduce coverage or benefits for specifically

56 named or described preexisting diseases or physical conditions
57 beyond the waiting period described in subdivision (2), subsec-
58 tion (c) of this section.

59 (d) Prior hospitalization/institutionalization:

60 (1) No long-term care insurance policy may be delivered or
61 issued for delivery in this state if the policy:

62 (A) Conditions eligibility for any benefits on a prior
63 hospitalization requirement;

64 (B) Conditions eligibility for benefits provided in an
65 institutional care setting on the receipt of a higher level of
66 institutional care; or

67 (C) Conditions eligibility for any benefits other than waiver
68 of premium, post-confinement, post-acute care or recuperative
69 benefits on a prior institutionalization requirement.

70 (2) (A) A long-term care insurance policy containing
71 post-confinement, post-acute care or recuperative benefits shall
72 clearly label in a separate paragraph of the policy or certificate
73 entitled "Limitations or Conditions on Eligibility for Benefits"
74 such limitations or conditions, including any required number
75 of days of confinement.

76 (B) A long-term care insurance policy or rider that condi-
77 tions eligibility of noninstitutional benefits on the prior receipt
78 of institutional care shall not require a prior institutional stay of
79 more than thirty days.

80 (3) No long-term care insurance policy or rider that
81 provides benefits only following institutionalization shall
82 condition such benefits upon admission to a facility for the
83 same or related conditions within a period of less than thirty
84 days after discharge from the institution.

85 (e) The commissioner may adopt rules establishing loss
86 ratio standards for long-term care insurance policies provided
87 that a specific reference to long-term care insurance policies is
88 contained in the rule.

89 (f) Right to return - free look:

90 (1) Long-term care insurance applicants shall have the right
91 to return the policy or certificate within thirty days of its
92 delivery and to have the premium refunded if, after examination
93 of the policy or certificate, the applicant is not satisfied for any
94 reason. Long-term care insurance policies and certificates shall
95 have a notice prominently printed on the first page or attached
96 thereto stating in substance that the applicant shall have the
97 right to return the policy or certificate within thirty days of its
98 delivery and to have the premium refunded if, after examination
99 of the policy or certificate, other than a certificate issued
100 pursuant to a policy issued to a group defined in subdivision
101 (1), subsection (e), section four of this article, the applicant is
102 not satisfied for any reason.

103 (2) This subsection shall also apply to denials of applica-
104 tions and any refund must be made within thirty days of the
105 return or denial.

106 (g) Outline of coverage:

107 (1) An outline of coverage shall be delivered to a prospec-
108 tive applicant for long-term care insurance at the time of initial
109 solicitation through means that prominently direct the attention
110 of the recipient to the document and its purpose.

111 (A) The commissioner shall prescribe a standard format,
112 including style, arrangement and overall appearance, and the
113 content of an outline of coverage.

114 (B) In the case of agent solicitations, an agent must deliver
115 the outline of coverage prior to the presentation of an applica-
116 tion or enrollment form.

117 (C) In the case of direct response solicitations, the outline
118 of coverage must be presented in conjunction with any applica-
119 tion or enrollment form.

120 (D) In the case of a policy issued to a group defined in
121 subdivision (1), subsection (e), section four of this article, an
122 outline of coverage shall not be required to be delivered,
123 provided that the information described in paragraphs (A)
124 through (F), inclusive, subdivision (2) of this subsection is
125 contained in other materials relating to enrollment. Upon
126 request, these other materials shall be made available to the
127 commissioner.

128 (2) The outline of coverage shall include:

129 (A) A description of the principal benefits and coverage
130 provided in the policy;

131 (B) A statement of the principal exclusions, reductions, and
132 limitations contained in the policy;

133 (C) A statement of the terms under which the policy or
134 certificate, or both, may be continued in force or discontinued,
135 including any reservation in the policy of a right to change
136 premium. Continuation or conversion provisions of group
137 coverage shall be specifically described;

138 (D) A statement that the outline of coverage is a summary
139 only, not a contract of insurance, and that the policy or group
140 master policy contain governing contractual provisions;

141 (E) A description of the terms under which the policy or
142 certificate may be returned and premium refunded;

143 (F) A brief description of the relationship of cost of care
144 and benefits; and

145 (G) A statement that discloses to the policyholder or
146 certificate holder whether the policy is intended to be a feder-
147 ally tax-qualified long-term care insurance contract under
148 Section 7702(B)(b) of the Internal Revenue Code of 1986, as
149 amended.

150 (h) A certificate issued pursuant to a group long-term care
151 insurance policy that is delivered or issued for delivery in this
152 state shall include:

153 (1) A description of the principal benefits and coverage
154 provided in the policy;

155 (2) A statement of the principal exclusions, reductions and
156 limitations contained in the policy; and

157 (3) A statement that the group master policy determines
158 governing contractual provisions.

159 (i) If an applicant for a long-term care insurance contract or
160 certificate is approved, the issuer shall deliver the contract or
161 certificate of insurance to the applicant no later than thirty days
162 after the date of approval.

163 (j) At the time of policy delivery, a policy summary shall be
164 delivered for an individual life insurance policy that provides
165 long-term care benefits within the policy or by rider. In the
166 case of direct response solicitations, the insurer shall deliver the
167 policy summary upon the applicant's request, but regardless of
168 request shall make delivery no later than at the time of policy
169 delivery. In addition to complying with all applicable require-
170 ments, the summary shall also include:

171 (1) An explanation of how the long-term care benefit
172 interacts with other components of the policy, including
173 deductions from death benefits;

174 (2) An illustration of the amount of benefits, the length of
175 benefit, and the guaranteed lifetime benefits if any, for each
176 covered person;

177 (3) Any exclusions, reductions and limitations on benefits
178 of long-term care;

179 (4) A statement that any long-term care inflation protection
180 option required by section eight of the commissioner's rule
181 relating to long-term care insurance is not available under this
182 policy; and

183 (5) If applicable to the policy type, the summary shall also
184 include:

185 (A) A disclosure of the effects of exercising other rights
186 under the policy;

187 (B) A disclosure of guarantees related to long-term care
188 costs of insurance charges; and

189 (C) Current and projected maximum lifetime benefits.

190 (k) Any time a long-term care benefit, funded through a life
191 insurance vehicle by the acceleration of the death benefit, is in
192 benefit payment status, a monthly report shall be provided to
193 the policyholder. The report shall include:

194 (1) Any long-term care benefits paid out during the month;

195 (2) An explanation of any changes in the policy, for
196 example death benefits or cash values, due to long-term care
197 benefits being paid out; and

198 (3) The amount of long-term care benefits existing or
199 remaining.

200 (l) If a claim under a long-term care insurance contract is
201 denied, the issuer shall, within sixty days of the date of a
202 written request by the policyholder or certificate holder, or a
203 representative thereof:

204 (1) Provide a written explanation of the reasons for the
205 denial; and

206 (2) Make available all information directly related to the
207 denial.

208 (m) Any policy or rider advertised, marketed or offered as
209 long-term care or nursing home insurance shall comply with the
210 provisions of this article.

§33-15A-8. Incontestability period.

1 (a) For a policy or certificate that has been in force for less
2 than six months an insurer may rescind a long-term care
3 insurance policy or certificate or deny an otherwise valid
4 long-term care insurance claim upon a showing of misrepresen-
5 tation that is material to the acceptance for coverage.

6 (b) For a policy or certificate that has been in force for at
7 least six months but less than two years, an insurer may rescind
8 a long-term care insurance policy or certificate or deny an
9 otherwise valid long-term care insurance claim upon a showing
10 of misrepresentation that is both material to the acceptance for
11 coverage and which pertains to the condition for which benefits
12 are sought.

13 (c) After a policy or certificate has been in force for two
14 years it is not contestable upon the grounds of misrepresenta-
15 tion alone. The policy or certificate may be contested only

16 upon a showing that the insured knowingly and intentionally
17 misrepresented relevant facts relating to the insured's health.

18 (d) No long-term care insurance policy or certificate may
19 be field issued based on medical or health status. For purposes
20 of this subsection, "field issued" means a policy or certificate
21 issued by an agent or a third-party administrator pursuant to the
22 underwriting authority granted to the agent or third-party
23 administrator by an insurer.

24 (e) If an insurer has paid benefits under the long-term care
25 insurance policy or certificate, the benefit payments may not be
26 recovered by the insurer in the event that the policy or certifi-
27 cate is rescinded.

28 (f) In the event of the death of the insured, this section shall
29 not apply to the remaining death benefit of a life insurance
30 policy that accelerates benefits for long-term care. In this
31 situation, the remaining death benefits under these policies shall
32 be governed by section four, article thirteen of this chapter. In
33 all other situations, this section shall apply to life insurance
34 policies that accelerate benefits for long-term care.

§33-15A-9. Nonforfeiture benefits.

1 (a) Except as provided in subsection (b) of this section, a
2 long-term care insurance policy may not be delivered or issued
3 for delivery in this state unless the policyholder or certificate
4 holder has been offered the option of purchasing a policy or
5 certificate including a nonforfeiture benefit. The offer of a
6 nonforfeiture benefit may be in the form of a rider that is
7 attached to the policy. In the event the policyholder or certifi-
8 cate holder declines the nonforfeiture benefit, the insurer shall
9 provide a contingent benefit upon lapse that shall be available
10 for a specified period of time following a substantial increase
11 in premium rates.

12 (b) When a group long-term care insurance policy is issued,
13 the offer required in subsection (a) of this section shall be made
14 to the group policyholder. However, if the policy is issued as
15 group long-term care insurance as defined in subdivision (4),
16 subsection (e), section four of this article, other than to a
17 continuing care retirement community or other similar entity,
18 the offering shall be made to each proposed certificate holder.

19 (c) The commissioner may promulgate rules pursuant to
20 chapter twenty-nine-a of this code specifying the type or types
21 of nonforfeiture benefits to be offered as part of long-term care
22 insurance policies and certificates, the standards for
23 nonforfeiture benefits and the rules regarding contingent benefit
24 upon lapse, including a determination of the specified period of
25 time during which a contingent benefit upon lapse will be
26 available and the substantial premium rate increase that triggers
27 a contingent benefit upon lapse as described in subsection (a)
28 of this section.

§33-15A-10. Authority to promulgate rules.

1 The commissioner may issue reasonable rules pursuant to
2 chapter twenty-nine-a of this code to promote premium
3 adequacy and to protect the policyholder in the event of
4 substantial rate increases and to establish minimum standards
5 for marketing practices, agent compensation, agent testing,
6 penalties and reporting practices for long-term care insurance.

§33-15A-11. Penalties.

1 In addition to any other penalties provided by the laws of
2 this state, any insurer and any agent found to have violated any
3 requirement of this state relating to the regulation of long-term
4 care insurance or the marketing of such insurance shall be
5 subject to a fine of up to three times the amount of any commis-
6 sions paid for each policy involved in the violation or up to ten
7 thousand dollars, whichever is greater.

CHAPTER 145

(Com. Sub. for S. B. 143 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-16D-16, relating to small employer accident and sickness policies and small employer group health benefit plans for uninsured groups.

Be it enacted by the Legislature of West Virginia:

That §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §33-16D-16, to read as follows:

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-16. Authorization of uninsured small group health benefit plans.

- 1 (a) Upon filing with and approval by the commissioner, any
- 2 carrier licensed pursuant to this chapter which accesses a health
- 3 care provider network to deliver services may offer a health

4 benefit plan and rates associated with the plan to a small
5 employer subject to the conditions of this section and subject to
6 the provisions of this article. The health benefit plan shall be
7 subject to the following conditions:

8 (1) The health benefit plan may be offered by the carrier
9 only to small employers which have not had a health benefit
10 plan covering their employees for at least six consecutive
11 months before the effective date of this section. After the
12 passage of six months from the effective date of this section,
13 the health benefit plan under this section may be offered by
14 carriers only to small employers which have not had a health
15 benefit plan covering their employees for twelve consecutive
16 months;

17 (2) If a small employer covered by a health benefit plan
18 offered pursuant to this section no longer meets the definition
19 of a small employer as a result of an increase in eligible
20 employees, that employer shall remain covered by the health
21 benefit plan until the next annual renewal date;

22 (3) The small employer shall pay at least fifty percent of its
23 employees' premium amount for individual employee coverage;

24 (4) The commissioner shall promulgate emergency rules
25 under the provisions of article three, chapter twenty-nine-a of
26 this code on or before the first day of September, two thousand
27 four, to place additional restrictions upon the eligibility
28 requirements for health benefit plans authorized by this section
29 in order to prevent manipulation of eligibility criteria by small
30 employers and otherwise implement the provisions of this
31 section;

32 (5) Carriers must offer the health benefit plans issued
33 pursuant to this section through one of their existing networks
34 of health care providers;

35 (A) The director of the public employees insurance agency
36 shall, on or before the first day of May, two thousand four, and
37 each year thereafter, by regular mail, provide a written notice
38 to all known in-state health care providers that:

39 (i) Informs the health care provider regarding the provisions
40 of this section; and

41 (ii) Notifies the health care provider that if the health care
42 provider does not give written refusal to the director of the
43 public employees insurance agency within thirty days from
44 receipt of the notice or the health care provider has not previ-
45 ously filed a written notice of refusal to participate, the health
46 care provider must participate with and accept the products and
47 provider reimbursements authorized pursuant to this section;

48 (B) The carrier's network of health care providers, as well
49 as any health care provider which provides health care goods or
50 services to beneficiaries of any departments or divisions of the
51 state, as identified in article twenty-nine-d, chapter sixteen of
52 this code, shall accept the health care provider reimbursement
53 rates set pursuant to this section unless the health care provider
54 gives written refusal to the director of the public employees
55 insurance agency between the first day of May and the first day
56 of June that the provider will not participate in this program for
57 the next calendar year. Notwithstanding any provision of this
58 code to the contrary, health care providers may not be mandated
59 to participate in this program except under the opt-out provi-
60 sions of subdivision five, subsection (a) of this section and
61 therefore the health care provider shall annually have the ability
62 to file with the director of the public employees insurance
63 agency written notice that the health care provider will not
64 participate with products issued pursuant to this section. Once
65 a health care provider has filed a notice of refusal with the
66 director, the notice shall remain effective until rescinded by the

67 provider and the provider shall not be required to renew the
68 notice each year;

69 (C) The public employees insurance agency is responsible
70 for receiving the responses, if any, from the health care provid-
71 ers that have elected not to participate, and for providing a list
72 to the commissioner of those health care providers that have
73 elected not to participate;

74 (D) Those health care providers that do not file a notice of
75 refusal shall be considered to have accepted participation in this
76 program and to accept public employees insurance agency
77 health care provider reimbursement rates for their services as
78 set by this section;

79 (E) Health care provider reimbursement rates used by the
80 carrier for a health benefit plan offered pursuant to this section
81 shall have no effect on provider rates for other products offered
82 by the carrier and most-favored-nation clauses do not apply to
83 the rates;

84 (6) With respect to the health benefit plans authorized by
85 this section, the carrier shall reimburse network health care
86 providers at the same health care provider reimbursement rates
87 in effect for the managed care and health maintenance organiza-
88 tion plans offered by the West Virginia public employees
89 insurance agency. Beginning in the year two thousand four,
90 and in each year thereafter, the health care provider reimburse-
91 ment rates set under this section shall not be lowered from the
92 level of the rates in effect on the first day of July of that year for
93 the managed care and health maintenance plans offered by the
94 public employees insurance agency. While it is the intent of
95 this paragraph to govern rates for plans offered pursuant to this
96 section for annual periods, this paragraph in no way prevents
97 the public employees insurance agency from making provider
98 reimbursement rate adjustments to public employees insurance

99 agency plans during the course of each year. If there is a
100 dispute regarding the determination of appropriate rates
101 pursuant to this section, the director of the public employees
102 insurance agency shall, in his or her sole discretion, specify the
103 appropriate rate to be applied;

104 (A) The health care provider reimbursement rates as
105 authorized by this section shall be accepted by the health care
106 provider as payment in full for services or products provided to
107 a person covered by a product authorized by this section;

108 (B) Except for the health care provider rates authorized
109 under this section, a carrier's payment methodology, including
110 copayments and deductibles and other conditions of coverage,
111 remains unaffected by this section;

112 (C) The provisions of this section do not require the public
113 employees insurance agency to give carriers access to the
114 purchasing networks of the public employees insurance agency.
115 The public employees insurance agency may enter into agree-
116 ments with carriers offering health benefit plans under this
117 section to permit the carrier, at its election, to participate in
118 drug purchasing arrangements pursuant to article sixteen-c,
119 chapter five of this code, including the multistate drug purchas-
120 ing program. This paragraph provides authorization of the
121 agreements pursuant to section four, article sixteen-c, chapter
122 five of this code;

123 (7) Carriers may not underwrite products authorized by this
124 section more strictly than other small group policies governed
125 by this article;

126 (8) With respect to health benefit plans authorized by this
127 section, a carrier shall have a minimum anticipated loss ratio of
128 seventy-seven percent to be eligible to make a rate increase

129 request after the first year of providing a health benefit plan
130 under this section;

131 (9) Products authorized under this section are exempt from
132 the premium taxes assessed under sections fourteen and
133 fourteen-a, article three of this chapter;

134 (10) A carrier may elect to nonrenew any health benefit
135 plan to an eligible employer if, at any time, the carrier deter-
136 mines, by applying the same network criteria which it applies
137 to other small employer health benefit plans, that it no longer
138 has an adequate network of health care providers accessible for
139 that eligible small employer. If the carrier makes a determina-
140 tion that an adequate network does not exist, the carrier has no
141 obligation to obtain additional health care providers to establish
142 an adequate network;

143 (11) Upon thirty days' advance notice to the commissioner,
144 a carrier may, at any time, elect to nonrenew all health benefit
145 plans issued pursuant to this section. If a carrier nonrenews all
146 its business issued pursuant to this section for any reason other
147 than the adequacy of the provider network, the carrier may not
148 offer this health benefit plan to any eligible small employer for
149 a period of at least two years after the last eligible small
150 employer is nonrenewed; and

151 (12) The insurance commissioner may not approve any
152 health benefit plan issued pursuant to this section until it has
153 obtained any necessary federal governmental authorizations or
154 waivers. The insurance commissioner shall apply for and
155 obtain all necessary federal authorizations or waivers.

156 (b) Health benefit plans authorized by this section are not
157 intended to violate the prohibition set out in subsection (a),
158 section four of this article.

159 (c) If no carrier has offered a health benefit plan under this
160 section by the first day of July, two thousand five, except for
161 failure to obtain a federal authorization or waiver pursuant to
162 subdivision (12), subsection (a) of this section, the director of
163 the public employees insurance agency and the insurance
164 commissioner may, if they agree, jointly develop a proposed
165 program for consideration by the Legislature for the public
166 employees insurance agency to offer small group health plans
167 to uninsured small employer groups. The proposed program
168 shall not be acted upon by the public employees insurance
169 agency until the Legislature approves the program.

170 (d) If no carrier or the public employees insurance agency
171 has offered a health benefit plan pursuant to this section within
172 three years from the effective date of this section, the provisions
173 of this section expire and become null and void.

174 (e) The commissioner shall appoint a policy advisory
175 committee to provide advice to the commissioner regarding
176 providing health insurance to uninsureds and to monitor the
177 effectiveness of this section. The committee shall contain
178 members the commissioner considers appropriate, but shall
179 have members representing at least the following interest
180 groups: Labor, hospital providers, physician providers, private
181 business, local government, insurance carriers and the unin-
182 sured.

183 (f) Carriers offering health benefit plans pursuant to this
184 section shall annually or before the first day of December of
185 each year report in a form acceptable to the commissioner the
186 number of health benefit plans written by the carrier and the
187 number of individuals covered under the health benefit plans.

188 (g) To the extent that provisions of this section differ from
189 those contained elsewhere in this chapter, the provisions of this
190 section control.

CHAPTER 146

(S. B. 428 — By Senator Minard)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13, §33-31-14 and §33-31-15 of the code of West Virginia 1931, as amended; to amend said code by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and to amend said code by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all relating to captive insurance companies; authorizing establishment of and regulating branch captive insurance companies and sponsored cell captives; and generally modernizing the captive insurance law.

Be it enacted by the Legislature of West Virginia:

That §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13, §33-31-14 and §33-31-15 of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and that said code be amended by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all to read as follows:

Article

31. Captive Insurance.

31A. Sponsored Captive Insurance Company Formation.

ARTICLE 31. CAPTIVE INSURANCE.

- §33-31-1. Definitions.
- §33-31-2. Licensing; authority.
- §33-31-4. Minimum capital and surplus; letter of credit.
- §33-31-5. Dividends.
- §33-31-6. Formation of captive insurance companies in this state.
- §33-31-7. Reports and statements.
- §33-31-8. Examinations and investigations.
- §33-31-9. Grounds and procedures for suspension or revocation of license.
- §33-31-10. Legal investments.
- §33-31-11. Reinsurance.
- §33-31-13. Exemption from compulsory associations.
- §33-31-14. Tax on premiums collected.
- §33-31-15. Rules and regulations.
- §33-31-17. Delinquency.
- §33-31-18. Rules for controlled unaffiliated business.
- §33-31-19. Conversion to or merger with reciprocal insurer.
- §33-31-20. Branch captive insurance company formation.
- §33-31-21. Security required.
- §33-31-22. Certificate of general good.
- §33-31-23. Reports.
- §33-31-24. Examination.
- §33-31-25. Taxation.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires other-
2 wise:

3 (1) "Affiliated company" means any company in the same
4 corporate system as a parent, an industrial insured or a member
5 organization by virtue of common ownership, control, operation
6 or management.

7 (2) "Alien captive insurance company" means any insur-
8 ance company formed to write insurance business for its parents
9 and affiliates and licensed pursuant to the laws of a country

10 other than the United States which imposes statutory or
11 regulatory standards in a form acceptable to the commissioner
12 on companies transacting the business of insurance in such
13 jurisdiction.

14 . (3) "Association" means any legal association of individu-
15 als, corporations, limited liability companies, partnerships,
16 associations or other entities that has been in continuous
17 existence for at least one year, the member organizations of
18 which, or which does itself, whether or not in conjunction with
19 some or all of the member organizations:

20 (A) Own, control or hold with power to vote all of the
21 outstanding voting securities of an association captive insurance
22 company incorporated as a stock insurer;

23 (B) Have complete voting control over an association
24 captive insurance company incorporated as a mutual insurer; or

25 (C) Constitute all of the subscribers of an association
26 captive insurance company formed as a reciprocal insurer.

27 (4) "Association captive insurance company" means any
28 company that insures risks of the member organizations of the
29 association, and their affiliated companies.

30 (5) "Branch business" means any insurance business
31 transacted by a branch captive insurance company in this state.

32 (6) "Branch captive insurance company" means any alien
33 captive insurance company licensed by the commissioner to
34 transact the business of insurance in this state through a
35 business unit with a principal place of business in this state.

36 (7) "Branch operations" means any business operations of
37 a branch captive insurance company in this state.

38 (8) "Captive insurance company" means any pure captive
39 insurance company, association captive insurance company,
40 sponsored captive insurance company, industrial insured
41 captive insurance company or risk retention group formed or
42 licensed under the provisions of this chapter. For purposes of
43 this chapter, a branch captive insurance company shall be a
44 pure captive insurance company with respect to operations in
45 this state, unless otherwise permitted by the commissioner.

46 (9) "Commissioner" means the insurance commissioner of
47 West Virginia.

48 (10) "Controlled unaffiliated business" means any com-
49 pany:

50 (A) That is not in the corporate system of a parent and
51 affiliated companies;

52 (B) That has an existing contractual relationship with a
53 parent or affiliated company; and

54 (C) Whose risks are managed by a pure captive insurance
55 company in accordance with section nineteen of this article.

56 (11) "Industrial insured" means an insured:

57 (A) Who procures the insurance of any risk or risks by use
58 of the services of a full-time employee acting as an insurance
59 manager or buyer;

60 (B) Whose aggregate annual premiums for insurance on all
61 risks total at least twenty-five thousand dollars; and

62 (C) Who has at least twenty-five full-time employees.

63 (12) "Industrial insured captive insurance company" means
64 any company that insures risks of the industrial insureds that

65 comprise the industrial insured group and their affiliated
66 companies.

67 (13) "Industrial insured group" means any group of
68 industrial insureds that collectively:

69 (A) Own, control or hold with power to vote all of the
70 outstanding voting securities of an industrial insured captive
71 insurance company incorporated as a stock insurer;

72 (B) Have complete voting control over an industrial insured
73 captive insurance company incorporated as a mutual insurer;
74 or

75 (C) Constitute all of the subscribers of an industrial insured
76 captive insurance company formed as a reciprocal insurer.

77 (14) "Member organization" means any individual,
78 corporation, limited liability company, partnership, association
79 or other entity that belongs to an association.

80 (15) "Mutual corporation" means a corporation organized
81 without stockholders and includes a nonprofit corporation with
82 members.

83 (16) "Parent" means a corporation, limited liability com-
84 pany, partnership, other entity, or individual that directly or
85 indirectly owns, controls or holds with power to vote more than
86 fifty percent of the outstanding voting:

87 (A) Securities of a pure captive insurance company
88 organized as a stock corporation; or

89 (B) Membership interests of a pure captive insurance
90 company organized as a nonprofit corporation.

91 (17) "Pure captive insurance company" means any com-
92 pany that insures risks of its parent and affiliated companies or
93 controlled unaffiliated business.

94 (18) “Risk retention group” means a captive insurance
95 company organized under the laws of this state pursuant to the
96 Liability Risk Retention Act of 1986, 15 U. S. C. §3901, *et seq.*,
97 as amended, as a stock or mutual corporation, a reciprocal or
98 other limited liability entity.

§33-31-2. Licensing; authority.

1 (a) Any captive insurance company, when permitted by its
2 articles of association, charter or other organizational document,
3 may apply to the commissioner for a license to do any and all
4 insurance comprised in section ten, article one of this chapter
5 except as indicated in subdivision (4), subsection (a) of this
6 section: *Provided*, That all captive insurance companies, except
7 pure captive insurance companies, shall maintain their principal
8 office and principal place of business in this state: *Provided*,
9 *however*, That:

10 (1) No pure captive insurance company may insure any
11 risks other than those of its parent and affiliated companies or
12 controlled unaffiliated business;

13 (2) No association captive insurance company may insure
14 any risks other than those of the member organizations of its
15 association, and their affiliated companies;

16 (3) No industrial insured captive insurance company may
17 insure any risks other than those of the industrial insureds that
18 comprise the industrial insured group, and their affiliated
19 companies;

20 (4) No risk retention group may insure any risks other than
21 those of its members and owners;

22 (5) No captive insurance company may provide personal
23 motor vehicle or homeowner’s insurance coverage or any
24 component thereof;

25 (6) No captive insurance company may accept or cede
26 reinsurance except as provided in section eleven of this article;

27 (7) Any captive insurance company may provide excess
28 workers' compensation insurance to its parent and affiliated
29 companies, unless prohibited by the federal law or laws of the
30 state having jurisdiction over the transaction. Any captive
31 insurance company, unless prohibited by federal law, may
32 reinsure workers' compensation of a qualified self-insured plan
33 of its parent and affiliated companies; and

34 (8) Any captive insurance company which insures risks
35 described in subsections (a) and (b) of section ten, article one
36 of this chapter shall comply with all applicable state and federal
37 laws.

38 (b) No captive insurance company may do any insurance
39 business in this state unless:

40 (1) It first obtains from the commissioner a license autho-
41 rizing it to do insurance business in this state;

42 (2) Its board of directors, or, in the case of a reciprocal
43 insurer, its subscribers' advisory committee, holds at least one
44 meeting each year in this state; and

45 (3) It appoints a registered agent to accept service of
46 process and to otherwise act on its behalf in this state: *Pro-*
47 *vided*, That whenever such registered agent cannot with
48 reasonable diligence be found at the registered office of the
49 captive insurance company, the secretary of state shall be an
50 agent of such captive insurance company upon whom any
51 process, notice, or demand may be served.

52 (c) (1) Before receiving a license, a captive insurance
53 company shall:

54 (A) File with the commissioner a certified copy of its
55 organizational documents, a statement under oath of its
56 president and secretary showing its financial condition, and any
57 other statements or documents required by the commissioner;
58 and

59 (B) Submit to the commissioner for approval a description
60 of the coverages, deductibles, coverage limits and rates,
61 together with such additional information as the commissioner
62 may reasonably require. In the event of any subsequent
63 material change in any item in such description, the captive
64 insurance company shall submit to the commissioner for
65 approval an appropriate revision and shall not offer any
66 additional kinds of insurance until a revision of such description
67 is approved by the commissioner. The captive insurance
68 company shall inform the commissioner of any material change
69 in rates within thirty days of the adoption of such change.

70 (2) Each applicant captive insurance company shall also file
71 with the commissioner evidence of the following:

72 (A) The amount and liquidity of its assets relative to the
73 risks to be assumed;

74 (B) The adequacy of the expertise, experience and character
75 of the person or persons who will manage it;

76 (C) The overall soundness of its plan of operation;

77 (D) The adequacy of the loss prevention programs of its
78 insureds; and

79 (E) Such other factors deemed relevant by the commis-
80 sioner in ascertaining whether the proposed captive insurance
81 company will be able to meet its policy obligations.

82 (3) Information submitted pursuant to this subsection shall
83 be and remain confidential and may not be made public by the
84 commissioner or an employee or agent of the commissioner
85 without the written consent of the company, except that:

86 (A) Such information may be discoverable by a party in a
87 civil action or contested case to which the captive insurance
88 company that submitted such information is a party, upon a
89 showing by the party seeking to discover such information that:

90 (i) The information sought is relevant to and necessary for
91 the furtherance of such action or case;

92 (ii) The information sought is unavailable from other
93 nonconfidential sources; and

94 (iii) A subpoena issued by a judicial or administrative
95 officer of competent jurisdiction has been submitted to the
96 commissioner: *Provided*, That the provisions of subdivision (3)
97 of this subsection shall not apply to any risk retention group;
98 and

99 (B) The commissioner may, in the commissioner's discre-
100 tion, disclose such information to a public officer having
101 jurisdiction over the regulation of insurance in another state, if:

102 (i) The public official shall agree in writing to maintain the
103 confidentiality of such information; and

104 (ii) The laws of the state in which such public official
105 serves require such information to be and to remain confiden-
106 tial.

107 (d) Each captive insurance company shall pay to the
108 commissioner a nonrefundable fee of two hundred dollars for
109 examining, investigating and processing its application for
110 license, and the commissioner is authorized to retain legal,

111 financial and examination services from outside the department,
112 the reasonable cost of which may be charged against the
113 applicant. The provisions of subsection (r), section nine, article
114 two of this chapter shall apply to examinations, investigations
115 and processing conducted under the authority of this section.
116 In addition, each captive insurance company shall pay a license
117 fee for the year of registration and a renewal fee for each year
118 thereafter of three hundred dollars.

119 (e) If the commissioner is satisfied that the documents and
120 statements that such captive insurance company has filed
121 comply with the provisions of this chapter, the commissioner
122 may grant a license authorizing it to do insurance business in
123 this state until April first, thereafter, which license may be
124 renewed.

§33-31-4. Minimum capital and surplus; letter of credit.

1 (a) No captive insurance company shall be issued a license
2 unless it shall possess and thereafter maintain unimpaired
3 paid-in capital of:

4 (1) In the case of a pure captive insurance company, not
5 less than one hundred thousand dollars;

6 (2) In the case of an association captive insurance company,
7 not less than three hundred fifty thousand dollars;

8 (3) In the case of an industrial insured captive insurance
9 company, not less than two hundred fifty thousand dollars;

10 (4) In the case of a risk retention group, not less than five
11 hundred thousand dollars; and

12 (5) In the case of a sponsored captive insurance company,
13 not less than two hundred fifty thousand dollars.

14 (b) No captive insurance company shall be issued a license
15 unless it possesses and thereafter maintains unimpaired paid-in
16 surplus of:

17 (1) In the case of a pure captive insurance company, not less
18 than one hundred fifty thousand dollars;

19 (2) In the case of an association captive insurance company,
20 not less than three hundred fifty thousand dollars;

21 (3) In the case of an industrial insured captive insurance
22 company, not less than two hundred fifty thousand dollars;

23 (4) In the case of a risk retention group, not less than five
24 hundred thousand dollars; and

25 (5) In the case of a sponsored captive insurance company,
26 not less than two hundred fifty thousand dollars.

27 (c) The commissioner may prescribe additional capital and
28 surplus based upon the type, volume, and nature of insurance
29 business transacted.

30 (d) Capital and surplus may be in the form of cash or an
31 irrevocable letter of credit issued by a bank chartered by the state
32 of West Virginia or a member bank of the federal reserve system
33 and approved by the commissioner.

§33-31-5. Dividends.

1 No captive insurance company may pay a dividend out of, or
2 other distribution with respect to, capital or surplus without the
3 prior approval of the commissioner. Approval of an ongoing
4 plan for the payment of dividends or other distributions shall be
5 conditioned upon the retention, at the time of each payment, of
6 capital or surplus in excess of amounts specified by, or deter-
7 mined in accordance with formulas approved by, the commis-
8 sioner.

§33-31-6. Formation of captive insurance companies in this state.

1 (a) A pure captive insurance company may be incorporated
2 as a stock insurer with its capital divided into shares and held by
3 the stockholders, or as a nonprofit corporation with one or more
4 members.

5 (b) An association captive insurance company or an indus-
6 trial insured captive insurance company may be:

7 (1) Incorporated as a stock insurer with its capital divided
8 into shares and held by the stockholders;

9 (2) Incorporated as a mutual insurer without capital stock,
10 the governing body of which is elected by its insureds; or

11 (3) Organized as a reciprocal insurer in accordance with
12 article twenty-one of this chapter.

13 (c) A captive insurance company incorporated or organized
14 in this state shall have not less than three incorporators or three
15 organizers of whom not less than one shall be a resident of this
16 state.

17 (d) In the case of a captive insurance company:

18 (1) (A) Formed as a corporation the incorporators shall
19 petition the commissioner to issue a certificate setting forth the
20 commissioner's finding that the establishment and maintenance
21 of the proposed corporation will promote the general good of the
22 state. In arriving at such a finding the commissioner shall
23 consider:

24 (i) The character, reputation, financial standing and pur-
25 poses of the incorporators;

26 (ii) The character, reputation, financial responsibility,
27 insurance experience and business qualifications of the officers
28 and directors; and

29 (iii) Such other aspects as the commissioner shall deem
30 advisable.

31 (B) The articles of incorporation, such certificate, and the
32 organization fee shall be transmitted to the secretary of state,
33 who shall thereupon record both the articles of incorporation and
34 the certificate.

35 (2) Formed as a reciprocal insurer, the organizers shall
36 petition the commissioner to issue a certificate setting forth the
37 commissioner's finding that the establishment and maintenance
38 of the proposed association will promote the general good of the
39 state. In arriving at such a finding the commissioner shall
40 consider the items set forth in subparagraphs (i), (ii) and (iii),
41 paragraph (A), subdivision (1) of this subsection.

42 (e) The capital stock of a captive insurance company
43 incorporated as a stock insurer may be authorized with no par
44 value.

45 (f) In the case of a captive insurance company:

46 (1) Formed as a corporation, at least one of the members of
47 the board of directors shall be a resident of this state; and

48 (2) Formed as a reciprocal insurer, at least one of the
49 members of the subscribers' advisory committee shall be a
50 resident of this state.

51 (g) Other than captive insurance companies formed as
52 nonprofit corporations under chapter thirty-one-e of this code,
53 captive insurance companies formed as corporations under the
54 provisions of this article shall have the privileges and be subject

55 to the provisions of the general corporation law as well as the
56 applicable provisions contained in this chapter. In the event of
57 conflict between the provisions of said general corporation law
58 and the provisions of this chapter, the latter shall control.

59 (h) Captive insurance companies formed as nonprofit
60 corporations under the provisions of this article shall have the
61 privileges and be subject to the provisions of chapter thirty-one-e
62 of this code as well as the applicable provisions contained in this
63 chapter. In the event of conflict between the provisions of
64 chapter thirty-one-e of this code and the provisions of this
65 chapter, the latter shall control.

66 (i) The provisions of sections twenty-five, twenty-seven and
67 twenty-eight, article five of this chapter and section three, article
68 twenty-seven of this chapter, pertaining to mergers, consolida-
69 tions, conversions, mutualizations, redomestications and mutual
70 holding companies, shall apply in determining the procedures to
71 be followed by captive insurance companies in carrying out any
72 of the transactions described therein, except that:

73 (1) The commissioner may waive or modify the require-
74 ments for public notice and hearing in accordance with rules
75 which the commissioner may adopt addressing categories of
76 transactions. If a notice of public hearing is required, but no one
77 requests a hearing, then the commissioner may cancel the
78 hearing; and

79 (2) An alien insurer may be a party to a merger authorized
80 under this subsection: *Provided*, That the requirements for a
81 merger between a captive insurance company and a foreign
82 insurer under section twenty-five, article five of this chapter
83 shall apply to a merger between a captive insurance company
84 and an alien insurer under this subsection. Such alien insurer
85 shall be treated as a foreign insurer under section twenty-five,
86 article five of this chapter and such other jurisdictions shall be

87 the equivalent of a state for purposes of section twenty-five,
88 article five of this chapter.

89 (j) Captive insurance companies formed as reciprocal
90 insurers under the provisions of this chapter shall have the
91 privileges and be subject to the provisions of article twenty-one
92 of this chapter in addition to the applicable provisions of this
93 chapter. In the event of a conflict between the provisions of
94 article twenty-one of this chapter and the provisions of this
95 chapter, the latter shall control. To the extent a reciprocal
96 insurer is made subject to other provisions of this chapter
97 pursuant to article twenty-one of this chapter, such provisions
98 shall not be applicable to a reciprocal insurer formed under this
99 chapter unless such provisions are expressly made applicable to
100 captive insurance companies under this chapter.

101 (k) The articles of incorporation or bylaws of a captive
102 insurance company formed as a corporation may authorize a
103 quorum of its board of directors to consist of no fewer than one
104 third of the fixed or prescribed number of directors determined
105 under section eight hundred twenty-four, article eight, chapter
106 thirty-one-e of this code.

107 (l) The subscribers' agreement or other organizing docu-
108 ment of a captive insurance company formed as a reciprocal
109 insurer may authorize a quorum of its subscribers' advisory
110 committee to consist of no fewer than one third of the number of
111 its members.

§33-31-7. Reports and statements.

1 (a) Captive insurance companies shall not be required to
2 make any annual report except as provided in this chapter.

3 (b) On or before the first day of March of each year, each
4 captive insurance company shall submit to the commissioner a
5 report of its financial condition, verified by oath of two of its

6 executive officers. Each captive insurance company shall report
7 using generally accepted accounting principles, unless the
8 commissioner approves the use of statutory accounting princi-
9 ples, with any appropriate or necessary modifications or adapta-
10 tions thereof required or approved or accepted by the commis-
11 sioner for the type of insurance and kinds of insurers to be
12 reported upon, and as supplemented by additional information
13 required by the commissioner. Except as otherwise provided,
14 each association captive insurance company and each risk
15 retention group shall file its report in the form required by
16 section fourteen, article three of this chapter, and each risk
17 retention group shall comply with the requirements set forth in
18 article thirty-two of this chapter. The commissioner shall by rule
19 propose the forms in which pure captive insurance companies
20 and industrial insured captive insurance companies shall report.

21 (c) Any pure captive insurance company or an industrial
22 insured captive insurance company may make written applica-
23 tion for filing the required report on a fiscal year-end. If an
24 alternative reporting date is granted:

25 (1) The annual report is due sixty days after the fiscal
26 year-end; and

27 (2) In order to provide sufficient detail to support the
28 premium tax return, the pure captive insurance company or
29 industrial insured captive insurance company shall file on or
30 before the first day of March of each year for each calendar
31 year-end, pages one, two, three, and five of the "captive annual
32 statement; pure or industrial insured", verified by oath of two of
33 its executive officers.

§33-31-8. Examinations and investigations.

1 (a) At least once in five years, and whenever the commis-
2 sioner determines it to be prudent, the commissioner shall
3 personally, or by some competent person appointed by the

4 commissioner, visit each captive insurance company and
5 thoroughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations and
7 whether it has complied with the provisions of this chapter. The
8 captive insurance company shall be subject to the provisions of
9 section nine, article two of this chapter in regard to the expense
10 and conduct of the examination.

11 (b) All examination reports, preliminary examination reports
12 or results, working papers, recorded information, documents and
13 copies thereof produced by, obtained by or disclosed to the
14 commissioner or any other person in the course of an examina-
15 tion made under this section are confidential and are not subject
16 to subpoena and may not be made public by the commissioner or
17 an employee or agent of the commissioner without the written
18 consent of the company, except to the extent provided in this
19 subsection. Nothing in this subsection shall prevent the commis-
20 sioner from using such information in furtherance of the
21 commissioner's regulatory authority under this title. The
22 commissioner may, in the commissioner's discretion, grant
23 access to such information to public officers having jurisdiction
24 over the regulation of insurance in any other state or country, or
25 to law-enforcement officers of this state or any other state or
26 agency of the federal government at any time, so long as such
27 officers receiving the information agree in writing to hold it in
28 a manner consistent with this section.

**§33-31-9. Grounds and procedures for suspension or revocation of
license.**

1 (a) The license of a captive insurance company may be
2 suspended or revoked by the commissioner for any of the
3 following reasons:

4 (1) Insolvency or impairment of capital or surplus;

5 (2) Failure to meet the requirements of section four of this
6 article;

7 (3) Refusal or failure to submit an annual report, as required
8 by section seven of this article , or any other report or statement
9 required by law or by lawful order of the commissioner;

10 (4) Failure to comply with the provisions of its own charter,
11 bylaws or other organizational document;

12 (5) Failure to submit to examination or any legal obligation
13 relative thereto, as required by section eight of this article;

14 (6) Refusal or failure to pay the cost of examination as
15 required by section eight of this article;

16 (7) Use of methods that, although not otherwise specifically
17 prohibited by law, nevertheless render its operation detrimental
18 or its condition unsound with respect to the public or to its
19 policyholders; or

20 (8) Failure otherwise to comply with the laws of this state.

21 (b) If the commissioner finds, upon examination, hearing, or
22 other evidence, that any captive insurance company has violated
23 any provision of subsection (a) of this section, the commissioner
24 may suspend or revoke such company's license if the commis-
25 sioner deems it in the best interest of the public and the policy-
26 holders of such captive insurance company, notwithstanding any
27 other provision of this title.

§33-31-10. Legal investments.

1 (a) Association captive insurance companies and risk
2 retention groups shall comply with the investment requirements
3 contained in article eight of this chapter, as applicable. Section
4 eleven, article seven of this chapter shall apply to association

5 captive insurance companies and risk retention groups except to
6 the extent it is inconsistent with approved accounting standards
7 in use by the company. Notwithstanding any other provision of
8 this chapter, the commissioner may approve the use of alterna-
9 tive reliable methods of valuation and rating.

10 (b) No pure captive insurance company or industrial insured
11 captive insurance company shall be subject to any restrictions on
12 allowable investments whatever, including those limitations
13 contained in article eight of this chapter: *Provided*, That the
14 commissioner may prohibit or limit any investment that threat-
15 ens the solvency or liquidity of any such company.

16 (c) No pure captive insurance company may make a loan to
17 or an investment in its parent company or affiliates without prior
18 written approval of the commissioner, and any such loan or
19 investment must be evidenced by documentation approved by
20 the commissioner. Loans of minimum capital and surplus funds
21 required by section four of this article are prohibited.

§33-31-11. Reinsurance.

1 (a) Any captive insurance company may provide reinsur-
2 ance, comprised in section fifteen-a, article four of this chapter,
3 on risks ceded by any other insurer.

4 (b) Any captive insurance company may take credit for the
5 reinsurance of risks or portions of risks ceded to reinsurers
6 complying with the provisions of sections fifteen-a and fifteen-b,
7 article four of this chapter. Prior approval of the commissioner
8 shall be required for ceding or taking credit for the reinsurance
9 of risks or portions of risks ceded to reinsurers not complying
10 with sections fifteen-a and fifteen-b, article four of this chapter,
11 except for business written by an alien captive insurance
12 company outside of the United States.

13 (c) In addition to reinsurers authorized under the provisions
14 of section fifteen, article four of this chapter, a captive insurance
15 company may take credit for the reinsurance of risks or portions
16 of risks ceded to a pool, exchange or association acting as a
17 reinsurer which has been authorized by the commissioner. The
18 commissioner may require any other documents, financial
19 information or other evidence that such a pool, exchange or
20 association will be able to provide adequate security for its
21 financial obligations. The commissioner may deny authorization
22 or impose any limitations on the activities of a reinsurance pool,
23 exchange or association that, in the commissioner's judgment,
24 are necessary and proper to provide adequate security for the
25 ceding captive insurance company and for the protection and
26 consequent benefit of the public at large.

27 (d) For all purposes of this chapter, insurance by a captive
28 insurance company of any workers' compensation qualified
29 self-insured plan of its parent and affiliates shall be deemed to be
30 reinsurance.

§33-31-13. Exemption from compulsory associations.

1 No captive insurance company may be permitted to join or
2 contribute financially to any plan, pool, association, or guaranty
3 or insolvency fund in this state, nor may any captive insurance
4 company, or any insured or affiliate thereof, receive any benefit
5 from any such plan, pool, association, or guaranty or insolvency
6 fund for claims arising out of the operations of such captive
7 insurance company.

§33-31-14. Tax on premiums collected.

1 (a) Each pure captive insurance company which maintains
2 its principal office and principal place of business in this state
3 shall pay to the commissioner, in the month of February of each
4 year, a tax at the rate of five tenths of one percent on the gross
5 amount of all premiums collected or contracted for on policies

6 or contracts of insurance written by the pure captive insurance
7 company during the year ending December thirty-first, next
8 preceding, after deducting from the direct premiums, subject to
9 the tax, the amounts paid to policyholders as return premiums
10 which shall include dividends on unabsorbed premiums or
11 premium deposits returned or credited to policyholders: *Pro-*
12 *vided*, That no tax shall be due or payable as to considerations
13 received for annuity contracts.

14 (b) Except as otherwise provided in subsection (a) of this
15 section, each captive insurance company shall pay to the
16 commissioner in the month of February of each year, a tax at the
17 rate of two percent on the gross amount of all premiums col-
18 lected on or contracted for on policies or contracts of insurance
19 written by the captive insurance company during the year ending
20 December thirty-first, next preceding, after deducting from the
21 direct premiums, subject to the tax, the amounts paid to policy-
22 holders as return premiums which shall include dividends on
23 unabsorbed premiums or premium deposits returned or credited
24 to policyholders. Each captive insurance company shall also be
25 subject to the additional premium taxes levied by sections
26 fourteen-a and fourteen-d, article three of this chapter and the
27 surcharge levied by section thirty-three, article three of this
28 chapter.

29 (c) The tax provided for in this section shall constitute all
30 taxes collectible under the laws of this state from any captive
31 insurance company, and no other occupation tax or other taxes
32 shall be levied or collected from any captive insurance company
33 by the state or any county, city or municipality within this state,
34 except ad valorem taxes.

35 (d) The tax provided for in this section shall be calculated on
36 an annual basis, notwithstanding policies or contracts of insur-
37 ance or contracts of reinsurance issued on a multiyear basis. In
38 the case of multiyear policies or contracts, the premium shall be
39 prorated for purposes of determining the tax under this section.

§33-31-15. Rules and regulations.

1 The commissioner may establish and from time to time
2 amend such rules relating to captive insurance companies as are
3 necessary to enable the commissioner to carry out the provisions
4 of this chapter.

§33-31-17. Delinquency.

1 Except as otherwise provided in this article, the terms and
2 conditions set forth in article ten of this chapter, pertaining to
3 insurance reorganizations, receiverships and injunctions, shall
4 apply in full to captive insurance companies formed or licensed
5 under this article.

§33-31-18. Rules for controlled unaffiliated business.

1 The commissioner may adopt rules establishing standards to
2 ensure that a parent or affiliated company is able to exercise
3 control of the risk management function of any controlled
4 unaffiliated business to be insured by the pure captive insurance
5 company. Until such time as rules under this section are
6 adopted, the commissioner may approve the coverage of such
7 risks by a pure captive insurance company.

§33-31-19. Conversion to or merger with reciprocal insurer.

1 (a) An association captive insurance company, risk retention
2 group, or industrial insured captive insurance company formed
3 as a stock or mutual corporation may be converted to or merged
4 with and into a reciprocal insurer in accordance with a plan
5 therefore and the provisions of this section.

6 (b) Any plan for such conversion or merger shall provide a
7 fair and equitable plan for purchasing, retiring or otherwise
8 extinguishing the interests of the stockholders and policyholders
9 of a stock insurer and the members and policyholders of a

10 mutual insurer, including a fair and equitable provision for the
11 rights and remedies of dissenting stockholders, members or
12 policyholders.

13 (c) In the case of a conversion authorized under subsection
14 (a) of this section:

15 (1) Such conversion shall be accomplished under such
16 reasonable plan and procedure as approved by the commissioner.
17 The commissioner may not approve any plan of conversion
18 unless the plan:

19 (A) Satisfies the provisions of subsection (b) of this section;

20 (B) Provides for a hearing, of which notice is given or to be
21 given to the captive insurance company, its directors, officers
22 and policyholders, and, in the case of a stock insurer, its stock-
23 holders, and in the case of a mutual insurer, its members, all of
24 which persons shall be entitled to attend and appear at such
25 hearing. If notice of a hearing is given and no director, officer,
26 policyholder, member or stockholder requests a hearing, the
27 commissioner may cancel such hearing;

28 (C) Provides a fair and equitable plan for the conversion of
29 stockholder, member or policyholder interests into subscriber
30 interests in the resulting reciprocal insurer, substantially propor-
31 tionate to the corresponding interests in the stock or mutual
32 insurer: *Provided*, That this requirement shall not preclude the
33 resulting reciprocal insurer from applying underwriting criteria
34 that could affect ongoing ownership interests; and

35 (D) Is approved:

36 (i) In the case of a stock insurer, by a majority of the shares
37 entitled to vote represented in person or by proxy at a duly called
38 regular or special meeting at which a quorum is present; and

39 (ii) In the case of a mutual insurer, by a majority of the
40 voting interests of policyholders represented in person or by
41 proxy at a duly called regular or special meeting thereof at which
42 a quorum is present;

43 (2) The commissioner shall approve such plan of conversion
44 if the commissioner finds that the conversion will promote the
45 general good of the state in conformity with those standards set
46 forth in subdivision (2), subsection (d), section six of this article;

47 (3) If the commissioner approves the plan, the commissioner
48 shall amend the converting insurer's certificate of authority to
49 reflect conversion to a reciprocal insurer and issue such amended
50 certificate of authority to the company's attorney-in-fact;

51 (4) Upon the issuance of an amended certificate of authority
52 of a reciprocal insurer by the commissioner, the conversion shall
53 be effective; and

54 (5) Upon the effectiveness of such conversion the corporate
55 existence of the converting insurer shall cease and the resulting
56 reciprocal insurer shall notify the secretary of state of such
57 conversion.

58 (d) A merger authorized under subsection (a) of this section
59 shall be accomplished substantially in accordance with the
60 procedures set forth in sections twenty-five and twenty-eight,
61 article five of this chapter, except that, solely for purposes of
62 such merger:

63 (1) The plan of merger shall satisfy the provisions of
64 subsection (b) of this section;

65 (2) The subscribers' advisory committee of a reciprocal
66 insurer shall be equivalent to the board of directors of a stock or
67 mutual insurance company;

68 (3) The subscribers of a reciprocal insurer shall be the
69 equivalent of the policyholders of a mutual insurance company;

70 (4) If a subscribers' advisory committee does not have a
71 president or secretary, the officers of such committee having
72 substantially equivalent duties shall be deemed the president or
73 secretary of such committee;

74 (5) The commissioner shall approve the articles of merger if
75 the commissioner finds that the merger will promote the general
76 good of the state in conformity with those standards set forth in
77 subdivision (2), subsection (d), section six of this article. If the
78 commissioner approves the articles of merger, the commissioner
79 shall endorse the commissioner's approval thereon and the
80 surviving insurer shall present the same to the secretary of state
81 at the secretary of state's office;

82 (6) Notwithstanding section four of this article, the commis-
83 sioner may permit the formation, without surplus, of a captive
84 insurance company organized as a reciprocal insurer, into which
85 an existing captive insurance company may be merged for the
86 purpose of facilitating a transaction under this section: *Provided,*
87 That there shall be no more than one authorized insurance
88 company surviving such merger; and

89 (7) An alien insurer may be a party to a merger authorized
90 under subsection (a) of this section: *Provided,* That the require-
91 ments for a merger between a domestic and a foreign insurer
92 under section twenty-five, article five of this chapter shall apply
93 to a merger between a domestic and an alien insurer under this
94 subsection. Such alien insurer shall be treated as a foreign
95 insurer under section twenty-five, article five of this chapter and
96 such other jurisdictions shall be the equivalent of a state for
97 purposes of section twenty-five, article five of this chapter.

§33-31-20. Branch captive insurance company formation.

1 (a) A branch captive may be established in this state in
2 accordance with the provisions of this article to write in this state
3 only insurance or reinsurance of the employee benefit business
4 of its parent and affiliated companies which is subject to the
5 provisions of the federal Employee Retirement Income Security
6 Act of 1974 and set forth in 29 U. S. C. §1001, *et seq.*, as
7 amended. In addition to the general provisions of this chapter,
8 the provisions of sections twenty-one through twenty-five,
9 inclusive, of this article shall apply to branch captive insurance
10 companies.

11 (b) No branch captive insurance company shall do any
12 insurance business in this state unless it maintains the principal
13 place of business for its branch operations in this state.

§33-31-21. Security required.

1 In the case of a branch captive insurance company, as
2 security for the payment of liabilities attributable to the branch
3 operations, the commissioner shall require that a trust fund,
4 funded by an irrevocable letter of credit or other acceptable
5 asset, be established and maintained in the United States for the
6 benefit of United States policyholders and United States ceding
7 insurers under insurance policies issued or reinsurance contracts
8 issued or assumed by the branch captive insurance company
9 through its branch operations. The amount of such security may
10 be no less than the amount set forth in subdivision (1), subsec-
11 tion (a), section four of this article and the reserves on such
12 insurance policies or such reinsurance contracts, including
13 reserves for losses, allocated loss adjustment expenses, incurred
14 but not reported losses and unearned premiums with regard to
15 business written through the branch operations: *Provided*, That
16 the commissioner may permit a branch captive insurance
17 company that is required to post security for loss reserves on
18 branch business by its reinsurer to reduce the funds in the trust
19 account required by this section by the same amount so long as

20 the security remains posted with the reinsurer. If the form of
21 security selected is a letter of credit, the letter of credit must be
22 established by, or issued or confirmed by, a bank chartered in
23 this state or a member bank of the federal reserve system.

§33-31-22. Certificate of general good.

1 In the case of a captive insurance company licensed as a
2 branch captive, the alien captive insurance company shall
3 petition the commissioner to issue a certificate setting forth the
4 commissioner's finding that, after considering the character,
5 reputation, financial responsibility, insurance experience and
6 business qualifications of the officers and directors of the alien
7 captive insurance company, the licensing and maintenance of the
8 branch operations will promote the general good of the state.
9 The alien captive insurance company may register to do business
10 in this state after the commissioner's certificate is issued.

§33-31-23. Reports.

1 Prior to the first day of March of each year, or with the
2 approval of the commissioner within sixty days after its fiscal
3 year-end, a branch captive insurance company shall file with the
4 commissioner a copy of all reports and statements required to be
5 filed under the laws of the jurisdiction in which the alien captive
6 insurance company is formed, verified under oath by its presi-
7 dent and secretary. If the commissioner is satisfied that the
8 annual report filed by the alien captive insurance company in its
9 domiciliary jurisdiction provides adequate information concern-
10 ing the financial condition of the alien captive insurance
11 company, the commissioner may waive the requirement for
12 completion of the captive annual statement for business written
13 in the alien jurisdiction.

§33-31-24. Examination.

1 (a) The examination of a branch captive insurance company
2 pursuant to section eight of this article shall be of branch
3 business and branch operations only, so long as the branch
4 captive insurance company annually provides to the commis-
5 sioner a certificate of compliance, or its equivalent, issued by or
6 filed with the licensing authority of the jurisdiction in which the
7 branch captive insurance company is formed and demonstrates
8 to the commissioner's satisfaction that it is operating in sound
9 financial condition in accordance with all applicable laws and
10 regulations of such jurisdiction.

11 (b) As a condition of licensure, the alien captive insurance
12 company shall grant authority to the commissioner for examina-
13 tion of the affairs of the alien captive insurance company in the
14 jurisdiction in which the alien captive insurance company is
15 formed.

§33-31-25. Taxation.

1 In the case of a branch captive insurance company, the tax
2 provided for in section fourteen of this article shall apply only to
3 the branch business of such company.

ARTICLE 31A. SPONSORED CAPTIVE INSURANCE COMPANY FORMA- TION.

§33-31A-1. Applicability of article.

§33-31A-2. Definitions.

§33-31A-3. Formation of sponsored captive insurance companies.

§33-31A-4. Supplemental application materials.

§33-31A-5. Protected cells.

§33-31A-6. Qualification of sponsors.

§33-31A-7. Authorized participants.

§33-31A-8. Investments.

§33-31A-9. Delinquency.

§33-31A-1. Applicability of article.

1 In addition to the provisions of article thirty-one of this
2 chapter, the provisions of this article shall apply to all sponsored
3 captive insurance companies.

§33-31A-2. Definitions.

1 As used in this article, unless the context requires otherwise:

2 (1) "Participant" means associations, corporations, limited
3 liability companies, partnerships, trusts and other business
4 entities and any affiliates thereof that are insured by a sponsored
5 captive insurance company where the losses of the participant
6 are limited through a participant contract to such participant's
7 pro rata share of the assets of one or more protected cells
8 identified in such participant contract.

9 (2) "Participant contract" means a contract by which a
10 sponsored captive insurance company insures the risks of a
11 participant and limits the losses of each such participant to its
12 pro rata share of the assets of one or more protected cells
13 identified in such participant contract.

14 (3) "Protected cell" means a separate account established by
15 a sponsored captive insurance company formed or licensed under
16 the provisions of this chapter in which assets are maintained for
17 one or more participants in accordance with the terms of one or
18 more participant contracts to fund the liability of the sponsored
19 captive insurance company assumed on behalf of such partici-
20 pants as set forth in such participant contracts.

21 (4) "Sponsor" means any entity that meets the requirements
22 of section six of this article and is approved by the commissioner
23 to provide all or part of the capital and surplus required by
24 applicable law and to organize and operate a sponsored captive
25 insurance company.

26 (5) "Sponsored captive insurance company" means any
27 captive insurance company:

28 (A) In which the minimum capital and surplus required by
29 applicable law is provided by one or more sponsors;

30 (B) That is formed or licensed under the provisions of this
31 chapter;

32 (C) That insures the risks only of its participants through
33 separate participant contracts; and

34 (D) That funds its liability to each participant through one or
35 more protected cells and segregates the assets of each protected
36 cell from the assets of other protected cells and from the assets
37 of the sponsored captive insurance company's general account.

§33-31A-3. Formation of sponsored captive insurance companies.

1 One or more sponsors may form a sponsored captive
2 insurance company under the provisions of this article. A
3 sponsored captive insurance company shall be incorporated as a
4 stock insurer with its capital divided into shares and held by the
5 stockholders.

§33-31A-4. Supplemental application materials.

1 In addition to the information required by subdivisions (1)
2 and (2), subsection (c), section two, article thirty-one of this
3 chapter, each applicant-sponsored captive insurance company
4 shall file with the commissioner the following:

5 (1) Materials demonstrating how the applicant will account
6 for the loss and expense experience of each protected cell at a
7 level of detail found to be sufficient by the commissioner and
8 how it will report such experience to the commissioner;

9 (2) A statement acknowledging that all financial records of
10 the sponsored captive insurance company, including records
11 pertaining to any protected cells, shall be made available for

12 inspection or examination by the commissioner or the commis-
13 sioner's designated agent;

14 (3) All contracts or sample contracts between the sponsored
15 captive insurance company and any participants; and

16 (4) Evidence that expenses shall be allocated to each
17 protected cell in a fair and equitable manner.

§33-31A-5. Protected cells.

1 A sponsored captive insurance company formed or licensed
2 under the provisions of this article may establish and maintain
3 one or more protected cells to insure risks of one or more
4 participants, subject to the following conditions:

5 (1) The shareholders of a sponsored captive insurance
6 company shall be limited to its participants and sponsors:
7 *Provided*, That a sponsored captive insurance company may
8 issue nonvoting securities to other persons on terms approved by
9 the commissioner;

10 (2) Each protected cell shall be accounted for separately on
11 the books and records of the sponsored captive insurance
12 company to reflect the financial condition and results of opera-
13 tions of such protected cell, net income or loss, dividends or
14 other distributions to participants and such other factors as may
15 be provided in the participant contract or required by the
16 commissioner;

17 (3) The assets of a protected cell shall not be chargeable with
18 liabilities arising out of any other insurance business the
19 sponsored captive insurance company may conduct;

20 (4) No sale, exchange or other transfer of assets may be
21 made by such sponsored captive insurance company between or

22 among any of its protected cells without the consent of such
23 protected cells;

24 (5) No sale, exchange, transfer of assets, dividend or
25 distribution may be made from a protected cell to a sponsor or
26 participant without the commissioner's approval and in no event
27 shall such approval be given if the sale, exchange, transfer,
28 dividend or distribution would result in insolvency or impair-
29 ment with respect to a protected cell;

30 (6) Each sponsored captive insurance company shall
31 annually file with the commissioner such financial reports as the
32 commissioner shall require, which shall include, without
33 limitation, accounting statements detailing the financial experi-
34 ence of each protected cell;

35 (7) Each sponsored captive insurance company shall notify
36 the commissioner in writing within ten business days of any
37 protected cell that is insolvent or otherwise unable to meet its
38 claim or expense obligations;

39 (8) No participant contract shall take effect without the
40 commissioner's prior written approval and the addition of each
41 new protected cell and withdrawal of any participant or termina-
42 tion of any existing protected cell shall constitute a change in the
43 business plan requiring the commissioner's prior written
44 approval; and

45 (9) The business written by a sponsored captive, with respect
46 to each cell, shall be:

47 (A) Fronted by an insurance company licensed under the
48 laws of any state;

49 (B) Reinsured by a reinsurer authorized or approved by the
50 state of West Virginia; or

51 (C) Secured by a trust fund in the United States for the
52 benefit of policyholders and claimants or funded by an irrevoca-
53 ble letter of credit or other arrangement that is acceptable to the
54 commissioner. The amount of security provided shall be no less
55 than the reserves associated with those liabilities which are
56 neither fronted nor reinsured, including reserves for losses,
57 allocated loss adjustment expenses, incurred but not reported
58 losses and unearned premiums for business written through the
59 participant's protected cell. The commissioner may require the
60 sponsored captive to increase the funding of any security
61 arrangement established under this subdivision. If the form of
62 security is a letter of credit, the letter of credit must be estab-
63 lished, issued or confirmed by a bank chartered in this state, a
64 member of the federal reserve system or a bank chartered by
65 another state if such state chartered bank is acceptable to the
66 commissioner. A trust maintained pursuant to this paragraph
67 shall be established in a form and upon such terms approved by
68 the commissioner.

§33-31A-6. Qualification of sponsors.

1 A sponsor of a sponsored captive insurance company shall
2 be an insurer licensed under the laws of any state, a reinsurer
3 authorized or approved under the laws of any state or a captive
4 insurance company formed or licensed under this article. A risk
5 retention group shall not be either a sponsor or a participant of
6 a sponsored captive insurance company.

§33-31A-7. Authorized participants.

1 Associations, corporations, limited liability companies,
2 partnerships, trusts and other business entities may be partici-
3 pants in any sponsored captive insurance company formed or
4 licensed under this chapter. A sponsor may be a participant in
5 a sponsored captive insurance company. A participant need not
6 be a shareholder of the sponsored captive insurance company or

7 any affiliate thereof. A participant shall insure only its own risks
8 through a sponsored captive insurance company.

§33-31A-8. Investments.

1 Notwithstanding the provisions of section five of this article,
2 the assets of two or more protected cells may be combined for
3 purposes of investment, and such combination shall not be
4 construed as defeating the segregation of such assets for account-
5 ing or other purposes. Sponsored captive insurance companies
6 shall comply with the investment requirements contained in
7 article eight of this chapter, as applicable: *Provided*, That
8 compliance with such investment requirements shall be waived
9 for sponsored captive insurance companies to the extent that
10 credit for reinsurance ceded to reinsurers is allowed pursuant to
11 section eleven, article thirty-one of this chapter or to the extent
12 otherwise deemed reasonable and appropriate by the commis-
13 sioner. Notwithstanding any other provision of this chapter, the
14 commissioner may approve the use of alternative reliable
15 methods of valuation and rating.

§33-31A-9. Delinquency.

1 In the case of a delinquency of a sponsored captive insurance
2 company, the provisions of section seventeen, article thirty-one
3 of this chapter shall apply, provided:

4 (1) The assets of a protected cell may not be used to pay any
5 expenses or claims other than those attributable to such protected
6 cell; and

7 (2) Its capital and surplus shall at all times be available to
8 pay any expenses of or claims against the sponsored captive
9 insurance company.

CHAPTER 147

(Com. Sub. for S. B. 431 — By Senator Minard)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all relating to the establishment and operation of an interstate compact for the review and approval of certain lines of insurance products; setting forth the purposes for establishing the compact; protecting the interests of consumers and promoting uniform standards for insurance products; setting forth definitions; establishing the interstate insurance product regulation commission which has the power to develop uniform standards for product lines, to receive and approve those product filings and to be an instrumentality of the compacting states; setting forth the powers of the interstate insurance product regulation commission to promulgate rules, establish reasonable uniform standards for product filings, review products filed with the commission, review advertisement relating to long-term care insurance, exercise its rule-making authority, bring legal actions, issue subpoenas, undertake activities relating to the administration of the commission and appoint committees; setting forth provisions relating to organization of the commission; memberships and voting rights of states and participation in the governance of the commission; creation and content of bylaws of the commission; setting forth provisions relating to meetings and acts of the commission; establishing rule-making authority of the commission; exempting rules promulgated by the commission from the provisions of chapter twenty-nine-a of this code; allowing states to opt out of rules promulgated by the commis-

sion; setting forth provisions relating to the maintenance and disclosure of commission records; commission's power to monitor states' compliance with the compact, but preserving to states the ability to regulate the market conduct of insurers; setting forth provisions relating to resolution of disputes between compacting states and noncompacting states; setting forth requirements for filing products with the commission; setting forth appeal rights of insurers following disapproval of filings; setting forth provisions relating to the mechanism for funding the operations of the commission, including the collection of filing fees; setting forth the circumstances under which the compact will become effective and requiring twenty-six states or states representing forty percent of premium volume for the effected insurance lines to adopt the compact before the commission may adopt uniform standards and approve filings; setting forth the procedures for states to withdraw from the compact and circumstances under which a state will be determined to be in default of the compact; provisions relating to severability; requiring the insurance commissioner to file in the state register rules or uniform standards adopted by the commission and which have become effective in this state; and provisions relating to the binding effect of the compact.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all to read as follows:

**ARTICLE 47. INTERSTATE INSURANCE PRODUCT REGULATION
COMPACT.**

- §33-47-1. Purposes.
- §33-47-2. Definitions.
- §33-47-3. Establishment of the commission and venue.
- §33-47-4. Powers of the commission.
- §33-47-5. Organization of the commission.

- §33-47-6. Meetings and acts of the commission.
- §33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.
- §33-47-8. Commission records and enforcement.
- §33-47-9. Dispute resolution.
- §33-47-10. Product filing and approval.
- §33-47-11. Review of commission decisions regarding filings.
- §33-47-12. Finance.
- §33-47-13. Compacting states, effective date and amendment.
- §33-47-14. Withdrawal, default and termination.
- §33-47-15. Severability and construction.
- §33-47-16. Binding effect of compact and other laws.
- §33-47-17. Filing of rules by the insurance commissioner.

§33-47-1. Purposes.

1 Pursuant to terms and conditions of this article, the state of
2 West Virginia seeks to join with other states and establish the
3 interstate insurance product regulation compact and thus
4 become a member of the interstate insurance product regulation
5 commission. The insurance commissioner is hereby designated
6 to serve as the representative of this state to the commission.

7 The purposes of this compact are, through means of joint
8 and cooperative action among the compacting states:

9 (1) To promote and protect the interest of consumers of
10 individual and group annuity, life insurance, disability income
11 and long-term care insurance products;

12 (2) To develop uniform standards for insurance products
13 covered under the compact;

14 (3) To establish a central clearinghouse to receive and
15 provide prompt review of insurance products covered under the
16 compact and, in certain cases, advertisements related thereto,
17 submitted by insurers authorized to do business in one or more
18 compacting states;

19 (4) To give appropriate regulatory approval to those product
20 filings and advertisements satisfying the applicable uniform
21 standard;

22 (5) To improve coordination of regulatory resources and
23 expertise between state insurance departments regarding the
24 setting of uniform standards and review of insurance products
25 covered under the compact;

26 (6) To create the interstate insurance product regulation
27 commission; and

28 (7) To perform these and such other related functions as
29 may be consistent with the state regulation of the business of
30 insurance.

§33-47-2. Definitions.

1 For purposes of this compact:

2 (a) "Advertisement" means any material designed to create
3 public interest in a product, or induce the public to purchase,
4 increase, modify, reinstate, borrow on, surrender, replace or
5 retain a policy as more specifically defined in the rules and
6 operating procedures of the commission.

7 (b) "Bylaws" mean those bylaws established by the
8 commission for its governance or for directing or controlling
9 the commission's actions or conduct.

10 (c) "Compacting state" means any state which has enacted
11 this compact legislation and which has not withdrawn pursuant
12 to subsection (a), section fourteen of this article or been
13 terminated pursuant to subsection (b) of said section.

14 (d) "Commission" means the "interstate insurance product
15 regulation commission" established by this compact.

16 (e) "Commissioner" means the insurance commissioner of
17 the state of West Virginia.

18 (f) "Domiciliary state" means the state in which an insurer
19 is incorporated or organized; or, in the case of an alien insurer,
20 its state of entry.

21 (g) "Insurer" means any entity licensed by a state to issue
22 contracts of insurance for any of the lines of insurance covered
23 by this article.

24 (h) "Member" means the person chosen by a compacting
25 state as its representative to the commission or his or her
26 designee.

27 (i) "Noncompacting state" means any state which is not at
28 the time a compacting state.

29 (j) "Operating procedures" mean procedures promulgated
30 by the commission implementing a rule, uniform standard or a
31 provision of this compact.

32 (k) "Product" means the form of a policy or contract,
33 including any application, endorsement or related form which
34 is attached to and made a part of the policy or contract and any
35 evidence of coverage or certificate, for an individual or group
36 annuity, life insurance, disability income or long-term care
37 insurance product that an insurer is authorized to issue.

38 (l) "Rule" means a statement of general or particular
39 applicability and future effect promulgated by the commission,
40 including a uniform standard developed pursuant to section
41 seven of this article, designed to implement, interpret or
42 prescribe law or policy or describing the organization, proce-
43 dure or practice requirements of the commission, which shall
44 have the force and effect of law in the compacting states.

45 (m) "State" means any state, district or territory of the
46 United States of America.

47 (n) "Third-party filer" means an entity that submits a
48 product filing to the commission on behalf of an insurer.

49 (o) "Uniform standard" means a standard adopted by the
50 commission for a product line, pursuant to section seven of this
51 article and shall include all of the product requirements in
52 aggregate: *Provided*, That each uniform standard shall be
53 construed, whether express or implied, to prohibit the use of
54 any inconsistent, misleading or ambiguous provisions in a
55 product and the form of the product made available to the
56 public shall not be unfair, inequitable or against public policy
57 as determined by the commission.

§33-47-3. Establishment of the commission and venue.

1 (a) The compacting states hereby create and establish a
2 joint public agency known as the "interstate insurance product
3 regulation commission". Pursuant to section four of this article,
4 the commission will have the power to develop uniform
5 standards for product lines, receive and provide prompt review
6 of products filed therewith and give approval to those product
7 filings satisfying applicable uniform standards: *Provided*, That
8 it is not intended for the commission to be the exclusive entity
9 for receipt and review of insurance product filings. Nothing
10 herein shall prohibit any insurer from filing its product in any
11 state wherein the insurer is licensed to conduct the business of
12 insurance; and any such filing shall be subject to the laws of the
13 state where filed.

14 (b) The commission is a body corporate and politic and an
15 instrumentality of the compacting states.

16 (c) The commission is solely responsible for its liabilities
17 except as otherwise specifically provided in this article.

18 (d) Venue is proper and judicial proceedings by or against
19 the commission shall be brought solely and exclusively in a
20 court of competent jurisdiction where the principal office of the
21 commission is located.

§33-47-4. Powers of the commission.

1 The commission shall have the following powers:

2 (a) To promulgate rules, pursuant to section seven of this
3 article, which shall have the force and effect of law and shall be
4 binding in the compacting states to the extent and in the manner
5 provided in this article;

6 (b) To exercise its rule-making authority and establish
7 reasonable uniform standards for products covered under the
8 compact, and advertisement related thereto, which shall have
9 the force and effect of law and shall be binding in the compact-
10 ing states, but only for those products filed with the commis-
11 sion: *Provided*, That a compacting state shall have the right to
12 opt out of any uniform standard pursuant to section seven of
13 this article, to the extent and in the manner provided in this
14 article: *Provided, however*, That any uniform standard estab-
15 lished by the commission for long-term care insurance products
16 may provide the same or greater protections for consumers as,
17 but shall not provide less than, those protections set forth in the
18 national association of insurance commissioners' long-term
19 care insurance model act and long-term care insurance model
20 regulation, respectively, adopted as of two thousand one. The
21 commission shall consider whether any subsequent amend-
22 ments to the national association of insurance commissioners'
23 long-term care insurance model act or the long-term care
24 insurance model regulation adopted by the national association
25 of insurance commissioners require the commissioner to amend
26 the uniform standards established by the commission for long-
27 term care insurance products;

28 (c) To receive and review in an expeditious manner
29 products filed with the commission and rate filings for disabil-
30 ity income and long-term care insurance products and give
31 approval of those products and rate filings that satisfy the
32 applicable uniform standard, where such approval shall have
33 the force and effect of law and be binding on the compacting
34 states to the extent and in the manner provided in the compact;

35 (d) To receive and review in an expeditious manner
36 advertisement relating to long-term care insurance products for
37 which uniform standards have been adopted by the commission,

38 and give approval to all advertisement that satisfies the applica-
39 ble uniform standard. For any product covered under this
40 compact, other than long-term care insurance products, the
41 commission shall have the authority to require an insurer to
42 submit all or any part of its advertisement with respect to that
43 product for review or approval prior to use, if the commission
44 determines that the nature of the product is such that an
45 advertisement of the product could have the capacity or
46 tendency to mislead the public. The actions of the commission
47 as provided in this subsection shall have the force and effect of
48 law and shall be binding in the compacting states to the extent
49 and in the manner provided in the compact;

50 (e) To exercise its rule-making authority and designate
51 products and advertisement that may be subject to a
52 self-certification process without the need for prior approval by
53 the commission;

54 (f) To promulgate operating procedures, pursuant to section
55 seven of this article, which shall be binding in the compacting
56 states to the extent and in the manner provided in this article;

57 (g) To bring and prosecute legal proceedings or actions in
58 its name as the commission: *Provided*, That the standing of any
59 state insurance department to sue or be sued under applicable
60 law shall not be affected;

61 (h) To issue subpoenas requiring the attendance and
62 testimony of witnesses and the production of evidence;

63 (i) To establish and maintain offices;

64 (j) To purchase and maintain insurance and bonds;

65 (k) To borrow, accept or contract for services of personnel,
66 including, but not limited to, employees of a compacting state;

67 (l) To hire employees, professionals or specialists and elect
68 or appoint officers and to fix their compensation, define their
69 duties and give them appropriate authority to carry out the

70 purposes of the compact and determine their qualifications; and
71 to establish the commission's personnel policies and programs
72 relating to, among other things, conflicts of interest, rates of
73 compensation and qualifications of personnel;

74 (m) To accept any and all appropriate donations and grants
75 of money, equipment, supplies, materials and services and to
76 receive, utilize and dispose of the same: *Provided*, That at all
77 times the commission shall strive to avoid any appearance of
78 impropriety;

79 (n) To lease, purchase, accept appropriate gifts or donations
80 of, or otherwise to own, hold, improve or use, any property,
81 real, personal or mixed: *Provided*, That at all times the
82 commission shall strive to avoid any appearance of impropriety;
83

84 (o) To sell, convey, mortgage, pledge, lease, exchange,
85 abandon or otherwise dispose of any property, real, personal or
86 mixed;

87 (p) To remit filing fees to compacting states as may be set
88 forth in the bylaws, rules or operating procedures;

89 (q) To enforce compliance by compacting states with rules,
90 uniform standards, operating procedures and bylaws;

91 (r) To provide for dispute resolution among compacting
92 states;

93 (s) To advise compacting states on issues relating to
94 insurers domiciled or doing business in noncompacting
95 jurisdictions, consistent with the purposes of this compact;

96 (t) To provide advice and training to those personnel in
97 state insurance departments responsible for product review and
98 to be a resource for state insurance departments;

99 (u) To establish a budget and make expenditures;

100 (v) To borrow money;

101 (w) To appoint committees, including advisory committees
102 comprising members, state insurance regulators, state legisla-
103 tors or their representatives, insurance industry and consumer
104 representatives and any other interested persons as may be
105 designated in the bylaws;

106 (x) To provide and receive information from, and to
107 cooperate with, law-enforcement agencies;

108 (y) To adopt and use a corporate seal; and

109 (z) To perform such other functions as may be necessary or
110 appropriate to achieve the purposes of this compact consistent
111 with the state regulation of the business of insurance.

§33-47-5. Organization of the commission.

1 (a) Membership, voting and bylaws of the commission shall
2 be as follows:

3 (1) Each compacting state shall have and be limited to one
4 member. Each member shall be qualified to serve in that
5 capacity pursuant to applicable law of the compacting state.
6 Any member may be removed or suspended from office as
7 provided by the law of the state from which he or she is
8 appointed. Any vacancy occurring in the commission shall be
9 filled in accordance with the laws of the compacting state
10 wherein the vacancy exists. Nothing herein may be construed
11 to affect the manner in which a compacting state determines the
12 election or appointment and qualification of its own commis-
13 sioner.

14 (2) Each member shall be entitled to one vote and shall
15 have an opportunity to participate in the governance of the
16 commission in accordance with the bylaws. Notwithstanding
17 any provision herein to the contrary, no action of the commis-
18 sion with respect to the promulgation of a uniform standard
19 shall be effective unless two thirds of the members vote in favor
20 thereof.

21 (3) The commission shall, by a majority of the members,
22 prescribe bylaws to govern its conduct as may be necessary or
23 appropriate to carry out the purposes, and exercise the powers,
24 of the compact, including, but not limited to:

25 (A) Establishing the fiscal year of the commission;

26 (B) Providing reasonable procedures for appointing and
27 electing members, as well as holding meetings, of the manage-
28 ment committee;

29 (C) Providing reasonable standards and procedures for the
30 establishment and meetings of other committees, and providing
31 standards and procedures governing any general or specific
32 delegation of any authority or function of the commission;

33 (D) Providing reasonable procedures for calling and
34 conducting meetings of the commission that consist of a
35 majority of commission members, ensuring reasonable advance
36 notice of each such meeting and providing for the right of
37 citizens to attend each such meeting with enumerated excep-
38 tions designed to protect the public's interest, the privacy of
39 individuals, and insurers' proprietary information, including
40 trade secrets. The commission may meet in camera only after
41 a majority of the entire membership votes to close a meeting *en*
42 *toto* or in part. As soon as practicable, the commission must
43 make public a copy of the vote to close the meeting revealing
44 the vote of each member with no proxy votes allowed, and the
45 votes taken during such meeting;

46 (E) Establishing the titles, duties and authority and reason-
47 able procedures for the election of the officers of the commis-
48 sion;

49 (F) Providing reasonable standards and procedures for the
50 establishment of the personnel policies and programs of the
51 commission. Notwithstanding any civil service or other similar
52 laws of any compacting state, the bylaws shall exclusively
53 govern the personnel policies and programs of the commission;

54 (G) Promulgating a code of ethics to address permissible
55 and prohibited activities of commission members and employ-
56 ees; and

57 (H) Providing a mechanism for winding up the operations
58 of the commission and the equitable disposition of any surplus
59 funds that may exist after the termination of the compact after
60 the payment and reserving of all of its debts and obligations.

61 (4) The commission shall publish its bylaws in a convenient
62 form and file a copy thereof and a copy of any amendment
63 thereto, with the appropriate agency or officer in each of the
64 compacting states.

65 (b) Management committee, officers and personnel.

66 (1) A management committee comprising no more than
67 fourteen members shall be established as follows:

68 (A) One member from each of the six compacting states
69 with the largest premium volume for individual and group
70 annuities, life, disability income and long-term care insurance
71 products, determined from the records of the NAIC for the prior
72 year;

73 (B) Four members from those compacting states with at
74 least two percent of the market based on the premium volume
75 described above, other than the six compacting states with the
76 largest premium volume, selected on a rotating basis as
77 provided in the bylaws; and

78 (C) Four members from those compacting states with less
79 than two percent of the market, based on the premium volume
80 described above, with one selected from each of the four zone
81 regions of the NAIC as provided in the bylaws.

82 (2) The management committee shall have such authority
83 and duties as may be set forth in the bylaws, including, but not
84 limited to:

85 (A) Managing the affairs of the commission in a manner
86 consistent with the bylaws and purposes of the commission;

87 (B) Establishing and overseeing an organizational structure
88 within, and appropriate procedures for, the commission to
89 provide for the creation of uniform standards and other rules,
90 receipt and review of product filings, administrative and
91 technical support functions, review of decisions regarding the
92 disapproval of a product filing, and the review of elections
93 made by a compacting state to opt out of a uniform standard:
94 *Provided*, That a uniform standard shall not be submitted to the
95 compacting states for adoption unless approved by two thirds
96 of the members of the management committee;

97 (C) Overseeing the offices of the commission; and

98 (D) Planning, implementing and coordinating communica-
99 tions and activities with other state, federal and local govern-
100 ment organizations in order to advance the goals of the commis-
101 sion.

102 (3) The commission shall elect annually officers from the
103 management committee, with each having such authority and
104 duties, as may be specified in the bylaws.

105 (4) The management committee may, subject to the
106 approval of the commission, appoint or retain an executive
107 director for such period, upon such terms and conditions and for
108 such compensation as the commission may deem appropriate.
109 The executive director shall serve as secretary to the commis-
110 sion, but shall not be a member of the commission. The
111 executive director shall hire and supervise such other staff as
112 may be authorized by the commission.

113 (c) Legislative and advisory committees.

114 (1) A legislative committee comprising state legislators or
115 their designees shall be established to monitor the operations of,
116 and make recommendations to, the commission, including the
117 management committee: *Provided*, That the manner of selection

118 and term of any legislative committee member shall be as set
119 forth in the bylaws. Prior to the adoption by the commission of
120 any uniform standard, revision to the bylaws, annual budget or
121 other significant matter as may be provided in the bylaws, the
122 management committee shall consult with and report to the
123 legislative committee.

124 (2) The commission shall establish two advisory commit-
125 tees, one of which shall comprise consumer representatives
126 independent of the insurance industry, and the other comprising
127 insurance industry representatives.

128 (3) The commission may establish additional advisory
129 committees as its bylaws may provide for the carrying out of its
130 functions.

131 (d) Corporate records of the commission.

132 The commission shall maintain its corporate books and
133 records in accordance with the bylaws.

134 (e) Qualified immunity, defense and indemnification.

135 (1) The members, officers, executive director, employees
136 and representatives of the commission shall be immune from
137 suit and liability, either personally or in their official capacity,
138 for any claim for damage to or loss of property or personal
139 injury or other civil liability caused by or arising out of any
140 actual or alleged act, error or omission that occurred, or that the
141 person against whom the claim is made had a reasonable basis
142 for believing occurred within the scope of commission employ-
143 ment, duties or responsibilities: *Provided*, That nothing in this
144 subdivision shall be construed to protect any such person from
145 suit or liability for any damage, loss, injury or liability caused
146 by the intentional or willful and wanton misconduct of that
147 person.

148 (2) The commission shall defend any member, officer,
149 executive director, employee or representative of the commis-
150 sion in any civil action seeking to impose liability arising out of

151 any actual or alleged act, error or omission that occurred within
152 the scope of commission employment, duties or responsibilities,
153 or that the person against whom the claim is made had a
154 reasonable basis for believing occurred within the scope of
155 commission employment, duties or responsibilities: *Provided,*
156 That nothing herein shall be construed to prohibit that person
157 from retaining his or her own counsel: *Provided, however,* That
158 the actual or alleged act, error or omission did not result from
159 that person's intentional or willful and wanton misconduct.

160 (3) The commission shall indemnify and hold harmless any
161 member, officer, executive director, employee or representative
162 of the commission for the amount of any settlement or judg-
163 ment obtained against that person arising out of any actual or
164 alleged act, error or omission that occurred within the scope of
165 commission employment, duties or responsibilities or that such
166 person had a reasonable basis for believing occurred within the
167 scope of commission employment, duties or responsibilities:
168 *Provided,* That the actual or alleged act, error or omission did
169 not result from the intentional or willful and wanton misconduct
170 of that person.

§33-47-6. Meetings and acts of the commission.

1 (a) The commission shall meet and take such actions as are
2 consistent with the provisions of this compact and the bylaws.

3 (b) Each member of the commission shall have the right
4 and power to cast a vote to which that compacting state is
5 entitled and to participate in the business and affairs of the
6 commission. A member shall vote in person or by such other
7 means as provided in the bylaws. The bylaws may provide for
8 members' participation in meetings by telephone or other
9 means of communication.

10 (c) The commission shall meet at least once during each
11 calendar year. Additional meetings shall be held as set forth in
12 the bylaws.

§33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.

1 (a) *Rule-making authority.* -- The commission shall
2 promulgate reasonable rules, including uniform standards, and
3 operating procedures in order to effectively and efficiently
4 achieve the purposes of this compact. Notwithstanding the
5 foregoing, in the event the commission exercises its rule-
6 making authority in a manner that is beyond the scope of the
7 purposes of this article, or the powers granted hereunder, then
8 such an action by the commission shall be invalid and have no
9 force and effect.

10 (b) *Rule-making procedure.* -- Rules and operating proce-
11 dures shall be made pursuant to a rule-making process that
12 conforms to the model state administrative procedure act of
13 1981, as amended, as may be appropriate to the operations of
14 the commission. Before the commission adopts a uniform
15 standard, the commission shall give written notice to the
16 relevant state legislative committee or committees in each
17 compacting state responsible for insurance issues of its inten-
18 tion to adopt the uniform standard. The commission in adopt-
19 ing a uniform standard shall consider fully all submitted
20 materials and issue a concise explanation of its decision.
21 Notwithstanding any provision of this code to the contrary, the
22 commission is authorized to promulgate rules in the manner set
23 forth in this section. Rules promulgated by the commission
24 pursuant to this section are not subject to the provisions of
25 article three, chapter twenty-nine-a of this code and will
26 become effective pursuant to the procedures set forth in this
27 section notwithstanding any provisions of article three, chapter
28 twenty-nine-a of this code to the contrary.

29 (c) *Effective date and opt out of a uniform standard.* -- A
30 uniform standard shall become effective ninety (90) days after
31 its promulgation by the commission or such later date as the
32 commission may determine: *Provided*, That a compacting state
33 may opt out of a uniform standard as provided in this section.

34 “Opt out” is defined as any action by a compacting state to
35 decline to adopt or participate in a promulgated uniform
36 standard. All other rules and operating procedures, and
37 amendments thereto, shall become effective as of the date
38 specified in each rule, operating procedure or amendment.

39 (d) *Opt out procedure.* -- A compacting state may opt out
40 of a uniform standard, either by legislation or regulation duly
41 promulgated by the insurance department under the compacting
42 state’s administrative procedure act. If a compacting state
43 elects to opt out of a uniform standard by regulation, it must:
44 (a) Give written notice to the commission no later than ten
45 business days after the uniform standard is promulgated, or at
46 the time the state becomes a compacting state; and (b) find that
47 the uniform standard does not provide reasonable protections to
48 the citizens of the state, given the conditions in the state. The
49 commissioner shall make specific findings of fact and conclu-
50 sions of law, based on a preponderance of the evidence,
51 detailing the conditions in the state which warrant a departure
52 from the uniform standard and determining that the uniform
53 standard would not reasonably protect the citizens of the state.
54 The commissioner must consider and balance the following
55 factors and find that the conditions in the state and needs of the
56 citizens of the state outweigh: (i) The intent of the Legislature
57 to participate in, and the benefits of, an interstate agreement to
58 establish national uniform consumer protections for the
59 products subject to this article; and (ii) the presumption that a
60 uniform standard adopted by the commission provides reason-
61 able protections to consumers of the relevant product.

62 Notwithstanding the foregoing, a compacting state may, at
63 the time of its enactment of this compact, prospectively opt out
64 of all uniform standards involving long-term care insurance
65 products by expressly providing for such opt out in the enacted
66 compact, and such an opt out shall not be treated as a material
67 variance in the offer or acceptance of any state to participate in
68 this compact. Such an opt out shall be effective at the time of
69 enactment of this compact by the compacting state and shall
70 apply to all existing uniform standards involving long-term care
71 insurance products and those subsequently promulgated.

72 (e) *Effect of opt out.* -- If a compacting state elects to opt
73 out of a uniform standard, the uniform standard shall remain
74 applicable in the compacting state electing to opt out until such
75 time as the opt out legislation is enacted into law or the regula-
76 tion opting out becomes effective.

77 Once the opt out of a uniform standard by a compacting
78 state becomes effective as provided under the laws of that state,
79 the uniform standard shall have no further force and effect in
80 that state unless and until the legislation or regulation imple-
81 menting the opt out is repealed or otherwise becomes ineffec-
82 tive under the laws of the state. If a compacting state opts out
83 of a uniform standard after the uniform standard has been made
84 effective in that state, the opt out shall have the same prospec-
85 tive effect as provided under section fourteen of this article for
86 withdrawals.

87 (f) *Stay of uniform standard.* -- If a compacting state has
88 formally initiated the process of opting out of a uniform
89 standard by regulation, and while the regulatory opt out is
90 pending, the compacting state may petition the commission, at
91 least fifteen days before the effective date of the uniform
92 standard, to stay the effectiveness of the uniform standard in
93 that state. The commission may grant a stay if it determines the
94 regulatory opt out is being pursued in a reasonable manner and
95 there is a likelihood of success. If a stay is granted or extended
96 by the commission, the stay or extension thereof may postpone
97 the effective date by up to ninety days, unless affirmatively
98 extended by the commission: *Provided*, That a stay may not be
99 permitted to remain in effect for more than one year unless the
100 compacting state can show extraordinary circumstances which
101 warrant a continuance of the stay, including, but not limited to,
102 the existence of a legal challenge which prevents the compact-
103 ing state from opting out. A stay may be terminated by the
104 commission upon notice that the rule-making process has been
105 terminated.

106 (g) Not later than thirty days after a rule or operating
107 procedure is promulgated, any person may file a petition for

108 judicial review of the rule or operating procedure: *Provided*,
109 That the filing of such a petition shall not stay or otherwise
110 prevent the rule or operating procedure from becoming effec-
111 tive unless the court finds that the petitioner has a substantial
112 likelihood of success. The court shall give deference to the
113 actions of the commission consistent with applicable law and
114 shall not find the rule or operating procedure to be unlawful if
115 the rule or operating procedure represents a reasonable exercise
116 of the commission's authority.

§33-47-8. Commission records and enforcement.

1 (a) The commission shall promulgate rules establishing
2 conditions and procedures for public inspection and copying of
3 its information and official records, except such information
4 and records involving the privacy of individuals and insurers'
5 trade secrets. The commission may promulgate additional rules
6 under which it may make available to federal and state agen-
7 cies, including law-enforcement agencies, records and informa-
8 tion otherwise exempt from disclosure, and may enter into
9 agreements with such agencies to receive or exchange informa-
10 tion or records subject to nondisclosure and confidentiality
11 provisions.

12 (b) Except as to privileged records, data and information,
13 the laws of any compacting state pertaining to confidentiality or
14 nondisclosure shall not relieve any compacting state commis-
15 sioner of the duty to disclose any relevant records, data or
16 information to the commission: *Provided*, That disclosure to
17 the commission shall not be deemed to waive or otherwise
18 affect any confidentiality requirement: *Provided, however*,
19 That, except as otherwise expressly provided in this article, the
20 commission shall not be subject to the compacting state's laws
21 pertaining to confidentiality and nondisclosure with respect to
22 records, data and information in its possession. Confidential
23 information of the commission shall remain confidential after
24 such information is provided to any commissioner.

25 (c) The commission shall monitor compacting states for
26 compliance with duly adopted bylaws, rules, including uniform

27 standards, and operating procedures. The commission shall
28 notify any noncomplying compacting state in writing of its
29 noncompliance with commission bylaws, rules or operating
30 procedures. If a noncomplying compacting state fails to
31 remedy its noncompliance within the time specified in the
32 notice of noncompliance, the compacting state shall be deemed
33 to be in default as set forth in section fourteen of this article.

34 (d) The commissioner of any state in which an insurer is
35 authorized to do business, or is conducting the business of
36 insurance, shall continue to exercise his or her authority to
37 oversee the market regulation of the activities of the insurer in
38 accordance with the provisions of the state's law. The commis-
39 sioner's enforcement of compliance with the compact is
40 governed by the following provisions:

41 (1) With respect to the commissioner's market regulation
42 of a product or advertisement that is approved or certified to the
43 commission, the content of the product or advertisement shall
44 not constitute a violation of the provisions, standards or
45 requirements of the compact except upon a final order of the
46 commission, issued at the request of a commissioner after prior
47 notice to the insurer and an opportunity for hearing before the
48 commission.

49 (2) Before a commissioner may bring an action for viola-
50 tion of any provision, standard or requirement of the compact
51 relating to the content of an advertisement not approved or
52 certified to the commission, the commission, or an authorized
53 commission officer or employee, must authorize the action.
54 However, authorization pursuant to this subdivision does not
55 require notice to the insurer, opportunity for hearing or disclo-
56 sure of requests for authorization or records of the commis-
57 sion's action on such requests.

§33-47-9. Dispute resolution.

1 The commission shall attempt, upon the request of a
2 member, to resolve any disputes or other issues that are subject
3 to this compact and which may arise between two or more

4 compacting states, or between compacting states and
5 noncompacting states, and the commission shall promulgate an
6 operating procedure providing for resolution of such disputes.

§33-47-10. Product filing and approval.

1 (a) Insurers and third-party filers seeking to have a product
2 approved by the commission shall file the product with, and pay
3 applicable filing fees to, the commission. Nothing in this
4 article shall be construed to restrict or otherwise prevent an
5 insurer from filing its product with the insurance department in
6 any state wherein the insurer is licensed to conduct the business
7 of insurance, and such filing shall be subject to the laws of the
8 states where filed.

9 (b) The commission shall establish appropriate filing and
10 review processes and procedures pursuant to commission rules
11 and operating procedures. Notwithstanding any provision
12 herein to the contrary, the commission shall promulgate rules
13 to establish conditions and procedures under which the commis-
14 sion will provide public access to product filing information.
15 In establishing such rules, the commission shall consider the
16 interests of the public in having access to such information, as
17 well as protection of personal medical and financial information
18 and trade secrets, that may be contained in a product filing or
19 supporting information.

20 (c) Any product approved by the commission may be sold
21 or otherwise issued in those compacting states for which the
22 insurer is legally authorized to do business.

§33-47-11. Review of commission decisions regarding filings.

1 (a) Not later than thirty days after the commission has given
2 notice of a disapproved product or advertisement filed with the
3 commission, the insurer or third-party filer whose filing was
4 disapproved may appeal the determination to a review panel
5 appointed by the commission. The commission shall promul-
6 gate rules to establish procedures for appointing such review
7 panels and provide for notice and hearing. An allegation that

8 the commission, in disapproving a product or advertisement
9 filed with the commission, acted arbitrarily, capriciously, or in
10 a manner that is an abuse of discretion or otherwise not in
11 accordance with the law, is subject to judicial review in
12 accordance with subsection (d), section three of this article.

13 (b) The commission shall have authority to monitor, review
14 and reconsider products and advertisements subsequent to their
15 filing or approval upon a finding that the product does not meet
16 the relevant uniform standard. Where appropriate, the commis-
17 sion may withdraw or modify its approval after proper notice
18 and hearing, subject to the appeal process in subsection (a) of
19 this section.

§33-47-12. Finance.

1 (a) The commission shall pay or provide for the payment of
2 the reasonable expenses of its establishment and organization.
3 To fund the cost of its initial operations, the commission may
4 accept contributions and other forms of funding from the
5 national association of insurance commissioners, compacting
6 states and other sources. Contributions and other forms of
7 funding from other sources shall be of such a nature that the
8 independence of the commission concerning the performance
9 of its duties shall not be compromised.

10 (b) The commission shall collect a filing fee from each
11 insurer and third party filer filing a product with the commis-
12 sion to cover the cost of the operations and activities of the
13 commission and its staff in a total amount sufficient to cover
14 the commission's annual budget.

15 (c) The commission's budget for a fiscal year shall not be
16 approved until it has been subject to notice and comment as set
17 forth in section seven of this article.

18 (d) The commission shall be exempt from all taxation in
19 and by the compacting states.

20 (e) The commission shall not pledge the credit of any
21 compacting state, except by and with the appropriate legal
22 authority of that compacting state.

23 (f) The commission shall keep complete and accurate
24 accounts of all its internal receipts, including grants and
25 donations, and disbursements of all funds under its control. The
26 internal financial accounts of the commission shall be subject
27 to the accounting procedures established under its bylaws. The
28 financial accounts and reports including the system of internal
29 controls and procedures of the commission shall be audited
30 annually by an independent certified public accountant. Upon
31 the determination of the commission, but no less frequently
32 than every three years, the review of the independent auditor
33 shall include a management and performance audit of the
34 commission. The commission shall make an annual report to
35 the governor and Legislature of the compacting states, which
36 shall include a report of the independent audit. The commis-
37 sion's internal accounts shall not be confidential and such
38 materials may be shared with the commissioner of any com-
39 pacting state upon request: *Provided*, That any work papers
40 related to any internal or independent audit and any information
41 regarding the privacy of individuals and insurers' proprietary
42 information, including trade secrets, shall remain confidential.

43 (g) No compacting state shall have any claim to or owner-
44 ship of any property held by or vested in the commission or to
45 any commission funds held pursuant to the provisions of this
46 compact.

§33-47-13. Compacting states, effective date and amendment.

1 (a) Any state is eligible to become a compacting state.

2 (b) The compact shall become effective and binding upon
3 legislative enactment of the compact into law by two compact-
4 ing states: *Provided*, That the commission shall become
5 effective for purposes of adopting uniform standards for,
6 reviewing and giving approval or disapproval of, products filed
7 with the commission that satisfy applicable uniform standards

8 only after twenty-six states are compacting states or, alterna-
9 tively, by states representing greater than forty percent of the
10 premium volume for life insurance, annuity, disability income
11 and long-term care insurance products, based on records of the
12 national association of insurance commissioners for the prior
13 year. Thereafter, it shall become effective and binding as to
14 any other compacting state upon enactment of the compact into
15 law by that state.

16 (c) Amendments to the compact may be proposed by the
17 commission for enactment by the compacting states. No
18 amendment shall become effective and binding upon the
19 commission and the compacting states unless and until all
20 compacting states enact the amendment into law.

§33-47-14. Withdrawal, default and termination.

1 (a) *Withdrawal.--*

2 (1) Once effective, the compact shall continue in force and
3 remain binding upon each and every compacting state: *Pro-*
4 *vided*, That a compacting state may withdraw from the compact
5 by enacting a statute specifically repealing the statute which
6 enacted the compact into law.

7 (2) The effective date of withdrawal is the effective date of
8 the repealing statute. However, the withdrawal shall not apply
9 to any product filings approved or self-certified, or any adver-
10 tisement of such products, on the date the repealing statute
11 becomes effective, except by mutual agreement of the commis-
12 sion and the withdrawing state unless the approval is rescinded
13 by the withdrawing state as provided in subdivision (5) of this
14 subsection.

15 (3) The commissioner of the withdrawing state shall
16 immediately notify the management committee in writing upon
17 the introduction of legislation repealing this compact in the
18 withdrawing state.

19 (4) The commission shall notify the other compacting states
20 of the introduction of such legislation within ten days after its
21 receipt of notice thereof.

22 (5) The withdrawing state is responsible for all obligations,
23 duties and liabilities incurred through the effective date of
24 withdrawal, including any obligations, the performance of
25 which extend beyond the effective date of withdrawal, except
26 to the extent those obligations may have been released or
27 relinquished by mutual agreement of the commission and the
28 withdrawing state. The commission's approval of products and
29 advertisement prior to the effective date of withdrawal shall
30 continue to be effective and be given full force and effect in the
31 withdrawing state, unless formally rescinded by the withdraw-
32 ing state in the same manner as provided by the laws of the
33 withdrawing state for the prospective disapproval of products
34 or advertisement previously approved under state law.

35 (6) Reinstatement following withdrawal of any compacting
36 state shall occur upon the effective date of the withdrawing
37 state reenacting the compact.

38 (b) *Default.* --

39 (1) If the commission determines that any compacting state
40 has at any time defaulted in the performance of any of its
41 obligations or responsibilities under this compact, the bylaws or
42 duly promulgated rules or operating procedures, then, after
43 notice and hearing as set forth in the bylaws, all rights, privi-
44 leges and benefits conferred by this compact on the defaulting
45 state shall be suspended from the effective date of default as
46 fixed by the commission. The grounds for default include, but
47 are not limited to, failure of a compacting state to perform its
48 obligations or responsibilities, and any other grounds desig-
49 nated in commission rules. The commission shall immediately
50 notify the defaulting state in writing of the defaulting state's
51 suspension pending a cure of the default. The commission shall
52 stipulate the conditions and the time period within which the
53 defaulting state must cure its default. If the defaulting state
54 fails to cure the default within the time period specified by the

55 commission, the defaulting state shall be terminated from the
56 compact and all rights, privileges and benefits conferred by this
57 compact shall be terminated from the effective date of termina-
58 tion.

59 (2) Product approvals by the commission or product
60 self-certifications, or any advertisement in connection with such
61 product, that are in force on the effective date of termination
62 shall remain in force in the defaulting state in the same manner
63 as if the defaulting state had withdrawn voluntarily pursuant to
64 subsection (a) of this section.

65 (3) Reinstatement following termination of any compacting
66 state requires a reenactment of the compact.

67 (c) *Dissolution of compact.*--

68 (1) The compact dissolves effective upon the date of the
69 withdrawal or default of the compacting state which reduces
70 membership in the compact to one compacting state.

71 (2) Upon the dissolution of this compact, the compact
72 becomes null and void and shall be of no further force or effect,
73 and the business and affairs of the commission shall be wound
74 up and any surplus funds shall be distributed in accordance with
75 the bylaws.

§33-47-15. Severability and construction.

1 (a) The provisions of this compact shall be severable; and
2 if any phrase, clause, sentence or provision is deemed unen-
3 forceable, the remaining provisions of the compact shall be
4 enforceable.

5 (b) The provisions of this compact shall be liberally
6 construed to effectuate its purposes.

§33-47-16. Binding effect of compact and other laws.

1 (a) *Other laws.*--

2 (1) Nothing herein prevents the enforcement of any other
3 law of a compacting state, except as provided in subdivision (2)
4 of this subsection.

5 (2) For any product approved or certified to the commis-
6 sion, the rules, uniform standards and any other requirements of
7 the commission shall constitute the exclusive provisions
8 applicable to the content, approval and certification of such
9 products. For advertisements that are subject to the commis-
10 sion's authority, any rule, uniform standard or other require-
11 ment of the commission which governs the content of the
12 advertisements shall constitute the exclusive provision that a
13 commissioner may apply to the content of the advertisement.
14 Notwithstanding the foregoing, no action taken by the commis-
15 sion shall abrogate or restrict: (i) The access of any person to
16 state courts; (ii) remedies available under state law related to
17 breach of contract, tort or other laws not specifically directed to
18 the content of the product; (iii) state law relating to the con-
19 struction of insurance contracts; or (iv) the authority of the
20 attorney general of the state, including, but not limited to,
21 maintaining any actions or proceedings, as authorized by law.

22 (3) All insurance products filed with individual states shall
23 be subject to the laws of those states.

24 (b) *Binding effect of this compact.* --

25 (1) All lawful actions of the commission, including all rules
26 and operating procedures promulgated by the commission, are
27 binding upon the compacting states.

28 (2) All agreements between the commission and the
29 compacting states are binding in accordance with their terms.

30 (3) Upon the request of a party to a conflict over the
31 meaning or interpretation of commission actions and upon a
32 majority vote of the compacting states, the commission may
33 issue advisory opinions regarding the meaning or interpretation
34 in dispute.

35 (4) In the event any provision of this compact exceeds the
36 constitutional limits imposed on the legislature of any compact-
37 ing state, the obligations, duties, powers or jurisdiction sought
38 to be conferred by that provision upon the commission shall be
39 ineffective as to that compacting state and those obligations,
40 duties, powers or jurisdiction shall remain in the compacting
41 state and shall be exercised by the agency thereof to which
42 those obligations, duties, powers or jurisdiction are delegated
43 by law in effect at the time this compact becomes effective.

§33-47-17. Filing of rules by the insurance commissioner.

1 The insurance commissioner shall, pursuant to the provi-
2 sions of section four, article three, chapter twenty-nine-a of this
3 code, file in the state register any rules or uniform standards
4 which have been adopted by the commission and have become
5 effective in this state.

CHAPTER 148

**(Com. Sub. for S. B. 161 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 13, 2004; to take effect July 1, 2004. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-48-1, §33-48-2, §33-48-3, §33-48-4, §33-48-5, §33-48-6, §33-48-7, §33-48-8, §33-48-9, §33-48-10, §33-48-11 and §33-48-12, all relating to creating a West Virginia insurance plan; defining terms; creating a body corporate and politic to be known as the West Virginia health insurance plan; providing for its supervision and control by a board of directors to be appointed by the governor; providing the board of directors' administrative requirements; requiring a plan

of operation to be approved by the insurance commissioner; requiring the plan to be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal Health Care Tax Credit; describing procedural requirements for the plan; describing powers of the plan; requiring the board to annually report to the governor summarizing preceding year activities; shielding the board and its employees from any liability resulting from obligations of the plan; authorizing the board of directors to promulgate rules to implement the act; defining eligibility for persons seeking coverage from the plan and when such coverage shall cease; making it an unfair trade practice to arrange for an employee to apply for coverage with the plan for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment; providing for the selection of a plan administrator; providing for funding for the plan; defining the benefits to be offered; providing that participation in the plan by an insurer is not the basis of any legal action against the participating insurer; providing that the plan is exempt from taxes; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-48-1, §33-48-2, §33-48-3, §33-48-4, §33-48-5, §33-48-6, §33-48-7, §33-48-8, §33-48-9, §33-48-10, §33-48-11 and §33-48-12, all to read as follows:

**ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS
ACT.**

- §33-48-1. Definitions.
- §33-48-2. Operation of the plan.
- §33-48-3. Establishment of rules.
- §33-48-4. Eligibility.
- §33-48-5. Unfair referral to plan.
- §33-48-6. Plan administrator.
- §33-48-7. Funding of the plan.

§33-48-8. Benefits.

§33-48-9. Collective action.

§33-48-10. Taxation.

§33-48-11. Continuation of model health plan for uninsurable individuals.

§33-48-12. Effective date.

§33-48-1. Definitions.

1 For purposes of this article:

2 (a) "Board" means the board of directors of the plan.

3 (b) "Church plan" has the meaning given such term under
4 Section 3(33) of the federal Employee Retirement Income
5 Security Act of 1974.

6 (c) "Commissioner" means the insurance commissioner of
7 this state.

8 (d) (1) "Creditable coverage" means, with respect to an
9 individual, coverage of the individual provided under any of
10 the following:

11 (A) A group health plan;

12 (B) Health insurance coverage;

13 (C) Part A or Part B of Title XVIII of the Social Security
14 Act;

15 (D) Title XIX of the Social Security Act, other than
16 coverage consisting solely of benefits under section 1928;

17 (E) Chapter 55 of Title 10, U. S. C.;

18 (F) A medical care program of the federal Indian health
19 service or of a tribal organization;

20 (G) A state health benefits risk pool;

21 (H) A health plan offered under Chapter 89 of Title 5, U.
22 S. C.;

23 (I) A public health plan as defined in federal regulations;
24 or

25 (J) A health benefit plan under Section 5(e) of the federal
26 Peace Corps Act (22 U. S. C. 2504 (e)).

27 (2) A period of creditable coverage shall not be counted,
28 with respect to the enrollment of an individual who seeks
29 coverage under this article, if, after such period and before the
30 enrollment date, the individual experiences a significant break
31 in coverage.

32 (e) "Department" means the insurance commissioner of
33 West Virginia.

34 (f) "Dependent" means a resident spouse or resident
35 unmarried child under the age of nineteen years, a child who is
36 a student under the age of twenty-three years and who is
37 financially dependent upon the parent or a child of any age
38 who is disabled and dependent upon the parent.

39 (g) "Federally defined eligible individual" means an
40 individual:

41 (1) For whom, as of the date on which the individual seeks
42 coverage under this article, the aggregate of the periods of
43 creditable coverage as defined in subsection (d) of this section
44 is eighteen or more months;

45 (2) Whose most recent prior creditable coverage was under
46 a group health plan, governmental plan, church plan or health
47 insurance coverage offered in connection with such a plan;

48 (3) Who is not eligible for coverage under a group health
49 plan, Part A or Part B of Title XVIII of the Social Security Act
50 (Medicare), or a state plan under Title XIX of Act (Medicaid)

51 or any successor program and who does not have other health
52 insurance coverage;

53 (4) With respect to whom the most recent coverage within
54 the period of aggregate creditable coverage was not terminated
55 based on a factor relating to nonpayment of premiums or fraud;

56 (5) Who, if offered the option of continuation coverage
57 under a COBRA continuation provision or under a similar state
58 program, elected this coverage; and

59 (6) Who has exhausted the continuation coverage under
60 this provision or program, if the individual elected the continu-
61 ation coverage described in subdivision (5) of this subsection.

62 (h) "Governmental plan" has the meaning given such term
63 under Section 3(32) of the federal Employee Retirement
64 Income Security Act of 1974 and any federal government plan.

65 (i) "Group health plan" means an employee welfare benefit
66 plan as defined in Section 3(1) of the federal Employee
67 Retirement Income Security Act of 1974 to the extent that the
68 plan provides medical care as defined in subsection (m) of this
69 section and including items and services paid for as medical
70 care to employees or their dependents as defined under the
71 terms of the plan directly or through insurance, reimbursement
72 or otherwise.

73 (j)(1) "Health insurance coverage" means any hospital and
74 medical expense incurred policy, nonprofit health care service
75 plan contract, health maintenance organization subscriber
76 contract, or any other health care plan or arrangement that pays
77 for or furnishes medical or healthcare services whether by
78 insurance or otherwise.

79 (2) "Health insurance coverage" shall not include one or
80 more, or any combination of, the following:

81 (A) Coverage only for accident or disability income
82 insurance, or any combination thereof;

83 (B) Coverage issued as a supplement to liability insurance;

84 (C) Liability insurance, including general liability insur-
85 ance and automobile liability insurance;

86 (D) Workers' compensation or similar insurance;

87 (E) Automobile medical payment insurance;

88 (F) Credit-only insurance;

89 (G) Coverage for on-site medical clinics; and

90 (H) Other similar insurance coverage, specified in federal
91 regulations issued pursuant to PL 104-191, under which
92 benefits for medical care are secondary or incidental to other
93 insurance benefits.

94 (3) "Health insurance coverage" shall not include the
95 following benefits if they are provided under a separate policy,
96 certificate or contract of insurance or are otherwise not an
97 integral part of the coverage:

98 (A) Limited scope dental or vision benefits;

99 (B) Benefits for long-term care, nursing home care, home
100 health care, community-based care or any combination thereof;
101 or

102 (C) Other similar, limited benefits specified in federal
103 regulations issued pursuant to PL 104-191.

104 (4) "Health insurance coverage" shall not include the
105 following benefits if the benefits are provided under a separate
106 policy, certificate or contract of insurance, there is no coordina-
107 tion between the provision of the benefits and any exclusion of
108 benefits under any group health plan maintained by the same
109 plan sponsor and the benefits are paid with respect to an event
110 without regard to whether benefits are provided with respect to
111 such an event under any group health plan maintained by the
112 same plan sponsor:

- 113 (A) Coverage only for a specified disease or illness; or
- 114 (B) Hospital indemnity or other fixed indemnity insurance.
- 115 (5) "Health insurance coverage" shall not include the
116 following if offered as a separate policy, certificate or contract
117 of insurance:
- 118 (A) Medicare supplemental health insurance as defined
119 under Section 1882(g)(1) of the Social Security Act;
- 120 (B) Coverage supplemental to the coverage provided under
121 Chapter 55 of Title 10, U. S. C. (Civilian Health and Medical
122 Program of the Uniformed Services (CHAMPUS)); or
- 123 (C) Similar supplemental coverage provided to coverage
124 under a group health plan.
- 125 (k) "Health maintenance organization" means an organiza-
126 tion licensed in this state pursuant to the provisions of article
127 twenty-five-a of this chapter.
- 128 (l) "Insurer" means any entity that provides health insur-
129 ance coverage in this state. For the purposes of this article,
130 insurer includes an insurance company, a prepaid limited
131 health service organization as operating under a certificate of
132 authority pursuant to article twenty-five-d of this chapter, a
133 fraternal benefit society, a health maintenance organization and
134 any other entity providing a plan of health insurance coverage
135 or health benefits subject to state insurance regulation.
- 136 (m) "Medical care" means amounts paid for:
- 137 (1) The diagnosis, care, mitigation, treatment or prevention
138 of disease, or amounts paid for the purpose of affecting any
139 structure or function of the body;
- 140 (2) Transportation primarily for and essential to medical
141 care referred to in subdivision (1) of this subsection; and

142 (3) Insurance covering medical referred to in subdivisions
143 (1) and (2) of this subsection.

144 (n) "Medicare" means coverage under both Parts A and B
145 of Title XVIII of the Social Security Act, 42 U. S. C. 1395, *et*
146 *seq.*, as amended.

147 (o) "Participating insurer" means any insurer providing
148 health insurance coverage to residents of this state.

149 (p) "Plan" means the West Virginia health insurance plan
150 as created in section two of this article.

151 (q) "Plan of operation" means the articles, bylaws and
152 operating rules and procedures adopted by the board pursuant
153 to section two of this article.

154 (r) "Resident" means an individual who has been legally
155 domiciled in this state for a period of at least thirty days, except
156 that for a federally defined eligible individual, there shall not
157 be a thirty-day requirement. "Resident" also means an individ-
158 ual who is legally domiciled in this state on the date of applica-
159 tion to the plan and is eligible for the credit for health insurance
160 costs under Section 35 of the Internal Revenue Code of 1986.

161 (s) "Significant break in coverage" means a period of
162 sixty-three consecutive days during all of which the individual
163 does not have any creditable coverage, except that neither a
164 waiting period nor an affiliation period is taken into account in
165 determining a significant break in coverage.

166 Terms within this article with meaning ascribed by federal
167 law shall have the meaning as in effect in federal law the thirty
168 first day of December, two thousand three.

§33-48-2. Operation of the plan.

1 (a) There is hereby created within the West Virginia
2 department of tax and revenue a body corporate and politic to
3 be known as the West Virginia health insurance plan which

4 shall be deemed to be an instrumentality of the state and a
5 public corporation. The West Virginia health insurance plan
6 shall have perpetual existence and any change in the name or
7 composition of the plan shall in no way impair the obligations
8 of any contracts existing under this chapter.

9 (b) The plan shall operate subject to the supervision and
10 control of the board. The board shall consist of the commis-
11 sioner or his or her designated representative, who shall serve
12 as an ex officio member of the board and shall be its chairper-
13 son, and six members appointed by the governor. At least two
14 board members shall be individuals, or the parent, spouse or
15 child of individuals, reasonably expected to qualify for
16 coverage by the plan. At least two board members shall be
17 representatives of insurers. At least one board member shall be
18 a hospital administrator. A majority of the board shall be
19 composed of individuals who are not representatives of
20 insurers or health care providers.

21 (c) The initial board members shall be appointed as
22 follows: One third of the members to serve a term of two years;
23 one third of the members to serve a term of four years; and one
24 third of the members to serve a term of six years. Subsequent
25 board members shall serve for a term of three years. A board
26 member's term shall continue until his or her successor is
27 appointed.

28 (d) Vacancies in the board shall be filled by the governor.
29 Board members may be removed by the governor for cause.

30 (e) Board members shall not be compensated in their
31 capacity as board members but shall be reimbursed for reason-
32 able expenses incurred in the necessary performance of their
33 duties.

34 (f) The board shall submit to the commissioner a plan of
35 operation for the plan and any amendments thereto necessary
36 or suitable to assure the fair, reasonable and equitable adminis-
37 tration of the plan. The plan of operation shall become
38 effective upon approval in writing by the commissioner

39 consistent with the date on which the coverage under this
40 article must be made available. If the board fails to submit a
41 suitable plan of operation within one hundred eighty days after
42 the appointment of the board of directors, or at any time
43 thereafter fails to submit suitable amendments to the plan of
44 operation, the commissioner shall adopt and promulgate such
45 rules as are necessary or advisable to effectuate the provisions
46 of this section. Such rules shall continue in force until modi-
47 fied by the commissioner or superseded by a plan of operation
48 submitted by the board and approved by the commissioner.

49 (g) The plan of operation shall:

50 (1) Establish procedures for operation of the plan: *Pro-*
51 *vided*, That the plan shall be operated so as to qualify as an
52 acceptable alternative mechanism under the federal Health
53 Insurance Portability and Accountability Act and as an option
54 to provide health insurance coverage for individuals eligible
55 for the federal health care tax credit established by the federal
56 Trade Adjustment Assistance Reform Act of 2002 (Section 35
57 of the Internal Revenue Code of 1986);

58 (2) Establish procedures for selecting an administrator in
59 accordance with section six of this article;

60 (3) Establish procedures to create a fund, under manage-
61 ment of the board, for administrative expenses;

62 (4) Establish procedures for the handling, accounting and
63 auditing of assets, moneys and claims of the plan and the plan
64 administrator;

65 (5) Develop and implement a program to publicize the
66 existence of the plan, the eligibility requirements and proce-
67 dures for enrollment; and to maintain public awareness of the
68 plan;

69 (6) Establish procedures under which applicants and
70 participants may have grievances reviewed by a grievance
71 committee appointed by the board. The grievances shall be

72 reported to the board after completion of the review. The
73 board shall retain all written complaints regarding the plan for
74 at least three years; and

75 (7) Provide for other matters as may be necessary and
76 proper for the execution of the board's powers, duties and
77 obligations under this article.

78 (h) The plan shall have the general powers and authority
79 granted under the laws of this state to health insurers and, in
80 addition thereto, the specific authority to:

81 (1) Enter into contracts as are necessary or proper to carry
82 out the provisions and purposes of this article, including the
83 authority, with the approval of the commissioner, to enter into
84 contracts with similar plans of other states for the joint perfor-
85 mance of common administrative functions or with persons or
86 other organizations for the performance of administrative
87 functions;

88 (2) Sue or be sued, including taking any legal actions
89 necessary or proper to recover or collect assessments due the
90 plan;

91 (3) Take such legal action as necessary:

92 (A) To avoid the payment of improper claims against the
93 plan or the coverage provided by or through the plan;

94 (B) To recover any amounts erroneously or improperly
95 paid by the plan;

96 (C) To recover any amounts paid by the plan as a result of
97 mistake of fact or law; or

98 (D) To recover other amounts due the plan;

99 (4) Establish and modify, from time to time, as appropriate,
100 rates, rate schedules, rate adjustments, expense allowances,
101 agents' referral fees, claim reserve formulas and any other
102 actuarial function appropriate to the operation of the plan.

103 Rates and rate schedules may be adjusted for appropriate
104 factors such as age, sex and geographic variation in claim cost
105 and shall take into consideration appropriate factors in accor-
106 dance with established actuarial and underwriting practices;

107 (5) Issue policies of insurance in accordance with the
108 requirements of this article;

109 (6) Appoint appropriate legal, actuarial and other commit-
110 tees as necessary to provide technical assistance in the opera-
111 tion of the plan, policy and other contract design and any other
112 function within the authority of the pool;

113 (7) Borrow money to effect the purposes of the plan. Any
114 notes or other evidence of indebtedness of the plan not in
115 default shall be legal investments for insurers and may be
116 carried as admitted assets;

117 (8) Establish rules, conditions and procedures for reinsur-
118 ing risks of participating insurers desiring to issue plan
119 coverages in their own name. Provision of reinsurance shall
120 not subject the plan to any of the capital or surplus require-
121 ments, if any, otherwise applicable to reinsurers;

122 (9) Employ and fix the compensation of employees;

123 (10) Prepare and distribute certificate of eligibility forms
124 and enrollment instruction forms to insurance procedures and
125 to the general public;

126 (11) Provide for reinsurance of risks incurred by the plan;

127 (12) Issue additional types of health insurance policies to
128 provide optional coverages, including medicare supplemental
129 insurance;

130 (13) Provide for and employ cost containment measures
131 and requirements, including, but not limited to, preadmission
132 screening, second surgical opinion, concurrent utilization
133 review and individual case management for the purpose of
134 making the benefit plan more cost effective;

135 (14) Design, utilize, contract or otherwise arrange for the
136 delivery of cost-effective health care services, including
137 establishing or contracting with preferred provider organiza-
138 tions, health maintenance organizations and other limited
139 network provider arrangements; and

140 (15) Adopt bylaws, policies and procedures as may be
141 necessary or convenient for the implementation of this article
142 and the operation of the plan.

143 (i) The board shall make an annual report to the governor
144 which shall also be filed with the Legislature. The report shall
145 summarize the activities of the plan in the preceding calendar
146 year, including the net written and earned premiums, plan
147 enrollment, the expense of administration, and the paid and
148 incurred losses.

149 (j) Study and recommend to the Legislature in January, two
150 thousand six, alternative funding mechanisms for the continua-
151 tion of the health plan for uninsurable individuals.

152 (k) Neither the board nor its employees shall be liable for
153 any obligations of the plan. No member or employee of the
154 board shall be liable, and no cause of action of any nature may
155 arise against them, for any act or omission related to the
156 performance of their powers and duties under this article,
157 unless such act or omission constitutes willful or wanton
158 misconduct. The board may provide in its bylaws or rules for
159 indemnification of, and legal representation for, its members
160 and employees.

§33-48-3. Establishment of rules.

1 The board may promulgate rules, in accordance with article
2 three, chapter twenty-nine-a of this code, as may be necessary
3 to implement the provisions of this article.

§33-48-4. Eligibility.

1 (a) (1) Any individual person who is and continues to be a
2 resident shall be eligible for plan coverage if evidence is
3 provided:

4 (A) Of a notice of rejection or refusal to issue substantially
5 similar insurance for health reasons by one insurer; or

6 (B) Of a refusal by an insurer to issue insurance except at
7 a rate exceeding the plan rate.

8 (C) That the individual is legally domiciled in this state and
9 is eligible for the credit for health insurance costs under
10 Section 35 of the Internal Revenue Code of 1986.

11 (2) Any federally defined eligible individual who has not
12 experienced a significant break in coverage and who is and
13 continues to be a resident shall be eligible for plan coverage.

14 (3) A rejection or refusal by an insurer offering only stop
15 loss, excess of loss or reinsurance coverage with respect to an
16 applicant under subdivision (1) of this subsection shall not be
17 sufficient evidence under this subsection.

18 (b) The board shall promulgate a list of medical or health
19 conditions for which a person shall be eligible for plan cover-
20 age without applying for health insurance coverage pursuant to
21 subdivision (1), subsection (a) of this section. Persons who can
22 demonstrate the existence or history of any medical or health
23 conditions on the list promulgated by the board shall not be
24 required to prove the evidence specified in said subdivision (1).
25 The list shall be effective on the first day of the operation of
26 the plan and may be amended, from time to time, as may be
27 appropriate.

28 (c) Each resident dependent of a person who is eligible for
29 plan coverage shall also be eligible for plan coverage.

30 (d) A person shall not be eligible for coverage under the
31 plan if:

32 (1) The person has or obtains health insurance coverage
33 substantially similar to or more comprehensive than a plan
34 policy or would be eligible to have coverage if the person
35 elected to obtain it; except that:

36 (A) A person may maintain other coverage for the period
37 of time the person is satisfying any preexisting condition
38 waiting period under a plan policy; and

39 (B) A person may maintain plan coverage for the period of
40 time the person is satisfying a preexisting condition waiting
41 period under another health insurance policy intended to
42 replace the plan policy;

43 (2) The person is determined to be eligible for health care
44 benefits under the state medicaid law;

45 (3) The person has previously terminated plan coverage
46 unless twelve months have lapsed since such terminations,
47 except that this subdivision shall not apply with respect to an
48 applicant who is a federally defined eligible individual;

49 (4) The plan has paid out one million dollars in benefits on
50 behalf of the person;

51 (5) The person is an inmate or resident of a public institu-
52 tion, except that this subdivision shall not apply with respect to
53 an applicant who is a federally defined eligible individual; or

54 (6) The person's premiums are paid for or reimbursed
55 under any government sponsored program or by any govern-
56 ment agency or health care provider, except as an otherwise
57 qualifying full-time employee, or dependent thereof, of a
58 government agency or health care provider.

59 (e) Coverage shall cease:

60 (1) On the date a person is no longer a resident of this state;

61 (2) On the date a person requests coverage to end;

62 (3) Upon the death of the covered person;

63 (4) On the date state law requires cancellation of the
64 policy; or

65 (5) At the option of the plan, thirty days after the plan
66 makes any inquiry concerning the person's eligibility or place
67 of residence to which the person does not reply.

68 (f) Except under the circumstance described in subsection
69 (d) of this section, a person who ceases to meet the eligibility
70 requirements of this section may be terminated at the end of the
71 policy period for which the necessary premiums have been
72 paid.

§33-48-5. Unfair referral to plan.

1 It shall constitute an unfair trade practice for the purposes
2 of article eleven of this chapter for an insurer, insurance agent
3 or insurance broker to refer an individual employee to the plan,
4 or arrange for an individual employee to apply to the plan, for
5 the purpose of separating that employee from group health
6 insurance coverage provided in connection with the em-
7 ployee's employment.

§33-48-6. Plan administrator.

1 (a) The board shall select a plan administrator through a
2 competitive bidding process to administer the plan. The board
3 shall evaluate bids submitted based on criteria established by
4 the board which shall include:

5 (1) The plan administrator's proven ability to handle health
6 insurance coverage to individuals;

7 (2) The efficiency and timeliness of the plan administra-
8 tor's claim processing procedures;

9 (3) An estimate of total charges for administering the plan;

10 (4) The plan administrator's ability to apply effective cost
11 containment programs and procedures and to administer the
12 plan in a cost efficient manner; and

13 (5) The financial condition and stability of the plan
14 administrator.

15 (b) (1) The plan administrator shall serve for a period
16 specified in the contract between the plan and the plan adminis-
17 trator subject to removal for cause and subject to any terms,
18 conditions and limitations of the contract between the plan and
19 the plan administrator.

20 (2) At least one year prior to the expiration of each period
21 of service by a plan administrator, the board shall invite
22 eligible entities, including the current plan administrator to
23 submit bids to serve as the plan administrator. Selection of the
24 plan administrator for the succeeding period shall be made at
25 least six months prior to the end of the current period.

26 (c) The plan administrator shall perform such functions
27 relating to the plan as may be assigned to it, including:

28 (1) Determination of eligibility;

29 (2) Payment of claims;

30 (3) Establishment of a premium billing procedure for
31 collection of premium from persons covered under the plan;
32 and

33 (4) Other necessary functions to assure timely payment of
34 benefits to covered persons under the plan.

35 (d) The plan administrator shall submit regular reports to
36 the board regarding the operation of the plan. The frequency,
37 content and form of the report shall be specified in the contract
38 between the board and the plan administrator.

39 (e) Following the close of each calendar year, the plan
40 administrator shall determine net written and earned premiums,

41 the expense of administration and the paid and incurred losses
42 for the year and report this information to the board and the
43 commission on a form prescribed by the commissioner.

44 (f) Notwithstanding any other provision in this section to
45 the contrary, the board may elect to designate the public
46 employees insurance agency as the plan administrator. If so
47 designated, the public employees insurance agency shall
48 provide the services set forth in subsection (c) of this section
49 and shall be subject to the reporting requirements of subsec-
50 tions (d) and (e) of this section. The plan shall, if the public
51 employees insurance agency is designated by the board as the
52 plan administrator, reimburse health care providers at the same
53 health care reimbursement rates then in effect for the West
54 Virginia public employees insurance agency.

§33-48-7. Funding of the plan.

1 (a) *Premiums.* –

2 (1) The plan shall establish premium rates for plan cover-
3 age as provided in subdivision (2) of this subsection. Separate
4 schedules of premium rates based on age, sex and geographical
5 location may apply for individual risks. Premium rates and
6 schedules shall be submitted to the commissioner for approval
7 prior to use.

8 (2) The plan, with the assistance of the commissioner, shall
9 determine a standard risk rate by considering the premium rates
10 charged by other insurers offering health insurance coverage to
11 individuals. The standard risk rate shall be established using
12 reasonable actuarial techniques, and shall reflect anticipated
13 experience and expenses for such coverage. Initial rates for
14 plan coverage shall not be less than one hundred twenty-five
15 percent of rates established as applicable for individual
16 standard risks. Subject to the limits provided in this subdivi-
17 sion, subsequent rates shall be established to provide fully for
18 the expected costs of claims including recovery of prior losses,
19 expenses of operation, investment income of claim reserves,

20 and any other cost factors subject to the limitations described
21 herein. In no event shall plan rates exceed one hundred fifty
22 percent of rates applicable to individual standard risks.

23 (b) *Sources of additional revenue.* –

24 The plan may be additionally funded by an assessment on
25 hospitals. Notwithstanding the provisions of subsection (c),
26 section eight, article twenty-nine-b, chapter sixteen of this code
27 and not to be construed as in conflict therewith, the health care
28 authority is authorized to increase the assessment obligation of
29 hospitals. The increase shall not exceed a maximum of twenty-
30 five percent above the one tenth of one percent specified in this
31 code section. The entire assessment, including the increase,
32 shall be collected as specified in subsection (c), section eight,
33 article twenty-nine-b, chapter sixteen of this code. Upon
34 receipt of the assessment fees, the health care authority shall
35 transfer all proceeds generated from the new fee collected to a
36 special revenue account established in the state treasury by the
37 commissioner and designated the “West Virginia Health
38 Insurance Plan Account” for the sole purpose of providing
39 additional funding for the plan.

§33-48-8. Benefits.

1 (a) The plan shall offer health care coverage consistent
2 with comprehensive coverage to every eligible person who is
3 not eligible for medicare. The coverage to be issued by the
4 plan, its schedule of benefits, exclusions and other limitations
5 shall be established by the board and subject to the approval of
6 the commissioner.

7 (b) In establishing the plan coverage, the board shall take
8 into consideration the levels of health insurance coverage
9 provided in the state and medical economic factors as may be
10 deemed appropriate; and promulgate benefit levels, deduct-
11 ibles, coinsurance factors, exclusions and limitations deter-
12 mined to be generally reflective of and commensurate with

13 health insurance coverage provided through a representative
14 number of large employers in the state.

15 (c) The board may adjust any deductibles and coinsurance
16 factors annually according to the medical component of the
17 consumer price index.

18 (d) *Preexisting conditions.* –

19 (1) Plan coverage shall exclude charges or expenses
20 incurred during the first six months following the effective date
21 of coverage as to any condition for which medical advice, care
22 or treatment was recommended or received as to such condi-
23 tions during the six-month period immediately preceding the
24 effective date of coverage, except that no preexisting condition
25 exclusion shall be applied to a federally defined eligible
26 individual.

27 (2) Subject to subdivision (1) of this subsection, the
28 preexisting condition exclusions shall be waived to the extent
29 that similar exclusions, if any, have been satisfied under any
30 prior health insurance coverage which was involuntarily
31 terminated; *Provided, That:*

32 (A) Application for pool coverage is made not later than
33 sixty-three days following such involuntary termination and, in
34 such case, coverage in the plan shall be effective from the date
35 on which such prior coverage was terminated; and

36 (B) The applicant is not eligible for continuation or
37 conversion rights that would provide coverage substantially
38 similar to plan coverage.

39 (e) *Nonduplication of benefits.* –

40 (1) The plan shall be payer of last resort of benefits
41 whenever any other benefit or source of third-party payment is
42 available. Benefits otherwise payable under plan coverage
43 shall be reduced by all amounts paid or payable through any
44 other health insurance coverage and by all hospital and medical

45 expense benefits paid or payable under any workers' compen-
46 sation coverage, automobile medical payment or liability
47 insurance, whether provided on the basis of fault or nonfault,
48 and by any hospital or medical benefits paid or payable under
49 or provided pursuant to any state or federal law or program.

50 (2) The plan shall have a cause of action against an eligible
51 person for the recovery of the amount of benefits paid that are
52 not for covered expenses. Benefits due from the plan may be
53 reduced or refused as a set-off against any amount recoverable
54 under this subdivision.

§33-48-9. Collective action.

1 Neither the participation in the plan as participating
2 insurers, the establishment of rates, forms or procedures nor
3 any other joint or collective action required by this article shall
4 be the basis of any legal action, criminal or civil liability or
5 penalty against the plan or any participating insurer.

§33-48-10. Taxation.

1 The plan established pursuant to this article shall be
2 exempt from the premium taxes assessed under sections
3 fourteen and fourteen-a, article three of this chapter.

§33-48-11. Continuation of model health plan for uninsurable individuals.

1 The model health plan for uninsurable individuals 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.

§33-48-12. Effective date.

1 The provisions of this article shall become effective on the
2 first day of July, two thousand four.

CHAPTER 149

(Com. Sub. for S. B. 513 — By Senators McCabe, Minard and Unger)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, all relating to the jobs investment trust board; expanding board powers; providing for sale or transfer of nonincentive tax credits; and providing that certain documents be available for public inspection.

Be it enacted by the Legislature of West Virginia:

That §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

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

§12-7-6. Corporate powers.

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

§12-7-11. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

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

- 1 (a) The jobs investment trust board is continued. The board
- 2 is a public body corporate and established to improve and
- 3 otherwise promote economic development in this state.

4 (b) The board consists of thirteen members, five of whom
5 serve by virtue of their respective positions. These five are the
6 president of West Virginia university or his or her designee; the
7 president of Marshall university or his or her designee; the
8 chancellor of the higher education policy commission or his or
9 her designee; the executive director of the West Virginia
10 housing development fund; and the executive director of the
11 West Virginia development office. One member shall be
12 appointed by the governor from a list of two names submitted
13 by the board of directors of the housing development fund. One
14 member shall be appointed by the governor from a list of two
15 names submitted by the commissioner of the division of
16 tourism. The other six members shall be appointed from the
17 general public by the governor. Of the members of the general
18 public appointed by the governor, one shall be an attorney with
19 experience in finance and investment matters, one shall be a
20 certified public accountant, one shall be a representative of
21 labor, one shall be experienced or involved in innovative
22 business development and two shall be present or past execu-
23 tive officers of companies listed on a major stock exchange or
24 large privately held companies: *Provided*, That all appoint-
25 ments made pursuant to the provisions of this article shall be by
26 and with the advice and consent of the Senate.

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

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

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

38 (f) Seven members of the board is a quorum. No action
39 may be taken by the board except upon the affirmative vote of

40 at least a majority of those members present or participating by
41 any other means as described in subsection (g) of this section,
42 but in no event fewer than six of the members serving on the
43 board.

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

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

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

57 (j) The governor shall appoint a member for a four-year
58 term. Any member whose term has expired serves until his or
59 her successor has been duly appointed and qualified. Any
60 member is eligible for reappointment.

61 (k) Additionally, one member of the West Virginia House
62 of Delegates, to be appointed by the speaker of the House of
63 Delegates, and one member of the West Virginia Senate, to be
64 appointed by the president of the Senate, shall serve as advisory
65 members of the jobs investment trust board and, as advisory
66 members, shall be ex officio, nonvoting members.

§12-7-6. Corporate powers.

1 The board may:

2 (1)(i) Make loans to eligible businesses with or without
3 interest secured if and as required by the board; and (ii) acquire
4 ownership interests in eligible businesses. These investments

5 may be made in eligible businesses that stimulate economic
6 growth and provide or retain jobs in this state and shall be made
7 only upon the determination by the board that the investments
8 are prudent and meet the criteria established by the board;

9 (2) Accept appropriations, gifts, grants, bequests and
10 devises and use or dispose of them to carry out its corporate
11 purposes;

12 (3) Make and execute contracts, releases, compromises,
13 agreements and other instruments necessary or convenient for
14 the exercise of its powers or to carry out its corporate purposes;

15 (4) Collect reasonable fees and charges in connection with
16 making and servicing loans, notes, bonds, obligations, commit-
17 ments and other evidences of indebtedness, in connection with
18 making equity investments and in connection with providing
19 technical, consultative and project assistance services;

20 (5) Sue and be sued;

21 (6) Make, amend and repeal bylaws and rules consistent
22 with the provisions of this article;

23 (7) Hire its own employees, who shall be employees of the
24 state of West Virginia for purposes of articles ten and sixteen,
25 chapter five of this code, and appoint officers and consultants
26 and fix their compensation and prescribe their duties;

27 (8) Acquire, hold and dispose of real and personal property
28 for its corporate purposes;

29 (9) Enter into agreements or other transactions with any
30 federal or state agency, college or university, any person and
31 any domestic or foreign partnership, corporation, association or
32 organization;

33 (10) Acquire real and personal property, or an interest in
34 real or personal property, in its own name, by purchase or
35 foreclosure when acquisition is necessary or appropriate to
36 protect any loan in which the board has an interest; to sell,

37 transfer and convey any real or personal property to a buyer;
38 and, in the event a sale, transfer or conveyance cannot be
39 effected with reasonable promptness or at a reasonable price, to
40 lease real or personal property to a tenant;

41 (11) Purchase, sell, own, hold, negotiate, transfer or assign:
42 (i) Any mortgage, instrument, note, credit, debenture, guaran-
43 tee, bond or other negotiable instrument or obligation securing
44 a loan, or any part of a loan; (ii) any security or other instru-
45 ment evidencing ownership or indebtedness; or (iii) equity or
46 other ownership interest. An offering of one of these instru-
47 ments shall include the representation and qualification that the
48 board is a public body corporate managing a venture capital
49 fund that includes high-risk investments and that in any
50 transfer, sale or assignment of any interest, the transferee,
51 purchaser or assignee accepts any risk without recourse to the
52 jobs investment trust or to the state;

53 (12) Procure insurance against losses to its property in
54 amounts, and from insurers, as is prudent;

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

59 (14) Establish training and educational programs to further
60 the purposes of this article;

61 (15) File its own travel rules;

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

65 (17) Take options in or warrants for, subscribe to, acquire,
66 purchase, own, hold, transfer, sell, vote, employ, mortgage,
67 pledge, assign, pool or syndicate: (i) Any loans, notes, mort-
68 gages or securities; (ii) debt instruments, ownership certificates
69 or other instruments evidencing loans or equity; or (iii) securi-

70 ties or other ownership interests of or in domestic or foreign
71 corporations, associations, partnerships, limited partnerships,
72 limited liability partnerships, limited liability companies, joint
73 ventures or other private enterprise to foster economic growth,
74 jobs preservation and creation in the state of West Virginia and
75 all other acts that carry out the board's purpose;

76 (18) Contract with either Marshall university or West
77 Virginia university, or both, for the purpose of retaining the
78 services of, and paying the reasonable cost of, services per-
79 formed by the institution for the board in order to effectuate the
80 purposes of this article;

81 (19) Enter into collaborative arrangements or contracts with
82 private venture capital companies when considered advisable
83 by the board;

84 (20) Provide equity financing for any eligible business that
85 will stimulate economic growth and provide or retain jobs in
86 this state and hold, transfer, sell, assign, pool or syndicate, or
87 participate in the syndication of, any loans, notes, mortgages,
88 securities, debt instruments or other instruments evidencing
89 loans or equity interest in furtherance of the board's corporate
90 purposes;

91 (21) Form partnerships, create subsidiaries or take all other
92 actions necessary to qualify as a small business investment
93 company under the United States Small Business Investment
94 Act, PL 85-699, as amended;

95 (22) Provide for staff payroll and make purchases in the
96 same manner as the housing development fund;

97 (23) Indemnify its members, directors, officers, employees
98 and agents relative to actions and proceedings to which they
99 have been made parties and make advances for expenses
100 relative thereto and purchase and maintain liability insurance on
101 behalf of those persons all to the same extent as authorized for
102 West Virginia business corporations under present or future

103 laws of the state applicable to business corporations generally;
104 and

105 (24) Contract for the provision of legal services by private
106 counsel and, notwithstanding the provisions of article three,
107 chapter five of this code, counsel may, but is not limited to,
108 represent the board in court, negotiate contracts and other
109 agreements on behalf of the board, render advice to the board
110 on any matter relating thereto, prepare contracts and other
111 agreements and provide any other legal services requested by
112 the board.

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

1 (a) The new millennium fund is continued to permit the
2 board to better fulfill its mission to mobilize financing and
3 capital for emerging, expanding and restructuring businesses in
4 the state. New millennium fund moneys are to consist of all
5 appropriations for use by the jobs investment trust board made
6 by the Legislature subsequent to the thirty-first day of Decem-
7 ber, one thousand nine hundred ninety-nine, and funds bor-
8 rowed from private or institutional lenders by the board through
9 the issuance of promissory notes. Fund moneys may be held in
10 a separate account or accounts by or at the West Virginia
11 housing development fund for the board until the board
12 disburses any portion of the funds. Fund moneys that are not
13 set aside or otherwise designated for paying interest on the
14 promissory notes may be used by the board in accordance with
15 and to effectuate the purposes of this article. The board may
16 impose reasonable fees and charges associated with its invest-
17 ment of funds from the new millennium fund in eligible
18 businesses to be paid in any combination of money, warrants or
19 equity interests.

20 (b) Without limiting the powers otherwise enumerated in
21 this article, the board may: (1) Sell and transfer portions of the
22 nonincentive tax credits created, issued and transferred to the
23 board pursuant to the provisions of this section to contracting
24 taxpayers and/or their assigns in return for the payments

25 described in subsection (f) of this section; (2) issue or provide
26 promissory notes on loans made to the board having terms of up
27 to ten years on a zero-coupon basis or otherwise; (3) enter into
28 put options or similar commitment contracts with taxpayers that
29 would be for terms of up to ten years committing, at the board's
30 option, to sell and transfer to the contracting taxpayers or their
31 assigns at the end of the term and as soon after the term as is
32 reasonable under the circumstances portions of the nonincentive
33 tax credits created, issued and transferred to the board pursuant
34 to this section; (4) grant, transfer and assign the benefits of the
35 put options or similar commitment contracts as collateral to
36 secure the board's obligations pursuant to its promissory notes;
37 (5) satisfy the board's payment obligations under its promissory
38 notes from assets of the board, other than the benefits of the put
39 options or similar commitment contracts, then to effect a
40 corresponding cancellation of the board's related nonincentive
41 tax credit commitment; and (6) satisfy the board's payment
42 obligations under its promissory notes from the benefits of the
43 put options or similar commitment contracts, then to effect a
44 corresponding sale and transfer of nonincentive tax credits. The
45 terms and conditions of the promissory notes, put options or
46 similar commitment contracts shall be consistent with the
47 purposes of this section, and approved by board resolution, and
48 may be different for separate transactions.

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

55 (d) The board may issue its promissory notes pursuant to
56 this section in amounts totaling no more than six million dollars
57 in each of the fiscal years ending in two thousand one, two
58 thousand two, two thousand three, two thousand four and two
59 thousand five and may issue its nonincentive tax credit commit-
60 ments in amounts totaling no more than six million dollars in
61 each of the fiscal years ending in two thousand one, two

62 thousand two, two thousand three, two thousand four and two
63 thousand five. The board may agree to sell and transfer, at its
64 option, nonincentive tax credits to taxpayers ten years after the
65 date of its commitments and as soon thereafter as it is reason-
66 able under the circumstances.

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

69 (1) The new millennium fund moneys to be received in
70 relationship to the commitment shall be used for the develop-
71 ment, promotion and expansion of the economy of the state;
72 and

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

78 (f) The board may sell and transfer nonincentive tax credits
79 only in conjunction with the satisfaction of its obligations under
80 its promissory notes issued pursuant to this section. Each
81 original sale and transfer of nonincentive tax credits by the
82 board shall be consummated upon payment to the board, or for
83 its benefits, of an amount equal to the dollar amount of the
84 nonincentive tax credits sold and transferred. The nonincentive
85 tax credits sold and transferred by the board pursuant to this
86 section shall be claimed as a credit on the tax returns for the
87 year or years in which the nonincentive tax credits are sold and
88 transferred by the board. The amount of the nonincentive tax
89 credit that exceeds the taxpayer's tax liability for the taxable
90 year in the year of the purchase may be carried to succeeding
91 taxable years until used in full up to two years after the year of
92 purchase and may not be carried back to prior taxable years.
93 Any nonincentive tax credit sold and transferred by the board
94 that remains outstanding after the third taxable year subsequent
95 to and including the year of the transfer is forfeited.

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

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

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

**§12-7-11. Documentary materials concerning trade secrets;
commercial, financial or personal information;
confidentiality.**

1 Any documentary material or data made or received by the
2 board for the purpose of furnishing assistance, to the extent that
3 the material or data consists of trade secrets, commercial,
4 financial or personal information regarding the financial

5 position or activities of such business or person, shall not be
6 considered public records and shall be exempt from disclosure
7 pursuant to the provisions of chapter twenty-nine-b of this code.
8 Any discussion or consideration of the trade secrets, commer-
9 cial, financial or personal information may be held by the board
10 in executive session closed to the public, notwithstanding the
11 provisions of article nine-a, chapter six of this code: *Provided,*
12 That the board shall make public the following information
13 regarding executed investments: (1) The names and addresses
14 of the principals of the business and its board of directors; (2)
15 the location or locations of the projects; (3) the amount of the
16 investment or financial assistance provided by the board; (4) the
17 purpose of the investment or financial assistance; (5) the
18 maturity, interest rate and other pertinent terms of the invest-
19 ment; (6) the fixed assets which serve as security for the
20 investment; and (7) the names and addresses of all persons
21 holding twenty-five percent or more of the equity of the entity
22 receiving investment assistance: *Provided, however,* That the
23 board shall keep available in its offices for inspection by any
24 citizen of this state the annual report prepared pursuant to the
25 requirements of section twelve of this article and the annual
26 audit report prepared pursuant to the requirements of sections
27 nine and fourteen of this article.

CHAPTER 150

(Com. Sub. for S. B. 71 — By Senator Hunter)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-1B-1, §21-1B-2 and §21-1B-3 of the code of West Virginia, 1931, as amended, all relating to verifying legal employment status of workers employed in West Virginia; defining “unauthorized workers”; and permitting division of labor permits as proof of employment.

Be it enacted by the Legislature of West Virginia:

That §21-1B-1, §21-1B-2 and §21-1B-3 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-1. Findings; policy.

§21-1B-2. Definitions.

§21-1B-3. Unauthorized workers; employment prohibited.

§21-1B-1. Findings; policy.

1 The Legislature finds that employers have the responsibility
2 to verify the legal employment status of all persons who come
3 into their employ and to report their employment to the appro-
4 priate governmental agencies. Employers are precluded from
5 hiring unauthorized workers and can be penalized for doing so.
6 Additionally, employers owe a duty to the residents of the state
7 to uphold the intent and integrity of the general workforce due
8 to the potential loss of revenue to the state by loss of taxes,
9 unemployment premiums and workers' compensation premi-
10 ums.

§21-1B-2. Definitions.

1 (a) "Employer" means any individual, person, corporation,
2 department, board, bureau, agency, commission, division,
3 office, company, firm, partnership, council or committee of the
4 state government, public benefit corporation, public authority
5 or political subdivision of the state or other business entity
6 which employs or seeks to employ an individual or individuals.

7 (b) "Commissioner" means the labor commissioner or his
8 or her designated agent.

9 (c) "Unauthorized worker" means a person who does not
10 have the legal right to be employed or is employed in violation
11 of law.

12 (d) "Records" means records that may be required by the
13 commissioner of labor for the purposes of compliance with the
14 provisions of this article.

§21-1B-3. Unauthorized workers; employment prohibited.

1 (a) It is unlawful for any employer to employ, hire, recruit,
2 or refer, either for him or herself or on behalf of another, for
3 private or public employment within the state, an unauthorized
4 worker who is not duly authorized to be employed by law.

5 (b) Employers shall be required to verify a prospective
6 employee's legal status or authorization to work prior to
7 employing the individual or contracting with the individual for
8 employment services.

9 (c) For purposes of this article, proof of legal status or
10 authorization to work includes, but is not limited to, a valid
11 social security card, a valid immigration or nonimmigration
12 visa including photo identification, a valid birth certificate, a
13 valid passport, a valid photo identification card issued by a
14 government agency, a valid work permit or supervision permit
15 authorized by the division of labor, a valid permit issued by the
16 department of justice or other valid document providing
17 evidence of legal residence or authorization to work in the
18 United States.

CHAPTER 151

(Com. Sub. for H. B. 4299 — By Delegates Stemple and Kominar)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the

code of West Virginia, 1931, as amended, all relating to modifications to the West Virginia Contractor Licensing Act; by increasing the cost of the undertaking in the definition of a contractor; providing compensation for board members; increasing the penalty for failing to conspicuously display license; exempting certain work from licensure; decreasing the period that a lapsed license may be renewed; providing for an appeal of penalty for contracting without a license; and removal of references to the board in certain sections.

Be it enacted by the Legislature of West Virginia:

That §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-3. Definitions

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

§21-11-6. Necessity for license; exemptions.

§21-11-12. License renewal, lapse and reinstatement.

§21-11-13. Violation of article; injunction; criminal penalties.

§21-11-15. Administrative duties of division.

§21-11-17. Record keeping.

§21-11-20. Board authorized to provide training.

§21-11-3. Definitions.

1 (a) "Commissioner" means the commissioner of the
2 division of labor.

3 (b) "Board" means the West Virginia contractor licensing
4 board.

5 (c) "Contractor" means a person who in any capacity for
6 compensation, other than as an employee of another, under-
7 takes, offers to undertake, purports to have the capacity to
8 undertake, or submits a bid to construct, alter, repair, add to,
9 subtract from, improve, move, wreck or demolish any building,

10 highway, road, railroad, structure or excavation associated with
11 a project, development or improvement, or to do any part
12 thereof, including the erection of scaffolding or other structures
13 or works in connection therewith, where the cost of the under-
14 taking is two thousand five hundred dollars or more.

15 Contractor includes a construction manager who performs
16 management and counseling services for a construction project
17 for a professional fee.

18 Contractor does not include:

19 (1) One who merely furnishes materials or supplies without
20 fabricating or consuming them in the construction project;

21 (2) A person who personally performs construction work on
22 the site of real property which the person owns or leases
23 whether for commercial or residential purposes;

24 (3) A person who is licensed or registered as a professional
25 and who functions under the control of any other licensing or
26 regulatory board, whose primary business is real estate sales,
27 appraisal, development, management and maintenance, who
28 acting in his or her respective professional capacity and any
29 employee of such professional, acting in the course of his or her
30 employment, performs any work which may be considered to
31 be performing contracting work;

32 (4) A pest control operator licensed under the provisions of
33 section seven, article sixteen-a, chapter nineteen of this code to
34 engage in the application of pesticides for hire, unless the
35 operator also performs structural repairs exceeding one thou-
36 sand dollars on property treated for insect pests; or

37 (5) A corporation, partnership or sole proprietorship whose
38 primary purpose is to prepare construction plans and specifica-
39 tions used by the contractors defined in subsection (c) of this
40 section and who employs full time a registered architect
41 licensed to practice in this state or a registered professional
42 engineer licensed to practice in this state. Employees of such

43 corporation, partnership or sole proprietorship shall also be
44 exempt from the requirements of this article.

45 (d) "Electrical contractor" means a person who engages in
46 the business of contracting to install, erect, repair or alter
47 electrical equipment for the generation, transmission or
48 utilization of electrical energy.

49 (e) "General building contractor" means a person whose
50 principal business is in connection with any structures built,
51 being built or to be built for the support, shelter and enclosure
52 of persons, animals, chattels or movable property of any kind,
53 requiring in the construction the use of more than two contrac-
54 tor classifications, or a person who supervises the whole or any
55 part of such construction.

56 (f) "General engineering contractor" means a person whose
57 principal business is in connection with public or private works
58 projects, including, but not limited to, one or more of the
59 following: Irrigation, drainage and water supply projects;
60 electrical generation projects; swimming pools; flood control;
61 harbors; railroads; highways; tunnels; airports and airways;
62 sewers and sewage disposal systems; bridges; inland water-
63 ways; pipelines for transmission of petroleum and other liquid
64 or gaseous substances; refineries; chemical plants and other
65 industrial plants requiring a specialized engineering knowledge
66 and skill; piers and foundations; and structures or work inciden-
67 tal thereto.

68 (g) "Heating, ventilating and cooling contractor" means a
69 person who engages in the business of contracting to install,
70 erect, repair, service or alter heating, ventilating and air
71 conditioning equipment or systems to heat, cool or ventilate
72 residential and commercial structures.

73 (h) "License" means a license to engage in business in this
74 state as a contractor in one of the classifications set out in this
75 article.

76 (i) "Multifamily contractor" means a person who is
77 engaged in construction, repair or improvement of a multifam-
78 ily residential structure.

79 (j) "Person" includes an individual, firm, sole proprietor-
80 ship, partnership, corporation, association or other entity
81 engaged in the undertaking of construction projects or any
82 combination thereof.

83 (k) "Piping contractor" means a person whose principal
84 business is the installation of process, power plant, air, oil,
85 gasoline, chemical or other kinds of piping; and boilers and
86 pressure vessels using joining methods of thread, weld, solvent
87 weld or mechanical methods.

88 (l) "Plumbing contractor" means a person whose principal
89 business is the installation, maintenance, extension and alter-
90 ation of piping, plumbing fixtures, plumbing appliances and
91 plumbing appurtenances, venting systems and public or private
92 water supply systems within or adjacent to any building or
93 structure; included in this definition is installation of gas piping,
94 chilled water piping in connection with refrigeration processes
95 and comfort cooling, hot water piping in connection with
96 building heating, and piping for stand pipes.

97 (m) "Residential contractor" means a person whose
98 principal business is in connection with construction, repair or
99 improvement of real property used as, or intended to be used
100 for, residential occupancy.

101 (n) "Specialty contractor" means a person who engages in
102 specialty contracting services which do not substantially fall
103 within the scope of any contractor classification as set out
104 herein.

105 (o) "Residential occupancy" means occupancy of a struc-
106 ture for residential purposes for periods greater than thirty
107 consecutive calendar days.

108 (p) "Residential structure" means a building or structure
109 used or intended to be used for residential occupancy, together
110 with related facilities appurtenant to the premises as an adjunct
111 of residential occupancy, which contains not more than three
112 distinct floors which are above grade in any structural unit
113 regardless of whether the building or structure is designed and
114 constructed for one or more living units. Dormitories, hotels,
115 motels or other transient lodging units are not residential
116 structures.

117 (q) "Subcontractor" means a person who performs a portion
118 of a project undertaken by a principal or general contractor or
119 another subcontractor.

120 (r) "Division" means the division of labor.

121 (s) "Cease and desist order" means an order issued by the
122 commissioner pursuant to the provisions of this article.

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

1 (a) The West Virginia contractor licensing board is contin-
2 ued. The board shall consist of ten members appointed by the
3 governor by and with the advice and consent of the Senate for
4 terms of four years. Such members shall serve until their
5 successors are appointed and have qualified. Eight of the
6 appointed members shall be owners of businesses engaged in
7 the various contracting industries, with at least one member
8 appointed from each of the following contractor classes: One
9 electrical contractor, one general building contractor, one
10 general engineering contractor, one heating, ventilating and
11 cooling contractor, one multifamily contractor, one piping
12 contractor, one plumbing contractor and one residential
13 contractor, as defined in section three hereof. Two of the
14 appointed members shall be building code officials who are not
15 members of any contracting industry. At least three members of
16 the board shall reside at the time of their appointment in each
17 congressional district as existing on the first day of January, one

18 thousand nine hundred ninety-eight. The commissioner of
19 labor, the secretary of the department of tax and revenue or his
20 designee, and the commissioner of the bureau of employment
21 programs or his designee shall be ex officio nonvoting members
22 of the board.

23 (b) Terms of the members first appointed shall be two
24 members for one year, two members for two years, three
25 members for three years and three members for four years, as
26 designated by the governor at the time of appointment. Thereaf-
27 ter, terms shall be for four years. A member who has served all
28 or part of two consecutive terms shall not be subject to reap-
29 pointment unless four years have elapsed since the member last
30 served. Vacancies shall be filled by appointment by the
31 governor for the unexpired term of any member whose office is
32 vacant and shall be made within sixty days of the occurrence of
33 the vacancy. A vacancy on the board shall not impair the right
34 of the remaining members to exercise all the powers of the
35 board.

36 (c) The board shall elect a chair from one of the voting
37 members of the board. The board shall meet at least once
38 annually and at such other times as called by the chair or a
39 majority of the board. Board members shall receive compensa-
40 tion not to exceed the amount paid to members of the Legisla-
41 ture for the interim duties as recommended by the citizens
42 legislative compensation commission and authorized by law for
43 each day or portion of a day spent attending meetings of the
44 board and shall be reimbursed for all reasonable and necessary
45 expenses incurred incident to his or her duties as a member of
46 the board. A majority of the members appointed shall constitute
47 a quorum of the board.

§21-11-6. Necessity for license; exemptions.

1 (a) On or after the first day of October, one thousand nine
2 hundred ninety-one, no person shall engage in this state in any
3 act as a contractor, as defined in this article, unless such person
4 holds a license issued under the provisions of this article. No
5 firm, partnership, corporation, association or other entity shall

6 engage in contracting in this state unless an officer thereof
7 holds a license issued pursuant to this article.

8 (b) Any person to whom a license has been issued under
9 this article shall keep the license or a copy thereof posted in a
10 conspicuous position at every construction site where work is
11 being done by the contractor. The contractor's license number
12 shall be included in all contracting advertisements and all fully
13 executed and binding contracts. Any person violating the
14 provisions of this subsection shall be subject, after hearing, to
15 a warning, a reprimand, or a fine of not more than two hundred
16 dollars.

17 (c) Except as otherwise provided in this code, the following
18 are exempt from licensure:

19 (1) Work done exclusively by employees of the United
20 States government, the state of West Virginia, a county,
21 municipality or municipal corporation, and any governmental
22 subdivision or agency thereof;

23 (2) The sale or installation of a finished product, material
24 or article or merchandise which is not actually fabricated into
25 and does not become a permanent fixed part of the structure;

26 (3) Work performed personally by an owner or lessee of
27 real property on property the primary use of which is for
28 agricultural or farming enterprise;

29 (4) A material supplier who renders advice concerning use
30 of products sold and who does not provide construction or
31 installation services;

32 (5) Work performed by a public utility company regulated
33 by the West Virginia public service commission and its
34 employees;

35 (6) Repair work contracted for by the owner of the equip-
36 ment on an emergency basis in order to maintain or restore the
37 operation of such equipment;

38 (7) Work performed by an employer's regular employees,
39 for which the employees are paid regular wages and not a
40 contract price, on property owned or leased by the employer
41 which is not intended for speculative sale or lease;

42 (8) Work personally performed on a structure by the owner
43 or occupant thereof; and

44 (9) Work performed when the specifications for such work
45 have been developed or approved by engineering personnel
46 employed by the owner of a facility by registered professional
47 engineers licensed pursuant to the laws of this state when the
48 work to be performed because of its specialized nature or
49 process cannot be reasonably or timely contracted for within the
50 general area of the facility.

§21-11-12. License renewal, lapse and reinstatement.

1 (a) A license which is not renewed on or before the renewal
2 date shall lapse. The board may establish by regulation a
3 delayed renewal fee to be paid for issuance of any license which
4 has lapsed: *Provided*, That no license which has lapsed for a
5 period of ninety days or more may be renewed: *Provided*,
6 *however*, That, if a licensee is in a dispute with a state agency,
7 and it is determined that the licensee is not at fault, the board
8 shall renew the license.

9 (b) In the event that continuing education or other require-
10 ments are made a condition of license reinstatement after lapse,
11 suspension or revocation, such requirements must be satisfied
12 before the license is reissued.

§21-11-13. Violation of article; injunction; criminal penalties.

1 (a)(1) Upon a determination that a person is engaged in
2 contracting business in the state without a valid license, the
3 board or commissioner shall issue a cease and desist order
4 requiring such person to immediately cease all operations in the
5 state. The order shall be withdrawn upon issuance of a license
6 to such person.

7 (2) After affording an opportunity for a hearing, the board
8 may impose a penalty of not less than two hundred dollars nor
9 more than one thousand dollars upon any person engaging in
10 contracting business in the state without a valid license. The
11 board may accept payment of the penalty in lieu of a hearing.

12 (3) Within thirty days after receipt of the final order issued
13 pursuant to this section, any party adversely affected by the
14 order may appeal the order to the circuit court of Kanawha
15 County, West Virginia, or to the circuit court of the county in
16 which the petitioner resides or does business.

17 (b) Any person continuing to engage in contracting business
18 in the state without a valid license after service of a cease and
19 desist order is guilty of a misdemeanor and, upon conviction, is
20 subject to the following penalties:

21 (1) For a first offense, a fine of not less than two hundred
22 dollars nor more than one thousand dollars;

23 (2) For a second offense, a fine of not less than five
24 hundred dollars nor more than five thousand dollars, or confine-
25 ment in the county or regional jail for not more than six months,
26 or both;

27 (3) For a third or subsequent offense, a fine of not less than
28 one thousand dollars nor more than five thousand dollars, and
29 confinement in the county or regional jail for not less than thirty
30 days nor more than one year.

31 (c) The board may institute proceedings in the circuit court
32 of the county in which the alleged violations of the provisions
33 of this article occurred or are now occurring to enjoin any
34 violation of any provision of this article.

35 (d) Any person who undertakes any construction work
36 without a valid license when such license is required by this
37 article, when the total cost of the contractor's construction
38 contract on any project upon which the work is undertaken is
39 twenty-five thousand dollars or more, shall, in addition to any

40 other penalty herein provided, be assessed by the board an
41 administrative penalty not to exceed two hundred dollars per
42 day for each day the person is in violation.

§21-11-15. Administrative duties of division.

1 (a) The division and commissioner shall perform the
2 following administrative duties:

3 (1) Collect and record all fees;

4 (2) Maintain records and files;

5 (3) Issue and receive application forms;

6 (4) Notify applicants of the results of the board examina-
7 tion;

8 (5) Arrange space for holding examinations and other
9 proceedings;

10 (6) Issue licenses and temporary licenses as authorized by
11 this article;

12 (7) Issue duplicate licenses upon submission of a written
13 request by the licensee attesting to loss of or the failure to
14 receive the original and payment by the licensee of a fee
15 established by regulation adopted by the division;

16 (8) Notify licensees of renewal dates at least thirty days
17 before the expiration date of their license;

18 (9) Answer routine inquiries;

19 (10) Maintain files relating to individual licensees;

20 (11) Arrange for printing and advertising;

21 (12) Purchase supplies;

22 (13) Employ additional help when needed;

23 (14) Perform other services that may be requested by the
24 board;

25 (15) Provide inspection, enforcement and investigative
26 services to the board; and

27 (16) Issue cease and desist orders to persons engaging in
28 contracting within the state without a valid license.

29 (b) All authority not specifically delegated to the commis-
30 sioner and division shall be the responsibility of the board.

31 (c) Following successful completion of the examination,
32 and prior to the issuance of the license, the applicant shall
33 certify by affidavit that the applicant:

34 (1) Is in compliance with the business franchise tax
35 provisions of chapter eleven of this code;

36 (2) Has registered, and is in compliance, with the workers'
37 compensation fund and the employment security fund, as
38 required by chapter twenty-three and chapter twenty-one-a of
39 this code; and

40 (3) Is in compliance with the applicable wage bond
41 requirements of section one, article five of this chapter:
42 Provided, That in the case of an out-of-state contractor not
43 doing business in this state and seeking licensure for bidding
44 purposes only, the applicant may be granted a conditional
45 license for bid purposes only.

§21-11-17. Record keeping.

1 (a) The division shall keep a record of all actions taken and
2 account for moneys received. All moneys shall be deposited in
3 a special account in the state treasury to be known as the "West
4 Virginia Contractor Licensing Board Fund". Expenditures from
5 said fund shall be for the purposes set forth in this article and
6 are not authorized from collections but are to be made only in
7 accordance with appropriation by the Legislature and in
8 accordance with the provisions of article three, chapter twelve

9 of this code and upon the fulfillment of the provisions set forth
10 in article two, chapter five-a of this code: Provided, That for the
11 fiscal year ending the thirtieth day of June, one thousand nine
12 hundred ninety-two, expenditures are authorized from collec-
13 tions rather than pursuant to an appropriation by the Legisla-
14 ture. Amounts collected which are found from time to time to
15 exceed the funds needed for purposes set forth in this article
16 may be transferred to other accounts or funds and redesignated
17 for other purposes by appropriation of the Legislature.

18 (b) The division shall maintain at the principal office, open
19 for public inspection during office hours, a complete indexed
20 record of all applications, licenses issued, licenses renewed and
21 all revocations, cancellations and suspensions of licenses.
22 Applications shall show the date of application, name, qualifi-
23 cations, place of business and place of residence of each
24 applicant; and whether the application was approved or refused.

25 (c) (1) All investigations, complaints, reports, records,
26 proceedings and other information received by the commis-
27 sioner and board and related to complaints made to the commis-
28 sioner or board or investigations conducted by the commis-
29 sioner or board pursuant to this article, including the identity of
30 the complainant or respondent, shall be confidential and shall
31 not be knowingly and improperly disclosed by any member or
32 former member of the board, the commissioner or staff, except
33 as follows:

34 (A) Upon a finding that probable cause exists to believe that
35 a respondent has violated the provisions of this article, the
36 complaint and all reports, records, nonprivileged and
37 nondeliberative materials introduced at any probable cause
38 hearing held pursuant to the complaint are thereafter not
39 confidential: *Provided*, That confidentiality of such information
40 shall remain in full force and effect until the respondent has
41 been served with a copy of the statement of charges.

42 (B) Any subsequent hearing held in the matter for the
43 purpose of receiving evidence or the arguments of the parties or
44 their representatives shall be open to the public and all reports,

45 records and nondeliberative materials introduced into evidence
46 at such subsequent hearing, as well as the board's and commis-
47 sioner's orders, are not confidential.

48 (C) The commissioner or board may release any informa-
49 tion relating to an investigation at any time if the release has
50 been agreed to in writing by the respondent.

51 (D) The complaint as well as the identity of the complain-
52 ant shall be disclosed to a person named as respondent in any
53 such complaint filed immediately upon such respondent's
54 request.

55 (E) Where the commissioner or board is otherwise required
56 by the provisions of this article to disclose such information or
57 to proceed in such a manner that disclosure is necessary and
58 required to fulfill such requirements.

59 (2) If, in a specific case, the commissioner or board finds
60 that there is a reasonable likelihood that the dissemination of
61 information or opinion in connection with a pending or immi-
62 nent proceeding will interfere with a fair hearing or otherwise
63 prejudice the due administration of justice, the commissioner or
64 board shall order that all or a portion of the information
65 communicated to the commissioner or board to cause an
66 investigation and all allegations of violations or misconduct
67 contained in a complaint shall be confidential, and the person
68 providing such information or filing a complaint shall be bound
69 to confidentiality until further order of the board.

70 (d) If any person violates the provisions of subsection (c) of
71 this section by knowingly and willfully disclosing any informa-
72 tion made confidential by such section or by the commissioner
73 or board, such person shall be guilty of a misdemeanor and,
74 upon conviction thereof, shall be fined not less than five
75 hundred dollars nor more than five thousand dollars, or impris-
76 oned in the county jail not more than one month, or both fined
77 and imprisoned.

78 (e) The commissioner shall certify to the state auditor and
79 to the board a detailed statement of all moneys received and
80 spent during the preceding fiscal year.

§21-11-20. Board authorized to provide training.

1 (a) On behalf of the board, the division may enter into
2 work-sharing agreements with state vocational and technical
3 training schools to provide classroom training to students who
4 desire to obtain a West Virginia contractor license. The purpose
5 of the training is limited to instruction applicable to the
6 contractor license examinations required by the board. The
7 terms of the work-sharing agreements shall be determined by
8 the West Virginia contractor licensing board and county boards
9 of education.

10 (b) For the purposes of this section, the division is autho-
11 rized to expend funds from its special revenue account, known
12 as the contractor licensing fund, to support this activity.

CHAPTER 152

(H. B. 4709— By Delegates Tucker, Kuhn, Varner,
Stemple, Staton, Yost and G. White)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §47-1-20 of the code of West Virginia, 1931, as amended, relating to allowing the commissioner of labor to charge fees for laboratory services and calibrations by rule; establishing a special revenue account to be used by the division of labor for the enforcement of weights and measures statutes.

Be it enacted by the Legislature of West Virginia:

That §47-1-20 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-20. State measurement laboratory.

1 The commissioner shall operate and maintain a state
2 measurement laboratory certified and approved by the national
3 institute of standards and technology. The laboratory shall be
4 used to both house and maintain the state primary standards and
5 secondary standards as traceable to the national standards and
6 to test or calibrate any secondary or working standards which
7 are submitted for test as required by this article.

8 The commissioner shall promulgate rules, pursuant to
9 chapter twenty-nine-a of this code to assess fees for weights and
10 measures laboratory calibration and testing. All fees collected
11 by the commissioner under the provisions of this section shall
12 be deposited into a special revenue account in the state treasury
13 to be known as the "Weights and Measures Fund." The moneys
14 in the fund shall be used by the commissioner solely for the
15 enforcement of this article. The commissioner is hereby
16 authorized to allocate moneys from the weights and measures
17 fund to enforce the provisions of this article without legislative
18 appropriation of moneys from the fund until the last day of
19 June, two thousand six. Effective the first day of July, two
20 thousand six, no moneys may be expended from the fund except
21 by legislative appropriation.

22 The commissioner shall provide such personnel as required
23 to operate the laboratory in a manner which is consistent with
24 the needs of this article. Personnel shall be trained and certified
25 to perform all such calibrations and tests as required by the
26 national institute of standards and technology to maintain
27 traceability of the state standards to national standards, and to
28 properly maintain the laboratory facility as certified and
29 traceable to the national institute of standards and technology.

CHAPTER 153

**(Com. Sub. for S. B. 454 — By Senators Bowman, Minard, Kessler,
McCabe, Rowe, Snyder, Minear and McKenzie)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §8-24-1, §8-24-2, §8-24-3, §8-24-4, §8-24-5, §8-24-6, §8-24-7, §8-24-8, §8-24-9, §8-24-10, §8-24-11, §8-24-12, §8-24-13, §8-24-14, §8-24-15, §8-24-16, §8-24-17, §8-24-18, §8-24-19, §8-24-20, §8-24-21, §8-24-22, §8-24-23, §8-24-24, §8-24-25, §8-24-26, §8-24-27, §8-24-28, §8-24-29, §8-24-30, §8-24-31, §8-24-32, §8-24-33, §8-24-34, §8-24-35, §8-24-36, §8-24-37, §8-24-38, §8-24-39, §8-24-40, §8-24-41, §8-24-42, §8-24-43, §8-24-44, §8-24-45, §8-24-46, §8-24-47, §8-24-48, §8-24-49, §8-24-50, §8-24-50a, §8-24-50b, §8-24-51, §8-24-52, §8-24-53, §8-24-54, §8-24-55, §8-24-56, §8-24-57, §8-24-58, §8-24-59, §8-24-60, §8-24-61, §8-24-62, §8-24-63, §8-24-64, §8-24-65, §8-24-66, §8-24-67, §8-24-68, §8-24-69, §8-24-70, §8-24-71, §8-24-72, §8-24-73, §8-24-73a, §8-24-73b, §8-24-73c, §8-24-73d, §8-24-74, §8-24-74a, §8-24-74b, §8-24-74c, §8-24-75, §8-24-76, §8-24-77, §8-24-78, §8-24-79, §8-24-80, §8-24-81, §8-24-82, §8-24-83, §8-24-84 and §8-24-85 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §8A-1-1, §8A-1-2, §8A-2-1, §8A-2-2, §8A-2-3, §8A-2-4, §8A-2-5, §8A-2-6, §8A-2-7, §8A-2-8, §8A-2-9, §8A-2-10, §8A-2-11, §8A-3-1, §8A-3-2, §8A-3-3, §8A-3-4, §8A-3-5, §8A-3-6, §8A-3-7, §8A-3-8, §8A-3-9, §8A-3-10, §8A-3-11, §8A-3-12, §8A-3-13, §8A-3-14, §8A-4-1, §8A-4-2, §8A-4-3, §8A-4-4, §8A-4-5, §8A-4-6, §8A-4-7, §8A-5-1, §8A-5-2, §8A-5-3, §8A-5-4, §8A-5-5, §8A-5-6, §8A-5-7, §8A-5-8, §8A-5-9, §8A-5-10, §8A-5-11, §8A-5-12, §8A-6-1, §8A-6-2, §8A-6-3, §8A-7-1, §8A-7-2, §8A-7-3, §8A-7-4, §8A-7-5, §8A-7-6, §8A-7-7, §8A-7-8, §8A-7-9, §8A-7-10, §8A-7-11, §8A-7-12, §8A-7-13,

§8A-8-1, §8A-8-2, §8A-8-3, §8A-8-4, §8A-8-5, §8A-8-6, §8A-8-7, §8A-8-8, §8A-8-9, §8A-8-10, §8A-8-11, §8A-8-12, §8A-9-1, §8A-9-2, §8A-9-3, §8A-9-4, §8A-9-5, §8A-9-6, §8A-9-7, §8A-10-1, §8A-10-2, §8A-10-3, §8A-10-4, §8A-10-5, §8A-11-1, §8A-11-2, §8A-12-1, §8A-12-2, §8A-12-3, §8A-12-4, §8A-12-5, §8A-12-6, §8A-12-7, §8A-12-8, §8A-12-9, §8A-12-10, §8A-12-11, §8A-12-12, §8A-12-13, §8A-12-14, §8A-12-15, §8A-12-16, §8A-12-17, §8A-12-18, §8A-12-19, §8A-12-20 and §8A-12-21, all relating to land-use planning; authorizing planning commissions; setting forth jurisdiction and requirements for various types of planning commissions; requiring comprehensive plans; requiring surveys and studies; establishing mandatory and optional components of plans; establishing processes for adopting and amending plans; authorizing ordinances; establishing process for enacting ordinances; setting forth requirements for contents of ordinances; providing for subdivision or land development ordinances; providing for subdivision or land development plans and plats; establishing processes for approval of minor and major subdivisions; requiring plats to be recorded; setting forth appeal processes; providing for methods of security for construction and development; establishing vested property rights; providing for enforcement authority; providing for elections on ordinances; providing for variances from ordinances; providing for exemptions from ordinances; authorizing boards of zoning appeals; providing civil and criminal penalties; providing for injunctions; validating prior plans and ordinances; and incorporating special provisions for factory-built homes, group residential facilities and voluntary farmland protection programs.

Be it enacted by the Legislature of West Virginia:

That §8-24-1, §8-24-2, §8-24-3, §8-24-4, §8-24-5, §8-24-6, §8-24-7, §8-24-8, §8-24-9, §8-24-10, §8-24-11, §8-24-12, §8-24-13, §8-24-14, §8-24-15, §8-24-16, §8-24-17, §8-24-18, §8-24-19, §8-24-20, §8-24-21, §8-24-22, §8-24-23, §8-24-24, §8-24-25, §8-24-26, §8-24-27, §8-24-28, §8-24-29, §8-24-30, §8-24-31, §8-24-32, §8-24-33, §8-24-34, §8-24-35, §8-24-36, §8-24-37, §8-24-38, §8-24-39, §8-24-40, §8-24-41, §8-24-42, §8-24-43, §8-24-44, §8-24-45, §8-24-46, §8-24-47, §8-24-48, §8-24-49,

§8-24-50, §8-24-50a, §8-24-50b, §8-24-51, §8-24-52, §8-24-53, §8-24-54, §8-24-55, §8-24-56, §8-24-57, §8-24-58, §8-24-59, §8-24-60, §8-24-61, §8-24-62, §8-24-63, §8-24-64, §8-24-65, §8-24-66, §8-24-67, §8-24-68, §8-24-69, §8-24-70, §8-24-71, §8-24-72, §8-24-73, §8-24-73a, §8-24-73b, §8-24-73c, §8-24-73d, §8-24-74, §8-24-74a, §8-24-74b, §8-24-74c, §8-24-75, §8-24-76, §8-24-77, §8-24-78, §8-24-79, §8-24-80, §8-24-81, §8-24-82, §8-24-83, §8-24-84 and §8-24-85 of the code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated §8A-1-1, §8A-1-2, §8A-2-1, §8A-2-2, §8A-2-3, §8A-2-4, §8A-2-5, §8A-2-6, §8A-2-7, §8A-2-8, §8A-2-9, §8A-2-10, §8A-2-11, §8A-3-1, §8A-3-2, §8A-3-3, §8A-3-4, §8A-3-5, §8A-3-6, §8A-3-7, §8A-3-8, §8A-3-9, §8A-3-10, §8A-3-11, §8A-3-12, §8A-3-13, §8A-3-14, §8A-4-1, §8A-4-2, §8A-4-3, §8A-4-4, §8A-4-5, §8A-4-6, §8A-4-7, §8A-5-1, §8A-5-2, §8A-5-3, §8A-5-4, §8A-5-5, §8A-5-6, §8A-5-7, §8A-5-8, §8A-5-9, §8A-5-10, §8A-5-11, §8A-5-12, §8A-6-1, §8A-6-2, §8A-6-3, §8A-7-1, §8A-7-2, §8A-7-3, §8A-7-4, §8A-7-5, §8A-7-6, §8A-7-7, §8A-7-8, §8A-7-9, §8A-7-10, §8A-7-11, §8A-7-12, §8A-7-13, §8A-8-1, §8A-8-2, §8A-8-3, §8A-8-4, §8A-8-5, §8A-8-6, §8A-8-7, §8A-8-8, §8A-8-9, §8A-8-10, §8A-8-11, §8A-8-12, §8A-9-1, §8A-9-2, §8A-9-3, §8A-9-4, §8A-9-5, §8A-9-6, §8A-9-7, §8A-10-1, §8A-10-2, §8A-10-3, §8A-10-4, §8A-10-5, §8A-11-1, §8A-11-2, §8A-12-1, §8A-12-2, §8A-12-3, §8A-12-4, §8A-12-5, §8A-12-6, §8A-12-7, §8A-12-8, §8A-12-9, §8A-12-10, §8A-12-11, §8A-12-12, §8A-12-13, §8A-12-14, §8A-12-15, §8A-12-16, §8A-12-17, §8A-12-18, §8A-12-19, §8A-12-20 and §8A-12-21, all to read as follows:

CHAPTER 8A. LAND USE PLANNING.

Article

- 1. General Provisions.**
- 2. Planning Commissions.**
- 3. Comprehensive Plan.**
- 4. Subdivision and Land Development Ordinance.**
- 5. Subdivision or Land Development Plan and Plat.**
- 6. Methods of Security.**
- 7. Zoning Ordinance.**
- 8. Board of Zoning Appeals.**

9. **Appeal Process.**
10. **Enforcement Provisions.**
11. **Special Provisions.**
12. **Voluntary Farmland Protection Programs.**

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-1. Legislative findings.

§8A-1-2. Definitions.

§8A-1-1. Legislative findings.

1 (a) The Legislature finds, as the object of this chapter, the
2 following:

3 (1) That planning land development and land use is vitally
4 important to a community;

5 (2) A planning commission is helpful to a community to
6 plan for land development, land use and the future;

7 (3) A plan and a vision for the future is important when
8 deciding uses for and development of land;

9 (4) That sprawl is not advantageous to a community;

10 (5) A comprehensive plan is a guide to a community's goals
11 and objectives and a way to meet those goals and objectives;

12 (6) That the needs of agriculture, residential areas, industry
13 and business be recognized in future growth;

14 (7) That the growth of the community is commensurate
15 with and promotive of the efficient and economical use of
16 public funds;

17 (8) Promoting growth that is economically sound, environ-
18 mentally friendly and supportive of community livability to
19 enhance quality of life is a good objective for a governing body;
20 and

21 (9) Governing bodies of municipalities and counties need
22 flexibility when authorizing land development and use.

23 (b) Therefore, the Legislature encourages and recommends
24 the following:

25 (1) The goal of a governing body should be to have a plan
26 and a vision for the future, and an agency to oversee it;

27 (2) A governing body should have a planning commission,
28 to serve in an advisory capacity to the governing body, and
29 promote the orderly development of its community;

30 (3) A comprehensive plan should be the basis for land
31 development and use, and be reviewed and updated on a regular
32 basis;

33 (4) A goal of a governing body should be to reduce sprawl;

34 (5) That planning commissions prepare a comprehensive
35 plan and governing bodies adopt the comprehensive plans;

36 (6) Governing bodies, units of government and planning
37 commissions work together to provide for a better community;

38 (7) Governing bodies may have certain regulatory powers
39 over developments affecting the public welfare; and

40 (8) Based upon a comprehensive plan, governing bodies
41 may:

42 (A) Enact a subdivision and land development ordinance;

43 (B) Require plans and plats for land development;

44 (C) Issue improvement location permits for construction; and

45 (D) Enact a zoning ordinance.

§8A-1-2. Definitions.

1 As used in this chapter, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise:

4 (a) "Abandonment" means the relinquishment of property
5 or a cessation of the use of the property by the owner or lessee
6 without any intention of transferring rights to the property to
7 another owner or resuming the nonconforming use of the
8 property for a period of one year.

9 (b) "Aggrieved" or "aggrieved person" means a person
10 who:

11 (1) Is denied by the planning commission, board of subdivi-
12 sion and land development appeals, or the board of zoning
13 appeals, in whole or in part, the relief sought in any application
14 or appeal; or

15 (2) Has demonstrated that he or she will suffer a peculiar
16 injury, prejudice or inconvenience beyond that which other
17 residents of the county or municipality may suffer.

18 (c) "Comprehensive plan" means a plan for physical
19 development, including land use, adopted by a governing body,
20 setting forth guidelines, goals and objectives for all activities
21 that affect growth and development in the governing body's
22 jurisdiction.

23 (d) "Conditional use" means a use which because of special
24 requirements or characteristics may be permitted in a particular
25 zoning district only after review by the board of zoning appeals
26 and upon issuance of a conditional use permit, and subject to
27 the limitations and conditions specified in the zoning ordinance.

28 (e) "Contiguous" means lots, parcels, municipal boundaries
29 or county boundaries that are next to, abutting and having a
30 boundary, or portion thereof, that is coterminous. Streets,
31 highways, roads or other traffic or utility easements, streams,
32 rivers, and other natural topography are not to be used to

33 determine lots, parcels, municipal boundaries or county
34 boundaries as contiguous.

35 (f) "Essential utilities and equipment" means underground
36 or overhead electrical, gas, communications not regulated by
37 the federal communications commission, water and sewage
38 systems, including pole structures, towers, wires, lines, mains,
39 drains, sewers, conduits, cables, fire alarm boxes, public
40 telephone structures, police call boxes, traffic signals, hydrants,
41 regulating and measuring devices and the structures in which
42 they are housed, and other similar equipment accessories in
43 connection therewith. Essential utility equipment is recognized
44 in three categories:

45 (1) Local serving;

46 (2) Nonlocal or transmission through the county or munic-
47 pality; and

48 (3) Water and sewer systems, the activities of which are
49 regulated, in whole or in part, by one or more of the following
50 state agencies:

51 (A) Public service commission;

52 (B) Department of environmental protection; or

53 (C) The department of health and human resources.

54 (g) "Existing use" means use of land, buildings or activity
55 permitted or in existence prior to the adoption of a zoning map
56 or ordinances by the county or municipality. If the use is
57 nonconforming to local ordinance and lawfully existed prior to
58 the adoption of the ordinance, the use may continue to exist as
59 a nonconforming use until abandoned for a period of one year:
60 *Provided*, That in the case of natural resources, the absence of
61 natural resources extraction or harvesting is not abandonment
62 of the use.

63 (h) "Exterior architectural features" means the architectural
64 character and general composition of the exterior of a structure,

65 including, but not limited to, the kind, color and texture of the
66 building material, and the type, design and character of all
67 windows, doors, massing and rhythm, light fixtures, signs, other
68 appurtenant elements and natural features when they are
69 integral to the significance of the site, all of which are subject
70 to public view from a public street, way or place.

71 (i) "Factory-built homes" means modular and manufactured
72 homes.

73 (j) "Flood-prone area" means any land area susceptible to
74 repeated inundation by water from any source.

75 (k) "Governing body" means the body that governs a
76 municipality or county.

77 (l) "Historic district" means a geographically definable
78 area, designated as historic on a national, state or local register,
79 possessing a significant concentration, linkage or continuity of
80 sites, buildings, structures or objects united historically or
81 aesthetically by plan or physical development.

82 (m) "Historic landmark" means a site, building, structure or
83 object designated as historic on a national, state or local
84 register.

85 (n) "Historic site" means the location of a significant event,
86 a prehistoric or historic occupation or activity, or a building or
87 structure whether standing, ruined or vanished, where the
88 location itself possesses historical, cultural or archaeological
89 value regardless of the value of any existing structure and
90 designated as historic on a national, state or local register.

91 (o) "Improvement location permit" means a permit issued
92 by a municipality or county, in accordance with its subdivision
93 and land development ordinance, for the construction, erection,
94 installation, placement, rehabilitation or renovation of a
95 structure or development of land, and for the purpose of
96 regulating development within flood-prone areas.

97 (p) "Infill development" means to fill in vacant or
98 underused land in existing communities with new development
99 that blends in with its surroundings.

100 (q) "Land development" means the development of one or
101 more lots, tracts or parcels of land by any means and for any
102 purpose, but does not include easements, rights-of-way or
103 construction of private roads for extraction, harvesting or
104 transporting of natural resources.

105 (r) "Manufactured home" means housing built in a factory
106 according to the federal manufactured home construction and
107 safety standards effective the fifteenth day of June, one thou-
108 sand nine hundred seventy-six.

109 (s) "Modular home" means housing built in a factory that
110 meets state or local building codes where the homes will be
111 sited.

112 (t) "Non-traditional zoning ordinance" means an ordinance
113 that sets forth development standards and approval processes
114 for land uses within the jurisdiction, but does not necessarily
115 divide the jurisdiction into distinct zoning classifications or
116 districts requiring strict separation of different uses, and does
117 not require a zoning map amendment.

118 (u) "Permitted use" means any use allowed within a zoning
119 district, subject to the restrictions applicable to that zoning
120 district and is not a conditional use.

121 (v) "Plan" means a written description for the development
122 of land.

123 (w) "Planning commission" means a municipal planning
124 commission, a county planning commission, a multicounty
125 planning commission, a regional planning commission or a
126 joint planning commission.

127 (x) "Plat" means a map of the land development.

128 (y) "Preferred development area" means a geographically
129 defined area where incentives may be used to encourage
130 development, infill development or redevelopment in order to
131 promote well designed and coordinated communities.

132 (z) "Public place" means any lots, tracts or parcels of land,
133 structures, buildings or parts thereof owned or leased by a
134 governing body or unit of government.

135 (aa) "Sprawl" means poorly planned or uncontrolled
136 growth, usually of a low-density nature, within previously rural
137 areas, that is land consumptive, auto-dependent, designed
138 without respect to its surroundings, and some distance from
139 existing development and infrastructure.

140 (bb) "Streets" means streets, avenues, boulevards,
141 highways, roads, lanes, alleys and all public ways.

142 (cc) "Subdivision or partition" means the division of a lot,
143 tract or parcel of land into two or more lots, tracts or parcels of
144 land, or the recombination of existing lots, tracts, or parcels.

145 (dd) "Unit of government" means any federal, state,
146 regional, county or municipal government or governmental
147 agency.

148 (ee) "Urban area" means all lands or lots within the
149 jurisdiction of a municipal planning commission.

150 (ff) "Utility" means a public or private distribution service
151 to the public that is regulated by the public service commission.

152 (gg) "Zoning" means the division of a municipality or
153 county into districts or zones which specify permitted and
154 conditional uses and development standards for real property
155 within the districts or zones.

156 (hh) "Zoning map" means a map that geographically
157 illustrates all zoning district boundaries within a municipality
158 or county, as described within the zoning ordinance, and which

159 is certified as the official zoning map for the municipality or
160 county.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-1. Planning commissions authorized.

§8A-2-2. Continuation of established planning commissions.

§8A-2-3. Municipal planning commission.

§8A-2-4. County planning commission.

§8A-2-5. Multicounty planning commission, regional planning commission or joint
planning commission.

§8A-2-6. Sharing planning commissions.

§8A-2-7. Planning commission meetings.

§8A-2-8. Quorum.

§8A-2-9. Officers.

§8A-2-10. Governing body's duties.

§8A-2-11. Planning commission's powers and duties.

§8A-2-1. Planning commissions authorized.

1 (a) A governing body of a municipality or county may, by
2 ordinance, create a planning commission to promote the orderly
3 development of its jurisdiction.

4 (b) Governing bodies may, by ordinance, create a
5 multicounty planning commission, a regional planning commis-
6 sion or a joint planning commission to promote the orderly
7 development of land and reduce duplication of effort.

8 (c) The planning commission shall serve in an advisory
9 capacity to the governing body or governing bodies that created
10 it and have certain regulatory powers over land planning.

11 (d) Governing bodies and planning commissions are
12 authorized to carry out the objectives and overall purposes of
13 this chapter.

14 (e) A planning commission has only those powers, duties
15 and jurisdiction as given to it in the ordinance creating it.

§8A-2-2. Continuation of established planning commissions.

1 (a) A planning commission established prior to the effective
2 date of this chapter shall continue to operate as though estab-
3 lished under the terms of this chapter. All actions lawfully
4 taken under prior acts are hereby validated and continued in
5 effect until amended or repealed by action taken under the
6 authority of this chapter.

7 (b) The membership of an existing planning commission
8 shall continue unchanged until the first regular meeting, after
9 the enactment of this chapter, of the governing body that
10 established the planning commission. At that time, any
11 appointments or changes necessary shall be made to bring the
12 membership of the existing planning commission into confor-
13 mity with the provisions of this chapter.

§8A-2-3. Municipal planning commission.

1 (a) A municipal planning commission shall have not less
2 than five nor more than fifteen members, the exact number to
3 be specified in the ordinance creating the planning commission.

4 (b) The members of a municipal planning commission must
5 be:

6 (1) Residents of the municipality; and

7 (2) Qualified by knowledge and experience in matters
8 pertaining to the development of the municipality.

9 (c) At least three fifths of all of the members must have
10 been residents of the municipality for at least three years prior
11 to nomination or appointment and confirmation.

12 (d) The members of a municipal planning commission must
13 fairly represent different areas of interest, knowledge and
14 expertise, including, but not limited to, business, industry,
15 labor, government and other relevant disciplines. One member
16 must be a member of the municipal governing body or a
17 designee and one member must be a member of the administra-
18 tive department of the municipality or a designee. The term of

19 membership for these two members is the same as their term of
20 office.

21 (e) The remaining members of the municipal planning
22 commission first selected shall serve respectively for terms of
23 one year, two years and three years, divided equally or as nearly
24 equally as possible between these terms. Thereafter, members
25 shall serve three-year terms. Vacancies shall be filled for the
26 unexpired term and made in the same manner as original
27 selections were made.

28 (f) The members of a municipal planning commission shall
29 serve without compensation, but shall be reimbursed for all
30 reasonable and necessary expenses actually incurred in the
31 performance of their official duties.

32 (g) Nominations for municipal planning commission
33 membership shall be made by the administrative authority and
34 confirmed by the governing body when the administrative
35 authority and the governing body are separate, or appointed and
36 confirmed by the governing body where the administrative
37 authority and governing body are the same.

38 (h) An individual may serve as a member of a municipal
39 planning commission, a county planning commission, a
40 multicounty planning commission, a regional planning commis-
41 sion or a joint planning commission, at the same time.

42 (i) The governing body of the municipality may establish
43 procedures for the removal of members of the planning
44 commission for inactivity, neglect of duty or malfeasance. The
45 procedures must contain provisions requiring that the person to
46 be removed be provided with a written statement of the reasons
47 for removal and an opportunity to be heard on the matter.

§8A-2-4. County planning commission.

1 (a) A county planning commission shall have not less than
2 five nor more than fifteen members, the exact number to be
3 specified in the ordinance creating the planning commission.

4 (b) The members of a county planning commission must
5 be:

6 (1) Residents of the county; and

7 (2) Qualified by knowledge and experience in matters
8 pertaining to the development of the county.

9 (c) At least three fifths of all of the members must have
10 been residents of the county for at least three years prior to
11 appointment and confirmation by the county commission.

12 (d) The members of a county planning commission must
13 fairly represent different areas of interest, knowledge and
14 expertise, including, but not limited to, business, industry,
15 labor, farming, government and other relevant disciplines. One
16 member must be a member of the county commission or a
17 designee. The term of membership for this member is the same
18 as the term of office.

19 (e) The remaining members of the county planning com-
20 mission first selected shall serve respectively for terms of one
21 year, two years and three years, divided equally or as nearly
22 equally as possible between these terms. Thereafter, members
23 shall serve three-year terms. Vacancies shall be filled for the
24 unexpired term and made in the same manner as original
25 selections were made.

26 (f) The members of a county planning commission shall
27 serve without compensation, but shall be reimbursed for all
28 reasonable and necessary expenses actually incurred in the
29 performance of their official duties.

30 (g) Appointments for county planning commission mem-
31 bership shall be made and confirmed by the county commis-
32 sion.

33 (h) An individual may serve as a member of a municipal
34 planning commission, a county planning commission, a

35 multicounty planning commission, a regional planning commis-
36 sion or a joint planning commission, at the same time.

37 (i) The county commission may establish procedures for the
38 removal of members of the planning commission for inactivity,
39 neglect of duty or malfeasance. The procedures must contain
40 provisions requiring that the person to be removed be provided
41 with a written statement of the reasons for removal and an
42 opportunity to be heard on the matter.

**§8A-2-5. Multicounty planning commission, regional planning
commission or joint planning commission.**

1 (a) A multicounty planning commission, a regional plan-
2 ning commission or a joint planning commission shall have not
3 less than five nor more than fifteen members, the exact number
4 to be specified in the ordinance creating the planning commis-
5 sion.

6 (b) The members of a multicounty planning commission, a
7 regional planning commission or a joint planning commission
8 must be:

9 (1) Residents of the jurisdiction of the multicounty planning
10 commission, regional planning commission or joint planning
11 commission; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the jurisdiction.

14 (c) The members of a multicounty planning commission, a
15 regional planning commission or a joint planning commission
16 must equally represent the jurisdictions in the planning com-
17 mission, and must have been residents of the jurisdiction he or
18 she represents for at least three years prior to appointment and
19 confirmation.

20 (d) The members of a multicounty planning commission, a
21 regional planning commission or a joint planning commission
22 must fairly represent different areas of interest, knowledge and

23 expertise, including, but not limited to, business, industry,
24 labor, farming, government and other relevant disciplines.
25 Each governing body participating in the planning commission
26 must have one member from its governing body on the planning
27 commission. The term of membership for this member is the
28 same as the term of office.

29 (e) The remaining members of the multicounty planning
30 commission, regional planning commission or joint planning
31 commission first selected shall serve respectively for terms of
32 one year, two years and three years, divided equally or as nearly
33 equally as possible between these terms. Thereafter, members
34 shall serve three-year terms. Vacancies shall be filled for the
35 unexpired term and made in the same manner as original
36 selections were made.

37 (f) The members of a multicounty planning commission, a
38 regional planning commission or a joint planning commission
39 shall serve without compensation, but shall be reimbursed for
40 all reasonable and necessary expenses actually incurred in the
41 performance of their official duties.

42 (g) Appointments for a multicounty planning commission,
43 a regional planning commission or a joint planning commission
44 membership shall be made and confirmed by each governing
45 body participating in the planning commission.

46 (h) An individual may serve as a member of a municipal
47 planning commission, a county planning commission, a
48 multicounty planning commission, a regional planning commis-
49 sion or a joint planning commission, at the same time.

50 (i) The governing bodies may establish procedures for the
51 removal of members of the planning commission for inactivity,
52 neglect of duty or malfeasance. The procedures must contain
53 provisions requiring that the person to be removed be provided
54 with a written statement of the reasons for removal and an
55 opportunity to be heard on the matter.

§8A-2-6. Sharing planning commissions.

1 (a) The governing body of a municipality located within a
2 county with a planning commission may, by ordinance,
3 designate the county planning commission as the municipal
4 planning commission. A county planning commission desig-
5 nated as a municipal planning commission has all the powers,
6 authority and duties granted under this article to a municipal
7 planning commission.

8 (b) The county commission of a county with a municipal
9 planning commission may, by ordinance, designate the munici-
10 pal planning commission as the county planning commission.
11 A municipal planning commission designated as a county
12 planning commission has all the powers, authority and duties
13 granted under this article to a county planning commission.

14 (c) If a municipality is located in more than one county, this
15 section only applies to the county where the major portion of
16 the territory of the municipality is located.

17 (d) Municipalities and counties may contract annually with
18 each other to pay expenses for shared planning commissions.

§8A-2-7. Planning commission meetings.

1 (a) A planning commission shall meet at least quarterly and
2 may meet more frequently at the request of the president or by
3 two or more members.

4 (b) Notice for a special meeting must be in writing, include
5 the date, time and place of the special meeting, and be sent to
6 all members at least two days before the special meeting.

7 (c) Written notice of a special meeting is not required if the
8 date, time and place of the special meeting were set in a regular
9 meeting.

§8A-2-8. Quorum.

1 A planning commission must have quorum to conduct a
2 meeting. A majority of the members of a planning commission
3 is a quorum. No action of a planning commission is official

- 4 unless authorized by a majority of the members present at a
- 5 regular or properly called special meeting.

§8A-2-9. Officers.

- 1 At its first regular meeting each year, a planning commis-
- 2 sion shall elect from its members a president and vice president.
- 3 The vice president shall have the power and authority to act as
- 4 president of the planning commission during the absence or
- 5 disability of the president.

§8A-2-10. Governing body's duties.

- 1 (a) The county commission in the case of a county planning
- 2 commission, and the governing body of the municipality in the
- 3 case of a municipal planning commission, shall provide the
- 4 planning commission with:

- 5 (1) Suitable offices for the holding of meetings and the
- 6 preservation of plans, maps, documents and accounts; and

- 7 (2) Appropriate money to defray the reasonable expenses
- 8 of the planning commission.

- 9 (b) In the ordinance creating a multicounty planning
- 10 commission, a regional planning commission or a joint plan-
- 11 ning commission, the governing bodies shall designate office
- 12 space and will each equally appropriate money sufficient to
- 13 defray the reasonable expenses of the planning commission.

- 14 (c) Planning commissions are authorized to accept gifts,
- 15 funds and donations which will be deposited with the appropri-
- 16 ate governing body in a special nonreverting planning commis-
- 17 sion fund to be available for expenditures by the planning
- 18 commission for the purpose designated by the donor.

§8A-2-11. Planning commission's powers and duties.

- 1 A planning commission has the following powers and
- 2 duties:

- 3 (1) Exercise general supervision for the administration of
4 the affairs of the commission;
- 5 (2) Prescribe rules and regulations pertaining to administra-
6 tion, investigations and hearings: *Provided*, That the rules and
7 regulations are adopted by the governing body;
- 8 (3) Supervise the fiscal affairs and responsibilities of the
9 commission;
- 10 (4) With consent from the governing body, hire employees
11 necessary to carry out the duties and responsibilities of the
12 planning commission: *Provided*, That the governing body sets
13 the salaries;
- 14 (5) Keep an accurate and complete record of all planning
15 commission proceedings;
- 16 (6) Record and file all bonds and contracts;
- 17 (7) Take responsibility for the custody and preservation of
18 all papers and documents of the planning commission;
- 19 (8) Make recommendations to the appropriate governing
20 body concerning planning;
- 21 (9) Make an annual report to the appropriate governing
22 body concerning the operation of the planning commission and
23 the status of planning within its jurisdiction;
- 24 (10) Prepare, publish and distribute reports, ordinances and
25 other material relating to the activities authorized under this
26 article;
- 27 (11) Adopt a seal, and certify all official acts;
- 28 (12) Invoke any legal, equitable or special remedy for the
29 enforcement of the provisions of this article or any ordinance,
30 rule and regulation or any action taken thereunder;

31 (13) Prepare and submit an annual budget to the appropriate
32 governing body;

33 (14) If necessary, establish advisory committees;

34 (15) Delegate limited powers to a committee composed of
35 one or more members of the commission; and

36 (16) Contract for special or temporary services and profes-
37 sional counsel with the approval of the governing body. Upon
38 request, a county prosecuting attorney, the county surveyor, the
39 county engineer, or any other county employee may render
40 assistance and service to a planning commission without
41 compensation.

ARTICLE 3. COMPREHENSIVE PLAN.

§8A-3-1. Purpose and goals of a comprehensive plan.

§8A-3-2. Study guidelines for a comprehensive plan.

§8A-3-3. Authority for planning commission.

§8A-3-4. Mandatory components of a comprehensive plan.

§8A-3-5. Optional components of a comprehensive plan.

§8A-3-6. Notice and public participation requirement for a comprehensive plan.

§8A-3-7. Submission of comprehensive plan.

§8A-3-8. Adoption of comprehensive plan by governing body.

§8A-3-9. Filing the comprehensive plan.

§8A-3-10. Rejection or amendment of comprehensive plan by governing body.

§8A-3-11. Amending comprehensive plan after adoption.

§8A-3-12. Validation of prior comprehensive plans.

§8A-3-13. Intergovernmental cooperation.

§8A-3-14. Jurisdiction of municipal planning commission.

§8A-3-1. Purpose and goals of a comprehensive plan.

1 (a) The general purpose of a comprehensive plan is to guide
2 a governing body to accomplish a coordinated and compatible
3 development of land and improvements within its territorial
4 jurisdiction, in accordance with present and future needs and
5 resources.

6 (b) A comprehensive plan is a process through which
7 citizen participation and thorough analysis are used to develop
8 a set of strategies that establish as clearly and practically as
9 possible the best and most appropriate future development of
10 the area under the jurisdiction of the planning commission. A
11 comprehensive plan aids the planning commission in designing
12 and recommending to the governing body ordinances that result
13 in preserving and enhancing the unique quality of life and
14 culture in that community and in adapting to future changes of
15 use of an economic, physical or social nature. A comprehensive
16 plan guides the planning commission in the performance of its
17 duties to help achieve sound planning.

18 (c) A comprehensive plan must promote the health, safety,
19 morals, order, convenience, prosperity and general welfare of
20 the inhabitants, as well as efficiency and economy in the
21 process of development.

22 (d) The purpose of a comprehensive plan is to:

23 (1) Set goals and objectives for land development, uses and
24 suitability for a governing body, so a governing body can make
25 an informed decision;

26 (2) Ensure that the elements in the comprehensive plan are
27 consistent;

28 (3) Coordinate all governing bodies, units of government
29 and other planning commissions to ensure that all comprehen-
30 sive plans and future development are compatible;

31 (4) Create conditions favorable to health, safety, mobility,
32 transportation, prosperity, civic activities, recreational, educa-
33 tional, cultural opportunities and historic resources;

34 (5) Reduce the wastes of physical, financial, natural or
35 human resources which result from haphazard development,
36 congestion or scattering of population;

37 (6) Reduce the destruction or demolition of historic sites
38 and other resources by reusing land and buildings and revitaliz-
39 ing areas;

40 (7) Promote a sense of community, character and identity;

41 (8) Promote the efficient utilization of natural resources,
42 rural land, agricultural land and scenic areas;

43 (9) Focus development in existing developed areas and fill
44 in vacant or underused land near existing developed areas to
45 create well designed and coordinated communities; and

46 (10) Promote cost-effective development of community
47 facilities and services.

48 (e) A comprehensive plan may provide for innovative land
49 use management techniques, including:

50 (1) Density bonuses and/or density transfer;

51 (2) Clustering;

52 (3) Design guidelines, including planned unit develop-
53 ments;

54 (4) Conservation easements;

55 (5) Infill development;

56 (6) Consolidation of services; and

57 (7) Any other innovative land use technique that will
58 promote the governing body's development plans.

§8A-3-2. Study guidelines for a comprehensive plan.

1 (a) When preparing or amending a comprehensive plan, a
2 planning commission shall make comprehensive surveys and
3 studies of the existing conditions and services and probable
4 future changes of such conditions and services within the
5 territory under its jurisdiction.

6 (b) The comprehensive surveys and studies may cover such
7 factors as population density, health, general welfare, historic
8 sites, mobility, transportation, food supply, education, water
9 and sanitation requirements, public services, accessibility for
10 the disabled and future potential for residential, commercial,
11 industrial or public use.

12 (c) The major objective of the planning process is providing
13 information to and coordination among divergent elements in
14 the municipality or county. The elements in the comprehensive
15 plan shall be consistent and governing bodies, units of govern-
16 ment and planning commissions must work together to ensure
17 that comprehensive plans and future development are compati-
18 ble.

§8A-3-3. Authority for planning commission.

1 (a) A planning commission shall prepare a comprehensive
2 plan for the development of land within its jurisdiction. A
3 planning commission shall then recommend the comprehensive
4 plan to the appropriate governing body for adoption.

5 (b) A county, multicounty, regional or joint comprehensive
6 plan may include the planning of towns, villages or municipali-
7 ties to the extent to which, in the planning commission's
8 judgment, they are related to the planning of the unincorporated
9 territory of the county as a whole: *Provided*, That the compre-
10 hensive plan shall not be considered a comprehensive plan for
11 any town, village or municipality without the consent of the
12 planning commission and/or the governing body of the town,
13 village or municipality.

14 (c) A comprehensive plan should be coordinated with the
15 plans of the department of transportation, insofar as it relates to
16 highways, thoroughfares, trails and pedestrian ways under the
17 jurisdiction of that planning commission.

18 (d) A county planning commission may prepare a compre-
19 hensive plan for either the entire county or a part of the county.

20 (e) A multicounty, regional or joint planning commission
21 may prepare a comprehensive plan for land within its jurisdic-
22 tion.

§8A-3-4. Mandatory components of a comprehensive plan.

1 (a) The comprehensive plan is a written statement on
2 present and future land use and development patterns consisting
3 of descriptive materials, including text, graphics and maps,
4 covering the objectives, principles and guidelines for the
5 orderly and balanced present and future economic, social,
6 physical, environmental and fiscal development of the area
7 under the jurisdiction of the planning commission.

8 (b) A comprehensive plan shall meet the following objec-
9 tives:

10 (1) A statement of goals and objectives for a governing
11 body, concerning its present and future land development;

12 (2) A timeline on how to meet short and long-range goals
13 and objectives;

14 (3) An action plan setting forth implementation strategies;

15 (4) Recommend to the governing body a financial program
16 for goals and objectives that need public financing;

17 (5) A statement of recommendations concerning future land
18 use and development policies that are consistent with the goals
19 and objectives set forth in the comprehensive plan;

20 (6) A program to encourage regional planning, coordination
21 and cooperation with other governing bodies, units of govern-
22 ment and planning commissions; and

23 (7) Maps, plats, charts and/or descriptive material present-
24 ing basic information on the land included in the comprehen-
25 sive plan, including present and future uses.

26 (c) The comprehensive plan shall have, but is not limited to,
27 the following components:

28 (1) *Land use.* -- Designate the current, and set goals and
29 programs for the proposed general distribution, location and
30 suitable uses of land, including, but not limited to:

31 (A) Residential, commercial, industrial, agricultural,
32 recreational, educational, public, historic, conservation,
33 transportation, infrastructure or any other use of land;

34 (B) Population density and building intensity standards;

35 (C) Growth and/or decline management;

36 (D) Projected population growth or decline; and

37 (E) Constraints to development, including identifying
38 flood-prone and subsidence areas.

39 (2) *Housing.* -- Set goals, plans and programs to meet the
40 housing needs for current and anticipated future residents of the
41 jurisdiction, including, but not limited to:

42 (A) Analyzing projected housing needs and the different
43 types of housing needed, including affordable housing and
44 universally designed housing accessible to persons with
45 disabilities;

46 (B) Identifying the number of projected necessary housing
47 units and sufficient land needed for all housing needs;

48 (C) Addressing substandard housing;

49 (D) Rehabilitating and improving existing housing; and

50 (E) Adaptive reuse of buildings into housing.

51 (3) *Transportation.* -- Consistent with the land use compo-
52 nent, identify the type, location, programs, goals and plans to

53 meet the intermodal transportation needs of the jurisdiction,
54 including, but not limited to:

55 (A) Vehicular, transit, air, port, railroad, river and any other
56 mode of transportation system;

57 (B) Movement of traffic and parking;

58 (C) Pedestrian and bicycle systems; and

59 (D) Intermodal transportation.

60 (4) *Infrastructure*. -- Designate the current, and set goals,
61 plans and programs, for the proposed locations, capabilities and
62 capacities of all utilities, essential utilities and equipment,
63 infrastructure and facilities to meet the needs of current and
64 anticipated future residents of the jurisdiction.

65 (5) *Public services*. -- Set goals, plans and programs, to
66 ensure public safety, and meet the medical, cultural, historical,
67 community, social, educational and disaster needs of the current
68 and anticipated future residents of the jurisdiction.

69 (6) *Rural*. -- Consistent with the land use component,
70 identify land that is not intended for urban growth and set goals,
71 plans and programs for growth and/or decline management in
72 the designated rural area.

73 (7) *Recreation*. -- Consistent with the land use component,
74 identify land, and set goals, plans and programs for recreational
75 and tourism use in the area.

76 (8) *Economic development*. -- Establish goals, policies,
77 objectives, provisions and guidelines for economic growth and
78 vitality for current and anticipated future residents of the
79 jurisdiction, including, but not limited to:

80 (A) Opportunities, strengths and weaknesses of the local
81 economy and workforce;

82 (B) Identifying and designating economic development
83 sites and/or sectors for the area; and

84 (C) Type of economic development sought, correlated to
85 the present and projected employment needs and utilization of
86 residents in the area.

87 (9) *Community design.* -- Consistent with the land use
88 component, set goals, plans and programs to promote a sense of
89 community, character and identity.

90 (10) *Preferred development areas.* -- Consistent with the
91 land use component, identify areas where incentives may be
92 used to encourage development, infill development or redevelop-
93 ment in order to promote well designed and coordinated
94 communities and prevent sprawl.

95 (11) *Renewal and/or redevelopment.* -- Consistent with the
96 land use component, identify slums and other blighted areas and
97 set goals, plans and programs for the elimination of such slums
98 and blighted areas and for community renewal, revitalization
99 and/or redevelopment.

100 (12) *Financing.* -- Recommend to the governing body short
101 and long-term financing plans to meet the goals, objectives and
102 components of the comprehensive plan.

103 (13) *Historic preservation.* -- Identify historical, scenic,
104 archaeological, architectural or similar significant lands or
105 buildings, and specify preservation plans and programs so as
106 not to unnecessarily destroy the past development which may
107 make a viable and affordable contribution in the future.

§8A-3-5. Optional components of a comprehensive plan.

1 The comprehensive plan may have, but is not limited to, the
2 following components:

3 (1) *History.* -- An analysis of the history of the area to
4 better provide for the future.

5 (2) *Environmental.* -- Recommend programs where
6 appropriate to appropriate regulatory agencies to protect the
7 area from all types of pollution and promote a healthy environ-
8 ment.

9 (3) *Tourism.* -- Recommend programs to promote tourism
10 and cultural and heritage development in the area.

11 (4) *Conservation.* -- Recommend programs to conserve and
12 protect wildlife, natural habitats, sensitive natural areas, green
13 spaces and direct access to sunlight.

14 (5) *Safety.* -- Recommend public safety programs to educate
15 and protect the public from disasters, both natural and man-
16 made.

17 (6) *Natural resources use.* -- Identify areas for natural
18 resources use in an urban area.

§8A-3-6. Notice and public participation requirement for a comprehensive plan.

1 (a) Prior to recommending a new or amended comprehen-
2 sive plan to a governing body for adoption, the planning
3 commission shall give notice and hold a public hearing on the
4 new or amended comprehensive plan.

5 (b) At least thirty days prior to the date set for the public
6 hearing, the planning commission shall publish a notice of the
7 date, time and place of the public hearing as a Class I legal
8 advertisement in compliance with the provisions of article
9 three, chapter fifty-nine of this code. The publication area shall
10 be the area covered by the comprehensive plan.

11 (c) A planning commission shall include public participa-
12 tion throughout the process of studying and preparing a
13 comprehensive plan and amending a comprehensive plan. A
14 planning commission shall adopt procedures for public partici-
15 pation throughout the process of studying and preparing or
16 amending a comprehensive plan.

17 (d) A planning commission shall request input from other
18 affected governing bodies and units of government.

§8A-3-7. Submission of comprehensive plan.

1 (a) After the comprehensive plan is prepared and before it
2 is approved, the planning commission shall hold a public
3 hearing. After the public hearing and approval, the planning
4 commission shall submit the recommended comprehensive plan
5 to the applicable governing body for consideration and adop-
6 tion.

7 (b) At the first meeting of the applicable governing body
8 following the submission of the recommended comprehensive
9 plan by the planning commission to the governing body, the
10 planning commission shall present the recommended compre-
11 hensive plan to the governing body.

12 (c) After the presentation of the recommended comprehen-
13 sive plan by the planning commission to the governing body
14 and prior to adoption, the governing body shall hold a public
15 hearing after giving notice.

16 (d) At least fifteen days prior to the date set for the public
17 hearing, the planning commission shall publish a notice of the
18 date, time and place of the public hearing as a Class I legal
19 advertisement in compliance with the provisions of article
20 three, chapter fifty-nine of this code. The publication area shall
21 be the area covered by the comprehensive plan.

§8A-3-8. Adoption of comprehensive plan by governing body.

1 (a) Within the latter of ninety days or three scheduled
2 meetings after the submission of the recommended comprehen-
3 sive plan to the governing body, the governing body must act
4 by either adopting, rejecting or amending the comprehensive
5 plan.

6 (b) If the comprehensive plan is adopted by the governing
7 body, then the governing body may adopt the comprehensive

8 plan as an ordinance or designate what other effect the compre-
9 hensive plan may have.

10 (c) If the comprehensive plan is adopted by the governing
11 body and an ordinance is published, the comprehensive plan
12 may be incorporated by reference in the ordinance and the full
13 text of the comprehensive plan does not have to be published.

§8A-3-9. Filing the comprehensive plan.

1 After the adoption of a comprehensive plan by a governing
2 body, the governing body must file the adopted comprehensive
3 plan in the office of the clerk of the county commission where
4 the comprehensive plan applies. If an adopted comprehensive
5 plan covers more than one county, a certified copy of the
6 adopted comprehensive plan must be filed in the office of the
7 clerk of the county commission of each county covered by the
8 adopted comprehensive plan.

§8A-3-10. Rejection or amendment of comprehensive plan by governing body.

1 (a) If a governing body rejects or amends the recommended
2 comprehensive plan, then the comprehensive plan must be
3 returned to the planning commission for its consideration, with
4 a written statement of the reasons for the rejection or amend-
5 ment.

6 (b) The planning commission has forty-five days to
7 consider the rejection or amendment and make recommenda-
8 tions to the governing body.

9 (c) If the planning commission approves the amendment to
10 the comprehensive plan, then the comprehensive plan shall
11 stand as adopted by the governing body.

12 (d) If the planning commission disapproves of the rejection
13 or amendment, then the planning commission shall state its
14 reasons in its written recommendations to the governing body.

15 (e) Within forty-five days of receipt of the planning
16 commission's written recommendations for disapproval, the
17 governing body must act on the comprehensive plan.

18 (f) If the planning commission does not file a written
19 recommendation with the governing body within forty-five
20 days, then the action in rejecting or amending the comprehen-
21 sive plan is final.

§8A-3-11. Amending comprehensive plan after adoption.

1 (a) After the adoption of a comprehensive plan by the
2 governing body, the planning commission shall follow the
3 comprehensive plan, and review the comprehensive plan and
4 make updates at least every ten years.

5 (b) After the adoption of a comprehensive plan by the
6 governing body, all amendments to the comprehensive plan
7 shall be made by the planning commission and recommended
8 to the governing body for adoption in accordance with the
9 procedures set forth in sections six, seven, eight and nine of this
10 article. The planning commission shall hold a public hearing
11 prior to its recommendation to the governing body.

12 (c) If a governing body wants an amendment, it may
13 request in writing for the planning commission to prepare an
14 amendment. The planning commission must hold a public
15 hearing within one hundred twenty days after the written
16 request by the governing body to the planning commission is
17 received.

18 (d) Within the latter of ninety days or three scheduled
19 meetings after the submission of the recommended amendment
20 to the comprehensive plan to the governing body, the governing
21 body must act by either adopting, rejecting or amending the
22 comprehensive plan.

§8A-3-12. Validation of prior comprehensive plans.

1 (a) The adoption of a comprehensive plan or any general
2 development plans by a planning commission, under the

3 authority of prior acts, is hereby validated and the plans may
4 continue in effect for ten years after the effective date of this
5 chapter or until the plans are revised, amended or replaced in
6 accordance with this chapter.

7 (b) After the effective date of this chapter, amendments to
8 prior plans shall be made in accordance with the provisions of
9 this article.

§8A-3-13. Intergovernmental cooperation.

1 (a) With a view to coordinating and integrating the planning
2 of municipalities and/or counties with each other, all governing
3 bodies and units of government within the lands under the
4 jurisdiction of the planning commission preparing or amending
5 a comprehensive plan, all governing bodies and units of
6 government affected by the comprehensive plan, and any other
7 interested or affected governing body, unit of government or
8 planning commission, must cooperate, participate, share
9 information and give input when a planning commission
10 prepares or amends a comprehensive plan.

11 (b) All planning commissions, governing bodies and units
12 of government are authorized to cooperate and share informa-
13 tion with each other and may adopt rules and regulations to
14 coordinate and integrate planning.

15 (c) All planning commissions, governing bodies and units
16 of government must make available, upon the request of a
17 planning commission, any information, maps, documents, data
18 and plans pertinent to the preparation of a comprehensive plan.

§8A-3-14. Jurisdiction of municipal planning commission.

1 The jurisdiction of a municipal planning commission shall
2 not extend beyond the corporate limits of the municipality.

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-1. Subdivision and land development ordinances authorized.

§8A-4-2. Contents of subdivision and land development ordinance.

§8A-4-3. Enactment of subdivision and land development ordinance.

§8A-4-4. Filing the subdivision and land development ordinance.

§8A-4-5. Amendments to the subdivision and land development ordinance.

§8A-4-6. Effect of adopted subdivision and land development ordinance.

§8A-4-7. Validation of prior subdivision and land development ordinance.

§8A-4-1. Subdivision and land development ordinances authorized.

1 (a) The governing body of a municipality or a county may
2 regulate subdivisions and land development within its jurisdic-
3 tion by:

4 (1) Adopting a comprehensive plan; and

5 (2) Enacting a subdivision and land development ordinance.

6 (b) A municipality may adopt, by reference, the subdivision
7 and land development ordinance of the county in which it is
8 located.

9 (c) With the prior approval of the county planning commis-
10 sion, a municipality may, by ordinance, designate the county
11 planning commission as the planning commission for the
12 municipality to review and approve subdivision or land
13 development plans and plats.

§8A-4-2. Contents of subdivision and land development ordinance.

1 (a) A subdivision and land development ordinance shall
2 include the following provisions:

3 (1) A minor subdivision or land development process,
4 including criteria, requirements and a definition of minor
5 subdivision;

6 (2) The authority of the planning commission and its staff
7 to approve a minor subdivision or land development;

- 8 (3) A major subdivision or land development process,
9 including criteria and requirements;
- 10 (4) The authority of the planning commission to approve a
11 major subdivision or land development;
- 12 (5) The standards for setback requirements, lot sizes,
13 streets, sidewalks, walkways, parking, easements, rights-of-
14 way, drainage, utilities, infrastructure, curbs, gutters, street
15 lights, fire hydrants, storm water management and water and
16 wastewater facilities;
- 17 (6) Standards for flood-prone or subsidence areas;
- 18 (7) A review process for subdivision or land development
19 plans and plats by the planning commission;
- 20 (8) An approval process for subdivision or land develop-
21 ment plans and plats by the planning commission, including the
22 authority to approve subdivision or land development plans and
23 plats with conditions;
- 24 (9) A process to amend final approved subdivision or land
25 development plans and plats;
- 26 (10) A requirement that before development of the land is
27 commenced, subdivision and land development plans and plats
28 must be approved by the applicable planning commission, in
29 accordance with the comprehensive plan;
- 30 (11) A requirement that after approval of the subdivision or
31 land development plat by the planning commission and before
32 the subdivision or development of the land is commenced, the
33 subdivision and land development plat shall be recorded in the
34 office of the clerk of the county commission where a majority
35 of the land to be developed lies;
- 36 (12) A schedule of fees to be charged which are propor-
37 tioned to the cost of checking and verifying proposed plats;

38 (13) The process for granting waivers from the minimum
39 standards of the subdivision and land development ordinance;

40 (14) Improvement location permit process, including a
41 requirement that a structure or development of land is prohib-
42 ited without an improvement location permit;

43 (15) The acceptable methods of payment to cover the cost
44 of the water and sewer service infrastructure, which can
45 include, but are not limited to, bonds, impact fees, escrow fees
46 and proffers;

47 (16) The process for cooperating and coordinating with
48 other governmental agencies affected by the subdivision and
49 land development and use; and

50 (17) Penalties for violating the subdivision and land
51 development ordinance.

52 (b) A subdivision and land development ordinance may
53 include the following provisions:

54 (1) Establishing a board of subdivision and land develop-
55 ment appeals with the same powers, duties and appeals process
56 as set out for the board of zoning appeals under the provisions
57 of article eight of this chapter;

58 (2) Requirements for green space, common areas, public
59 grounds, walking and cycling paths, recreational trails, parks,
60 playgrounds and recreational areas;

61 (3) Encourage the use of renewable energy systems and
62 energy-conserving building design;

63 (4) Vested property right, including requirements;

64 (5) Exemptions of certain types of land development from
65 the subdivision and land development ordinance requirements,
66 including, but not limited to, single-family residential structures
67 and farm structures; and

68 (6) Any other provisions consistent with the comprehensive
69 plan the governing body considers necessary.

§8A-4-3. Enactment of subdivision and land development ordinance.

1 (a) Before a governing body enacts a subdivision and land
2 development ordinance, the governing body shall hold at least
3 one public hearing and give public notice.

4 (b) The public notice of the date, time and place of the
5 public hearing must be published in a local newspaper of
6 general circulation in the area as a Class I legal advertisement,
7 in accordance with the provisions of article three, chapter fifty-
8 nine of this code, at least thirty days prior to the public hearing.
9 The public notice must contain a brief summary of the principal
10 provisions of the proposed subdivision and land development
11 ordinance and a reference to the place or places where copies of
12 the proposed subdivision and land development ordinance may
13 be examined.

14 (c) After the public hearing, if the governing body makes
15 other than technical amendments to the proposed subdivision
16 and land development ordinance prior to voting on it, the
17 governing body shall hold another public hearing and give
18 public notice. The public notice shall be as provided in
19 subsection (b) of this section, and must contain a brief summary
20 of the amendments.

§8A-4-4. Filing the subdivision and land development ordinance.

1 After the enactment of the subdivision and land develop-
2 ment ordinance by a governing body, the governing body must
3 file the enacted subdivision and land development ordinance in
4 the office of the clerk of the county commission where the
5 subdivision and land development ordinance applies.

§8A-4-5. Amendments to the subdivision and land development ordinance.

1 After the enactment of the subdivision and land develop-
2 ment ordinance by the governing body, all amendments to the
3 subdivision and land development ordinance shall be made by
4 the governing body after holding a public hearing with public
5 notice.

§8A-4-6. Effect of adopted subdivision and land development ordinance.

1 After enactment of a subdivision and land development
2 ordinance by the governing body, all subsequent subdivisions
3 and land development must be done in accordance with the
4 provisions of the subdivision and land development ordinance.

§8A-4-7. Validation of prior subdivision and land development ordinance.

1 All subdivision and land development ordinances, all
2 amendments, supplements and changes to the ordinance, legally
3 adopted under prior acts, and all action taken under the author-
4 ity of the ordinance, are hereby validated and the ordinance
5 shall continue in effect until amended or repealed by action of
6 the governing body taken under authority of this article. These
7 ordinances shall have the same effect as though previously
8 adopted as a comprehensive plan of land use or parts thereof.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-1. Jurisdiction of planning commissions.

§8A-5-2. Requirements for a minor subdivision or land development.

§8A-5-3. Application for minor subdivision or land development.

§8A-5-4. Approval of minor subdivision or land development plans and plats.

§8A-5-5. Recording of minor subdivision or land development plat.

§8A-5-6. Application for major subdivision or land development.

§8A-5-7. Contents of a major subdivision or land development plan and plat.

§8A-5-8. Approval of major subdivision or land development plans and plats.

§8A-5-9. Recording of major subdivision or land development plat.

§8A-5-10. Appeal process.

§8A-5-11. Effect of approval of land development plans and plats.

§8A-5-12. Vested property right.

§8A-5-1. Jurisdiction of planning commissions.

- 1 (a) A planning commission has the authority to:
 - 2 (1) Approve a minor subdivision or land development
3 application within its jurisdiction;
 - 4 (2) Exempt an application for a minor subdivision or land
5 development within its jurisdiction; and
 - 6 (3) Approve a major subdivision or land development
7 application within its jurisdiction.
- 8 (b) The staff of a planning commission has the authority to
9 approve a minor subdivision or land development application
10 within its jurisdiction, if granted such authority by the govern-
11 ing body in the subdivision and land development ordinance.
- 12 (c) If a subdivision or land development plan and plat
13 cannot be approved through the minor subdivision or land
14 development process, then an applicant must use the major
15 subdivision or land development approval process.

PART I. MINOR SUBDIVISION OR LAND
DEVELOPMENT PROCESS.

**§8A-5-2. Requirements for a minor subdivision or land develop-
ment.**

- 1 (a) An application for approval of a subdivision or land
2 development plan and plat may be considered a minor subdivi-
3 sion or land development if it meets the following require-
4 ments:
 - 5 (1) Only creates the maximum number of lots specifically
6 permitted by the subdivision and land development ordinance
7 for a minor subdivision or land development;
 - 8 (2) Will not require the development of new or the exten-
9 sion of existing off-tract infrastructure; and

10 (3) Such other requirements as determined by the governing
11 body to ensure that required improvements are installed and not
12 avoided by a series of minor subdivisions or land developments.

13 (b) The following can be considered a minor subdivision or
14 land development if approved by the planning commission:

15 (1) Merger or consolidation of parcels of land;

16 (2) Land transfers between immediate family members; and

17 (3) Minor boundary line adjustments.

§8A-5-3. Application for minor subdivision or land development.

1 (a) An applicant submits a copy of a land development plat
2 and the fees to the planning commission having jurisdiction
3 over the land.

4 (b) Within seven days after the submission of the subdivi-
5 sion or land development plat, the applicant and the staff of the
6 planning commission shall meet to discuss the proposed
7 subdivision or land development and the criteria used to
8 classify the proposal as minor.

9 (c) The staff of the planning commission may make a site
10 inspection of the proposed subdivision or land development.

11 (d) Within ten days after the submission of the subdivision
12 or land development plat, the staff of the planning commission
13 shall notify the applicant in writing that the proposed subdivi-
14 sion or land development has been classified a minor subdivi-
15 sion or land development.

§8A-5-4. Approval of minor subdivision or land development plans and plats.

1 (a) Within ten days after a plat has been classified a minor
2 subdivision or land development, then the planning commission
3 or staff, if the authority has been given by the governing body,
4 shall approve or deny the plat.

5 (b) If the planning commission approves the plat, then the
6 planning commission shall affix its seal on the plat.

7 (c) If the planning commission approves the plat with
8 conditions, then the planning commission must state the
9 conditions.

10 (d) If the planning commission denies the plat, then the
11 planning commission shall notify the applicant in writing of the
12 reasons for the denial.

§8A-5-5. Recording of minor subdivision or land development plat.

1 After approval of a minor subdivision or land development
2 plat by the planning commission and before the subdivision or
3 development is commenced, the subdivision or land develop-
4 ment plat shall be recorded by the applicant in the office of the
5 clerk of the county commission where the land is located.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-6. Application for major subdivision or land development.

1 (a) An applicant for approval of a major subdivision or land
2 development plan and plat shall submit written application, a
3 copy of the proposed land development plan and plat, and the
4 fees to the planning commission having jurisdiction over the
5 land.

6 (b) Within forty-five days after receipt of the application,
7 the planning commission shall review the application for
8 completeness and either accept or deny it.

9 (c) If the application is not complete, then the planning
10 commission may deny the application and must notify the
11 applicant in writing stating the reasons for the denial.

§8A-5-7. Contents of a major subdivision or land development plan and plat.

1 (a) A land development plan and plat must include every-
2 thing required by the governing body's subdivision and land
3 development ordinance.

4 (b) If a governing body does not have a subdivision and
5 land development ordinance or if a governing body's subdivi-
6 sion and land development ordinance does not specify what
7 may be included in a subdivision or land development plan and
8 plat, then the following may be included, when applicable, in a
9 subdivision or land development plan and plat:

10 (1) Show that the subdivision or land development con-
11 forms to the governing body's comprehensive plan;

12 (2) A method of payment to cover the cost of the water and
13 sewer service infrastructure, which can include, but is not
14 limited to, bonds, impact fees, escrow fees and proffers;

15 (3) Coordination among land development with adjoining
16 land owners, including, but not limited to, facilities and streets;

17 (4) Distribution of population and traffic in a manner
18 tending to create conditions favorable to health, safety, conve-
19 nience and the harmonious development of the municipality or
20 county;

21 (5) Show that there is a fair allocation of areas for different
22 uses, including, but not limited to, streets, parks, schools, public
23 and private buildings, utilities, businesses and industry;

24 (6) Show that there is a water and sewer supply;

25 (7) Setback and lot size measures were used;

26 (8) The standards used for designating land which is subject
27 to flooding or subsidence, details for making it safe, or informa-
28 tion showing that such land will be set aside for use which will
29 not endanger life or property and will not further aggravate or
30 increase the existing menace;

31 (9) The control measures for drainage, erosion and sedi-
32 ment;

33 (10) The coordination of streets, sidewalks and pedestrian
34 pathways in and bordering the land development; and

35 (11) The design, construction and improvement measures
36 to be used for the streets, sidewalks, easements, rights-of-way,
37 drainage, utilities, walkways, curbs, gutters, street lights, fire
38 hydrants, water and wastewater facilities, and other improve-
39 ments installed, including the width, grade and location for the
40 purpose of accommodating prospective traffic, customers and
41 facilitating fire protection.

§8A-5-8. Approval of major subdivision or land development plans and plats.

1 (a) Upon written request of the applicant for a determina-
2 tion, the planning commission must determine by vote at the
3 next regular meeting or at a special meeting, whether or not the
4 application is complete based upon a finding that the applica-
5 tion meets the requirements set forth in its governing body's
6 subdivision and land development ordinance.

7 (b) If a governing body's subdivision and land development
8 ordinance does not specify what may be included in a land
9 development plan and plat, then the planning commission must
10 determine that an application is complete if the application
11 meets the requirements set forth in subsection (b), section seven
12 of this article.

13 (c) At a meeting where the application is determined to be
14 complete, the planning commission must set a date, time and
15 place for a public hearing and a meeting to follow the public
16 hearing to vote on the application. The public hearing must be
17 held within forty-five days, and the planning commission must
18 notify the applicant of the public hearing and meeting in writing
19 unless notice is waived in writing by the applicant. The
20 planning commission must publish a public notice of the public

21 hearing and meeting in a local newspaper of general circulation
22 in the area at least twenty-one days prior to the public hearing.

23 (d) At a meeting at the conclusion of the public hearing or
24 a meeting held within fourteen days after the public hearing, the
25 planning commission shall vote to approve, deny or hold the
26 application.

27 (e) The application may be held for additional information
28 necessary to make a determination. An application may be held
29 for up to forty-five days.

30 (f) The planning commission shall approve the application
31 after the planning commission determines that an application is
32 complete and meets the requirements of the governing body's
33 subdivision and land development ordinance; or if the govern-
34 ing body does not have a subdivision and land development
35 ordinance or if the subdivision and land development ordinance
36 does not specify what may be included in a subdivision or land
37 development plan and plat, that the application meets the
38 requirements set forth in subsection (b) section seven of this
39 article.

40 (g) If the planning commission approves the application,
41 then the planning commission shall affix its seal on the subdivi-
42 sion or land development plan and/or plat.

43 (h) If the planning commission approves the application
44 with conditions, then the planning commission must specify
45 those conditions.

46 (i) If the planning commission denies the application, then
47 the planning commission shall notify the applicant in writing of
48 the reasons for the denial. The applicant may request, one time,
49 a reconsideration of the decision of the planning commission,
50 which request for reconsideration must be in writing and
51 received by the planning commission no later than ten days
52 after the decision of the planning commission is received by the
53 applicant.

§8A-5-9. Recording of major subdivision or land development plat.

1 After approval of a major subdivision or land development
2 plat by the planning commission and after the conditions of the
3 planning commission are met, the subdivision or land develop-
4 ment plat shall be recorded by the applicant in the office of the
5 clerk of the county commission where the land is located. If the
6 land is located in more than one county, then the land develop-
7 ment plat shall be recorded in the county of the initial land
8 development and subsequently recorded in the other counties
9 when there is land development in that county.

§8A-5-10. Appeal process.

1 (a) An appeal may be made by an aggrieved person from
2 any decision or ruling of the planning commission to:

3 (1) The circuit court, pursuant to the provisions of article
4 nine of this chapter; or

5 (2) A board of subdivision and land development appeals,
6 if the governing body has established a board of subdivision
7 and land development appeals by ordinance.

8 (b) Within thirty days after the date of the denial, the
9 petition, specifying the grounds of the appeal in writing, must
10 be filed with:

11 (1) The circuit court of the county in which the affected
12 land or the major portion of the affected land is located; or

13 (2) The board of subdivision and land development appeals
14 that has jurisdiction over the affected land.

§8A-5-11. Effect of approval of land development plans and plats.

1 A land development plan and plat that has not been
2 approved by the planning commission is without legal effect:
3 *Provided*, That failure to comply with this article shall not

4 invalidate or affect the title to any land within the area of the
5 land development plat.

§8A-5-12. Vested property right.

1 (a) A vested property right is a right to undertake and
2 complete the land development. The right is established when
3 the land development plan and plat is approved by the planning
4 commission and is only applicable under the terms and condi-
5 tions of the approved land development plan and plat.

6 (b) Failure to abide by the terms and conditions of the
7 approved land development plan and plat will result in forfei-
8 ture of the right.

9 (c) The vesting period for an approved land development
10 plan and plat which creates the vested property right is five
11 years from the approval of the land development plan and plat
12 by the planning commission.

13 (d) Without limiting the time when rights might otherwise
14 vest, a landowner's rights vest in a land use or development
15 plan and cannot be affected by a subsequent amendment to a
16 zoning ordinance or action by the planning commission when
17 the landowner:

18 (1) Obtains or is the beneficiary of a significant affirmative
19 governmental act which remains in effect allowing develop-
20 ment of a specific project;

21 (2) Relies in good faith on the significant affirmative
22 governmental act; and

23 (3) Incurs extensive obligations or substantial expenses in
24 diligent pursuit of the specific project in reliance on the
25 significant affirmative governmental act.

26 (e) A vested right is a property right, which cannot be taken
27 without compensation. A court may award damages against the
28 local government in favor of the landowner for monetary losses
29 incurred by the landowner and court costs and attorneys' fees,

30 resulting from the local government's bad faith refusal to
31 recognize that the landowner has obtained vested rights.

ARTICLE 6. METHODS OF SECURITY.

§8A-6-1. Bond requirements.

§8A-6-2. Conditions as part of final plat approval.

§8A-6-3. Enforcement and guarantees.

§8A-6-1. Bond requirements.

1 (a) If a bond is used as an acceptable method of security for
2 infrastructure construction, then it shall meet the following
3 requirements:

4 (1) Be in an amount to cover the infrastructure construction,
5 as determined by the governing body;

6 (2) Be payable to the governing body;

7 (3) Have adequate surety and be satisfactory to the govern-
8 ing body;

9 (4) Specify the time for the completion of the infrastructure
10 construction; and

11 (5) Specify the date and/or condition for when the bond will
12 be released.

13 (b) The money from the bond shall only be used by the
14 governing body to which the bond is payable, for the comple-
15 tion of the infrastructure construction, when the infrastructure
16 construction is not completed as approved at the issuance of the
17 bond.

§8A-6-2. Conditions as part of final plat approval.

1 (a) A subdivision and land development ordinance may
2 provide for the voluntary proffering by a landowner as a
3 requirement of final plat approval for a development project.

4 (b) For purposes of this section, a “voluntary proffer” is a
5 written offer by a landowner to a governing body whereby the
6 landowner offers to satisfy certain reasonable conditions as a
7 requirement of the final plat approval for a development
8 project. A voluntary proffer made to a governing body shall be
9 in lieu of payment of an impact fee as authorized by section
10 four, article twenty, chapter seven of this code: *Provided*, That
11 no proffer may be accepted by a governing body in lieu of an
12 impact fee that would otherwise go to schools without the
13 approval of the county board of education.

14 (c) For purposes of this section, a condition contained in a
15 voluntary proffer is considered reasonable if:

16 (1) The development project results in the need for the
17 conditions;

18 (2) The conditions have a reasonable relation to the
19 development project; and

20 (3) All conditions are in conformity with the comprehen-
21 sive plan adopted pursuant to this chapter.

22 (d) No proffer may be accepted by a governing body unless
23 it has approved a list detailing any proposed capital improve-
24 ments from all areas within the jurisdiction of the governing
25 body to which the proffer is made, which list contains descrip-
26 tions of any proposed capital improvements, cost estimates,
27 projected time frames for constructing the improvements and
28 proposed or anticipated funding sources: *Provided*, That the
29 approval of the list does not limit the governing body from
30 accepting proffers relating to items not contained on the list.

31 (e) For purposes of this section, “capital improvement” has
32 the same definition as found in section three, article twenty,
33 chapter seven of this code.

34 (f) If a voluntary proffer includes the dedication of real
35 property or the payment of cash, the proffer shall provide for
36 the alternate disposition of the property or cash payment in the

37 event the property or cash payment is not to be used for the
38 purpose for which it was proffered.

39 (g) Notwithstanding any provision of this code to the
40 contrary, a municipality may transfer the portion of the pro-
41 ceeds of a voluntary proffer intended by the terms of the proffer
42 to be used by the board of education of a county in which the
43 municipality is located upon the condition that the portion so
44 transferred may only be used by the board for capital improve-
45 ments.

§8A-6-3. Enforcement and guarantees.

1 (a) The planning commission is vested with all the neces-
2 sary authority to administer and enforce conditions attached to
3 the final plat approved for a development project, including, but
4 not limited to, the authority to:

5 (1) Order, in writing, the remedy for any noncompliance
6 with the conditions;

7 (2) Bring legal action to ensure compliance with the
8 conditions, including injunction, abatement, or other appropri-
9 ate action or proceeding; and

10 (3) Require a guarantee satisfactory to the planning
11 commission in an amount sufficient for and conditioned upon
12 the construction of any physical improvements required by the
13 conditions, or a contract for the construction of the improve-
14 ments and the contractor's guarantee, in like amount and so
15 conditioned, which guarantee shall be reduced or released by
16 the planning commission upon the submission of satisfactory
17 evidence that construction of the improvements has been
18 completed in whole or in part.

19 (b) Failure to meet all conditions attached to the final plat
20 approved for a development project shall constitute cause to
21 deny the issuance of any of the required use, occupancy or
22 improvement location permits, as may be appropriate.

ARTICLE 7. ZONING ORDINANCE.

- §8A-7-1. Authority for zoning ordinance.
- §8A-7-2. Contents of zoning ordinance.
- §8A-7-3. Zoning -- Generally.
- §8A-7-4. Study and report on zoning.
- §8A-7-5. Enactment of zoning ordinance.
- §8A-7-6. Filing the zoning ordinance.
- §8A-7-7. Election on a zoning ordinance.
- §8A-7-8. Amendments to the zoning ordinance by the governing body.
- §8A-7-9. Amendments to the zoning ordinance by petition.
- §8A-7-10. Effect of enacted zoning ordinance.
- §8A-7-11. Variance.
- §8A-7-12. Validation of prior zoning ordinance.
- §8A-7-13. Process to replace nontraditional zoning ordinance.

§8A-7-1. Authority for zoning ordinance.

- 1 (a) The governing body of a municipality or a county may
- 2 regulate land use within its jurisdiction by:
 - 3 (1) Adopting a comprehensive plan;
 - 4 (2) Working with the planning commission and the public
 - 5 to develop a zoning ordinance; and
 - 6 (3) Enacting a zoning ordinance.
- 7 (b) A zoning ordinance may cover a county's entire
- 8 jurisdiction or parts of its jurisdiction.
- 9 (c) A zoning ordinance shall cover a municipality's entire
- 10 jurisdiction.
- 11 (d) A municipality may adopt, by reference, the zoning
- 12 ordinance of the county in which it is located.

§8A-7-2. Contents of zoning ordinance.

- 1 (a) The following must be considered when enacting a
- 2 zoning ordinance:

- 3 (1) Promoting general public welfare, health, safety,
4 comfort and morals;
- 5 (2) A plan so that adequate light, air, convenience of access,
6 and safety from fire, flood and other danger is secured;
- 7 (3) Ensuring attractiveness and convenience is promoted;
- 8 (4) Lessening congestion;
- 9 (5) Preserving historic landmarks, sites, districts and
10 buildings;
- 11 (6) Preserving agricultural land; and
- 12 (7) Promoting the orderly development of land.
- 13 (b) A zoning ordinance may include the following:
- 14 (1) Regulating the use of land and designating or prohibit-
15 ing specific land uses;
- 16 (2) Authorizing flexible planning standards to create,
17 redevelop, reuse, protect, and enhance the physical qualities of
18 the community;
- 19 (3) Designating historic districts and regulating the uses of
20 land and the design of buildings within the historic district;
- 21 (4) Establishing corridor overlay districts to achieve land
22 design goals and regulating the uses of land within the corridor
23 overlay districts;
- 24 (5) Establishing design standards and site plan approval
25 procedures;
- 26 (6) Dividing the land of the governing body into different
27 zone classifications regulating the use of land, establishing

28 performance standards for various land uses when dividing is
29 not desired, or any combination of both;

30 (7) Authorizing overlay districts and special design districts
31 within which specific additional development standards for
32 each permitted, accessory and conditional use shall apply;

33 (8) Regulating the height, area, bulk, use and architectural
34 features of buildings, including reasonable exterior architectural
35 features and reasonable aesthetic standards for factory-built
36 homes;

37 (9) Authorizing a process and standards for factory-built
38 homes: *Provided*, That a governing body is prohibited from
39 establishing a process and standards for regulating factory-built
40 homes that is more restrictive than a process and standards for
41 site-built homes;

42 (10) Preserving green spaces and requiring new green
43 spaces, landscaping, screening and the preservation of adequate
44 natural light;

45 (11) Regulating traffic flow and access, pedestrian flow and
46 access, parking and loading;

47 (12) Identifying flood-prone areas subject to periodic
48 flooding, and regulating with specific control the permitted use,
49 type of construction and height of floor levels above base flood
50 elevation permitted in the area so as to lessen or avoid the
51 hazards to persons and damage to property resulting from the
52 accumulation of storm or flood waters;

53 (13) Designating an airport area and establishing land-use
54 regulations within a specific distance from the boundaries of the
55 airport; and

56 (14) Authorizing planned unit developments to achieve
57 more efficient use of land and setting standards and regulations
58 for the developments.

59 (c) A zoning ordinance shall:

60 (1) Create a board of zoning appeals;

61 (2) Specify certification requirements for zoning district
62 maps that are consistent with the governing body's comprehen-
63 sive plan;

64 (3) Adopt procedures and requirements for nonconforming
65 land uses;

66 (4) Adopt procedures and requirements for variances; and

67 (5) Adopt procedures and requirements for conditional use
68 permits.

§8A-7-3. Zoning -- Generally.

1 (a) A zoning ordinance may cover a county's entire
2 jurisdiction or parts of its jurisdiction.

3 (b) The different zones created in a zoning ordinance by a
4 governing body do not have to cover or include the same
5 territory, and may overlap.

6 (c) Overlay districts and special design districts may have
7 specific additional development standards for each permitted,
8 accessory and conditional use.

9 (d) Each zone will be subject to the same rules, regulations,
10 standards and designations throughout the zone, unless specific
11 provisions are made by the governing body in the zoning
12 ordinance.

13 (e) Essential utilities and equipment are a permitted use in
14 any zoning district.

15 (f) Several areas of a municipality or county may be
16 classified in a zone even though the areas are not contiguous.

17 (g) The boundaries of each zone and the designated
18 classifications must be shown on a zoning district map. The
19 boundaries may only be changed after appropriate public
20 hearing and zoning district map changes are adopted by the
21 governing body.

22 (h) A governing body shall certify the original zoning
23 district map. Subsequent versions of the zoning district map
24 shall be certified and clearly identified with an effective date.

25 (i) All certified zoning district maps must be filed with the
26 clerk of the applicable governing body, the applicable planning
27 commission and the office of the clerk of the applicable county
28 commission.

§8A-7-4. Study and report on zoning.

1 (a) After adoption of a comprehensive plan and before
2 enacting a zoning ordinance, a governing body with the
3 applicable planning commission must study the land within its
4 jurisdiction. The study may include:

5 (1) Evaluating the existing conditions, the character of the
6 buildings, the most desirable use for the land and the conserva-
7 tion of property values in relation to the adopted comprehensive
8 plan; and

9 (2) Holding public hearings and meetings with notice to
10 receive public input.

11 (b) The planning commission must use the information
12 from the study and the comprehensive plan and prepare a report

13 on zoning. The report shall include the proposed zoning
14 ordinance, with explanatory maps showing the recommended
15 boundaries of each district, and the rules, regulations and
16 restrictions for each district.

17 (c) No zoning ordinance may be enacted without a study
18 and report.

§8A-7-5. Enactment of zoning ordinance.

1 (a) After the study and the report, and before the governing
2 body enacts the proposed zoning ordinance, the governing body
3 shall hold at least two public hearings and give public notice.
4 At least one public hearing shall be held during the day and at
5 least one public hearing shall be held during the evening.

6 (b) The public notice shall be published in a local newspa-
7 per of general circulation in the area affected by the proposed
8 zoning ordinance, as a Class II legal advertisement in accor-
9 dance with the provisions of article three, chapter fifty-nine of
10 this code, at least fourteen consecutive days prior to the public
11 hearing. The public notice must contain the following:

12 (1) The date, time and place of the public hearings;

13 (2) That it is a public hearing on a proposed zoning
14 ordinance;

15 (3) A brief summary of the principal provisions of the
16 proposed zoning ordinance;

17 (4) A reference to the place where copies of the proposed
18 zoning ordinance may be examined; and

19 (5) That written objections to the proposed zoning ordi-
20 nance may be made and will be heard at the public hearings and
21 must be filed with the clerk of the applicable governing body.

22 (c) Copies of the proposed zoning ordinance must be made
23 available to the public, at least two weeks prior to the public
24 hearings, at the office of the governing body and all public
25 libraries in the area to be zoned.

26 (d) After the public hearings, if the governing body makes
27 substantial amendments to the proposed zoning ordinance prior
28 to voting on the zoning ordinance, the governing body shall
29 hold another public hearing, after public notice. The public
30 notice shall be as provided in subsections (b) and (c) of this
31 section, and must contain a brief summary of the amendments.

32 (e) After the public hearings and any amendments, the
33 governing body may enact the zoning ordinance or it may hold
34 an election to have the qualified voters residing in the affected
35 area approve the zoning ordinance.

§8A-7-6. Filing the zoning ordinance.

1 After the enactment of a zoning ordinance by a governing
2 body, the governing body shall file the enacted zoning ordi-
3 nance in the office of the clerk of the county commission where
4 the zoning ordinance applies.

§8A-7-7. Election on a zoning ordinance.

1 (a) The governing body of a municipality or a county may
2 submit a proposed zoning ordinance for approval or rejection at
3 any primary election, general election or special election, to the
4 qualified voters residing:

5 (1) Within the entire jurisdiction of the governing body, if
6 the proposed zoning ordinance is for the entire jurisdiction; or

7 (2) In the specific area to be zoned by the proposed zoning
8 ordinance, if the proposed zoning ordinance only applies to part
9 of the governing body's jurisdiction.

10 (b) The election laws of this state apply to any election on
11 a proposed zoning ordinance.

12 (c) If a petition for an election on a zoning ordinance is
13 filed with the clerk of a governing body within ninety days after
14 the enactment of a zoning ordinance by a governing body
15 without an election, then a zoning ordinance does not take
16 effect until an election is held and a majority of the voters
17 approves it. At least fifteen percent of the total eligible voters
18 in the area to be affected by the proposed zoning ordinance
19 must sign, in their own handwriting, the petition for an election
20 on a zoning ordinance.

21 (d) Notice for an election on a proposed zoning ordinance
22 must be published in a local newspaper of general circulation
23 in the area affected by the proposed zoning ordinance, as a
24 Class II-0 legal advertisement, in accordance with the provi-
25 sions of article three, chapter fifty-nine of this code.

26 (e) The ballots for an election on a zoning ordinance shall
27 have the following:

28 For Zoning

29 Against Zoning

30 (f) The zoning ordinance is adopted if it is approved by a
31 majority of the voters and is effective on the date the results of
32 an election are declared. If a zoning ordinance is rejected, the
33 zoning ordinance does not take effect. The governing body
34 may submit the zoning ordinance to the voters again at the next
35 primary or general election.

**§8A-7-8. Amendments to the zoning ordinance by the governing
body.**

1 (a) After the enactment of the zoning ordinance, the
2 governing body of the municipality or the county may amend
3 the zoning ordinance without holding an election.

4 (b) Before amending the zoning ordinance, the governing
5 body with the advice of the planning commission, must find
6 that the amendment is consistent with the adopted comprehen-
7 sive plan. If the amendment is inconsistent, then the governing
8 body with the advice of the planning commission, must find
9 that there have been major changes of an economic, physical or
10 social nature within the area involved which were not antici-
11 pated when the comprehensive plan was adopted and those
12 changes have substantially altered the basic characteristics of
13 the area.

§8A-7-9. Amendments to the zoning ordinance by petition.

1 (a) After the enactment of the zoning ordinance, the
2 planning commission or the owners of fifty percent or more of
3 the real property in the area to which the petition relates may
4 petition to amend the zoning ordinance. The petition must be
5 signed and be presented to the planning commission or the clerk
6 of the governing body.

7 (b) Within sixty days after a petition to amend the zoning
8 ordinance is received by the planning commission or the
9 governing body, then the planning commission or the governing
10 body must hold a public hearing after giving public notice. The
11 public notice of the date, time and place of the public hearing
12 must be published in a local newspaper of general circulation
13 in the area affected by the proposed zoning ordinance, as a
14 Class I legal advertisement, in accordance with the provisions
15 of article three, chapter fifty-nine of this code, at least fifteen
16 days prior to the public hearing.

17 (c) If the petition to amend the zoning ordinance is from the
18 owners of fifty percent or more of the real property in the area,

19 then before amending the zoning ordinance, the governing body
20 with the advice of the planning commission, must find that the
21 amendment is consistent with the adopted comprehensive plan.
22 If the amendment is inconsistent, then the governing body with
23 the advice of the planning commission, must find that there
24 have been major changes of an economic, physical or social
25 nature within the area involved which were not anticipated
26 when the comprehensive plan was adopted and those changes
27 have substantially altered the basic characteristics of the area.

§8A-7-10. Effect of enacted zoning ordinance.

1 (a) After enactment of a zoning ordinance by a municipality
2 or county, all subsequent land development must be done in
3 accordance with the provisions of the zoning ordinance.

4 (b) All zoning ordinances, and all amendments, supple-
5 ments and changes thereto, legally adopted under any prior
6 enabling acts, and all actions taken under the authority of any
7 such ordinances, are hereby validated and continued in effect
8 until amended or repealed by action of the governing body of
9 the municipality or the county taken under authority of this
10 article. These ordinances shall have the same effect as though
11 previously adopted as a comprehensive plan of land use or parts
12 thereof.

13 (c) Land, buildings or structures in use when a zoning
14 ordinance is enacted can continue the same use and such use
15 cannot be prohibited by the zoning ordinance so long as the use
16 of the land, buildings or structures is maintained, and no zoning
17 ordinance may prohibit alterations or additions to or replace-
18 ment of buildings or structures owned by any farm, industry or
19 manufacturer, or the use of land presently owned by any farm,
20 industry or manufacturer but not used for agricultural, industrial
21 or manufacturing purposes, or the use or acquisition of addi-
22 tional land which may be required for the protection, continuing

23 development or expansion of any agricultural, industrial or
24 manufacturing operation of any present or future satellite
25 agricultural, industrial or manufacturing use. A zoning ordi-
26 nance may provide for the enlargement or extension of a
27 nonconforming use, or the change from one nonconforming use
28 to another.

29 (d) If a use of a property that does not conform to the
30 zoning ordinance has ceased and the property has been vacant
31 for one year, abandonment will be presumed unless the owner
32 of the property can show that the property has not been aban-
33 doned: *Provided*, That neither the absence of natural resources
34 extraction or harvesting nor the absence of any particular
35 agricultural, industrial or manufacturing process may be
36 construed as abandonment of the use. If the property is shown
37 to be abandoned, then any future use of the land, buildings or
38 structures must conform with the provisions of the zoning
39 ordinance regulating the use where the land, buildings or
40 structures are located, unless the property is a duly designated
41 historic landmark, historic site or historic district.

42 (e) Nothing in this chapter authorizes an ordinance, rule
43 or regulation preventing, outside of urban areas, the complete
44 use of natural resources by the owner.

§8A-7-11. Variance.

1 (a) A variance is a deviation from the minimum standards
2 of the zoning ordinance and shall not involve permitting land
3 uses that are otherwise prohibited in the zoning district nor shall
4 it involve changing the zoning classifications of a parcel of
5 land.

6 (b) The board of zoning appeals shall grant a variance to the
7 zoning ordinance if it finds that the variance:

8 (1) Will not adversely affect the public health, safety or
9 welfare, or the rights of adjacent property owners or residents;

10 (2) Arises from special conditions or attributes which
11 pertain to the property for which a variance is sought and which
12 were not created by the person seeking the variance;

13 (3) Would eliminate an unnecessary hardship and permit a
14 reasonable use of the land; and

15 (4) Will allow the intent of the zoning ordinance to be
16 observed and substantial justice done.

§8A-7-12. Validation of prior zoning ordinance.

1 All zoning ordinances, all amendments, supplements and
2 changes to the ordinance, legally adopted under prior acts, and
3 all action taken under the authority of the ordinance, are hereby
4 validated and the ordinance shall continue in effect until
5 amended or repealed by action of the governing body taken
6 under authority of this article.

§8A-7-13. Process to replace nontraditional zoning ordinance.

1 (a) A governing body that has adopted or enacted a nontra-
2 ditional zoning ordinance may replace the nontraditional zoning
3 ordinance with a zoning ordinance. A nontraditional zoning
4 ordinance may be replaced with a zoning ordinance by:

5 (1) The governing body; or

6 (2) A petition by the voters in the affected area. If the
7 voters petition to replace the nontraditional zoning ordinance
8 with a zoning ordinance, then the provisions of this section and
9 this chapter shall be followed.

10 (b) At least fifteen percent of the total eligible voters in the
11 affected area may petition the governing body to replace the

12 nontraditional zoning ordinance with a zoning ordinance. The
13 petition must include:

14 (1) The governing body's name to which the petition is
15 addressed;

16 (2) The reason for the petition, including:

17 (A) Replacing the nontraditional zoning ordinance with a
18 zoning ordinance; and

19 (B) That the question of replacing the nontraditional zoning
20 ordinance with a new zoning ordinance be put to the voters of
21 the affected area; and

22 (3) Signatures in ink or permanent marker.

23 (c) Each person signing the petition must be a registered
24 voter in the affected area and in the governing body's jurisdic-
25 tion. The petition must be delivered to the clerk of the affected
26 governing body. There are no time constraints on the petition.

27 (d) Upon receipt of the petition with the required number of
28 qualifying signatures, the governing body shall place the
29 question on the next special, primary or general election ballot.
30 Notice for an election on replacing a zoning ordinance must be
31 published in a local newspaper of general circulation in the area
32 affected by the nontraditional zoning ordinance, as a Class II-0
33 legal advertisement, in accordance with the provisions of article
34 three, chapter fifty-nine of this code.

35 (e) The ballots for an election on replacing a zoning
36 ordinance shall have the following:

37 "Shall _____ (name of governing body) replace
38 _____ (name of commonly known nontraditional zoning
39 ordinance) with a zoning ordinance?"

40 Yes

41 No”

42 (f) Upon a majority vote of the voters voting in favor of
43 replacing a non-traditional zoning ordinance with a zoning
44 ordinance, the governing body shall immediately begin the
45 process of adopting and enacting a zoning ordinance, in
46 accordance with the provisions of chapter eight-a of this code.
47 The governing body has a maximum of three years from the
48 date of the election to adopt a zoning ordinance.

49 (g) The governing body may amend its nontraditional
50 zoning ordinance during the process of adopting and enacting
51 a zoning ordinance.

52 (h) If a majority of the voters reject replacing the nontradi-
53 tional zoning ordinance with a zoning ordinance, the affected
54 voters may not petition for a vote on the issue for at least two
55 years from the date of the election.

56 (i) Nothing in this section shall prevent a governing body
57 from amending its zoning ordinance in accordance with this
58 chapter.

ARTICLE 8. BOARD OF ZONING APPEALS.

- §8A-8-1. Board of zoning appeals authorized.
- §8A-8-2. Continuation of established boards of zoning appeals.
- §8A-8-3. Municipal board of zoning appeals.
- §8A-8-4. County board of zoning appeals.
- §8A-8-5. Board of zoning appeals meetings.
- §8A-8-6. Quorum.
- §8A-8-7. Officers.
- §8A-8-8. Governing body's duties.
- §8A-8-9. Powers and duties of board of zoning appeals.
- §8A-8-10. Appeal to board of zoning appeals.
- §8A-8-11. Notice and hearing of appeal.
- §8A-8-12. Stays; exception.

PART I. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.

1 If a governing body adopts a zoning ordinance, then as part
2 of that zoning ordinance it shall create a board of zoning
3 appeals to hear appeals on zoning issues.

§8A-8-2. Continuation of established boards of zoning appeals.

1 A board of zoning appeals established prior to the effective
2 date of this chapter shall continue to operate as though estab-
3 lished under the terms of this chapter. All actions lawfully
4 taken under prior acts are hereby validated and continued in
5 effect until amended or repealed by action taken under the
6 authority of this chapter.

§8A-8-3. Municipal board of zoning appeals.

1 (a) A municipal board of zoning appeals shall have five
2 members to be appointed by the governing body of the munici-
3 pality.

4 (b) The members of a municipal board of zoning appeals
5 must be:

6 (1) Residents of the municipality for at least three years
7 preceding his or her appointment;

8 (2) Cannot be a member of the municipal planning commis-
9 sion; and

10 (3) Cannot hold any other elective or appointive office in
11 the municipal government.

12 (c) Upon the creation of a board of zoning appeals, the
13 members shall be appointed for the following terms: One for
14 a term of one year; two for a term of two years; and two for a

15 term of three years. The terms shall expire on the first day of
16 January of the first, second and third year, respectively,
17 following their appointment. Thereafter, members shall serve
18 three-year terms. If a vacancy occurs, the governing body of
19 the municipality shall appoint a member for the unexpired term.

20 (d) The governing body of the municipality may appoint up
21 to three additional members to serve as alternate members of
22 the municipal board of zoning appeals. The alternate members
23 must meet the same eligibility requirements as set out in
24 subsection (b) of this section. The term for an alternate
25 member is three years. The governing body of the municipality
26 may appoint alternate members on a staggered term schedule.

27 (e) An alternate member shall serve on the board when one
28 of the regular members is unable to serve. The alternate
29 member shall serve until a final determination is made in the
30 matter to which the alternate member was initially called on to
31 serve.

32 (f) The municipal board of zoning appeals shall establish
33 rules and procedures for designating an alternate member. An
34 alternate member shall have the same powers and duties of a
35 regular board member.

36 (g) The members and alternate members of a county board
37 of zoning appeals shall serve without compensation, but shall
38 be reimbursed for all reasonable and necessary expenses
39 actually incurred in the performance of their official duties.

§8A-8-4. County board of zoning appeals.

1 (a) A county board of zoning appeals shall have five
2 members to be appointed by the governing body of the county.

3 (b) The members of a county board of zoning appeals must
4 be:

5 (1) Residents of the county for at least three years preced-
6 ing his or her appointment;

7 (2) Cannot be a member of the county planning commis-
8 sion; and

9 (3) Cannot hold any other elective or appointive office in
10 the county government.

11 (c) Where only a portion of the county is zoned, the
12 members of the board of zoning appeals for that part of the
13 county that is zoned, must be:

14 (1) Residents of that part of the county that is zoned for at
15 least three years preceding his or her appointment;

16 (2) Cannot be a member of the county planning commis-
17 sion; and

18 (3) Cannot hold any other elective or appointive office in
19 the county government.

20 (d) Upon the creation of a board of zoning appeals, the
21 members shall be appointed for the following terms: One for
22 a term of one year; two for a term of two years; and two for a
23 term of three years. The terms shall expire on the first day of
24 January of the first, second and third year, respectively,
25 following their appointment. Thereafter, members shall serve
26 three-year terms. If a vacancy occurs, the governing body of
27 the county shall appoint a member for the unexpired term.

28 (e) The governing body of the county may appoint up to
29 three additional members to serve as alternate members of the
30 county board of zoning appeals. The alternate members must
31 meet the same eligibility requirements as set out in subsection
32 (b) or subsection (c) of this section, as applicable. The term for
33 an alternate member is three years. The governing body of the

34 county may appoint alternate members on a staggered term
35 schedule.

36 (f) An alternate member shall serve on the board when one
37 of the regular members is unable to serve. The alternate
38 member shall serve until a final determination is made in the
39 matter to which the alternate member was initially called on to
40 serve.

41 (g) The county board of zoning appeals shall establish rules
42 and procedures for designating an alternate member. An
43 alternate member shall have the same powers and duties of a
44 regular board member.

45 (h) The members and alternate members of a county board
46 of zoning appeals shall serve without compensation, but shall
47 be reimbursed for all reasonable and necessary expenses
48 actually incurred in the performance of their official duties.

§8A-8-5. Board of zoning appeals meetings.

1 (a) A board of zoning appeals shall meet quarterly and may
2 meet more frequently at the written request of the chairperson
3 or by two or more members.

4 (b) Notice for a special meeting must be in writing, include
5 the date, time and place of the special meeting, and be sent to
6 all members at least two days before the special meeting.

7 (c) Written notice of a special meeting is not required if the
8 date, time and place of the special meeting were set in a regular
9 meeting.

§8A-8-6. Quorum.

1 A board of zoning appeals must have quorum to conduct a
2 meeting. A majority of the members of a board of zoning

3 appeals is a quorum. No action of a board is official unless
4 authorized by a majority of the members present at a regular or
5 properly called special meeting.

§8A-8-7. Officers.

1 At its first regular meeting each year, a board of zoning
2 appeals shall elect a chairperson and vice chairperson from its
3 membership. The vice chairperson shall have the power and
4 authority to act as chairperson during the absence or disability
5 of the chairperson.

§8A-8-8. Governing body's duties.

1 The county commission in the case of a county board of
2 zoning appeals, and the governing body of the municipality in
3 the case of a municipal board of zoning appeals, shall provide
4 the board of zoning appeals with:

5 (1) Suitable offices for the holding of meetings and the
6 preservation of plans, maps, documents and accounts; and

7 (2) Appropriate money to defray the reasonable expenses
8 of the board.

§8A-8-9. Powers and duties of board of zoning appeals.

1 A board of zoning appeals has the following powers and
2 duties:

3 (1) Hear, review and determine appeals from an order,
4 requirement, decision or determination made by an administra-
5 tive official or board charged with the enforcement of a zoning
6 ordinance or rule and regulation adopted pursuant thereto;

7 (2) Authorize exceptions to the district rules and regulations
8 only in the classes of cases or in particular situations, as
9 specified in the zoning ordinance;

10 (3) Hear and decide conditional uses of the zoning ordi-
11 nance upon which the board is required to act under the zoning
12 ordinance;

13 (4) Authorize, upon appeal in specific cases, a variance to
14 the zoning ordinance;

15 (5) Reverse, affirm or modify the order, requirement,
16 decision or determination appealed from and have all the
17 powers and authority of the official or board from which the
18 appeal was taken;

19 (6) Adopt rules and regulations concerning:

20 (A) The filing of appeals, including the process and forms
21 for the appeal;

22 (B) Applications for variances and conditional uses;

23 (C) The giving of notice; and

24 (D) The conduct of hearings necessary to carry out the
25 board's duties under the terms of this article;

26 (7) Keep minutes of its proceedings;

27 (8) Keep an accurate and complete audio record of all the
28 board's proceedings and official actions and keep the audio
29 record in a safe manner, which audio record is accessible within
30 twenty-four hours of demand, for three years;

31 (9) Record the vote on all actions taken;

32 (10) Take responsibility for the custody and preservation of
33 all papers and documents of the board. All minutes and records
34 shall be filed in the office of the board and shall be public
35 records;

36 (11) With consent from the governing body, hire employees
37 necessary to carry out the duties and responsibilities of the
38 board: *Provided*, That the governing body sets the salaries; and

39 (12) Supervise the fiscal affairs and responsibilities of the
40 board.

PART II. APPEAL PROCESS TO BOARD OF ZONING APPEALS.

§8A-8-10. Appeal to board of zoning appeals.

1 (a) An appeal from any order, requirement, decision or
2 determination made by an administrative official or board
3 charged with the enforcement of a zoning ordinance, or rule and
4 regulation adopted pursuant to a zoning ordinance, shall be filed
5 with the board of zoning appeals.

6 (b) The appeal shall:

7 (1) Specify the grounds of the appeal;

8 (2) Be filed within thirty days of the original order, require-
9 ment, decision or determination made by an administrative
10 official or board charged with the enforcement of a zoning
11 ordinance; and

12 (3) Be on a form prescribed by the board.

13 (c) Upon request of the board of zoning appeals, the
14 administrative official or board shall transmit all documents,
15 plans and papers constituting the record of the action from
16 which the appeal was taken.

§8A-8-11. Notice and hearing of appeal.

1 (a) Within ten days of receipt of the appeal by the board of
2 zoning appeals, the board shall set a time for the hearing of the

3 appeal and give notice. The hearing on the appeal must be held
4 within forty-five days of receipt of the appeal by the board.

5 (b) At least fifteen days prior to the date set for the hearing
6 on the appeal, the board of zoning appeals shall publish a notice
7 of the date, time and place of the hearing on the appeal as a
8 Class I legal advertisement in compliance with the provisions
9 of article three, chapter fifty-nine of this code, and written
10 notice shall be given to the interested parties. The publication
11 area shall be the area covered in the appeal.

12 (c) The board of zoning appeals may require the party
13 taking the appeal to pay for the cost of public notice and written
14 notice to interested parties.

15 (d) At the hearing, any party may appear in person, by
16 agent or by an attorney licensed to practice in this state.

17 (e) Every decision by the board must be in writing and state
18 findings of fact and conclusions of law on which the board
19 based its decision. If the board fails to provide findings of fact
20 and conclusions of law adequate for decision by the circuit
21 court, and as a result of the failure, the circuit court returns an
22 appealed matter to the board and dismisses jurisdiction over an
23 applicant's appeal without deciding the matter, whether the
24 court returns the matter with or without restrictions, the board
25 shall pay any additional costs for court filing fees, service of
26 process and reasonable attorneys' fees required to permit the
27 person appealing the board's decision to return the matter to the
28 circuit court for completion of the appeal.

§8A-8-12. Stays; exception.

1 When an appeal has been filed with the board of zoning
2 appeals, all proceedings and work on the premises in question
3 shall be stayed, unless the official or board from where the
4 appeal was taken certifies in writing to the board of zoning

5 appeals, that a stay would cause imminent peril to life or
 6 property. If the written certification is filed, proceedings or
 7 work on the premises shall not be stayed. Nothing in this
 8 section prevents obtaining a restraining order.

ARTICLE 9. APPEAL PROCESS.

§8A-9-1. Petition for writ of certiorari.

§8A-9-2. Notice to adverse parties.

§8A-9-3. Court action on petition.

§8A-9-4. Stay of work on allowance of writ.

§8A-9-5. Return to writ.

§8A-9-6. Action by circuit court or judge.

§8A-9-7. Appeal from final judgment of circuit court or judge.

§8A-9-1. Petition for writ of certiorari.

1 (a) Every decision or order of the planning commission,
 2 board of subdivision and land development appeals, or board of
 3 zoning appeals is subject to review by certiorari.

4 (b) Within thirty days after a decision or order by the
 5 planning commission, board of subdivision and land develop-
 6 ment appeals, or board of zoning appeals, any aggrieved person
 7 may present to the circuit court of the county in which the
 8 affected premises are located, a duly verified petition for a writ
 9 of certiorari setting forth:

10 (1) That the decision or order by the planning commission,
 11 board of subdivision and land development appeals, or board of
 12 zoning appeals is illegal in whole or in part; and

13 (2) Specify the grounds of the alleged illegality.

§8A-9-2. Notice to adverse parties.

1 (a) Upon filing a petition for a writ of certiorari with the
 2 clerk of the circuit court of the county in which the affected

3 premises are located, the petitioner shall cause a notice to be
4 issued and served by the sheriff of the county upon:

5 (1) The adverse party, as shown by the record of the appeal
6 in the office of the planning commission, board of subdivision
7 and land development appeals, or board of zoning appeals; and

8 (2) The chairperson or secretary of the planning commis-
9 sion, board of subdivision and land development appeals, or
10 board of zoning appeals, as applicable.

11 (b) The adverse party is any property owner appearing at
12 the hearing before the planning commission, board of subdivi-
13 sion and land development appeals, or board of zoning appeals
14 in opposition to the petitioner.

15 (c) If the record shows a written document containing the
16 names of more than three property owners opposing the request
17 of the petitioner, then the petitioner is required to cause notice
18 to be issued and served upon the three property owners whose
19 names first appear upon the written document. Notice to the
20 other parties named in the written document is not required.

21 (d) The notice shall:

22 (1) State that a petition for a writ of certiorari has been filed
23 in the circuit court of the county asking for a review of the
24 decision or order of the planning commission, board of subdivi-
25 sion and land development appeals, or board of zoning appeals;

26 (2) Designate the affected premises; and

27 (3) Specify the date of the decision or order that is the
28 subject of the petition for a writ of certiorari.

29 (e) Service of the notice by the sheriff on the chairperson or
30 secretary of the planning commission, board of subdivision and

31 land development appeals, or board of zoning appeals shall
32 constitute notice to the commission or boards. Service of the
33 notice by the sheriff to the governing body and to any official
34 or board thereof charged with the enforcement of the subdivi-
35 sion and land development ordinance, subdivision or land
36 development plan and plat, or zoning ordinance. No further
37 summons or notice with reference to the filing of such petition
38 shall be necessary.

39 (f) As an alternative to the requirements for notice pre-
40 scribed in the preceding subsections of this section, notice is
41 sufficient upon a showing that the chairperson or secretary of
42 the planning commission, board of subdivision and land
43 development appeals, or board of zoning appeals and all
44 adjacent landowners to the affected premises have received
45 personal service of process of the notice containing information
46 as required in subsection (d) of this section. As to all other
47 interested parties, notice shall be sufficient if notice containing
48 information as required in subsection (d) of this section, is
49 published as a Class III-0 legal advertisement, in the county or
50 counties wherein the affected premises are located.

§8A-9-3. Court action on petition.

1 (a) Within twenty days after a petition for a writ of certio-
2 rari is presented, the planning commission, board of subdivision
3 and land development appeals, or board of zoning appeals must
4 show the circuit court, or a judge in vacation, of the county in
5 which the affected premises are located, cause why a writ of
6 certiorari should not be issued.

7 (b) If the planning commission, board of subdivision and
8 land development appeals, or board of zoning appeals fails to
9 show the court or judge that a writ should not be issued, then
10 the court or judge may allow a writ of certiorari directed to the
11 planning commission, board of subdivision and land develop-
12 ment appeals, or board of zoning appeals.

13 (c) The writ shall prescribe the time in which a return shall
14 be made to it. This time shall be not less than ten days from the
15 date of issuance of the writ and may be extended by the court
16 or judge.

§8A-9-4. Stay of work on allowance of writ.

1 (a) The allowance of the writ of certiorari shall not stay
2 proceedings or work on the premises affected by the decision or
3 order to be brought up for review.

4 (b) The court or judge may, upon application and on notice
5 to all parties to the decision or order and on due cause shown,
6 grant such relief as the circumstances of the case may require,
7 including an order staying the proceedings or work until final
8 determination of the case by the court or judge.

9 (c) The staying order may be issued by the court or judge
10 without requiring the petitioner to enter into a written undertak-
11 ing with the adverse party or parties affected thereby for the
12 payment of damages by reason of such staying order.

§8A-9-5. Return to writ.

1 (a) The return to the writ of certiorari by the planning
2 commission, board of subdivision and land development
3 appeals, or board of zoning appeals must concisely set forth the
4 pertinent facts and data and present material to show the
5 grounds of the decision or order appealed. The return must be
6 verified by the secretary of the planning commission, board of
7 subdivision and land development appeals, or board of zoning
8 appeals.

9 (b) The planning commission, board of subdivision and
10 land development appeals, or board of zoning appeals does not
11 have to return the original papers acted upon by it. It shall be

12 sufficient to return certified copies of all or such portion of the
13 papers as may be called for by the writ.

§8A-9-6. Action by circuit court or judge.

1 (a) The court or judge may consider and determine the
2 sufficiency of the allegations of illegality contained in the
3 petition without further pleadings and may make a determina-
4 tion and render a judgment with reference to the legality of the
5 decision or order of the planning commission, board of subdivi-
6 sion and land development appeals, or board of zoning appeals
7 on the facts set out in the petition and return to the writ of
8 certiorari.

9 (b) If it appears to the court or judge that testimony is
10 necessary for the proper disposition of the matter, the court or
11 judge may take evidence to supplement the evidence and facts
12 disclosed by the petition and return to the writ of certiorari, but
13 no such review shall be by trial de novo.

14 (c) In passing upon the legality of the decision or order of
15 the planning commission, board of subdivision and land
16 development appeals, or board of zoning appeals, the court or
17 judge may reverse, affirm or modify, in whole or in part, the
18 decision or order.

§8A-9-7. Appeal from final judgment of circuit court or judge.

1 An appeal may be taken to the West Virginia Supreme
2 Court of Appeals from the final judgment of the court or judge
3 reversing, affirming or modifying the decision or order of the
4 planning commission, board of subdivision and land develop-
5 ment appeals, or board of zoning appeals within the same time,
6 in the same manner, and upon the same terms, conditions and
7 limitations as appeals in other civil cases.

ARTICLE 10. ENFORCEMENT PROVISIONS.

§8A-10-1. Enforcement.

§8A-10-2. Penalty.

§8A-10-3. Injunction.

§8A-10-4. Special provisions.

§8A-10-5. General repealer.

§8A-10-1. Enforcement.

1 The governing body of a municipality or county may:

2 (1) Enforce penalties, set out in section two of this article,
3 for failure to comply with the provisions of any ordinance or
4 rule and regulation adopted pursuant to the provisions of this
5 chapter; and

6 (2) Declare that any buildings erected, raised or converted,
7 or land or premises used in violation of any provision of any
8 ordinance or rule and regulation adopted under the authority of
9 this chapter shall be a common nuisance and the owner of the
10 building, land or premises shall be liable for maintaining a
11 common nuisance.

§8A-10-2. Penalty.

1 A person who violates any provision of this chapter is
2 guilty of a misdemeanor, and upon conviction, shall be fined
3 not less than fifty dollars nor more than five hundred dollars.

§8A-10-3. Injunction.

1 (a) The planning commission, board of subdivision and
2 land development appeals, the board of zoning appeals or any
3 designated enforcement official may seek an injunction in the
4 circuit court of the county where the affected property is
5 located, to restrain a person or unit of government from
6 violating the provisions of this chapter or of any ordinance or
7 rule and regulation adopted pursuant hereto.

8 (b) The planning commission, board of subdivision and
9 land development appeals, the board of zoning appeals or any
10 designated enforcement official may also seek a mandatory
11 injunction in the circuit court where the affected property is
12 located, directing a person or unit of government to remove a
13 structure erected in violation of the provisions of this chapter or
14 of any ordinance or rule and regulation adopted pursuant hereto.

15 (c) If the planning commission, board of subdivision and
16 land development appeals, the board of zoning appeals or the
17 designated enforcement official is successful in any such suit,
18 the respondent shall bear the costs of the action.

§8A-10-4. Special provisions.

1 (a) The planning and zoning provisions of this chapter are
2 supplemental to and do not abrogate the powers and authority
3 extended to agencies, bureaus, departments, commissions,
4 divisions and officials of the state government by other state
5 statute and those powers and authority shall remain in full force
6 and effect.

7 (b) The powers of supervision and regulation by the
8 divisions of the state government over municipal, county and
9 other local governmental units and persons are also not abro-
10 gated and shall continue in full force and effect.

§8A-10-5. General repealer.

1 All acts or parts of acts, including special legislative
2 charters, inconsistent with the provisions of this chapter are
3 hereby repealed to the extent of their inconsistency, except as
4 provided in this chapter.

ARTICLE 11. SPECIAL PROVISIONS.

§8A-11-1. Standards for factory-built homes.

§8A-11-2. Permitted use for group residential facility.

§8A-11-1. Standards for factory-built homes.

1 (a) Notwithstanding any existing provisions of law,
2 municipal or county ordinance, or local building code, but
3 excluding any provisions relating to zoning or land use control,
4 the standards for factory-built homes, housing prototypes,
5 subsystems, materials and components certified as acceptable
6 by the federal department of housing and urban development
7 are considered acceptable and are approved for use in housing
8 construction in this state.

9 (b) A certificate from the state director of the federal
10 housing administration of the department of housing and urban
11 development shall constitute prima facie evidence that the
12 products or materials listed therein are acceptable and such
13 certificates shall be furnished by the building contractor to any
14 local building inspector or other local housing authority upon
15 request.

§8A-11-2. Permitted use for group residential facility.

1 (a) A group residential facility as defined in article seven-
2 teen, chapter twenty-seven of this code, shall be a permitted
3 residential use of property for the purposes of zoning and is a
4 permitted use in zones or districts where single family dwelling
5 units or multifamily dwelling units are permitted.

6 (b) A governing body of a municipality or a county, and a
7 planning commission, cannot discriminate in regard to housing
8 and cannot require a group residential facility or its owner or
9 operator, to obtain a conditional use permit, special use permit,
10 special exception or variance to locate a group residential
11 facility in a zone or district where single family dwelling units
12 or multi-family dwelling units are permitted.

- 13 (c) The provisions of this section do not exempt any group
 14 residential facility from the structural requirements of any bona
 15 fide historic preservation district.

ARTICLE 12. VOLUNTARY FARMLAND PROTECTION PROGRAMS.

- §8A-12-1. Legislative findings and purpose.
 §8A-12-2. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.
 §8A-12-3. Content and requirements of farmland protection programs.
 §8A-12-4. Farmland protection boards -- appointment, composition, terms.
 §8A-12-5. Farmland protection boards -- powers.
 §8A-12-6. Farmland protection board duties.
 §8A-12-7. West Virginia agricultural land protection authority -- established.
 §8A-12-8. West Virginia agricultural land protection authority -- board of trustees.
 §8A-12-9. West Virginia agricultural land protection authority -- powers.
 §8A-12-10. West Virginia agricultural land protection authority -- duties.
 §8A-12-11. Definitions.
 §8A-12-12. Methods of farmland protection.
 §8A-12-13. Offer of conservation or preservation easements.
 §8A-12-14. Value of conservation or preservation easement.
 §8A-12-15. Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority.
 §8A-12-16. Use of land for which conservation or preservation easement acquired.
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 §8A-12-19. Classification of land subject to conservation or preservation easement.
 §8A-12-20. Authorization for commissioner of agriculture to promulgate proposed rules.
 §8A-12-21. Tax on privilege of transferring real property.

§8A-12-1. Legislative findings and purpose.

- 1 (a) The Legislature hereby finds and declares that agricul-
 2 ture is a unique "life support" industry and that a need exists to
 3 assist those agricultural areas of the state which are experienc-
 4 ing the irreversible loss of agricultural land.

5 (b) It is the intent of the Legislature to provide persons and
6 other entities an opportunity to voluntarily protect agricultural
7 land and woodland in order to:

8 (1) Assist in sustaining the farming community;

9 (2) Provide sources of agricultural products within the state
10 for the citizens of the state;

11 (3) Control the urban expansion which is consuming the
12 agricultural land, topsoil and woodland of the state;

13 (4) Curb the spread of urban blight and deterioration;

14 (5) Protect agricultural land and woodland as open-space
15 land;

16 (6) Enhance tourism; and

17 (7) Protect worthwhile community values, institutions and
18 landscapes which are inseparably associated with traditional
19 farming.

20 (c) Further, it is the intent of the Legislature to establish a
21 West Virginia agricultural land protection authority, hereinafter
22 "authority", to assist persons, other entities and counties to
23 obtain funding from any source available to accomplish the
24 purposes of the voluntary farmland protection programs.

**§8A-12-2. County farmland protection programs and farmland
protection boards authorized; authority of county
commission to approve purchase of farmland
easements; expense reimbursement of actual
expenses for the board members.**

1 (a) The county commission of each county may adopt and
2 implement a farmland protection program within the county.
3 The county commission of each county which decides to adopt
4 and implement a farmland protection program shall appoint a

5 farmland protection board. The farmland protection board shall
6 administer on behalf of the county commission all matters
7 concerning farmland protection. The county commission has
8 final approval authority for any and all purchases of easements
9 for the farmland protection program by the board.

10 (b) The farmland protection board shall adopt bylaws
11 prescribing the board's officers, meeting dates, record-keeping
12 procedures, meeting attendance requirements and other internal
13 operational procedures. The member of the farmland protection
14 board who is a county commissioner shall serve as temporary
15 chairman of the board until the board's bylaws are adopted and
16 until the board's officers are selected as prescribed by those
17 bylaws. The farmland protection board shall prepare a docu-
18 ment proposing a farmland protection program which is
19 consistent with the Legislature's intent.

20 (c) Each member of the board shall receive expense
21 reimbursement for actual expenses incurred while engaged in
22 the discharge of official duties, the actual expenses not to
23 exceed the amount paid to members of the Legislature.

§8A-12-3. Content and requirements of farmland protection programs.

1 (a) An adopted farmland protection program shall include
2 only those qualifying properties which are voluntarily offered
3 into the program by the landowners of the properties.

4 (b) An adopted farmland protection program shall meet the
5 following minimum requirements:

6 (1) The program shall be developed by the county farmland
7 protection board and approved by the county commission. The
8 county farmland protection board, in consultation with the local
9 conservation district, shall administer the farmland protection
10 program;

11 (2) The board shall establish uniform standards and
12 guidelines for the eligibility of properties for the program. The
13 standards and guidelines shall take into consideration the
14 following: Current and past uses of the property; existing
15 property improvements, property tract size and shape; location
16 of the property tract in relation to other potential agricultural
17 property tracts; impending threat of conversion of the property
18 to nonagricultural uses; property ownership and existing deed
19 covenants; and restrictions with respect to the property; and

20 (3) The guidelines established by the board shall outline the
21 various methods of farmland protection which are available to
22 prospective participating property owners and the procedures to
23 be followed in applying for program consideration.

§8A-12-4. Farmland protection boards – appointment, composition, terms.

1 (a) *Composition.* -- A farmland protection board shall be
2 composed of seven members, each serving without compensa-
3 tion. Membership on the farmland protection board shall
4 consist of the following: One county commissioner; the
5 executive director of the county development authority; one
6 farmer who is a county resident and a member of the county
7 farm bureau; one farmer who is a county resident and a member
8 of a conservation district; one farmer who is a county resident;
9 and two county residents who are not members of any of the
10 foregoing organizations. All members of the farmland protec-
11 tion board shall be voting members, except the county commis-
12 sioner who shall serve in an advisory capacity as a nonvoting
13 member.

14 (b) *Terms.* -- Each member of a farmland protection board
15 shall be appointed for a term of office of four years except the
16 initial appointment of two voting board members shall be for a
17 term of two years:

18 (1) No member may serve for more than two consecutive
19 full terms; and

20 (2) An appointment to fill a vacancy shall be for the
21 remainder of the unexpired term.

§8A-12-5. Farmland protection boards – powers.

1 A farmland protection board has the following general
2 powers:

3 (a) *Power to sue.* -- To sue and be sued in contractual
4 matters in its own name;

5 (b) *Power to contract.* -- To enter into contracts generally
6 and to execute all instruments necessary or appropriate to carry
7 out its purposes;

8 (c) *Power to restrict use of land.* -- To acquire or cohold, by
9 gift, purchase, devise, bequest or grant, easements in gross, fee
10 or other rights to restrict the use of agricultural land and
11 woodland as may be designated to maintain the character of the
12 land as agricultural land or woodland: *Provided,* That the
13 county commission has final approval authority for any and all
14 purchases of easements for the farmland protection program by
15 the board;

16 (d) *Power to implement rules.* -- To implement rules
17 necessary to achieve the purposes of the voluntary farmland
18 protection programs;

19 (e) *Power to disseminate information.* -- To promote the
20 dissemination of information throughout the county concerning
21 the activities of the farmland protection board; and

22 (f) *Power to seek funding.* -- To pursue and apply for any
23 and all county, state, federal and private funding available,

24 consistent with the purpose of the voluntary farmland protection
25 programs.

§8A-12-6. Farmland protection board duties.

1 The duties of each farmland protection board are as
2 follows:

3 (a) To report to the county commission with respect to the
4 acquisition of easements by the farmland protection board
5 within the county and to obtain final approval authority for any
6 and all purchases of easements for the farmland protection
7 program by the board;

8 (b) To advise the authority concerning county priorities for
9 agricultural protection;

10 (c) To promote protection of agriculture within the county
11 by offering information and assistance to landowners with
12 respect to the acquisition of easements;

13 (d) To seek and apply for all available funds from federal,
14 state, county and private sources to accomplish the purposes of
15 the voluntary farmland protection programs; and

16 (e) To perform any other duties assigned by the county
17 commission.

**§8A-12-7. West Virginia agricultural land protection authority
– established.**

1 A West Virginia agricultural land protection authority is
2 established within the department of agriculture. The authority
3 has the powers and duties provided in this article.

**§8A-12-8. West Virginia agricultural land protection authority
– board of trustees.**

1 (a) *Composition; chairman; quorum; qualifications.* -- The
2 authority established on the first day of July, two thousand two,
3 shall be governed and administered by a board of trustees
4 composed of the state treasurer, the auditor and the commis-
5 sioner of agriculture, who shall serve as ex officio members,
6 and nine members to be appointed by the governor, by and with
7 the advice and consent of the Senate, at least five of whom shall
8 be representative of farmers from different areas of the state.
9 The state treasurer, auditor and the commissioner of agriculture
10 may appoint designees to serve on the board of trustees. One
11 of the appointed members who is not a representative of
12 farmers shall be a representative of the division of natural
13 resources; one of the appointed members who is not a represen-
14 tative of farmers shall be a representative of the conservation
15 district; and one of the appointed members who is not a
16 representative of farmers shall be a representative of an I.R.C.
17 501(c)(3) qualified land trust. Three of the five representatives
18 of farmers shall be appointed as follows:

19 (1) Two from a list of five nominees submitted by the West
20 Virginia department of agriculture; and

21 (2) One from a list of three nominees submitted by the West
22 Virginia farm bureau.

23 The governor shall appoint the chairman of the board from
24 among the nine appointed members. A majority of the mem-
25 bers of the board serving at any one time constitutes a quorum
26 for the transaction of business.

27 Notwithstanding any provision of law to the contrary, a
28 person may be appointed to and serve on the board as an
29 appointed member even if prior to the appointment the person
30 conveyed an easement on the person's land to the authority.

31 (b) *Terms.* -- (1) The governor, with the advice and consent
32 of the Senate, shall appoint the nine members for the following
33 terms:

34 (A) Three for a term of four years;

35 (B) Three for a term of three years; and

36 (C) Three for a term of two years.

37 (2) Successors to appointed members whose terms expire
38 shall be appointed for terms of four years. Vacancies shall be
39 filled for the unexpired term. An appointed member may not
40 serve more than two successive terms. Appointment to fill a
41 vacancy may not be considered as one of two terms.

42 (c) *Oath.* -- Appointed members shall take the oath of office
43 as prescribed by law.

44 (d) *Compensation and expenses.* -- Members shall not
45 receive compensation. Each member of the board shall receive
46 expense reimbursement for actual expenses incurred while
47 engaged in the discharge of official duties, the actual expenses
48 not to exceed the amount paid to members of the Legislature.

**§8A-12-9. West Virginia agricultural land protection authority
– powers.**

1 The authority has the following general powers:

2 (a) *Power to sue.* -- To sue and be sued in contractual
3 matters in its own name;

4 (b) *Power to contract.* -- To enter into contracts generally
5 and to execute all instruments necessary or appropriate to carry
6 out its purposes;

7 (c) *Power to restrict use of land.* -- To acquire or cohold, by
8 gift, purchase, devise, bequest or grant, easements in gross, fee
9 or other rights to restrict the use of agricultural land and
10 woodland as may be designated to maintain the character of the
11 land as agricultural land or woodland;

12 (d) *Power to disseminate information.* -- To promote the
13 dissemination of information throughout the state concerning
14 the activities of the farmland protection board; and

15 (e) *Power to seek funding.* -- To pursue and apply for any
16 and all state, federal and private funding available consistent
17 with the purpose of the voluntary farmland protection pro-
18 grams.

**§8A-12-10. West Virginia agricultural land protection authority
– duties.**

1 The authority shall:

2 (a) Disseminate information regarding agricultural land
3 protection and promote the protection of agricultural land;

4 (b) Assist county farmland protection boards in applying
5 for and obtaining all state and federal funding available
6 consistent with the purposes of the farmland protection pro-
7 grams;

8 (c) Upon request of a farmland protection board, provide
9 technical and legal services necessary to procure, acquire, draft,
10 file and record conservation and preservation easements;

11 (d) Prepare and file electronically with the governor's
12 office and with the Legislature by the thirty-first day of August
13 of each year a report including, but not limited to, the following
14 information:

15 (1) The cost per easement obtained;

16 (2) The identity of all applicants for conservation and
17 preservation easements; and

18 (3) The identity of all applicants from whom conservation
19 and preservation easements have been acquired;

20 (e) Seek and apply for all available funds from federal, state
21 and private sources to accomplish the purposes of the farmland
22 protection programs.

§8A-12-11. Definitions.

1 For purposes of the voluntary farmland protection pro-
2 grams, the following terms have the meanings set forth in this
3 section.

4 (a) *Acquisition of easement.* -- The holding or coholding of
5 land-use restrictions as defined in this article, whether obtained
6 through purchase, gift, devise, bequest, grant or contract to
7 cohold with another holder.

8 (b) *Conservation easement.* -- This article incorporates the
9 definition of a conservation easement found in section three,
10 article twelve, chapter twenty of this code, except that a
11 conservation easement created under this article must be held
12 or coheld by at least one "holder" as defined in that section in
13 perpetuity.

14 (c) *Farm, farmland or agricultural land.* -- A tract, or
15 contiguous tracts of land, of any size, used or useable for
16 agriculture, horticulture or grazing and includes all real
17 property designated as wetlands that are part of a property used
18 or useable as farmland.

19 (d) *Preservation easement.* -- This article incorporates the
20 definition of a preservation easement found in section three,
21 article twelve, chapter twenty of this code, except that a

22 preservation easement created under this article must be held or
23 coheld by at least one "holder" as defined in that section and
24 must be perpetual in its duration.

25 (e) *Woodland*. -- Woodland shall be considered land of a
26 farm only if it is part of or appurtenant to a tract of land which
27 is a farm, or held by common ownership of a person or entity
28 owning a farm, but in no event may woodland include land used
29 primarily in commercial forestry or the growing of timber for
30 commercial purposes or any other use inconsistent with farm
31 use.

32 (f) *Opt-out provision*. -- A provision which may be inserted
33 into any conservation or preservation easement agreement
34 entered into pursuant to this article which would act as a
35 mechanism to place the easement selling price into an escrow
36 fund for the purpose of allowing the owner or owners up to five
37 years to rescind the decision to enter into the farmland protec-
38 tion program.

§8A-12-12. Methods of farmland protection.

1 (a) The authority or a county farmland protection board
2 may negotiate with and compensate eligible property owners to
3 ensure the protection of farmland within the county or state.
4 Methods of protecting farmland may include, but are not
5 limited to, the following:

6 (1) *Acquisition of conservation easement or preservation*
7 *easement*. -- With the consent of a property owner, the county
8 farmland protection board or the authority may acquire and
9 place on record a conservation or preservation easement.
10 Acquired easements apply only to those properties which
11 qualify for consideration under the terms established by an
12 adopted farmland protection program; and

13 (2) *Acquisition of land and disposition.* -- With the consent
14 of a property owner, the county farmland protection board or
15 the authority may acquire any property which qualifies for
16 agricultural protection under terms established by an adopted
17 farmland protection program. The county farmland protection
18 board or the authority may lease, as lessor, acquired property
19 for agricultural uses or may restrict the property to agricultural
20 uses and sell the property at fair market value for use as a farm.
21 Any property acquired by a county farmland protection board
22 or the authority and then sold shall be sold subject to a conser-
23 vation or preservation easement. If the property is leased, the
24 lessee shall pay to the county commission, in addition to rent,
25 an annual fee set by the county commission. The amount of
26 this annual fee shall be commensurate with the amount of
27 property taxes which would be assessed in accordance with the
28 provisions of this code upon the property if the property were
29 held by a private landowner.

30 (b) Revenues from the sale of properties restricted to
31 agricultural uses shall be used to recover the original purchase
32 costs of the properties and shall be returned to the applicable
33 funds which were used by the county farmland protection board
34 or the authority to purchase the property. Any profits resulting
35 from the sale of property restricted to agricultural uses shall be
36 deposited in a farmland protection fund.

§8A-12-13. Offer of conservation or preservation easements.

1 (a) *Owner may offer to sell or donate a conservation or*
2 *preservation easement.* -- An owner of farmland may offer by
3 written application to sell or donate a conservation or preserva-
4 tion easement on all or any portion of the farm to a county
5 farmland board or the authority.

6 (b) *Requirements for application to sell or donate.* -- In
7 order to be considered by a county farmland protection board or
8 the authority, an application to sell or donate shall:

9 (1) Include an asking price, if any, at which the owner is
10 willing to sell a conservation or preservation easement and shall
11 specify the terms under which the offer is made; and

12 (2) Include a complete description of the land, including,
13 but not limited to, an itemization of all debts secured by the
14 land and the identity and amount of all liens.

§8A-12-14. Value of conservation or preservation easement.

1 (a) *Maximum value.* -- The maximum value of any conser-
2 vation or preservation easement acquired by the county
3 farmland protection board or the authority is the asking price or
4 the difference between the fair market value of the land and the
5 agricultural value of the land, whichever is lower.

6 (b) *Fair market value.* -- The fair market value of the land
7 is the price as of the valuation date for the highest and best use
8 of the property which a vendor, willing but not obligated to sell,
9 would accept for the property, and which a purchaser, willing
10 but not obligated to buy, would pay for the property if the
11 property was not subject to any restriction imposed under this
12 article.

13 (c) *Agricultural value.* -- The agricultural value of land is
14 the price as of the valuation date which a vendor, willing but
15 not obligated to sell, would accept for the property, and which
16 a purchaser, willing but not obligated to buy, would pay for the
17 property subject to the restrictions placed upon it by the
18 conservation or preservation easement.

19 (d) *Determination of values.* -- The value of the easement
20 is determined at the time the county farmland protection board
21 or the authority is requested in writing to acquire the easement.
22 The fair market value is determined by the county farmland
23 protection board or the authority based on one or more apprais-

24 als obtained by the county farmland protection board or the
25 authority, and appraisals, if any, of the landowner.

26 (e) *Arbitration.* -- If the landowner and the county farmland
27 protection board or the authority do not agree on the value of
28 the easement as determined by the state, the landowner, the
29 county farmland protection board or the authority may request
30 that the matter be referred to a mutually agreed upon mediator
31 for arbitration as to the value of the easement. The arbitration
32 shall be conducted in accordance with the rules promulgated by
33 the American arbitration association. The value determined at
34 arbitration is binding upon the owner and the county farmland
35 protection board or the authority in a purchase of the easement
36 made subsequent to the arbitration for a period of two years,
37 unless the landowner and the county farmland protection board
38 or the authority agree upon a lesser value or the landowner, the
39 county farmland protection board or the authority appeals the
40 results of the arbitration to the circuit court.

**§8A-12-15. Criteria for acquisition of conservation and preserva-
tion easements by county farmland protection
boards and the authority.**

1 The authority and county farmland protection boards, in
2 ranking applications for conservation and preservation ease-
3 ments, shall consider the following factors as priorities:

4 (a) The imminence of residential, commercial or industrial
5 development;

6 (b) The total acreage offered for conservation or preserva-
7 tion easement;

8 (c) The presence of prime farmland, unique farmland,
9 farmland of statewide importance, other locally significant
10 farmlands and the productive capacity of the acreage;

11 (d) Whether the property offered is contiguous or appurte-
12 nant to working farms;

13 (e) The ratio of the asking price, if any, of the easement to
14 the fair market value of the easement;

15 (f) The historical, architectural, archaeological, cultural,
16 recreational, natural, scenic, source water protection or unique
17 value of the easement: *Provided*, That determinations of the
18 authority or a county farmland protection board are not a
19 substitute for and do not have the effect of other procedures
20 under state or federal law for granting protected status to land,
21 including, but not limited to, procedures under the National
22 Historic Preservation Act of 1966, as amended, or rules of the
23 director of the historic preservation section of the division of
24 culture and history authorized in section eight, article one,
25 chapter twenty-nine of this code, or procedures under the
26 authority of the tourism commissioner or the parks and recre-
27 ation section of the division of natural resources;

28 (g) The existence and amount of secured debt upon the
29 property, as determined by a title search, and whether the total
30 exceeds the agricultural value of the land as determined by the
31 appraisal as required in subsection (d), section fourteen of this
32 article; and

33 (h) The length of the protective easement.

**§8A-12-16. Use of land for which conservation or preservation
easement acquired.**

1 (a) *Provisions to be included in conservation or preserva-*
2 *tion easement and county farmland protection board rules, or*
3 *the authority rules.* -- Farmland upon which a conservation or
4 preservation easement has been recorded may be used for the
5 following:

6 (1) Farm use;

7 (2) Businesses directly related to the retail sale of farm
8 products;

9 (3) Any activity performed for religious, charitable or
10 educational purposes or to foster tourism; and

11 (4) Any home-based business that does not require a
12 division of environmental protection permit to operate.

13 Notwithstanding any of the exceptions in this subsection,
14 any use of land under preservation or conservation easement
15 must be consistent with the purpose of the farmland protection
16 programs.

17 (b) *Use for commercial, industrial or residential purposes.*

18 -- Excepting existing and future uses described in subsections
19 (c), (d) and (e) of this section, a landowner whose land is
20 subject to a conservation or preservation easement may not
21 develop the land for any commercial, industrial, residential or
22 other nonfarm purpose. Nonresidential, noncommercial,
23 nonindustrial farm support buildings or structures are permitted.

24 (c) *Exclusion for single residential dwelling.* -- On request
25 to a county farmland protection board or the authority, an
26 owner may exclude two acres per each single residential
27 dwelling, which existed at the time of the sale of the easement,
28 from the easement prohibitions on residential development. A
29 land survey and recordation identifying each single residential
30 dwelling shall be provided at the expense of the owner.
31 However, before any exclusion is granted, an owner shall agree
32 with the county farmland protection board or the authority not
33 to subdivide further for residential purposes any acreage
34 allowed to be excluded. This agreement shall be recorded
35 among the land records where the land is located and shall bind
36 all future owners.

37 (d) *Exclusion for certain existing and future uses.* -- This
38 article neither abrogates nor creates any preexisting rights in the
39 land owned by any person not joining as a grantor of a conser-
40 vation or preservation easement. Neither the creation nor the
41 existence of a conservation or preservation easement shall
42 prevent existing or future use of the land based on a preexisting
43 right, or prevent any existing or future use consistent with state
44 law with respect to transmission and telecommunications
45 facilities' rights-of-way, easements and licenses.

46 (e) *Condemnation of private property for public use.* -- This
47 article neither abrogates nor creates any rights inconsistent with
48 state or federal law respecting the power of condemnation of
49 private property for public use. Any person or entity exercising
50 the power of eminent domain must pay compensation at not less
51 than the fair market value of the land to the court having
52 jurisdiction of the proceeding or as directed by the court. The
53 term "fair market value" as used in this subsection shall be
54 determined without regard to the existence of the conservation
55 or preservation easement. Neither the creation nor the existence
56 of a conservation or preservation easement shall prevent
57 acquisition of real property, or any right or interest in the
58 property, for public use.

§8A-12-17. Funding of farmland protection programs.

1 (a) *County funds.* --

2 (1) *Creation of county funds.* -- Once having created a
3 county farmland protection program, a county commission may
4 authorize the county farmland protection board to create and
5 maintain a farmland protection fund and hire staff as it consid-
6 ers appropriate.

7 (2) *Sources.* -- A county farmland protection fund is
8 comprised of:

9 (A) Any moneys not specifically limited to other uses and
10 dedicated to the fund by a county commission;

11 (B) Any moneys collected pursuant to section twenty-one
12 of this article;

13 (C) Any money made available to the fund by grants or
14 transfers from governmental or private sources; and

15 (D) Any money realized by investments, interest, dividends
16 or distributions.

17 (b) *State fund.* --

18 (1) *Created and continued.* -- The West Virginia farmland
19 protection fund is created for the purposes specified in this
20 article.

21 (2) *Sources.* -- The West Virginia farmland protection fund
22 is comprised of:

23 (A) Any money made available to the fund by general or
24 special fund appropriations;

25 (B) Any money made available to the fund by grants or
26 transfers from governmental or private sources;

27 (C) Any money realized by investments, interest, dividends
28 or distributions; and

29 (D) Any money appropriated by the Legislature for the
30 West Virginia farmland protection fund.

31 (3) *Disbursements.* -- The treasurer may not disburse any
32 money from the fund other than:

33 (A) For costs associated with the staffing, administration,
34 and technical and legal duties of the authority;

35 (B) For reasonable expenses incurred by the members of
36 the board of trustees of the authority in the performance of
37 official duties; and

38 (C) For consideration in the purchase of farmland conserva-
39 tion and preservation easements.

40 (4) *Money remaining at end of fiscal year.* -- Any money
41 remaining in the fund at the end of a fiscal year shall not revert
42 to the general revenue fund of the state, but shall remain in the
43 West Virginia farmland protection fund to be used for the
44 purposes specified in this article.

45 (5) *Budget.* -- The estimated budget of the authority for the
46 next fiscal year shall be included with the budget of the West
47 Virginia department of agriculture.

48 (6) *Audit.* -- The fund shall be audited annually.

**§8A-12-18. Disbursements by the authority to county farmland
protection boards.**

1 (a) *Applications; amount.* -- If a county has established a
2 county farmland protection program, the authority shall
3 distribute within sixty days after the end of its fiscal year at
4 least eighty percent of that fiscal year's remaining funds to
5 county farmland protection boards who have certified to the
6 authority that there is then pending an application for one or
7 more conservation or preservation easements. Each certifica-
8 tion shall include:

9 (1) The name of each applicant for an easement and the
10 date of each application for an easement during the fiscal year;

11 (2) A description of the property upon which an easement
12 is offered; and

13 (3) An appraisal of the value of the conservation or preser-
14 vation easement as provided in section fourteen of this article.

15 (b) *Disbursement formula.* -- Disbursement of authority
16 funds to qualifying counties shall be based on the ratio of each
17 county farmland protection board's appraisal value of conserva-
18 tion and preservation easement applications, including those
19 applications to donate easements, received during the fiscal
20 year to the total of the appraisal value of all applications for
21 conservation and preservation easements for the fiscal year
22 received by the authority from county farmland protection
23 boards. Applications for easement donations may only be
24 counted if the county farmland protection board holds or
25 coholds the easement.

**§8A-12-19. Classification of land subject to conservation or
preservation easement.**

1 Notwithstanding any statute or rule to the contrary, any
2 property held or coheld by a holder under a conservation or
3 preservation easement as defined in this article, regardless of
4 ownership, shall be taxed as "agricultural lands" for ad valorem
5 property tax purposes without further requirement, restriction
6 or disqualification. For ad valorem property tax purposes, any
7 property held or coheld by a holder under a perpetual conserva-
8 tion or preservation easement as defined by this article, regard-
9 less of ownership, shall be taxed as "agricultural lands" without
10 further requirement, restriction or disqualification.

**§8A-12-20. Authorization for commissioner of agriculture to
promulgate proposed rules.**

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

§8A-12-21. Tax on privilege of transferring real property.

1 (a) Notwithstanding the provisions of section two, article
2 twenty-two, chapter eleven, and effective the first day of
3 January, two thousand three, and thereafter, in addition to the
4 tax imposed pursuant to article twenty-two, chapter eleven of
5 this code, any county commission that has created a farmland
6 protection program may impose an additional county excise tax
7 for the privilege of transferring title to real estate at the rate of
8 no more than one dollar and ten cents for each five hundred
9 dollars' value or fraction thereof, as represented by any
10 document as defined in section one, article twenty-two, chapter
11 eleven of this code, payable at the time of delivery, acceptance
12 or presentation for recording of the document.

13 (b) The tax imposed pursuant to this section is to be
14 administered and collected as the tax on the privilege of
15 transferring title to real estate imposed pursuant to the provi-
16 sions of article twenty-two, chapter eleven of this code.

17 (c) The tax imposed pursuant to this section is to be used
18 exclusively for the purpose of funding farmland preservation.

CHAPTER 154

**(S. B. 200 — By Senators Bowman, Unger, Jenkins,
McCabe, Kessler, Plymale, White, Caldwell,
Rowe, Minard, Hunter and Fanning)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-7 of the code of West Virginia,
1931, as amended, relating to requiring the superintendent of the

state police to report annually to the Legislature about the effectiveness of its efforts in recruiting minorities.

Be it enacted by the Legislature of West Virginia:

That §15-2-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.

1 (a) The superintendent shall establish within the West
2 Virginia state police a cadet selection board which shall be
3 representative of commissioned and noncommissioned officers
4 within the division.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on the
7 current list of eligible applicants established by the cadet
8 selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of the
11 armed forces of the United States and to residents of West
12 Virginia. Each applicant for appointment shall be a person not
13 less than twenty-one years of age of sound constitution and
14 good moral character; shall be required to pass any mental and
15 physical examination; and meet other requirements as may be
16 provided for in rules promulgated by the cadet selection board:
17 *Provided*, That a former member may, at the discretion of the
18 superintendent, be reenlisted.

19 (d) No person may be barred from becoming a member of
20 the division because of his or her religious or political convic-
21 tions.

22 (e) The superintendent shall adhere to the principles of
23 equal employment opportunity set forth in article eleven,
24 chapter five of this code and shall take positive steps to
25 encourage applications for division membership from females
26 and minority groups within the state. An annual report shall be
27 filed with the Legislature on or before the first day of January
28 of each year by the superintendent which includes a summary
29 of the efforts and the effectiveness of those efforts intended to
30 recruit females, African-Americans and other minorities into
31 the ranks of the state police.

32 (f) Except for the superintendent, no person may be
33 appointed or enlisted to membership in the division at a grade
34 or rank above the grade of trooper.

35 (g) The superintendent shall appoint such civilian employ-
36 ees as may be necessary and all employees may be included in
37 the classified service of the civil service system except those in
38 positions exempt under the provisions of article six, chapter
39 twenty-nine of this code.

40 (h) Effective the first day of July, two thousand one,
41 civilian employees with a minimum of five years' service shall
42 receive a salary increase equal to one hundred dollars a year for
43 each year of service as a civilian employee. Every three years
44 thereafter, civilian employees who have five or more years of
45 service shall receive an annual salary increase of three hundred
46 dollars. The increases in salary provided by this subsection are
47 in addition to any other increases to which the civilian employ-
48 ees might otherwise be entitled.

CHAPTER 155

(Com. Sub. for S. B. 208 — By Senators Unger, Kessler, Prezioso, Sharpe, Jenkins, Caldwell, Rowe, Smith, McKenzie, Boley, White, McCabe, Fanning, Dempsey, Hunter and Facemyer)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-13 of the code of West Virginia, 1931, as amended, relating to allowing members of the state police to engage in certain political activities while out of uniform and off duty.

Be it enacted by the Legislature of West Virginia:

That §15-2-13 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-13. Limitations upon members; exceptions.

1 (a) No member of the West Virginia state police may in any
 2 way interfere with the rights or property of any person except
 3 for the prevention of crime.

4 (b) No member of the West Virginia state police may in any
 5 way become active or take part in any political contest or at any
 6 time participate in any political party caucus, committee,
 7 primary, assembly or convention or in any general or special
 8 election while in uniform, except to cast his or her ballot.

9 (c) No member of the West Virginia state police may be
 10 detailed or ordered to duty at or near any voting precinct where

11 any election or convention is held on the day of an election or
12 convention; nor may any member thereof remain in, about or
13 near the voting precinct or place of convention, except to cast
14 his or her vote. After voting he or she shall forthwith retire
15 from the voting precinct. No member may act as an election
16 official. If any member of the West Virginia state police is
17 found guilty of violating any of the provisions of this section,
18 he or she shall be dismissed by the superintendent as hereinafter
19 provided.

20 (d) While out of uniform and off duty, no member of the
21 West Virginia state police may participate in any political
22 activity except:

23 (1) Campaign for and hold office in political clubs and
24 organizations;

25 (2) Actively campaign for candidates for public office in
26 partisan and nonpartisan elections; and

27 (3) Contribute money to political organizations and attend
28 political fund-raising functions.

29 (e) No member of the West Virginia state police may at any
30 time:

31 (1) Be a candidate for public office in a nonpartisan or
32 partisan election;

33 (2) Use official authority or influence to interfere with or
34 affect the results of an election or nomination; or

35 (3) Directly or indirectly coerce contributions from subordi-
36 nates in support of a political party or candidate.

37 (f) No officer or member of the West Virginia state police
38 may, in any labor trouble or dispute between employer and

39 employee, aid or assist either party thereto, but shall in these
40 cases see that the statutes and laws of this state are enforced in
41 a legal way and manner.

CHAPTER 156

(Com. Sub. for S. B. 181 — By Senators Unger, Kessler, McCabe,
Caldwell, Harrison, Snyder, Oliverio, Ross, Smith, Sprouse,
Hunter, Love, Dempsey, Weeks, White, Fanning, Prezioso,
Jenkins, Rowe, Plymale, Bowman, Edgell, Sharpe,
Minear, Minard and Tomblin, Mr. President)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-25 of the code of West Virginia, 1931, as amended, relating to permitting a retired member of the state police to carry a concealed weapon for the life of the member.

Be it enacted by the Legislature of West Virginia:

That §15-2-25 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25. Rules generally; carrying of weapons upon retirement or medical discharge.

1 Subject to the written approval of the governor and the
2 provisions of this article, the superintendent may make and
3 promulgate proper rules for the government, discipline and
4 control of the West Virginia state police and shall also cause to
5 be established proper rules for the examinations of all appli-
6 cants for appointment thereto. The members of the West

7 Virginia state police shall be permitted to carry arms and
8 weapons and no license may be required for the privilege.

9 Upon retirement or medical discharge from the West
10 Virginia state police and with the written consent of the
11 superintendent, any retired or medically discharged member
12 may carry a handgun for the life of the member following
13 retirement or medical discharge notwithstanding the provisions
14 of article seven, chapter sixty-one of this code: *Provided*, That
15 the superintendent's written letter of consent to carry a handgun
16 may not last for more than five years at a time and a retired or
17 medically discharged member who wishes to continue to carry
18 a handgun beyond five years of the date of his or her initial
19 retirement or medical discharge must request and obtain a
20 renewal of the superintendent's written permission to carry a
21 handgun at least once every five years. A retired or medically
22 discharged member desiring to carry a handgun after retirement
23 or medical discharge must provide his or her own handgun.
24 Upon request, each member shall be presented with a letter of
25 authorization signed by the superintendent authorizing the
26 retired or medically discharged member to carry a handgun.
27 The written authorization shall be carried by the retired or
28 medically discharged member at all times that he or she has a
29 handgun on his or her person. The superintendent may not
30 issue a letter of authorization to any retired or medically
31 discharged member who is no longer employed by the state
32 police due to a mental disability or who the superintendent has
33 reason to believe is mentally incapacitated to the extent it
34 would present a threat of physical harm to one or more persons
35 for the member to carry a concealed weapon. The superinten-
36 dent may revoke the authority at any time without cause and
37 without recourse. Conviction of the retired or medically
38 discharged member for the commission of any felony or for a
39 misdemeanor involving the improper or illegal use of a firearm
40 shall cause this authority to terminate immediately without a
41 hearing or other recourse and without any action on the part of
42 the superintendent. The superintendent shall promulgate a

43 legislative rule in accordance with the provisions of chapter
44 twenty-nine-a of this code, which rule shall prescribe require-
45 ments necessary for the issuance and continuance of the
46 authority herein granted.

CHAPTER 157

(H. B. 4671 — By Delegates Michael, Boggs, Proudfoot,
Ashley, Browning, G. White and Stalnaker)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-43 of the code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1d of said code, all relating to the disposal of law-enforcement weapons when replaced due to routine wear.

Be it enacted by the Legislature of West Virginia:

That §15-2-43 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-1d of said code be amended and reenacted, all to read as follows:

Chapter

- 15. Public Safety.
- 20. Natural Resources.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-43. Awarding service revolver upon retirement and disposal of service weapon when replaced due to routine wear.

1 (a) Upon the retirement of a member of the West Virginia
2 state police, the superintendent shall award to the retiring
3 member his or her service revolver, without charge, upon
4 determining:

5 (1) That the retiring member is retiring honorably with at
6 least twenty years of service; or

7 (2) Such retiring member is retiring with less than twenty
8 years of service based upon a determination that such member
9 is totally physically disabled as a result of his or her service
10 with the West Virginia state police.

11 (b) Notwithstanding the provisions of subsection (a) of this
12 section, the superintendent may not award his or her service
13 revolver to any member whom the superintendent finds to be
14 mentally incapacitated or who constitutes a danger to any
15 person or the community.

16 (c) The disposal of state police service weapons, when
17 replaced due to routine wear, shall not fall under the jurisdiction
18 of the agency for surplus property, within the purchasing
19 division of the department of administration. The superinten-
20 dent may offer these surplus weapons for sale to any active or
21 retired member of the state police, at fair market value, with the
22 proceeds from any sales used to offset the cost of the new
23 weapons.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1d. Awarding service revolver upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.

1 (a) Upon the retirement of any full-time salaried conserva-
2 tion officer, the chief conservation officer shall award to the
3 retiring conservation officer his or her service revolver, without
4 charge, upon determining:

5 (1) That the conservation officer is retiring honorably with
6 at least twenty-five years of recognized law-enforcement
7 service as determined by the chief conservation officer; or

8 (2) That such conservation officer is retiring with less than
9 twenty-five years of service based upon a determination that he
10 or she is totally physically disabled as a result of service with
11 the division.

12 (b) Notwithstanding the provisions of subsection (a) of this
13 section, the chief conservation officer shall not award a service
14 revolver to any conservation officer who has been declared
15 mentally incompetent by a licensed physician or any court of
16 law, or who, in the opinion of the chief conservation officer,
17 constitutes a danger to any person or the community.

18 (c) The disposal of law-enforcement service weapons, when
19 replaced due to routine wear, shall not fall under the jurisdiction
20 of the agency for surplus property, within the purchasing
21 division of the department of administration. The chief conser-
22 vation officer may offer these surplus weapons for sale to any
23 active or retired division of natural resources law-enforcement
24 officer, at fair market value, with the proceeds from any sales
25 used to offset the cost of the new weapons.

26 (d) Upon the death of any current or honorably retired
27 conservation officer, the chief conservation officer shall, upon
28 request of the deceased officer's family, furnish a full uniform
29 for burial of the deceased officer.

CHAPTER 158

(Com. Sub. for H. B. 3096 — By Delegates Craig, Howard,
Leach, Morgan, Smirl, Webb and Kominar)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-10-3, §15-10-4 and §15-10-5 of the code of West Virginia, 1931, as amended, all relating to authorizing cooperation of campus police and rangers employed by the Hatfield-McCoy regional recreation authority with other law-enforcement agencies.

Be it enacted by the Legislature of West Virginia:

That §15-10-3, §15-10-4 and §15-10-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

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

§15-10-3. Definitions.

1 For purposes of this article only, and unless a different
2 meaning plainly is required:

3 (1) "Criminal justice enforcement personnel" means those
4 persons within the state criminal justice system who are

5 actually employed as members of the division of public safety,
6 members of the division of protective services, state conserva-
7 tion officers, chiefs of police and police of incorporated
8 municipalities, and county sheriffs and their deputies, and
9 whose primary duties are the investigation of crime and the
10 apprehension of criminals.

11 (2) "Head of a law-enforcement agency" means the
12 superintendent of the division of public safety, the director of
13 the division of protective services, the chief conservation
14 officer of the division of natural resources, a chief of police of
15 an incorporated municipality or a county sheriff.

16 (3) "State or local law-enforcement officer" means any duly
17 authorized member of a law-enforcement agency who is
18 authorized to maintain public peace and order, prevent and
19 detect crime, make arrests and enforce the laws of the state or
20 any county or municipality thereof, other than parking ordi-
21 nances, and includes those persons employed as campus police
22 officers at state institutions of higher education in accordance
23 with the provisions of section five, article four, chapter eigh-
24 teen-b of this code, although those institutions may not be
25 considered law-enforcement agencies. The term also includes
26 those persons employed as rangers by the Hatfield-McCoy
27 regional recreation authority in accordance with the provisions
28 of section six, article fourteen, chapter twenty of this code,
29 although the authority may not be considered a law-enforce-
30 ment agency.

31 (4) "Head of campus police" means the superintendent or
32 administrative head of state or local law-enforcement officers
33 employed as campus police officers at state institutions of
34 higher education in accordance with the provisions of section
35 five, article four, chapter eighteen-b of this code.

36 (5) "Head of the rangers of the Hatfield-McCoy regional
37 recreation authority" means the superintendent or administra-

38 tive head of state or local law-enforcement officers employed
39 as rangers by the Hatfield-McCoy regional recreation authority
40 in accordance with the provisions of section six, article four-
41 teen, chapter twenty of this code.

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

1 (a) The head of any law-enforcement agency, the head of
2 any campus police or the head of the rangers of the Hatfield-
3 McCoy regional recreational authority, as those terms are
4 defined in section three of this article, may temporarily provide
5 assistance and cooperation to another agency of the state
6 criminal justice system or to a federal law-enforcement agency
7 in investigating crimes or possible criminal activity if requested
8 to do so in writing by the head of another law-enforcement
9 agency or federal law-enforcement agency. Such assistance
10 may also be provided upon the request of the head of the
11 law-enforcement agency or federal law-enforcement agency
12 without first being reduced to writing in emergency situations
13 involving the imminent risk of loss of life or serious bodily
14 injury. The assistance may include, but is not limited to,
15 entering into a multijurisdictional task force agreement to
16 integrate federal, state, county and municipal law-enforcement
17 agencies or other groups of state or local law-enforcement
18 officers, or any combination thereof, for the purpose of enhanc-
19 ing interagency coordination, intelligence gathering, facilitating
20 multijurisdictional investigations, providing criminal justice
21 enforcement personnel of the law-enforcement agency to work
22 temporarily with personnel of another agency, including in an
23 undercover capacity, and making available equipment, training,
24 technical assistance and information systems for the more
25 efficient investigation, apprehension and adjudication of
26 persons who violate the criminal laws of this state or the United
27 States, and to assist the victims of such crimes. When providing

28 the assistance under the provisions of this article, a head of a
29 law-enforcement agency shall comply with all applicable
30 statutes, ordinances, rules, policies or guidelines officially
31 adopted by the state or the governing body of the city or county
32 by which he or she is employed, and any conditions or restric-
33 tions included therein.

34 (b) While temporarily assigned to work with another
35 law-enforcement agency or agencies, criminal justice enforce-
36 ment personnel and other state and local law-enforcement
37 officers shall have the same jurisdiction, powers, privileges and
38 immunities, including those relating to the defense of civil
39 actions, as such criminal justice enforcement personnel would
40 enjoy if actually employed by the agency to which they are
41 assigned, in addition to any corresponding or varying jurisdic-
42 tion, powers, privileges and immunities conferred by virtue of
43 their continued employment with the assisting agency.

44 (c) While assigned to another agency or to a multijurisdic-
45 tional task force, criminal justice enforcement personnel and
46 other state and local law-enforcement officers shall be subject
47 to the lawful operational commands of the superior officers of
48 the agency or task force to which they are assigned, but for
49 personnel and administrative purposes, including compensation,
50 they shall remain under the control of the assisting agency.
51 These assigned personnel shall continue to be covered by all
52 employee rights and benefits provided by the assisting agency,
53 including workers' compensation, to the same extent as though
54 such personnel were functioning within the normal scope of
55 their duties.

56 (d) No request or agreement between the heads of law-
57 enforcement agencies, the heads of campus police or the head
58 of the rangers of the Hatfield-McCoy regional recreation
59 authority, made or entered into pursuant to the provisions of
60 this article shall remain in force and effect for a period of more

61 than twelve months unless renewed in writing by the parties
62 thereto nor shall any request or agreement made or entered into
63 pursuant to the provisions of this article have force or effect
64 until a copy of said request or agreement is filed with the office
65 of the circuit clerk of the county or counties in which the
66 law-enforcement agencies, the campus police, or the Hatfield-
67 McCoy regional recreation authority rangers involved operate.
68 Upon filing, the requests or agreements may be sealed, subject
69 to disclosure pursuant to an order of a circuit court directing
70 disclosure for good cause. Nothing in this article shall be
71 construed to limit the authority of the head of a law-enforce-
72 ment agency, the head of campus police or the head of the
73 rangers of the Hatfield-McCoy regional recreation authority to
74 withdraw from any agreement at any time.

75 (e) Nothing contained in this article shall be construed so as
76 to grant, increase, decrease or in any manner affect the civil
77 service protection or the applicability of civil service laws as to
78 any criminal justice enforcement personnel, or as to any state or
79 local law-enforcement officer or agency operating under the
80 authority of this article, nor shall this article in any way reduce
81 or increase the jurisdiction or authority of any criminal justice
82 enforcement personnel, or of any state or local law-enforcement
83 officer or agency, except as specifically provided herein.

84 (f) Nothing contained in this article shall be construed so as
85 to authorize the permanent consolidation or merger or the
86 elimination of operations of participating federal, state, county
87 municipal law-enforcement agencies, or other groups of state
88 and local law-enforcement officers, the head campus police or
89 the head of the rangers of the Hatfield-McCoy regional recre-
90 ation authority.

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

1 (a) Notwithstanding any provision of this code to the
2 contrary, any person who is employed by the United States

3 government as a federal law-enforcement officer and is listed
4 in subsection (b) of this section, has the same authority to
5 enforce the laws of this state, except state or local traffic laws
6 or parking ordinances, as that authority granted to state or local
7 law-enforcement officers, if one or more of the following
8 circumstances exist:

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

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

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

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

29 (1) Federal bureau of investigation special agents;

30 (2) Drug enforcement administration special agents;

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

- 33 (4) United States postal service inspectors;
- 34 (5) Internal revenue service special agents;
- 35 (6) United States secret service special agents;
- 36 (7) Bureau of alcohol, tobacco, and firearms special agents;
- 37 (8) Police officers employed pursuant to 40 U.S.C. §§318
38 and 490 at the federal bureau of investigation's criminal justice
39 information services division facility located within this state;
40 and
- 41 (9) Law-enforcement commissioned rangers of the national
42 park service.
- 43 (c) Any person acting under the authority granted pursuant
44 to this section:
- 45 (1) Has the same authority and is subject to the same
46 exemptions and exceptions to this code as a state or local
47 law-enforcement officer;
- 48 (2) Is not an officer, employee, or agent of any state or local
49 law-enforcement agency;
- 50 (3) May not initiate or conduct an independent investigation
51 into an alleged violation of any provision of this code except to
52 the extent necessary to preserve evidence or testimony at risk
53 of loss immediately following an occurrence described in
54 subdivision (3), subsection (a) of this section;
- 55 (4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims
56 Act; and
- 57 (5) Has the same immunities from liability as a state or
58 local law-enforcement officer.

CHAPTER 159

(Com. Sub. for H. B. 2088 — By Delegates Amores and Faircloth)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §60A-9-5 of the code of West Virginia, 1931, as amended, relating to authorizing local law-enforcement officers who are members of drug task forces to have access to prescription drug monitoring data.

Be it enacted by the Legislature of West Virginia:

That §60A-9-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 The information required by this article to be kept by the
2 state board of pharmacy is confidential and is open to inspec-
3 tion only by inspectors and agents of the state board of phar-
4 macy, members of the West Virginia state police expressly
5 authorized by the superintendent of the West Virginia state
6 police to have access to the information, authorized agents of
7 local law-enforcement agencies as a member of a drug task
8 force, authorized agents of the federal drug enforcement
9 agency, duly authorized agents of licensing boards of practitio-
10 ners in this state and other states authorized to prescribe
11 Schedules II, III and IV controlled substances, prescribing
12 practitioners and pharmacists and persons with an enforceable

13 court order or regulatory agency administrative subpoena:
14 *Provided*, That all information released by the state board of
15 pharmacy must be related to a specific patient or a specific
16 individual or entity under investigation by any of the above
17 parties except that practitioners who prescribe controlled
18 substances may request specific data related to their drug
19 enforcement administration controlled substance registration
20 number or for the purpose of providing treatment to a patient.
21 The board shall maintain the information required by this article
22 for a period of not less than five years. Notwithstanding any
23 other provisions of this code to the contrary, data obtained
24 under the provisions of this article may be used for compilation
25 of educational, scholarly or statistical purposes as long as the
26 identities of persons or entities remain confidential. No individ-
27 ual or entity required to report under section four of this article
28 may be subject to a claim for civil damages or other civil relief
29 for the reporting of information to the board of pharmacy as
30 required under and in accordance with the provisions of this
31 article.

CHAPTER 160

(Com. Sub. for H. B. 4536 — By Delegates Stemple, Varner,
Swartzmiller, Staton, Kominar, Michael and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-10A-1, §15-10A-2, §15-10A-3, §15-10A-4, §15-10A-5 and §15-10A-6, all relating to establishing the law-enforcement re-employment act; legislative findings; authorizing the re-employment of retired county and

municipality law-enforcement officers, and division of natural resource law-enforcement officers; examination requirements; coverage for illness or injury; ineligibility for contributions to pensions; and employment status, civil service and retirement benefits.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-10A-1, §15-10A-2, §15-10A-3, §15-10A-4, §15-10A-5 and §15-10A-6, all to read as follows:

ARTICLE 10A. LAW-ENFORCEMENT RE-EMPLOYMENT ACT.

§15-10A-1. Legislative findings.

§15-10A-2. Re-employment of law-enforcement officers.

§15-10A-3. Examination requirements.

§15-10A-4. Coverage for illness or injury.

§15-10A-5. Ineligibility for contributions to pensions.

§15-10A-6. Employment status; civil service; and retirement benefits.

§15-10A-1. Legislative findings.

1 The Legislature finds:

2 (1) That West Virginia law enforcement is currently
3 suffering from an unacceptably high number of vacant law-
4 enforcement positions because of military service obligations,
5 and that given the time factors and expense associated with the
6 hiring and training of personnel with no prior law-enforcement
7 experience, it is in the interest of the state to re-employ retired
8 law-enforcement officers in order to temporarily fill only the
9 vacant positions of those law-enforcement officers called to
10 active military duty;

11 (2) That no pension rights of any kind shall accrue or attach
12 pursuant to re-employment under this article; and

13 (3) That a law-enforcement agency who hires a retired law-
14 enforcement officer shall bear no responsibility for medical
15 payments resulting from work-related injuries or illnesses of
16 persons hired pursuant to this article, other than those com-
17 monly associated with state employees covered by workers'
18 compensation.

§15-10A-2. Re-employment of law-enforcement officers.

1 (a) Notwithstanding any provision of this code to the
2 contrary, any honorably retired law-enforcement officer may,
3 at the discretion of the head of a law-enforcement agency, be
4 re-employed subject to the provisions of this article: *Provided*,
5 That a retired law-enforcement officer employed pursuant to
6 this article must be certified pursuant to article twenty-nine,
7 chapter thirty.

8 (b) Any person re-employed pursuant to the provisions of
9 this article shall:

10 (1) Receive the same compensation as a regularly enlisted
11 officer of the same rank;

12 (2) Receive credit for all years of service accrued prior to
13 their retirement, as well as service rendered after the date of
14 their re-employment;

15 (3) Exercise the same authority as a regularly enlisted
16 officer of the law-enforcement agency;

17 (4) Wear the same uniform and insignia;

18 (5) Be subject to the same oath;

19 (6) Execute the same bond; and

20 (7) Exercise the same powers and be subject to the same
21 limitations as a regularly enlisted officer of the law-enforce-
22 ment agency.

23 (c) A person re-employed pursuant to the provisions of this
24 article is ineligible for promotion or reclassification of any type
25 nor eligible for appointment to a temporary rank.

26 (d) A person re-employed pursuant to the provisions of this
27 article may be employed for a period not to exceed two years
28 from the date on which he or she is hired.

29 (e) As used in this article:

30 (1) "Law-enforcement officer" or "officer" means: (A) Any
31 sheriff and any deputy sheriff of any county; (B) any member
32 of a police department in any municipality as defined in section
33 two, article one, chapter eight of this code; and (C) any conser-
34 vation officer of the division of natural resources; and

35 (2) "Head of a law-enforcement agency" means the chief of
36 police of an incorporated municipality; a county sheriff, or the
37 chief conservation officer of the division of natural resources.

§15-10A-3. Examination requirements.

1 A retired law-enforcement officer applying for re-employ-
2 ment under this article is required to pass mental and physical
3 examinations as required, and meet such other requirements, as
4 may be provided in rules promulgated by the head of the
5 applicable law-enforcement agency.

§15-10A-4. Coverage for illness or injury.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the head of the law-enforcement agency shall make
3 provisions for coverage of personnel employed pursuant to this
4 article by the workers' compensation division and bureau of
5 employment programs. In the event an individual re-employed

6 pursuant to this article sustains an illness or injury which is
7 work related in origin, any cost associated with the treatment
8 must be defrayed in this manner.

9 (b) In the event a work-related illness or injury renders an
10 individual employed pursuant to the provisions of this article
11 permanently physically or mentally disabled, the applicable
12 law-enforcement agencies' disability coverage through the
13 workers' compensation division shall apply, and the individ-
14 ual's existing pension shall be recalculated as though the
15 disabling event had occurred coincident with the individual's
16 original retirement. Any change in benefits resulting from this
17 recalculation may not be retroactive in nature.

18 (c) The provisions of this section do not apply in the event
19 a person employed pursuant to this article is disabled because
20 of some cause or event which is determined not to be work
21 related.

§15-10A-5. Ineligibility for contributions to pensions.

1 Any person re-employed pursuant to this article is not
2 eligible to contribute to any pension plan administered by the
3 consolidated public retirement board, nor may he or she
4 establish or accrue any new pension eligibility as a result of
5 such re-employment.

§15-10A-6. Employment status; civil service; and retirement benefits.

1 (a) Notwithstanding any provision of this code to the
2 contrary, any person re-employed pursuant to this article shall
3 serve at the will and pleasure of the head of the law-enforce-
4 ment agency, and is subject to termination without cause.

5 (b) Any person re-employed pursuant to this article may not
6 be included in the classified service of the civil service system.

7 (c) Notwithstanding any provision of this code to the
8 contrary, compensation paid to any person re-employed

9 pursuant to this article shall be in addition to any public
10 employees insurance act retirement benefits, or any other
11 retirement payments or pension benefits which he or she is
12 already entitled to receive or is receiving.

CHAPTER 161

**(Com. Sub. for S. B. 327 — By Senators Ross, Minard,
Snyder, Unger, Boley and Minear)**

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §64-1-1 of the code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; authorizing the department of administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the department of administration to promulgate a legislative rule relating to parking; authorizing the consolidated public retirement board to promulgate a legislative rule relating

to general provisions; authorizing the consolidated public retirement board to promulgate a legislative rule relating to 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 board of risk and insurance management to promulgate a legislative rule relating to the public entities insurance program; and disapproving the board of risk and insurance management legislative rule relating to the terms and conditions pertaining to members of self-insurance pools who wish to participate in state insurance programs.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code 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. Consolidated public retirement board.

§64-2-3. Board of risk and insurance management.

§64-2-1. Department of administration.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section forty-two, article three, 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 twenty-third day of
7 January, two thousand four, relating to the department of
8 administration (leasing space on behalf of state spending units,
9 148 CSR 2), is authorized with the following amendments:

10 On page one, subdivision 1.1, on the ninth line, by striking
11 out the words “those spending units who are exempt or who
12 have independent leasing authority.” and inserting in lieu
13 thereof the words “the division of highways, the higher educa-
14 tion policy commission, the lottery commission, or a spending
15 unit of the state with independent leasing authority pursuant to
16 the code of West Virginia. This exemption does not apply to
17 the office space of spending units of the executive branch.”

18 On page one, subsection 2.1, by designating the first
19 paragraph as subdivision 2.1.a and by designating the second
20 paragraph as subdivision 2.1.b;

21 On page one, subsection 2.2, line three, after the words
22 “describing the space” by striking out the remainder of the
23 subsection and by inserting in lieu thereof the words “and a
24 letter justifying the agency’s need for leasing the new space.”;

25 On page two, subdivision 4.2.b, line three, after the word
26 “considered”, by inserting the words “by the leasing officer”;

27 On page two, subdivision 4.2.c, line two, by inserting the
28 words "Class II";

29 On page two, section four, following subsection 4.3, by
30 inserting the following and renumbering the remaining subsec-
31 tions:

32 "4.4. Notification.

33 The Leasing Office shall provide written notification of its
34 site selection recommendation to the spending unit within thirty
35 (30) days of the evaluation of the spending unit's request for
36 space which includes the review of bids, evaluation of bids by
37 the Leasing Office and any negotiations conducted by the
38 Leasing Office pursuant to Subsection 4.3 of this rule prior to
39 final location selection."

40 On page two, section four, subsection 4.4, by striking the
41 second paragraph;

42 On page two, subsection 4.5, after the period, by inserting
43 the words "The leasing office shall provide written notification
44 to the spending unit regarding the agency's authorization to
45 occupy the space within thirty (30) days of an evaluation
46 period.";

47 On page three, section six, subsection 6.3, line 1, following
48 the word "Administration" by inserting "or the Director of the
49 Purchasing Division of the Department of Administration";

50 On page three, section six, subsection 6.3, line seven,
51 following the word "Administration" by inserting "or the
52 Director of the Purchasing Division";

53 On page three, section six, subsection 6.3, line nine,
54 following the word "Secretary" and the comma, by inserting the
55 words "the Director";

56 On page three, section six, subsection 6.3, line 14, follow-
57 ing the word "Secretary", by inserting the words "or Director";

58 On page three, section six, subsection 6.4, line two,
59 following the word "Administration" by inserting "or the
60 Director of the Purchasing Division";

61 On page four, section seven, subsection 7.1, line seven,
62 following the word "Administration" by inserting "or the
63 Director of the Purchasing Division"; and

64 On page four, section ten, subsection 10.1, line five,
65 following the word "Administration" by inserting "or the
66 Director of the Purchasing Division".

67 On page four, subsection 11.1, line two, after the words
68 "other emergency situation", by inserting the words "as
69 determined by the Secretary,";

70 On page four, subsection 11.1, line three, after the period,
71 by inserting the words "In the event of a natural disaster or
72 emergency situation, the Secretary of Administration shall
73 continue to have the authority to select and to acquire by
74 contract or lease, in the name of the State, all grounds, build-
75 ings, office space or other space for and on behalf of any
76 spending unit.";

77 On page four, subsection 11.2, by striking out the entire
78 subsection and by renumbering the subsequent subsections;

79 On page four, subsection 11.3, line one, by striking out the
80 words "At no time does the" and inserting in lieu thereof the
81 word "The", and after the words "spending unit", by inserting
82 the words "does not";

83 On page four, subsection 11.4, line one, by striking out the
84 words "To the degree" and by inserting in lieu thereof the word
85 "When";

86 On page four, subsection 11.4, line three, after the word
87 "unit", by striking out the words "shall get" and by inserting in
88 lieu thereof the words "will obtain";

89 On page five, subsection 11.5, line one, by striking out the
90 words “To the degree” and by inserting in lieu thereof the word
91 “When”;

92 And,

93 On page five, subsection 11.5, line two, after the words
94 “will put a”, by inserting the words “Class II”.

95 (b) The legislative rule filed in the state register on the first
96 day of August, two thousand three, authorized under the
97 authority of section five, article four, chapter five-a of this code,
98 modified by the department of administration to meet the
99 objections of the legislative rule-making review committee and
100 refiled in the state register on the twenty-third day of January,
101 two thousand four, relating to the department of administration
102 (parking, 148 CSR 6), is authorized with the following amend-
103 ment:

104 On page two, subsection 5, on the eleventh line, by adding
105 after “2007.” the following sentence: “The maximum fee that
106 can be charged thereafter for parking is twenty dollars (\$20.00)
107 per month.”.

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

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

9 (b) The legislative rule filed in the state register on the
10 twenty-eighth day of July, two thousand three, authorized under
11 the authority of section one, article ten-d, chapter five of this
12 code, modified by the consolidated public retirement board to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the thirtieth day of

15 October, two thousand three, relating to the consolidated public
16 retirement board (benefit determination and appeal, 162 CSR
17 2), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-eighth day of July, two thousand three, authorized under
20 the authority of section one, article ten-d, chapter five of this
21 code, modified by the consolidated public retirement board to
22 meet the objections of the legislative rule-making review
23 committee and refiled in the state register on the thirtieth day of
24 October, two thousand three, relating to the consolidated public
25 retirement board (teachers defined benefit plan, 162 CSR 4), is
26 authorized.

27 (d) The legislative rule filed in the state register on the
28 twenty-eighth day of July, two thousand three, authorized under
29 the authority of section one, article ten-d, chapter five of this
30 code, modified by the consolidated public retirement board to
31 meet the objections of the legislative rule-making review
32 committee and refiled in the state register on the thirtieth day of
33 October, two thousand three, relating to the consolidated public
34 retirement board (West Virginia state police disability determi-
35 nation and appeal process, 162 CSR 9), is authorized.

§64-2-3. Board of risk and insurance management.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section one, article twelve, chapter twenty-nine of
4 this code, modified by the board of risk and insurance manage-
5 ment to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 third day of January, two thousand four, relating to the board of
8 risk and insurance management (public entities insurance
9 program, 115 CSR 2), is authorized.

10 (b) The legislative rule filed in the state register on the first
11 day of August, two thousand three, authorized under the
12 authority of section fourteen, article twelve, chapter twenty-
13 nine of this code, modified by the board of risk and insurance

14 management to meet the objections of the legislative rule-
15 making review committee and refiled in the state register on the
16 twenty-third day of January, two thousand four, relating to the
17 board of risk and insurance management (terms and conditions
18 pertaining to members of self insurance pools who wish to
19 participate in state insurance programs, 115 CSR 7), is not
20 authorized.

CHAPTER 162

**(Com. Sub. for H. B. 4193 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)**

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 3, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules presented to the Legislature for authorization; 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 emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; 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 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 requirements for determining conformity of transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the federal transit laws applicable air quality implementation plans (transportation conformity); authorizing the department of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the department of environmental protection to promulgate a legislative rule relating to solid waste management; 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 West Virginia NPDES rule for coal mining facilities; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the environmental quality board to promulgate emergency and legislative rules on or before the first day of October, two thousand four to revise the aquatic life aluminum criteria.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

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

§64-3-2. Environmental quality board.

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

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of July, two thousand three, 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 non-electric generating units,
7 45 CSR 1), is authorized.

8 (b) The legislative rule filed in the state register on the
9 thirtieth day of July, two thousand three, authorized under the
10 authority of section four, article five, chapter twenty-two of this
11 code, relating to the department of environmental protection
12 (emission standards for hazardous air pollutants pursuant to 40
13 CFR Part 61, 45 CSR 15), is authorized.

14 (c) The legislative rule filed in the state register on the
15 thirtieth day of July, two thousand three, authorized under the
16 authority of section four, article five, chapter twenty-two of this
17 code, relating to the department of environmental protection
18 (standards of performance for new stationary sources pursuant
19 to 40 CFR Part 60, 45 CSR 16), is authorized with the following
20 amendment:

21 Wherever the rule has been amended to insert the term
22 “Division of Water and Waste Management” the existing
23 language of the rule prior to the amendment denoting a change
24 in the name of the agency of reference shall be retained.

25 (d) The legislative rule filed in the state register on the
26 twenty-ninth day of July, two thousand three, authorized under
27 the authority of section four, article five, chapter twenty-two of

28 this code, relating to the department of environmental protec-
29 tion (to prevent and control air pollution from hazardous waste
30 treatment, storage or disposal facilities, 45 CSR 25), is autho-
31 rized with the following amendment:

32 Wherever the rule has been amended to insert the term
33 “Division of Water and Waste Management”, the existing
34 language of the rule prior to the amendment denoting a change
35 in the name of the agency of reference shall be retained.

36 (e) The legislative rule filed in the state register on the
37 thirty-first day of July, two thousand three, authorized under the
38 authority of section four, article five, chapter twenty-two of this
39 code, relating to the department of environmental protection
40 (emission standards for hazardous air pollutants for source
41 categories pursuant to 40 CFR Part 63, 45 CSR 34), is autho-
42 rized with the following amendment:

43 Wherever the rule has been amended to insert the term
44 “Division of Water and Waste Management”, the existing
45 language of the rule prior to the amendment denoting a change
46 in the name of the agency of reference shall be retained.

47 (f) The legislative rule filed in the state register on the
48 thirtieth day of July, two thousand three, authorized under the
49 authority of section four, article five, chapter twenty-two of this
50 code, relating to the department of environmental protection
51 (requirements for determining conformity of transportation
52 plans, programs and projects developed, funded or approved
53 under Title 23 U.S.C. or the federal transit laws applicable to air
54 quality implementation plans (transportation conformity), 45
55 CSR 36), is authorized with the following amendment:

56 Wherever the rule has been amended to insert the term
57 “Division of Water and Waste Management”, the existing
58 language of the rule prior to the amendment denoting a change
59 in the name of the agency of reference shall be retained.

60 (g) The legislative rule filed in the state register on the
61 thirty-first day of July, two thousand three, authorized under the

62 authority of section four, article three, chapter twenty-two of
63 this code, modified by the department of environmental
64 protection to meet the objections of the legislative rule-making
65 review committee and refiled in the state register on the
66 sixteenth day of January, two thousand four, relating to the
67 department of environmental protection (surface mining
68 reclamation, 38 CSR 2), is authorized.

69 (h) The legislative rule filed in the state register on the first
70 day of August, two thousand three, authorized under the
71 authority of section five, article fifteen, chapter twenty-two of
72 this code, modified by the department of environmental
73 protection to meet the objections of the legislative rule-making
74 review committee and refiled in the state register on the second
75 day of December, two thousand three, relating to the depart-
76 ment of environmental protection (solid waste management, 33
77 CSR 1), is authorized with the following amendment:

78 Wherever the rule has been amended to insert the term
79 "Division of Water and Waste Management", the existing
80 language of the rule prior to the amendment denoting a change
81 in the name of the agency of reference shall be retained.

82 (i) The legislative rule filed in the state register on the
83 thirty-first day of July, two thousand three, authorized under the
84 authority of section one, article eighteen, chapter twenty-two of
85 this code, modified by the department of environmental
86 protection to meet the objections of the legislative rule-making
87 review committee and refiled in the state register on the second
88 day of December, two thousand three, relating to the depart-
89 ment of environmental protection (hazardous waste manage-
90 ment, 33 CSR 20), is authorized with the following amendment:

91 Wherever the rule has been amended to insert the term
92 "Division of Water and Waste Management", the existing
93 language of the rule prior to the amendment denoting a change
94 in the name of the agency of reference shall be retained.

95 (j) The legislative rule filed in the state register on the
96 thirty-first day of July, two thousand three, authorized under the

97 authority of section four, article eleven, chapter twenty-two of
98 this code, modified by the department of environmental
99 protection to meet the objections of the legislative rule-making
100 review committee and refiled in the state register on the
101 twentieth day of November, two thousand three, relating to the
102 department of environmental protection (West Virginia NPDES
103 rule for coal mining facilities, 47 CSR 30), is authorized with
104 the following amendment:

105 Wherever the rule has been amended to insert the term
106 “Division of Water and Waste Management”, the existing
107 language of the rule prior to the amendment denoting a change
108 in the name of the agency of reference shall be retained.

§64-3-2. Environmental quality board.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, under the authority of section
3 four, article three, chapter twenty-two-b of this code, relating to
4 the environmental quality board (requirements governing water
5 quality standards, 46 CSR 1), is not authorized.

6 (1) The legislative rule filed in the state register on the
7 fourteenth day of April, two thousand three, and effective the
8 twenty-fifth day of June, two thousand three, authorized under
9 the authority of section four, article three, chapter twenty-two-b
10 of this code, authorized by the Legislature during the regular
11 session of the Legislature in two thousand three, relating to the
12 environmental quality board (requirements governing water
13 quality standards, 46 CSR 1), is reauthorized with the following
14 amendments:

15 On page seven, section 6.2.d., after the words “(require-
16 ments for Category A waters.)”, by striking out the words “The
17 manganese human health criteria shall not apply where the
18 discharge point of the manganese is located more than five
19 miles upstream from a known drinking water source.” and
20 inserting the following:

21 “The manganese human health criterion shall only apply
22 within the five-mile zone immediately upstream above a known
23 public or private water supply used for human consumption.”;

24 On page ten, section 7.2.a.2., after the words “(to its
25 headwaters.)” by striking out the words “Until September 1,
26 2004, the one-half mile zone described in this section shall not
27 apply to the Ohio River main channel (between Brown’s Island
28 and the left descending bank) between river mile points 61.0
29 and 63.5.” and inserting in lieu thereof the words “Until
30 September 1, 2010, or until action by the Environmental
31 Quality Board to revise this provision, whichever comes first,
32 the one-half (½) mile zone described in this section shall not
33 apply to the Ohio River main channel (between Brown’s Island
34 and the left descending bank) between river mile points 61.0
35 and 63.5 for the Category A criterion for iron as set forth in §8
36 herein. Weirton Steel Corporation shall conduct monthly
37 monitoring of the treated water at its drinking water plant for
38 iron and submit the results of such monitoring to the West
39 Virginia Bureau for Public Health and the Office of Water
40 Resources of the West Virginia Department of Environmental
41 Protection. In addition, Weirton Steel Corporation shall submit
42 a written report regarding the status of its drinking water plant
43 and the issues pertaining thereto to the Environmental Quality
44 Board on or before March 1, 2007.”;

45 On pages twelve and thirteen, section 7.2.d.16.2. after the
46 words “the following instream criteria:” by striking the remain-
47 der of 7.2.d.16.2. and inserting in lieu thereof, the following:

48 “Lead 14 ug/l, Daily Maximum, Temperature 100 degree F
49 (monitored per Footnote 12 of the permit); Iron 4.0 mg/l,
50 monthly average and 8.0 mg/l Daily Maximum (monitored per
51 Footnote 12 of the permit). Weirton Steel Corporation shall
52 continue to submit to the Office of Water Resources of the
53 West Virginia Department of Environmental Protection, on an
54 annual basis summary reports on the water quality of the
55 discharge from Outlet 004 and the efforts made by Weirton
56 Steel Corporation during the previous year to improve the

57 quality of the discharge. These exceptions shall be in effect
58 until action by the Environmental Quality Board to revise the
59 exceptions or until July 1, 2007, whichever comes first.”;

60 On page thirteen, section 7.2.d.19. by adding a new
61 paragraph designated 7.2.d.19.3. to read as follows:

62 7.2.d.19.3. Except that in Ward Hollow of Davis Creek, the
63 following site-specific numeric criterion for chloride shall apply
64 for Category A and Category B1 (chronic aquatic life protec-
65 tion):310,000 ug/L.;

66 On page 30, APPENDIX E, TABLE 1, column one, by
67 striking out the words “The concentration of un-ionized
68 ammonia (NH₃) shall not exceed 50 ug/l.; and

69 On page 30, APPENDIX E, TABLE 1, by striking the all
70 the provisions of 8.2. and on page 31, by renumbering 8.2.1. as
71 8.2..

72 (2) In addition to the forgoing amendments to the rule the
73 environmental quality board shall, in cooperation with the
74 regulated community and the department of environmental
75 protection, propose for promulgation in accordance with the
76 provisions of article three, chapter twenty-nine-a of this code,
77 an emergency and legislative rule on or before the first day of
78 October, two thousand four, to revise the aquatic life aluminum
79 criteria.

CHAPTER 163

(Com. Sub. for H. B. 4205 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 5, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the legislature; authorizing the department of health and human resources to promulgate a legislative rule relating to eligibility standards for economic assistance from the James "Tiger" Morton catastrophic illness fund; authorizing the division of health to promulgate a legislative rule relating to assisted living residences; authorizing the division of health to promulgate a legislative rule relating to cross connection and backflow prevention; authorizing the division of health to promulgate a legislative rule relating to the certification of backflow prevention assembly testers; authorizing the division of health to promulgate a legislative rule relating to the state-wide trauma/emergency care system; authorizing the division of health to promulgate a legislative rule relating to public water systems; authorizing the division of health to promulgate a legislative rule relating to childhood lead screening; authorizing the division of health to promulgate a legislative rule relating to fees for services; authorizing the division of health to promulgate a legislative rule relating to residential board and care homes; and authorizing the division of health to promulgate a legislative rule relating to the birth defects information system.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-5-1. Department of health and human resources.

§64-5-2. Division of health.

§64-5-1. Department of health and human resources.

1 The legislative rule filed in the state register on the eighth
2 day of July, two thousand three, authorized under the authority
3 of section two, article five-q, chapter sixteen of this code,
4 modified by the department of health and human resources to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the second day of
7 December, two thousand three, relating to the department of
8 health and human resources (eligibility standards for economic
9 assistance from the James “Tiger” Morton catastrophic illness
10 fund, 72 CSR 1), is authorized, with the following amendments:

11 On page one, section 2, lines one and two, by striking out
12 the words “has a catastrophic illness and has applied” and
13 inserting in lieu there of the word “applies”;

14 On page one, subsection 2.1, line three, by striking out the
15 word “that” and inserting in lieu thereof the word “cata-
16 strophic”;

17 On page two, subsection 3.4, after the words “A life-
18 threatening illness” by striking out the remainder of the
19 subsection and inserting in lieu thereof the words “presenting
20 an applicant with an imminent risk of death.”;

21 On page two, subsection 3.6, by striking out the subsection
22 in its entirety and inserting in lieu thereof the following:

23 “3.6. Eligible applicant. - An applicant who is suffering
24 from a catastrophic illness and who meets the financial eligibil-
25 ity standards established by subsection 6.3 of this rule.”;

26 On page two, section 4, by striking out the section in its
27 entirety and inserting in lieu thereof the following:

28 “4.1. A West Virginia citizen may request economic
29 assistance from the commission by contacting the commission
30 and providing information by telephone.

31 4.2. Any person who obtains or attempts to obtain funds
32 from the commission by willful, false statement or misrepresen-
33 tation or by impersonation or any other fraudulent device may
34 be investigated by the Department of Health and Human
35 Resources, Office of Inspector General, and may be prosecuted
36 to the full extent of the law.”;

37 On page four, section 5, by striking out the section in its
38 entirety and renumbering subsequent sections accordingly;

39 On page two, section 6, by striking out the words “If
40 funding is available, the Commission may consider an applicant
41 eligible” and inserting in lieu thereof the words “An applicant
42 is eligible”;

43 On page three, subsection 8.1, by striking out the subsection
44 in its entirety and inserting in lieu thereof the following:

45 “8.1. Requests for pharmaceutical purchases other than
46 those approved under section 7 of this rule.”;

47 On page three, subsection 8.3, line one, after the word
48 “days”, by inserting the words “or more”;

49 On page four, subsection 9.1, by striking out the subsection
50 in its entirety and inserting in lieu thereof the following:

51 “9.1. If funding is available, the commissioner may order an
52 award of economic assistance to an eligible applicant.”;

53 On page four, subsection 9.2, line two, after the words
54 “amount of an award.” by striking out the remainder of the
55 subsection and inserting in lieu thereof the following:

56 “The decision to make an award is within the discretion of
57 the commission or, where permitted by this rule, its executive
58 director.”;

59 On page four, subsection 9.3, by striking out the subsection
60 in its entirety and inserting in lieu thereof the following:

61 “9.3. Within each budget year, similarly situated applicants
62 shall be treated similarly.”;

63 On page four, section 10, by striking out the section in its
64 entirety and inserting in lieu thereof the following:

65 “Records of the Commission are confidential and may not
66 be disclosed except as required by W. Va. Code §29B-1-1 *et*
67 *seq.* Any employee of the commission who has access to
68 confidential information regarding an applicant must sign a
69 written statement acknowledging that he or she fully under-
70 stands and will maintain the confidential nature of the informa-
71 tion.”;

72 And,

73 On page five, section 11, line eight, after the word “conclu-
74 sion.”, by striking out the quotation marks.

§64-5-2. Division of health.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day of July, two thousand three, authorized under
3 the authority of section five, article five-d, chapter sixteen of
4 this code, modified by the division of health to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the eighth day of December, two
7 thousand three, relating to the division of health (assisted living
8 residences, 64 CSR 14), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-second day of July, two thousand three, authorized
11 under the authority of section four, article one, chapter sixteen
12 of 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 twenty-second day of Decem-
15 ber, two thousand three, relating to the division of health (cross
16 connection and backflow prevention, 64 CSR 15), is authorized.

17 (c) The legislative rule filed in the state register on the
18 twenty-second day of July, two thousand three, authorized
19 under the authority of section four, article one, chapter sixteen
20 of this code, modified by the division of health to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the twenty-second day of Decem-
23 ber, two thousand three, relating to the division of health
24 (certification of backflow prevention assembly testers, 64 CSR
25 25), is authorized with the following amendment:

26 “On page two, section four, following subdivision 4.1.b., by
27 striking the remainder of the subsection and inserting the
28 following:

29 ‘and

30 4.1.c. Either:

31 4.1.c.1. Complete and pass all parts of an approved
32 forty (40) hour course of instruction in theory, design, perfor-
33 mance, testing and maintenance of backflow prevention
34 assemblies; or

35 4.1.c.2. Meet recertification, reinstatement or reciprocity
36 requirements, as provided in sections 7 or 8 of this rule.’.”

37 (d) The legislative rule filed in the state register on the
38 thirty-first day of July, two thousand three, authorized under the
39 authority of section nine-c, article seven-b, chapter fifty-five of
40 this code, modified by the division of health to meet the
41 objections of the legislative rule-making review committee and

42 refiled in the state register on the eighth day of December, two
43 thousand three, relating to the division of health (statewide
44 trauma/emergency care system, 64 CSR 27), is authorized.

45 (e) The legislative rule filed in the state register on the
46 eleventh day of July, two thousand three, authorized under the
47 authority of section four, article one, chapter sixteen of this
48 code, relating to the division of health (public water systems, 64
49 CSR 3), is authorized.

50 (f) The legislative rule filed in the state register on the
51 twenty-eighth day of July, two thousand three, authorized under
52 the authority of section four-a, article thirty-five, chapter
53 sixteen of this code, modified by the division of health to meet
54 the objections of the legislative rule-making review committee
55 and refiled in the state register on the eighth day of December,
56 two thousand three, relating to the division of health (childhood
57 lead screening, 64 CSR 42), is authorized with the following
58 amendments:

59 “On page two, subsection 3.6, line one, following the word
60 “Screening” and the dash, by striking out the remainder of the
61 sentence and inserting in lieu thereof the following: “The
62 assessment of a child’s environment and social conditions to
63 determine risk for lead poisoning.”;

64 On page two, subsection 4.1, line two, following the words
65 “years for” by inserting the words “risk of”;

66 On page two, subdivision 4.1.a, line one, following the
67 word “screened”, by inserting the words “using a risk assess-
68 ment”;

69 On page two, subdivision 4.1.a, line two, following the
70 word “age”, by striking out the words “shall be screened”;

71 On page two, subdivision 4.1.b, line one, following the
72 word “lead”, by inserting the words “risk assessment”;

73 On page two, subdivision 4.1.b, line three, following the
74 word “conducted”, by striking out the comma and inserting the
75 word “and”;

76 On page two, subdivision 4.1.b, line three, following the
77 word “name”, by striking out the remainder of the sentence.

78 On page two, section four, following subdivision 4.1.b, by
79 inserting the following:

80 “4.1.c. If a child is determined to be at risk for lead poison-
81 ing, the health care provider shall perform or authorize a blood
82 test to identify the blood lead level.”

83 On page three, section six, line two, following the word
84 “quarterly”, by inserting the word “testing”;

85 On page three, section six, line two, following the word
86 “results”, by striking out the words “of the screening”;

87 And

88 On page three, subsection 7.2, line two, following the word
89 “child’s”, by inserting the word “name” and a comma.”

90 (g) The legislative rule filed in the state register on the first
91 day of August, two thousand three, authorized under the
92 authority of section four, article one, chapter sixteen of this
93 code, modified by the division of health to meet the objections
94 of the legislative rule-making review committee and refiled in
95 the state register on the eighth day of December, two thousand
96 three, relating to the division of health (fees for services, 64
97 CSR 51), is authorized, with the following amendments:

98 On page one, subsection 3.2 after the words “Ambulatory
99 Surgical” by striking out the words “Center (ASC)” and
100 inserting in lieu thereof the words “Facility (ASF)”;

101 On page twenty-one, Appendix A. Laboratory Service
102 Fees., subparagraph 1.A.1.8.1, after the words “Active Sub-

103 stances”, by striking out the numbers “\$12.00” and inserting in
104 lieu thereof the numbers “\$15.00”;

105 On page twenty-one, Appendix A. Laboratory Service
106 Fees., after subparagraph 1.A.1.8.1., by inserting a new subpara-
107 graph, designated subparagraph 1.A.1.8.1. and renumbering the
108 remaining subsections, to read as follows:

109 “m. Nitrate \$15.00”;

110 On page twenty-one, Appendix A. Laboratory Service
111 Fees., subsection 1.B., by renumbering the subdivisions in the
112 subsection;

113 On page twenty-two, Appendix A. Laboratory Service
114 Fees., after subparagraph 1.B.3.A.3. by adding a new subpara-
115 graph, designated subparagraph 1.B.3.A.4., to read as follows:

116 “3. All Other Organic Tests \$800.00

117 4. Total Organic Carbon (TOC) and/or Specific Ultraviolet
118 Absorption (SUVA) \$200.00”

119 and by renumbering the subsequent subparagraphs accord-
120 ingly;

121 On page twenty-two, Appendix A. Laboratory Service
122 Fees., paragraph 1.B.4.A., after the words “Newborn Screen-
123 ing”, by striking out the numbers “\$15.00” and inserting in lieu
124 thereof the numbers “\$28.00”;

125 On page twenty-seven, Appendix C. Maximum Health
126 Facility Fees., subsection 2.B., after the words “Ambulatory
127 Surgical”, by striking out the word “Center” and inserting in
128 lieu thereof the word “Facility”;

129 And,

130 On page twenty-eight, Appendix C. Maximum Health
131 Facility Fees., subsection 3.B., after the words “Ambulatory

132 Surgical”, by striking out the word “Center” and inserting in
133 lieu thereof the word “Facility”.

134 (h) The legislative rule filed in the state register on the
135 twenty-fifth day of July, two thousand three, authorized under
136 the authority of section five, article five-d, chapter sixteen of
137 this code, relating to the division of health (residential board
138 and care homes, 64 CSR 65), is authorized.

139 (i) The legislative rule filed in the state register on the
140 twenty-fifth day of July, two thousand three, authorized under
141 the authority of section seven, article forty, chapter sixteen of
142 this code, modified by the division of health to meet the
143 objections of the legislative rule-making review committee and
144 refiled in the state register on the eighth day of December, two
145 thousand three, relating to the division of health (birth defects
146 information system, 64 CSR 81), is authorized.

CHAPTER 164

**(Com. Sub. for H. B. 4200 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)**

[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 6, chapter 64 of the code of West Virginia, 1931, as amended; all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to

promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the fire marshal to promulgate a legislative rule relating to the certification of electrical inspectors; authorizing the fire marshal to promulgate a legislative rule relating to fees for licenses, permits, inspections, plans review and other services rendered; and authorizing the state police to promulgate a legislative rule relating to the career progression system.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the code of West Virginia, 1931, 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 marshal.

§64-6-2. State police.

§64-6-1. Fire marshal.

- 1 (a) The legislative rule filed in the state register on the
- 2 eighteenth day of February, two thousand three, authorized
- 3 under the authority of section four, article three-c, chapter
- 4 twenty-nine of this code, modified by the fire marshal to meet
- 5 the objections of the legislative rule-making review committee
- 6 and refiled in the state register on the eighteenth day of June,
- 7 two thousand three, relating to the fire marshal (certification of

8 electrical inspectors, 103 CSR 1), is authorized, with the
9 following amendments:

10 On page 4, subsection 5.2, after the word “qualifications”
11 by striking out the word “forfeits” and inserting in lieu thereof
12 the words “and he or she shall also forfeit”;

13 On page five, subsection 7.4, line one, by striking out the
14 words “Duplicate license fee” and inserting in lieu thereof the
15 words “Duplicate certification fee”;

16 On page five, subsection 7.4, line five, by striking out the
17 word “license” and inserting in lieu thereof the words “certifi-
18 cation”;

19 And,

20 On page five, section 8, line five, by striking out the word
21 “offense” and inserting in lieu thereof the words “violation of
22 this rule”.

23 (b) The legislative rule filed in the state register on the
24 twenty-eighth day of July, two thousand three, authorized under
25 the authority of section twelve-b, article three, chapter twenty-
26 nine of this code, modified by the fire marshal to meet the
27 objections of the legislative rule-making review committee and
28 refiled in the state register on the fifteenth day of December,
29 two thousand three, relating to the fire marshal (fees for
30 licenses, permits, inspections, plans review and other services
31 rendered, 103 CSR 2), is authorized with the following amend-
32 ments:

33 On page four, subsection 6.12, by striking out the subsec-
34 tion in its entirety and renumbering subsequent subsections
35 accordingly;

36 On page five, subsection 6.14, by striking out the words
37 “Unjustified Complaint ————— Fee to complainant will be

38 the same as listed per above respective occupancy” and
39 inserting in lieu thereof the words “Unjustified Complaint (fee
40 charged complainant) ————— \$25.00”;

41 On page five, subsection 6.20, by striking out the subsec-
42 tion in its entirety and renumbering subsequent subsections
43 accordingly;

44 And,

45 On page five, subsection 6.22, by striking out said subsec-
46 tion 6.22 in its entirety.

§64-6-2. State police.

1 The legislative rule filed in the state register on the thirty-
2 first day of July, two thousand three, 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 sixteenth day of December, two thousand
7 three, relating to the state police (career progression system, 81
8 CSR 3), is authorized.

CHAPTER 165

(Com. Sub. H. B. 4217 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 7, chapter 64 of the code of
West Virginia, 1931, as amended, all relating generally to the

promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the insurance commissioner to promulgate a legislative rule relating to the licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to accident and sickness rate filing; authorizing the insurance commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the insurance commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited video lottery; authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the racing commission to promulgate a legislative rule relating to greyhound racing; and authorizing the

tax commissioner to promulgate a legislative rule relating the alternative resolution of tax disputes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-7-1. Division of banking.

§64-7-2. Insurance commissioner.

§64-7-3. Lottery commission.

§64-7-4. Racing commission.

§64-7-5. Tax commissioner.

§64-7-1. Division of banking.

1 The legislative rule filed in the state register on the fifteenth
2 day of July, two thousand three, authorized under the authority
3 of section three, article seventeen, chapter thirty-one, of this
4 code, modified by the division of banking to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twentieth day of January, two
7 thousand four, relating to the division of banking (residential
8 mortgage lenders, brokers and loan originators, 106 CSR 5), is
9 authorized, with the following amendments:

10 On page three, after section 3.1, by adding a new section to
11 read “3.2 All records required to be maintained by section 3.1
12 shall be kept in the specific loan file relating to the individual
13 borrower or loan applicant except for those records listed in
14 subsections 3.1.z, 3.1.aa, 3.1.bb and 3.1.cc.”;

15 On page four, after section 4.1, by adding a new section to
16 read “4.2 All records required to be maintained by section 4.1
17 shall be kept in the specific loan file relating to the individual

18 borrower or loan applicant except for those records listed in
19 subsections 4.1.g, 4.1.h, 4.1.i, 4.1.j and 4.1.k.”;

20 On page five, after section 5.1, by adding a new section to
21 read “5.2 All records required to be maintained by section 5.1
22 shall be kept in the specific loan file relating to the individual
23 borrower or loan applicant except for those records listed in
24 subsections 5.1.j, 5.1.k, 5.1.l, 5.1.m and 5.1.n.”;

25 And,

26 On page seven, after section 6.1, by adding a new section
27 to read “6.2 All records required to be maintained by section
28 6.1 shall be kept in the specific loan file relating to the individ-
29 ual borrower or loan applicant except for those records listed in
30 subsections 6.1.t, 6.1.u, 6.1.v, 6.1.w and 6.1.y.”

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of July, two thousand three, 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 fourth day of December, two
7 thousand three, relating to the insurance commissioner (licens-
8 ing and conduct of individual insurance producers, agencies and
9 solicitors, 114 CSR 2), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-ninth day of July, two thousand three, authorized under
12 the authority of section ten, article two, chapter thirty-three, of
13 this code, modified by the insurance commissioner to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the fourth day of December, two
16 thousand three, relating to the insurance commissioner (surplus

17 lines insurance, 114 CSR 20), is authorized with the following
18 amendments:

19 On page three, by striking out all of subdivision 4.1 and
20 inserting in lieu thereof the following:

21 “4.1 Diligent Search – In accordance with the provisions of
22 West Virginia code §33-12C-5(a)(3), insurance coverage
23 written by a surplus lines insurer and placed by a surplus lines
24 licensee may not be procured until a diligent search has been
25 made by the individual insurance producer to place the risk with
26 an admitted insurer. The surplus lines licensee shall submit to
27 the commissioner a sworn notarized affidavit, as provided in
28 subsection 4.5 of this rule, that a diligent search has been made
29 by the individual insurance producer to place the risk with
30 licensed insurers authorized to write and actually writing the
31 particular risk sought to be placed in the excess lines market.
32 This affidavit shall be maintained, as required by West Virginia
33 code §33-12C-16, as part of the full and true record of each
34 surplus lines contract procured.”;

35 On page three, section 4 (subdivision 4.2.a.) following the
36 word “rule” and the period by inserting the following:

37 “The affidavit shall affirm that the insured was expressly
38 advised prior to the placement of the insurance that:

39 (1) the surplus lines insurer with which the insurance is to
40 be placed is not an admitted authorized insurer in this
41 state and is not subject to the commissioner’s supervi-
42 sion; and,

43 (2) in the event the surplus lines insurance becomes
44 insolvent, claims will not be paid nor will unearned
45 premiums be returned by any West Virginia insurance
46 guaranty fund.”;

47 On pages three and four by striking out all of subdivision
48 4.2.b. and inserting in lieu thereof the following:

49 “b. No individual insurance producer may solicit, procure,
50 place, or renew any insurance with a nonadmitted insurer unless
51 the producer has been unable to procure the requested insurance
52 from an authorized insurer after conducting a diligent search. A
53 diligent search requires the individual insurance producer to
54 contact as many insurers as the individual insurance producer
55 represents, that customarily write the kind of insurance re-
56 quested by the insured. A diligent search is presumed if
57 declinations are received from each authorized insured con-
58 tacted.”;

59 And,

60 On pages eleven and twelve, by striking out all of subdivi-
61 sion 7.2.b. and inserting in lieu thereof the following:

62 “b. Insurance coverages and classes not included on the
63 export list may only be placed with surplus lines insurers once
64 a diligent search has been made.”

65 (c) The legislative rule filed in the state register on the
66 twenty-first day of March, two thousand three, authorized under
67 the authority of section ten, article two, chapter thirty-three of
68 this code, relating to the insurance commissioner (Medicare
69 supplement insurance, 114 CSR 24), is authorized.

70 (d) The legislative rule filed in the state register on the
71 twenty-ninth day of July, two thousand three, authorized under
72 the authority of section ten, article two, chapter thirty-three of
73 this code, modified by the insurance commissioner to meet the
74 objections of the legislative rule-making review committee and
75 refiled in the state register on the fourth day of December, two
76 thousand three, relating to the insurance commissioner (acci-
77 dent and sickness rate filing, 114 CSR 26), is authorized.

78 (e) The legislative rule filed in the state register on the
79 twenty-ninth day of July, two thousand three, authorized under
80 the authority of section ten, article two, chapter thirty-three of
81 this code, modified by the insurance commissioner to meet the
82 objections of the legislative rule-making review committee and
83 refiled in the state register on the twenty-third day of January,
84 two thousand four, relating to the insurance commissioner
85 (credit for reinsurance, 114 CSR 40), is authorized, with the
86 following amendments:

87 On page one, subsection 2.2, line one, after the words “alien
88 ceding insurer”, by inserting the words “which is”;

89 On page one, subsection 2.2, line two, by striking out the
90 word “that” and inserting in lieu thereof the word “and”;

91 On page two, subdivision 4.1.d, line four, after the words
92 “The accredited reinsurer”, by striking out the word “shall” and
93 inserting in lieu thereof the word “may”;

94 On page three, subsection 5.1, line two, after the words
95 “insurer which”, by inserting a comma:

96 On page three, subsection 5.1, line three, after the words
97 “on which”, by striking out the remainder of the subsection and
98 inserting in lieu thereof the words “credit for reinsurance is
99 claimed on the domestic insurer’s statutory financial state-
100 ment”;

101 On page four, subdivision 6.2.b, line two, after the word
102 “underwriters”, by inserting a comma;

103 On page four, subdivision 6.2.b, line three, after the words
104 “United States”, by inserting a period, striking out the words
105 “and in” and inserting in lieu thereof the word “In”;

106 On page seven, subsection 6.6, line three, after the word
107 “dollars”, by changing the comma to a semi-colon;

108 On page seven, subsection 6.6, line four, after the terms “(f)
109 and (g)”, by changing the comma to a semi-colon;

110 On page seven, subsection 6.6, line five, after the terms “(f)
111 and (g)”, by changing the comma to a semi-colon;

112 On page ten, subparagraph 6.6.f.1.B, line five, by striking
113 out the word “shall” and inserting in lieu thereof the word
114 “may”;

115 On page eleven, subdivision 6.6.i, line three, by striking out
116 the words “shall be” and inserting in lieu thereof the word “is”;

117 On page fifteen, subdivision 9.1.i, line three, by striking out
118 the words “shall have” and inserting in lieu thereof the word
119 “has”;

120 And,

121 On page fifteen, subdivision 9.1.j, line three, by striking out
122 the words “shall be” and inserting in lieu thereof the word “is”.

123 (f) The legislative rule filed in the state register on the
124 twenty-ninth day of July, two thousand three, authorized under
125 the authority of section sixteen, article twelve-a, chapter
126 twenty-nine of this code, relating to the insurance commis-
127 sioner (self-insurance pools for political subdivisions, 114 CSR
128 65), is authorized.

§64-7-3. Lottery commission.

1 (a) The legislative rule filed in the state register on the tenth
2 day of July, two thousand three, authorized under the authority
3 of section five, article twenty-two, chapter twenty-nine of this

4 code, modified by the lottery commission to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twenty-second day of Decem-
7 ber, two thousand three, relating to the lottery commission
8 (state lottery rules, 179 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-fourth day of July, two thousand three, authorized under
11 the authority of section four hundred two, article twenty-two-b,
12 chapter twenty-nine, of this code, modified by the lottery
13 commission to meet the objections of the legislative rule-
14 making review committee and refiled in the state register on the
15 twelfth day of January, two thousand four, relating to the lottery
16 commission (limited video lottery, 179 CSR 5), is authorized
17 with the following amendments:

18 On page three, section two, subsection 2.13, line four,
19 following the words "operating on", by inserting the word
20 "that";

21 On page four, section two, subsection 2.15, line two,
22 following the word "Code", by striking out the citation "§11-
23 14-2", and inserting in lieu thereof the citation "§11-14C-2";

24 On page seven, section five, subsection 5.2, line one,
25 following the word "subdivision", by striking out the citation
26 "5.1.a", and inserting in lieu thereof the citation "5.1.b";

27 On page twenty-one, beginning on line four, by striking out
28 section 30 in its entirety and redesignating the remaining
29 sections and parts thereof accordingly;

30 And,

31 On page twenty-four, section 34.2, by changing the period
32 at the end of the sentence to a colon and inserting the words:
33 "*Provided*, That a limited video lottery retailer may display a

34 sign on the exterior of the establishment that states ‘West
35 Virginia Lottery Products available here,’ which sign is of
36 uniform size and design, no greater than twelve inches by
37 twelve inches, produced and distributed to retailers by the
38 lottery commission.”

§64-7-4. Racing commission.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, two thousand three, authorized under the
3 authority of section six, article twenty-three, chapter nineteen,
4 of this code, modified by the racing commission 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 three, relating to the racing commission (thoroughbred
8 racing, 178 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 thirty-first day of July, two thousand three, authorized under the
11 authority of section six, article twenty-three, chapter nineteen,
12 of this code, relating to the racing commission (greyhound
13 racing, 178 CSR 2), is authorized.

§64-7-5. Tax commissioner.

1 The legislative rule filed in the state register on the eigh-
2 teenth day of February, two thousand three, authorized under
3 the authority of section twenty-three, article ten, chapter eleven,
4 of this code, modified by the tax commissioner to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-first day of April, two
7 thousand three, relating to the tax commissioner (alternative
8 resolution of tax disputes, 110 CSR 10g), is authorized, with the
9 following amendments:

10 On page two, subdivision 3.1.1, line two, after the word
11 “and”, by inserting a comma;

12 On page two, subsection 3.5, line three, by striking the
13 word “shall” and inserting in lieu thereof the word “must”;

14 One page two, subsection 3.5, line six, after the word
15 “assessment” by inserting a comma;

16 One page two, subsection 3.5, line six, by striking the word
17 “commence” and inserting in lieu thereof the work “begin”;

18 On page two, subdivision 3.5.1, line two, by striking the
19 word “that” and inserting in lieu thereof the word “as”;

20 On page three, subsection 4.1, line two, after the word
21 “coordinator” by inserting a comma;

22 On page three, subdivision 4.2.1, line three, after the word
23 “approved” by striking the comma and inserting in lieu thereof
24 a period;

25 One page three, subdivision 4.2.1, line three, by striking the
26 word “and” and inserting in lieu thereof “The conciliation
27 coordinator or assistant conciliation coordinator”;

28 On page three, subdivision 4.2.1, line four, following the
29 word “date” by striking the comma and inserting in lieu thereof
30 a period;

31 On page three, subdivision 4.2.1, line five, by striking the
32 word “which” and inserting in lieu thereof the words “The
33 conference date”;

34 On page three, subsection 4.4, line one by striking out the
35 words “without regard to the rules of evidence”;

36 On page three, subsection 4.4, line three after the word
37 “dispute” by striking the period and inserting the words “and
38 without regard to the rules of evidence”.

CHAPTER 166

**(Com. Sub. for H. B. 4211 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)**

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 8, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the division of motor vehicles to promulgate a legislative rule relating to administrative due process.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the code of West Virginia, 1931, 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 first
2 day of August, two thousand three, authorized under the
3 authority of section eleven, article twenty-two, chapter seven-
4 teen of this code, modified by the division of highways to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-seventh day of
7 January, two thousand four, relating to the division of highways
8 (use of state road rights-of-way and adjacent areas, 157 CSR 6),
9 is authorized.

10 (b) The legislative rule filed in the state register on the
11 eighteenth day of July, two thousand three, authorized under the
12 authority of section seven, article eighteen, chapter twenty-two
13 of this code, relating to the division of highways (transportation
14 of hazardous wastes upon the roads and highways, 157 CSR 7),
15 is authorized, with the following amendment:

16 On page four, subdivision 6.3.2, on the third line, by
17 striking out the words "Division of Water and" and inserting in
18 lieu thereof the words "Office of".

§64-8-2. Division of motor vehicles.

1 The legislative rule filed in the state register on the nine-
2 tenth day of November, two thousand three, authorized under
3 the authority of section nine, article two, chapter seventeen-a of
4 this code, relating to the division of motor vehicles (administra-

5 tive due process, 91 CSR 1), is authorized, with the following
6 amendment:

7 On page five, subdivision 3.7.2., after the period, by
8 inserting the following: “*Provided*, That, where the arresting
9 officer fails to appear at the hearing, but the licensee appears,
10 the revocation or suspension of license may not be based solely
11 on the arresting officer’s affidavit or other documentary
12 evidence submitted by the arresting officer.”;

13 On page six, paragraph 3.9.4.a., by striking out the subdivi-
14 sion in its entirety and inserting in lieu thereof the following:

15 “a. The party carrying the burden of proof has the initial
16 opportunity to present evidence.”;

17 On page six, paragraph 3.9.4.b, after the words “and accept
18 as”, by striking out the word “evidence” and inserting in lieu
19 thereof the words “part of the record”.

CHAPTER 167

(Com. Sub. for S. B. 399 — By Senators Ross, Minard,
Snyder, Unger, Boley and Minear)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 9, chapter 64 of the code of West Virginia, 1931, 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; disapproving certain rules; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing commissioner of agriculture to promulgate legislative rule relating to frozen desserts and imitation frozen desserts; authorizing commissioner of agriculture to promulgate legislative rule relating to dairy products and imitation dairy products; authorizing commissioner of agriculture to promulgate legislative rule relating to seed law; authorizing board of architects to promulgate legislative rule relating to registration of architects; authorizing auditor's office to promulgate legislative rule relating to transaction fee and rate structure; authorizing auditor's office to promulgate legislative rule relating to state purchasing card program; authorizing board of examiners in counseling to promulgate legislative rule relating to fees; authorizing board of registration for professional engineers to promulgate legislative rule relating to governance of board; authorizing board of examiners of land surveyors to promulgate legislative rule relating to minimum standards for practice of land surveying; authorizing board of examiners of land surveyors to promulgate legislative rule relating to mandatory continuing education for land surveyors; authorizing board of landscape architects to promulgate legislative rule relating to board; authorizing board of examiners for licensed practical nurses to promulgate legislative rule relating to policies and procedures for development and maintenance of

education programs in practical nursing; authorizing board of medicine to promulgate legislative rule relating to licensing and disciplinary procedures: physicians and podiatrists; authorizing board of optometry to promulgate legislative rule relating to board; authorizing board of examiners of psychologists to promulgate legislative rule relating to fees; authorizing public service commission to promulgate legislative rule relating to transportation of coal by commercial motor vehicles; authorizing records management and preservation board to promulgate legislative rule relating to general management and preservation of county records; and authorizing statewide addressing and mapping board to promulgate legislative rule relating to addressing and mapping standards and participation by public agencies in statewide addressing and mapping projects.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Board of accountancy.
- §64-9-2. Commissioner of agriculture.
- §64-9-3. Board of architects.
- §64-9-4. Auditor's office.
- §64-9-5. Board of examiners in counseling.
- §64-9-6. Board of registration for professional engineers.
- §64-9-7. Board of examiners of land surveyors.
- §64-9-8. Board of landscape architects.
- §64-9-9. Board of examiners for licensed practical nurses.
- §64-9-10. Board of medicine.
- §64-9-11. Board of optometry.
- §64-9-12. Board of examiners of psychologists.
- §64-9-13. Public service commission.
- §64-9-14. Records management and preservation board.
- §64-9-15. Statewide addressing and mapping board.

§64-9-1. Board of accountancy.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, authorized under the authority
3 of section five, article nine, chapter thirty of this code, modified
4 by the board of accountancy to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-sixth day of January, two thousand
7 four, relating to the board of accountancy (board rules and rules
8 of professional conduct, 1 CSR 1), is authorized.

§64-9-2. Commissioner of agriculture.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section ten, article eleven-b, chapter nineteen of
4 this code, modified by the commissioner of agriculture to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-fourth day of
7 November, two thousand three, relating to the commissioner of
8 agriculture (frozen desserts and imitation frozen desserts, 61
9 CSR 4B), is authorized with the following amendment:

10 On page one, section 2.1.f, after the words “Pasteurized
11 Milk”, by deleting the term “Ordiance”, and by inserting in lieu
12 thereof the word “Ordinance”.

13 (b) The legislative rule filed in the state register on the first
14 day of August, two thousand three, authorized under the
15 authority of section ten, article eleven-a, chapter nineteen of
16 this code, modified by the commissioner of agriculture to meet
17 the objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-fourth day of
19 November, two thousand three, relating to the commissioner of
20 agriculture (dairy products and imitation dairy products, 61
21 CSR 4C), is authorized.

22 (c) The legislative rule filed in the state register on the first
23 day of August, two thousand three, authorized under the

24 authority of section six, article sixteen, chapter nineteen of this
25 code, modified by the commissioner of agriculture to meet the
26 objections of the legislative rule-making review committee and
27 refiled in the state register on the twenty-fourth day of Novem-
28 ber, two thousand three, relating to the commissioner of
29 agriculture (West Virginia seed law, 61 CSR 9), is authorized.

§64-9-3. Board of architects.

1 The legislative rule filed in the state register on the third
2 day of October, two thousand two, authorized under the
3 authority of section one, article twelve, chapter thirty of this
4 code, modified by the board of architects 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 April, two
7 thousand three, relating to the board of architects (registration
8 of architects, 2 CSR 1), is authorized.

§64-9-4. Auditor's office.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section ten-c, article three, chapter twelve of this
4 code, modified by the auditor's office to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on the eighteenth day of December, two thousand
7 three, relating to the auditor's office (transaction fee and rate
8 structure, 155 CSR 4), is authorized.

9 (b) The legislative rule filed in the state register on the first
10 day of August, two thousand three, authorized under the
11 authority of section ten-a, article three, chapter twelve of this
12 code, modified by the auditor's office to meet the objections of
13 the legislative rule-making review committee and refiled in the
14 state register on the fourth day of November, two thousand
15 three, relating to the auditor's office (state purchasing card

16 program, 155 CSR 7), is authorized with the following amendments:

17 On page two, section two, subdivision 2.17.e, line one,
18 following the words "Higher Education," by inserting the words
19 "not to exceed \$5,000 for any purchase";

20 On page two, section two, subdivision 2.17.f, line two,
21 following the words "Higher Education," by striking out the
22 word "which" and inserting in lieu thereof the words "not to
23 exceed \$5,000 for any purchase unless approved by the Pur-
24 chasing Division 'Routine, regularly scheduled payments of
25 Higher Education'";

26 On page two, section two, subdivision 2.18.c, line three,
27 following the words "Chapter 15", by striking out the words
28 "and WV Code 18B-5-9";

29 On page two, section two, subdivision 2.18.c, line five,
30 following the words "with the card," and the semicolon, by
31 inserting the words "and as provided in WV Code 18B-5-9, the
32 transaction limit for Higher Education is the credit limit
33 associated with the card, not to exceed \$5,000 for any pur-
34 chase", followed by a semicolon;

35 On page two, section two, subdivision 2.18.e, line four,
36 following the words "with the card," by striking out the period
37 and inserting the words "except as provided in subdivision
38 2.17.f.";

39 And,

40 On page three, section three, subsection 3.3, line one,
41 following the words "an emergency", by striking out the word
42 "effecting" and inserting in lieu thereof the word "affecting".

§64-9-5. Board of examiners in counseling.

1 The legislative rule filed in the state register on the fourth
2 day of December, two thousand two, authorized under the
3 authority of section five, article thirty-one, chapter thirty of this
4 code, modified by the board of examiners in counseling to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-first day of April,
7 two thousand three, relating to the board of examiners in
8 counseling (fees, 27 CSR 2), is authorized.

§64-9-6. Board of registration for professional engineers.

1 The legislative rule filed in the state register on the thirtieth
2 day of July, two thousand three, authorized under the authority
3 of section nine, article thirteen, chapter thirty of this code,
4 modified by the board of registration for professional engineers
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 four, relating to the board of registra-
8 tion for professional engineers (rule governing the West
9 Virginia board of registration for professional engineers, 7 CSR
10 1), is authorized with the following amendments:

11 On page three, subsection 3.3, subdivision h, by striking out
12 said subdivision h in its entirety;

13 And,

14 On page twenty-one, subsection 14.4, by striking out said
15 subsection 14.4 in its entirety and inserting in lieu thereof the
16 words:

17 The Board may assess administrative costs incurred in the
18 performance of its enforcement or investigatory activities
19 against any person or entity who violates the provisions
20 referenced in subsection 14.1 of this rule, which shall be paid
21 to the West Virginia State Board of Registration for Profes-
22 sional Engineers by check or money order within a period of

23 thirty (30) days from the date of the final order entered by the
24 Board.”.

§64-9-7. Board of examiners of land surveyors.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section four, article thirteen-a, chapter thirty of this
4 code, relating to the board of examiners of land surveyors
5 (minimum standards for practice of land surveying in West
6 Virginia, 23 CSR 1), is authorized with the following amend-
7 ments:

8 On page three, subsection 5.1, line eight, after the words
9 “annual renewal fee” by striking out the comma and the words
10 “determined by the board, not to exceed one hundred dollars
11 (\$100.00)” and by inserting in lieu thereof the words “of forty
12 dollars (\$40.00)”;

13 On page three, subsection 5.1, line nine, after the words
14 “the fee shall increase”, by striking out the words “an amount
15 determined by the Board, not to exceed twenty per cent (20%)
16 of the annual renewal fee” and inserting in lieu thereof the
17 words “one dollar (\$1.00)”;

18 And,

19 On page four, subsection 5.1, line one, after the words
20 “payment of a fee”, by striking out the words “determined by
21 the Board, not to exceed fifty dollars (\$50.00)” and by inserting
22 in lieu thereof the words “of ten dollars (\$10.00)”.

23 (b) The legislative rule filed in the state register on the first
24 day of August, two thousand three, authorized under the
25 authority of section four, article thirteen-a, chapter thirty of this
26 code, relating to the board of examiners of land surveyors

27 (mandatory continuing education for land surveyors, 23 CSR
28 2), is authorized.

§64-9-8. Board of landscape architects.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, authorized under the authority
3 of section five, article twenty-two, chapter thirty of this code,
4 modified by the board of landscape architects to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-fourth day of Novem-
7 ber, two thousand three, relating to the board of landscape
8 architects (rule of the West Virginia board of landscape
9 architects, 9 CSR 1), is authorized, with the following amend-
10 ment:

11 On page one, section 1.1, line one, after the words “the
12 Board”, by inserting the words “and the”;

13 On page three, section 4.15, line two, after the words
14 “Section 8 of”, by striking out the words “these rules” and
15 inserting in lieu thereof, the words “this rule”;

16 On page four, section 6.5, line two, after the words “Section
17 4.2 of”, by striking out the words “these rules” and inserting in
18 lieu thereof, the words “this rule”;

19 On page five, section 6.6, line four, after the words “Section
20 4.17 of”, by striking out the words “these rules” and inserting
21 in lieu thereof, the words “this rule”;

22 On page five, section 6.8, line three, after the words “10.6
23 of”, by striking out the words “these rules” and inserting in lieu
24 thereof, the words “this rule”;

25 And,

26 On page seven, section 7.7, line four, after the word “or”,
27 by striking out the words “these rules” and inserting in lieu
28 thereof, the words “this rule”, and after the words “violation
29 of”, by striking out the words “these rules” and inserting in lieu
30 thereof, the words “this rule”.

§64-9-9. Board of examiners for licensed practical nurses.

1 The legislative rule filed in the state register on the twenty-
2 third day of June, two thousand three, authorized under the
3 authority of section one, article seven-a, chapter thirty of this
4 code, relating to the board of examiners for licensed practical
5 nurses (policies and procedures for development and mainte-
6 nance of education programs in practical nursing, 10 CSR 1), is
7 authorized.

§64-9-10. Board of medicine.

1 The legislative rule filed in the state register on the six-
2 teenth day of July, two thousand three, authorized under the
3 authority of section seven, article three, chapter thirty of this
4 code, relating to the board of medicine (licensing and disciplin-
5 ary procedures: physicians; podiatrists, 11 CSR 1a), is autho-
6 rized.

§64-9-11. Board of optometry.

1 The legislative rule filed in the state register on the thirty-
2 first day of July, two thousand three, authorized under the
3 authority of section three, article eight, chapter thirty of this
4 code, modified by the board of optometry to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the eighteenth day of December,
7 two thousand three, relating to the board of optometry (rule of
8 the West Virginia board of optometry, 14 CSR 1), is authorized.

§64-9-12. Board of examiners of psychologists.

1 The legislative rule filed in the state register on the eighth-
2 teenth day of June, two thousand three, authorized under the
3 authority of section six, article twenty-one, chapter thirty of this
4 code, modified by the board of examiners of psychologists to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the eighth day of
7 August, two thousand three, relating to the board of examiners
8 of psychologists (fees, 17 CSR 1), is authorized.

§64-9-13. Public service commission.

1 The legislative rule filed in the state register on the twenty-
2 first day of November, two thousand three, authorized under the
3 authority of section three, article seventeen-a, chapter
4 seventeen-c of this code, modified by the public service
5 commission to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on the
7 twenty-sixth day of January, two thousand four, relating to the
8 public service commission (transportation of coal by commer-
9 cial motor vehicles, 150 CSR 27), is authorized.

§64-9-14. Records management and preservation board.

1 The legislative rule filed in the state register on the thir-
2 teenth day of June, two thousand three, authorized under the
3 authority of section fifteen, article eight, chapter five-a of this
4 code, relating to the records management and preservation
5 board (general management and preservation of county records,
6 100 CSR 2), is authorized with the following amendment:

7 On page seven, section five, subsection 5.2, line 1, by
8 striking the word “shall” and inserting the word “may”.

§64-9-15. Statewide addressing and mapping board.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, authorized under the authority

3 of section six, article one, chapter twenty-four-e of this code,
4 modified by the statewide addressing and mapping board to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-sixth
7 day of January, two thousand four, relating to the statewide
8 addressing and mapping board (addressing and mapping
9 standards and participation by public agencies in statewide
10 addressing and mapping projects, 169 CSR 2), is authorized.

CHAPTER 168

**(Com. Sub. for S. B. 350 — By Senators Ross, Minard,
Snyder, Unger, Boley and Minear)**

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 10, chapter 64 of the code of West Virginia, 1931, 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; disapproving certain legislative rules; authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia venture capital act; authorizing the economic development authority to promulgate a legislative rule relating to economic development and technology advancement centers; authorizing the infrastructure and jobs development council to promulgate a legislative rule relating to council; authorizing the division of labor to promulgate a legislative rule relating to psychophysiological detection of deception examinations; disapproving the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board; authorizing the office of miners' health, safety and training to promulgate a legislative rule relating to reporting requirements for independent contractors; authorizing the division of natural resources to promulgate a legislative rule relating to public land corporation rule controlling sale, lease, exchange or transfer of land and minerals; authorizing the division of natural resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the division of natural resources to promulgate a legislative rule relating to special motorboating regulations; and authorizing the division of natural resources to promulgate a legislative rule relating to special fishing.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

- §64-10-1. Economic development authority.
- §64-10-2. Infrastructure and jobs development council.
- §64-10-3. Division of labor.
- §64-10-4. Manufactured housing construction and safety standards board.
- §64-10-5. Office of miners health, safety and training.
- §64-10-6. Division of natural resources.

§64-10-1. Economic development authority.

1 (a) The legislative rule filed in the state register on the first
2 day of August, two thousand three, authorized under the
3 authority of section three, article two, chapter five-e of this
4 code, modified by the economic development authority to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-second day of
7 December, two thousand three, relating to the economic
8 development authority (general administration of the West
9 Virginia venture capital act, 117 CSR 3), is authorized with the
10 following amendments:

11 On page one, subsection 1.5, after the words “Series 3,” by
12 striking out the remainder of the sentence and inserting in lieu
13 thereof the words “§117-3-1, et seq.”;

14 On page two, section two, subsection 2.10, line 3, by
15 striking the word “Subdivision” and inserting the word
16 “Subsection”;

17 On page four, section four, subdivision 4.2.a, line 3,
18 following the word “with” by striking the word “Subdivision”
19 and inserting the word “Subsection”;

20 On page six, subdivision 5.2.c.9., line one by striking the
21 words “A signed commitment” and inserting in lieu thereof the
22 words “An irrevocable letter of credit”;

23 On page six, paragraph 5.2.c.9, line three, after the words
24 “certified check for”, by striking out the word “the” and
25 inserting in lieu thereof the word “any”, and after the word
26 “call”, by striking out the comma and the words “if required by
27 the Authority”;

28 On page six, subdivision 5.2.c.9, line three, following the
29 words “by the authority”, by inserting a colon and the words

30 “*Provided*, That the economic development authority may
31 authorize a reduction in the amount of the irrevocable letter of
32 credit to correspond to a payment made towards the proposed
33 investment”;

34 On page twelve, subdivision 7.4.1, line six, after the words
35 “applicable where”, by striking out the remainder of the
36 subdivision and inserting in lieu thereof the words “the Fund
37 Manager’s economic relationship is solely the result of the fact
38 that the Fund Manager has made a previous investment in the
39 West Virginia Business pursuant to the Act or this Rule.”;

40 On page twelve, subdivision 7.4.2, line seven, after the
41 words “applicable where”, by striking out the remainder of the
42 subdivision and inserting in lieu thereof the words “the inves-
43 tor’s economic relationship is solely the result of the fact that
44 the Fund Manager has made a previous investment in the West
45 Virginia Business pursuant to the Act or this Rule.”;

46 And,

47 On page sixteen, section ten, subsection 10.10, line 1,
48 following the words “described in” by striking the words
49 “Section 10” and inserting “this section”.

50 (b) The legislative rule filed in the state register on the first
51 day of August, two thousand three, authorized under the
52 authority of section five, article one, chapter five-e of this code,
53 modified by the economic development authority to meet the
54 objections of the legislative rule-making review committee and
55 refiled in the state register on the twenty-second day of Decem-
56 ber, two thousand three, relating to the economic development
57 authority (economic development and technology advancement
58 centers, 117 CSR 4), is authorized with the following amend-
59 ments:

60 On page five, section four, subdivision 4.1.2, line 1,
61 following the word “Per” by striking the word “Investor” and
62 inserting the word “Center”;

63 On page five, section four, subdivision 4.1.2, line 1,
64 following the word “single” by striking the words “Investor in
65 a Center” and inserting the word “Center”;

66 On page five, section four, subsection 4.3, line 7, following
67 the word “subdivision” by striking “6.4.f” and inserting “4.4.f”;

68 And,

69 On page nine, section six, subsection 6.8, following the
70 words “described in” by striking the word “Sections” and
71 inserting the word “Subsections.”.

§64-10-2. Infrastructure and jobs development council.

1 The legislative rule filed in the state register on the twenty-
2 third day of June, two thousand three, authorized under the
3 authority of section four, article fifteen-a, chapter thirty-one of
4 this code, modified by the infrastructure and jobs development
5 council to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 fourteenth day of August, two thousand three, relating to the
8 infrastructure and jobs development council (infrastructure and
9 jobs development council, 167 CSR 1), is authorized with the
10 following amendments:

11 On page nine, section five, subdivision 5.13.6, line 9,
12 following the citation “WVC 22C-2-1 et. seq.” by inserting
13 words “and WVC 16-13C-1 et seq.”;

14 On page nine, section five, subdivision 5.13.6, line 11,
15 following the word “State” by striking the words “as delin-
16 eated”;

17 And,

18 On page nine, section five, subdivision 5.13.6, line 13,
19 following the word “~~Code~~” by striking the word “in”.

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, authorized under the authority
3 of section five-c, article five, chapter twenty-one of this code,
4 modified by the division of labor to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the fifth day of December, two thousand three,
7 relating to the division of labor (psychophysiological detection
8 of deception examinations, limitations of use, requirements,
9 licenses and penalties, 42 CSR 6), is authorized with the
10 following amendments:

11 On page one, subsection 1.1, line one, after the words “W.
12 Va. Code”, by striking out the words “§21-5-5(c)” and inserting
13 in lieu thereof the words “§21-5-5c”;

14 On page one, subsection 1.1, line three, after the words “W.
15 Va. Code”, by striking out the words “§21-5-5(a)-(d)” and
16 inserting in lieu thereof the words “§§21-5-5a, -5b, -5c, and -
17 5d”;

18 On page one, subsection 2.4, line three, after the words “W.
19 Va. Code”, by striking out the words “§21-5-5c(c)” and
20 inserting in lieu thereof the words “§§21-5-5a, -5b, -5c, and -
21 5d”;

22 On page two, subsection 3.1, line two, after the words
23 “issue a license”, by striking out the word “to”;

24 On page two, subsection 3.1, line five, after the words “W.
25 Va. Code”, by striking out the words “§21-5-5a, b, c, and d”
26 and inserting in lieu thereof the words “§§21-5-5a, -5b, -5c, and
27 -5d”;

28 On page two, subsection 3.3, line one, after the words
29 “Subsection 3.2”, by inserting the words “of this section”;

30 On page three, subdivision 3.10(b), line one, after the words
31 “in the violation of.”, by striking out the words “this article”
32 and inserting in lieu thereof the words “W. Va. Code §§21-5-5a,
33 -5b, -5c, and -5d”;

34 On page three, subdivision 3.10(c), line one, after the words
35 “The licensee”, by striking out the word “is” and inserting in
36 lieu thereof the words “has been”;

37 On page three, subdivision 3.10(d), line one, after the words
38 “The licensee”, by striking out the word “makes” and inserting
39 in lieu thereof the words “has been”, and after the words “false
40 promises”, by striking out the word “cause” and inserting in
41 lieu thereof the words “has caused”;

42 On page four, subdivision 3.10(f), line one, after the words
43 “The licensee”, by striking out the word “allows” and inserting
44 in lieu thereof the words “has allowed”;

45 On page four, subdivision 3.10(g), line one, after the words
46 “The licensee”, by striking out the word “fails” and inserting in
47 lieu thereof the words “has failed”;

48 On page four, subdivision 4.2, line one, after the words
49 “The intern”, by striking out the words “shall have” and
50 inserting in lieu thereof the word “has”;

51 On page four, subparagraph 4.2.1.b.(1), line one, after the
52 words “W. Va. Code”, by striking out the words “§21-5-5a, b,

53 c, and d” and inserting in lieu thereof the words “§§21-5-5a, -
54 5b, -5c, and -5d”;

55 On page six, paragraph 4.2.3.A, line three, after the word
56 “but”, by striking out the word “compliance” and inserting in
57 lieu thereof the words “must comply” and, after the words
58 “with all other”, by striking out the rest of the paragraph and
59 inserting in lieu thereof the words “requirements of this
60 subsection”;

61 On page six, subsection 5.1, line one, after the words “issue
62 a license”, by inserting the words “without examination” and,
63 after the words “applicant who is”, by striking out the words
64 “an examiner” and inserting in lieu thereof the word “a”;

65 On page six, subsection 5.1, line two, after the word
66 “licensed”, by inserting the word “examiner”;

67 On page six, subsection 5.1, line three, by striking out the
68 words “without examination”;

69 On page seven, section 6, line two, by striking out the
70 words “this article, it is the policy of the Commissioner that”
71 and inserting in lieu thereof the words “W. Va. Code §§21-5-5a,
72 -5b, -5c, and -5d.”;

73 On page eight, subdivision 8.1.(b), line three, after the
74 words “unfit for the”, by striking out the word “an”;

75 And,

76 On page nine, subdivision 8.2.(c), line two, after the words
77 “record of the”, by striking out the term “PDD” and inserting in
78 lieu thereof the words “psychophysiological detection of
79 deception”.

§64-10-4. Manufactured housing construction and safety standards board.

1 The legislative rule filed in the state register on the first day
2 of August, two thousand three, authorized under the authority
3 of section four, article nine, chapter twenty-one of this code,
4 modified by the manufactured housing construction and safety
5 standards board to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on the
7 fifth day of December, two thousand three, relating to the
8 manufactured housing construction and safety standards board
9 (West Virginia manufactured housing construction and safety
10 standards board, 42 CSR 19), is not authorized.

§64-10-5. Office of miners health, safety and training.

1 The legislative rule filed in the state register on the eighth
2 day of November, two thousand two, authorized under the
3 authority of section six, article one, chapter twenty-two-a of this
4 code, modified by the office of miners health, safety and
5 training to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 fourteenth day of April, two thousand three, relating to the
8 office of miners health, safety and training (reporting require-
9 ments for independent contractors, 56 CSR 10), is authorized.

§64-10-6. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 eleventh day of September, two thousand three, authorized
3 under the authority of section seven, article one, chapter twenty
4 of this code, modified by the division of natural resources to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-sixth
7 day of January, two thousand four, relating to the division of
8 natural resources (public land corporation rule controlling the

9 sale, lease, exchange or transfer of land and minerals, 58 CSR
10 2), is authorized.

11 (b) The legislative rule filed in the state register on the
12 second day of July, two thousand three, authorized under the
13 authority of section seven, article one, chapter twenty of this
14 code, modified by the division of natural resources to meet the
15 objections of the legislative rule-making review committee and
16 refiled in the state register on the fifteenth day of September,
17 two thousand three, relating to the division of natural resources
18 (revocation of hunting and fishing licenses, 58 CSR 23), is
19 authorized with the following amendment:

20 On page one, subsection 2.4, on the first line by striking out
21 the words "Class A-1-L" and inserting in lieu thereof the words
22 "Lifetime Class A-1".

23 (c) The legislative rule filed in the state register on the tenth
24 day of July, two thousand three, authorized under the authority
25 of section twenty-two, article seven, chapter twenty of this
26 code, relating to the division of natural resources (special
27 motorboating regulations, 58 CSR 27), is authorized.

28 (d) The legislative rule filed in the state register on the
29 fourteenth day of July, two thousand three, authorized under the
30 authority of section seventeen, article one, chapter twenty of
31 this code, relating to the division of natural resources (special
32 fishing, 58 CSR 61), is authorized with the following amend-
33 ment:

34 On page one, section 3, by striking out all of subsection 3.1
35 and renumbering the remaining subsections.

CHAPTER 169

(Com. Sub. for S. B. 28 — By Senator Rowe)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §38-8-1 of the code of West Virginia, 1931, as amended, relating to increasing the monetary value of exemptions from levy, forced sale, attachment or execution of certain personal property.

Be it enacted by the Legislature of West Virginia:

That §38-8-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

1 (a) Any individual residing in this state or the dependent of
2 such individual may set apart and hold as exempt from execu-
3 tion or other process the following personal property:

4 (1) Such individual's interest, not to exceed five thousand
5 dollars in value, in one motor vehicle;

6 (2) Such individual's interest, not to exceed eight thousand
7 dollars in aggregate value, in household goods, furniture, toys,
8 animals, appliances, books and wearing apparel that are held
9 primarily for the personal, family or household use of such
10 individual;

11 (3) Such individual's aggregate interest, not to exceed three
12 thousand dollars, in any implements, professional books or
13 tools of such individual's trade;

14 (4) Such individual's funds on deposit in a federally insured
15 financial institution, wages or salary, not to exceed the greater
16 of: (i) One thousand dollars; or (ii) one hundred twenty-five
17 percent of the amount of the annualized federal poverty level of
18 such individual's household divided by the number of pay
19 periods for such individual per year; and

20 (5) Funds on deposit in an individual retirement account
21 (IRA), including a simplified employee pension (SEP), in the
22 name of such individual: *Provided*, That the amount is exempt
23 only to the extent it is not or has not been subject to an excise
24 or other tax on excess contributions under Section 4973 or
25 Section 4979 of the Internal Revenue Code of 1986, or both
26 sections, or any successor provisions, regardless of whether the
27 tax is or has been paid.

28 (b) Notwithstanding the foregoing, in no case may an
29 individual residing in this state or the dependent of such
30 individual exempt from execution or other process more than
31 fifteen thousand dollars in the aggregate in personal property
32 listed in subdivisions (1), (2), (3) and (4), subsection (a) of this
33 section.

CHAPTER 170

(Com. Sub. for S. B. 320 — By Senators Hunter, Helmick and Ross)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-5-12 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-4 of said code; and to amend said code by adding thereto a new section, designated §17A-3-12b, all relating to certificates of title; permitting the filing of canceled certificates of title in the office of the clerk of the county commission; exempting mobile and manufactured homes from the prohibition against the transfer, purchase or sale of a mobile or manufactured home when a certificate of title has been cancelled; exempting modular homes from the need for certificates of title; and cancellation of certificates of title for mobile and manufactured homes permanently attached to real estate.

Be it enacted by the Legislature of West Virginia:

That §11-5-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17A-3-12b, all to read as follows:

Chapter

11. Taxation.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

CHAPTER 11. TAXATION.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

1 Mobile homes situate upon property owned by a person
2 other than the owner of the mobile home shall be classified as
3 personal property whether or not said mobile home is perma-
4 nently affixed to the real estate and, unless subject to assess-
5 ment as Class II property under section eleven of this article or
6 section two, article four of this chapter, shall be assessed as

7 Class III or Class IV personal property, as may be appropriate
8 in the circumstances.

9 A mobile home permanently attached to the real estate of
10 the owner may not be classified as personal property if the
11 owner has filed a canceled certificate of title with the clerk of
12 the county commission and has recorded it in the same manner
13 as deeds are recorded and indexed.

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-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

§17A-3-12b. Canceled certificates of title for certain mobile and manufactured homes.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or registration
2 plates for the vehicle, whether original issues or duplicates, may
3 not be issued or furnished by the division of motor vehicles or
4 any other officer or agent charged with the duty, unless the
5 applicant already has received, or at the same time makes
6 application for and is granted, an official certificate of title of
7 the vehicle in either an electronic or paper format. The applica-
8 tion shall be upon a blank form to be furnished by the division
9 of motor vehicles and shall contain a full description of the
10 vehicle, which description shall contain a manufacturer's serial
11 or identification number or other number as determined by the
12 commissioner and any distinguishing marks, together with a

13 statement of the applicant's title and of any liens or encum-
14 brances upon the vehicle, the names and addresses of the
15 holders of the liens and any other information as the division of
16 motor vehicles may require. The application shall be signed
17 and sworn to by the applicant. A duly certified copy of the
18 division's electronic record of a certificate of title is admissible
19 in any civil, criminal or administrative proceeding in this state
20 as evidence of ownership.

21 (b) A tax is imposed upon the privilege of effecting the
22 certification of title of each vehicle in the amount equal to five
23 percent of the value of the motor vehicle at the time of the
24 certification, to be assessed as follows:

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser of the vehicle is the value of the
27 vehicle. If the vehicle is a used or secondhand vehicle, the
28 present market value at time of transfer or purchase is the value
29 of the vehicle for the purposes of this section: *Provided*, That
30 so much of the purchase price or consideration as is represented
31 by the exchange of other vehicles on which the tax imposed by
32 this section has been paid by the purchaser shall be deducted
33 from the total actual price or consideration paid for the vehicle,
34 whether the vehicle be new or secondhand. If the vehicle is
35 acquired through gift or by any manner whatsoever, unless
36 specifically exempted in this section, the present market value
37 of the vehicle at the time of the gift or transfer is the value of
38 the vehicle for the purposes of this section.

39 (2) No certificate of title for any vehicle may be issued to
40 any applicant unless the applicant has paid to the division of
41 motor vehicles the tax imposed by this section which is five
42 percent of the true and actual value of the vehicle whether the
43 vehicle is acquired through purchase, by gift or by any other
44 manner whatsoever, except gifts between husband and wife or
45 between parents and children: *Provided*, That the husband or

46 wife, or the parents or children, previously have paid the tax on
47 the vehicles transferred to the state of West Virginia.

48 (3) The division of motor vehicles may issue a certificate of
49 registration and title to an applicant if the applicant provides
50 sufficient proof to the division of motor vehicles that the
51 applicant has paid the taxes and fees required by this section to
52 a motor vehicle dealership that has gone out of business or has
53 filed bankruptcy proceedings in the United States bankruptcy
54 court and the taxes and fees so required to be paid by the
55 applicant have not been sent to the division by the motor
56 vehicle dealership or have been impounded due to the bank-
57 ruptcy proceedings: *Provided*, That the applicant makes an
58 affidavit of the same and assigns all rights to claims for money
59 the applicant may have against the motor vehicle dealership to
60 the division of motor vehicles.

61 (4) The division of motor vehicles shall issue a certificate
62 of registration and title to an applicant without payment of the
63 tax imposed by this section if the applicant is a corporation,
64 partnership or limited liability company transferring the vehicle
65 to another corporation, partnership or limited liability company
66 when the entities involved in the transfer are members of the
67 same controlled group and the transferring entity has previously
68 paid the tax on the vehicle transferred. For the purposes of this
69 section, control means ownership, directly or indirectly, of
70 stock or equity interests possessing fifty percent or more of the
71 total combined voting power of all classes of the stock of a
72 corporation or equity interests of a partnership or limited
73 liability company entitled to vote or ownership, directly or
74 indirectly, of stock or equity interests possessing fifty percent
75 or more of the value of the corporation, partnership or limited
76 liability company.

77 (5) The tax imposed by this section does not apply to
78 vehicles to be registered as Class H vehicles or Class M

79 vehicles, as defined in section one, article ten of this chapter,
80 which are used or to be used in interstate commerce. Nor does
81 the tax imposed by this section apply to the titling of Class B
82 vehicles registered at a gross weight of fifty-five thousand
83 pounds or more, or to the titling of Class C semitrailers, full
84 trailers, pole trailers and converter gear: *Provided*, That if an
85 owner of a vehicle has previously titled the vehicle at a declared
86 gross weight of fifty-five thousand pounds or more and the title
87 was issued without the payment of the tax imposed by this
88 section, then before the owner may obtain registration for the
89 vehicle at a gross weight less than fifty-five thousand pounds,
90 the owner shall surrender to the commissioner the exempted
91 registration, the exempted certificate of title and pay the tax
92 imposed by this section based upon the current market value of
93 the vehicle: *Provided, however*, That notwithstanding the
94 provisions of section nine, article fifteen, chapter eleven of this
95 code, the exemption from tax under this section for Class B
96 vehicles in excess of fifty-five thousand pounds and Class C
97 semitrailers, full trailers, pole trailers and converter gear does
98 not subject the sale or purchase of the vehicles to the consumers
99 sales tax.

100 (6) The tax imposed by this section does not apply to titling
101 of vehicles leased by residents of West Virginia. A tax is
102 imposed upon the monthly payments for the lease of any motor
103 vehicle leased by a resident of West Virginia, which tax is equal
104 to five percent of the amount of the monthly payment, applied
105 to each payment, and continuing for the entire term of the initial
106 lease period. The tax shall be remitted to the division of motor
107 vehicles on a monthly basis by the lessor of the vehicle.

108 (7) The tax imposed by this section does not apply to titling
109 of vehicles by a registered dealer of this state for resale only,
110 nor does the tax imposed by this section apply to titling of
111 vehicles by this state or any political subdivision thereof, or by
112 any volunteer fire department or duly chartered rescue or

113 ambulance squad organized and incorporated under the laws of
114 the state of West Virginia as a nonprofit corporation for
115 protection of life or property. The total amount of revenue
116 collected by reason of this tax shall be paid into the state road
117 fund and expended by the commissioner of highways for
118 matching federal funds allocated for West Virginia. In addition
119 to the tax, there is a charge of five dollars for each original
120 certificate of title or duplicate certificate of title so issued:
121 *Provided*, That this state or any political subdivision of this
122 state or any volunteer fire department or duly chartered rescue
123 squad is exempt from payment of the charge.

124 (8) The certificate is good for the life of the vehicle, so long
125 as the vehicle is owned or held by the original holder of the
126 certificate, and need not be renewed annually, or any other
127 time, except as provided in this section.

128 (9) If, by will or direct inheritance, a person becomes the
129 owner of a motor vehicle and the tax imposed by this section
130 previously has been paid to the division of motor vehicles on
131 that vehicle, he or she is not required to pay the tax.

132 (10) A person who has paid the tax imposed by this section
133 is not required to pay the tax a second time for the same motor
134 vehicle, but is required to pay a charge of five dollars for the
135 certificate of retitle of that motor vehicle, except that the tax
136 shall be paid by the person when the title to the vehicle has
137 been transferred either in this or another state from the person
138 to another person and transferred back to the person.

139 (11) The tax imposed by this section does not apply to any
140 passenger vehicle offered for rent in the normal course of
141 business by a daily passenger rental car business as licensed
142 under the provisions of article six-d of this chapter. For
143 purposes of this section, a daily passenger car means a Class A
144 motor vehicle having a gross weight of eight thousand pounds

145 or less and is registered in this state or any other state. In lieu
146 of the tax imposed by this section, there is hereby imposed a tax
147 of not less than one dollar nor more than one dollar and fifty
148 cents for each day or part of the rental period. The commis-
149 sioner shall propose an emergency rule in accordance with the
150 provisions of article three, chapter twenty-nine-a of this code to
151 establish this tax.

152 (12) The tax imposed by this article does not apply to the
153 titling of any vehicle purchased by a senior citizen service
154 organization which is exempt from the payment of income
155 taxes under the United States Internal Revenue Code, Title 26
156 U. S. C. §501(c)(3) and which is recognized to be a bonafide
157 senior citizen service organization by the senior services bureau
158 existing under the provisions of article five, chapter sixteen of
159 this code.

160 (c) Notwithstanding any provisions of this code to the
161 contrary, the owners of trailers, semitrailers, recreational
162 vehicles and other vehicles not subject to the certificate of title
163 tax prior to the enactment of this chapter are subject to the
164 privilege tax imposed by this section: *Provided*, That the
165 certification of title of any recreational vehicle owned by the
166 applicant on the thirtieth day of June, one thousand nine
167 hundred eighty-nine, is not subject to the tax imposed by this
168 section: *Provided, however*, That mobile homes, manufactured
169 homes, modular homes and similar nonmotive propelled
170 vehicles, except recreational vehicles and house trailers,
171 susceptible of being moved upon the highways but primarily
172 designed for habitation and occupancy, rather than for trans-
173 porting persons or property, or any vehicle operated on a
174 nonprofit basis and used exclusively for the transportation of
175 mentally retarded or physically handicapped children when the
176 application for certificate of registration for the vehicle is
177 accompanied by an affidavit stating that the vehicle will be
178 operated on a nonprofit basis and used exclusively for the

179 transportation of mentally retarded and physically handicapped
180 children, are not subject to the tax imposed by this section, but
181 are taxable under the provisions of articles fifteen and fifteen-a,
182 chapter eleven of this code.

183 (d) Any person making any affidavit required under any
184 provision of this section who knowingly swears falsely, or any
185 person who counsels, advises, aids or abets another in the
186 commission of false swearing, or any person, while acting as an
187 agent of the division of motor vehicles, issues a vehicle
188 registration without first collecting the fees and taxes or fails to
189 perform any other duty required by this chapter to be performed
190 before a vehicle registration is issued is, on the first offense,
191 guilty of a misdemeanor and, upon conviction thereof, shall be
192 fined not more than five hundred dollars or be confined in jail
193 for a period not to exceed six months or, in the discretion of the
194 court, both fined and confined. For a second or any subsequent
195 conviction within five years, that person is guilty of a felony
196 and, upon conviction thereof, shall be fined not more than five
197 thousand dollars or be imprisoned in a state correctional facility
198 for not less than one year nor more than five years or, in the
199 discretion of the court, both fined and imprisoned.

200 (e) Notwithstanding any other provisions of this section,
201 any person in the military stationed outside West Virginia or his
202 or her dependents who possess a motor vehicle with valid
203 registration are exempt from the provisions of this article for a
204 period of nine months from the date the person returns to this
205 state or the date his or her dependent returns to this state,
206 whichever is later.

207 (f) No person may transfer, purchase or sell a factory-built
208 home without a certificate of title issued by the commissioner
209 in accordance with the provisions of this article:

210 (1) Any person who fails to provide a certificate of title
211 upon the transfer, purchase or sale of a factory-built home is

212 guilty of a misdemeanor and, upon conviction thereof, shall for
213 the first offense be fined not less than one hundred dollars nor
214 more than one thousand dollars, or be confined in jail for not
215 more than one year or, both fined and confined. For each
216 subsequent offense, the fine may be increased to not more than
217 two thousand dollars, with confinement in jail not more than
218 one year or, both fined and confined.

219 (2) Failure of the seller to transfer a certificate of title upon
220 sale or transfer of the factory-built home gives rise to a cause of
221 action, upon prosecution thereof, and allows for the recovery of
222 damages, costs and reasonable attorney fees.

223 (3) This subsection does not apply to a mobile or manufac-
224 tured home for which a certificate of title has been canceled
225 pursuant to section twelve-b of this article.

226 (g) Notwithstanding any other provision to the contrary,
227 whenever reference is made to the application for or issuance
228 of any title or the recordation or release of any lien, it includes
229 the application, transmission, recordation, transfer of ownership
230 and storage of information in an electronic format.

231 (h) Notwithstanding any other provision contained in this
232 section, nothing herein shall be considered to include modular
233 homes as defined in subsection (i), section two, article fifteen,
234 chapter thirty-seven of this code and built to the state building
235 code as established by legislative rules promulgated by the state
236 fire commission pursuant to section five-b, article three, chapter
237 twenty-nine of this code.

**§17A-3-12b. Canceled certificates of title for certain mobile and
manufactured homes.**

1 The commissioner may cancel a certificate of title for a
2 mobile or manufactured home affixed to the real property of the
3 owner of the mobile or manufactured home. The person

4 requesting the cancellation shall submit to the commissioner an
5 application for cancellation together with the certificate of title.
6 The application shall be on a form prescribed by the commis-
7 sioner. The commissioner shall return one copy of the cancella-
8 tion certificate to the owner and shall send a copy of the
9 cancellation certificate to the clerk of the county commission to
10 be recorded and indexed in the deed book with the owner's
11 name being indexed in the grantor index. The commissioner
12 shall charge a fee of ten dollars per certificate of title canceled.
13 Upon recordation in the county clerk's office the mobile or
14 manufactured home shall be treated for all purposes as an
15 appurtenance to the real estate to which it is affixed and be
16 transferred only as real estate and the ownership interest in the
17 mobile or manufactured home, together with all liens and
18 encumbrances on the home, shall be transferred to and shall
19 encumber the real property to which the mobile or manufac-
20 tured home has become affixed.

CHAPTER 171

(Com. Sub. for H. B. 4374 — By Delegates Kuhn, Butcher and Martin)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-9-4, §21-9-11 and §21-9-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-9-12a, all relating to manufactured housing construction and safety standards; removing out-dated language; providing for inspections and the payment of the costs of inspection; authorizing the issuance of cease and desist orders; and establishing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §21-9-4, §21-9-11 and §21-9-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-9-12a, all to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

§21-9-11. State may act as primary inspection agency.

§21-9-12. Violation of article; penalties; injunction.

§21-9-12a. Violation of cease and desist order; penalties.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

- 1 (a) The board shall have the power to:
- 2 (1) Regulate its own procedure and practice;
- 3 (2) Propose rules for legislative approval in accordance
- 4 with the provisions of article three, chapter twenty-nine-a of
- 5 this code, to implement the provisions of this article and the
- 6 federal standards;
- 7 (3) Advise the commissioner in all matters within his
- 8 jurisdiction under this article;
- 9 (4) Prepare and submit to HUD a state plan application
- 10 seeking the designation of the board as a state administrative
- 11 agency for the purpose of administering and enforcing the
- 12 federal standards and take all other action necessary to enable
- 13 the board to serve as a state administrative agency;
- 14 (5) Study and report to the governor and the Legislature on
- 15 matters pertinent to the manufacture, distribution and sale of

16 manufactured housing in this state and recommend changes in
17 the law determined by the board to be necessary to promote
18 consumer safety and protect purchasers of manufactured
19 housing;

20 (6) Conduct hearings and presentations of views consistent
21 with its rules and the federal standards;

22 (7) Approve or disapprove applications for licenses to
23 manufacturers, dealers, distributors and contractors in accor-
24 dance with section nine of this article, and revoke or suspend
25 licenses in accordance with that section, and set the amounts of
26 license fees and bonds or other forms of assurance in accor-
27 dance with sections nine and ten of this article;

28 (8) Delegate to and authorize the commissioner to exercise
29 the powers and duties of the board that the board may deter-
30 mine, including without limitation, the authority to approve,
31 disapprove, revoke or suspend licenses in accordance with
32 section nine of this article.

33 (b) Any person adversely affected by a decision of the
34 board or the commissioner shall be afforded an opportunity for
35 hearing before the board in accordance with section one, article
36 five, chapter twenty-nine-a of this code.

§21-9-11. State may act as primary inspection agency.

1 (a) This state, acting through the board, is hereby granted
2 all powers and authority necessary to act as a primary inspec-
3 tion agency and to perform the functions of a “design approval
4 primary inspection agency” and a “production inspection
5 primary inspection agency”, as the terms are defined in the
6 federal standards. The board may apply to the secretary of HUD
7 on behalf of this state to act as the primary inspection agency,
8 including application for approval to act as the exclusive
9 production inspection primary inspection agency in this state.

10 The board may propose rules for legislative approval in
11 accordance with the provisions of article three, chapter twenty-
12 nine-a of this code necessary to enable the board to act on
13 behalf of this state as the primary inspection agency.

14 (b) The board may provide inspections to private home sites
15 to aid in the resolution of a consumer complaint filed with the
16 board by the home owner. The board may provide, free of
17 charge, one initial and one follow-up inspection related to each
18 consumer complaint: *Provided*, That the board may charge a
19 licensee an inspection fee for any follow-up inspections which
20 are necessitated by a licensee's failure to comply with an order
21 of the board. The inspection fee may not exceed seventy-five
22 dollars per hour, plus expenses.

§21-9-12. Violation of article; penalties; injunction.

1 (a) Any person who violates any of the following provi-
2 sions relating to manufactured homes or any legislative rule
3 proposed by the board pursuant to the provisions of this article,
4 is liable to the state for a penalty, as determined by the board,
5 not to exceed one thousand dollars for each violation. Each
6 violation constitutes a separate violation with respect to each
7 manufactured home, except that the maximum penalty may not
8 exceed one million dollars for any related series of violations
9 occurring within one year from the date of the first violation.
10 No person may:

11 (1) Manufacture for sale, lease, sell, offer for sale or lease,
12 or introduce or deliver, or import into this state any manufac-
13 tured home which is manufactured on or after the effective date
14 of any applicable standard established by a rule promulgated by
15 the board pursuant to the provisions of this article, or any
16 applicable federal standard, which does not comply with that
17 standard.

18 (2) Fail or refuse to permit access to or copying of records,
19 or fail to make reports or provide information or fail or refuse
20 to permit entry or inspection as required by the provisions of
21 this article.

22 (3) Fail to furnish notification of any defect as required by
23 the provisions of 42 U.S.C. §5414.

24 (4) Fail to issue a certification required by the provisions of
25 42 U.S.C. §5415 or issue a certification to the effect that a
26 manufactured home conforms to all applicable federal stan-
27 dards, when the person knows or in the exercise of due care
28 would have reason to know that the certification is false or
29 misleading in a material respect.

30 (5) Fail to establish and maintain records, make reports, and
31 provide information as the board may reasonably require to
32 enable the board to determine whether there is compliance with
33 the federal standards; or fail to permit, upon request of a person
34 duly authorized by the board, the inspection of appropriate
35 books, papers, records and documents relative to determining
36 whether a manufacturer, dealer, distributor or contractor has
37 acted or is acting in compliance with the provisions of this
38 article or applicable federal standards.

39 (6) Issue a certification pursuant to the provisions of 42
40 U.S.C. §5403(a), when the person knows or in the exercise of
41 due care would have reason to know that the certification is
42 false or misleading in a material respect.

43 (b) Subdivision (1), subsection (a) of this section does not
44 apply to:

45 (1) The sale or the offer for sale of any manufactured home
46 after the first purchase of it in good faith for purposes other
47 than resale;

48 (2) Any person who establishes that he did not have reason
49 to know in the exercise of due care that the manufactured home
50 is not in conformity with applicable federal standards; or

51 (3) Any person who, prior to the first purchase, holds a
52 certificate by the manufacturer or importer of the manufactured
53 home to the effect that the manufactured home conforms to all
54 applicable federal standards, unless that person knows that the
55 manufactured home does not conform to those standards.

56 (c) Any manufacturer, dealer, distributor or contractor who
57 engages in business in this state without furnishing a bond or
58 other form of assurance as required by the provisions of this
59 article is guilty of a misdemeanor and, upon conviction thereof,
60 shall be fined not more than fifty dollars for each day the
61 violation continues.

62 (d) The board may institute proceedings in the circuit court
63 of the county in which the alleged violation occurred or are
64 occurring to enjoin any violation of the provisions of this
65 article.

66 (e) Any person or officer, director, partner or agent of a
67 corporation, partnership or other entity who willfully or
68 knowingly violates any of the provisions listed in subsection (a)
69 of this section, in any manner which threatens the health or
70 safety of any purchaser, is guilty of a misdemeanor and, upon
71 conviction thereof, shall be fined not more than one thousand
72 dollars or confined in the county or regional jail for a period of
73 not more than one year, or both fined and imprisoned.

74 (f) Nothing in this article applies to any bank or financial
75 institution engaged in the disposal of foreclosed or repossessed
76 manufactured homes.

§21-9-12a. Violation of cease and desist order; penalties.

1 (a) Upon a determination that a person is engaging in
2 business without a valid license as required under the provi-
3 sions of section nine of this article, the board or commissioner
4 may immediately issue a cease and desist order requiring the
5 person to cease all operations within this state. After a hearing,
6 the board may impose a penalty of not less than two hundred
7 dollars nor more than one thousand dollars upon any person
8 found to have been engaging in business in this state without a
9 valid license as required under the provisions of section nine of
10 this article.

11 (b) The board may institute proceedings in the circuit court
12 of the county where the violation occurred, against any person
13 violating a cease and desist order issued under the provisions of
14 subsection (a) of this section.

15 (c) Any person continuing to engage in business in this
16 state without a valid license as required under the provisions of
17 section nine of this article, after the issuance of a cease and
18 desist order under the provisions of subsection (a) of this
19 section, is guilty of a misdemeanor and, upon conviction
20 thereof, is subject to the following penalties:

21 (1) For a first offense, a fine of not less than two hundred
22 dollars nor more than one thousand dollars;

23 (2) For a second offense, a fine of not less than five
24 hundred dollars nor more than five thousand dollars, or confine-
25 ment in a county or regional jail for not less than thirty days nor
26 more than six months or both a fine and confinement; and

27 (3) For a third or subsequent offense, a fine of not less than
28 one thousand dollars nor more than five thousand dollars, and
29 confinement in the county or regional jail for not less than thirty
30 days nor more than one year.

CHAPTER 172

(Com. Sub. for S. B. 637 — By Senator Snyder)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §37-15-2, §37-15-3 and §37-15-6 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §37-15-3a; and to amend said code by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all relating to factory-built home sites; definition of good cause and section; written agreements for factory-built home sites; adoption of rules and regulations by owners of factory-built home sites; terms of written agreement related to termination of tenancy; remedies for wrongful occupation of factory-built home site; definitions; tenancy of factory-built home site; termination of tenancy; petition for summary relief for wrongful occupation; defenses; proceedings; final order; disposition of abandoned property; and waiver of rights.

Be it enacted by the Legislature of West Virginia:

That §37-15-2, §37-15-3 and §37-15-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §37-15-3a; and that said code be amended by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all to read as follows:

Chapter

37. Real Property.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 37. REAL PROPERTY.**ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.**

§37-15-2. Definitions.

§37-15-3. Written agreement required.

§37-15-3a. Rules and regulations.

§37-15-6. Termination of tenancy.

§37-15-2. Definitions.

1 For the purposes of this article, unless expressly stated
2 otherwise:

3 (a) “Abandoned factory-built home” means a factory-built
4 home occupying a factory-built home site pursuant to a written
5 agreement under which the tenant has defaulted in rent or the
6 landlord has exercised any right to terminate the rental agree-
7 ment;

8 (b) “Factory-built home” includes modular homes, mobile
9 homes, house trailers and manufactured homes;

10 (c) “Factory-built home rental community” means a parcel
11 of land under single or common ownership upon which two or
12 more factory-built homes are located on a continual,
13 nonrecreational basis together with any structure, equipment,
14 road or facility intended for use incidental to the occupancy of
15 the factory-built homes, but does not include premises used
16 solely for storage or display of uninhabited factory-built homes
17 or premises occupied solely by a landowner and members of his
18 family;

19 (d) “Factory-built home site” means a parcel of land within
20 the boundaries of a factory-built home rental community
21 provided for the placement of a single factory-built home and
22 the exclusive use of its occupants;

23 (e) "Good cause" means:

24 (1) The tenant is in arrears in the payment of periodic
25 payments or other charges;

26 (2) The tenant has breached a material term of a written
27 rental agreement or has repeatedly breached other terms of the
28 rental agreement;

29 (3) Where there is no written agreement, or where the
30 written agreement does not cover the subject matter of a
31 warranty or leasehold covenant, the tenant breached a material
32 warranty or leasehold covenant or has repeatedly breached
33 other terms of a warranty or a leasehold covenant;

34 (4) The tenant has deliberately or negligently damaged the
35 property or knowingly permitted another person to do so.

36 (f) "House trailers" means all trailers designed or intended
37 for human occupancy and commonly referred to as mobile
38 homes or house trailers and shall include fold down camping
39 and travel trailers as these terms are defined in section one,
40 article six, chapter seventeen-a of this code, but only when such
41 camping and travel trailers are located in a factory-built home
42 rental community, as defined in this section, on a continual,
43 nonrecreational basis.

44 (g) "Landlord" means the factory-built home rental
45 community owner, lessor or sublessor of the factory-built home
46 rental community, or an agent or representative authorized to
47 act on his or her behalf in connection with matters relating to
48 tenancy in the community.

49 (h) "Manufactured home" has the same meaning as the term
50 is defined in section two, article nine, chapter twenty-one of this
51 code which meets the National Manufactured Housing Con-
52 struction and Safety Standards Act of 1974 (42 U. S. C. §5401,

53 *et seq.*), effective on the fifteenth day of June, one thousand
54 nine hundred seventy-six, and the federal manufactured home
55 construction and safety standards and regulations promulgated
56 by the secretary of the United States department of housing and
57 urban development.

58 (i) "Mobile home" means a transportable structure that is
59 wholly, or in substantial part, made, fabricated, formed or
60 assembled in manufacturing facilities for installation or
61 assembly and installation on a building site and designed for
62 long-term residential use and built prior to enactment of the
63 Federal Manufactured Housing Construction and Safety
64 Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective on
65 the fifteenth day of June, one thousand nine hundred seventy-
66 six, and usually built to the voluntary industry standard of the
67 American national standards institute (ANSI)--A119.1 stan-
68 dards for mobile homes.

69 (j) "Modular home" means any structure that is wholly, or
70 in substantial part, made, fabricated, formed or assembled in
71 manufacturing facilities for installation or assembly and
72 installation on a building site and designed for long-term
73 residential use and is certified as meeting the standards con-
74 tained in the state fire code encompassed in the legislative rules
75 promulgated by the state fire commission pursuant to section
76 five-b, article three, chapter twenty-nine of this code.

77 (k) "Owner" means one or more persons, jointly or sever-
78 ally, in whom is vested: (i) All or part of the legal title to the
79 factory-built home rental community; or (ii) all or part of the
80 beneficial ownership and right to present use and enjoyment of
81 the factory-built homesite or other areas specified in the rental
82 agreement and the term includes a mortgagee in possession.

83 (l) "Rent" means payments made by the tenant to the
84 landlord for use of a factory-built home site and as payment for
85 other facilities or services provided by the landlord.

86 (m) "Section" means a unit of a factory-built home which
87 is transported and delivered as a whole and which contains
88 some or all of the indoor living area.

89 (n) "Tenant" means a person entitled pursuant to a rental
90 agreement to occupy a factory-built home site to the exclusion
91 of others.

§37-15-3. Written agreement required.

1 (a) The rental and occupancy of a factory-built home site
2 shall be governed by a written agreement which shall be dated
3 and signed by all parties thereto prior to commencement of
4 tenancy. A copy of the signed and dated written agreement and
5 a copy of this article shall be given by the landlord to the tenant
6 within seven days after the tenant signs the written agreement.

7 (b) The written agreement, in addition to the provisions
8 otherwise required by law to be included, shall contain:

9 (1) The terms of the tenancy and the rent therefor;

10 (2) The rules and regulations of the factory-built home
11 rental community. A copy of the text of the rules and regula-
12 tions attached as an exhibit satisfies this requirement;

13 (3) The language of the provisions of this article. A copy
14 of the text of this article attached as an exhibit satisfies this
15 requirement;

16 (4) A description of the physical improvements and
17 maintenance to be provided by the tenant and the landlord
18 during the tenancy; and

19 (5) A provision listing those services which will be pro-
20 vided at the time the rental agreement is executed and will
21 continue to be offered for the term of tenancy and the fees, if
22 any, to be charged for those services.

23 (c) The written agreement for a factory-built home site on
24 which is placed a factory-built home that is comprised of one
25 section, other than a camping or travel trailer, may not allow for
26 the termination of the tenancy by the landlord during the first
27 twelve months that the factory-built home is placed on the site
28 except for good cause. The written agreement for a factory-
29 built home site upon which is placed a factory-built home that
30 is comprised of more than one section may not allow for the
31 termination of the tenancy by the landlord during the first five
32 years the factory-built home is placed on the site except for
33 good cause.

34 (d) The written agreement may not contain:

35 (1) Any provisions contrary to the provisions of this article
36 and shall not contain a provision prohibiting the tenant who
37 owns his or her factory-built home from selling his or her
38 factory-built home;

39 (2) Any provision that requires the tenant to pay any
40 recurring charges except fixed rent, utility charges or reason-
41 able incidental charges for services or facilities supplied by the
42 landlord; or

43 (3) Any provision by which the tenant waives his or her
44 rights under the provisions of this article.

45 (e) When any person possesses a security interest in the
46 factory-built home, the written agreement or rental application
47 shall contain the name and address of any secured parties. The
48 written agreement shall require the tenant to notify the landlord
49 within ten days of any new security interest, change of existing
50 security interest or settlement or release of the security interest.

51 (f) When a factory-built home owner sells a factory-built
52 home, the new owner shall enter into a written agreement if the
53 factory-built home continues to occupy the site: *Provided*, That

54 the new owner meets the standards and restrictions contained in
55 the prior rental agreement.

§37-15-3a. Rules and regulations.

1 (a) An owner, from time to time, may adopt rules or
2 regulations concerning the tenant's use and occupancy of the
3 premises. A rule or regulation is enforceable against the tenant
4 if the rule or regulation:

5 (1) Is reasonably related to the purpose for which it is
6 adopted;

7 (2) Applies to all tenants in the factory-built home rental
8 community in a fair manner;

9 (3) Is sufficiently explicit in its prohibition, direction, or
10 limitation of the tenant's conduct to fairly inform the tenant of
11 what the tenant must or must not do to comply;

12 (4) Is not for the purpose of evading the obligations of the
13 landlord; and

14 (5) The tenant has been given written notice of the rule at
15 the time the tenant enters into the rental agreement, or when it
16 is adopted by the owner.

17 (b) A rule or regulation adopted by the owner after the
18 tenant has entered into a rental agreement that results in a
19 substantial modification of the tenant's original rental agree-
20 ment does not become effective until the current rental agree-
21 ment expires and a new agreement is made in writing.

§37-15-6. Termination of tenancy.

1 (a) The tenancy for a factory-built home site upon which is
2 placed a factory-built home that is comprised of one section,
3 other than a camping or travel trailer, may not be terminated

4 until twelve months after the home is placed on the site except
5 for good cause. The tenancy for a factory-built home site on
6 which is placed a factory-built home that is comprised of two
7 or more sections may not be terminated until five years after the
8 home has been placed on the site except for good cause.

9 (b) The tenancy for a factory-built home, other than a
10 camping or travel trailer, may be terminated at the time set forth
11 in this subsection.

12 (1) Either party may terminate a rental agreement at the end
13 of its stated term or at the end of the time period set out in
14 subsection (a) of this section, whichever is later, for any reason,
15 unless the rental agreement states that reasons for termination
16 must exist.

17 (2) Either party may terminate a tenancy which has
18 continued after its stated term and longer than the period set out
19 in subsection (a) of this section for no reason, unless the rental
20 agreement states that reasons must exist.

21 (3) A tenancy that has not reached the end of its stated term
22 or has not existed for the time periods stated in subsection (a)
23 of this section may be terminated only for good cause.

24 (c) A tenancy governed by subdivision (1) or (2), subsec-
25 tion (b) of this section may be terminated only by written notice
26 at least three months before the termination date of the tenancy.
27 A tenancy governed by subdivision (3), subsection (a) of this
28 section may be terminated only by a written notice at least three
29 months before the termination date of the tenancy. The rental
30 agreement may specify a period of notice in excess of the
31 periods of time set out in this subsection.

32 (d) A landlord may not cause the eviction of a tenant by
33 willfully interrupting gas, electricity, water or any other
34 essential service, or by removal of the factory-built home from

35 the factory-built home site, or by any other willful self-help
36 measure.

37 (e) The landlord shall set forth in a notice of termination the
38 reason relied upon for the termination with specific facts to
39 permit determination of the date, place, witnesses and circum-
40 stances concerning that reason.

41 (f) Unless the landlord is changing the use of the site, if a
42 tenancy is ended by the landlord at the later of its stated term or
43 at the end of the time period set out in subsection (a) of this
44 section with no good cause, the owner may not prevent the sale
45 of the factory-built home in place to another tenant who meets
46 the standards and restrictions in effect for other new tenants
47 prior to the termination of the tenancy.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3B. REMEDIES FOR WRONGFUL OCCUPATION OF FACTORY-BUILT HOME SITE.

§55-3B-1. Definitions.

§55-3B-2. Tenancy of factory-built home site.

§55-3B-3. Termination of tenancy.

§55-3B-4. Petition for summary relief for wrongful occupation of residential rental
property.

§55-3B-5. Defenses available.

§55-3B-6. Proceedings in court; final order; disposition of abandoned personal
property.

§55-3B-7. Waiver.

§55-3B-1. Definitions.

1 For the purposes of this article, unless expressly stated
2 otherwise:

3 (a) "Factory-built home" has the same meaning given to
4 that term in West Virginia code section two, article fifteen,
5 chapter thirty-seven of this code.

6 (b) "Factory-built home site" means a parcel of land
7 provided for the placement of a factory-built home for occu-
8 pancy as a residence whether or not in a factory-built home
9 community. A factory-built home site is not residential rental
10 property for the purposes of article three-a of this chapter.

11 (c) "Good cause" means:

12 (1) The tenant is in arrears in the payment of periodic
13 payments or other charges related to the tenancy;

14 (2) The tenant has breached a material term of a written
15 rental agreement or repeatedly breached other terms of a written
16 rental agreement including those agreements required in section
17 three, article fifteen, chapter thirty-seven of this code;

18 (3) Where there is no written agreement, or where the
19 written agreement does not cover the subject matter of a
20 warranty or leasehold covenant, the tenant breached a material
21 term of a warranty or leasehold covenant or repeatedly
22 breached other terms of a warranty of leasehold covenant;

23 (4) The tenant has deliberately or negligently damaged the
24 property or knowingly permitted another person to do so.

25 (d) "Section" means a unit of a factory-built home which is
26 transported and delivered as a whole and which contains some
27 or all of the indoor living area.

§55-3B-2. Tenancy of factory-built home site.

1 (a) The tenancy of the site of a factory-built home that is
2 comprised of one section and that is not subject to a written
3 agreement is from month to month. The tenancy of the site of
4 a factory-built home that is comprised of two or more sections
5 that is not subject to a written agreement is from year to year.

6 (b) The tenancy of a factory-built home site that has placed
7 on it a factory-built home that is comprised of one section,
8 other than a camping or travel trailer, may not be terminated by
9 the landlord until twelve months after the tenancy began except
10 for good cause. The tenancy of a factory-built home site that
11 has placed on it a factory-built home that is comprised of two
12 or more sections may not be terminated by the landlord until
13 five years after the tenancy began except for good cause. A
14 written agreement may provide that the tenant may not termi-
15 nate the tenancy for the same or greater periods of time. A
16 written agreement may provide that the landlord may not
17 terminate the tenancy for greater periods of time.

18 (c) For a month-to-month or year-to-year tenancy or a
19 tenancy that is created by a written agreement for a definite
20 period of time, the tenancy does not terminate at the end of the
21 month, year or stated period of time unless either party gives
22 timely notice as required in section three of this article. If no
23 notice is given and if no new agreement is made, the tenancy of
24 a factory-built home site that is comprised of one section
25 becomes a month-to-month tenancy and the tenancy of a
26 factory-built home that is comprised of two or more sections
27 becomes a year-to-year tenancy.

§55-3B-3. Termination of tenancy.

1 (a) The tenancy of a factory-built home site may be
2 terminated by either party only by giving at least three months'
3 notice in writing to the other of his or her intention to terminate
4 the tenancy. When such notice is to the tenant, it may be served
5 upon him, or upon anyone holding under him the leased
6 premises or any part thereof. When it is by the tenant, it may
7 be served upon anyone who at the time owns the premises, in
8 whole or in part, or the agent of such owner or according to the
9 common law.

10 (b) Unless the landlord is changing the use of the site, if a
11 tenancy is ended by the landlord at the later of its stated term or
12 at the end of the time period set out in subsection (b), section
13 two of this article, with no good cause, the owner may not
14 prevent the sale of the factory-built home in place to another
15 tenant who meets the standards and criteria in effect for new
16 tenants prior to the termination of the tenancy.

§55-3B-4. Petition for summary relief for wrongful occupation of residential rental property.

1 (a) A person desiring to remove a tenant and factory-built
2 home from a factory-built home site may apply for such relief
3 to the magistrate court or the circuit court of the county in
4 which such property is located, by verified petition, setting
5 forth the following:

6 (1) That he is the owner or agent of the owner and as such
7 has a right to evict the tenant and have the factory-built home
8 of the tenant removed;

9 (2) A brief description of the factory-built home site
10 sufficient to identify it;

11 (3) That the tenant is wrongfully occupying such property
12 in that the tenant is:

13 (A) Holding over after having been given proper notice of
14 termination of tenancy, whether or not the tenant has continued
15 to pay and the landlord has accepted rent; or

16 (B) The landlord has good cause; and

17 (4) A prayer for eviction of the tenant and removal of the
18 tenant's factory-built home.

19 (b) Previous to the filing of the petition the person shall

20 request from the court the time and place at which the petitioner
21 shall be heard. The court shall fix a time for such hearing,
22 which time shall not be less than five nor more than ten judicial
23 days following such request.

24 (c) Immediately upon being apprised of the time and place
25 for hearing the petitioner shall cause a notice of the same to be
26 served upon the tenant in accordance with the provisions of rule
27 4 of the West Virginia rules of civil procedure or by certified
28 mail, return receipt requested. Such notice shall inform the
29 tenant that any defense to the petition must be submitted in
30 writing to the petitioner within five days of the receipt by the
31 tenant of the notice and in no case later than the fifth day next
32 preceding the date of hearing. Upon receipt of the return of
33 service or the return receipt as the case may be, evidencing
34 service upon the tenant, the petitioner shall file with the court
35 his petition and such proof of service.

§55-3B-5. Defenses available.

1 In a proceeding under the provisions of this article, a tenant
2 against whom a petition has been brought may assert any and
3 all defenses which might be raised in an action for ejectment or
4 an action for unlawful detainer or provided by this article or
5 article fifteen, chapter thirty-seven of this code.

§55-3B-6. Proceedings in court; final order; disposition of abandoned personal property.

1 (a) If at the time of the hearing there has been no appear-
2 ance, answer or other responsive pleading filed by the tenant,
3 the court shall make and enter an order evicting the tenant and
4 ordering the tenant to have the factory-built home removed.

5 (b) In the case of a petition alleging good cause or holding
6 over after proper termination of a tenancy, if the tenant files an
7 answer raising the defense of breach by the landlord of a

8 material covenant upon which the tenant's duties depend or
9 other defenses to the claim or claims set forth in the petition,
10 the court shall proceed to a hearing on such issues.

11 (c) Continuances of the hearing provided for in this section
12 shall be for good cause only and the judge or magistrate shall
13 not grant a continuance to either party as a matter of right. If a
14 continuance is granted upon request by a tenant, the tenant shall
15 be required to pay into court any periodic rent becoming due
16 during the period of such continuance.

17 (d) At the conclusion of the hearing, if the court finds that
18 the landlord is entitled to evict the tenants and have the factory-
19 built home of the tenants removed, the court shall make and
20 enter an order evicting the tenants and ordering the tenants to
21 have the factory-built home removed. In the case of a proceed-
22 ing pursuant to subsection (a) of this section, the court may also
23 make a written finding and include in its order such relief on the
24 issue of arrearage in the payment of periodic payments or other
25 agreed charges related to the tenancy as the evidence may
26 require. The court may disburse any moneys paid into court by
27 the tenant in accordance with the provisions of this section.

28 (e) The court order shall specify the time when the tenant
29 shall vacate the property, taking into consideration such factors
30 as the nature of the factory-built home, the possibility of
31 relative harm to the parties and other material facts deemed
32 relevant by the court in considering when the tenant might
33 reasonably be expected to vacate the property. The court shall
34 not order the tenant to vacate the premises in less than one
35 month unless the tenant refuses or fails to pay rent for that
36 period in advance as it becomes due or unless the court finds
37 that the tenant has deliberately or negligently damaged the
38 property or the property of other tenants or materially threat-
39 ened or harmed the quiet enjoyment of the property of other
40 tenants or neighbors or knowingly permitted another person to

41 do so. The court shall not order the tenant to remove the
42 factory-built home in less than three months unless the tenant
43 refuses or fails to pay rent in advance as it becomes due for that
44 period or unless the court finds that the presence of the factory-
45 built home poses an imminent threat to the health or safety of
46 other tenants or neighbors: *Provided*, That the court may order
47 the home to be removed in not less than thirty days if the
48 factory-built home is a single section and the tenant had held
49 over after having been given notice pursuant to section three of
50 this article. The order shall further provide that if the tenant
51 continues to wrongfully occupy the property beyond such time
52 or if the tenant refuses or fails to remove the factory-built home
53 in the time required, the landlord may apply for a writ of
54 possession and the sheriff shall forthwith remove the tenant,
55 taking precautions to guard against damage to the property of
56 the landlord and the tenant.

57 (f) In the event an appeal is taken and the tenant prevails
58 upon appeal, and if the term of the lease has expired and proper
59 termination notice was given pursuant to section three of this
60 article, absent an issue of title, retaliatory eviction or breach of
61 warranty, the relief ordered by the appellate court shall be for
62 monetary damages only and shall not restore the tenant to
63 possession. During the pendency of any such appeal, if the
64 period of the tenancy has otherwise expired and proper termina-
65 tion notice was given pursuant to section three of this article,
66 the tenant is not entitled to remain in possession of the property.

67 (g) When an order is issued pursuant to this section evicting
68 the tenant and ordering the tenant to remove the factory-built
69 home and the tenant fails to remove the factory-built home by
70 the date specified by the order issued pursuant to subsection (e)
71 of this section, the landlord may:

72 (1) Dispose of the tenant's factory-built home without
73 incurring any liability or responsibility to the tenant or any

74 other person if the tenant informs the landlord in writing that
75 the tenant is abandoning the factory-built home;

76 (2) Remove and store the factory-built home after the date
77 and time by which the court ordered the tenant to remove the
78 factory-built home. The landlord may sell the stored factory-
79 built home after thirty days without incurring any liability or
80 responsibility to the tenant or any other person if: (i) The tenant
81 has not paid the reasonable costs of storage and removal to the
82 landlord and has not taken possession of the stored factory-built
83 home; or (ii) the costs of storage equal the value of the factory-
84 built home being stored; or

85 (3) Leave the factory-built home on the property. The
86 landlord may sell the factory-built home left on the property
87 after thirty days without incurring any liability or responsibility
88 to the tenant or any other person if the tenant has not paid the
89 landlord the reasonable costs of leaving the factory-built home
90 on the landlord's property and has not taken possession of the
91 factory-built home.

92 (h) The sale shall be conducted and the proceeds distributed
93 pursuant to article nine, chapter forty-six of this code as if the
94 landlord became the holder of a security interest on the day the
95 the tenant was to have the factory-built home removed from the
96 site except that the landlord shall have first priority to recover
97 unpaid rent and may require as a condition of the sale that the
98 buyer post security or place in escrow the cost of moving the
99 factory-built home from the site.

100 (i) When an order is issued pursuant to this section granting
101 possession of the property to the landlord and the tenant
102 removes the factory-built home, but fails to remove all other
103 personal property by the date and time specified by the order
104 issued pursuant to subsection (e) of this section, the landlord
105 may:

106 (1) Dispose of the tenant's personal property without
107 incurring any liability or responsibility to the tenant or any
108 other person if the tenant informs the landlord in writing that
109 the other personal property is abandoned or if the property is
110 garbage;

111 (2) Remove and store the other personal property after the
112 date and time by which the court ordered the tenant to vacate
113 the property. The landlord may dispose of the stored personal
114 property after thirty days without incurring any liability or
115 responsibility to the tenant or any other person if: (i) The tenant
116 has not paid the reasonable costs of storage and removal to the
117 landlord and has not taken possession of the stored personal
118 property; or (ii) the costs of storage equal the value of the
119 personal property being stored; or

120 (3) Leave the personal property on the property. The
121 landlord may dispose of personal property left on the property
122 after thirty days without incurring any liability or responsibility
123 to the tenant or any other person if the tenant has not paid the
124 landlord the reasonable costs of leaving the personal property
125 on the landlord's property and has not taken possession of the
126 personal property.

127 (j) Notwithstanding the provisions of subsections (g) and (i)
128 of this section, if the personal property is worth more than three
129 hundred dollars and was not removed from the property or
130 place of storage within thirty days with the required fees paid
131 as provided in subsection (i) of this section, or if the factory-
132 built home was not removed within thirty days with the
133 required fees paid as provided in subsection (g) of this section,
134 the landlord shall store the personal property or factory-built
135 home for up to thirty additional days if the tenant or any person
136 holding a security interest in the abandoned personal property
137 or factory-built home informs the landlord of their intent to
138 remove the property: *Provided*, That the tenant or person

139 holding a security interest in the personal property pays the
140 landlord the reasonable costs of storage and removal.

§55-3B-7. Waiver.

1 A tenant's rights under this article may not be waived by
2 agreement.

CHAPTER 173

(H. B. 4560 — By Delegates Browning and Kuhn)

[Passed March 4, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1B-26, relating to the West Virginia national guard generally; and requiring that guards and firefighters employed by the adjutant general be members of the national guard.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-1B-26, to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-26. Firefighters and security guards to be members of the national guard.

1 Only firefighters and security guards who are members of
2 the West Virginia national guard may be employed by the

3 adjutant general as firefighters and security guards: *Provided*,
4 That any person employed as a firefighter on the effective date
5 of this section who is not a member of the West Virginia air
6 national guard may continue to be employed as a firefighter:
7 *Provided, however*, That no person who is not employed on the
8 effective date of this section as a firefighter and who is not a
9 member of the West Virginia air national guard may be
10 employed as a firefighter for the West Virginia air national
11 guard.

CHAPTER 174

(Com. Sub. for H. B. 4166 — By Delegates Palumbo, Staton,
Kominar, Amores, Craig and Webster)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §36-3-5a of the code of West Virginia, 1931, as amended, relating to excepting the description requirements from deeds or instruments for easements and rights-of-way for mineral leases.

Be it enacted by the Legislature of West Virginia:

That §36-3-5a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 and mineral leases.

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:
8 *Provided*, That oil and gas, gas storage and mineral leases shall
9 not be required to describe the easement, but shall describe the
10 land on which the easement or right of way will be situate by
11 source of title or reference to a tax map and parcel, recorded
12 deed, recorded lease, plat or survey sufficient to reasonably
13 identify and locate the property on which the easement or right-
14 of-way is situate: *Provided, however*, That the easement or
15 right-of-way is not invalid because of the failure of the ease-
16 ment or right-of-way to meet the requirements of this subsec-
17 tion.

18 (b) This section does not apply to the construction of a
19 service extension from a main distribution system of a public
20 utility when such service extension is located entirely on,
21 below, or above the property to which the utility service is to be
22 provided.

23 (c) The clerk of the county commission of any county in
24 which an easement or right-of-way is recorded pursuant to this
25 section shall only accept for recordation any document that
26 complies with this section and that otherwise complies with the
27 requirements of article one, chapter thirty-nine of this code,
28 without need for a survey or certification under section twelve,
29 article thirteen-a, chapter thirty of this code.

CHAPTER 175

(Com. Sub. for H. B. 4491— By Delegates Frederick, Caputo,
Kuhn, Varner, Pethtel, Stemple and Kominar)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, all relating to mine inspectors and instructors employed by the office of miners' health, safety and training; regions and districts; and qualifications, examinations, appointments, salaries, expense reimbursements, tenure and removal of mine safety instructors, electrical inspectors and mine inspectors.

Be it enacted by the Legislature of West Virginia:

That §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

- §22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.
- §22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to mine safety instructors.
- §22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.
- §22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.
- §22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

1 Notwithstanding any other provisions of this code to the
2 contrary, mine inspectors shall be selected, serve and be
3 removed as provided in this article.

4 The director shall divide the state into a sufficient number
5 of regions, so as to equalize, as far as practical, the work of
6 each inspector. The director may assign inspectors to districts
7 and may designate and assign not more than one inspec-
8 tor-at-large and one assistant inspector-at-large to each region.
9 The director may designate the places of abode of inspectors at
10 points convenient to the mines of their respective districts, and,
11 in the case of inspectors-at-large and assistant inspec-
12 tors-at-large, their respective regions.

13 All mine inspectors appointed after the mine inspectors'
14 examining board has certified to the director an adequate
15 register of qualified eligible candidates, so long as the register
16 contains the names of at least three qualified eligible candi-
17 dates, shall be appointed from the names on such register. Each
18 original appointment shall be made by the director for a
19 probationary period of not more than one year.

20 The director shall make each appointment from among the
21 three qualified eligible candidates on the register having the
22 highest grades: *Provided*, That the director may, for good cause,
23 at least thirty days prior to making an appointment, strike any
24 name from the register. Upon striking any name from the
25 register, the director shall immediately notify in writing each
26 member of the mine inspectors' examining board of the action,
27 together with a detailed statement of the reasons therefor.
28 Thereafter, if the mine inspectors' examining board finds, after
29 hearing, that the action of the director was arbitrary or unrea-
30 sonable, it may then order the name of any candidate so stricken

31 from the register to be reinstated thereon. The reinstatement is
32 effective from the date of removal from the register.

33 The name of any candidate passed over for appointment for
34 three years shall be deleted from the register.

35 After having served for a probationary period of one year
36 to the satisfaction of the director, a mine inspector has perma-
37 nent tenure, subject to dismissal only for cause in accordance
38 with the applicable provisions of section twelve of this article.
39 No mine inspector, while in office, may be directly or indirectly
40 interested as an employee, owner, lessor, operator, stockholder,
41 superintendent or engineer of any coal mine. Before entering
42 upon the discharge of the duties as a mine inspector, he or she
43 shall take the oath of office prescribed by section 5, article IV
44 of the Constitution of West Virginia, a certificate of which oath
45 shall be filed in the office of the secretary of state.

46 The inspectors, inspectors-at-large and assistant inspec-
47 tors-at-large, together with the director, shall make all inspec-
48 tions authorized by this article and article two of this chapter
49 and shall perform such other duties as are imposed upon mine
50 inspectors by this chapter and by any applicable legislative
51 rules.

**§22A-1-9. Mine safety instructors; eligibility; qualifications;
examinations; salary; provisions relating to
underground mine inspectors applicable to mine
safety instructors.**

1 (a) The office shall employ a sufficient number of mine
2 safety instructors as the director determines to be reasonably
3 necessary in fully and effectively carrying out the applicable
4 provisions of this chapter.

5 (b) To be eligible for employment as a mine safety instruc-
6 tor, the applicant shall be: (1) A citizen of West Virginia, in

7 good health, not less than twenty-four years of age, of good
8 character and reputation, and of temperate habits; (2) a person
9 who has had at least five years of practical experience in coal
10 mines, at least two years of which has been in mines in this
11 state: *Provided*, That graduation from any accredited college of
12 mining engineering may be considered equivalent to two years
13 of practical experience; (3) a person who has had practical
14 experience with dangerous gases found in coal mines, and who
15 has a good theoretical and practical knowledge of mines,
16 mining methods, mine ventilation, sound safety practices and
17 applicable mining laws and rules; and (4) a person who
18 possesses a West Virginia foreman-fireboss certification; or a
19 person who has had at least three years of experience as an
20 actual working team member of a mine rescue team, or at least
21 three years of experience as a member of a first aid team or
22 emergency medical technician team; or a person who has had
23 at least three years of experience as the safety director, or the
24 equivalent as approved by the mine inspectors' examining
25 board, of a mine; or a person who has had at least three years of
26 experience as an active member of a mine safety committee.
27 For the purpose of this section, practical experience means the
28 performance of normal mining duties requiring a person to hold
29 a certificate of competency and qualification as an experienced
30 miner prior to actually performing such duties.

31 (c)(1) In order to qualify for appointment as a mine safety
32 instructor, an eligible applicant shall submit to written, oral and
33 practical examinations administered by the mine inspectors'
34 examining board and furnish evidence of good health, character
35 and other facts establishing eligibility as the board may require.
36 The examinations shall relate to the duties to be performed by
37 a mine safety instructor and, subject to the approval of the mine
38 inspectors' examining board, may be prepared by the director.

39 (2) If the board finds after investigation and examination
40 that an applicant: (A) Is eligible for appointment; and (B) has

41 passed each required examination with a grade of at least
42 seventy-five percent or an overall combined average score of
43 eighty percent, the board shall add the applicant's name and
44 grades to the register of qualified eligible candidates and
45 promptly certify its action in writing to the director. The
46 director shall then appoint one of the candidates from the three
47 having the highest grades.

48 (d) Mine safety instructors shall be paid an annual salary of
49 not less than thirty-seven thousand four hundred dollars, which
50 shall be fixed by the director, who shall take into consideration
51 ability, performance of duty and experience. Mine safety
52 instructors shall devote all of their time to the duties of the
53 office.

54 (e) Except as expressly provided in this section to the
55 contrary, all provisions of this article relating to the eligibility,
56 qualification, appointment, tenure and removal of underground
57 mine inspectors, as well as those provisions relating to compen-
58 satory time and reimbursement for necessary expenses, are
59 applicable to mine safety instructors.

**§22A-1-11. Employment of electrical inspectors; eligibility;
qualifications; examinations; salary; provisions
relating to underground mine inspectors applica-
ble to electrical inspectors.**

1 (a) The office shall employ a sufficient number of electrical
2 inspectors as the director determines to be reasonably necessary
3 in fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as an electrical inspector,
6 the applicant shall be: (1) A citizen of West Virginia, in good
7 health, not less than twenty-four years of age, of good character
8 and reputation, and of temperate habits; and (2) a person who
9 has had five years of practical electrical experience in coal

10 mines, at least two of which were in mines in this state, or a
11 degree in electrical engineering from an accredited electrical
12 engineering school and three years of practical electrical
13 experience in underground coal mining. For the purposes of this
14 section, practical electrical experience means the performance
15 of duties requiring a person to be a certified electrician, as that
16 term is defined in subdivision (2), subsection (d), section two
17 of this article, prior to actually performing such duties.

18 (c)(1) In order to qualify for appointment as an electrical
19 inspector, an eligible applicant shall submit to written, oral and
20 practical examinations administered by the mine inspectors'
21 examining board and furnish evidence of good health, character
22 and other facts establishing eligibility as the board may require.
23 The examinations shall relate to the duties to be performed by
24 an electrical inspector and, subject to approval of the mine
25 inspectors' examining board, may be prepared by the director.

26 (2) If the board finds after investigation and examination
27 that an applicant: (A) Is eligible for appointment; and (B) has
28 passed the required examinations with an average grade of at
29 least ninety percent, the board shall add the applicant's name
30 and grades to the register of qualified eligible candidates and
31 promptly certify its action in writing to the director. The
32 director shall then appoint one of the candidates from the three
33 having the highest grades.

34 (d) Electrical inspectors shall be paid an annual salary of
35 not less than forty-two thousand eight hundred twenty-eight
36 dollars, which shall be fixed by the director, who shall take into
37 consideration ability, performance of duty and experience.
38 Electrical inspectors shall devote all of their time to the duties
39 of the office.

40 (e) Except as expressly provided in this section to the
41 contrary, all provisions of this article relating to the eligibility,

42 qualifications, appointment, tenure and removal of underground
43 mine inspectors, as well as those provisions relating to compen-
44 satory time and reimbursement for necessary expenses, are
45 applicable to mine electrical inspectors.

**§22A-1-12. Employment of underground mine inspectors; eligi-
bility; qualifications; examinations; salary and
expenses; reinstatement; removal.**

1 (a) The office shall employ as many underground mine
2 inspectors as the director determines to be reasonably necessary
3 in fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as a mine inspector the
6 applicant shall be: (1) A citizen of West Virginia, in good
7 health, not less than twenty-four years of age, of good character
8 and reputation and of temperate habits; (2) a person who has
9 had at least five years of practical experience in coal mines, at
10 least two years of which have been in mines of this state:
11 *Provided*, That graduation from any accredited college of
12 mining engineering may be considered the equivalent of two
13 years of practical experience; (3) a person who has had practical
14 experience with dangerous gases found in coal mines; and (4)
15 a person who has a good theoretical and practical knowledge of
16 mines, mining methods, mine ventilation, sound safety prac-
17 tices and applicable mining laws and rules. For the purpose of
18 this section, practical experience means the performance of
19 normal mining duties requiring a person to hold a certificate of
20 competency and qualification as an experienced underground
21 miner prior to actually performing such duties.

22 (c) In order to qualify for appointment as an underground
23 mine inspector, an eligible applicant shall submit to written,
24 oral and practical examinations administered by the mine
25 inspectors' examining board and furnish evidence of good

26 health, character and other facts establishing eligibility as the
27 board may require. The examinations shall relate to the duties
28 to be performed by an underground mine inspector and, subject
29 to the approval of the mine inspectors' examining board, may
30 be prepared by the director. If the board finds after investigation
31 and examination that an applicant: (1) Is eligible for appoint-
32 ment; and (2) has passed each required examination, with a
33 grade of at least seventy-five percent or an overall combined
34 average score of eighty percent, the board shall add
35 the applicant's name and grades to the register of qualified
36 eligible candidates and promptly certify its action in writing to
37 the director. The director shall then appoint one of the candi-
38 dates from the three having the highest grades.

39 (d) Underground mine inspectors shall be paid an annual
40 salary of not less than thirty-eight thousand one hundred sixty
41 dollars; assistant inspectors-at-large, not less than forty-four
42 thousand four hundred forty-eight dollars; inspectors-at-large,
43 not less than forty-six thousand one hundred four dollars, each
44 of which shall be fixed by the director, who shall take into
45 consideration ability, performance of duty, and experience. In
46 accordance with established rules of the state's travel manage-
47 ment office, underground mine inspectors shall also be allowed
48 and paid expenses necessarily incident to the performance of
49 their official duties: *Provided*, That no reimbursement for
50 expenses may be made other than upon the timely submittal of
51 a properly itemized expense account settlement completed by
52 the underground mine inspector, approved and countersigned
53 by the director, or his or her designated representative, verify-
54 ing that the expenses were actually incurred in the performance
55 of official duties. Underground mine inspectors shall devote all
56 of their time to the duties of the office and shall be afforded
57 compensatory time or compensation of at least the regular rate
58 for all time in excess of forty hours per week.

59 (e)(1) An underground mine inspector, after having
60 received a permanent appointment, may be removed from
61 office only for physical or mental impairment, incompetency,
62 neglect of duty, public intoxication, malfeasance in office or
63 other similarly good cause.

64 (2) Proceedings for the removal of an underground mine
65 inspector may be initiated by the director whenever there is
66 reasonable cause to believe that adequate cause exists, warrant-
67 ing removal. The proceeding may be initiated by a verified
68 petition, filed with the mine inspectors' examining board by the
69 director, setting forth with particularity the facts alleged. Not
70 less than twenty reputable citizens, who are operators or
71 employees in mines in this state, may petition the director for
72 the removal of an underground mine inspector. If the petition is
73 verified by at least one of the petitioners, based on actual
74 knowledge of the affiant of the alleged facts, which, if true,
75 warrant the removal of the inspector, the director shall cause an
76 investigation of the alleged facts to be made. If, after the
77 investigation, the director finds that there is substantial evi-
78 dence, which, if true, warrants removal of the inspector, the
79 director shall file a petition with the board requesting removal
80 of the inspector.

81 (3) On receipt of a petition by the director seeking removal
82 of an underground mine inspector, the board shall promptly
83 notify the inspector to appear before it at a time and place
84 designated in the notice, which time shall be not less than
85 fifteen days thereafter. There shall be attached to the copy of
86 the notice served upon the inspector a copy of the petition filed
87 with the board.

88 (4) At the time and place designated in the notice, the board
89 shall hear all evidence offered in support of the petition and on
90 behalf of the inspector. Each witness shall be sworn, and a
91 transcript shall be made of all evidence taken and proceedings

92 had at the hearing. No continuance may be granted except for
93 good cause shown. The chair of the board and the director have
94 power to administer oaths and subpoena witnesses.

95 (5) If any mine inspector against whom a petition has been
96 filed willfully refuses or fails to appear before the board, or
97 having appeared, refuses to answer under oath any relevant
98 question on the basis that the testimony or answer might
99 incriminate him or her or refuses to waive immunity from
100 prosecution because of any relevant matter about which the
101 inspector may be asked to testify, then the inspector shall forfeit
102 his or her position.

103 (6) If, after hearing, the board finds that the inspector
104 should be removed, it shall enter an order to that effect. The
105 decision of the board is final and is not subject to judicial
106 review.

**§22A-1-13. Employment of surface mine inspectors; eligibility;
qualifications; examinations; salary; provisions
relating to underground mine inspectors applica-
ble to surface mine inspectors.**

1 (a) The office shall employ as many surface mine inspec-
2 tors as the director determines to be reasonably necessary in
3 fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as a surface mine
6 inspector the applicant shall be: (1) A citizen of West Virginia,
7 in good health, not less than twenty-four years of age, of good
8 character and reputation and of temperate habits; (2) a person
9 who has had at least five years of practical experience in coal
10 mines, at least two years of which have been in surface mines
11 in this state: *Provided*, That graduation from any accredited
12 college of mining engineering may be considered the equivalent

13 of two years of practical experience; and (3) a person who has
14 a good theoretical and practical knowledge of surface mines,
15 surface mining methods, sound safety practices and applicable
16 mining laws and rules. For the purpose of this section, practical
17 experience means the performance of normal mining duties
18 requiring a person to hold a certificate of competency and
19 qualification as an experienced surface miner prior to actually
20 performing such duties.

21 (c)(1) In order to qualify for appointment as a surface mine
22 inspector, an eligible applicant shall submit to written, oral and
23 practical examinations administered by the mine inspectors'
24 examining board and furnish evidence of good health, character
25 and other facts establishing eligibility as the board may require.
26 The examinations shall relate to the duties to be performed by
27 a surface mine inspector and, subject to the approval of the
28 mine inspectors' examining board, may be prepared by the
29 director.

30 (2) If the board finds after investigation and examination
31 that an applicant is: (A) Eligible for appointment; and (B) has
32 passed each required examination with a grade of at least
33 seventy-five percent, or an overall combined average score of
34 eighty percent, the board shall add the applicant's name and
35 grades to the register of qualified eligible candidates and
36 promptly certify its action in writing to the director. The
37 director shall then appoint one of the candidates from the three
38 having the highest grades.

39 (d) Surface mine inspectors shall be paid an annual salary
40 of not less than thirty-seven thousand three hundred thirty-two
41 dollars, which shall be fixed by the director, who shall take into
42 consideration ability, performance of duty, and experience.
43 Surface mine inspectors shall devote all of their time to the
44 duties of the office.

45 (e) Except as expressly provided in this section to the
46 contrary, all provisions of this article relating to the eligibility,
47 qualification, appointment, tenure, and removal of underground
48 mine inspectors, as well as those provisions relating to compen-
49 satory time and reimbursement for necessary expenses, are
50 applicable to surface mine inspectors.

CHAPTER 176

(S. B. 697 — By Senators Tomblin, Mr. President,
Helmick and Bowman)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §24A-7-7 of the code of West Virginia, 1931, as amended, relating to authorizing the public service commission to delegate motor carrier inspector duties to weight enforcement officers and vice versa.

Be it enacted by the Legislature of West Virginia:

That §24A-7-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

1 (a) The employees of the commission designated as motor
2 carrier inspectors have the same authority as law-enforcement
3 officers generally to enforce the provisions of chapter

4 seventeen-c of this code with respect to commercial motor
5 vehicles owned or operated by motor carriers, exempt carriers
6 or private commercial carriers where vehicles have a gross
7 vehicle weight rating of ten thousand pounds or more.

8 The commission is authorized to delegate motor carrier
9 inspector duties to weight enforcement officers as it considers
10 appropriate, following successful training and certification of
11 individual officers, who shall then have the same authority as
12 motor carrier inspectors under this section. The commission is
13 also authorized to delegate weight enforcement duties to motor
14 carrier inspectors.

15 (b) The speed of a commercial motor vehicle owned or
16 operated by a motor carrier, exempt carrier or private commer-
17 cial carrier may be proved by evidence obtained by use of any
18 device designed to measure and indicate or record the speed of
19 a moving object by means of microwaves, when the evidence
20 is obtained by employees of the commission designated as
21 motor carrier inspectors. The evidence so obtained is prima
22 facie evidence of the speed of the vehicle.

23 (c) Motor carrier inspectors shall also perform a north
24 American standard safety inspection of each commercial motor
25 vehicle stopped for enforcement purposes pursuant to this
26 section.

27 (d) Before exercising the provisions of this section, the
28 motor carrier inspectors shall receive adequate training.

29 (e) Nothing in this section affects the existing authority of
30 law-enforcement officers not employed by the commission to
31 enforce the provisions of chapter seventeen-c of this code.

CHAPTER 177

(Com. Sub. for S. B. 505 — By Senators Ross and Love)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-1-1 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-2 of said code; and to amend and reenact §17A-6-3 and §17A-6-18 of said code, all relating to creating a motor vehicle classification of “low-speed vehicle”.

Be it enacted by the Legislature of West Virginia:

That §17A-1-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-2 of said code be amended and reenacted; and that §17A-6-3 and §17A-6-18 of said code be amended and reenacted, all to read as follows:

Article

1. **Words and Phrases Defined.**
3. **Original and Renewal of Registration; Issuance of Certificates of Title.**
6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter, the following
2 words and phrases, when used in this chapter, shall have the
3 meanings respectively ascribed to them in this article:

4 (a) “Vehicle” means every device in, upon or by which any
5 person or property is or may be transported or drawn upon a

6 highway, excepting devices moved by human power or used
7 exclusively upon stationary rails or tracks.

8 (b) "Motor vehicle" means every vehicle which is
9 self-propelled and every vehicle which is propelled by electric
10 power obtained from overhead trolley wires, but not operated
11 upon rails.

12 (c) "Motorcycle" means every motor vehicle, including
13 motor-driven cycles and mopeds as defined in sections five and
14 five-a, article one, chapter seventeen-c of this code, having a
15 saddle for the use of the rider and designed to travel on not
16 more than three wheels in contact with the ground, but exclud-
17 ing a tractor.

18 (d) "School bus" means every motor vehicle owned by a
19 public governmental agency and operated for the transportation
20 of children to or from school or privately owned and operated
21 for compensation for the transportation of children to or from
22 school.

23 (e) "Bus" means every motor vehicle designed to carry
24 more than seven passengers and used to transport persons; and
25 every motor vehicle, other than a taxicab, designed and used to
26 transport persons for compensation.

27 (f) "Truck tractor" means every motor vehicle designed and
28 used primarily for drawing other vehicles and not so con-
29 structed as to carry a load other than a part of the weight of the
30 vehicle and load so drawn.

31 (g) "Farm tractor" means every motor vehicle designed and
32 used primarily as a farm implement for drawing plows, mowing
33 machines and other implements of husbandry.

34 (h) "Road tractor" means every motor vehicle designed,
35 used or maintained for drawing other vehicles and not so

36 constructed as to carry any load thereon either independently or
37 any part of the weight of a vehicle or load so drawn.

38 (i) "Truck" means every motor vehicle designed, used or
39 maintained primarily for the transportation of property.

40 (j) "Trailer" means every vehicle with or without motive
41 power designed for carrying persons or property and for being
42 drawn by a motor vehicle and so constructed that no part of its
43 weight rests upon the towing vehicle, but excluding recreational
44 vehicles.

45 (k) "Semitrailer" means every vehicle with or without
46 motive power designed for carrying persons or property and for
47 being drawn by a motor vehicle and so constructed that some
48 part of its weight and that of its load rests upon or is carried by
49 another vehicle.

50 (l) "Pole trailer" means every vehicle without motive power
51 designed to be drawn by another vehicle and attached to the
52 towing vehicle by means of a reach, or pole, or by being
53 boomed or otherwise secured to the towing vehicle and ordi-
54 narily used for transporting long or irregularly shaped loads
55 such as poles, pipes or structural members capable, generally,
56 of sustaining themselves as beams between the supporting
57 connections.

58 (m) "Specially constructed vehicles" means every vehicle
59 of a type required to be registered hereunder not originally
60 constructed under a distinctive name, make, model or type by
61 a generally recognized manufacturer of vehicles and not
62 materially altered from its original construction.

63 (n) "Reconstructed vehicle" means every vehicle of a type
64 required to be registered hereunder materially altered from its
65 original construction by the removal, addition or substitution of
66 essential parts, new or used.

67 (o) "Essential parts" means all integral and body parts of a
68 vehicle of a type required to be registered hereunder, the
69 removal, alteration or substitution of which would tend to
70 conceal the identity of the vehicle or substantially alter its
71 appearance, model, type or mode of operation.

72 (p) "Foreign vehicle" means every vehicle of a type
73 required to be registered hereunder brought into this state from
74 another state, territory or country other than in the ordinary
75 course of business by or through a manufacturer or dealer and
76 not registered in this state.

77 (q) "Implement of husbandry" means every vehicle which
78 is designed for or adapted to agricultural purposes and used by
79 the owner thereof primarily in the conduct of his agricultural
80 operations, including, but not limited to, trucks used for
81 spraying trees and plants: *Provided*, That the vehicle may not
82 be let for hire at any time.

83 (r) "Special mobile equipment" means every self-propelled
84 vehicle not designed or used primarily for the transportation of
85 persons or property and incidentally operated or moved over the
86 highways, including, without limitation, road construction or
87 maintenance machinery, ditch-digging apparatus, stone
88 crushers, air compressors, power shovels, graders, rollers,
89 well-drillers, wood-sawing equipment, asphalt spreaders,
90 bituminous mixers, bucket loaders, ditchers, leveling graders,
91 finishing machines, motor graders, road rollers, scarifiers,
92 earth-moving carryalls, scrapers, drag lines, rock-drilling
93 equipment and earth-moving equipment. The foregoing
94 enumeration shall be deemed partial and may not operate to
95 exclude other such vehicles which are within the general terms
96 of this subdivision.

97 (s) "Pneumatic tire" means every tire in which compressed
98 air is designed to support the load.

99 (t) "Solid tire" means every tire of rubber or other resilient
100 material which does not depend upon compressed air for the
101 support of the load.

102 (u) "Metal tire" means every tire the surface of which in
103 contact with the highway is wholly or partly of metal or other
104 hard, nonresilient material.

105 (v) "Commissioner" means the commissioner of motor
106 vehicles of this state.

107 (w) "Division" means the division of motor vehicles of this
108 state acting directly or through its duly authorized officers and
109 agents.

110 (x) "Person" means every natural person, firm, copartner-
111 ship, association or corporation.

112 (y) "Owner" means a person who holds the legal title to a
113 vehicle, or in the event a vehicle is the subject of an agreement
114 for the conditional sale or lease thereof with the right of
115 purchase upon performance of the conditions stated in the
116 agreement and with an immediate right of possession vested in
117 the conditional vendee or lessee, or in the event a mortgagor of
118 a vehicle is entitled to possession, then the conditional vendee
119 or lessee or mortgagor shall be deemed the owner for the
120 purpose of this chapter.

121 (z) "Nonresident" means every person who is not a resident
122 of this state.

123 (aa) "Dealer" or "dealers" is a general term meaning,
124 depending upon the context in which used, either a new motor
125 vehicle dealer, used motor vehicle dealer, factory-built home
126 dealer, recreational vehicle dealer, trailer dealer or motorcycle
127 dealer, as defined in section one, article six of this chapter, or

128 all of the dealers or a combination thereof and, in some in-
129 stances, a new motor vehicle dealer or dealers in another state.

130 (bb) "Registered dealer" or "registered dealers" is a general
131 term meaning, depending upon the context in which used, either
132 a new motor vehicle dealer, used motor vehicle dealer, house
133 trailer dealer, trailer dealer, recreational vehicle dealer or
134 motorcycle dealer, or all of the dealers or a combination
135 thereof, licensed under the provisions of article six of this
136 chapter.

137 (cc) "Licensed dealer" or "licensed dealers" is a general
138 term meaning, depending upon the context in which used, either
139 a new motor vehicle dealer, used motor vehicle dealer, house
140 trailer dealer, trailer dealer, recreational vehicle dealer or
141 motorcycle dealer, or all of the dealers or a combination
142 thereof, licensed under the provisions of article six of this
143 chapter.

144 (dd) "Transporter" means every person engaged in the
145 business of delivering vehicles of a type required to be regis-
146 tered hereunder from a manufacturing, assembling or distribut-
147 ing plant to dealers or sales agents of a manufacturer.

148 (ee) "Manufacturer" means every person engaged in the
149 business of constructing or assembling vehicles of a type
150 required to be registered hereunder at a place of business in this
151 state which is actually occupied either continuously or at
152 regular periods by the manufacturer where his books and
153 records are kept and a large share of his business is transacted.

154 (ff) "Street" or "highway" means the entire width between
155 boundary lines of every way publicly maintained when any part
156 thereof is open to the use of the public for purposes of vehicular
157 travel.

158 (gg) "Motorboat" means any vessel propelled by an
159 electrical, steam, gas, diesel or other fuel propelled or driven
160 motor, whether or not the motor is the principal source of
161 propulsion, but may not include a vessel which has a valid
162 marine document issued by the bureau of customs of the United
163 States government or any federal agency successor thereto.

164 (hh) "Motorboat trailer" means every vehicle designed for
165 or ordinarily used for the transportation of a motorboat.

166 (ii) "All-terrain vehicle" (ATV) means any motor vehicle
167 designed for off-highway use having a seat or saddle designed
168 to be straddled by the operator and handlebars for steering
169 control.

170 (jj) "Travel trailer" means every vehicle, mounted on
171 wheels, designed to provide temporary living quarters for
172 recreational, camping or travel use of such size or weight as not
173 to require special highway movement permits when towed by
174 a motor vehicle and of gross trailer area less than four hundred
175 square feet.

176 (kk) "Fold down camping trailer" means every vehicle
177 consisting of a portable unit mounted on wheels and con-
178 structed with collapsible partial sidewalls which fold for towing
179 by another vehicle and unfold at the camp site to provide
180 temporary living quarters for recreational, camping or travel
181 use.

182 (ll) "Motor home" means every vehicle, designed to
183 provide temporary living quarters, built into an integral part of
184 or permanently attached to a self-propelled motor vehicle,
185 chassis or van including: (1) Type A motor home built on an
186 incomplete truck chassis with the truck cab constructed by the
187 second stage manufacturer; (2) Type B motor home consisting
188 of a van-type vehicle which has been altered to provide
189 temporary living quarters; and (3) Type C motor home built on

190 an incomplete van or truck chassis with a cab constructed by
191 the chassis manufacturer.

192 (mm) "Snowmobile" means a self-propelled vehicle
193 intended for travel primarily on snow and driven by a track or
194 tracks in contact with the snow and steered by a ski or skis in
195 contact with the snow.

196 (nn) "Recreational vehicle" means a motorboat, motorboat
197 trailer, all-terrain vehicle, travel trailer, fold down camping
198 trailer, motor home or snowmobile.

199 (oo) "Mobile equipment" means every self-propelled
200 vehicle not designed or used primarily for the transportation of
201 persons or property over the highway but which may infre-
202 quently or incidentally travel over the highways among job
203 sites, equipment storage sites or repair sites, including farm
204 equipment, implements of husbandry, well-drillers, cranes and
205 wood-sawing equipment.

206 (pp) "Factory-built home" includes mobile homes, house
207 trailers and manufactured homes.

208 (qq) "Manufactured home" has the same meaning as the
209 term is defined in section two, article nine, chapter twenty-one
210 of this code which meets the federal Manufactured Housing
211 Construction and Safety Standards Act of 1974 (42 U. S. C.
212 §5401, *et seq.*), effective on the fifteenth day of June, one
213 thousand nine hundred seventy-six, and the federal manufac-
214 tured home construction and safety standards and regulations
215 promulgated by the secretary of the United States department
216 of housing and urban development.

217 (rr) "Mobile home" means a transportable structure that is
218 wholly, or in substantial part, made, fabricated, formed or
219 assembled in manufacturing facilities for installation or
220 assembly and installation on a building site and designed for

221 long-term residential use and built prior to enactment of the
222 federal Manufactured Housing Construction and Safety
223 Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective on
224 the fifteenth day of June, one thousand nine hundred seventy-
225 six, and usually built to the voluntary industry standard of the
226 American national standards institute (ANSI) -- A119.1
227 standards for mobile homes.

228 (ss) "House trailers" means all trailers designed and used
229 for human occupancy on a continual nonrecreational basis, but
230 may not include fold down camping and travel trailers, mobile
231 homes or manufactured homes.

232 (tt) "Parking enforcement vehicle" means a motor vehicle
233 which does not fit into any other classification of vehicle in this
234 chapter, has three or four wheels and is designed for use in an
235 incorporated municipality by a city, county, state or other
236 governmental entity primarily for parking enforcement or other
237 governmental purposes with an operator area with sides
238 permanently enclosed with rigid construction and a top which
239 may be convertible, sealed beam headlights, turn signals, brake
240 lights, horn, at least one rear view mirror on each side and such
241 other equipment that will enable it to pass a standard motorcy-
242 cle vehicle inspection.

243 (uu) "Low-speed vehicle" means a four-wheeled motor
244 vehicle whose attainable speed in one mile on a paved level
245 surface is more than twenty miles per hour but not more than
246 twenty-five miles per hour.

**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
25 and license requirements also applies to any vehicle described
26 in 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 exemp-
58 tion certificate on the lower driver's side of the windshield:

59 (i) The farm-use exemption certificate shall be provided by
60 the commissioner and shall be issued annually by the assessor
61 of the applicant's county of residence. The assessor shall issue
62 a farm-use exemption certificate to the applicant upon his or her
63 determination pursuant to an examination of the property books
64 or documentation provided by the applicant that the vehicle has

65 been properly assessed as Class I personal property. The
66 assessor shall charge a fee of two dollars for each certificate,
67 which shall be retained by the assessor;

68 (ii) A farm-use exemption certificate shall not exempt the
69 applicant from maintaining the security required by chapter
70 seventeen-d of this code on any vehicle being operated on the
71 roads or highways of this state;

72 (iii) No person charged with the offense of operating a
73 vehicle without a farm-use exemption certificate, if required
74 under this section, may be convicted of the offense if he or she
75 produces in court, or in the office of the arresting officer, a
76 valid farm-use exemption certificate for the vehicle in question
77 within five days;

78 (3) Any vehicle which is propelled exclusively by electric
79 power obtained from overhead trolley wires though not
80 operated upon rails;

81 (4) Any vehicle of a type subject to registration which is
82 owned by the government of the United States;

83 (5) Any wrecked or disabled vehicle towed by a licensed
84 wrecker or dealer on the public highways of this state;

85 (6) The following recreational vehicles are exempt from the
86 requirements of annual registration, license plates and fees,
87 unless otherwise specified by law, but are subject to the
88 certificate of title provisions of this chapter regardless of
89 highway use: Motorboats, all-terrain vehicles and snowmobiles;
90 and

91 (7) Any special mobile equipment as defined in subsection
92 (r), section one, article one of this chapter.

93 (b) Notwithstanding the provisions of subsection (a) of this
94 section:

95 (1) Mobile homes or manufactured homes are exempt from
96 the requirements of annual registration, license plates and fees;

97 (2) House trailers may be registered and licensed; and

98 (3) Factory-built homes are subject to the certificate of title
99 provisions of this chapter.

100 (c) The division shall title and register low-speed vehicles
101 if the manufacturer's certificate of origin clearly identifies the
102 vehicle as a low-speed vehicle. The division may not title or
103 register homemade low-speed vehicles or retrofitted golf carts
104 and such vehicles do not qualify as low-speed vehicles in this
105 state. In addition to all other motor vehicle laws and regula-
106 tions, except as specifically exempted below, low-speed
107 vehicles are subject to the following restrictions and require-
108 ments:

109 (1) Low-speed vehicles shall only be operated on private
110 roads and on public roads and streets within the corporate limits
111 of a municipality where the speed limit is not more than twenty-
112 five miles per hour;

113 (2) Notwithstanding any provisions in this code to the
114 contrary, low-speed vehicles shall meet the requirements of 49
115 C. F. R. §571.500 (2003);

116 (3) In lieu of annual inspection, the owner of a low-speed
117 vehicle shall, upon initial application for registration and each
118 renewal thereafter, certify under penalty of false swearing, that
119 all lights, brakes, tires and seat belts are in good working
120 condition; and

121 (4) Any person operating a low-speed vehicle must hold a
122 valid driver's license, not an instruction permit.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

1 (a) No person shall engage or represent or advertise that he
2 or she is engaged or intends to engage in the business of new
3 motor vehicle dealer, used motor vehicle dealer, house trailer
4 dealer, trailer dealer, recreational vehicle dealer, motorcycle
5 dealer, used parts dealer or wrecker or dismantler in this state
6 unless and until he or she first obtains a license certificate
7 therefor as provided in this article, which license certificate
8 remains unexpired, unsuspended and unrevoked. Any person
9 desiring to engage in more than one such business must, subject
10 to the provisions of section five of this article, apply for and
11 obtain a separate license certificate for each such business.

12 (b) A person in business as a new motor vehicle or recre-
13 ational vehicle dealer may sell low-speed vehicles as defined in
14 section one, article one of this chapter.

15 (c) Except for the qualification contained in subdivision
16 (17), subsection (a), section one of this article with respect to a
17 new motor vehicle dealer, each place of business of a new
18 motor vehicle dealer, used motor vehicle dealer, house trailer
19 dealer, trailer dealer, recreational vehicle dealer, motorcycle
20 dealer, used parts dealer and wrecker or dismantler must be an
21 established place of business as defined for such business in
22 said section one.

23 (d) Any person who violates this section shall, in addition
24 to any other penalty prescribed by law, be subject to a civil
25 penalty levied by the commissioner in an amount not to exceed
26 one thousand dollars for the first violation, two thousand dollars
27 for the second violation and five thousand dollars for every
28 subsequent violation.

29 (e) The commissioner shall promulgate rules, in accordance
30 with the provisions of chapter twenty-nine-a of this code,
31 establishing procedures whereby persons against whom such
32 civil penalties are to be assessed shall be afforded all due
33 process required pursuant to the provisions of the West Virginia
34 constitution.

**§17A-6-18. Investigation; matters confidential; grounds for
suspending or revoking license or imposing fine;
suspension and revocation generally.**

1 (a) The commissioner may conduct an investigation to
2 determine whether any provisions of this chapter have been or
3 are about to be violated by a licensee. Any investigation shall
4 be kept in strictest confidence by the commissioner, the
5 division, the licensee, any complainant and all other persons,
6 unless and until the commissioner suspends or revokes the
7 license certificate of the licensee involved or fines the licensee:
8 *Provided*, That the commissioner may advise the motor vehicle
9 dealers advisory board of pending actions and may disclose to
10 the motor vehicle dealers advisory board any information that
11 enables it to perform its advisory function in imposing penal-
12 ties. The commissioner may suspend or revoke a license
13 certificate, suspend a special dealer plate or plates, impose a
14 fine or take any combination of these actions if the commis-
15 sioner finds that the licensee:

16 (1) Has failed or refused to comply with the laws of this
17 state relating to the registration and titling of vehicles and the
18 giving of notices of transfers, the provisions and requirements

19 of this article, or any reasonable rules authorized in section
20 nine, article two of this chapter and promulgated to implement
21 the provisions of this article by the commissioner in accordance
22 with the provisions of article three, chapter twenty-nine-a of
23 this code;

24 (2) Has given any check in the payment of any fee required
25 under the provisions of this chapter which is dishonored;

26 (3) In the case of a dealer, has knowingly made or permitted
27 any unlawful use of any dealer special plate or plates issued to
28 him or her;

29 (4) In the case of a dealer, has a dealer special plate or
30 plates to which he or she is not lawfully entitled;

31 (5) Has knowingly made false statement of a material fact
32 in his or her application for the license certificate then issued
33 and outstanding;

34 (6) Has habitually defaulted on financial obligations;

35 (7) Does not have and maintain at each place of business
36 (subject to the qualification contained in subdivision (17),
37 subsection (a), section one of this article with respect to a new
38 motor vehicle dealer) an established place of business as
39 defined for the business in question in section one of this
40 article;

41 (8) Has been guilty of any fraudulent act in connection with
42 the business of new motor vehicle dealer, used motor vehicle
43 dealer, house trailer dealer, trailer dealer, motorcycle dealer,
44 used parts dealer or wrecker or dismantler;

45 (9) Has defrauded or is attempting to defraud any buyer or
46 any other person, to the damage of the buyer or other person, in
47 the conduct of the licensee's business;

48 (10) Has defrauded or is attempting to defraud the state or
49 any political subdivision of the state of any taxes or fees in
50 connection with the sale or transfer of any vehicle;

51 (11) Has committed fraud in the registration of a vehicle;

52 (12) Has knowingly purchased, sold or otherwise dealt in a
53 stolen vehicle or vehicles;

54 (13) Has advertised by any means, with intent to defraud,
55 any material representation or statement of fact which is untrue,
56 misleading or deceptive in any particular relating to the conduct
57 of the licensed business;

58 (14) Has willfully failed or refused to perform any legally
59 binding written agreement with any buyer;

60 (15) Has made a fraudulent sale or purchase;

61 (16) Has failed or refused to assign, reassign or transfer a
62 proper certificate of title;

63 (17) Has a license certificate to which he or she is not
64 lawfully entitled;

65 (18) Has misrepresented a customer's credit or financial
66 status to obtain financing; or

67 (19) Has failed to reimburse, when ordered, any claim
68 against the dealer recovery fund as prescribed in section two-a
69 of this article.

70 The commissioner shall also suspend or revoke the license
71 certificate of a licensee if he or she finds the existence of any
72 ground upon which the license certificate could have been
73 refused or any ground which would be cause for refusing a
74 license certificate to the licensee were he or she then applying
75 for the license certificate.

76 (b) Whenever a licensee fails to keep the bond, unless
77 exempt from the requirement pursuant to section two-a of this
78 article or liability insurance required by section four of this
79 article, in full force and effect, or fails to provide evidence of
80 the bond or liability insurance, the commissioner shall automat-
81 ically suspend the license certificate of the licensee unless and
82 until a bond or certificate of insurance as required by section
83 four of this article is furnished to the commissioner. When the
84 licensee furnishes the bond or certificate of insurance to the
85 commissioner and pays all reinstatement fees, the commis-
86 sioner shall vacate the suspension.

87 (c) Suspensions under this section shall continue until the
88 cause for the suspension has been eliminated or corrected.
89 Revocation of a license certificate shall not preclude application
90 for a new license certificate. The commissioner shall process
91 the application for a new license certificate in the same manner
92 and issue or refuse to issue the license certificate on the same
93 grounds as any other application for a license certificate is
94 processed, considered and passed upon, except that the commis-
95 sioner may give any previous suspension and the revocation
96 such weight in deciding whether to issue or refuse the license
97 certificate as is correct and proper under all of the circum-
98 stances.

CHAPTER 178

**(Com. Sub. for H. B. 4019 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-2A-4, §17A-2A-7 and §17A-2A-11 of the code of West Virginia, 1931, as amended, all relating to limiting disclosure of personal information from motor vehicle records; prohibiting the division of motor vehicles' sale of personal information for bulk distribution of surveys, marketing and solicitations.

Be it enacted by the Legislature of West Virginia:

That §17A-2A-4, §17A-2A-7 and §17A-2A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.

§17A-2A-4. Prohibition on disclosure and use of personal information from motor vehicles records.

§17A-2A-7. Permitted disclosures.

§17A-2A-11. Resale or redisclosure.

§17A-2A-4. Prohibition on disclosure and use of personal information from motor vehicles records.

1 Notwithstanding any other provision of law to the contrary,
2 and except as provided in sections five through eight, both
3 inclusive, of this article, the division, and any officer, em-
4 ployee, agent or contractor thereof may not disclose any
5 personal information obtained by the division in connection
6 with a motor vehicle record. Notwithstanding the provisions of
7 this article or any other provision of law to the contrary, finger
8 images obtained and stored by the division of motor vehicles as
9 part of the driver's licensing process may not be disclosed to
10 any person or used for any purpose other than the processing
11 and issuance of driver's licenses and associated legal action
12 unless the disclosure or other use is expressly authorized by this
13 code. Notwithstanding the provisions of this article or any other

14 provision of law to the contrary, an individual's photograph or
15 image, social security number, and medical or disability
16 information shall not be disclosed pursuant to West Virginia
17 Code §17A-2A-7(2),(3),(5),(7),(8),(10) and (11), without the
18 express written consent of the person to whom such information
19 applies.

§17A-2A-7. Permitted disclosures.

1 The division or its designee shall disclose personal informa-
2 tion as defined in section three of this article to any person who
3 requests the information if the person: (a) Has proof of his or
4 her identity; and (b) verifies that the use of the personal
5 information will be strictly limited to one or more of the
6 following:

7 (1) For use by any governmental agency, including any
8 court or law-enforcement agency, in carrying out its functions,
9 or any private person or entity acting on behalf of a governmen-
10 tal agency in carrying out its functions;

11 (2) For use in connection with matters of motor vehicle or
12 driver safety and theft, motor vehicle product alterations, recalls
13 or advisories, performance monitoring of motor vehicles, motor
14 vehicle parts and dealers, motor vehicle market research
15 activities including survey research and removal of nonowner
16 records from the original owner records of motor vehicle
17 manufacturers;

18 (3) For use in the normal course of business by a legitimate
19 business or its agents, employees or contractors:

20 (A) For the purpose of verifying the accuracy of personal
21 information submitted by the individual to the business or its
22 agents, employees or contractors; and

23 (B) If the information as submitted is not correct or is no
24 longer correct, to obtain the correct information, but only for
25 the purposes of preventing fraud by, pursuing legal remedies
26 against or recovering on a debt or security interest against the
27 individual;

28 (4) For use in conjunction with any civil, criminal, adminis-
29 trative or arbitral proceeding in any court or governmental
30 agency or before any self-regulatory body, including the service
31 of process, the execution or enforcement of judgments and
32 orders or pursuant to an order of any court;

33 (5) For use in research and producing statistical reports, so
34 long as the personal information is not published, redisclosed
35 or used to contact individuals;

36 (6) For use by any insurer or insurance support organization
37 or by a self-insured entity, its agents, employees or contractors
38 in connection with claim investigation activities, antifraud
39 activities, rating or underwriting;

40 (7) For use in providing notice to the owners of towed or
41 impounded vehicles;

42 (8) For use by any licensed private investigator agency or
43 licensed security service for any purpose permitted under this
44 section;

45 (9) For use by an employer or its agent or insurer to obtain
46 or verify information relating to a holder of a commercial
47 driver's license that is required under the Commercial Motor
48 Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

49 (10) For use in connection with the operation of private toll
50 transportation facilities; and

51 (11) For any other use specifically authorized by law that
52 is related to the operation of a motor vehicle or public safety.

§17A-2A-11. Resale or redisclosure.

1 (a) An authorized recipient of personal information may
2 resell or redisclose the information for any use permitted under
3 section seven.

4 (b) Any authorized recipient who resells or rediscloses
5 personal information shall: (1) Maintain for a period of not less
6 than five years, records as to the person or entity receiving
7 information, and the permitted use for which it was obtained;
8 (2) make the records available for inspection by the division,
9 upon request; and (3) only be disseminated in accordance with
10 express consent obtained pursuant to section four of this article.

CHAPTER 179

(S. B. 638 — By Senator Ross)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-3-14 of the code of West Virginia, 1931, as amended, relating to registration plates; providing registration plates for promoting education; Fairmont state college; West Virginia farmers; Native Americans; members of the 82nd airborne association; Knights of Pythias or Pythian Sisters; whitewater rafting; survivors of wounds received in the line of duty as law-enforcement members; authorizing a special license plate commemorating the centennial anniversary of the creation of Davis and Elkins college; authorizing a special license

plate recognizing and honoring breast cancer survivors; setting fees; exemptions from fees; extending the time period for certain organizations to achieve the minimum number of applicants for a registration plate; setting forth requirements to obtain certain registration plates; and expanding the number of registration plates certain persons may obtain.

Be it enacted by the Legislature of West Virginia:

That §17A-3-14 of the code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

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 registra-
25 tion 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 repre-
32 sentatives 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 subdivi-
99 sion, which is in addition to all other fees required by this
100 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 adminis-
115 tration of this section: *Provided*, That nothing in this section
116 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 registra-
127 tion 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
187 a 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 organi-
195 zations previously authorized under the prior enactment of this
196 subdivision may accept and collect applications for special

197 registration plates from owners of Class A motor vehicles
198 together with a special annual fee of fifteen dollars, which is in
199 addition to all other fees required by this chapter. The applica-
200 tions and fees shall be submitted to the division of motor
201 vehicles with the request that the division issue a registration
202 plate bearing a combination of letters or numbers with the
203 organizations' logo or emblem, with the maximum number of
204 letters or numbers to be determined by the commissioner.

205 (B) The commissioner shall propose rules for legislative
206 approval in accordance with the provisions of article three,
207 chapter twenty-nine-a of this code regarding the procedures for
208 and approval of special registration plates issued pursuant to
209 this subdivision.

210 (C) The commissioner shall set an appropriate fee to defray
211 the administrative costs associated with designing and manufac-
212 turing special registration plates for a nonprofit charitable or
213 educational organization. The nonprofit charitable or educa-
214 tional organization shall collect this fee and forward it to the
215 division for deposit in a special revolving fund to pay the
216 administrative costs. The nonprofit charitable or educational
217 organization may also collect a fee for marketing the special
218 registration plates.

219 (D) The commissioner may not approve or authorize any
220 additional nonprofit charitable and educational organizations to
221 design or market special registration plates.

222 (10) The division may issue specified emergency or
223 volunteer registration plates as follows:

224 (A) Any owner of a motor vehicle who is a resident of the
225 state of West Virginia and who is a certified paramedic or
226 emergency medical technician, a member of a paid fire depart-
227 ment, a member of the state fire commission, the state fire
228 marshal, the state fire marshal's assistants, the state fire

229 administrator and voluntary rescue squad members may apply
230 for a special license plate for any number of Class A vehicles
231 titled in the name of the qualified applicant which bears the
232 insignia of the profession, group or commission. Any insignia
233 shall be designed by the commissioner. License plates issued
234 pursuant to this subdivision shall bear the requested insignia in
235 addition to the registration number issued to the applicant
236 pursuant to the provisions of this article.

237 (B) Each application submitted pursuant to this subdivision
238 shall be accompanied by an affidavit signed by the fire chief or
239 department head of the applicant stating that the applicant is
240 justified in having a registration with the requested insignia;
241 proof of compliance with all laws of this state regarding
242 registration and licensure of motor vehicles; and payment of all
243 required fees.

244 (C) Each application submitted pursuant to this subdivision
245 shall be accompanied by payment of a special initial application
246 fee of ten dollars, which is in addition to any other registration
247 or license fee required by this chapter. All special fees shall be
248 collected by the division and deposited into a special revolving
249 fund to be used for the purpose of compensating the division of
250 motor vehicles for additional costs and services required in the
251 issuing of the special registration and for the administration of
252 this section.

253 (11) The division may issue specified certified firefighter
254 registration plates as follows:

255 (A) Any owner of a motor vehicle who is a resident of the
256 state of West Virginia and who is a certified firefighter may
257 apply for a special license plate which bears the insignia of the
258 profession, for any number of Class A vehicles titled in the
259 name of the qualified applicant. Any insignia shall be designed
260 by the commissioner. License plates issued pursuant to this

261 subdivision shall bear the requested insignia pursuant to the
262 provisions of this article. Upon presentation of written evi-
263 dence of certification as a certified firefighter, certified
264 firefighters are eligible to purchase the special registration
265 plate, issued pursuant to this subdivision.

266 (B) Each application submitted pursuant to this subdivision
267 shall be accompanied by an affidavit stating that the applicant
268 is justified in having a registration with the requested insignia;
269 proof of compliance with all laws of this state regarding
270 registration and licensure of motor vehicles; and payment of all
271 required fees. The firefighter certification department, section
272 or division of the West Virginia university fire service exten-
273 sion shall notify the commissioner in writing immediately when
274 a firefighter loses his or her certification. If a firefighter loses
275 his or her certification, the commissioner may not issue him or
276 her a license plate under this subsection.

277 (C) Each application submitted pursuant to this subdivision
278 shall be accompanied by payment of a special initial application
279 fee of ten dollars, which is in addition to any other registration
280 or license fee required by this chapter. All special fees shall be
281 collected by the division and deposited into a special revolving
282 fund to be used for the purpose of compensating the division of
283 motor vehicles for additional costs and services required in the
284 issuing of the special registration and for the administration of
285 this section.

286 (12) The division may issue special scenic registration
287 plates as follows:

288 (A) Upon appropriate application, the commissioner shall
289 issue a special registration plate displaying a scenic design of
290 West Virginia which displays the words "Wild Wonderful" as
291 a slogan.

292 (B) The division shall charge a special one-time initial
293 application fee of ten dollars in addition to all other fees
294 required by this chapter. All initial application fees collected
295 by the division shall be deposited into a special revolving fund
296 to be used in the administration of this chapter.

297 (13) The division may issue honorably discharged marine
298 corps league members special registration plates as follows:

299 (A) Upon appropriate application, the division shall issue
300 to any honorably discharged marine corps league member a
301 special registration plate for any number of vehicles titled in the
302 name of the qualified applicant with an insignia designed by the
303 commissioner of the division of motor vehicles.

304 (B) The division may charge a special one-time initial
305 application fee of ten dollars in addition to all other fees
306 required by this chapter. This special fee is to compensate the
307 division of motor vehicles for additional costs and services
308 required in the issuing of the special registration and shall be
309 collected by the division and deposited in a special revolving
310 fund to be used for the administration of this section: *Provided*,
311 That nothing in this section may be construed to exempt any
312 veteran from any other provision of this chapter.

313 (C) A surviving spouse may continue to use his or her
314 deceased spouse's honorably discharged marine corps league
315 license plate until the surviving spouse dies, remarries or does
316 not renew the license plate.

317 (14) The division may issue military organization registra-
318 tion plates as follows:

319 (A) The division may issue a special registration plate for
320 the members of any military organization chartered by the
321 United States Congress upon receipt of a guarantee from the

322 organization of a minimum of one hundred applicants. The
323 insignia on the plate shall be designed by the commissioner.

324 (B) Upon appropriate application, the division may issue
325 members of the chartered organization in good standing, as
326 determined by the governing body of the chartered organiza-
327 tion, a special registration plate for any number of vehicles
328 titled in the name of the qualified applicant.

329 (C) The division shall charge a special one-time initial
330 application fee of ten dollars for each special license plate in
331 addition to all other fees required by this chapter. All initial
332 application fees collected by the division shall be deposited into
333 a special revolving fund to be used in the administration of this
334 chapter: *Provided*, That nothing in this section may be con-
335 strued to exempt any veteran from any other provision of this
336 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 desig-
355 nated the nongame wildlife fund and credited to the division of
356 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
360 by the division shall be deposited in a special revolving fund to
361 be 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 adminis-
376 tration 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 registra-
380 tion plate designed by the commissioner. An annual fee of
381 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 registra-
385 tion 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 adminis-
398 tration of this section: *Provided*, That nothing in this section
399 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 commis-
431 sioner of motor vehicles for each award that denotes that those
432 individuals who are granted this special registration plate are
433 recipients of the navy cross, distinguished service cross,
434 distinguished flying cross, air force cross, silver star or bronze
435 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 adminis-
442 tration of this section: *Provided*, That nothing in this section
443 exempts the applicant for a special registration plate under this
444 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 commis-
459 sioner 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 applica-
493 tion fees shall be deposited into a special revolving fund to be
494 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 organi-
529 zation 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 organi-
534 zation which represents a cross section of an ear of corn for any
535 number of vehicles titled in the name of the qualified applicant.

536 (B) The division shall charge a special initial application
537 fee of ten dollars in addition to all other fees required by law.
538 This special fee is to compensate the division of motor vehicles
539 for additional costs and services required in the issuing of the
540 special registration and shall be collected by the division and
541 deposited in a special revolving fund to be used for the adminis-
542 tration of this section.

543 (C) The division shall charge an annual fee of fifteen
544 dollars for each special 4-H future farmers of America registra-
545 tion plate in addition to all other fees required by this chapter.

546 (26) The division may issue special registration plates to
547 educators in the state's elementary and secondary schools and
548 in the state's institutions of higher education as follows:

549 (A) Upon appropriate application, the division may issue a
550 special registration plate designed by the commissioner for any
551 number of vehicles titled in the name of the qualified applicant.

552 (B) The division shall charge a special initial application
553 fee of ten dollars in addition to all other fees required by law.
554 This special fee is to compensate the division of motor vehicles
555 for additional costs and services required in the issuing of the
556 special registration and shall be collected by the division and
557 deposited in a special revolving fund to be used for the adminis-
558 tration of this section.

559 (C) The division shall charge an annual fee of fifteen
560 dollars for each special educator registration plate in addition
561 to all other fees required by this chapter.

562 (27) The division may issue special registration plates to
563 members of the Nemesis Shrine as follows:

564 (A) Upon appropriate application, the division may issue a
565 special registration plate designed by the commissioner for any

566 number of vehicles titled in the name of the qualified applicant.
567 Persons desiring the special registration plate shall offer
568 sufficient proof of membership in Nemesis Shrine.

569 (B) The division shall charge a special initial application
570 fee of ten dollars in addition to all other fees required by law.
571 This special fee is to compensate the division of motor vehicles
572 for additional costs and services required in the issuing of the
573 special registration and shall be collected by the division and
574 deposited in a special revolving fund to be used for the adminis-
575 tration of this section.

576 (C) An annual fee of fifteen dollars shall be charged for
577 each plate in addition to all other fees required by this chapter.

578 (D) Notwithstanding the provisions of subsection (d) of this
579 section, the time period for the Nemesis Shrine to comply with
580 the minimum one hundred prepaid applications is hereby
581 extended to the fifteenth day of January, two thousand five.

582 (28) The division may issue volunteers and employees of
583 the American Red Cross special registration plates as follows:

584 (A) Upon appropriate application, the division shall issue
585 to any person who is a duly qualified volunteer or employee of
586 the American Red Cross a specialized registration plate which
587 bears recognition of the applicant as a volunteer or employee of
588 the American Red Cross for any number of vehicles titled in the
589 name of the qualified applicant.

590 (B) The division shall charge a special initial application
591 fee of ten dollars in addition to all other fees required by law.
592 This special fee is to compensate the division of motor vehicles
593 for additional costs and services required in the issuing of the
594 special registration and shall be collected by the division and
595 deposited in a special revolving fund to be used for the adminis-
596 tration of this section.

597 (C) An annual fee of fifteen dollars shall be charged for
598 each plate in addition to all other fees required by this chapter.

599 (29) The division shall issue special registration plates to
600 individuals who have received either the combat infantry badge
601 or the combat medic badge as follows:

602 (A) Upon appropriate application, the division shall issue
603 a special registration plate designed by the commissioner for
604 any number of vehicles titled in the name of the qualified
605 applicant. Persons desiring the special registration plate shall
606 offer sufficient proof that they have received either the combat
607 infantry badge or the combat medic badge.

608 (B) The division shall charge a special initial application
609 fee of ten dollars in addition to all other fees required by law.
610 This special fee is to compensate the division of motor vehicles
611 for additional costs and services required in the issuing of the
612 special registration and shall be collected by the division and
613 deposited in a special revolving fund to be used for the adminis-
614 tration of this section.

615 (30) The division may issue special registration plates to
616 members of the Knights of Columbus as follows:

617 (A) Upon appropriate application, the division shall issue
618 a special registration plate designed by the commissioner for
619 any number of vehicles titled in the name of the qualified
620 applicant. Persons desiring the special registration plate shall
621 offer sufficient proof of membership in the Knights of Colum-
622 bus.

623 (B) The division shall charge a special initial application
624 fee of ten dollars in addition to all other fees required by law.
625 This special fee is to compensate the division of motor vehicles
626 for additional costs and services required in the issuing of the
627 special registration and shall be collected by the division and

628 deposited in a special revolving fund to be used for the adminis-
629 tration of this section.

630 (C) An annual fee of fifteen dollars shall be charged for
631 each plate in addition to all other fees required by this chapter.

632 (D) Notwithstanding the provisions of subsection (d) of this
633 section, the time period for the Knights of Columbus to comply
634 with the minimum one hundred prepaid applications is hereby
635 extended to the fifteenth day of January, two thousand five.

636 (31) The division may issue special registration plates to
637 former members of the Legislature as follows:

638 (A) Upon appropriate application, the division shall issue
639 a special registration plate designed by the commissioner for
640 any number of vehicles titled in the name of the qualified
641 applicant. Persons desiring the special registration plate shall
642 offer sufficient proof of former service as an elected or ap-
643 pointed member of the West Virginia House of Delegates or the
644 West Virginia Senate.

645 (B) The division shall charge a special initial application
646 fee of ten dollars in addition to all other fees required by law.
647 This special fee is to compensate the division of motor vehicles
648 for additional costs and services required in the issuing of the
649 special registration and shall be collected by the division and
650 deposited in a special revolving fund to be used for the adminis-
651 tration of this section. The design of the plate shall indicate
652 total years of service in the Legislature.

653 (C) An annual fee of fifteen dollars shall be charged for
654 each plate in addition to all other fees required by this chapter.

655 (32) Democratic state or county executive committee
656 member special registration plates:

657 (A) The division shall design and issue special registration
658 plates for use by democratic state or county executive commit-
659 tee members. The design of the plates shall include an insignia
660 of a donkey and shall differentiate by wording on the plate
661 between state and county executive committee members.

662 (B) An annual fee of twenty-five dollars shall be charged
663 for each democratic state or county executive committee
664 member registration plate in addition to all other fees required
665 by this chapter. All annual fees collected for each special plate
666 issued under this subdivision shall be deposited into a special
667 revolving fund to be used in the administration of this chapter.

668 (C) A special application fee of ten dollars shall be charged
669 at the time of initial application as well as upon application for
670 any duplicate or replacement registration plate, in addition to all
671 other fees required by this chapter. All application fees shall be
672 deposited into a special revolving fund to be used in the
673 administration of this chapter.

674 (D) The division shall not begin production of a plate
675 authorized under the provisions of this subdivision until the
676 division receives at least one hundred completed applications
677 from the state or county executive committee members,
678 including all fees required pursuant to this subdivision.

679 (E) Notwithstanding the provisions of subsection (d) of this
680 section, the time period for the democratic executive committee
681 to comply with the minimum one hundred prepaid applications
682 is hereby extended to the fifteenth day of January, two thousand
683 five.

684 (33) The division may issue honorably discharged female
685 veterans special registration plates as follows:

686 (A) Upon appropriate application, there shall be issued to
687 any female honorably discharged veteran, of any branch of the

688 armed services of the United States, a special registration plate
689 for any number of vehicles titled in the name of the qualified
690 applicant with an insignia designed by the commissioner of the
691 division of motor vehicles to designate the recipient as a woman
692 veteran.

693 (B) A special initial application fee of ten dollars shall be
694 charged in addition to all other fees required by law. This
695 special fee is to compensate the division of motor vehicles for
696 additional costs and services required in the issuing of the
697 special registration and shall be collected by the division and
698 deposited in a special revolving fund to be used for the adminis-
699 tration of this section: *Provided*, That nothing in this section
700 may be construed to exempt any veteran from any other
701 provision of this chapter.

702 (C) A surviving spouse may continue to use his deceased
703 spouse's honorably discharged veterans license plate until the
704 surviving spouse dies, remarries or does not renew the license
705 plate.

706 (34) The division may issue special registration plates
707 bearing the logo, symbol, insignia, letters or words demonstrat-
708 ing association with West Liberty state college to any resident
709 owner of a motor vehicle. Resident owners may apply for the
710 special license plate for any number of Class A vehicles titled
711 in the name of the applicant. The special registration plates
712 shall be designed by the commissioner. Each application
713 submitted pursuant to this subdivision shall be accompanied by
714 payment of a special initial application fee of fifteen dollars,
715 which is in addition to any other registration or license fee
716 required by this chapter. The division shall charge an annual
717 fee of fifteen dollars for each special educator registration plate
718 in addition to all other fees required by this chapter. All special
719 fees shall be collected by the division and deposited into a
720 special revolving fund to be used for the purpose of compensat-

721 ing the division of motor vehicles for additional costs and
722 services required in the issuing of the special registration and
723 for the administration of this section.

724 (35) The division may issue special registration plates to
725 members of the Harley Owners Group as follows:

726 (A) Upon appropriate application, the division may issue a
727 special registration plate designed by the commissioner for any
728 number of vehicles titled in the name of the qualified applicant.
729 Persons desiring the special registration plate shall offer
730 sufficient proof of membership in the Harley Owners Group.

731 (B) The division shall charge a special initial application
732 fee of ten dollars in addition to all other fees required by law.
733 This special fee is to compensate the division of motor vehicles
734 for additional costs and services required in the issuing of the
735 special registration and shall be collected by the division and
736 deposited in a special revolving fund to be used for the adminis-
737 tration of this section.

738 (C) An annual fee of fifteen dollars shall be charged for
739 each plate in addition to all other fees required by this chapter.

740 (36) The division may issue special registration plates for
741 persons retired from any branch of the armed services of the
742 United States as follows:

743 (A) Upon appropriate application, there shall be issued to
744 any person who has retired after service in any branch of the
745 armed services of the United States, a special registration plate
746 for any number of vehicles titled in the name of the qualified
747 applicant with an insignia designed by the commissioner of the
748 division of motor vehicles to designate the recipient as retired
749 from the armed services of the United States.

750 (B) A special initial application fee of ten dollars shall be
751 charged in addition to all other fees required by law. This
752 special fee is to compensate the division of motor vehicles for
753 additional costs and services required in the issuing of a special
754 registration and shall be collected by the division and deposited
755 in a special revolving fund to be used for the administration of
756 this section: *Provided*, That nothing in this section may be
757 construed to exempt any registrants from any other provision of
758 this chapter.

759 (C) A surviving spouse may continue to use his or her
760 deceased spouse's retired military license plate until the
761 surviving spouse dies, remarries or does not renew the license
762 plate.

763 (37) The division may issue special registration plates
764 bearing the logo, symbol, insignia, letters or words demonstrat-
765 ing association with or support for Fairmont state college as
766 follows:

767 (A) Upon appropriate application, the division may issue a
768 special registration plate designed by the commissioner for any
769 number of vehicles titled in the name of the qualified applicant.

770 (B) The division shall charge a special initial application
771 fee of ten dollars in addition to all other fees required by law.
772 This special fee is to compensate the division of motor vehicles
773 for additional costs and services required in the issuing of the
774 special registration and shall be collected by the division and
775 deposited in a special revolving fund to be used for the adminis-
776 tration of this section.

777 (C) An annual fee of fifteen dollars shall be charged for
778 each plate in addition to all other fees required by this chapter.

779 (38) The division may issue special registration plates
780 honoring the farmers of West Virginia as follows:

781 (A) Any owner of a motor vehicle who is a resident of West
782 Virginia may apply for a special license plate depicting a
783 farming scene or other apt reference to farming, whether in
784 pictures or words, at the discretion of the commissioner.

785 (B) The division shall charge a special initial application
786 fee of ten dollars. This special fee is to compensate the division
787 of motor vehicles for additional costs and services required in
788 the issuing of the special registration and shall be collected by
789 the division and deposited in a special revolving fund to be used
790 for the administration of this section.

791 (C) An annual fee of fifteen dollars shall be charged for
792 each plate in addition to all other fees required by this chapter.

793 (39) The division shall issue special registration plates
794 promoting education as follows:

795 (A) Upon appropriate application, the division shall issue
796 a special registration plate displaying a children's education-
797 related theme as prescribed and designated by the commissioner
798 and the state superintendent of schools.

799 (B) The division shall charge a special initial application
800 fee of ten dollars in addition to all other fees required by law.
801 This special fee is to compensate the division of motor vehicles
802 for additional costs and services required in the issuing of the
803 special registration and shall be collected by the division and
804 deposited in a special revolving fund to be used for the adminis-
805 tration of this section: *Provided*, That nothing in this section
806 exempts the applicant for a special registration plate under this
807 subdivision from any other provision of this chapter.

808 (C) An annual fee of fifteen dollars shall be charged for
809 each plate in addition to all other fees required by this chapter.

810 (40) The division may issue members of the 82nd airborne
811 division association special registration plates as follows:

812 (A) The division may issue a special registration plate for
813 members of the 82nd airborne division association upon receipt
814 of a guarantee from the organization of a minimum of one
815 hundred applicants. The insignia on the plate shall be designed
816 by the commissioner.

817 (B) Upon appropriate application, the division may issue
818 members of the 82nd airborne division association in good
819 standing, as determined by the governing body of the organiza-
820 tion, a special registration plate for any number of vehicles
821 titled in the name of the qualified applicant.

822 (C) The division shall charge a special one-time initial
823 application fee of ten dollars for each special license plate in
824 addition to all other fees required by this chapter. All initial
825 application fees collected by the division shall be deposited into
826 a special revolving fund to be used in the administration of this
827 chapter: *Provided*, That nothing in this section may be con-
828 strued to exempt the applicant from any other provision of this
829 chapter.

830 (D) A surviving spouse may continue to use his or her
831 deceased spouse's special 82nd airborne division association
832 registration plate until the surviving spouse dies, remarries or
833 does not renew the special registration plate.

834 (41) The division may issue special registration plates to
835 survivors of wounds received in the line of duty as a member
836 with a West Virginia law-enforcement agency.

837 (A) Upon appropriate application, the division shall issue
838 to any member of a municipal police department, sheriff's
839 department, the state police or the law-enforcement division of
840 the department of natural resources who has been wounded in

841 the line of duty and awarded a purple heart in recognition
842 thereof by the West Virginia chiefs of police association, the
843 West Virginia sheriffs' association, the West Virginia troopers
844 association or the division of natural resources a special
845 registration plate for one vehicle titled in the name of the
846 qualified applicant with an insignia appropriately designed by
847 the commissioner.

848 (B) Registration plates issued pursuant to this subdivision
849 are exempt from the registration fees otherwise required by the
850 provisions of this chapter.

851 (C) A surviving spouse may continue to use his or her
852 deceased spouse's special registration plate until the surviving
853 spouse dies, remarries or does not renew the plate.

854 (D) Survivors of wounds received in the line of duty as a
855 member with a West Virginia law-enforcement agency may
856 obtain a license plate as described in this section for use on a
857 passenger vehicle titled in the name of the qualified applicant.
858 The division shall charge a one-time fee of ten dollars to be
859 deposited into a special revolving fund to be used in the
860 administration of this section, in addition to all other fees
861 required by this chapter, for the second plate.

862 (42) The division may issue a special registration plate for
863 persons who are Native Americans and residents of this state.

864 (A) Upon appropriate application, the division shall issue
865 to an applicant who is a Native American resident of West
866 Virginia a registration plate for a vehicle titled in the name of
867 the applicant with an insignia designed by the commissioner of
868 the division of motor vehicles to designate the recipient as a
869 Native American.

870 (B) The division shall charge a special one-time initial
871 application fee of ten dollars in addition to all other fees

872 required by law. This special fee is to compensate the division
873 of motor vehicles for additional costs and services required in
874 the issuing of the special registration and shall be collected by
875 the division and deposited in a special revolving fund to be used
876 for the administration of this section.

877 (C) An annual fee of fifteen dollars shall be charged for
878 each plate in addition to all other fees required by this chapter.

879 (43) The division may issue special registration plates
880 commemorating the centennial anniversary of the creation of
881 Davis and Elkins college as follows:

882 (A) Upon appropriate application, the division may issue a
883 special registration plate designed by the commissioner to
884 commemorate the centennial anniversary of Davis and Elkins
885 college for any number of vehicles titled in the name of the
886 applicant.

887 (B) The division shall charge a special initial application
888 fee of ten dollars. This special fee is to compensate the division
889 of motor vehicles for additional costs and services required in
890 the issuing of the special registration and shall be collected by
891 the division and deposited in a special revolving fund to be used
892 for the administration of this section.

893 (C) An annual fee of fifteen dollars shall be charged for
894 each plate in addition to all other fees required by this chapter.

895 (44) The division may issue special registration plates
896 recognizing and honoring breast cancer survivors.

897 (A) Upon appropriate application, the division may issue a
898 special registration plate designed by the commissioner to
899 recognize and honor breast cancer survivors, such plate to
900 incorporate somewhere in the design the "pink ribbon emblem",
901 for any number of vehicles titled in the name of the applicant.

902 (B) The division shall charge a special initial application
903 fee of ten dollars. This special fee is to compensate the division
904 of motor vehicles for additional costs and services required in
905 the division and deposited in a special revolving fund to be used
906 for the administration of this section.

907 (C) An annual fee of fifteen dollars shall be charged for
908 each plate in addition to all other fees required by this chapter.

909 (45) The division may issue special registration plates to
910 members of the Knights of Pythias or Pythian Sisters as
911 follows:

912 (A) Upon appropriate application, the division may issue a
913 special registration plate designed by the commissioner for any
914 number of vehicles titled in the name of the qualified applicant.
915 Persons desiring the special registration plate shall offer
916 sufficient proof of membership in the Knights of Pythias or
917 Pythian Sisters.

918 (B) The division shall charge a special initial application
919 fee of ten dollars in addition to all other fees required by law.
920 This special fee is to compensate the division of motor vehicles
921 for additional costs and services required in the issuing of the
922 special registration and shall be collected by the division and
923 deposited in a special revolving fund to be used for the adminis-
924 tration of this section.

925 (C) An annual fee of fifteen dollars shall be charged for
926 each plate in addition to all other fees required by this chapter.

927 (46) The commissioner may issue special registration plates
928 for whitewater rafting enthusiasts as follows:

929 (A) Upon appropriate application, the division may issue a
930 special registration plate designed by the commissioner for any
931 number of vehicles titled in the name of the qualified applicant.

932 (B) The division shall charge a special initial application
933 fee of ten dollars in addition to all other fees required by law.
934 This special fee is to compensate the division of motor vehicles
935 for additional costs and services required in the issuing of the
936 special registration and shall be collected by the division and
937 deposited in a special revolving fund to be used for the adminis-
938 tration of this section.

939 (C) The division shall charge an annual fee of fifteen
940 dollars for each special registration plate in addition to all other
941 fees required by this chapter.

942 (d) The commissioner shall propose rules for legislative
943 approval in accordance with the provisions of article three,
944 chapter twenty-nine-a of this code regarding the proper forms
945 to be used in making application for the special license plates
946 authorized by this section. The commissioner may not begin
947 the design or production of any license plates for which
948 eligibility is based on membership or affiliation with a particu-
949 lar private organization until at least one hundred persons
950 complete an application and deposit a check to cover the first
951 year's basic registration, one-time design and manufacturing
952 costs and to cover the first year additional annual fee. If the
953 organization fails to submit the required number of applications
954 with attached checks within six months of the effective date of
955 the authorizing legislation, the plate will not be produced and
956 will require legislative reauthorization: *Provided*, That the six-
957 month requirement in this subsection does not apply to subdivi-
958 sions (1) through (26), inclusive, subsection (c) of this section.

959 (e)(1) Nothing in this section requires a charge for a free
960 prisoner of war license plate or a free recipient of the Congres-
961 sional Medal of Honor license plate for a vehicle titled in the
962 name of the qualified applicant as authorized by other provi-
963 sions of this code.

964 (2) A surviving spouse may continue to use his or her
965 deceased spouse's prisoner of war or Congressional Medal of
966 Honor license plate until the surviving spouse dies, remarries or
967 does not renew the license plate.

968 (3) Qualified former prisoners of war and recipients of the
969 Congressional Medal of Honor may obtain a second special
970 registration plate for use on a passenger vehicle titled in the
971 name of the qualified applicant. The division shall charge a
972 one-time fee of ten dollars to be deposited into a special
973 revolving fund to be used in the administration of this chapter,
974 in addition to all other fees required by this chapter, for the
975 second special plate.

976 (f) The division may issue special ten-year registration
977 plates as follows:

978 (1) The commissioner may issue or renew for a period of no
979 more than ten years any registration plate exempted from
980 registration fees pursuant to any provision of this code or any
981 restricted use antique motor vehicle license plate authorized by
982 section three-a, article ten of this chapter: *Provided*, That the
983 provisions of this subsection do not apply to any person who
984 has had a special registration suspended for failure to maintain
985 motor vehicle liability insurance as required by section three,
986 article two-a, chapter seventeen-d of this code or failure to pay
987 personal property taxes as required by section three-a of this
988 article.

989 (2) An initial nonrefundable fee shall be charged for each
990 special registration plate issued pursuant to this subsection,
991 which is the total amount of fees required by section fifteen,
992 article ten of this chapter, section three, article three of this
993 chapter or section three-a, article ten of this chapter for the
994 period requested.

995 (g) The provisions of this section may not be construed to
996 exempt any registrant from maintaining motor vehicle liability
997 insurance as required by section three, article two-a, chapter
998 seventeen-d of this code or from paying personal property taxes
999 on any motor vehicle as required by section three-a of this
1000 article.

1001 (h) The commissioner may, in his or her discretion, issue a
1002 registration plate of reflectorized material suitable for perma-
1003 nent use on motor vehicles, trailers and semitrailers, together
1004 with appropriate devices to be attached to the registration to
1005 indicate the year for which the vehicles have been properly
1006 registered or the date of expiration of the registration. The
1007 design and expiration of the plates shall be determined by the
1008 commissioner.

1009 (i) Any license plate issued or renewed pursuant to this
1010 chapter which is paid for by a check that is returned for
1011 nonsufficient funds is void without further notice to the
1012 applicant. The applicant may not reinstate the registration until
1013 the returned check is paid by the applicant in cash, money order
1014 or certified check and all applicable fees assessed as a result
1015 thereof have been paid.

CHAPTER 180

**(Com. Sub. for S. B. 52 — By Senators Kessler, Hunter,
Ross, Chafin, Minard and Caldwell)**

[Passed March 3, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-3-15 of the code of West
Virginia, 1931, as amended, relating to registration plates for

motorcycles; allowing for plates to be fastened in vertical position; and requiring the commissioner of the division of motor vehicles to offer owners of motorcycles the choice of registration plates for vertical or horizontal positioning.

Be it enacted by the Legislature of West Virginia:

That §17A-3-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-15. Display of registration plates.

1 (a) Registration plates issued for vehicles required to be
2 registered under this article shall be attached to the rear of the
3 vehicles except that on truck tractors and road tractors designed
4 and constructed to pull trailers or semitrailers, the registration
5 plate shall be mounted to the front.

6 (b) Every registration plate shall at all times be securely
7 fastened in a horizontal position to the vehicle for which it is
8 issued so as to prevent the plate from swinging and at a height
9 of not less than twelve inches from the ground, measuring from
10 the bottom of the plate, in a place and position to be clearly
11 visible and shall be maintained free from foreign materials and
12 in a condition to be clearly legible.

13 (c) Notwithstanding the provisions of subsection (b) of this
14 section, an owner of a motor vehicle with a Class G registration
15 as defined in section one, article ten of this chapter may choose
16 to:

17 (1) Display a standard, Class G registration plate in a
18 horizontal position; or

- 19 (2) Display a specially designed Class G registration plate
20 in a vertical position issued by the division of motor vehicles if
21 the owner:
- 22 (A) Pays a one-time fee of twenty-five dollars to cover the
23 additional cost and services necessary to issue the special
24 registration plate to be deposited into a special revolving fund
25 to be used for the administration of this chapter; and
- 26 (B) Pays all other required fees and complies with all other
27 applicable provisions of this code regarding the titling, registra-
28 tion and operation of the vehicle.

CHAPTER 181

**(Com. Sub. for H. B. 4373 — By Mr. Speaker, Mr. Kiss, and Delegates
Iaquinta, Browning, Foster, Beane, Crosier and Varner)**

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-3-10, relating to making it a crime to possess or use a traffic-control device with an infrared or electronic device designed to change traffic light indication; exceptions; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17C-3-10, to read as follows:

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.**§17C-3-10. Interference with official traffic-control devices by infrared or electronic devices.**

1 (a) The possession or use of a mobile infrared transmitter
2 (MIRT), or any type of infrared or electronic device capable of
3 changing a traffic control signal, by anyone other than the
4 operator of an authorized emergency vehicle, is prohibited.

5 (b) Any person violating the provisions of subsection (a) of
6 this section is guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not more than five hundred dollars or
8 confined in the county or regional jail not more than three days,
9 or both; and upon a second conviction thereof, shall be fined
10 not more than one thousand dollars or confined in the county or
11 regional jail not more than six days, or both; and upon a third
12 or subsequent conviction thereof, shall be fined not less than
13 five hundred dollars nor more than two thousand five hundred
14 dollars or confined in a county or regional jail one year, or both.

15 (c) Notwithstanding the provisions of subsection (a) of this
16 section, any person convicted of a violation of subsection (a) of
17 this section which results in physical injury to another shall be
18 guilty of a felony and, upon conviction, shall be imprisoned in
19 a state correctional facility for not less than one nor more than
20 three years or fined not more than five thousand dollars, or
21 both.

22 (d) The provisions of this section shall not apply to any
23 device which simply makes a vehicle visible or its presence
24 known to a sensor which triggers the changing of a traffic light
25 after the vehicle operator has complied with the traffic signal
26 indication.

CHAPTER 182

(H. B. 4108 — By Delegates Perry, Stemple, Shaver,
Crosier, Pino, Howard and Sumner)

[Passed March 8, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17C-15-36a of the code of West Virginia, 1931, as amended, relating to motor vehicle equipment; and authorizing sun screening devices that exceed statutory limits to be used in law-enforcement K-9 and other emergency vehicles that haul animals.

Be it enacted by the Legislature of West Virginia:

That §17C-15-36a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-36a. Sun screening devices; penalty.

1 (a) No person may operate a motor vehicle that is registered
2 or required to be registered in the state on any public highway,
3 road or street that has a sun screening device on the windshield,
4 the front side wings and side windows adjacent to the right and
5 left of the driver and windows adjacent to the rear of the driver
6 that do not meet the requirements of this section: *Provided,*
7 That law-enforcement K-9 and other emergency vehicles that
8 are designed to haul animals are exempt from this requirement.

9 (b) A sun screening device when used in conjunction with
10 the windshield must be nonreflective and may not be red,

11 yellow or amber in color. A sun screening device may be used
12 only along the top of the windshield and may not extend
13 downward beyond the ASI line or more than five inches from
14 the top of the windshield whichever is closer to the top of the
15 windshield.

16 (c) A sun screening device when used in conjunction with
17 the automotive safety glazing materials of the side wings or
18 side windows located at the immediate right and left of the
19 driver shall be a nonreflective type with reflectivity of not more
20 than twenty percent and have a light transmission of not less
21 than thirty-five percent. The side windows behind the driver
22 and the rear most windows may have a sun screening device
23 that is designed to be used on automotive safety glazing
24 materials that has a light transmission of not less than
25 thirty-five percent and a reflectivity of not more than twenty
26 percent. If a sun screening device is used on glazing behind the
27 driver, one right and one left outside rear view mirror is
28 required.

29 (d) Each manufacturer shall:

30 (1) Certify to the West Virginia state police and division of
31 motor vehicles that a sun screening device used by it is in
32 compliance with the reflectivity and transmittance requirements
33 of this section;

34 (2) Provide a label not to exceed one and one-half square
35 inches in size, with a means for the permanent and legible
36 installations between the sun screening material and each
37 glazing surface to which it is applied that contains the manufac-
38 turer's name and its percentage of light transmission; and

39 (3) Include instructions with the product or material for
40 proper installation, including the affixing of the label specified
41 in this section. The labeling or marking must be placed in the

42 left lower corner of each glazing surface when facing the
43 vehicle from the outside.

44 (e) No person may:

45 (1) Offer for sale or for use any sun screening product or
46 material for motor vehicle use not in compliance with this
47 section; or

48 (2) Install any sun screening product or material on vehicles
49 intended for use on public roads without permanently affixing
50 the label specified in this section.

51 (f) The provisions of this section do not apply to a motor
52 vehicle registered in this state in the name of a person, or the
53 person's legal guardian, who has an affidavit signed by a
54 physician or an optometrist licensed to practice in this state that
55 states that the person has a physical condition that makes it
56 necessary to equip the motor vehicle with sun screening
57 material which would be of a light transmittance or luminous
58 reflectance in violation of this section. The affidavit must be in
59 the possession of the person so afflicted, or the person's legal
60 guardian, at all times while being transported in the motor
61 vehicle.

62 (g) The light transmittance requirement of this section does
63 not apply to windows behind the driver on trucks, buses,
64 trailers, mobile homes and multipurpose passenger vehicles.

65 (h) As used in this section:

66 (1) "Bus" means a motor vehicle with motive power, except
67 a trailer, designed for carrying more than ten persons.

68 (2) "Light transmission" means the ratio of the amount of
69 total light to pass through a product or material to the amount
70 of the total light falling on the product or material.

71 (3) “Luminous reflectants” means the ratio of the amount
72 of total light that is reflected outward by the product or material
73 to the amount of the total light falling on the product or
74 materials.

75 (4) “Manufacturer” means any person engaged in the
76 manufacturing or assembling of sun screening products or
77 materials designed to be used in conjunction with vehicle
78 glazing materials for the purpose of reducing the effects of the
79 sun.

80 (5) “Motor homes” means vehicular units designed to
81 provide temporary living quarters built into and an integral part
82 of or permanently attached to a self-propelled motor vehicle
83 chassis.

84 (6) “Multipurpose passenger vehicle” means a motor
85 vehicle with motive power, except a trailer, designed to carry
86 ten persons or less which is constructed either on a truck chassis
87 or with special features for occasional off-road operation.

88 (7) “Nonreflective” means a product or material designed
89 to absorb light rather than to reflect it.

90 (8) “Passenger car” means a motor vehicle with motive
91 power, except a multipurpose passenger vehicle, motorcycle or
92 trailer, designed for carrying ten persons or less.

93 (9) “Sun screening device” means film material or device
94 that is designed to be used in conjunction with motor vehicle
95 safety glazing materials for reducing the effects of the sun.

96 (10) “Truck” means a motor vehicle with motive power,
97 except a trailer, designed primarily for the transportation of
98 property or special purpose equipment.

99 (i) Any person violating the provisions of this section is
100 guilty of a misdemeanor and, upon conviction thereof, shall be
101 fined not more than two hundred dollars.

CHAPTER 183

(Com. Sub. for S. B. 701 — By Senators Plymale and Jenkins)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; to amend and reenact §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code; and to amend and reenact §11-10-3 of said code, all relating to authorizing a qualifying municipality to impose municipal occupational tax, an alternative municipal sales and service tax and use tax and a pension relief municipal sales and service tax and use tax; establishing responsibilities of tax commissioner relating to the tax; clarifying application of other state tax laws; creating qualifying municipal sales and service tax and use tax fund; providing that tax rate applies to purchases from printed catalogs; limiting use of certain proceeds of the taxes to application toward the unfunded liability of certain pensions; citing instances where qualifying municipalities lose certain taxing authority; limiting increase in pension benefits pending imposition of certain taxes; addressing conflicts and unconstitutionality; establishing prerequisites to imposition of certain taxes; requiring a study by the chief technology officer on the cost of implementing municipal taxes; imposing criminal penalties for certain violations relating

to municipal tax; and applying tax procedure and administration act to municipal taxes.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; that §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code be amended and reenacted; and that §11-10-3 of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

11. Taxation.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS.

- §8-13C-1. Findings.
- §8-13C-2. Definitions.
- §8-13C-3. Pension relief municipal occupational tax.
- §8-13C-4. Municipal sales and service taxes.
- §8-13C-5. Municipal use tax.
- §8-13C-5a. Credit for sales tax paid to another municipality.
- §8-13C-6. Notification to tax commissioner; responsibilities of tax commissioner; application of state tax law.
- §8-13C-7. Municipal sales and service tax and use tax fund; deposit and remittance of collections.
- §8-13C-8. Printed catalogs.
- §8-13C-9. Restriction on use of certain revenues.
- §8-13C-10. Conflict; partial unconstitutionality.
- §8-13C-11. Additional requirements for authority to impose certain taxes.
- §8-13C-12. Limited authority to impose tax.
- §8-13C-13. Study.

§8-13C-1. Findings.

1 The Legislature finds that:

2 (a) Imposing additional taxes creates an extra burden on the
3 citizens of the state;

4 (b) Imposing additional taxes can be detrimental to the
5 economy of the state;

6 (c) Imposing additional taxes is only proper under certain
7 circumstances;

8 (d) For many municipalities with severe unfunded liabilities
9 of the police and fire pension funds, all available sources of
10 local revenue have been exhausted. Property taxes are at the
11 maximum allowed by the state constitution and local business
12 and occupation taxes and utility taxes are at the maximum rates
13 allowed by state law. Other fees have reached the economic
14 maximum and are causing relocation of business outside the
15 municipal boundaries;

16 (e) For many municipalities with severe unfunded police
17 and fire pension fund liabilities, revenue from existing sources
18 has become stagnant over the past few years with no expecta-
19 tion of significant future growth;

20 (f) For many municipalities with severe unfunded police
21 and fire pension fund liabilities, payments required under state
22 law to fund fire and police pension funds are now close to
23 equaling the city payrolls for police and fire protection and will
24 rise to exceed those payrolls within a ten-year period;

25 (g) For many municipalities with severe unfunded police
26 and fire pension fund liabilities, payments required under state
27 law to fund fire and police pension funds now constitute a large
28 percentage of those municipalities' total budget and will rise to
29 an even larger percentage of the available revenues in the next

30 ten years. Payment and benefit levels are dictated to the
31 municipalities by state law;

32 (h) As the required pension payments rise, many of the
33 municipalities with severe unfunded police and fire pension
34 fund liabilities will find it impossible to maintain at minimum
35 levels necessary and proper city services including, but not
36 limited to, police and fire protection, street maintenance and
37 repair and sanitary services;

38 (i) For some of the municipalities with severe unfunded
39 liabilities of the police and fire pension funds, the combination
40 of the steeply rising pension obligations and the stagnant
41 revenue sources raise the real possibility of municipal bank-
42 ruptcy in the near and predictable future. If this happens,
43 pensioners would either not receive the full benefits which they
44 have been promised or pressure would be placed on the state to
45 fund these programs;

46 (j) For a municipality that has the most severe unfunded
47 liability in its pension funds, paying off the unfunded liability
48 in a timely manner would cause tremendous financial hardship
49 and the loss of many services that would otherwise be provided
50 to the municipality's citizens;

51 (k) Only for a municipality that has the most severe
52 unfunded liability in its pension funds would the imposition of
53 the pension relief municipal occupational tax, the pension relief
54 municipal sales and service tax, the pension relief municipal
55 use tax or any combination of those taxes be an appropriate
56 method of addressing the unfunded liability; and

57 (l) Only for a municipality that does not impose or ceases
58 to impose a business and occupation or privilege tax would the
59 imposition of an alternative municipal sales and service tax and
60 an alternative municipal use tax be appropriate.

§8-13C-2. Definitions.

1 For the purposes of this article:

2 (a) “Alternative municipal sales and service tax” means the
3 tax authorized to be imposed by subsection (b), section four of
4 this article only if a municipality does not impose or ceases to
5 impose the business and occupation or privilege tax authorized
6 in section five, article thirteen of this chapter;

7 (b) “Alternative municipal use tax” means the tax autho-
8 rized to be imposed by subsection (b), section five of this article
9 only if a municipality does not impose or ceases to impose the
10 business and occupation or privilege tax authorized in section
11 five, article thirteen of this chapter;

12 (c) “Qualifying municipality” means any municipality, as
13 defined in section two, article one of this chapter:

14 (1) In which the weighted average of the percentages to
15 which its policemen’s and firemen’s pension and relief funds
16 are fully funded is three percent or less on the date of adoption
17 of the ordinance imposing the tax; and

18 (2) That has satisfied the requirements set forth in section
19 eleven of this article;

20 (d) “Pension relief municipal occupational tax” means the
21 tax authorized to be imposed by section three of this article and
22 for which the use of the proceeds of the tax are restricted by
23 section nine of this article;

24 (e) “Pension relief municipal sales and service tax” means
25 the tax authorized to be imposed by subsection (a), section four
26 of this article and for which the use of the proceeds of the tax
27 are restricted by section nine of this article;

28 (f) "Pension relief municipal use tax" means the tax
29 authorized to be imposed by subsection (a), section five of this
30 article and for which the use of the proceeds of the tax are
31 restricted by section nine of this article; and

32 (g) "Taxable employee" means any individual:

33 (1) Who holds employment with an employer with a place
34 of business located within the qualifying municipality electing
35 to impose the municipal payroll tax pursuant to this article; and

36 (2) Whose salaries, wages, commissions and other earned
37 income that would be included in federal adjusted gross income
38 for the year is more than ten thousand dollars per year.

§8-13C-3. Pension relief municipal occupational tax.

1 (a) Effective on and after the first day of July, two thousand
2 five, each qualifying municipality, as defined in section two of
3 this article, has the plenary power and authority to impose, by
4 ordinance, a pension relief municipal occupational tax on
5 taxable employees. Any pension relief municipal occupational
6 tax imposed pursuant to this section shall meet the following
7 requirements:

8 (1) The tax shall be imposed at a rate of one percent or less;

9 (2) The tax shall be imposed at a uniform rate; and

10 (3) The tax rate shall be applied only to salaries, wages,
11 commissions and other earned income of taxable employees
12 that would be included in federal adjusted gross income for the
13 year. The tax rate may not be applied to other forms of income
14 including, but not limited to, intangible income and net profit
15 from a business.

16 (b) Each employer with a taxable employee, during each
17 pay period, shall withhold from the taxable employee's salary
18 the amount of the tax as computed by applying the appropriate
19 tax rate to the taxable employee's salary during that pay period
20 and remit the withholdings to the appropriate municipal taxing
21 authority.

§8-13C-4. Municipal sales and service taxes.

1 (a) Effective on and after the first day of July, two thousand
2 five, each qualifying municipality, as defined in section two of
3 this article, has the plenary power and authority to impose, by
4 ordinance, a pension relief municipal sales and service tax at a
5 rate not to exceed one percent, subject to the provisions of this
6 article.

7 (b) Effective on and after the first day of July, two thousand
8 five, notwithstanding subsection (a) of this section, and in
9 addition thereto in the case of a qualifying municipality, any
10 municipality that does not impose, or ceases to impose, the
11 business and occupation or privilege tax authorized by section
12 five, article thirteen of this chapter has the plenary power and
13 authority to impose, by ordinance, an alternative municipal
14 sales and service tax at a rate not to exceed one percent, subject
15 to the provisions of this article.

16 (c) Any municipal sales and service tax imposed under the
17 authority granted by this section is subject to the following:

18 (1) The base of a municipal sales and service tax imposed
19 pursuant to this section shall be identical to the base of the
20 consumers sales and service tax imposed pursuant to article
21 fifteen, chapter eleven of this code on sales made and services
22 rendered within the boundaries of the municipality, subject to
23 the following:

24 (A) Except for the exemption provided in section nine-f,
25 article fifteen, chapter eleven of this code, all exemptions and
26 exceptions from consumers sales and service tax apply to a
27 municipal sales and service tax imposed pursuant to this
28 section; and

29 (B) Sales of gasoline and special fuel are not subject to a
30 municipal sales and service tax imposed pursuant to this
31 section;

32 (2) Any municipal sales and service tax imposed pursuant
33 to this section applies solely to tangible personal property,
34 custom software and services that are sourced to the municipal-
35 ity. The sourcing rules set forth in article fifteen-b, chapter
36 eleven of this code, including any amendments thereto, apply
37 to municipal sales and use taxes levied pursuant to this article;

38 (3) Any municipality that imposes a municipal sales and
39 service tax pursuant to this section or changes the rate of a
40 municipal sales and service tax imposed pursuant to this section
41 shall notify the tax commissioner pursuant to section six of this
42 article;

43 (4) Any municipality that imposes a municipal sales and
44 service tax pursuant to this section may not administer or
45 collect the tax, but shall use the services of the tax commis-
46 sioner to administer, enforce and collect the tax;

47 (5) Any municipal sales and service tax imposed pursuant
48 to this section shall be imposed in addition to the consumers
49 sales and service tax imposed pursuant to article fifteen, chapter
50 eleven of this code on sales made and services rendered within
51 the boundaries of the municipality and, except as exempted or
52 excepted, all sales made and services rendered within the
53 boundaries of the municipality shall remain subject to the tax
54 levied by that article; and

55 (6) Any municipal sales and service tax imposed pursuant
56 to this section shall be imposed in addition to any tax imposed
57 pursuant to section one, article eighteen, chapter seven of this
58 code, sections six and seven, article thirteen of this chapter and
59 section twelve, article thirty-eight of this chapter.

§8-13C-5. Municipal use tax.

1 (a) Effective on and after the first day of July, two thousand
2 five, each qualifying municipality, as defined in section two of
3 this article, that imposes a pension relief municipal sales and
4 service tax pursuant to this article shall impose, by ordinance,
5 a pension relief municipal use tax at the same rate that is set for
6 the pension relief municipal sales and service tax.

7 (b) Effective on and after the first day of July, two thousand
8 five, each municipality that imposes an alternative municipal
9 sales and service tax pursuant to this article shall impose, by
10 ordinance, an alternative municipal use tax at the same rate that
11 is set for the alternative municipal sales and service tax.

12 (c) The base of a municipal use tax imposed pursuant to this
13 section shall be identical to the base of the use tax imposed
14 pursuant to article fifteen-a, chapter eleven of this code on the
15 use of tangible personal property, custom software and taxable
16 services within the boundaries of the municipality, subject to
17 the following:

18 (1) Except for the exemption provided in section nine-f,
19 article fifteen, chapter eleven of this code, all exemptions and
20 exceptions from the use tax apply to a municipal use tax
21 imposed pursuant to this section; and

22 (2) Uses of gasoline and special fuel are not subject to a
23 municipal use tax imposed pursuant to this section when the use
24 is subject to the tax imposed by article fourteen-c, chapter
25 eleven of this code.

26 (d) Any municipality that imposes a municipal use tax
27 pursuant to this section or changes the rate of a municipal use
28 tax imposed pursuant to this section shall notify the tax com-
29 missioner pursuant to section six of this article.

30 (e) Any municipality that imposes a municipal use tax
31 pursuant to this section may not administer or collect the tax,
32 but shall use the services of the tax commissioner to administer,
33 enforce and collect the taxes.

34 (f) Any municipal use tax imposed pursuant to this section
35 shall be imposed in addition to the use tax imposed pursuant to
36 article fifteen-a, chapter eleven of this code on the use of
37 tangible personal property, custom software or taxable services
38 within the boundaries of the municipality and, except as
39 exempted or excepted, all use of tangible personal property,
40 custom software or taxable services within the boundaries of
41 the municipality shall remain subject to the tax levied by said
42 article.

43 (g) Any municipal use tax imposed pursuant to this section
44 shall be imposed in addition to any tax imposed pursuant to
45 section one, article eighteen, chapter seven of this code,
46 sections six and seven, article thirteen of this chapter and
47 section twelve, article thirty-eight of this chapter.

§8-13C-5a. Credit for sales tax paid to another municipality.

1 (a) *Credit against municipal use tax.* -- A person is entitled
2 to a credit against a use tax imposed by a municipality pursuant
3 to section five of this article on the use of a particular item of
4 tangible personal property, custom software or service equal to
5 the amount, if any, of sales tax lawfully paid to another
6 municipality for the acquisition of that property or service:
7 *Provided,* That the amount of credit allowed may not exceed the
8 amount of use tax imposed on the use of the property or service
9 in the municipality of use.

10 (b) *Definitions.* -- For purposes of this section:

11 (1) "Municipality" means a municipality, as defined in
12 section two, article one of this chapter, or a comparable unit of
13 local government in another state;

14 (2) "Sales tax" includes a sales tax or compensating use tax
15 lawfully imposed on the use of tangible personal property,
16 custom software or a service by the municipality or county, as
17 appropriate, in which the sale or use occurred; and

18 (3) "State" includes the fifty states of the United States and
19 the District of Columbia but does not include any of the several
20 territories organized by Congress.

21 (c) No credit is allowed under this section for payment of
22 any sales or use taxes imposed by this state or any other state.

**§8-13C-6. Notification to tax commissioner; responsibilities of
tax commissioner; application of state tax law.**

1 (a) Any municipality that imposes a municipal sales and
2 service tax and a municipal use tax pursuant to this article or
3 changes the rate of the taxes shall notify the tax commissioner
4 of the imposition of the taxes or the change in the rate of the
5 taxes within thirty days of enacting the ordinance imposing the
6 taxes or changing the rate of the taxes. A municipal sales and
7 service tax and a municipal use tax imposed pursuant to this
8 article or a change in the rate of the taxes is not effective until
9 at least ninety days after the ordinance imposing the taxes is
10 enacted.

11 (b) The tax commissioner is responsible for collecting,
12 enforcing and administering any municipal sales and service tax
13 and any municipal use tax imposed pursuant to this article in
14 the same manner as the state sales and service tax imposed

15 pursuant to article fifteen, chapter eleven of this code and the
16 state use tax imposed pursuant to article fifteen-a of said
17 chapter. Additionally, the tax commissioner may charge a fee
18 not to exceed the lesser of the cost of the service provided or
19 one percent of the proceeds from the municipal sales and
20 service tax.

21 (c) The state consumers sales and service tax law, set forth
22 in article fifteen, chapter eleven of this code, and the amend-
23 ments to that article and the rules of the tax commissioner
24 relating to the laws shall apply to a municipal sales and service
25 tax imposed pursuant to this article to the extent the rules and
26 laws are applicable.

27 (d) The state use tax law, set forth in article fifteen-a,
28 chapter eleven of this code, and the amendments to that article
29 and the rules of the tax commissioner relating to the laws shall
30 apply to a municipal use tax imposed pursuant to this article to
31 the extent the rules and laws are applicable.

32 (e) Any term used in this article or in an ordinance adopted
33 pursuant to this article that is defined in articles fifteen,
34 fifteen-a and fifteen-b, chapter eleven of this code, as amended,
35 shall have the same meaning when used in this article or in an
36 ordinance adopted pursuant to this article, unless the context in
37 which the term is used clearly requires a different result.

38 (f) Any amendments to articles nine, ten, fifteen, fifteen-a
39 and fifteen-b, chapter eleven of this code shall automatically
40 apply to a sales or use tax imposed pursuant to this article, to
41 the extent applicable.

42 (g) Each and every provision of the "West Virginia Tax
43 Procedure and Administration Act" set forth in article ten,
44 chapter eleven of this code applies to the taxes imposed
45 pursuant to this article, except as otherwise expressly provided

46 in this article, with like effect as if that act were applicable only
47 to the taxes imposed by this article and were set forth in extenso
48 in this article.

49 (h) Each and every provision of the “West Virginia Tax
50 Crimes and Penalties Act” set forth in article nine, chapter
51 eleven of this code applies to the taxes imposed pursuant to this
52 article with like effect as if that act were applicable only to the
53 taxes imposed pursuant to this article and were set forth in
54 extenso in this article.

**§8-13C-7. Municipal sales and service tax and use tax fund;
deposit and remittance of collections.**

1 (a) There is created a special revenue account in the state
2 treasury designated the “municipal sales and service tax and use
3 tax fund” which is an interest-bearing account and shall be
4 invested in the manner described in section nine-c, article six,
5 chapter twelve of this code with the interest and other return
6 earned a proper credit to the fund. A separate subaccount
7 within the fund shall be established for each municipality that
8 imposes a municipal sales and service tax and use tax pursuant
9 to this article.

10 (b) The tax commissioner shall deposit all the proceeds
11 from a municipal sales and service tax and a municipal use tax
12 collected for each municipality minus any fee for collecting,
13 enforcing and administering taxes in the appropriate
14 subaccount. All moneys collected and deposited in the fund
15 shall be remitted at least quarterly by the state treasurer to the
16 treasurer of the appropriate municipality.

§8-13C-8. Printed catalogs.

1 Local tax rate changes made pursuant to sections four and
2 five of this article apply to purchases from printed catalogs
3 where the purchaser computed the tax based upon the local tax

4 rate published in the catalog only on and after the first day of a
5 calendar quarter after a minimum of one hundred twenty days'
6 notice to the seller.

§8-13C-9. Restriction on use of certain revenues.

1 (a) All proceeds from a pension relief municipal occupa-
2 tional tax, a pension relief municipal sales and service tax and
3 a pension relief municipal use tax imposed pursuant to this
4 article shall be used solely for the purpose of reducing the
5 unfunded actuarial accrued liability of policemen's and
6 firemen's pension and relief funds of the qualifying municipal-
7 ity imposing the tax. The proceeds used for this purpose shall
8 be in addition to the minimum annual contribution required by
9 section twenty, article twenty-two of this chapter.

10 (b) A qualifying municipality loses its authority to impose
11 a pension relief municipal occupational tax, a pension relief
12 municipal sales and service tax and a pension relief municipal
13 use tax pursuant to this article after:

14 (1) The unfunded actuarial accrued liability of the qualify-
15 ing municipality's policemen's and firemen's pension and relief
16 funds is eliminated; or

17 (2) Sufficient moneys accrue from the proceeds of the
18 pension relief municipal occupational tax, the pension relief
19 municipal sales and service tax, the pension relief municipal
20 use tax or any combination of these taxes to eliminate the
21 unfunded actuarial accrued liability of the qualifying municipal-
22 ity's policemen's and firemen's pension and relief funds.

§8-13C-10. Conflict; partial unconstitutionality.

1 (a) If a court of competent jurisdiction finds that the
2 provisions of this article and the provisions of articles fifteen,
3 fifteen-a and fifteen-b, chapter eleven of this code, conflict and

4 cannot be harmonized, then the provisions of said articles shall
5 control.

6 (b) If any section, subsection, subdivision, paragraph,
7 sentence, clause or phrase of this article is for any reason held
8 to be invalid, unlawful or unconstitutional, that decision does
9 not affect the validity of the remaining portions of this article
10 or any part thereof: *Provided*, That if this article is held to be
11 unconstitutional under section thirty-nine, article VI of the
12 Constitution of West Virginia this severability clause shall not
13 apply.

**§8-13C-11. Additional requirements for authority to impose
certain taxes.**

1 (a) The authority to impose the pension relief municipal
2 occupational tax, the pension relief municipal sales and service
3 tax and the pension relief municipal use tax, all provided in this
4 article, is not effective until a municipality wishing to impose
5 the taxes presents to the joint committee on government and
6 finance a plan to remove the unfunded liabilities of its police-
7 men's and firemen's pension funds and the necessary changes
8 in West Virginia law have been enacted to allow for implemen-
9 tation of the municipal plan.

10 (b) Notwithstanding any other provision of this code to the
11 contrary, no cost-of-living increases or other benefit increases,
12 and no new benefits, may be granted to or received by any
13 member or beneficiary of a policemen's and firemen's pension
14 and relief funds of a municipality during any period that the
15 municipality imposes a pension relief municipal occupational
16 tax, a pension relief municipal sales and service tax, the pension
17 relief municipal use tax or any combination thereof authorized
18 under this chapter.

§8-13C-12. Limited authority to impose tax.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, no county, board, political subdivision or any other
3 agency or entity other than a municipality may impose an
4 alternative municipal sales and service tax, an alternative
5 municipal use tax, a pension relief municipal occupational tax,
6 a pension relief municipal sales and service tax, a pension relief
7 municipal use tax or any combination of these taxes.

8 (b) No subsequent amendment to this code shall supersede
9 the provisions of subsection (a) of this section unless the
10 amendment specifically states that the provisions of said
11 subsection are superseded.

§8-13C-13. Study.

1 The chief technology officer, appointed pursuant to article
2 one-b, chapter five of this code, shall conduct a study on the
3 cost for the tax commissioner to implement the taxes that may
4 be imposed pursuant to this article. The chief technology
5 officer shall report the findings and recommendations to the
6 joint committee on government and finance before the first day
7 of December, two thousand four.

CHAPTER 11. TAXATION.

Article

9. Crimes and Penalties.

10. Procedure and Administration.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

§11-9-3. Definitions.

§11-9-4. Failure to pay tax or file return or report.

§11-9-5. Failure to account for and pay over another's tax.

§11-9-6. Failure to collect or withhold tax.

§11-9-8. Willful failure to maintain records or supply information; misuse of
exemption certificate.

§11-9-10. Attempt to evade tax.

§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) Inheritance and transfer taxes
3 and estate taxes imposed by article eleven of this chapter; (2)
4 business registration tax imposed by article twelve of this
5 chapter; (3) minimum severance tax on coal imposed by article
6 twelve-b of this chapter; (4) corporate license tax imposed by
7 article twelve-c of this chapter; (5) business and occupation tax
8 imposed by article thirteen of this chapter; (6) severance tax
9 imposed by article thirteen-a of this chapter; (7) telecommuni-
10 cations tax imposed by article thirteen-b of this chapter; (8)
11 gasoline and special fuels excise tax imposed by article fourteen
12 of this chapter; (9) motor fuels excise tax imposed by article
13 fourteen-c of this chapter; (10) motor carrier road tax imposed
14 by article fourteen-a of this chapter; (11) interstate fuel tax
15 agreement authorized by article fourteen-b of this chapter; (12)
16 consumers sales and service tax imposed by article fifteen of
17 this chapter; (13) use tax imposed by article fifteen-a of this
18 chapter; (14) tobacco products excise tax imposed by article
19 seventeen of this chapter; (15) soft drinks tax imposed by
20 article nineteen of this chapter; (16) personal income tax
21 imposed by article twenty-one of this chapter; (17) business
22 franchise tax imposed by article twenty-three of this chapter;
23 (18) corporation net income tax imposed by article twenty-four
24 of this chapter; and (19) health care provider tax imposed by
25 article twenty-seven of this chapter.

26 (b) The provisions of this article also apply to the West
27 Virginia tax procedure and administration act in article ten of
28 this chapter and to any other articles of this chapter when
29 application is expressly provided for by the Legislature.

30 (c) The provisions of this article also apply to municipal
31 sales and use taxes imposed pursuant to article thirteen-c,
32 chapter eight of this code; the charitable bingo fee imposed by

33 sections six and six-a, article twenty, chapter forty-seven of this
34 code; the charitable raffle fee imposed by section seven, article
35 twenty-one of said chapter; and the charitable raffle boards and
36 games fees imposed by section three, article twenty-three of
37 said chapter.

38 (d) Each and every provision of this article applies to the
39 articles of this chapter listed in subsections (a), (b) and (c) of
40 this section, with like effect, as if the provisions of this article
41 were applicable only to the tax and were set forth in extenso in
42 this article.

§11-9-3. Definitions.

1 For the purposes of this article, the term:

2 (1) "Person" means any individual, firm, partnership,
3 limited partnership, copartnership, joint venture, association,
4 corporation, municipal corporation, organization, receiver,
5 estate, trust, guardian, executor, administrator and any officer,
6 employee or member of any of the foregoing who, as an officer,
7 employee or member, is under a duty to perform or is responsi-
8 ble for the performance or nonperformance of the act in respect
9 of which a violation occurs under this article.

10 (2) "Return" or "report" means any return or report required
11 to be filed by any article of this chapter imposing any tax to
12 which this article applies as specified in section two of this
13 article or by any other article of this code pursuant to which a
14 tax or fee is imposed that is collected by the tax commissioner
15 as specified in section two of this article.

16 (3) "Tax" or "taxes" means any tax to which this article
17 applies, as specified in section two of this article, and includes
18 additions to tax, penalties and interest unless the intention to
19 give it a more limited meaning is disclosed by the context in
20 which the term "tax" or "taxes" is used.

21 (4) "Tax commissioner" or "commissioner" means the tax
22 commissioner of the state of West Virginia or his or her
23 delegate.

24 (5) "This chapter" means chapter eleven of the code of
25 West Virginia, one thousand nine hundred thirty-one, as
26 amended, and shall include only those articles of chapter eleven
27 of this code listed in section two of this article.

28 (6) "Willfully" means the intentional violation of a known
29 legal duty to perform any act, required to be performed by any
30 provision of this chapter or article thirteen-c, chapter eight of
31 this code, in respect of which the violation occurs: *Provided,*
32 That the mere failure to perform any act shall not be a willful
33 violation under this article. A willful violation of this article
34 requires that the defendant had knowledge of or notice of a duty
35 to perform an act and that the defendant, with knowledge of or
36 notice of that duty, intentionally failed to perform the act.

37 (7) "Evade" means to willfully and fraudulently commit
38 any act with the intent of depriving the state of payment of any
39 tax which there is a known legal duty to pay under this chapter.

40 (8) "Fraud" means any false representation or concealment
41 as to any material fact made by any person with the knowledge
42 that it is not true and correct, with the intent that the representa-
43 tion or concealment be relied upon by the state.

§11-9-4. Failure to pay tax or file return or report.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to pay any tax, or to
3 file any return or report, who willfully fails to pay the tax, or
4 willfully fails to file the return or report, more than thirty days
5 after the date the tax is required to be paid by law, is guilty of
6 a misdemeanor and, upon conviction thereof, shall be fined not
7 less than one hundred dollars nor more than two thousand five

8 hundred dollars. Each failure to pay tax, or file a return or
9 report, more than thirty days after its due date for any tax period
10 is a separate offense under this section and punishable accord-
11 ingly: *Provided*, That thirty days prior to instituting criminal
12 proceedings under this section, the tax commissioner shall give
13 the person written notice of any failure to pay a tax or to file a
14 return or report. Notice shall be served on the person by
15 certified mail or by personal service. The provisions of this
16 section shall not apply to the business franchise registration tax
17 imposed by article twelve of this chapter.

§11-9-5. Failure to account for and pay over another's tax.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to collect, or
3 withhold, account for and pay over any tax, who willfully fails
4 to truthfully account for and pay over the tax in the manner
5 required by law, more than thirty days after the date the tax is
6 required to be accounted for and paid over by law, is guilty of
7 a felony if the amount of tax not paid over is one thousand
8 dollars or more and, upon conviction thereof, shall be fined not
9 less than five thousand dollars nor more than twenty-five
10 thousand dollars or imprisoned in a correctional facility not less
11 than one nor more than three years, or, in the discretion of the
12 court, be confined in jail not more than one year, or both fined
13 and imprisoned; or is guilty of a misdemeanor, if the amount of
14 tax not paid over is less than one thousand dollars, and, upon
15 conviction thereof, shall be fined not less than five hundred
16 dollars nor more than five thousand dollars or imprisoned in jail
17 not more than six months, or both fined and imprisoned. Each
18 failure to account for and pay over tax for any tax period under
19 this section is a separate offense and punishable accordingly:
20 *Provided*, That thirty days prior to instituting a criminal
21 proceeding under this section, the tax commissioner shall give
22 the person written notice of the failure to truthfully account for

23 and pay over tax. Notice shall be served on the person by
24 certified mail or personal service.

§11-9-6. Failure to collect or withhold tax.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to collect or
3 withhold any tax, who willfully fails to collect or withhold the
4 tax in the manner required by law, is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than one
6 hundred dollars nor more than five hundred dollars or impris-
7 oned in jail not more than six months, or both fined and
8 imprisoned. Each month or fraction thereof during which the
9 failure continues is a separate offense under this section and
10 punishable accordingly.

**§11-9-8. Willful failure to maintain records or supply informa-
tion; misuse of exemption certificate.**

1 If any person: (1) Willfully fails to maintain any records, or
2 supply any information, in the manner required by this chapter
3 or article thirteen-c, chapter eight of this code or regulations
4 therefor promulgated in accordance with law, to compute,
5 assess, withhold or collect any tax imposed by this chapter; or
6 (2) presents to any vendor a certificate for the purpose of
7 obtaining an exemption from the tax imposed by article fifteen
8 or fifteen-a of this chapter or article thirteen-c, chapter eight of
9 this code and then knowingly uses the item or service purchased
10 in a manner that is not exempt from the tax without remitting
11 the tax in the manner required by law, that person is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not
13 less than one hundred dollars nor more than one thousand
14 dollars or imprisoned in jail not more than six months, or both
15 fined and imprisoned.

§11-9-10. Attempt to evade tax.

1 If any person: (1) Knowingly files a false or fraudulent
2 return, report or other document under any provision of this
3 chapter or article thirteen-c, chapter eight of this code; or (2)
4 willfully delivers or discloses to the tax commissioner any list,
5 return, account, statement, record or other document known by
6 him or her to be fraudulent or false as to any material matter
7 with the intent of obtaining or assisting another person in
8 obtaining any credit, refund, deduction, exemption or reduction
9 in tax not otherwise permitted by this chapter or article thir-
10 teen-c, chapter eight of this code; or (3) willfully attempts in
11 any other manner to evade any tax imposed by this chapter or
12 article thirteen-c, chapter eight of this code or the payment
13 thereof, is guilty of a felony and, notwithstanding any other
14 provision of the code, upon conviction thereof, shall be fined
15 not less than one thousand dollars nor more than ten thousand
16 dollars or imprisoned in a correctional facility not less than one
17 nor more than three years or, in the discretion of the court, be
18 confined in jail not more than one year, or both fined and
19 imprisoned.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to inheritance and
2 transfer taxes, estate tax and interstate compromise and
3 arbitration of inheritance and death taxes, business registration
4 tax, annual tax on incomes of certain carriers, minimum
5 severance tax on coal, corporate license tax, business and
6 occupation tax, severance tax, telecommunications tax, inter-
7 state fuel tax, consumers sales and service tax, use tax, tobacco
8 products excise tax, soft drinks tax, personal income tax,
9 business franchise tax, corporation net income tax, gasoline and
10 special fuels excise tax, motor fuels excise tax, motor carrier
11 road tax, health care provider tax and tax relief for elderly
12 homeowners and renters administered by the state tax commis-

13 sioner. This article shall not apply to ad valorem taxes on real
14 and personal property or any other tax not listed in this section,
15 except that in the case of ad valorem taxes on real and personal
16 property, when any return, claim, statement or other document
17 is required to be filed, or any payment is required to be made
18 within a prescribed period or before a prescribed date, and the
19 applicable law requires delivery to the office of the sheriff of a
20 county of this state, the methods prescribed in section five-f of
21 this article for timely filing and payment to the tax commis-
22 sioner or state tax department are the same methods utilized for
23 timely filing and payment with the sheriff.

24 (b) The provisions of this article apply to beer barrel tax
25 levied by article sixteen of this chapter and to wine liter tax
26 levied by section four, article eight, chapter sixty of this code.

27 (c) The provisions of this article apply to any other article
28 of this chapter when the application is expressly provided for by
29 the Legislature.

30 (d) The provisions of this article apply to municipal sales
31 and use taxes imposed under article thirteen-c, chapter eight of
32 this code and collected by the tax commissioner.

CHAPTER 184

**(Com. Sub. for S. B. 518 — By Senators McCabe,
White, Bowman, Unger and Dempsey)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §8-14-2a of the code of West Virginia,
1931, as amended; and to amend and reenact §8-15-10a of said

code, all relating to policemen and firemen who are required to work during holidays; and compensation.

Be it enacted by the Legislature of West Virginia:

That §8-14-2a of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-15-10a of said code be amended and reenacted, all to read as follows:

Article

- 14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
- 15. Firefighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-2a. Policemen who are required to work during holidays; how compensated.

1 From the effective date of this section, if any municipal
 2 police officer is required to work during a legal holiday as is
 3 specified in subsection (a), section one, article two, chapter two
 4 of this code, or if a legal holiday falls on the police officer's
 5 regular scheduled day off, he or she is allowed equal time off at
 6 a time as may be approved by the chief of police under whom
 7 he or she serves or, in the alternative, shall be paid at a rate not
 8 less than one and one-half times his or her regular rate of pay:
 9 *Provided*, That if a special election of a political subdivision
 10 other than a municipality falls on a Saturday or Sunday, the
 11 municipality may choose not to recognize the day of the
 12 election as a holiday if a majority of the municipality's city
 13 council votes not to recognize the day of the election as a holiday.

**ARTICLE 15. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-10a. Firemen who are required to work during holidays;
how compensated.**

1 From the effective date of this section, if any member of a
2 paid fire department is required to work during a legal holiday
3 as is specified in subsection (a), section one, article two, chapter
4 two of this code, or if a legal holiday falls on the member's
5 regular scheduled day off, he or she shall be allowed equal time
6 off at such time as may be approved by the chief executive
7 officer of the department under whom he or she serves or, in the
8 alternative, shall be paid at a rate not less than one and one-half
9 times his or her regular rate of pay: *Provided*, That if a special
10 election of a political subdivision other than a municipality falls
11 on a Saturday or Sunday, the municipality may choose not to
12 recognize the day of the election as a holiday if a majority of
13 the municipality's city council votes not to recognize the day of
14 the election as a holiday.

CHAPTER 185

(Com. Sub. for S. B. 672 — By Senator Tomblin,
Mr. President, By Request)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §8-18-22 of the code of West Virginia, 1931, as amended; to amend and reenact §8-19-12a of said code; to amend and reenact §8-20-10 of said code; and to amend and reenact §16-13-16 of said code, all relating to municipalities; public utility services; deposit required for new customers; payment for delinquency from deposit; reconnecting deposit;

liens; discontinuance of service for delinquency; tenants; providing refund of deposit with interest; and requiring owners of property abutting municipal sewer to pay municipal sewer fees regardless of connection.

Be it enacted by the Legislature of West Virginia:

That §8-18-22 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §8-19-12a of said code be amended and reenacted; that §8-20-10 of said code be amended and reenacted; and that §16-13-16 of said code be amended and reenacted, all to read as follows:

Chapter

- 8. **Municipal Corporations.**
- 16. **Public Health.**

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

- 18. **Assessments to Improve Streets, Sidewalks, and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.**
- 19. **Municipal and County Waterworks and Electrical Power Systems.**
- 20. **Combined Waterworks and Sewerage Systems.**

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS, AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

PART XII - CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

- 1 Regardless of whether a lot or parcel is within any municipi-
- 2 pality's geographical limits, the owner or owners of any lot or
- 3 parcel of land abutting on any street, alley, public way or
- 4 easement on which a municipal sewer is now located or may
- 5 hereafter be constructed and laid (whether constructed and laid
- 6 under the provisions of this article or any other provisions of

7 law) upon which lot or parcel of land any business or residence
8 building is now located or may hereafter be erected, not
9 connected with a public sewer, may be required and compelled
10 by the municipality or by the board of health to connect any
11 such building with such sewer. Notice so to connect shall be
12 given by the municipality or by the board of health to the owner
13 and to the lessee or occupant of such building. The owner or
14 owners shall connect to the municipal sewer within thirty days
15 after notice to connect has been sent by the municipality.
16 Regardless of whether the owner or owners connect to such
17 sewer, the municipality may bill the owner or owners of the lot
18 or parcel and the owner or owners shall pay the municipality's
19 charge based on the actual water consumption on the lot or
20 parcel. If the lot or parcel is not metered, the municipality's
21 charge shall be based on the municipality's good faith estimate
22 of the consumption on the lot or parcel.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELEC-
TRICAL POWER SYSTEMS.**

PART IV - REVENUE BOND FINANCING.

**§8-19-12a. Deposit required for new customers; lien for delin-
quent service rates and charges; failure to cure
delinquency; payment from deposit; reconnect-
ing deposit; return of deposit; liens; civil actions;
deferral of filing fees and costs in magistrate
court action; limitations with respect to foreclo-
sure.**

1 (a) (1) Whenever any rates and charges for water services
2 or facilities furnished remain unpaid for a period of twenty days
3 after the same become due and payable, the property and the
4 owner thereof, as well as the user of the services and facilities
5 provided, shall be delinquent and the owner, user and property
6 shall be held liable at law until such time as all such rates and
7 charges are fully paid. When a payment has become delin-
8 quent, the municipality may utilize any funds held as a security

9 deposit to satisfy the delinquent payment. All new applicants
10 for service shall indicate to the municipality or governing body
11 whether they are an owner or tenant with respect to the service
12 location.

13 (2) The municipality or governing body, but only one of
14 them, may collect from all new applicants for service a deposit
15 of fifty dollars or two twelfths of the average annual usage of
16 the applicant's specific customer class, whichever is greater, to
17 secure the payment of water service rates, fees and charges in
18 the event they become delinquent as provided in this section.
19 In any case where a deposit is forfeited to pay service rates, fees
20 and charges which were delinquent and the user's service is
21 disconnected or terminated, no reconnection or reinstatement of
22 service may be made by the municipality or governing body
23 until another deposit equal to fifty dollars or a sum equal to two
24 twelfths of the average usage for the applicant's specific
25 customer class, whichever is greater, is remitted to the munici-
26 pality or governing body. After twelve months of prompt
27 payment history, the municipality or governing body shall
28 return the deposit to the customer or credit the customer's
29 account with interest at a rate as the public service commission
30 may prescribe: *Provided*, That where the customer is a tenant,
31 the municipality or governing body is not required to return the
32 deposit until the time the tenant discontinues service with the
33 municipality or governing body. Whenever any rates, fees,
34 rentals or charges for services or facilities furnished remain
35 unpaid for a period of twenty days after the same become due
36 and payable, the user of the services and facilities provided is
37 delinquent and the user is liable at law until all rates, fees and
38 charges are fully paid. The municipality or governing body
39 may, under reasonable rules promulgated by the public service
40 commission, shut off and discontinue water services to a
41 delinquent user of water facilities ten days after the water
42 services become delinquent regardless of whether the munici-

43 pality or governing body utilizes the security deposit to satisfy
44 any delinquent payments.

45 (b) All rates or charges for water service whenever delin-
46 quent shall be liens of equal dignity, rank and priority with the
47 lien on such premises of state, county, school and municipal
48 taxes for the amount thereof upon the real property served, and
49 the municipality shall have plenary power and authority from
50 time to time to enforce such lien in a civil action to recover the
51 money due for such services rendered plus court fees and costs
52 and a reasonable attorney's fee: *Provided*, That an owner of real
53 property may not be held liable for the delinquent rates or
54 charges for services or facilities of a tenant, nor shall any lien
55 attach to real property for the reason of delinquent rates or
56 charges for services or facilities of a tenant of such real
57 property, unless the owner has contracted directly with the
58 municipality to purchase such services or facilities.

59 (c) Municipalities are hereby granted a deferral of filing
60 fees or other fees and costs incidental to the bringing and
61 maintenance of an action in magistrate court for the collection
62 of the delinquent rates and charges. If the municipality collects
63 the delinquent account, plus fees and costs, from its customer
64 or other responsible party, the municipality shall pay to the
65 magistrate court the filing fees or other fees and costs which
66 were previously deferred.

67 (d) No municipality may foreclose upon the premises
68 served by it for delinquent rates or charges for which a lien is
69 authorized by this section except through the bringing and
70 maintenance of a civil action for such purpose brought in the
71 circuit court of the county wherein the municipality lies. In
72 every such action, the court shall be required to make a finding
73 based upon the evidence and facts presented that the municipal-
74 ity had exhausted all other remedies for the collection of debts
75 with respect to such delinquencies prior to the bringing of such

76 action. In no event shall foreclosure procedures be instituted by
77 any municipality or on its behalf unless such delinquency had
78 been in existence or continued for a period of two years from
79 the date of the first such delinquency for which foreclosure is
80 being sought.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

PART III - REVENUE BOND FINANCING.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a) (1) The governing body of any municipality availing
2 itself of the provisions of this article shall have plenary power
3 and authority to make, enact and enforce all needful rules for
4 the repair, maintenance and operation and management of the
5 combined system of such municipality and for the use thereof,
6 and shall also have plenary power and authority to make, enact
7 and enforce all needful rules and ordinances for the care and
8 protection of any such system, which may be conducive to the
9 preservation of the public health, comfort and convenience and
10 to rendering the water supply of such municipality pure, the
11 sewerage harmless insofar as it is reasonably possible so to do,
12 and if applicable properly collecting and controlling the
13 stormwater as is reasonably possible so to do: *Provided*, That
14 no municipality may make, enact or enforce any rule, regulation
15 or ordinance regulating any highways, road or drainage
16 easements or storm water facilities constructed, owned or

17 operated by the West Virginia division of highways except in
18 accordance with chapter twenty-nine-a of this code.

19 (2) Any municipality shall have plenary power and author-
20 ity to charge the users for the use and service of combined
21 system and to establish required deposits, rates, fees or charges
22 for such purpose. Separate deposits, rates, fees or charges may
23 be fixed for the water and sewer services respectively, and, if
24 applicable, the stormwater services, or combined rates, fees or
25 for the combined water and sewer services, and, if applicable,
26 the storm water services. Such deposits, rates, fees or charges,
27 whether separate or combined, shall be sufficient at all times to
28 pay the cost of repair, maintenance and operation of the
29 combined system, provide an adequate reserve fund and
30 adequate depreciation fund and pay the principal of and interest
31 upon all revenue bonds issued under this article. Deposits,
32 rates, fees or charges shall be established, revised and main-
33 tained by ordinance and become payable as the governing body
34 may determine by ordinance, and such rates, fees or charges
35 shall be changed from time to time as needful, consistent with
36 the provisions of this article.

37 (3) All new applicants for service shall indicate to the
38 municipality or governing body whether they are an owner or
39 tenant with respect to the service location.

40 (4) The municipality or governing body, but only one of
41 them, may collect from all new applicants for service a deposit
42 of one hundred dollars or two twelfths of the average annual
43 usage of the applicant's specific customer class, whichever is
44 greater, to secure the payment of water and sewage service
45 rates, fees and charges in the event they become delinquent as
46 provided in this section. In any case where a deposit is for-
47 feited to pay service rates, fees and charges which were
48 delinquent and the user's service is disconnected or terminated,
49 no reconnecting or reinstatement of service may be made by the

50 municipality or governing body until another deposit equal to
51 one hundred dollars or a sum equal to two twelfths of the
52 average usage for the applicant's specific customer class,
53 whichever is greater, is remitted to the municipality or govern-
54 ing body. After twelve months of prompt payment history, the
55 municipality or governing body shall return the deposit to the
56 customer or credit the customer's account with interest at a rate
57 as the public service commission may prescribe: *Provided*, That
58 where the customer is a tenant, the municipality or governing
59 body is not required to return the deposit until the time the
60 tenant discontinues service with the municipality or governing
61 body. Whenever any rates, fees, rentals or charges for services
62 or facilities furnished remain unpaid for a period of twenty days
63 after the same become due and payable, the user of the services
64 and facilities provided is delinquent and the user is liable at law
65 until all rates, fees and charges are fully paid. The municipality
66 or governing body may, under reasonable rules promulgated by
67 the public service commission, shut off and discontinue water
68 services to a delinquent user of either water or sewage facilities,
69 or both, ten days after the water or sewage services become
70 delinquent regardless of whether the governing body utilizes the
71 security deposit to satisfy any delinquent payments.

72 (b) Whenever any rates, fees or charges for services or
73 facilities furnished remain unpaid for a period of twenty days
74 after the same become due and payable, the user of the services
75 and facilities provided shall be delinquent and the municipality
76 or governing body may apply any deposit against any delin-
77 quent fee and the user shall be held liable at law until such time
78 as all rates, fees and charges are fully paid.

79 (c) All rates, fees or charges for water service, sewer
80 service, and, if applicable, stormwater service, whenever
81 delinquent, as provided by ordinance of the municipality, shall
82 be liens of equal dignity, rank and priority with the lien on such
83 premises of state, county, school and municipal taxes for the

84 amount thereof upon the real property served, and the munici-
85 pality shall have plenary power and authority from time to time
86 to enforce such lien in a civil action to recover the money due
87 for services rendered plus court fees and costs and a reasonable
88 attorney's fee: *Provided*, That an owner of real property may
89 not be held liable for the delinquent rates, fees or charges for
90 services or facilities of a tenant, nor shall any lien attach to real
91 property for the reason of delinquent rates, fees or charges for
92 services or facilities of a tenant of the real property, unless the
93 owner has contracted directly with the municipality to purchase
94 such services or facilities.

95 (d) Municipalities are hereby granted a deferral of filing
96 fees or other fees and costs incidental to the bringing and
97 maintenance of an action in magistrate court for the collection
98 of the delinquent rates and charges. If the municipality collects
99 the delinquent account, plus fees and costs, from its customer
100 or other responsible party, the municipality shall pay to the
101 magistrate court the filing fees or other fees and costs which
102 were previously deferred.

103 (e) No municipality may foreclose upon the premises
104 served by it for delinquent rates, fees or charges for which a
105 lien is authorized by this section except through the bringing
106 and maintenance of a civil action for the purpose brought in the
107 circuit court of the county wherein the municipality lies. In
108 every such action, the court shall be required to make a finding
109 based upon the evidence and facts presented that the municipal-
110 ity had exhausted all other remedies for the collection of debts
111 with respect to such delinquencies prior to the bringing of the
112 action. In no event shall foreclosure procedures be instituted by
113 any municipality or on its behalf unless the delinquency had
114 been in existence or continued for a period of two years from
115 the date of the first delinquency for which foreclosure is being
116 sought.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND
SANITARY DISTRICTS.****§16-13-16. Rates for service; deposit required for new customers;
forfeiture of deposit; reconnecting deposit; ten-
ant's deposit; change or readjustment; hearing;
lien and recovery; discontinuance of services.**

1 The governing body shall have power, and it shall be its
2 duty, by ordinance, to establish and maintain just and equitable
3 rates, fees or charges for the use of and the service rendered by:

4 (a) Sewerage works, to be paid by the owner of each and
5 every lot, parcel of real estate or building that is connected with
6 and uses such works by or through any part of the sewerage
7 system of the municipality, or that in any way uses or is served
8 by such works; and

9 (b) Stormwater works, to be paid by the owner of each and
10 every lot, parcel of real estate, or building that in any way uses
11 or is served by such stormwater works or whose property is
12 improved or protected by the stormwater works or any user of
13 such stormwater works.

14 (c) The governing body may change and readjust such rates,
15 fees or charges from time to time. However, no rates, fees or
16 charges for stormwater services may be assessed against
17 highways, road and drainage easements and/or stormwater
18 facilities constructed, owned and/or operated by the West
19 Virginia division of highways.

20 (d) All new applicants for service shall indicate to the
21 governing body whether they are an owner or tenant with
22 respect to the service location.

23 (e) The governing body may collect from all new applicants
24 for service a deposit of fifty dollars or two twelfths of the
25 average annual usage of the applicant's specific customer class,
26 whichever is greater, to secure the payment of service rates,
27 fees and charges in the event they become delinquent as
28 provided in this section. In any case where a deposit is for-
29 feited to pay service rates, fees and charges which were
30 delinquent at the time of disconnection or termination of
31 service, no reconnecting or reinstatement of service may be
32 made by the governing body until another deposit equal to fifty
33 dollars or a sum equal to two twelfths of the average usage for
34 the applicant's specific customer class, whichever is greater, is
35 remitted to the governing body. After twelve months of prompt
36 payment history, the governing body shall return the deposit to
37 the customer or credit the customer's account with interest at a
38 rate as the public service commission may prescribe: *Provided,*
39 That where the customer is a tenant, the governing body is not
40 required to return the deposit until the time the tenant discontin-
41 ues service with the governing body. Whenever any rates, fees,
42 rentals or charges for services or facilities furnished remain
43 unpaid for a period of twenty days after the same become due
44 and payable, the user of the services and facilities provided is
45 delinquent and the user is liable at law until all rates, fees and
46 charges are fully paid. The governing body may, under
47 reasonable rules promulgated by the public service commission,
48 shut off and discontinue water services to a delinquent user of
49 sewer facilities ten days after the sewer services become
50 delinquent regardless of whether the governing body utilizes the
51 security deposit to satisfy any delinquent payments.

52 (f) Such rates, fees or charges shall be sufficient in each
53 year for the payment of the proper and reasonable expense of
54 operation, repair, replacements and maintenance of the works
55 and for the payment of the sums herein required to be paid into
56 the sinking fund. Revenues collected pursuant to this section
57 shall be considered the revenues of the works.

58 (g) No such rates, fees or charges shall be established until
59 after a public hearing, at which all the users of the works and
60 owners of property served or to be served thereby and others
61 interested shall have an opportunity to be heard concerning the
62 proposed rates, fees or charges.

63 (h) After introduction of the ordinance fixing such rates,
64 fees or charges, and before the same is finally enacted, notice
65 of such hearing, setting forth the proposed schedule of such
66 rates, fees or charges, shall be given by publication as a Class
67 II-0 legal advertisement in compliance with the provisions of
68 article three, chapter fifty-nine of this code, and the publication
69 area for such publication shall be the municipality. The first
70 publication shall be made at least ten days before the date fixed
71 in such notice for the hearing.

72 (i) After such hearing, which may be adjourned from time
73 to time, the ordinance establishing rates, fees or charges, either
74 as originally introduced or as modified and amended, shall be
75 passed and put into effect. A copy of the schedule of such rates,
76 fees and charges so established shall be kept on file in the office
77 of the board having charge of the operation of such works, and
78 also in the office of the clerk of the municipality, and shall be
79 open to inspection by all parties interested. The rates, fees or
80 charges so established for any class of users or property served
81 shall be extended to cover any additional premises thereafter
82 served which fall within the same class, without the necessity
83 of any hearing or notice.

84 (j) Any change or readjustment of such rates, fees or
85 charges may be made in the same manner as such rates, fees or
86 charges were originally established as hereinbefore provided:
87 *Provided*, That if such change or readjustment be made
88 substantially pro rata, as to all classes of service, no hearing or
89 notice shall be required. The aggregate of the rates, fees or
90 charges shall always be sufficient for such expense of opera-

91 tion, repair and maintenance and for such sinking fund pay-
92 ments.

93 (k) All rates, fees or charges, if not paid when due, shall
94 constitute a lien upon the premises served by such works. If
95 any service rate, fees or charge so established is not paid within
96 twenty days after the same is due, the amount thereof, together
97 with a penalty of ten percent, and a reasonable attorney's fee,
98 may be recovered by the board in a civil action in the name of
99 the municipality, and in connection with such action said lien
100 may be foreclosed against such lot, parcel of land or building,
101 in accordance with the laws relating thereto: *Provided*, That
102 where both water and sewer services are furnished by any
103 municipality to any premises the schedule of charges may be
104 billed as a single amount or individually itemized and billed for
105 the aggregate thereof.

106 (l) Whenever any rates, rentals, fees or charges for services
107 or facilities furnished shall remain unpaid for a period of twenty
108 days after the same shall become due and payable, the property
109 and the owner thereof, as well as the user of the services and
110 facilities shall be delinquent until such time as all rates, fees
111 and charges are fully paid. When any payment for rates,
112 rentals, fees or charges becomes delinquent, the governing body
113 may use the security deposit to satisfy the delinquent payment.

114 (m) The board collecting such rates, fees or charges shall be
115 obligated under reasonable rules to shut off and discontinue
116 both water and sewer services to all delinquent users of either
117 water facilities, or sewer facilities or both, and shall not restore
118 either water facilities or sewer facilities, to any delinquent user
119 of either until all delinquent rates, fees or charges for both
120 water facilities, and sewer facilities, including reasonable
121 interest and penalty charges, have been paid in full.

CHAPTER 186

(Com. Sub. for S. B. 500 — By Senator Fanning, By Request)

[Passed March 4, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §20-2-32, §20-2-33 and §20-2-34 of the code of West Virginia, 1931, as amended, all relating generally to the issuance of hunting and fishing licenses; disposition of duplicate license fees; increasing fees; promulgation of legislative rules; and disposition of fees.

Be it enacted by the Legislature of West Virginia:

That §20-2-32, §20-2-33 and §20-2-34 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-32. Issuance of licenses; duplicate licenses.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

§20-2-34. Disposition of license fees and donations; reports of agents; special funds and uses.

§20-2-32. Issuance of licenses; duplicate licenses.

- 1 The clerk of the county commission in each county and
- 2 other persons designated by the director shall be license-issuing
- 3 authorities. Each license-issuing authority shall issue a license
- 4 to a license applicant if, in the opinion of the authority, the
- 5 license applicant is legally entitled to obtain the license applied
- 6 for and pays the proper fee.

7 All materials and supplies necessary for the issuance of
8 licenses shall be furnished by the director to each person
9 authorized to issue licenses.

10 Each license shall bear a serial number and shall be signed
11 by the licensee. The issuing authority shall keep an accurate
12 record, in the form and manner prescribed by the director, of all
13 licenses issued and of all money collected as license fees.

14 Any license-issuing authority may issue a duplicate license,
15 to replace a lost, destroyed or damaged license, upon receipt of
16 a verified application duly executed by the original license
17 holder and the payment to the issuing authority of a duplicate
18 license fee of one dollar.

**§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.
4 Each person appointed shall, before issuing any license, file
5 with the director a bond payable to the state of West Virginia,
6 in the 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
11 person, other than those designated as issuing agents by the
12 director, may sell licenses or buy licenses for the purpose of
13 resale.

14 (b) Except when a license is purchased from a state official,
15 every person making application for a license shall pay, in
16 addition to the license fee prescribed in this article, an addi-
17 tional fee of three dollars to any county official issuing the

18 license and all fees collected by county officials must be paid
19 by them into the general fund of the county treasury or, in the
20 case of an agent issuing the license, an additional fee of three
21 dollars as compensation: *Provided*, That only one issuing fee of
22 three dollars may be collected by county officials or authorized
23 agents, respectively, for issuing two or more licenses at the
24 same time for use by the same person or for issuing combina-
25 tion resident statewide hunting, trapping and fishing licenses:
26 *Provided, however*, That a person with a lifetime license or a
27 person who has paid the original additional fee of three dollars
28 to a county official or issuing agent for a license shall only be
29 charged an additional fee of one dollar as additional compensa-
30 tion when subsequently purchasing an additional license from
31 a county official or issuing agent: *Provided further*, That
32 licenses may be issued electronically in a manner prescribed by
33 the director and persons purchasing electronically issued
34 licenses may be assessed, in addition to the license fee pre-
35 scribed in this article, an electronic issuance fee to be pre-
36 scribed by the director.

37 (c) In lieu of the license issuance fee prescribed in subsec-
38 tion (b) of this section, the director shall propose rules for
39 legislative approval in accordance with the provisions of article
40 three, chapter twenty-nine-a of this code governing the applica-
41 tion for and issuance of licenses by telephone and other
42 electronic methods.

43 (d) The director may propose rules for legislative approval
44 in accordance with the provisions of article three, chapter
45 twenty-nine-a of this code governing the management of
46 issuing agents.

§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 deposit the moneys
4 into an account at a financial institution at intervals designated
5 by the director with the approval of the state treasurer. The
6 payment shall be accompanied by a sales report. The form and
7 content of the sales report shall be prescribed by the director.

8 (b) Except where other provisions of this chapter specifi-
9 cally require direct payment of moneys into designated funds
10 for specific uses and purposes, all license fees received by the
11 director shall be promptly paid into the state treasury and
12 credited to the division of natural resources "license fund--
13 wildlife resources" which shall be used and paid out, upon order
14 of the director, solely for law enforcement and for other
15 purposes directly relating to the conservation, protection,
16 propagation and distribution of wildlife in this state pursuant to
17 the provisions of this chapter.

18 No funds from the "license fund--wildlife resources" may
19 be expended for recreational facilities or activities that are used
20 by or for the benefit of the general public, rather than purchas-
21 ers of hunting and fishing licenses.

22 The director shall retain ten percent of the "license
23 fund--wildlife resources" for capital improvements and land
24 purchases benefitting state wildlife, forty percent shall be
25 budgeted to the wildlife resources division, forty percent to law
26 enforcement and ten percent apportioned by the director within
27 provisions of this section. Any unexpended moneys for capital
28 improvements and land purchases shall be carried forward.

29 All interest generated from game and fish license fees shall
30 be used by the director for the division of natural resources in
31 the same manner as is provided for the use of license fees.

32 (c) Moneys received as donations to the hunters helping the
33 hungry program shall be deposited in the subaccount designated
34 “hunters helping the hungry fund”.

CHAPTER 187

(H. B. 4449 — By Delegates Yeager, Stemple, Beach,
Poling, Crosier, Boggs and R. Thompson)

[Passed March 2, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §20-2-46e of the code of West Virginia, 1931, as amended, relating to special hunting permit for disabled persons.

Be it enacted by the Legislature of West Virginia:

That §20-2-46e of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

1 (a) A Class Q permit is a special statewide hunting permit
2 entitling the permittee to hunt all legal species of game during
3 the designated hunting seasons from a motor vehicle in accor-
4 dance with the provisions of this section.

5 (b) A permit form shall be furnished by the director to an
6 applicant who meets the following requirements:

7 (1) He or she is permanently disabled in the lower extremi-
8 ties; and

9 (2) He or she holds a valid resident or nonresident statewide
10 hunting license, a senior citizens license or is otherwise exempt
11 from the license requirement.

12 (c) A licensed physician must certify the applicant's
13 permanent disability by completing the permit form. When
14 completed, the permit form constitutes a Class Q permit. The
15 Class Q permit and a completed license application shall be
16 submitted to the division, which will issue a wallet sized card
17 to the permittee. The card and all other documents and identifi-
18 cation required to be carried by this article shall be in the
19 permittee's possession when hunting.

20 (d) A Class Q permit entitles the holder to hunt from a
21 motor vehicle and, notwithstanding the provisions of subdivi-
22 sion (9), section five of this article, to possess a loaded firearm
23 in a motor vehicle, but only under the following circumstances:

24 (1) The motor vehicle is stationary;

25 (2) The engine of the motor vehicle is not operating;

26 (3) The permittee is the only occupant of the vehicle;

27 (4) The vehicle is not parked on the right-of-way of any
28 public road or highway; and

29 (5) The permittee observes all other pertinent laws and
30 regulations.

31 (e) The director may propose rules for legislative approval
32 in accordance with the provisions of article three, chapter
33 twenty-nine-a of this code setting forth the qualifications of
34 applicants and the permitting process.

CHAPTER 188

(Com. Sub. H. B. 4450 — By Delegates Yeager, Stemple, Beach,
Poling, Crosier, Boggs and R. Thompson)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §20-5-2 of the code of West Virginia, 1931, as amended, relating to permitting the sale of timber severed in a state park incidental to construction activities; use of gross proceeds derived from timber sales; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §20-5-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

1 (a) The director of the division of natural resources is
2 responsible for the execution and administration of the provi-
3 sions in this article as an integral part of the parks and recre-
4 ation program of the state and shall organize and staff the
5 section of parks and recreation for the orderly, efficient and
6 economical accomplishment of these ends. The authority
7 granted in the year one thousand nine hundred ninety-four to
8 the director of the division of natural resources to employ up to
9 six additional unclassified personnel to carry out the parks
10 functions of the division of natural resources is continued.

11 (b) The director of the division of natural resources shall:

12 (1) Establish, manage and maintain the state's parks and
13 recreation system for the benefit of the people of this state and
14 do all things necessary and incidental to the development and
15 administration of the state's parks and recreation system;

16 (2) Acquire property for the state in the name of the
17 division of natural resources by purchase, lease or agreement;
18 retain, employ and contract with legal advisors and consultants;
19 or accept or reject for the state, in the name of the division,
20 gifts, donations, contributions, bequests or devises of money,
21 security or property, both real and personal, and any interest in
22 the property, including lands and waters, for state park or
23 recreational areas for the purpose of providing public recre-
24 ation: *Provided*, That the provisions of section twenty, article
25 one of this chapter are specifically made applicable to any
26 acquisitions of land: *Provided, however*, That any sale, ex-
27 change or transfer of property for the purposes of completing
28 land acquisitions or providing improved recreational opportuni-
29 ties to the citizens of the state is subject to the procedures of
30 article one-a of this chapter: *Provided further*, That no sale of
31 any park or recreational area property, including lands and
32 waters, used for purposes of providing public recreation on the
33 effective date of this article and no privatization of any park
34 may occur without statutory authority;

35 (3) Approve and direct the use of all revenue derived from
36 the operation of the state parks and public recreation system for
37 the operation, maintenance and improvement of the system,
38 individual projects of the system or for the retirement of park
39 development revenue bonds;

40 (4) Effectively promote and market the state's parks, state
41 forests, state recreation areas and wildlife recreational resources
42 by approving the use of no less than twenty percent of the:

43 (A) Funds appropriated for purposes of advertising and
44 marketing expenses related to the promotion and development
45 of tourism, pursuant to subsection (j), section eighteen, article
46 twenty-two, chapter twenty-nine of this code; and

47 (B) Funds authorized for expenditure from the tourism
48 promotion fund for purposes of direct advertising, pursuant to
49 section twelve, article two, chapter five-b of this code and
50 section ten, article twenty-two-a, chapter twenty-nine of this
51 code;

52 (5) Issue park development revenue bonds as provided in
53 this article;

54 (6) Provide for the construction and operation of cabins,
55 lodges, resorts, restaurants and other developed recreational
56 service facilities, subject to the provisions of section fifteen of
57 this article and section twenty, article one of this chapter;

58 (7) The director may sell timber that has been severed in a
59 state park incidental to the construction of park facilities or
60 related infrastructure where the construction is authorized by
61 the Legislature in accordance with section twenty, article one
62 of this chapter, and the sale of the timber is otherwise in the
63 best interest of park development, without regard to proceeds
64 derived from the sale of timber. The gross proceeds derived
65 from the sale of timber shall be deposited into the operating
66 budget of the park from which the timber was harvested;

67 (8) Propose rules for legislative approval in accordance
68 with the provisions of article three, chapter twenty-nine-a of
69 this code to control the uses of parks: *Provided*, That the
70 director may not permit public hunting, the exploitation of
71 minerals or the harvesting of timber for commercial purposes
72 in any state park;

73 (9) Exempt designated state parks from the requirement that
74 all payments must be deposited in a bank within twenty-four
75 hours for amounts less than two hundred fifty dollars notwith-
76 standing any other provision of this code to the contrary;

77 (10) Waive the use fee normally charged to an individual or
78 group for one day's use of a picnic shelter or one week's use of
79 a cabin in a state recreation area when the individual or group
80 donates the materials and labor for the construction of the
81 picnic shelter or cabin: *Provided*, That the individual or group
82 was authorized by the director to construct the picnic shelter or
83 cabin and that it was constructed in accordance with the
84 authorization granted and the standards and requirements of the
85 division pertaining to the construction. The individual or group
86 to whom the waiver is granted may use the picnic shelter for
87 one reserved day or the cabin for one reserved week during
88 each calendar year until the amount of the donation equals the
89 amount of the loss of revenue from the waiver or until the
90 individual dies or the group ceases to exist, whichever first
91 occurs. The waiver is not transferable. The director shall permit
92 free use of picnic shelters or cabins to individuals or groups
93 who have contributed materials and labor for construction of
94 picnic shelters or cabins prior to the effective date of this
95 section. The director shall propose a legislative rule for
96 promulgation in accordance with the provisions of article three,
97 chapter twenty-nine-a of this code governing the free use of
98 picnic shelters or cabins provided for in this section, the
99 eligibility for free use, the determination of the value of the
100 donations of labor and materials, the appropriate definitions of
101 a group and the maximum time limit for the use;

102 (11) Provide within the parks a market for West Virginia
103 arts, crafts and products, which shall permit gift shops within
104 the parks to offer for sale items purchased on the open market
105 from local artists, artisans, craftsmen and suppliers and local or
106 regional crafts cooperatives;

107 (12) Provide that reservations for reservable campsites may
108 be made, upon two days advance notice, for any date for which
109 space is available within a state park or recreational area
110 managed by the parks and recreation section;

111 (13) Provide that reservations for all state parks and
112 recreational areas managed by the parks and recreation section
113 of the division may be made by use of a valid credit card; and

114 (14) Develop a plan to establish a centralized computer
115 reservation system for all state parks and recreational areas
116 managed by the parks and recreation section and to implement
117 the plan as funds become available.

CHAPTER 189

**(Com. Sub. for S. B. 251 — By Senators Snyder, Fanning, Hunter,
Jenkins, Oliverio, Rowe, Kessler, Weeks and White)**

[Passed February 17, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4 and §21-5F-5, all relating to providing requirements and limitations for mandatory nurse overtime in certain hospitals; providing legislative findings and purposes; defining terms; providing for certain requirements and limitations for hospital overtime; limiting number of hours worked in a day; providing exceptions to overtime limitations; providing that the division of labor enforce article; authorizing division of labor to propose rules providing administrative procedures; providing requirements for filing complaints; establishing administrative penalties; directing disposition of penalty proceeds; establishing

additional purposes for expenditures from health care cost review fund; and providing that new article does not amend other law.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4 and §21-5F-5, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-1. Legislative findings and purpose.

§21-5F-2. Definitions.

§21-5F-3. Hospital nursing overtime limitations and requirements.

§21-5F-4. Enforcement; offenses and penalties.

§21-5F-5. Relation to other laws.

§21-5F-1. Legislative findings and purpose.

1 The Legislature finds and declares that:

2 (1) It is essential that qualified registered nurses and other
3 licensed health care workers providing direct patient care be
4 available to meet the needs of patients;

5 (2) Quality patient care is jeopardized by nurses that work
6 unnecessarily long hours in hospitals;

7 (3) Health care workers, especially nurses, are leaving their
8 profession because of workplace stresses, long work hours and
9 depreciation of their essential role in the delivery of quality,
10 direct patient care;

11 (4) It is necessary to safeguard the efficiency, health and
12 general well-being of health care workers in hospitals, as well
13 as the health and general well-being of the persons who use
14 their services;

15 (5) It is further necessary that health care workers be aware
16 of their rights, duties and remedies with regard to hours worked
17 and patient safety; and

18 (6) Hospitals should provide adequate safe nursing staffing
19 without the use of mandatory overtime.

§21-5F-2. Definitions.

1 For the purposes of this article:

2 (1) "Hospital" means a facility licensed under the provi-
3 sions of article five-b, chapter sixteen of this code, but does not
4 include hospitals operated by state or federal agencies.

5 (2) "Nurse" means a certified or licensed practical nurse or
6 a registered nurse who is providing nursing services and is
7 involved in direct patient care activities or clinical services, but
8 does not include certified nurse anesthetists. Nurse managers
9 are included with respect to their delivery of in-hospital patient
10 care, but this is in no way intended to impact on their 24-hour
11 management responsibility for a unit, area or service.

12 (3) "Overtime" means the hours worked in excess of an
13 agreed upon, predetermined, regularly scheduled shift.

14 (4) "Taking action against" means discharging; disciplin-
15 ing; threatening; reporting to the board of nursing; discriminat-
16 ing against; or penalizing regarding compensation, terms,
17 conditions, location or privileges of employment.

18 (5) "Unforeseen emergent situation" means an unusual,
19 unpredictable or unforeseen circumstance such as, but not
20 limited to, an act of terrorism, a disease outbreak, adverse
21 weather conditions or natural disasters. An unforeseen emer-
22 gent situation does not include situations in which the hospital
23 has reasonable knowledge of increased patient volume or

24 decreased staffing, including, but not limited to, scheduled
25 vacations and scheduled health care worker medical leave.

§21-5F-3. Hospital nursing overtime limitations and requirements.

1 (a) Except as provided in subsections (b), (c), (d), (e) and
2 (f) of this section, a hospital is prohibited from mandating a
3 nurse, directly or through coercion, to accept an assignment of
4 overtime and is prohibited from taking action against a nurse
5 solely on the grounds that the nurse refuses to accept an
6 assignment of overtime at the facility if the nurse declines to
7 work additional hours because doing so may, in the nurse's
8 judgment, jeopardize patient or employee safety.

9 (b) Notwithstanding subsections (a) and (g) of this section,
10 a nurse may be scheduled for duty or mandated to continue on
11 duty in overtime status in an unforeseen emergent situation that
12 jeopardizes patient safety.

13 (c) Subsections (a) and (g) of this section do not apply
14 when a nurse may be required to fulfill prescheduled on-call
15 time, but nothing in this article shall be construed to permit an
16 employer to use on-call time as a substitute for mandatory
17 overtime.

18 (d) Notwithstanding subsections (a) and (g) of this section,
19 a nurse may be required to work overtime to complete a single
20 patient care procedure already in progress, but nothing in this
21 article shall be construed to permit an employer to use a staffing
22 pattern as a means to require a nurse to complete a procedure as
23 a substitute for mandatory overtime.

24 (e) Subsection (a) of this section does not apply when a
25 collective bargaining agreement is in place between nurses and
26 the hospital which is intended to substitute for the provisions of

27 this article by incorporating a procedure for the hospital to
28 require overtime.

29 (f) Subsection (a) of this section does not apply to voluntary
30 overtime.

31 (g) In the interest of patient safety, any nurse who works
32 twelve or more consecutive hours, as permitted by this section,
33 shall be allowed at least eight consecutive hours of off-duty
34 time immediately following the completion of the shift. Except
35 as provided in subsections (b), (c) and (d) of this section, no
36 nurse shall work more than sixteen hours in a 24-hour period.
37 The nurse is responsible for informing the employer hospital of
38 other employment experience during the 24-hour period in
39 question if this provision is to be invoked. To the extent that an
40 on-call nurse has actually worked sixteen hours in a hospital,
41 efforts shall be made by the hospital to find a replacement nurse
42 to work.

43 Each hospital shall designate an anonymous process for
44 patients and nurses to make staffing complaints related to
45 patient safety.

§21-5F-4. Enforcement; offenses and penalties.

1 (a) Pursuant to the powers set forth in article one of this
2 chapter, the commissioner of labor is charged with the enforce-
3 ment of this article. The commissioner shall propose legislative
4 and procedural rules in accordance with the provisions of article
5 three, chapter twenty-nine-a of this code to establish procedures
6 for enforcement of this article. These rules shall include, but
7 are not limited to, provisions to protect due process require-
8 ments, a hearings procedure and an appeals procedure.

9 (b) Any complaint must be filed with the commissioner of
10 labor regarding an alleged violation of the provisions of this
11 article must be made within thirty days following the occur-

12 rence of the incident giving rise to the alleged violation.
13 Notification of the alleged violation must be forwarded to the
14 hospital in question within three business days of filing.

15 (c) The administrative penalty for the first violation of this
16 article shall be a reprimand.

17 (d) The administrative penalty for the second offense of this
18 article shall be a reprimand and a fine not to exceed five
19 hundred dollars.

20 (e) The administrative penalty for the third and subsequent
21 offenses shall have a fine of not less than two thousand five
22 hundred dollars and not more than five thousand dollars for
23 each violation.

24 (f) To be eligible to be charged of a second offense or third
25 offense under this section, the subsequent offense must occur
26 within twelve months of the prior offense.

27 (g)(1) All moneys paid as administrative penalties pursuant
28 to this section shall be deposited into the health care cost review
29 fund provided by section eight, article twenty-nine-b, chapter
30 sixteen of this code.

31 (2) In addition to other purposes for which funds may be
32 expended from the health care cost review fund, the West
33 Virginia health care authority shall expend moneys from the
34 fund, in amounts up to but not exceeding amounts received
35 pursuant to subdivision (1) of this subsection, for the following
36 activities in the state of West Virginia:

37 (A) Establishment of scholarships in medical schools;

38 (B) Establishment of scholarships for nurses training;

39 (C) Establishment of scholarships in the public health field;

40 (D) Grants to finance research in the field of drug addiction
41 and development of cures therefor;

42 (E) Grants to public institutions devoted to the care and
43 treatment of narcotic addicts; and

44 (F) Grants for public health research, education and care.

§21-5F-5. Relation to other laws.

1 Any law of this state currently enacted shall not be deemed
2 to be amended, rescinded or otherwise affected by any provi-
3 sion of this article, but shall continue in full force and effect.

CHAPTER 190

(Com. Sub. for H. B. 4143 — By Delegates Hatfield,
Brown, Foster and Perdue)

[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-8a; to amend said code by adding thereto a new section, designated §30-7A-7a; and to amend said code by adding thereto a new article, designated §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6, §30-7B-7, §30-7B-8, §30-7B-9 and §30-7B-10, all relating to creating the West Virginia center for nursing; legislative findings; center assuming the duties of the nursing shortage study commission; authorizing supplemental nursing licensure fees; emergency rules; establishing a board of directors for the center; setting forth powers and duties; permitting expense reimbursement; establishing special revenue account; reporting requirement; and continuation.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-7-8a; that said code be amended by adding thereto a new section, designated §30-7A-7a; and that said code be amended by adding thereto a new article, designated §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6, §30-7B-7, §30-7B-8, §30-7B-9 and §30-7B-10, all to read as follows:

Article

- 7. Registered Professional Nurses.**
- 7A. Practical Nurses.**
- 7B. Center for Nursing.**

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-8a. Supplemental fees to fund center for nursing; emergency rules.

1 (a) The board is authorized to assess a supplemental
2 licensure fee not to exceed ten dollars per license per year. The
3 supplemental licensure fee is to be used to fund the center for
4 nursing and to carry out its purposes as set forth in article
5 seven-b of this chapter.

6 (b) The board shall propose rules for legislative approval in
7 accordance with the provisions of article three, chapter twenty-
8 nine-a of this code to establish the supplemental licensure fee.

9 (c) The board may promulgate emergency rules pursuant to
10 the provisions of section fifteen, article three, chapter twenty-
11 nine-a of this code for the initial fee assessment.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-7a. Supplemental fees to fund center for nursing; emergency rules.

1 (a) The board is authorized to assess a supplemental
2 licensure fee not to exceed ten dollars per license per year. The
3 supplemental licensure fee is to be used to fund the center for
4 nursing and to carry out its purposes as set forth in article
5 seven-b of this chapter.

6 (b) The board shall propose rules for legislative approval in
7 accordance with the provisions of article three, chapter twenty-
8 nine-a of this code to establish the supplemental licensure fee.

9 (c) The board may promulgate emergency rules pursuant to
10 the provisions of section fifteen, article three, chapter twenty-
11 nine-a of this code for the initial fee assessment.

ARTICLE 7B. CENTER FOR NURSING.

- §30-7B-1. Legislative findings.
- §30-7B-2. Definitions.
- §30-7B-3. West Virginia center for nursing.
- §30-7B-4. Center's powers and duties.
- §30-7B-5. Board of directors.
- §30-7B-6. Board's powers and duties.
- §30-7B-7. Reimbursement for expenses.
- §30-7B-8. Special revenue account.
- §30-7B-9. Reports.
- §30-7B-10. Continuation.

§30-7B-1. Legislative findings.

1 The Legislature finds that through the study of the nursing
2 shortage study commission, it is essential that there be qualified
3 registered professional nurses and other licensed nurses to meet
4 the needs of patients. Without qualified nurses, quality patient
5 care is jeopardized. The nursing population is aging and fewer
6 students are entering nursing programs.

7 Therefore, the Legislature declares to ensure quality health
8 care, recruitment and retention of nurses is important and a
9 center is needed to address the nursing shortage crisis in West
10 Virginia.

§30-7B-2. Definitions.

1 (a) "Board" means the board of directors for the West
2 Virginia center for nursing.

3 (b) "Center" means the West Virginia center for nursing.

4 (c) "Direct patient care", as used in this article, means
5 health care that provides for the physical, emotional, diagnostic
6 or rehabilitative needs of a patient, or health care that involves
7 examination, treatment or preparation for diagnostic tests or
8 procedures.

§30-7B-3. West Virginia center for nursing.

1 (a) Effective the first day of July, two thousand four, the
2 nursing shortage study commission, established pursuant to the
3 provisions of section eighteen, article seven, chapter thirty of
4 this code, is hereby terminated and the powers and duties of the
5 commission are transferred to the West Virginia center for
6 nursing.

7 (b) Effective the first day of July, two thousand four, the
8 West Virginia center for nursing is hereby created to address
9 the issues of recruitment and retention of nurses in West
10 Virginia.

11 (c) The higher education policy commission shall provide
12 suitable office space for the center. The commission shall share
13 statistics and other pertinent information with the center and
14 shall work cooperatively to assist the center to achieve its
15 objectives.

§30-7B-4. Center's powers and duties.

1 The West Virginia center for nursing shall have the
2 following powers and duties:

3 (1) Establish a statewide strategic plan to address the
4 nursing shortage in West Virginia;

5 (2) Establish and maintain a database of statistical informa-
6 tion regarding nursing supply, demand and turnover rates in
7 West Virginia and future projections;

8 (3) Coordinate communication between the organizations
9 that represent nurses, health care providers, businesses, con-
10 sumers, legislators and educators;

11 (4) Enhance and promote recruitment and retention of
12 nurses by creating reward, recognition and renewal programs;

13 (5) Promote media and positive image building efforts for
14 nursing, including establishing a statewide media campaign to
15 recruit students of all ages and backgrounds to the various
16 nursing programs throughout West Virginia;

17 (6) Promote nursing careers through educational and
18 scholarship programs, programs directed at nontraditional
19 students and other workforce initiatives;

20 (7) Explore solutions to improve working environments for
21 nurses to foster recruitment and retention;

22 (8) Explore and establish loan repayment and scholarship
23 programs designed to benefit nurses who remain in West
24 Virginia after graduation and work in hospitals and other health
25 care institutions;

26 (9) Establish grants and other programs to provide financial
27 incentives for employers to encourage and assist with nursing
28 education, internships and residency programs;

29 (10) Develop incentive and training programs for long-term
30 care facilities and other health care institutions to use self-

31 assessment tools documented to correlate with nurse retention,
32 such as the magnet hospital program;

33 (11) Explore and evaluate the use of year-round day,
34 evening and weekend nursing training and education programs;

35 (12) Establish a statewide hotline and website for informa-
36 tion about the center and its mission and nursing careers and
37 educational opportunities in West Virginia;

38 (13) Evaluate capacity for expansion of nursing programs,
39 including the availability of faculty, clinical laboratories,
40 computers and software, library holdings and supplies;

41 (14) Oversee development and implementation of education
42 and matriculation programs for health care providers covering
43 certified nursing assistants, licensed practical nurses, registered
44 professional nurses, advanced nurse practitioners and other
45 advanced degrees;

46 (15) Seek to improve the compensation of all nurses,
47 including nursing educators; and

48 (16) Perform such other activities as needed to alleviate the
49 nursing shortage in West Virginia.

§30-7B-5. Board of directors.

1 (a) The West Virginia center for nursing shall be governed
2 by a board of directors consisting of the following thirteen
3 members:

4 (1) One citizen member;

5 (2) Two representatives from the West Virginia board of
6 examiners for registered professional nurses, as follows:

7 (A) One representing a bachelor and higher degree pro-
8 gram; and

9 (B) One representing an associate degree program;

10 (3) One representative from the West Virginia board of
11 examiners for licensed practical nurses;

12 (4) One representative from the West Virginia nurses
13 association;

14 (5) One nurse representing a rural health care facility;

15 (6) Two representatives of employers of nurses, as follows:

16 (A) One director of nursing; and

17 (B) One health care administrator;

18 (7) Two registered professional staff nurses engaged in
19 direct patient care;

20 (8) One licensed practical nurse engaged in direct patient
21 care; and

22 (9) Two ex officio members, as follows:

23 (A) The secretary of the department of health and human
24 resources or a designee; and

25 (B) A representative from the workforce development
26 office.

27 (b) Before the first day of July, two thousand four, the
28 governor, by and with the consent of the Senate, shall appoint
29 the eleven citizen members as follows:

30 (1) The following members for an initial term of two years:

- 31 (A) One representative from the West Virginia board of
32 examiners for registered professional nurses representing an
33 associate degree program;
- 34 (B) One representative from the West Virginia board of
35 examiners for licensed practical nurses;
- 36 (C) One nurse representing a rural health care facility;
- 37 (D) One director of nursing; and
- 38 (E) One registered professional staff nurse engaged in
39 direct patient care;
- 40 (2) The following members for an initial term of four years:
- 41 (A) One citizen member;
- 42 (B) One representative from the West Virginia board of
43 examiners for registered professional nurses representing a
44 bachelor and higher degree program;
- 45 (C) One representative from the West Virginia nurses
46 association;
- 47 (D) One health care administrator;
- 48 (E) One registered professional staff nurse engaged in
49 direct patient care; and
- 50 (F) One licensed practical nurse engaged in direct patient
51 care.
- 52 (d) After the initial terms expire, the terms of all the
53 members shall be four years, with no member serving more
54 than two consecutive terms.

55 (e) The board shall designate a chairperson. Six members
56 shall constitute a quorum.

§30-7B-6. Board's powers and duties.

1 The board of directors shall have the following powers and
2 duties:

3 (1) Employ an executive director and other personnel
4 necessary to carry out the provisions of this article;

5 (2) Determine operational policy;

6 (3) Seek and accept public and private funding;

7 (4) Expend money from the center for nursing fund to carry
8 out the purposes of this article;

9 (5) Propose rules for legislative approval in accordance
10 with the provisions of article three, chapter twenty-nine of this
11 code to implement the provisions of this article;

12 (6) Impanel an advisory committee of stakeholders to
13 provide consultation to the board; and

14 (7) Do such other acts as necessary to alleviate the nursing
15 shortage in West Virginia.

§30-7B-7. Reimbursement for expenses.

1 The board members shall serve without compensation, but
2 may be reimbursed for actual and necessary expenses incurred
3 for each day or portion thereof engaged in the discharge of
4 official duties in a manner consistent with guidelines of the
5 travel management office of the department of administration.

§30-7B-8. Special revenue account.

1 (a) A special revenue account known as the “center for
2 nursing fund” is hereby established in the state treasury to be
3 administered by the board to carry out the purposes of this
4 article.

5 (b) The account shall be funded by:

6 (1) Assessing all nurses licensed by the board of examiners
7 for registered professional nurses, pursuant to section eight-a,
8 article seven of this chapter, and the board of examiners for
9 licensed practical nurses, pursuant to section seven-a, article
10 seven-a of this chapter, a supplemental licensure fee not to
11 exceed ten dollars per year; and

12 (2) Other public and private funds.

13 (c) Beginning the first day of January, two thousand six,
14 and continuing at least two years, a minimum of an equivalent
15 of one third of the funding from the annual supplemental
16 licensure fees shall be used for loan and scholarship programs.

§30-7B-9. Reports.

1 The center shall report annually to the joint committee on
2 government and finance on its progress in developing a
3 statewide strategic plan to address the nursing shortage in West
4 Virginia, along with drafts of proposed legislation needed to
5 implement the center’s plan.

§30-7B-10. Continuation.

1 The West Virginia center for nursing shall continue to exist
2 until the first day of July, two thousand eight, unless sooner
3 terminated, continued or reestablished pursuant to the provi-
4 sions of article ten, chapter four of this code.

CHAPTER 191

(Com. Sub. for S. B. 675 — By Senators Ross and Love)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-22-13, §17-22-15 and §17-22-16 of the code of West Virginia, 1931, as amended, all relating to the issuance of licenses and permits for outdoor advertising signs; increasing fees for licenses and permits; and establishing fees for inspections of signs and sign locations.

Be it enacted by the Legislature of West Virginia:

That §17-22-13, §17-22-15 and §17-22-16 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

§17-22-15. Permit required for each sign, etc.; applications; refusal of permits; expiration and renewal; change of advertising copy; revocation; fee; judicial review.

§17-22-16. Permit identification number for signs; fastening to signs.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

1 No person shall engage or continue in the business of
2 outdoor advertising in this state without first obtaining a
3 license for outdoor advertising from the commissioner; and no
4 person shall construct, erect, operate, use, maintain, lease or
5 sell any outdoor advertising sign, display or device in this state

6 without first obtaining a license from the commissioner. The
7 commissioner shall charge an annual license fee in the amount
8 of one hundred twenty-five dollars, payable in advance, for
9 licensees obtaining up to twenty permits. Licensees, including
10 subsidiaries and affiliates, obtaining twenty-one or more
11 permits shall pay an annual fee of one thousand dollars,
12 payable in advance. Applications for licenses, or renewal of
13 licenses, shall be made on forms furnished by the commis-
14 sioner and shall contain any pertinent information required by
15 the commissioner and shall be accompanied by the annual fee.
16 Licenses granted under this section expire on the thirtieth day
17 of June of each year and shall not be prorated. Applications for
18 the renewal of licenses shall be made not less than thirty days
19 prior to the date of expiration. Nothing in this section shall be
20 construed to require any person to obtain a license who
21 constructs, erects, operates, uses or maintains an outdoor
22 advertising sign, display or device solely on his or her own
23 property.

24 The commissioner may, after thirty days' notice in writing
25 to the licensee, make and enter an order revoking any license
26 granted by him or her upon repayment of a proportionate part
27 of the license fee, in any case where he or she finds that any
28 material information required to be given in the application for
29 the license is knowingly false or misleading or that the licensee
30 has violated any of the provisions of this article, unless the
31 licensee, before the expiration of said thirty days, corrects the
32 false or misleading information and complies with the provi-
33 sions of this article. The order shall be accompanied by
34 findings of fact and conclusions of law upon which the order
35 was made and entered. Any person adversely affected by an
36 order made and entered by the commissioner is entitled to
37 judicial review of the order. The judicial review shall be in the
38 circuit court for the county in which the owner of the sign has
39 his or her principal place of business in this state, or in the

40 circuit court of Kanawha county if all parties agree. The
41 judgment of the circuit court is final unless reversed, vacated
42 or modified on appeal to the Supreme Court of Appeals of
43 West Virginia. Legal counsel and services for the commis-
44 sioner in appeal proceedings in any circuit court and the
45 Supreme Court of Appeals shall be provided by the attorney
46 general or his or her assistants, and in appeal proceedings in
47 any circuit court by the prosecuting attorney of the county as
48 well, all without additional compensation. The commissioner
49 may employ special counsel to represent the commissioner in
50 a particular proceeding.

**§17-22-15. Permit required for each sign, etc.; applications;
refusal of permits; expiration and renewal;
change of advertising copy; revocation; fee;
judicial review.**

1 (a) Except as in this article otherwise provided, no person
2 shall construct, erect, operate, use, maintain or cause or permit
3 to be constructed, erected, operated, used or maintained any
4 advertising sign, display or device without first obtaining a
5 permit for the advertising sign, display or device from the
6 commissioner and paying the annual fee for the advertising
7 sign, display or device as provided in this section. The
8 commissioner shall not issue a permit to any person who has
9 not obtained the license provided for in section thirteen of this
10 article.

11 (b) A separate application for a permit shall be made for
12 each separate advertising sign, display or device, on a form
13 furnished by the commissioner, the application shall be signed
14 by the applicant or his or her representative duly authorized in
15 writing to act for him or her and shall describe and set forth the
16 size, shape and the nature of the proposed advertising sign,
17 display or device and its actual or proposed location with
18 sufficient accuracy to enable the commissioner to locate and

19 identify it. Every application for a changeable message sign
20 shall be accompanied by a fee of five hundred dollars, which
21 shall be retained by the commissioner if the permit is issued.
22 Every application for all other signs shall be accompanied by
23 a fee of twenty dollars for each advertising sign, display or
24 device, which shall be retained by the commissioner if the
25 permit is issued. In addition, a nonrefundable inspection fee of
26 seventy-five dollars shall be charged for each proposed
27 location along interstate and federal-aid primary highways. A
28 nonrefundable inspection fee of twenty-five dollars shall be
29 charged for each proposed location along all other public
30 roads. An annual permit renewal fee, not to exceed sixty
31 dollars per permit, shall be charged for renewal of each
32 changeable message sign. Permit renewal fees for all other
33 signs shall be established by legislative rule not to exceed
34 twenty-five dollars per permit annually. Each portion of an
35 advertising sign upon which a display is posted or exhibited
36 constitutes a separate advertising sign for purposes of this
37 section. If the permit is refused, the commissioner shall make
38 and enter an order to that effect and shall cause a copy of the
39 order to be served on the applicant by certified mail, return
40 receipt requested, and shall refund one-half the fee to the
41 applicant. The order shall be accompanied by findings of fact
42 and conclusions of law upon which the order was made and
43 entered. Each application shall be accompanied by an affidavit
44 of the applicant or his or her agent that the owner or other
45 person in control or possession of the real property upon which
46 the advertising sign, display or device is to be constructed,
47 erected, operated, used or maintained has consented to having
48 the advertising sign, display or device on his or her property.
49 Application shall be made in like manner for a permit to
50 operate, use or maintain any existing advertising sign, display
51 or device. Permits issued under this section expire on the
52 thirtieth day of June of each year and shall not be prorated and
53 may be renewed upon the payment of a renewal fee as provided

54 in this section. No application is required for a renewal of a
55 permit.

56 (c) For all signs other than changeable message signs, if
57 more than one side of an advertising sign is used for advertis-
58 ing, a permit application or renewal fee for each side is
59 required. One permit application or renewal fee shall be
60 charged for each changeable message sign. Advertisements
61 sculptured in the round shall be treated as using three sides.

62 (d) The holder of a permit, during the term of the permit,
63 has the right to change the advertising copy of the structure or
64 sign for which it was issued without payment of any additional
65 fee.

66 (e) The commissioner may, after thirty days' notice in
67 writing to the permittee, make and enter an order revoking any
68 permit issued by him or her under this section upon repayment
69 of a proportionate part of the fee in any case where it shall
70 appear to the commissioner that the application for the permit
71 contains knowingly false or misleading information or that the
72 permittee has violated any of the provisions of this article,
73 unless the permittee shall, before the expiration of the thirty
74 days, correct the false or misleading information and comply
75 with the provisions of this article. The order shall be accompa-
76 nied by findings of fact and conclusions of law upon which the
77 order was made and entered. If the construction, erection,
78 operation, use or maintenance of any advertising sign, display
79 or device for which a permit is issued by the commissioner and
80 the permit fee has been paid as provided for in this section is
81 prevented by any zoning board, commission or other public
82 agency which also has jurisdiction over the proposed advertis-
83 ing sign, display or device, or its site, the fee for the advertising
84 sign, display or device shall be returned by the commissioner
85 and the permit revoked. But one-half the fee shall be consid-
86 ered to have accrued upon the erection of an advertising sign

87 or structure or the display of advertising material followed by
88 any inspection by the commissioner or his or her representa-
89 tives.

90 (f) Any person adversely affected by an order made and
91 entered by the commissioner refusing to grant or revoking a
92 permit is entitled to judicial review of the order. The judicial
93 review shall be: (1) In the county in which the person applying
94 for the permit has his or her principal place of business in this
95 state; or (2) in the circuit court for the county in which the sign
96 for which the permit is sought is to be located; or (3) in the
97 circuit court of Kanawha County if all parties agree. The
98 judgment of the circuit court is final unless reversed, vacated
99 or modified on appeal to the Supreme Court of Appeals of
100 West Virginia. Legal counsel and services for the commis-
101 sioner in appeal proceedings in any circuit court and the
102 Supreme Court of Appeals shall be provided by the attorney
103 general or his or her assistants, and in appeal proceedings in
104 any circuit court by the prosecuting attorney of the county as
105 well, all without additional compensation. The commissioner
106 may employ special counsel to represent the commissioner in
107 a particular proceeding.

§17-22-16. Permit identification number for signs; fastening to signs.

1 Every permit issued by the commissioner shall be assigned
2 a separate identification number and each permittee shall fasten
3 to each advertising sign or device and each advertising display
4 not posted on an advertising sign a label or marker not larger
5 than two inches by six inches, which shall be furnished by the
6 commissioner, and on which shall be plainly visible the permit
7 number, the expiration date of the permit and the name of the
8 permittee. Permittees shall be charged five dollars for each
9 label or marker issued. The construction, erection, operation,
10 use or maintenance of an outdoor advertising sign, display or

11 device without having affixed to it a label or marker shall be
12 prima facie evidence that it has been constructed or erected and
13 is being operated, used or maintained in violation of the
14 provisions of this article.

CHAPTER 192

**(H. B. 4740 — By Delegates Michael, Doyle, Campbell,
Leach, Boggs, Stalnaker and Warner)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-12D-1, §29-12D-2 and §29-12D-3, all relating to the establishment, initial funding and operation of a patient injury compensation fund; creating a patient injury compensation fund; providing initial funding; providing the fund is not an insurer or insurance company under the code; providing for administration by the board of risk and insurance management; specifying certain powers and authority of the board; protecting the assets of the fund; requiring an annual audit of the fund by an independent actuary; providing immunity for the state and its agents for the debts, liabilities or obligations of the fund; providing for payments from the fund to qualified claimants; providing limits on the amount on payment in respect of any occurrence; authorizing payments from the fund either in lump sums or periodic payments; establishing procedures; providing for proration of payments under certain circumstances; authorizing the payment of reasonable attorney fees; and providing for appeals.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §29-12D-1, §29-12D-2 and §29-12D-3, all to read as follows:

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1. Creation of patient injury compensation fund; purpose; initial funding of patient injury compensation fund.

§29-12D-2. Administration of fund; investment of fund assets; annual actuarial review and audit; fund assets and liabilities not assets and liabilities of the state.

§29-12D-3. Payments from the patient injury compensation fund.

§29-12D-1. Creation of patient injury compensation fund; purpose; initial funding of patient injury compensation fund.

1 (a) There is created the West Virginia patient injury
2 compensation fund, for the purpose of providing fair and
3 reasonable compensation to claimants in medical malpractice
4 actions for any portion of economic damages awarded that is
5 uncollectible as a result of limitations on economic damage
6 awards for trauma care, or as a result of the operation of the
7 joint and several liability principles and standards, set forth in
8 article seven-b, chapter fifty-five of this code. The fund shall
9 consist of all contributions, revenues and moneys which may be
10 paid into the fund from time to time by the state of West
11 Virginia or from any other source whatsoever, together with
12 any and all interest, earnings, dividends, distributions, moneys
13 or revenues of any nature whatsoever accruing to the fund.

14 (b) Initial funding for the fund shall be provided as follows:
15 during fiscal year two thousand five, two million two hundred
16 thousand dollars of the revenues that would otherwise be
17 transferred to the tobacco account established at subsection (b),
18 section two, article eleven-a, chapter four of this code pursuant
19 to the provisions of section fourteen, article three, chapter

20 thirty-three of this code shall be transferred to the fund; during
21 fiscal year two thousand six, two million two hundred thousand
22 dollars of the revenues that would otherwise be transferred to
23 the tobacco account established at subsection (b), section two,
24 article eleven-a, chapter four of this code pursuant to the
25 provisions of section fourteen, article three, chapter thirty-three
26 of this code, shall be transferred to the fund; and during fiscal
27 year two thousand seven, two million two hundred thousand
28 dollars of the revenues that would otherwise be transferred to
29 the tobacco account established at subsection (b), section two,
30 article eleven-a, chapter four of this code pursuant to the
31 provisions of section fourteen, article three, chapter thirty-three
32 of this code shall be transferred to the fund. Beginning fiscal
33 year two thousand eight, if and to the extent additional funding
34 for the fund is required from time to time to maintain the
35 actuarial soundness of the fund, the additional funding may be
36 provided by further act of the Legislature, either from the
37 revenue stream identified in this subsection or otherwise.
38 Payments to the tobacco fund shall be extended until the
39 tobacco fund is repaid in full.

40 (c) The fund is not and shall not be considered a defendant
41 in any civil action arising under article seven-b, chapter fifty-
42 five of this code.

43 (d) The fund is not and shall not be considered an insurance
44 company or insurer for any purpose under this code.

**§29-12D-2. Administration of fund; investment of fund assets;
annual actuarial review and audit; fund assets
and liabilities not assets and liabilities of the state.**

1 (a) The patient injury compensation fund shall be imple-
2 mented, administered and operated by the board of risk and
3 insurance management. In addition to any other powers and

4 authority expressly or impliedly conferred on the board of risk
5 and insurance management in this code, the board may:

6 (1) Receive, collect and deposit all revenues and moneys
7 due the fund;

8 (2) Employ, or in accordance with the provisions of law
9 applicable contract for personal, professional or consulting
10 services, retain the services of a qualified competent actuary to
11 perform the annual actuarial study of the fund required by this
12 section and advise the board on all aspects of the fund's
13 administration, operation and defense which require application
14 of the actuarial science;

15 (3) Contract for any services necessary or advisable to
16 implement the authority and discharge the responsibilities
17 conferred and imposed on the board by this article;

18 (4) Employ, or contract with, legal counsel of the board's
19 choosing to advise and represent the board and represent the
20 fund in respect of any and all matters relating to the operation
21 of the fund and payments out of the fund;

22 (5) Employ necessary or appropriate clerical personnel to
23 carry out the responsibilities of the board under this part; and

24 (6) Promulgate rules, in accordance with article three,
25 chapter twenty-nine-a of this code as it considers necessary or
26 advisable to implement the authority of and discharge the
27 responsibilities conferred and imposed on the board by this
28 article.

29 (b) The assets of the fund, and any and all income, divi-
30 dends, distributions or other income or moneys earned by or
31 accruing to the benefit of the fund, shall be held in trust for the
32 purposes contemplated by this article, and shall not be spent for

33 any other purpose: *Provided*, That the assets of the fund may be
34 used to pay for all reasonable costs and expenses of any nature
35 whatsoever associated with the ongoing administration and
36 operation of the fund. All assets of the fund from time to time
37 shall be deposited with, held and invested by, and accounted for
38 separately by the investment management board. All moneys
39 and assets of the fund shall be invested and reinvested by the
40 investment management board in the same manner as provided
41 by law for the investment of other trust fund assets held and
42 invested by the investment management board.

43 (c) The board shall cause an annual review of the assets and
44 liabilities of the fund to be conducted on an annual basis by a
45 qualified, independent actuary.

46 (d) The board shall cause an audit of the fund to be con-
47 ducted on an annual basis by a qualified, independent auditor.

48 (e) The state of West Virginia is not liable for any liabilities
49 of the fund. Claims or expenses against the fund are not a debt
50 of the state of West Virginia or a charge against the general
51 revenue fund of the state of West Virginia.

§29-12D-3. Payments from the patient injury compensation fund.

1 (a) Other than payments in connection with the ongoing
2 operation and administration of the fund, no payments may be
3 made from the fund other than in satisfaction of claims for
4 economic damages to qualified claimants who would have
5 collected economic damages but for the operation of the limits
6 on economic damages set forth in article seven-b, chapter fifty-
7 five of this code.

8 (b) For purposes of this article, a qualified claimant must be
9 both a “patient” and a “plaintiff” as those terms are defined in
10 article seven-b, chapter fifty-five of this code.

11 (c) Any qualified claimant seeking payment from the fund
12 must establish to the satisfaction of the board that he or she has
13 exhausted all reasonable means to recover from all applicable
14 liability insurance an award of economic damages, following
15 procedures prescribed by the board by legislative rule.

16 (d) Upon a determination by the board that a qualified
17 claimant to the fund for compensation has exhausted all
18 reasonable means to recover from all applicable liability
19 insurance an award of economic damages arising under article
20 seven-b, chapter fifty-five of this code, the board shall make a
21 payment or payments to the claimant for economic damages.
22 The economic damages must have been awarded but be
23 uncollectible after the exhaustion of all reasonable means of
24 recovery of applicable insurance proceeds. In no event shall the
25 amount paid by the board in respect to any one occurrence
26 exceed one million dollars or the maximum amount of money
27 that could have been collected from all applicable insurance
28 prior to the creation of the patient injury compensation fund
29 under this article, regardless of the number of plaintiffs or the
30 number of defendants or, in the case of wrongful death,
31 regardless of the number of distributees.

32 (e) The board, in its discretion, may make payments to a
33 qualified claimant in a lump sum amount or in the form of
34 periodic payments. Periodic payments are to be based upon the
35 present value of the total amount to be paid by the fund to the
36 claimant by using federally approved qualified assignments.

37 (f) In its discretion, the board may make a payment or
38 payments out of the fund to a qualified claimant in connection
39 with the settlement of claims arising under article seven-b,
40 chapter fifty-five of this code, all according to rules promul-
41 gated by the board. The board shall prior to making payment
42 determine that payment from the fund to a qualified claimant is

43 in the best interests of the fund. When the claimant and the
44 board agree upon a settlement amount, the following procedure
45 shall be followed:

46 (1) A petition shall be filed by the claimant with the court
47 in which the action is pending, or if none is pending, in a court
48 of appropriate jurisdiction, for approval of the agreement
49 between the claimant and the board.

50 (2) The court shall set the petition for hearing as soon as the
51 court's calendar permits. Notice of the time, date and place of
52 hearing shall be given to the claimant and to the board.

53 (3) At the hearing the court shall approve the proposed
54 settlement if the court finds it to be valid, just and equitable.

55 (g) If and to the extent that any payment to one or more
56 qualified claimants under this section would deplete the fund
57 during any fiscal year, payments to and among qualified
58 claimant's shall be prorated during the fiscal year according to
59 the rules promulgated by the board. Any amounts due and
60 unpaid to qualified claimants shall be paid in subsequent fiscal
61 years from available funds, but only to the extent funds are
62 available in any fiscal year, according to the board's rules.

63 (h) Payments out of the fund may be used to pay reasonable
64 attorney fees of attorneys representing qualified claimants
65 receiving compensation in respect of economic damages as
66 established by the board of risk and insurance management.

67 (i) The claimant may appeal a final decision made by the
68 board pursuant to the provisions of article five, chapter twenty-
69 nine-a of this code.

CHAPTER 193

**(H. B. 4084 — By Delegates Michael, Mezzatesta, Leach,
Warner, Foster, Varner and Stalnaker)**

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17, all relating generally to the creation of a pharmaceutical program for the state; legislative findings; definitions; creation of the prescription drug assistance clearinghouse program; requiring costs of program to be paid by drug manufacturers; transfer of ownership of the program to the state; establishment of pharmaceutical discount program; eligibility for participation in the pharmaceutical discount program; discount pass through; creation of a West Virginia pharmaceutical cost management council; establishing membership; establishing powers and responsibilities; reporting requirements; authority to investigate the feasibility of purchasing Canadian drugs; authority to establish a pricing schedule to be implemented upon concurrent resolution of the Legislature; authority to explore numerous strategies, policies, and programs, including, but not limited to, referenced prices for prescription drug purchases and pricing in the state; authority to implement certain designated programs; state responsibilities; prohibiting restraint of trade; providing civil and criminal penalties for restraint of trade; advertising costs and reporting; rule-making authority; sunset provisions; and identifying potential use of savings.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17, all to read as follows:

ARTICLE 3C. PHARMACEUTICAL AVAILABILITY AND AFFORDABILITY ACT OF 2004.

- §5A-3C-1. Title.
- §5A-3C-2. Purpose.
- §5A-3C-3. Definitions.
- §5A-3C-4. Creation of clearinghouse program.
- §5A-3C-5. Pharmaceutical discount program; establishment; eligible individuals; discount pass through; terms.
- §5A-3C-6. Creation of program; administrative support; medicaid and chip program.
- §5A-3C-7. Multistate discussion group.
- §5A-3C-8. West Virginia pharmaceutical cost management council.
- §5A-3C-9. Investigation of Canadian drugs; wholesaling; federal waivers.
- §5A-3C-10. Director's powers; ability to enter drug purchasing contracts.
- §5A-3C-11. Agency's management ability continued.
- §5A-3C-12. Restraint of trade; civil and criminal violations defined.
- §5A-3C-13. Advertising costs; reporting of same.
- §5A-3C-14. State role.
- §5A-3C-15. Rulemaking.
- §5A-3C-16. Sunset provision.
- §5A-3C-17. Potential use of savings.

§5A-3C-1. Title.

- 1 The provisions of this article shall be known as and referred
- 2 to as the "West Virginia Pharmaceutical Availability and
- 3 Affordability Act".

§5A-3C-2. Purpose.

- 1 (a) The Legislature finds:

2 (1) That the rising cost of prescription drugs has imposed
3 a significant hardship on individuals who have limited budgets,
4 are uninsured or who have prescription coverage that is unable
5 to control costs successfully due to cost shifting and disparate
6 pricing policies;

7 (2) That the average cost per prescription for seniors rose
8 significantly between one thousand nine hundred ninety-two
9 and two thousand, and is expected to continue increasing
10 significantly through two thousand ten;

11 (3) That there is an increasing need for citizens of West
12 Virginia to have affordable access to prescription drugs; and

13 (4) That the Legislature does not intend the imposition of
14 the programs under this article to penalize or otherwise jeopardize
15 the benefits of veterans and other recipients of federal
16 supply schedule drug prices.

17 (b) In an effort to promote healthy communities and to
18 protect the public health and welfare of West Virginia residents,
19 the Legislature finds that it is its responsibility to make every
20 effort to provide affordable prescription drugs for all residents
21 of West Virginia.

§5A-3C-3. Definitions.

1 In this article:

2 (1) "Advertising or marketing" means any manner of
3 communication of information, either directly or indirectly, that
4 is paid for and usually persuasive in nature about products,
5 services or ideas related to pharmaceuticals by identified
6 sponsors through various media, persons or other forms as
7 further defined by legislative rule.

8 (2) “AWP” or “average wholesale price” means the amount
9 determined from the latest publication of the blue book, a
10 universally subscribed pharmacist reference guide annually
11 published by the Hearst Corporation. “AWP” or “average
12 wholesale price” may also be derived electronically from the
13 drug pricing database synonymous with the latest publication
14 of the blue book and furnished in the national drug data file
15 (NDDF) by first data bank (FDB), a service of the Hearst
16 Corporation.

17 (3) “Dispensing fee” means the fee charged by a pharmacy
18 to dispense pharmaceuticals.

19 (4) “Drug manufacturer” or “pharmaceutical manufacturer”
20 means any entity which is engaged in: (A) The production,
21 preparation, propagation, compounding, conversion or process-
22 ing of prescription drug products, either directly or indirectly by
23 extraction from substances of natural origin, or independently
24 by means of chemical synthesis or by a combination of extrac-
25 tion and chemical synthesis; or (B) in the packaging, repackag-
26 ing, labeling, relabeling or distribution of prescription drug
27 products. “Drug manufacturer” or “pharmaceutical manufact-
28 urer” does not include a wholesale distributor of drugs or a
29 retail pharmacy licensed under state law.

30 (5) “Federal supply schedule” or “FSS” means the price
31 available to all federal agencies for the purchase of
32 pharmaceuticals authorized in the Veterans Health Care Act of
33 1992, PL 102-585. FSS prices are intended to equal or better the
34 prices manufacturers charge their “most-favored” non-federal
35 customers under comparable terms and conditions.

36 (6) “Multiple-source drug”, “innovator drug” and
37 “noninnovator drug” mean the following:

38 (A) The term “multiple-source drug” means, for which
39 there are two or more drug products which are: Rated as

40 therapeutically equivalent (under the food and drug administra-
41 tion's most recent publication of "Approved Drug Products
42 with Therapeutic Equivalence Evaluations"), except as provided
43 in paragraph (B) of this subdivision, are pharmaceutically
44 equivalent and bioequivalent, as determined by the food and
45 drug administration, and the term "innovator drug" shall
46 hereinafter be referred to as "brand". The term "innovator drug"
47 means a drug which is produced or distributed under an original
48 new drug application approved by the food and drug adminis-
49 tration, including a drug product marketed by any
50 cross-licensed producers or distributors operating under the new
51 drug application and any multiple-source drug that was origi-
52 nally marketed under an original new drug application approved
53 by the food and drug administration. The term "noninnovator
54 drug" shall hereinafter be referred to as "generic". The term
55 "noninnovator drug" means a multiple-source drug that is not
56 an "innovator drug".

57 (B) Paragraph (A) of this subdivision shall not apply if the
58 food and drug administration changes by regulation the
59 requirement that, for purposes of the publication described in
60 paragraph (A) of this subdivision, in order for drug products to
61 be rated as therapeutically equivalent, they must be pharmaceu-
62 tically equivalent and bioequivalent.

63 (7) "Labeler" means an entity or person that receives
64 prescription drugs from a manufacturer or wholesaler and
65 repackages those drugs for later retail sale and that has a labeler
66 code from the federal food and drug administration pursuant to
67 21 C. F. R. §207.20 (1999).

68 (8) "Person" means any natural person or persons or any
69 corporation, partnership, company, trust or association of
70 persons.

71 (9) "Pharmaceutical drug detailing" or "detailing" means
72 the function performed by a sales representative who is

73 employed by a pharmaceutical manufacturer for the purpose of:
74 Promotion of pharmaceutical drugs or related products;
75 education about pharmaceutical drugs or related products; or to
76 provide samples of pharmaceutical drugs, related products or
77 related materials, gifts, food or meals.

78 (10) "Savings" means the difference between the previous
79 price of a prescription drug including any discounts, rebates or
80 price containments and the current price after the effective date
81 of this article for the public employees insurance agency,
82 children's health insurance program, medicaid and workers'
83 compensation programs or other programs which are payors for
84 prescription drugs.

85 (11) "Sole source" means a pharmaceutical that provides a
86 unique and powerful advantage available in the market to a
87 broad group of patients established under federal law.

88 (12) "West Virginia Pharmaceutical Cost Management
89 Council" or "council" means the council created pursuant to
90 section eight of this article.

§5A-3C-4. Creation of clearinghouse program.

1 (a) There is hereby created the state prescription drug
2 assistance clearinghouse program. The brand pharmaceutical
3 manufacturers shall create and implement a program to assist
4 state residents who are low income or uninsured to gain access
5 to prescription medications through existing private and public
6 sector programs and prescription drug assistance programs
7 offered by manufacturers, including discount and coverage
8 programs. The brand pharmaceutical manufacturers shall use
9 available computer software programs that access an eligible
10 individual with the appropriate private or public programs
11 relating to the individual's medically necessary drugs. The
12 brand pharmaceutical manufacturers shall provide education to

13 individuals and providers to promote the program and to
14 expand enrollment and access to necessary medications for low-
15 income or uninsured individuals qualifying for the programs.
16 The participating brand pharmaceutical manufacturers shall be
17 responsible for the cost of the establishment of the program,
18 and be responsible for running the program, regardless of the
19 date of transfer of the program to the state, for the period of
20 time until a date no earlier than the thirtieth day of June, two
21 thousand five, and ownership of the technology, website and
22 other program features shall be transferred to the state on the
23 same date. The secretary of the department of health and human
24 resources and the director of the public employees insurance
25 agency shall provide joint oversight over the establishment and
26 construction of the program and program features for the period
27 of time prior to the transfer of ownership to the state. The
28 pharmaceutical council shall recommend the state agency to
29 own, control and operate the program, technology and program
30 features, and shall include such recommendation in its report on
31 or before the first day of September, two thousand four, to the
32 joint committee on government and finance, as provided for in
33 section eight of this article. In addition, the pharmaceutical
34 manufacturers shall report to the Joint Committee on Govern-
35 ment and Finance on a monthly basis all activities related to the
36 implementation of this program including the number of
37 citizens serviced and the services provided.

38 (b) The participating brand pharmaceutical manufacturers
39 shall contribute the funding for the promotion of the public
40 relations program attendant to the establishment of the program.
41 The participating brand pharmaceutical manufacturers shall be
42 responsible for the cost of the establishment of the program and
43 the cost of the ongoing program, regardless of the date of
44 transfer of ownership of the program to the state, for the period
45 of time until the thirty-first day of December, two thousand
46 four.

§5A-3C-5. Pharmaceutical discount program; establishment; eligible individuals; discount pass through; terms.

1 There is hereby established a discount drug program to
2 provide low-income, uninsured individuals with access to
3 prescription drugs from participating brand pharmaceutical
4 companies and pharmacists through either a state-sponsored
5 discount card program or a program that extends current brand
6 pharmaceutical manufacturer prescription drug assistance
7 programs:

8 (a) The state hereby establishes a state-sponsored prescrip-
9 tion drug discount card program for certain eligible residents of
10 West Virginia:

11 (1) Eligible individuals include uninsured residents of West
12 Virginia up to two hundred per cent of the federal poverty
13 guideline who have not been covered by a prescription drug
14 program, whether public or private, at least six months prior to
15 applying to the discount card program;

16 (2) The state may negotiate voluntary discounts with brand
17 pharmaceutical manufacturers and pharmacists: *Provided*, That
18 the total discount received from the manufacturer shall pass
19 through to the eligible resident;

20 (3) Failure of a brand pharmaceutical manufacturer to
21 participate in the voluntary discount card program will not
22 result in prior authorization on drugs in the medicaid program
23 which would not otherwise be subject to prior authorization but
24 for the failure of the manufacturer to participate in this pro-
25 gram; and

26 (4) The state shall not establish a formulary or preferred
27 drug list as part of the discount card program.

28 (b) The brand pharmaceutical manufacturers may extend
29 existing prescription drug assistance programs to eligible
30 residents of West Virginia. Eligible individuals include
31 uninsured residents of West Virginia up to two hundred percent
32 of the federal poverty level who have not been covered by a
33 prescription drug program, whether public or private, at least
34 six months prior to applying to the program.

35 (c) The program established under this section shall be
36 structured so that a member presenting a discount card at a
37 participating pharmacy will receive the full benefit of the
38 pharmacy discount, as well as the manufacturer's discount, at
39 a point of sale transaction. The program, or the pharmacy
40 benefit manager contracted by the program, shall coordinate the
41 drug discount information provided by participating pharmacies
42 and manufacturers so that the available drug discounts are
43 provided to the member at the point of sale.

44 (d) Manufacturers participating in the voluntary program
45 established under this section shall cooperate with the program,
46 or the pharmacy benefit manager contracted by the program, to
47 provide the current list of drugs and the percentage of discount
48 from the AWP for such drugs, or the rebates that the manufac-
49 turer will provide under the program. It is the intent of this
50 program that adequate drug price and discount or rebate
51 information be provided by the manufacturer, such that the
52 program and participating pharmacies will have available such
53 drug prices and discounts or rebates at a point of sale pharma-
54 ceutical drug transaction. Retail pharmacies will be responsible
55 for no more than fifty percent of the discount offered by the
56 manufacturer to the participant.

57 (1) Pharmacies participating in the voluntary program(s)
58 established under this section will be responsible for no more
59 than fifty percent of the discount offered by the manufacturer
60 to the participant, and be paid a dispensing fee of no more than

61 three dollars and fifty cents per prescription with regard to
62 prescriptions filled under the program(s).

63 (2) Upon the presentation of a valid discount card, payment
64 for the prescription and otherwise meeting appropriate criteria
65 to have their prescription filled, the cardholder will have their
66 prescription filled by a participating pharmacy. To accomplish
67 the transaction, the participating pharmacy shall electronically
68 transmit the transaction to the program or pharmacy benefit
69 manager contracted by the program for processing. The
70 program, or the program's pharmacy benefit manager, shall
71 determine the discounted cost of the drug, including the
72 discount provided, the discount provided by the pharmacy, the
73 discount or rebate provided by the manufacturer, the pharmacy
74 dispensing fee, and any pharmacy benefit manager transaction
75 fee. The program, or the program's pharmacy benefit manager,
76 shall then transmit to the manufacturer an electronic statement
77 of the amount the manufacturer owes on the transaction to
78 cover the manufacturer's discount or rebate and the program's
79 or the pharmacy benefit manager's processing fee. The manu-
80 facturer shall, in turn, at least every fourteen days, transmit such
81 monetary amounts for the transaction to the program, or the
82 program's pharmacy benefit manager, and the program, or the
83 program's pharmacy benefit manager, shall pass such discount
84 or rebate amounts back to the participating pharmacy which
85 originated the transaction immediately.

86 (e) The pharmaceutical manufacturers shall report to the
87 Joint Committee on Government and Finance on a monthly
88 basis all activities related to the implementation of this program
89 including the number of citizens serviced and the services
90 provided, as well as, the benefits, the costs and the discounts
91 obtained.

**§5A-3C-6. Creation of program; administrative support;
medicaid and chip program.**

1 (a) There is hereby created in the state a program to obtain
2 favorable pharmaceutical prices for state agencies and other
3 qualified entities pursuant to this article.

4 (b) The medicaid program and the West Virginia children's
5 health insurance program may be exempt from participation in
6 this program until approval by the center for medicare and
7 medicaid services has been granted if it is determined to be
8 required by the council.

9 (c) Administrative staff support for the council created by
10 this article shall be provided by the departments represented on
11 the council.

12 (d) The council shall establish a pricing schedule using or
13 referencing the FSS prices, or using or referencing to the price,
14 as adjusted for currency valuations, set by Canada patented
15 medicine prices review board (PMPRB) or any other appropri-
16 ate referenced price that will maximize savings to the broadest
17 percentage of the population of this state.

18 (e) By September fifteenth of two thousand four, the
19 council shall report back to the Legislature the pricing schedule
20 developed and a strategic plan for implementation. The council
21 shall implement the proposed pricing schedule and strategic
22 plan upon concurrent resolution of the Legislature. If, at the
23 time of the acceptance or rejection of the concurrent resolution
24 to implement the proposed pricing schedule and strategy, the
25 concurrent resolution is not passed due to the Legislature's lack
26 of acceptance of the same, the Legislature shall accept or reject
27 a concurrent resolution to implement the pricing schedule and
28 strategy using or referencing the FSS: *Provided*, That accep-
29 tance or rejection of the above referenced resolutions shall
30 occur prior to the end of the regular session of the Legislature
31 in two thousand five.

32 (f) If neither of the above referenced resolutions pass during
33 the regular session of the Legislature in two thousand five, the
34 Legislature may, at any time in the future, pass a concurrent
35 resolution to implement the above referenced pricing schedule
36 and strategy or any subsequent recommendation of the council
37 to the Legislature and the Legislature determines that the
38 proposed pricing schedule and strategy are the most effective
39 method of reducing pharmaceutical prices for the citizens of the
40 state.

41 (g) Qualified entities, including, but not limited to, licensed
42 private insurers, self insured employers, free clinics and other
43 entities who provide pharmaceuticals either directly or through
44 some form of coverage to the citizens of West Virginia shall
45 have an option to apply for participation in the program
46 established by this article in the form and manner established
47 by the council. The council, in its sole discretion, shall approve
48 or deny participation through review of documentation deter-
49 mined to be necessary for full consideration and as established
50 by rule. The council shall consider, but not be limited to, the
51 fiscal stability and the size of each applicant.

52 (h) Pharmaceutical manufacturers may request a waiver
53 from the pricing schedule to be granted by the council for a
54 particular drug in which the development, production, distribu-
55 tion costs, other reasonable costs and reasonable profits, but
56 exclusive of all marketing and advertising costs as determined
57 by the council, is more than the pricing schedule rate of the
58 pharmaceutical or in those cases in which the pharmaceutical in
59 question has a sole source. The determination of reasonable
60 costs and reasonable profits may fluctuate between different
61 pharmaceuticals under consideration by the council. The
62 council shall determine by legislative rule fees to be paid by the
63 applicant at the time a waiver request is made and documenta-
64 tion required to be submitted at the time of the waiver request.

§5A-3C-7. Multistate discussion group.

1 For the purposes of reviewing or amending the program
2 establishing the process for making pharmaceuticals more
3 available and affordable to the citizens of West Virginia, the
4 state may continue to enter into multistate discussions and
5 agreements. For purposes of participating in these discussions,
6 the state shall be represented by members of the council created
7 in section eight of this article.

§5A-3C-8. West Virginia pharmaceutical cost management council.

1 (a) There is hereby created the West Virginia pharmaceuti-
2 cal cost management council which consists of the secretary of
3 the department of administration or his or her designee, the
4 director of the public employees insurance agency or his or her
5 designee, the commissioner of the bureau of medical services
6 of the department of health and human resources or his or her
7 designee, the secretary of the department of health and human
8 resources or his or her designee, the executive director of the
9 workers' compensation commission or his or her designee,
10 bureau of senior services or his or her designee and five
11 members from the public who shall be appointed by the
12 governor with the advice and consent of the Senate. One public
13 member shall be a licensed pharmacist employed by a commu-
14 nity retail pharmacy, one public member shall be a representa-
15 tive of a pharmaceutical manufacturer with substantial opera-
16 tions located in the state of West Virginia that has at least seven
17 hundred fifty employees, one public member shall be a primary
18 care physician, one public member shall represent those who
19 will receive benefit from the establishment of this program and
20 one public member shall have experience in the financing,
21 development or management of a health insurance company
22 which provides pharmaceutical coverage. Each public member
23 shall serve for a term of four years. Of the public members of

24 the council first appointed, one shall be appointed for a term
25 ending the thirtieth day of June, two thousand six, and two each
26 for terms of three and four years. Each public member shall
27 serve until his or her successor is appointed and has qualified.
28 A member of the council may be removed by the governor for
29 cause.

30 (b) The secretary of the department of administration shall
31 serve as chairperson of the council, which shall meet at times
32 and places specified by the chairperson or upon the request of
33 two members of the council.

34 (c) Authority members shall not be compensated in their
35 capacity as members but shall be reimbursed for reasonable
36 expenses incurred in the performance of their duties.

37 (d) The council has the power and authority to:

38 (1) Contract for the purpose of implementing the cost
39 containment provisions of this article;

40 (2) File suit;

41 (3) Execute as permitted by applicable federal law, pre-
42 scription drug purchasing agreements with:

43 (A) All departments, agencies, authorities, institutions,
44 programs, any agencies or programs of the federal government,
45 quasi-public corporations and political subdivisions of this
46 state, including, but not limited to, the children's health
47 insurance program, the division of corrections, the division of
48 juvenile services, the regional jail and correctional facility
49 authority, the workers' compensation fund, state colleges and
50 universities, public hospitals, state or local institutions, such as
51 nursing homes, veterans' homes, the division of rehabilitation,
52 public health departments, state programs, including, but not
53 limited to, programs established in sections four and five of this

54 article, and the bureau of medical services: *Provided*, That any
55 contract or agreement executed with or on behalf of the bureau
56 of medical services shall contain all necessary provisions to
57 comply with the provisions of Title XIX of the Social Security
58 Act, 42 U. S. C. §1396 *et seq.*, dealing with pharmacy services
59 offered to recipients under the medical assistance plan of West
60 Virginia;

61 (B) Governments of other states and jurisdictions and their
62 individual departments, agencies, authorities, institutions,
63 programs, quasi-public corporations and political subdivisions;
64 and

65 (C) Regional or multi-state purchasing alliances or consor-
66 tia, formed for the purpose of pooling the combined purchasing
67 power of the individual members in order to increase bargain-
68 ing power; and

69 (4) Consider strategies by which West Virginia may
70 manage the increasing costs of prescription drugs and increase
71 access to prescription drugs for all of the state's citizens,
72 including the authority to:

73 (A) Explore the enactment of fair prescription drug pricing
74 policies;

75 (B) Explore discount prices or rebate programs for seniors
76 and persons without prescription drug coverage;

77 (C) Explore programs offered by pharmaceutical manufac-
78 turers that provide prescription drugs for free or at reduced
79 prices;

80 (D) Explore requirements and criteria, including the level
81 of detail, for prescription drug manufacturers to disclose to the
82 council expenditures for advertising, marketing and promotion,
83 based on aggregate national data;

84 (E) Explore the establishment of counter-detailing pro-
85 grams aimed at educating health care practitioners authorized
86 to prescribe prescription drugs about the relative costs and
87 benefits of various prescription drugs, with an emphasis on
88 generic substitution for brand name drugs when available and
89 appropriate; prescribing older, less costly drugs instead of
90 newer, more expensive drugs, when appropriate; and prescrib-
91 ing lower dosages of prescription drugs, when available and
92 appropriate;

93 (F) Explore disease state management programs aimed at
94 enhancing the effectiveness of treating certain diseases identi-
95 fied as prevalent among this state's population with prescription
96 drugs;

97 (G) Explore prescription drug purchasing agreements with
98 large private sector purchasers of prescription drugs and
99 including those private entities in pharmacy benefit manage-
100 ment contracts: *Provided*, That no private entity may be
101 compelled to participate in a purchasing agreement;

102 (H) Explore the feasibility of using or referencing, the
103 federal supply schedule or referencing to the price, as adjusted
104 for currency valuations, set by the Canada patented medicine
105 prices review board ("PMPRB"), or any other appropriate
106 referenced price to establish prescription drug pricing for brand
107 name drugs in the state; and to review and determine the
108 dispensing fees for pharmacies in such as established in section
109 six of this article;

110 (I) Explore, if possible, joint negotiations for drug purchas-
111 ing and a shared prescription drug pricing schedule and shared
112 preferred drug list for use by the public employees insurance
113 agency, the medicaid program, other state payors and private
114 insurers;

115 (J) Explore coordination between the medicaid program,
116 the public employees insurance agency and, to the extent
117 possible, in-state hospitals and private insurers toward the
118 development of a uniform preferred prescription drug list which
119 is clinically appropriate and which leverages retail prices;

120 (K) Explore policies which promote the use of generic
121 drugs, where appropriate;

122 (L) Explore a policy that precludes a drug manufacturer
123 from reducing the amounts of drug rebates or otherwise
124 penalize an insurer, health plan or other entity which pays for
125 prescription drugs based upon the fact that the entity uses step
126 therapy or other clinical programs before a drug is covered or
127 otherwise authorized for payment;

128 (M) Explore arrangements with entities in the private
129 sector, including self-funded benefit plans and nonprofit
130 corporations, toward combined purchasing of health care
131 services, health care management services, pharmacy benefits
132 management services or pharmaceutical products on the
133 condition that no private entity be compelled to participate in
134 the prescription drug purchasing pool; and

135 (N) Explore other strategies, as permitted under state and
136 federal law, aimed at managing escalating prescription drug
137 prices and increasing affordable access to prescription drugs for
138 all West Virginia citizens;

139 (5) Contract with appropriate legal, actuarial and other
140 service providers required to accomplish any function within
141 the powers of the council;

142 (6) Develop other strategies, as permitted under state and
143 federal law, aimed at managing escalating prescription drug
144 prices and increasing affordable access to prescription drugs for
145 all West Virginia citizens;

146 (7) Explore the licensing and regulation of pharmaceutical
147 detailers, including the requirement of continuing professional
148 education, the imposition of fees for licensing and continuing
149 education, the establishment of a special revenue account for
150 deposit of the fees and the imposition of penalties for noncom-
151 pliance with licensing and continuing education requirements,
152 and rules to establish procedures to implement the provisions of
153 the subdivision;

154 (8) The council shall report to the Legislature's joint
155 committee on government and finance on or before the first day
156 of September, two thousand four, and report on or before the
157 thirty-first day of December, two thousand four, and annually
158 thereafter to the Legislature, and provide recommendations to
159 the Legislature on needed legislative action and other functions
160 established by the article or requested by the joint committee on
161 government and finance of the Legislature; and

162 (9) The council shall, upon the passage of this article,
163 immediately commence to study the fiscal impact to this state
164 of the federal "Medicare Prescription Drug Improvement and
165 Modernization Act of 2003" and shall report to the Legisla-
166 ture's joint committee on government and finance on or before
167 the fifteenth day of October, two thousand four, as to the
168 findings of the council.

169 (10) The council shall develop an evaluation methodology
170 to certify and audit savings in the discount savings program by
171 determining the impact on growth and profit of the pharmaceu-
172 tical manufacturers to ensure that prices have not been inflated
173 to offset the discount card value.

174 (11) The council shall evaluate the clearinghouse estab-
175 lished by this article and the discount card program established
176 by this article to report to the Joint Committee on Government
177 and Finance, and the Legislative Oversight Commission on

178 Health and Human Resources Accountability, their findings and
179 recommendations for further action by the Legislature.

180 (12) The council shall further: (1) Review determine that
181 the implementation of the programs under this article will not
182 jeopardize, reduce or penalize the benefits of veterans or other
183 recipients of FSS drug prices, considering their respective co-
184 pay structures, and the pricing mechanisms of their respective
185 programs; (2) commence negotiations to obtain independent
186 agreements or multi-state agreements as many as ten states to
187 use or reference a pricing schedule as set forth in section six of
188 this article; (3) and determine the ability to establish a savings
189 of forty-two percent of the retail cost to be reported to the Joint
190 Committee on Government and Finance and the Legislative
191 Oversight Commission on Health and Human Resources
192 Accountability, as established in section eight of this article.

**§5A-3C-9. Investigation of Canadian drugs; wholesaling; federal
waivers.**

1 The council created in section eight of this article and the
2 director of the public employees insurance agency are autho-
3 rized to investigate the feasibility of purchasing prescription
4 drugs from sources in Canada, which may include the feasibil-
5 ity of the state or an instrumentality thereof serving as a
6 wholesale distributor of prescription drugs in the state.

7 (a) Upon a determination by the council or the director of
8 the public employees insurance agency that the same is feasible
9 and in the best interests of the citizens of the state, the council
10 or the director is authorized to pursue waivers from the federal
11 government, including, but not limited to, from the United
12 States food and drug administration, as necessary for the state
13 to accomplish prescription drug purchasing from sources in
14 Canada provided, however, if a waiver is not granted, the
15 council is authorized to take necessary legal action.

16 (b) Upon a favorable finding by the appropriate federal
17 agencies or courts, notwithstanding any provision of this code
18 to the contrary, the council or the director of the public employ-
19 ees insurance agency may establish and implement a methodol-
20 ogy to provide wholesale drugs to licensed pharmacies located
21 within West Virginia, provided however, prior to the implemen-
22 tation, the Legislature must adopt a concurrent resolution
23 authorizing such action.

§5A-3C-10. Director's powers; ability to enter drug purchasing contracts.

1 Notwithstanding any provision of this code to the contrary,
2 nothing contained in this article shall be construed to limit the
3 powers and authority granted to the director of the public
4 employees insurance agency pursuant to article sixteen-c,
5 chapter five of this code. Notwithstanding any provision of this
6 code to the contrary and specifically subdivision four, subsec-
7 tion (a), section four, article five-c, chapter five of this code, the
8 director is authorized to execute prescription drug purchasing
9 agreements without further enactment of the Legislature.

§5A-3C-11. Agency's management ability continued.

1 Nothing contained in this article shall be construed to limit
2 the ability of the various state agencies to enter into contracts
3 or arrangements or to otherwise manage their pharmacy
4 programs until such time as the programs created or authorized
5 pursuant to this article are implemented.

§5A-3C-12. Restraint of trade; civil and criminal violations defined.

1 (a) The following are considered to restrain trade or
2 commerce unreasonably and shall be unlawful:

3 (1) A contract, combination or conspiracy between two or
4 more persons:

5 (A) For the purpose or with the intent to fix, control or
6 maintain the market price, rate or fee of pharmaceuticals; or

7 (B) Allocate or divide customers or markets, functional or
8 geographic, for any pharmaceutical.

9 (2) The establishment, maintenance or use of a monopoly
10 or an attempt to establish a monopoly of trade or commerce,
11 any part of which is within this state, by any persons for the
12 purpose of or with the intent to exclude competition or control,
13 fix or maintain pharmaceutical prices.

14 (b) Any person violating the provisions of this section is
15 guilty of a felony and, upon conviction thereof, shall be
16 confined in a state correctional facility for not less than one nor
17 more than ten years, or fined in an amount consistent with the
18 Clayton Act 15 U.S.C. §15 et seq. which may include treble
19 damages, or both fined and confined.

20 (c) Any person violating the provisions of this section is
21 liable for a civil penalty and fine in an amount consistent with
22 the Clayton Act 15 U.S.C. §15 et seq. which may include treble
23 damages, for each violation.

24 (d) The county prosecutor shall investigate suspected
25 violations of, and institute criminal proceedings pursuant to, the
26 provisions of this section.

27 (e) The attorney general or special counsel appointed by the
28 governor, in his or her discretion, shall represent the state in all
29 civil proceedings brought on behalf of the state to enforce the
30 provisions of this section. After payment of all attorney fees
31 and costs, no less than fifty percent of all judgments or settle-
32 ments shall be placed in the general revenue fund of the state.

§5A-3C-13. Advertising costs; reporting of same.

1 (a) Advertising costs for prescription drugs, based on
2 aggregate national data, must be reported to the state council by
3 all manufacturers and labelers of prescription drugs dispensed
4 in this state that employs, directs or utilizes marketing represen-
5 tatives. The reporting shall assist this state in its role as a
6 purchaser of prescription drugs and an administrator of pre-
7 scription drug programs, enabling this state to determine the
8 scope of prescription drug advertising costs and their effect on
9 the cost, utilization and delivery of health care services and
10 furthering the role of this state as guardian of the public
11 interest.

12 (b) The council shall establish, by legislative rule, the
13 reporting requirements of information by labelers and manufac-
14 turers which shall include all national aggregate expenses
15 associated with advertising and direct promotion of prescription
16 drugs through radio, television, magazines, newspapers, direct
17 mail and telephone communications as they pertain to residents
18 of this state.

19 (c) The following shall be exempt from disclosure require-
20 ments:

21 (1) All free samples of prescription drugs intended to be
22 distributed to patients;

23 (2) All payments of reasonable compensation and reim-
24 bursement of expenses in connection with a bona fide clinical
25 trial. As used in this subdivision, "clinical trial" means an
26 approved clinical trial conducted in connection with a research
27 study designed to answer specific questions about vaccines,
28 new therapies or new ways of using known treatments; or

29 (3) All scholarship or other support for medical students,
30 residents and fellows to attend significant educational, scientific
31 or policy-making conference of national, regional or specialty

32 medical or other professional association if the recipient of the
33 scholarship or other support is selected by the association.

34 (d) The council is further authorized to establish time lines,
35 the documentation, form and manner of reporting required as
36 the council determines necessary to effectuate the purpose of
37 this article. The council shall report to the joint committee on
38 government and finance, in an aggregate form, the information
39 provided in the required reporting.

40 (e) Notwithstanding any provision of law to the contrary,
41 information submitted to the council pursuant to this section is
42 confidential and is not a public record and is not available for
43 release pursuant to the West Virginia freedom of information
44 act. Data compiled in aggregate form by the council for the
45 purposes of reporting required by this section is a public record
46 as defined in the West Virginia freedom of information act, as
47 long as it does not reveal trade information that is protected by
48 state or federal law.

§5A-3C-14. State role.

1 For purpose of implementing this article, the state repre-
2 sented by the council shall have authority to negotiate pharma-
3 ceutical prices to be paid by program participants. These
4 negotiated prices shall be available to all programs.

§5A-3C-15. Rulemaking.

1 The council may promulgate emergency rules pursuant to
2 the provisions of section fifteen, article three, chapter
3 twenty-nine-a of this code to implement any section of this
4 article.

§5A-3C-16. Sunset provision.

1 The council shall continue to exist, pursuant to the provi-
2 sions of article ten, chapter four of this code, until the first day

3 of July, two thousand eight, unless sooner terminated, contin-
 4 ued or reestablished pursuant to the provisions of that article.

§5A-3C-17. Potential use of savings.

1 Savings identified by all program participants shall be
 2 quantified and certified to the council and included in the
 3 annual report of the council to the Legislature provided for in
 4 section eight of this article. Savings, or any part thereof, created
 5 by the implementation of this program may, in the sole discre-
 6 tion of the Legislature, be directed towards the maintenance of
 7 existing state health programs and the expansion of insurance
 8 programs for the uninsured and underinsured.

CHAPTER 194

**(H. B. 4480 —By Delegates Beane, Ennis, Butcher,
 Manuel, Perdue, Blair and Romine)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22C-11-4 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-11-6, all relating to continuation of West Virginia's participation in the interstate commission on the Potomac river basin.

Be it enacted by the Legislature of West Virginia:

That §22C-11-4 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22C-11-6, all to read as follows:

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-4. Effective date; findings.

§22C-11-6. Continuation of participation in compact.

§22C-11-4. Effective date; findings.

1 This article shall become effective upon the adoption of
2 substantially similar amendments to the interstate compact by
3 each of the signatory states to the compact, and upon the
4 approval of the amendments to the compact by the Congress of
5 the United States.

§22C-11-6. Continuation of participation in compact.

1 West Virginia’s membership in the interstate commission
2 on the Potomac river basin, shall continue to exist, pursuant to
3 the provisions of article ten, chapter four of this code, until the
4 first day of July, two thousand ten, unless sooner terminated,
5 continued or reestablished pursuant to the provisions of that
6 article.

CHAPTER 195

(H. B. 4308 — By Delegates Leach, Michael, Perdue and Susman)

[Amended and Again Passed March 21, 2004, as a Result of the Objections of the Governor; in Effect Ninety Days from Passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-11A-3a, relating to providing immunity from civil damages to a worker, contractor, engineer or architect, who in good faith provides services or

materials, without remuneration, to build or install certain handicap accessibility features in accordance with applicable building codes and state and federal laws.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-11A-3a, to read as follows:

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3a. Volunteer services or materials to build or install universal accessibility features; workers, contractors, engineers, architects; immunity from civil liability.

1 Any person, including a worker, contractor, engineer or
2 architect, who in good faith provides services or materials,
3 without remuneration, to build or install handicap accessible
4 features as set forth in section five of this article, may not be
5 liable for any civil damages as the result of any act or omission
6 in providing such services or materials: *Provided*, That the
7 universal accessible feature or features shall be built or con-
8 structed in accordance with applicable state and federal laws
9 and applicable building codes.

CHAPTER 196

**(Com. Sub. for H. B. 4291 — By Delegates Amores,
Perdue, Long, Foster and Trump)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-1-7a of the code of West Virginia, 1931, as amended, relating to continuing education requirements for licensed healthcare professionals on the subject of end-of-life care training, including pain management coursework.

Be it enacted by the Legislature of West Virginia:

That §30-1-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

§30-1-7a. Continuing education.

1 (a) Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to license
3 renewal. Each board shall develop continuing education criteria
4 appropriate to its discipline, which shall include, but not be
5 limited to, course content, course approval, hours required and
6 reporting periods.

7 (b)(1) Notwithstanding any other provision of this code or
8 the provision of any rule to the contrary, each person issued a
9 license to practice medicine and surgery or a license to practice
10 podiatry or a license as a physician assistant by the West
11 Virginia board of medicine, each person licensed as a pharma-
12 cist by the West Virginia board of pharmacy, each person
13 licensed to practice registered professional nursing or licensed
14 as an advanced nurse practitioner by the West Virginia board of
15 examiners for registered professional nurses, each person
16 licensed as a licensed practical nurse by the West Virginia state
17 board of examiners for licensed practical nurses and each
18 person licensed to practice medicine and surgery as an osteo-
19 pathic physician and surgeon or certified as an osteopathic
20 physician assistant by the West Virginia board of osteopathy

21 shall complete two hours of continuing education coursework
22 in the subject of end-of-life care including pain management
23 during each continuing education reporting period through the
24 reporting period ending the thirtieth day of June, two thousand
25 five. The two hours shall be part of the total hours of continuing
26 education required by each board by rule and not two additional
27 hours.

28 (2) Effective as of the reporting period beginning the first
29 day of July, two thousand five, the coursework requirement
30 imposed by this subsection will become a one-time require-
31 ment, and all licensees who have not completed the coursework
32 requirement shall complete the coursework requirement prior
33 to his or her first license renewal.

CHAPTER 197

(H. B. 4484 — By Mr. Speaker, Mr. Kiss, and Delegates Cann,
Varner, Stemple and Beach)

[Passed March 1, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-3-11a of the code of West Virginia, 1931, as amended, relating to allowing the board of medicine to issue a limited license to practice medicine and surgery without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another country under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §30-3-11a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

1 (a) The board shall issue a limited license to practice
2 medicine and surgery without examination to an individual
3 appointed to a West Virginia medical school faculty who holds
4 a valid license to practice medicine and surgery from another
5 state, the District of Columbia, the Commonwealth of Puerto
6 Rico, Canada or other country the board determines has
7 substantially equivalent requirements for licensure as those
8 jurisdictions, and who has completed the application form
9 prescribed by the board, remitted a nonrefundable application
10 fee in the amount of one hundred fifty dollars and who presents
11 satisfactory proof to the board that:

12 (1) He or she is of good moral and professional character;

13 (2) He or she is physically and mentally capable of engag-
14 ing in the practice of medicine and surgery;

15 (3) He or she is able to communicate in English;

16 (4) He or she is a graduate of a school of medicine which is
17 approved by the liaison committee on medical education or by
18 the World Health Organization or by the board with the degree
19 of doctor of medicine or its equivalent;

20 (5) He or she has successfully completed one year of
21 approved graduate clinical training or a fellowship of at least
22 one year, or has received training which the board determines
23 to be equivalent to or exceeds the one year graduate clinical
24 training or fellowship requirement;

25 (6) He or she has not committed any act in this or any other
26 jurisdiction which would constitute the basis for disciplining a
27 physician under section fourteen of this article; and

28 (7) He or she has been offered and has accepted a faculty
29 appointment to teach in a medical school in this state.

30 (b) The board shall investigate the applicant and may
31 request a personal interview to review the applicant's qualifica-
32 tions and professional credentials.

33 (c) The medical practice of a physician licensed under this
34 section is limited to the medical center of the medical school to
35 which the physician has been appointed to the faculty.

36 (d) A limited license issued under this section is valid for
37 a term of one year. No limited license issued pursuant to this
38 section may be renewed.

39 (e) Before the limited license has expired, a physician
40 licensed under this section may apply for a license to practice
41 medicine and surgery in West Virginia pursuant to the provi-
42 sions of section twelve of this article: *Provided*, That any
43 license granted by the board pursuant to this subsection, retains
44 the practice limitations set out in subsection (c) of this section.

45 (f) Any license issued under this section will automatically
46 expire and be void, without notice to the physician, when the
47 physician's faculty appointment is terminated. The dean of the
48 medical school shall notify the board within five days of the
49 termination of a faculty appointment of a physician licensed
50 pursuant to this section.

51 (g) A physician licensed under this section must keep all
52 medical licenses issued by other jurisdictions in good standing
53 and must notify the board, within fifteen days of its occurrence,
54 of any denial, suspension or revocation of or any limitation
55 placed on a medical license issued by another jurisdiction.

CHAPTER 198

**(Com. Sub. for H. B. 4377 — By Mr. Speaker, Mr. Kiss, and Delegates
Staton, Varner, Mahan, Doyle, Browning and Hrutkay)**

[Amended and Again Passed March 21, 2004, as a Result of the Objections
of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT to amend and reenact §30-3-12 of the code of West Virginia, 1931, as amended; to amend and reenact §30-14-10 of said code; and to amend and reenact §33-20F-4, §33-20F-5 and §33-20F-7 of said code, all relating to physicians generally; permitting a physician who allows his or her medical license to expire upon retirement to retain the license certificate issued by the board of medicine; authorizing the board of osteopathy to propose legislative rules allowing inactive license status; clarifying and correcting the premium taxes that the physicians' mutual insurance company will be subject to; providing exemption to certain physicians from special assessment; providing for license suspension and civil penalty for failure to pay the special assessment; and creating a sunset provision.

Be it enacted by the Legislature of West Virginia:

That §30-3-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §30-14-10 of said code be amended and reenacted; and that §33-20F-4, §33-20F-5 and §33-20F-7 of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.

33. Insurance.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**Article**

- 3. West Virginia Medical Practice Act.**
- 14. Osteopathic Physicians and Surgeons.**
- 20F. Physician' Mutual Insurance Company.**

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.**

1 (a) A license to practice medicine and surgery or podiatry
2 in this state is valid for a term of two years and shall be
3 renewed upon a receipt of a reasonable fee, as set by the board,
4 submission of an application on forms provided by the board
5 and, beginning with the biennial renewal application forms
6 completed by licensees and submitted to the board in one
7 thousand nine hundred ninety-three, a certification in accor-
8 dance with rules and regulations promulgated by the board in
9 accordance with chapter twenty-nine-a of this code of participa-
10 tion in and successful completion of a minimum of fifty hours
11 of continuing medical or podiatric education satisfactory to the
12 board, as appropriate to the particular license, during the
13 preceding two-year period. Continuing medical education
14 satisfactory to the board is continuing medical education
15 designated as Category I by the American Medical Association
16 or the Academy of Family Physicians and continuing podiatric
17 education satisfactory to the board is continuing podiatric
18 education approved by the council on podiatric education.

19 In addition, the Legislature hereby finds and declares that
20 it is in the public interest to encourage alternate categories of
21 continuing education satisfactory to the board for physicians
22 and podiatrists. In order to provide adequate notice of the same
23 to physicians and podiatrists, no later than the first day of June,
24 one thousand nine hundred ninety-one, the board shall file rules

25 under the provisions of section fifteen, article three, chapter
26 twenty-nine-a of this code, delineating any alternate categories
27 of continuing medical or podiatric education which may be
28 considered satisfactory to the board and any procedures for
29 board approval of such continuing education.

30 Notwithstanding any provision of this chapter to the
31 contrary, failure to timely submit to the board a certification in
32 accordance with rules and regulations promulgated by the board
33 in accordance with chapter twenty-nine-a of this code of
34 successful completion of a minimum of fifty hours of continu-
35 ing medical or podiatric education satisfactory to the board, as
36 appropriate to the particular license, shall, beginning the first
37 day of July, one thousand nine hundred ninety-three, result in
38 the automatic suspension of any license to practice medicine
39 and surgery or podiatry until such time as the certification in
40 accordance with rules and regulations promulgated by the board
41 in accordance with chapter twenty-nine-a of this code, with all
42 supporting written documentation, is submitted to and approved
43 by the board.

44 Any individual who accepts the privilege of practicing
45 medicine and surgery or podiatry in this state is required to
46 provide supporting written documentation of the continuing
47 education represented as received within thirty days of receipt
48 of a written request to do so by the board. If a licensee fails or
49 refuses to provide supporting written documentation of the
50 continuing education represented as received as required in this
51 section, such failure or refusal to provide supporting written
52 documentation is prima facie evidence of renewing a license to
53 practice medicine and surgery or podiatry by fraudulent
54 misrepresentation.

55 (b) The board may renew, on an inactive basis, the license
56 of a physician or podiatrist who is currently licensed to practice
57 medicine and surgery or podiatry in, but is not actually practic-

58 ing, medicine and surgery or podiatry in this state. A physician
59 or podiatrist holding an inactive license shall not practice
60 medicine and surgery or podiatry in this state. His or her
61 inactive license may be converted by the board to an active one
62 upon a written request to the board that accounts for his or her
63 period of inactivity to the satisfaction of the board: *Provided,*
64 That beginning on the first day of July, one thousand nine
65 hundred ninety-three, such licensee submits written documenta-
66 tion of participation in and successful completion of a minimum
67 of fifty hours of continuing medical or podiatric education
68 satisfactory to the board, as appropriate to the particular license,
69 during each preceding two-year period. An inactive license may
70 be obtained upon receipt of a reasonable fee, as set by the
71 board, and submission of an application on forms provided by
72 the board on a biennial basis.

73 (c) The board shall not require any physician or podiatrist
74 who is retired or retiring from the active practice of medicine
75 and surgery or the practice of podiatry and who is voluntarily
76 surrendering their license to return to the board the license
77 certificate issued to them by the board.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

1 (a) All holders of certificates of license to practice as
2 osteopathic physicians and surgeons in this state shall renew
3 them biennially on or before the first day of July, by the
4 payment of a reasonable renewal fee, the amount of such
5 reasonable fee to be set by the board rules to the secretary of the
6 board. The secretary of the board shall notify each certificate
7 holder by mail of the necessity of renewing his or her certificate
8 at least thirty days prior to the first day of July of each year.

9 (b) As a prerequisite to renewal of a certificate of license
10 issued by the board, each holder of such a certificate shall
11 furnish biennially to the secretary of the board satisfactory
12 evidence of having completed thirty-two hours of educational
13 refresher course training, of which the total amount of hours
14 must be AOA approved, and fifty percent of the required thirty-
15 two hours shall be category (1).

16 (c) The failure to renew a certificate of license shall operate
17 as an automatic suspension of the rights and privileges granted
18 by its issuance. The board may propose rules for legislative
19 approval, pursuant to the provisions of article three, chapter
20 twenty-nine-a of this code, providing that an osteopathic
21 physician may renew a certificate of license on an inactive
22 basis.

23 (d) A certificate of license suspended by a failure to make
24 a biennial renewal thereof may be reinstated by the board upon
25 compliance of the certificate holder with the following require-
26 ments:

27 (1) Presentation to the board of satisfactory evidence of
28 educational refresher training of quantity and standard approved
29 by the board for the previous two years;

30 (2) Payment of all fees for the previous two years that
31 would have been paid had the certificate holder maintained his
32 or her certificate in good standing; and

33 (3) Payment to the board of a reasonable reinstatement fee,
34 the amount of such reasonable fee to be set by the board rules.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.

§33-20F-5. Governance and organization.

§33-20F-7. Initial capital and surplus; special assessment; failure to pay assessment;
disposition of civil penalty collected.

§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, additional premium taxes, additional fire
32 and casualty insurance premium taxes and surcharges contained
33 in sections fourteen, fourteen-a, fourteen-d and thirty-three,
34 article three of this chapter: *Provided*, That while the loan to the
35 company of moneys from the West Virginia tobacco settlement
36 medical trust fund pursuant to section nine of this article
37 remains outstanding, the commissioner may waive the com-
38 pany's premium taxes, additional premium taxes and additional
39 fire and casualty insurance premium taxes if payment would
40 render the company insolvent or otherwise financially impaired.

41 (2) On and after the first day of July, two thousand three,
42 any premium taxes and additional premium taxes paid by the
43 company and by any insurer on its medical malpractice line
44 pursuant to sections fourteen and fourteen-a, article three of this
45 chapter, shall be temporarily applied toward replenishing the
46 moneys appropriated from the West Virginia tobacco settlement
47 medical trust fund pursuant to subsection (c), section two,
48 article eleven-a, chapter four of this code pending repayment of
49 the loan of such moneys by the company.

50 (3) The state treasurer shall notify the commissioner when
51 the moneys appropriated from the West Virginia tobacco
52 settlement medical trust have been fully replenished, at which
53 time the commissioner shall resume depositing premium taxes
54 and additional premium taxes diverted pursuant to subdivision
55 (2) of this subsection in accordance with the provisions of
56 sections fourteen and fourteen-a, article three of this chapter.

57 (4) Payments received by the treasurer from the company
58 in repayment of any outstanding loan made pursuant to section
59 nine of this article shall be deposited in the West Virginia
60 tobacco settlement medical trust fund and dedicated to replen-
61 ishing the moneys appropriated therefrom under subsection (c),
62 section two, article eleven-a, chapter four of this code. Once the

63 moneys appropriated from the West Virginia tobacco settlement
64 medical trust fund have been fully replenished, the treasurer
65 shall deposit any payments from the company in repayment of
66 any outstanding loan made pursuant to section nine of this
67 article in said fund and transfer a like amount from said fund to
68 the commissioner for disbursement in accordance with the
69 provisions of sections fourteen and fourteen-a, article three of
70 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-a 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 to 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 subsec-
59 tion (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 subsec-
72 tion (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-7. Initial capital and surplus; special assessment; failure
to pay assessment; disposition of civil penalty
collected.**

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
22 post-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(1)(2);

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 (6) A physician who is licensed on an inactive basis
38 pursuant to subsection (b), section twelve, article three, chapter
39 thirty of this code or section ten, article fourteen, chapter thirty
40 or a physician who voluntarily surrenders his license: *Provided,*
41 That a retired osteopathic physician, who submits to the board
42 of osteopathy an affidavit asserting that he or she receives no
43 monetary remuneration for any medical services provided,
44 executed under the penalty of perjury and if executed outside
45 the state of West Virginia, verified, may be considered to be
46 licensed on an inactive basis: *Provided, however,* That if a
47 physician elects to resume an active license to practice in the
48 state and the physician has never paid the assessment, then as
49 a condition of receiving an active status license, the physician
50 must pay the special one-time assessment; and

51 (7) A physician who practices less than forty hours a year
52 providing medical genetic services to patients within this state.

53 (c) The entire proceeds of the special assessment collected
54 pursuant to subsection (b) of this section shall be dedicated to
55 the company. The board of medicine and the board of osteopa-
56 thy shall promptly pay over to the company all amounts
57 collected pursuant to this section to be used as policyholder
58 surplus for the company.

59 (d) Any physician who applies to purchase insurance from
60 the company and who has not paid the assessment pursuant to
61 subsection (b) of this section shall pay one thousand dollars to
62 the company as a condition of obtaining insurance from the
63 company.

64 (e) A physician who fails to pay the special one-time
65 assessment imposed on the first day of July, two thousand three,
66 pursuant to subsection (b) of this section, on or before the
67 thirtieth day of June, two thousand four, or when the license is
68 due for renewal, whichever is earlier, and has received written
69 notice of the assessment and option to elect inactive status, at

70 least thirty days before the licensure renewal date or by the
71 thirtieth day of May, two thousand four, is subject to a civil
72 penalty in the amount of two hundred fifty dollars payable to
73 either the board of medicine or the board of osteopathy.
74 Furthermore, and notwithstanding any provision of chapter
75 thirty to the contrary, the board of medicine or the board of
76 osteopathy shall immediately suspend the license to practice
77 medicine or podiatry of any physician who received notice and
78 failed to pay the special assessment by the first day of July, two
79 thousand four. Any license to practice medicine suspended
80 pursuant to this section shall remain suspended until both the
81 special assessment and the civil penalty are paid in full.

82 (f) The entire proceeds of the civil penalty collected
83 pursuant to subsection (e) of this section shall be dedicated to
84 the company. The board of medicine and the board of osteopa-
85 thy shall promptly pay over to the company all amounts
86 collected pursuant to subsection (e) of this section to be used as
87 policyholder surplus for the company.

88 (g) The requirements of subsection (b), (c), (d), (e) and (f)
89 of this section shall terminate on January 1, 2008 unless
90 continued or reestablished.

CHAPTER 199

(H. B. 4587 — By Delegates Foster, Palumbo and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-3C-1 of the code of West Virginia, 1931, as amended, relating to including persons who are members or consultants to review organizations within the

definition of health care professionals for peer review purposes; including patient safety review in peer review; and including certain other organizations within the meaning of a review organization.

Be it enacted by the Legislature of West Virginia:

That §30-3C-1 of the code of West Virginia, 1931, 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 and individuals,
4 who, because of their education, experience or training partici-
5 pate as members of or consultants to a review organization.

6 “Peer review” means the procedure for evaluation by health
7 care professionals of the quality and efficiency of services
8 ordered or performed by other health care professionals,
9 including practice analysis, inpatient hospital and extended care
10 facility utilization review, medical audit, ambulatory care
11 review, claims review and patient safety review.

12 “Professional society” includes medical, psychological,
13 nursing, dental, optometric, pharmaceutical, chiropractic and
14 podiatric organizations having as members at least a majority
15 of the eligible licentiates in the area or health care facility or
16 agency served by the particular organization.

17 “Review organization” means any committee or organiza-
18 tion engaging in peer review, including a hospital utilization
19 review committee, a hospital tissue committee, a medical audit

20 committee, a health insurance review committee, a health
21 maintenance organization review committee, hospital, medical,
22 dental and health service corporation review committee, a
23 hospital plan corporation review committee, a professional
24 health service plan review committee or organization, a dental
25 review committee, a physicians' advisory committee, a podiatry
26 advisory committee, a nursing advisory committee, any
27 committee or organization established pursuant to a medical
28 assistance program, the joint commission on accreditation of
29 health care organizations or similar accrediting body or any
30 entity established by such accrediting body or to fulfill the
31 requirements of such accrediting body, any entity established
32 pursuant to state or federal law for peer review purposes, and
33 any committee established by one or more state or local
34 professional societies or institutes, to gather and review
35 information relating to the care and treatment of patients for the
36 purposes of: (i) Evaluating and improving the quality of health
37 care rendered; (ii) reducing morbidity or mortality; or (iii)
38 establishing and enforcing guidelines designed to keep within
39 reasonable bounds the cost of health care. It shall also mean any
40 hospital board committee or organization reviewing the
41 professional qualifications or activities of its medical staff or
42 applicants for admission thereto, and any professional standards
43 review organizations established or required under state or
44 federal statutes or regulations.

CHAPTER 200

**(H. B. 4247 — By Delegates Mahan, R. Thompson, Cann,
Kominar, Armstead and Faircloth)**

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, all relating to clarifying the board of registration for professional engineers may assess civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. ENGINEERS.

§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, civil penalty, reprimand.

§30-13-22. Disciplinary action — Procedures.

§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, civil penalty, reprimand.

1 (a) The board may suspend or revoke or refuse to issue,
2 restore or renew a certificate of registration of, or place on
3 probation, impose a civil penalty or reprimand any professional
4 engineer who has:

5 (1) Perpetrated any fraud or deceit in obtaining or attempt-
6 ing to obtain or renew a certificate of registration or certificate
7 of authorization;

8 (2) Been negligent, incompetent or committed an act of
9 misconduct in the practice of engineering;

10 (3) Been convicted of or has entered a plea of nolo conten-
11 dere to any crime under the laws of the United States or any
12 state or territory thereof, which is a felony whether related to
13 practice or not; and conviction of or entry of a plea of nolo
14 contendere to any crime, whether a felony, misdemeanor or

15 otherwise, an essential element of which is dishonesty, or which
16 is directly related to the practice of engineering;

17 (4) Failed to comply with any of the provisions of this
18 article or any of the rules promulgated under it;

19 (5) Been disciplined by another state, territory, the District
20 of Columbia, foreign country, the United States government or
21 any other governmental agency, if at least one of the grounds
22 for discipline is the same or substantially equivalent to those
23 grounds for discipline contained in this article;

24 (6) Failed within thirty days to provide information
25 requested by the board as a result of a formal or informal
26 complaint to the board which would indicate a violation of this
27 article;

28 (7) Knowingly made false statements or signed false
29 statements, certificates or affidavits to induce payment;

30 (8) Aided or assisted another person in violating any
31 provision of this article or the rules promulgated;

32 (9) Violated any terms of probation imposed by the board
33 or using a seal or practicing engineering while the professional
34 engineer's license is suspended, revoked, nonrenewed or
35 inactive;

36 (10) Signed or affixed the professional engineer's seal or
37 permitted the professional engineer's seal or signature to be
38 affixed to any specifications, reports, drawings, plans, design
39 information, construction documents or calculations or revi-
40 sions which have not been prepared or completely checked by
41 the professional engineer or under the professional engineer's
42 direct supervision or control;

43 (11) Engaged in dishonorable, unethical or unprofessional
44 conduct of a character likely to deceive, defraud or harm the
45 public;

46 (12) Provided false testimony or information to the board;
47 and

48 (13) Been habitually intoxicated or addicted to or by the use
49 of drugs or alcohol.

50 (b) In addition to any other penalty provided in this article,
51 the board may assess civil penalties against any person who
52 violates any provision of this article or any rule promulgated by
53 the board for each offense in an amount determined by the
54 board.

55 (c) The board shall prepare and shall adopt “rules of
56 professional responsibility for professional engineers”. The
57 board may revise and amend these “rules of professional
58 responsibility for professional engineers” from time to time and
59 shall notify each registrant in writing of any revisions or
60 amendments.

61 (d) The board may:

62 (1) Revoke a certificate of authorization;

63 (2) Suspend a certificate of authorization of any firm for a
64 period of time not exceeding two years where one or more of its
65 officers or directors of the firm have been found guilty of any
66 conduct which would authorize a revocation or suspension of
67 his or her certificate of registration under the provisions of this
68 article;

69 (3) Place the person or firm on probation for a period of
70 time and make the person or firm subject to conditions as the
71 board may specify;

72 (4) Assess a civil penalty and related costs for each count
73 or separate offense in an amount set by the board.

§30-13-22. Disciplinary action — Procedures.

1 (a) Any person may file a complaint with the board that a
2 person or firm subject to the provisions of this article has
3 committed a fraud, been deceitful, been grossly negligent,
4 incompetent, guilty of misconduct or has violated the “rules of
5 professional responsibility for professional engineers”.

6 (b) All complaints, unless dismissed by the board as
7 unfounded, trivial or unless settled informally, shall be heard by
8 the board within six months after the date each complaint was
9 received by the board.

10 (c) The board shall fix the time and place for hearings on
11 complaints and a copy of all charges, together with a notice of
12 the time and place of hearing on the complaint the person or
13 firm complained against or mailed to the last known address of
14 the person or firm at least thirty days prior to the hearing. At the
15 hearing, the person or firm shall have the right to appear in
16 person or by counsel, or both, to cross-examine witnesses and
17 to produce evidence and witnesses in his, her or its defense. If
18 the accused person or firm fails or refuses to appear, the board
19 may proceed to hear the complaint and determine the validity
20 of the charges.

21 (d) If after the hearing a majority of the board votes in favor
22 of sustaining the charges, the board shall reprimand or assess a
23 civil penalty against the person or firm complained against. The
24 board may also suspend, revoke, refuse to issue or refuse to
25 restore or renew an individual’s certificate of registration or a
26 firm’s certificate of authorization. In addition, the board may
27 place a registrant on probation.

28 (e) Any person or firm aggrieved by any action of the board
29 in assessing a civil penalty, denying, suspending, refusing to
30 issue, refusing to restore or renew or revoking a certificate of
31 registration or a certificate of authorization, may appeal the
32 board's decision to the circuit court.

33 (f) Any civil penalty assessed as a result of a hearing shall
34 be paid within fifty days after the decision becomes final.

35 (g) The board may, upon petition of a person or firm,
36 reissue a certificate of registration or authorization, provided
37 that a majority of the members of the board votes in favor of
38 such issuance.

CHAPTER 201

**(Com. Sub. for S. B. 460 — By Senators Bowman, Bailey,
Jenkins, Snyder, White and Smith)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-13A-1, §30-13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9, §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-16, §30-13A-17 and §30-13A-18 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto nineteen new sections, designated §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-13A-23, §30-13A-24, §30-13A-25, §30-13A-26, §30-13A-27, §30-13A-28, §30-13A-29, §30-13A-30, §30-13A-31, §30-13A-32, §30-13A-33, §30-13A-34, §30-13A-35, §30-13A-36 and §34-13-37, all relating to regulating surveyors and underground

surveyors; definitions; establishing licensure and endorsement requirements; restructuring and renaming the board; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-13A-1, §30-13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9, §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-16, §30-13A-17 and §30-13A-18 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto nineteen new sections, designated §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-13A-23, §30-13A-24, §30-13A-25, §30-13A-26, §30-13A-27, §30-13A-28, §30-13A-29, §30-13A-30, §30-13A-31, §30-13A-32, §30-13A-33, §30-13A-34, §30-13A-35, §30-13A-36 and §30-13A-37, all to read as follows:

ARTICLE 13A. PROFESSIONAL SURVEYORS.

- §30-13A-1. Legislative findings; license required to practice.
- §30-13A-2. Short title.
- §30-13A-3. Definitions.
- §30-13A-4. Board of surveyors.
- §30-13A-5. Powers and duties of the board.
- §30-13A-6. Rule-making authority.
- §30-13A-7. Fees; special revenue account; administrative fines.
- §30-13A-8. Education, experience and examination requirements for a surveying license.
- §30-13A-9. Surveyor intern requirements.
- §30-13A-10. Surveying license requirements.
- §30-13A-11. Underground surveying endorsement requirements.
- §30-13A-12. License, endorsement and certificate from another state; license, endorsement and certificate to practice in this state.
- §30-13A-13. License and endorsement renewal requirements.
- §30-13A-14. Inactive license and endorsement requirements.
- §30-13A-15. Expired license and endorsement requirements.
- §30-13A-16. Retired license and endorsement requirements.
- §30-13A-17. Requirements for when a person fails an examination.

- §30-13A-18. Display of license, endorsement or certificate.
- §30-13A-19. Signature and seal or stamp.
- §30-13A-20. Certificate of authorization requirements.
- §30-13A-21. Certificate of authorization renewal requirements.
- §30-13A-22. Display of certificate of authorization.
- §30-13A-23. Surveyor-in-charge requirements.
- §30-13A-24. Requirements for recording documents.
- §30-13A-25. Delivery of plat and description; recordation.
- §30-13A-26. Minimum standards for boundary surveys.
- §30-13A-27. "West Virginia Coordinate Systems"; definition; plane coordinates, limitations of use.
- §30-13A-28. Complaints; investigations.
- §30-13A-29. Refusal to issue or renew, suspension or revocation; disciplinary action.
- §30-13A-30. Hearing and judicial review.
- §30-13A-31. Reinstatement.
- §30-13A-32. Unlawful acts.
- §30-13A-33. Injunctions.
- §30-13A-34. Criminal proceedings; penalties.
- §30-13A-35. Single act evidence of practice.
- §30-13A-36. Exemption from licensing and regulation.
- §30-13A-37. Continuation of board.

§30-13A-1. Legislative findings; license required to practice.

1 The practice of surveying and underground surveying
2 involves special knowledge in mathematics and physical and
3 applied sciences and specific knowledge in the principles and
4 methods of surveying and underground surveying, which
5 knowledge can only be acquired through education and
6 practical experience in surveying and underground surveying.
7 Land surveying and underground surveying involve precise
8 practices and should only be performed by a person who has
9 specific training in surveying or underground surveying.

10 Therefore, the Legislature finds that to protect the public
11 interest and to provide for the regulation of surveying and
12 underground surveying in this state, a person must have a
13 license, as provided in this article, to practice as a surveyor in

14 the state of West Virginia and a person must have a surveyor's
15 license and an endorsement, as provided in this article, to
16 practice as an underground surveyor in the state of West
17 Virginia.

§30-13A-2. Short title.

1 This article shall be known and may be cited as the "West
2 Virginia Professional Surveyors Act".

§30-13A-3. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise:

4 (a) "Applicant" means a person making application for a
5 license, endorsement or certificate, or a firm making application
6 for a certificate of authorization, under the provisions of this
7 article.

8 (b) "Board" means the West Virginia board of professional
9 surveyors.

10 (c) "Boundary survey" means a survey in which property
11 lines and corners of a parcel of land have been established by a
12 survey and a description of survey has been written and a plat
13 has been prepared for the property.

14 (d) "Cadastral survey" means a survey representing the
15 ownership, relative positions and dimensions of land, objects
16 and estates.

17 (e) "Certificate" means a document issued by the board.

18 (f) "Certificate holder" means a person holding a certificate
19 issued by the board.

20 (g) "Certificate of authorization" means a certificate issued
21 under the provisions of this article to a firm providing survey-
22 ing or underground surveying services.

23 (h) "Construction survey" means the laying of stakes for a
24 construction project.

25 (i) "Direct supervision" means the responsible licensee or
26 endorsee is in direct control of all field and office surveying
27 operations: *Provided*, That direct control does not necessarily
28 require the actual physical presence of the responsible licensee
29 or endorsee at the site of the survey, nor prohibit the responsible
30 licensee or endorsee from maintaining simultaneous direct
31 supervision of more than one survey.

32 (j) "Endorsee" means a person holding an endorsement to
33 practice underground surveying issued under the provisions of
34 this article.

35 (k) "Endorsement" means an endorsement to practice
36 underground surveying issued under the provisions of this
37 article.

38 (l) "Firm" means any nongovernmental business entity,
39 including an individual, partnership or corporation, providing
40 surveying or underground surveying services.

41 (m) "Geodetic control survey" means a survey involving
42 the precise measurement of points on the earth's surface which
43 form the framework or control for a large map or project.

44 (n) "Geographic information system" means a system
45 of hardware, software and procedures designed to support
46 the capture and management of spatially referenced infor-
47 mation.

48 (o) "Global positioning system survey" means any mea-
49 surement of elevations or positions either absolute or relative
50 which utilizes the observation of artificial satellites.

51 (p) "Hydrographic survey" means a survey that measures
52 and determines the topographic features of water bodies and the
53 adjacent land areas, including the width, depth and course of
54 water bodies and other relative features.

55 (q) "Inactive" means the status granted by the board to a
56 licensee or endorsee.

57 (r) "Description of survey", under this article only, means
58 a description established by a survey describing the physical
59 location of land or the associated effects on the land.

60 (s) "License" means a surveying license issued under the
61 provisions of this article.

62 (t) "Licensee" means a person holding a surveying license
63 issued under the provisions of this article.

64 (u) "Metes and bounds" means a description where the land
65 or the associated effects on the land have been measured by
66 starting at a known point and describing, in sequence, the lines
67 by direction and distance forming the boundaries of the land or
68 a defined area relative to the physical land features, associated
69 effects or structural improvements on the land.

70 (v) "Monument" means a permanent marker, either
71 boundary or nonboundary, used to establish corners or mark
72 boundary lines of a parcel of land or reference the geospatial
73 relationship of other objects.

74 (w) "Mortgage/loan inspection survey" means a survey in
75 which property lines and corner have not been established.

76 (x) "Oil or gas well survey" means a survey and plat of a
77 proposed oil or gas well, including the location of the well, the
78 surface or mineral tract on which the well is located and the
79 physical features surrounding the well. An oil or gas well
80 survey must be performed in accordance with other provisions
81 of this code affecting oil and gas well surveys.

82 (y) "Partition survey" means a survey where the boundary
83 lines of a newly created parcel of land are established and the
84 new corners are monumented.

85 (z) "Photogrammetry" means the use of aerial photography,
86 other imagery and surveying principles to prepare scaled maps
87 or other survey products reflecting the contours, features and
88 fixed works of the earth's surface.

89 (aa) "Practice of surveying" means providing professional
90 surveying services, including consulting, investigating, expert
91 testimony, evaluating, planning, mapping and surveying.

92 (bb) "Responsible charge" means direct control and
93 surveying work under the direct supervision of a licensee or
94 person authorized in another state or country to engage in the
95 practice of surveying.

96 (cc) "Retracement survey" means a survey where the
97 boundary lines and corners of a parcel of land are reestablished
98 from an existing legal or deed description.

99 (dd) "Strip" means a description of an area by reference to
100 an alignment, usually a right-of-way or an easement, stating the
101 number of feet on each side of the alignment, the relative
102 position of the alignment, a reference to the measurements and
103 monuments where the alignment crosses a parcel of land and
104 the source of title for each parcel of land the alignment crosses.

105 (ee) "Subdivision" means the division of a lot, tract or
106 parcel of land into two or more lots, tracts or parcels of land.

107 (ff) "Surface mine survey" means a survey of the surface
108 mine permit area, including the location of the surface mine, the
109 surface or mineral tracts on which the surface mine is located,
110 the physical features surrounding the surface mine, all creeks or
111 streams near the surface mine and any other identifying
112 characteristics of the land to specify the location of the surface
113 mine permit area. A surface mine survey must be performed in
114 accordance with other provisions of this code affecting surface
115 mine surveys.

116 (gg) "Survey" or "land survey" means to measure a parcel
117 of land and ascertain its boundaries, corners and contents or
118 make any other authoritative measurements. A survey can be
119 any of the following, but not limited to:

120 (1) The performance of a boundary, cadastral, construction,
121 geodetic control, hydrographic, land, mortgage/loan inspection,
122 oil or gas well, partition, photogrammetry, retracement,
123 subdivision or surface mine survey by a licensed surveyor;

124 (2) The location, relocation, establishment, reestablishment,
125 laying out or retracement of any property line or boundary of
126 any parcel of land or of any road or utility right-of-way,
127 easement, strip or alignment or elevation of any fixed works by
128 a licensed surveyor; or

129 (3) The performance of an underground survey by an
130 endorsed underground surveyor.

131 (hh) "Surveying" or "land surveying" means providing, or
132 offering to provide, professional services using such sciences as
133 mathematics, geodesy, and photogrammetry, and involving
134 both: (1) The making of geometric measurements and gathering
135 related information pertaining to the physical or legal features

136 of the earth, improvements on the earth, the space above, on or
137 below the earth; and (2) providing, utilizing or developing the
138 same into survey products such as graphics, data, maps, plans,
139 reports, descriptions or projects. Professional services include
140 acts of consultation, investigation, testimony evaluation, expert
141 technical testimony, planning, mapping, assembling and
142 interpreting gathered measurements and information related to
143 any one or more of the following:

144 (A) Determining by measurement the configuration or
145 contour of the earth's surface or the position of fixed objects
146 thereon.

147 (B) Determining by performing geodetic surveys the size
148 and shape of the earth or the position of any point on the earth.

149 (C) Determining the position for any survey control
150 monument or reference point.

151 (D) Creating, preparing or modifying electronic, computer-
152 ized or other data relative to the performance of the activities in
153 the above-described paragraphs (A) through (C), inclusive, of
154 this subdivision.

155 (E) Locating, relocating, establishing, reestablishing or
156 retracing property lines or boundaries of any tract of land, road,
157 right-of-way or easement.

158 (F) Making any survey for the division, subdivision, or
159 consolidation of any tract or tracts of land.

160 (G) Locating or laying out alignments, positions or eleva-
161 tions for the construction of fixed works.

162 (H) Determining, by the use of principles of surveying, the
163 position for any boundary or nonboundary survey monument or

164 reference point; or establishing or replacing any such monu-
165 ment or reference point.

166 (I) Creating, preparing or modifying electronic or comput-
167 erized or other data relative to the performance of the activities
168 in the above-described paragraphs (E) through (H), inclusive,
169 of this subdivision.

170 Any person who engages in surveying, who by verbal
171 claim, sign, advertisement, letterhead, card or in any other way
172 represents themselves to be a professional surveyor, or who
173 implies through the use of some other title that they are able to
174 perform, or who does perform, any surveying service or work
175 or any other service designated by the practitioner which is
176 recognized as surveying, is practicing, or offering to practice,
177 surveying within the meaning and intent of this article.

178 (ii) "Surveyor", "professional surveyor" or "land surveyor"
179 means a person licensed to practice surveying under the
180 provisions of this article.

181 (jj) "Surveyor, retired", "professional surveyor, retired" or
182 "land surveyor, retired" means a licensed surveyor no longer
183 practicing surveying or underground surveying, who has chosen
184 to retire and has been granted the honorific title of "Profes-
185 sional Surveyor, Retired".

186 (kk) "Surveyor-in-charge" means a licensee or endorsee
187 designated by a firm to oversee the surveying activities and
188 practices of the firm.

189 (ll) "Surveyor intern" means a person who has passed an
190 examination covering the fundamentals of land surveying.

191 (mm) "Underground survey" means a survey that includes
192 the measurement of underground mine workings and surface
193 features relevant to the underground mine, the placing of survey

194 points (spads) for mining direction, the performance of horizon-
195 tal and vertical control surveys to determine the contours of a
196 mine, the horizontal and vertical location of mine features, and
197 the preparation of maps, reports and documents, including mine
198 progress maps and mine ventilation maps. An underground
199 mine survey must be performed in accordance with other
200 provisions of this code affecting underground mine surveys.

201 (nn) "Underground surveyor" means a person endorsed to
202 practice underground surveying.

§30-13A-4. Board of surveyors.

1 (a) The "West Virginia board of examiners of land survey-
2 ors" is hereby continued and commencing the first day of July,
3 two thousand four, and shall be known as the "West Virginia
4 Board of Professional Surveyors".

5 (b) To be effective on the first day of July, two thousand
6 four, the governor shall appoint, by and with the advice and
7 consent of the Senate, one person who is a licensed professional
8 surveyor and has practiced surveying for at least five years, for
9 a term of three years, to replace the member of the board whose
10 term expires on the first day of July, two thousand four.

11 (c) To be effective on the first day of July, two thousand
12 five, the governor shall appoint, by and with the advice and
13 consent of the Senate:

14 (1) One person who has a license in another field of
15 practice other than surveying and also has a surveyor license by
16 examination and has practiced surveying for at least ten years
17 for a term of four years;

18 (2) One person who is an endorsed underground surveyor
19 with at least ten years of experience for a term of four years;
20 and

21 (3) One citizen member who is not licensed, endorsed or
22 certified under the provisions of this article and does not
23 perform any services related to the practice licensed, endorsed
24 or certified under the provisions of this article for a term of
25 three years.

26 (d) To be effective on the first day of July, two thousand
27 six, the governor shall appoint, by and with the advice and
28 consent of the Senate, one person who is a licensed professional
29 surveyor with at least ten years of experience for a term of four
30 years to replace the member of the board whose term expires on
31 the first day of July, two thousand six.

32 (e) After the initial appointment term, the board term shall
33 be for four years.

34 (f) Commencing with the board terms beginning the first
35 day of July, two thousand five, the board shall consist of the
36 following five members:

37 (1) Two licensed professional surveyors with at least ten
38 years of experience in land surveying;

39 (2) One person who has a license in another field of
40 practice other than surveying and also who has a surveyor
41 license by examination and has practiced surveying for at least
42 ten years;

43 (3) One endorsed underground surveyor who has practiced
44 underground surveying for at least five years; and

45 (4) One citizen member who is not licensed, endorsed or
46 certified under the provisions of this article and does not
47 perform any services related to the practice licensed, endorsed
48 or certified under the provisions of this article.

49 (g) Each licensed or endorsed member of the board, at the
50 time of his or her appointment, must have held a license or
51 endorsement in this state for a period of not less than three
52 years immediately preceding the appointment and each member
53 must be a resident of this state during the appointment term.
54 Members must represent the three congressional districts of the
55 state.

56 (h) No member may serve more than two consecutive full
57 terms and any member having served two full terms may not be
58 appointed for one year after completion of his or her second full
59 term. A member shall continue to serve until his or her
60 successor has been appointed and qualified. Any member
61 currently serving on the board on the effective date of this
62 article may be reappointed in accordance with the provisions of
63 this section.

64 (i) The governor may remove any member from the board
65 for neglect of duty, incompetency or official misconduct.

66 (j) Any member of the board immediately and automati-
67 cally forfeits his or her membership if he or she has his or her
68 license or endorsement to practice suspended or revoked by the
69 board, is convicted of a felony under the laws of any state or the
70 United States or becomes a nonresident of this state.

71 (k) The board shall designate one of its members as
72 chairperson and one member as secretary-treasurer.

73 (l) Each member of the board shall receive compensation
74 and expense reimbursement in accordance with section eleven,
75 article one of this chapter.

76 (m) A majority of the members of the board shall constitute
77 a quorum.

78 (n) The board must hold at least one annual meeting. Other
79 meetings shall be held at the call of the chairperson, or upon the
80 written request of two members, at such time and place as
81 designated in the call or request.

§30-13A-5. Powers and duties of the board.

1 The board has all the powers and duties set forth in article
2 one of this chapter and also the following powers and duties:

3 (1) Hold meetings, conduct hearings and administer
4 examinations and reexaminations;

5 (2) Set the requirements for a license, endorsement,
6 certificate, surveyor-in-charge and certificate of authorization;

7 (3) Establish qualifications for licensure and procedures for
8 submitting, approving and disapproving applications for a
9 license, endorsement certificate and certificate of authorization;

10 (4) Examine the qualifications of any applicant for a
11 license, endorsement, or certificate;

12 (5) Establish procedures for persons who have begun one
13 of the education, experience or examination requirements for
14 licensure, stated in subdivision (1), subsection (a), section eight
15 of this article, and has not completed the requirements prior to
16 the thirty-first day of December, two thousand four;

17 (6) Prepare, conduct, administer and grade written, oral or
18 written and oral examinations and reexaminations for a license,
19 endorsement or certificate;

20 (7) Determine the passing grade for the examinations;

21 (8) Administer, or contract with third parties to administer,
22 the examinations and reexaminations required under the
23 provisions of this article;

24 (9) Maintain records of the examinations and reexamina-
25 tions the board or a third party administers, including the
26 number of persons taking the examination or reexamination and
27 the pass and fail rate;

28 (10) Maintain an accurate registry of names and addresses
29 of all licensees, endorsees and certificate holders;

30 (11) Maintain an accurate registry of names and addresses
31 of firms holding a certificate of authorization;

32 (12) Establish the standards for surveys, surveying and
33 underground surveying;

34 (13) Define, by legislative rule, the fees charged under the
35 provisions of this article;

36 (14) Issue, renew, deny, suspend, revoke or reinstate
37 licenses, endorsements and certificates and discipline such
38 persons;

39 (15) Issue, renew, deny, suspend, revoke or reinstate
40 certificates of authorization and discipline such firms;

41 (16) Establish, by legislative rule, and implement the
42 continuing education requirements for licensees and endorsees;

43 (17) Sue and be sued in its official name as an agency of
44 this state;

45 (18) Set the job requirements for investigators and employ-
46 ees necessary to enforce the provisions of this article;

47 (19) Hire, fix the compensation of and discharge investiga-
48 tors and the employees necessary to enforce the provisions of
49 this article;

50 (20) Investigate alleged violations of the provisions of this
51 article, the rules promulgated hereunder, and orders and final
52 decisions of the board;

53 (21) Conduct hearings upon charges calling for discipline
54 of a licensee, endorsee or certificate holder, or revocation or
55 suspension of a license, endorsement, certificate or certificate
56 of authorization;

57 (22) Set disciplinary action and issue orders;

58 (23) Propose rules in accordance with the provisions of
59 article three, chapter twenty-nine-a of this code to implement
60 the provisions of this article; and

61 (24) Take all other actions necessary and proper to effectuate
62 the purposes of this article.

§30-13A-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article including:

5 (1) Setting the standards and requirements for licensure,
6 endorsement, certification, surveyor-in-charge and certificate
7 of authorization;

8 (2) Setting the procedure for examinations and reexamina-
9 tions;

10 (3) Establishing requirements for third parties to administer
11 examinations and reexaminations;

12 (4) Establishing procedures for the issuance and renewal of
13 a license, endorsement, certificate and certificate of authoriza-
14 tion;

- 15 (5) Setting a schedule of fees and rates for nonrenewal;
- 16 (6) Establishing and implementing requirements for
17 continuing education for licensees and endorsees;
- 18 (7) Evaluating the curriculum, experience and the instruc-
19 tional hours required for a license, endorsement and certificate;
- 20 (8) Denying, suspending, revoking, reinstating or limiting
21 the practice of a licensee, endorsee, certificate holder or a
22 holder of a certificate of authorization;
- 23 (9) Establishing electronic signature requirements; and
- 24 (10) Proposing any other rules or taking other action
25 necessary to effectuate the provisions of this article.
- 26 (b) All rules in effect on the effective date of this article
27 shall remain in effect until they are amended, modified,
28 repealed or replaced.

§30-13A-7. Fees; special revenue account; administrative fines.

- 1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special
3 revenue fund in the state treasury designated the “board of
4 examiners of land surveyors fund”, which fund is hereby
5 continued. Commencing on the first day of July, two thousand
6 four, the “board of examiners of land surveyors fund” shall be
7 designated the “board of professional surveyors fund”. The
8 fund shall be used by the board for the administration of this
9 article. Except as may be provided in section eleven, article
10 one of this chapter, the board shall retain the amounts in the
11 special revenue fund from year to year. No compensation or
12 expense incurred under this article is a charge against the
13 general revenue fund.

14 (b) Any amounts received as fines imposed pursuant to this
15 article shall be deposited into the general revenue fund of the
16 state treasury.

**§30-13A-8. Education, experience and examination requirements
for a surveying license.**

1 (a) Before a person may apply for a surveying license to
2 practice under the provisions of this article, the person must
3 have completed one of the following educational, experience
4 and examination requirements:

5 (1) Prior to the thirty-first day of December, two thousand
6 four, has completed or is in the process of completing one of
7 the following education, experience and examination require-
8 ments:

9 (A) Is a graduate of a surveying curriculum of two scholas-
10 tic years, has six years or more of experience in surveying
11 under the direct supervision of a licensee or a person authorized
12 in another state or country to engage in the practice of survey-
13 ing, has passed the examination prescribed by the board, which
14 examination shall cover the basic subject matter of land
15 surveying and land surveying skills and techniques, and has
16 passed the West Virginia examination;

17 (B) Is not a graduate of a surveying curriculum, has eight
18 years or more of experience in surveying under the direct
19 supervision of a licensee or a person authorized in another state
20 or country to engage in the practice of surveying, has passed the
21 examination prescribed by the board, which examination shall
22 cover the basic subject matter of land surveying and land
23 surveying skills and techniques, and has passed the West
24 Virginia examination;

25 (C) Is a graduate of a surveying curriculum of two or more
26 years, has passed the surveyor-in-training (SIT) examination

27 which must have included an eight-hour portion of fundamen-
28 tals in science, mathematics and surveying, has six years or
29 more of experience in surveying under the direct supervision of
30 a licensee or a person authorized in another state or country to
31 engage in the practice of surveying, and has passed the exami-
32 nation prescribed by the board, which examination consists of
33 principles and practices of land surveying and has passed the
34 West Virginia examination; or

35 (D) Prior to the thirty-first day of December, two thousand
36 four, if a person has begun one of the education, experience or
37 examination requirements, stated in this subdivision, and has
38 not completed the requirements prior to the thirty-first day of
39 December, two thousand four, then the person must notify the
40 board that he or she will be making application under this
41 subdivision and comply with the procedures prescribed by the
42 board; or

43 (2) On and after the first day of January, two thousand five,
44 has completed one of the following education, experience and
45 examination requirements:

46 (A) Has a four-year degree or a bachelor degree in survey-
47 ing approved by the board, which degree must include a
48 minimum of thirty hours of surveying or surveying-related
49 courses, has passed an examination in the fundamentals of land
50 surveying, has two years or more of experience in surveying in
51 responsible charge, has passed an examination in the principles
52 and practice of land surveying and has passed the West Virginia
53 examination;

54 (B) Has a four-year degree or a bachelor degree, has
55 completed a minimum of thirty hours of surveying or
56 surveying-related courses, has passed an examination in the
57 fundamentals of land surveying, has four years or more of
58 experience in surveying, including two years of experience in

59 responsible charge under the direct supervision of a licensee or
60 a person authorized in another state or country to engage in the
61 practice of surveying, has passed an examination in the princi-
62 ples and practice of land surveying and has passed the West
63 Virginia examination;

64 (C) Has a two-year degree or an associate degree in
65 surveying or a related field approved by the board, which
66 degree must include a minimum of thirty hours of surveying or
67 surveying-related courses, has passed an examination in the
68 fundamentals of land surveying, has four years or more of
69 experience in surveying, including two years of experience in
70 responsible charge under the direct supervision of a licensee or
71 a person authorized in another state or country to engage in the
72 practice of surveying, has passed an examination in the princi-
73 ples and practice of land surveying and has passed the West
74 Virginia examination; or

75 (D) Is not a graduate of a surveying curriculum, has
76 completed the national society of professional surveyors survey
77 technician program, has obtained a level IV certification, issued
78 by the national society of professional surveyors, with a total of
79 five and one-half years of experience in surveying under the
80 direct supervision of a licensee or a person authorized in
81 another state or country to engage in the practice of surveying,
82 has passed an examination in the fundamentals of land survey-
83 ing, has four additional years of experience in surveying,
84 including two years of responsible charge under the direct
85 supervision of a licensee or a person authorized in another state
86 or country to engage in the practice of surveying, has passed an
87 examination in the principles and practice of land surveying and
88 has passed the West Virginia examination: *Provided*, That the
89 person intending to apply for the license pursuant to the
90 provisions of this subdivision so notifies the board before the
91 first day of January, two thousand five.

92 (b) A person graduating from a two-year or four-year
93 approved surveying degree program with a grade point average
94 of 3.0 or higher is permitted to take the examination in the
95 fundamentals of land surveying during his or her final semester.

96 (c) A person must pass the examination in the fundamentals
97 of land surveying and complete the work experience before he
98 or she is allowed to take the examination in the principles and
99 practice of land surveying and the West Virginia examination.

100 (d) The examination in the fundamentals of land surveying,
101 the examination in the principles and practice of land surveying
102 and the West Virginia examination shall each be held at least
103 once each year at the time and place determined by the board.
104 A person who fails to pass all or any part of an examination
105 may apply for reexamination, as prescribed by the board, and
106 shall furnish additional information and fees as required by the
107 board.

§30-13A-9. Surveyor intern requirements.

1 (a) To be recognized as a surveyor intern by the board, a
2 person must meet the following requirements:

3 (1) Is of good moral character;

4 (2) Is at least eighteen years of age;

5 (3) Is a citizen of the United States or is eligible for
6 employment in the United States;

7 (4) Holds a high school diploma or its equivalent;

8 (5) Has not been convicted of a crime involving moral
9 turpitude;

10 (6) Has completed one of the education requirements set
11 out in section eight of this article; and

12 (7) Has passed an examination in the fundamentals of land
13 surveying.

14 (b) A surveyor-in-training recognized by the board prior to
15 the first day of July, two thousand four, shall for all purposes be
16 considered a surveyor intern under this section.

17 (c) A surveyor intern must pass the principles and practice
18 of land surveying examination and the West Virginia examina-
19 tion within ten years of passing the fundamentals of land
20 surveying examination. If the examinations are not passed
21 within ten years, then the surveyor intern must retake the
22 fundamentals of land surveying examination.

§30-13A-10. Surveying license requirements.

1 (a) The board shall issue a surveying license to practice
2 under the provisions of this article to an applicant who meets
3 the following requirements:

4 (1) Is of good moral character;

5 (2) Is at least eighteen years of age;

6 (3) Is a citizen of the United States or is eligible for
7 employment in the United States;

8 (4) Holds a high school diploma or its equivalent;

9 (5) Has not been convicted of a crime involving moral
10 turpitude; and

11 (6) Has completed all of one of the education, experience
12 and examination requirements set out in section eight of this
13 article.

14 (b) An application for a surveying license shall be made on
15 forms provided by the board and include the following:

16 (1) Name and address of the applicant;

17 (2) Applicant's education and experience;

18 (3) Location and date of passage of all the examinations;

19 (4) Names of five persons for reference, at least three of
20 whom shall be licensees or persons authorized in another state
21 or country to engage in the practice of surveying, and who have
22 knowledge of the applicant's work; and

23 (5) Any other information the board prescribes.

24 (c) An applicant shall pay all the applicable fees.

25 (d) A license to practice land surveying issued by the board
26 prior to the first day of July, two thousand four, shall for all
27 purposes be considered a license issued under this section:
28 *Provided*, That a person holding a license to practice land
29 surveying issued prior to the first day of July, two thousand
30 four, must renew the license pursuant to the provisions of
31 section thirteen of this article.

§30-13A-11. Underground surveying endorsement requirements.

1 (a) The board shall issue an endorsement to practice
2 underground surveying under the provisions of this article to an
3 applicant who meets the following requirements:

4 (1) Is a licensed surveyor;

5 (2) Has three years or more experience in underground
6 surveying under the direct supervision of an endorsee or a

7 person authorized in another state or country to engage in the
8 practice of underground surveying; and

9 (3) Has passed an examination as prescribed by the board.

10 (b) An application for an underground surveying endorse-
11 ment shall be made on forms provided by the board and include
12 the following:

13 (1) Name and address of the applicant;

14 (2) Applicant's underground surveying experience;

15 (3) Names of three persons for reference, all three of whom
16 shall be endorsees or persons authorized in another state or
17 country to engage in the practice of underground surveying, and
18 who have knowledge of the applicant's work; and

19 (4) Any other information the board prescribes.

20 (c) An applicant shall pay all the applicable fees.

21 (d) The examination for underground surveying shall be
22 held at least once each year at the time and place determined by
23 the board. An applicant who fails to pass all or any part of the
24 examination may apply for reexamination, as prescribed by the
25 board, at any time and shall furnish additional information and
26 fees as required by the board.

27 (e) A license to practice underground surveying issued by
28 the board prior to the first day of July, two thousand four, shall
29 for all purposes be considered an endorsement issued under this
30 section: *Provided*, That a person holding a license to practice
31 underground surveying issued prior to the first day of July, two
32 thousand four, must renew and then receive an endorsement
33 pursuant to the provisions of section thirteen of this article.

§30-13A-12. License, endorsement and certificate from another state; license, endorsement and certificate to practice in this state.

1 The board may issue a license, endorsement or certificate
2 to practice surveying or underground surveying in this state to
3 an applicant of good moral character who holds a valid license,
4 endorsement, certificate, registration or other authorization to
5 practice surveying or underground surveying from another state
6 if the applicant demonstrates that:

7 (1) He or she holds a license, endorsement, certificate,
8 registration or other authorization to practice surveying or
9 underground surveying in another state which was granted after
10 completion of educational requirements substantially equivalent
11 to those required in this state;

12 (2) He or she holds a license, endorsement, certificate,
13 registration or other authorization to practice surveying or
14 underground surveying in another state which was granted after
15 completion of experience requirements substantially equivalent
16 to those required in this state;

17 (3) He or she holds a license, endorsement, certificate,
18 registration or other authorization to practice surveying or
19 underground surveying in another state which was granted after
20 passing, in that or another state, examinations that are substan-
21 tially equivalent to the examinations required in this state and
22 has passed the West Virginia examination;

23 (4) He or she is not currently being investigated by a
24 disciplinary authority of another state, does not have charges
25 pending against his or her license, endorsement, certificate,
26 registration or other authorization to practice surveying or
27 underground surveying and has never had a license, endorse-
28 ment, certificate, registration or other authorization to practice
29 surveying or underground surveying revoked;

30 (5) He or she has not previously failed an examination for
31 licensure, endorsement or certification in this state;

32 (6) He or she has paid all the applicable fees; and

33 (7) Has completed such other action as required by the
34 board.

§30-13A-13. License and endorsement renewal requirements.

1 (a) A licensee or endorsee wanting to continue in active
2 practice shall, annually or biennially upon or before the first
3 day of July, renew his or her license or endorsement and pay a
4 renewal fee.

5 (b) At least thirty days prior to the first day of July, either
6 annually or biennially, the secretary-treasurer of the board shall
7 mail to every licensee and endorsee a notice of renewal, an
8 application for renewal and the amount of the renewal fee.

9 (c) The board shall charge a fee for each renewal of a
10 license or endorsement and a late fee for any renewal not paid
11 in a timely manner.

12 (d) The board shall require as a condition for the renewal of
13 a license or endorsement that each licensee or endorsee
14 participate in continuing education.

§30-13A-14. Inactive license and endorsement requirements.

1 (a) A licensee or endorsee who does not want to continue
2 in active practice shall notify the board in writing and be
3 granted inactive status.

4 (b) A person granted inactive status shall pay an inactive
5 fee and is exempt from the continuing education requirements
6 and cannot practice in this state.

7 (c) When an inactive licensee or endorsee wants to return
8 to active practice, he or she must complete all the continuing
9 education requirements and pay all the applicable fees as set by
10 rule.

§30-13A-15. Expired license and endorsement requirements.

1 (a) If a license or endorsement is not renewed when due,
2 then the board shall automatically place the licensee or en-
3 dorsee on expired status.

4 (b) The fee for a person on expired status shall increase at
5 a rate, determined by the board, for each month or fraction
6 thereof that the renewal fee is not paid, up to a maximum of
7 thirty-six months.

8 (c) Within thirty-six months of being placed on expired
9 status, if a licensee or endorsee wants to return to active
10 practice, he or she must complete all the continuing education
11 requirements and pay all the applicable fees as set by rule.

12 (d) After thirty-six months of being placed on expired
13 status, a license or endorsement cannot be renewed. A person
14 whose license or endorsement has expired must reapply for a
15 new license or endorsement.

§30-13A-16. Retired license and endorsement requirements.

1 (a) A licensee or endorsee who does not want to continue
2 practicing surveying or underground surveying and who has
3 chosen to retire shall notify the board in writing and be granted
4 retired status.

5 (b) A person granted retired status shall be given the
6 honorific title of "Professional Surveyor, Retired" and cannot
7 practice in this state.

§30-13A-17. Requirements for when a person fails an examination.

1 (a) Any person failing any of the examinations for survey-
2 ing or underground surveying shall not be permitted to work as
3 a licensed surveyor or underground surveyor under the provi-
4 sions of this article until the person has passed all the examina-
5 tions.

6 (b) A person failing the fundamentals of land surveying
7 examination may still gain experience as required in section
8 eight of this article until he or she passes the examination.

9 (c) A person who has passed the fundamentals of land
10 surveying examination, but failed the principles and practice
11 examination or West Virginia examination may only work as a
12 surveyor intern under the direct supervision of a licensee or a
13 person authorized in another state or country to engage in the
14 practice of surveying until he or she passes all of the examina-
15 tions.

16 (d) Any person failing the examination for underground
17 surveying shall not be permitted to work as an endorsed
18 underground surveyor under the provisions of this article until
19 the person has passed the examination. This subsection does
20 not preclude the person from practicing as a licensed surveyor.

§30-13A-18. Display of license, endorsement or certificate.

1 (a) The board shall prescribe the form for a license,
2 endorsement and certificate and may issue a duplicate license,
3 endorsement and certificate upon payment of a fee.

4 (b) A licensee, endorsee and a certificate holder shall
5 conspicuously display his or her license, endorsement or
6 certificate at his or her principal place of practice.

§30-13A-19. Signature and seal or stamp.

1 (a) Each licensee must have a seal or a stamp, authorized by
2 the board, which seal or stamp shall include the licensee's name
3 and license number and the words "Professional Surveyor".

4 (b) Each endorsee must have a seal or a stamp, authorized
5 by the board, which seal or stamp shall include the endorsee's
6 name and endorsement license number and the words "Profes-
7 sional Surveyor SU".

8 (c) All final survey documents prepared by a licensee or an
9 endorsee shall be signed and stamped with the licensee's or the
10 endorsee's seal or stamp, or an electronic signature, seal or
11 stamp may be affixed.

12 (d) It is unlawful for a person who is not licensed or not
13 endorsed to affix a signature and stamp or seal on a document.

§30-13A-20. Certificate of authorization requirements.

1 (a) Each firm practicing surveying or underground survey-
2 ing in West Virginia shall have a certificate of authorization.

3 (b) The board shall issue a certificate of authorization to a
4 firm that:

5 (1) Practices surveying or underground surveying in West
6 Virginia;

7 (2) Provides proof that the firm has employed a sur-
8 veyor-in-charge;

9 (3) Has paid all applicable fees; and

10 (4) Completes such other requirements as specified by the
11 board.

§30-13A-21. Certificate of authorization renewal requirements.

1 (a) A firm wanting to continue in active practice shall,
2 annually or biennially upon or before the first day of January,
3 renew its certificate of authorization and pay a renewal fee.

4 (b) At least thirty days prior to the first day of January,
5 either annually or biennially, the secretary-treasurer of the
6 board shall mail to every certificate of authorization holder a
7 notice of renewal, an application for renewal and the amount of
8 the renewal fee.

9 (c) The board shall charge a fee for each renewal of a
10 certificate of authorization and a late fee for any renewal not
11 paid in a timely manner.

§30-13A-22. Display of certificate of authorization.

1 (a) The board shall prescribe the form for a certificate of
2 authorization and may issue a duplicate certificate of authoriza-
3 tion upon payment of a fee.

4 (b) A firm shall conspicuously display its certificate of
5 authorization at its principal place of practice.

§30-13A-23. Surveyor-in-charge requirements.

1 (a) A firm with a certificate of authorization practicing
2 surveying or underground surveying in West Virginia must
3 operate all surveying or underground surveying activities under
4 the supervision and management of a surveyor-in-charge who
5 shall be a licensee or endorsee who is licensed or endorsed in
6 this state.

7 (b) The designated surveyor-in-charge is responsible for the
8 surveying or underground surveying work in this state provided
9 by the firm.

10 (c) A licensee or endorsee cannot be designated as a
11 surveyor-in-charge for more than one firm without approval of
12 the board.

13 (d) A licensee or endorsee who performs part-time or
14 consulting surveying or underground surveying services for a
15 firm cannot be designated as a surveyor-in-charge for that firm
16 unless the licensee or endorsee is an officer, a majority interest
17 holder or owner of the firm.

18 (e) The responsibilities of a surveyor-in-charge include:

19 (1) Renewal of the certificate of authorization;

20 (2) Notification to the board of any change in the
21 surveyor-in-charge;

22 (3) Supervising the firm's employees, including licensees,
23 endorseees, certificate holders and other personnel providing
24 surveying or underground surveying services in this state; and

25 (4) Ensuring that the policies of the firm adhere to the
26 provisions of this article.

27 (f) The board may authorize a licensee or endorsee to
28 supervise the work of an individual that is not an employee of
29 the licensee or endorsee, nor is employed by the same firm as
30 the licensee or endorsee. The potential supervisor must apply
31 to the board for this authorization.

§30-13A-24. Requirements for recording documents.

1 (a) No survey document intended to be used in the transfer
2 of real property, prepared by a licensee or endorsee, shall be
3 filed with any county clerk or accepted by any public official of
4 this state unless the licensee's or endorsee's signature and seal
5 or stamp have been affixed thereto, except that any document,

6 plan, map, drawing, exhibit, sketch or pictorial representation
7 prepared by a person exempted from the regulation and
8 licensing requirements of this article as provided in section
9 thirty-six of this article shall not be required to have the
10 signature and seal affixed thereto.

11 (b) If a survey document, prepared by a licensee or en-
12 dorsee, has been altered from its original form, it shall not be
13 filed with any county clerk or accepted by any public official of
14 this state, until the original licensee or endorsee has initialed the
15 changes, except that any document, plan, map, drawing, exhibit,
16 sketch or pictorial representation altered by a person exempted
17 from the regulation and licensing requirements of this article as
18 provided in section thirty-six of this article shall require that the
19 person who made the alteration initial the changes.

§30-13A-25. Delivery of plat and description; recordation.

1 (a) When a licensee or endorsee prepares a boundary
2 survey, he or she shall make a plat of the land and provide a
3 description of survey of the land. The licensee or endorsee
4 shall give a copy of the plat and the description of survey to the
5 client.

6 (b) If the title to the land that was surveyed is conveyed and
7 the instrument conveying the title uses the description of
8 survey, the plat shall be recorded simultaneously with the
9 instrument, except when a plat has already been recorded and
10 a reference to the recordation of the plat is given instead.

§30-13A-26. Minimum standards for boundary surveys.

1 (a) The purpose of these standards is to establish minimum
2 technical criteria to govern the performance of surveyors when
3 more stringent specifications are not required. Further, the
4 purpose is to protect the inhabitants of this state from dishonest

5 or incompetent surveying and generally to protect the public welfare.

6 (b) The client discussion prior to the survey shall cover the
7 purpose of the survey, the scope of services, including the time
8 for completion of the survey, disputes with adjoining, fees and
9 all pertinent details of the contract.

10 (c) The record search shall include the record description
11 based on current and prior deeds, conveyance from common
12 grantor, or if necessary, the original survey or grant. It shall
13 also include descriptions of adjoining properties, other sources
14 of information or resolution of conflicts in descriptions. All
15 records of information sources used shall be retained as a
16 permanent record.

17 (d) A licensee, endorsee, an exempt person under section
18 thirty-six of this article or persons under the direct supervision
19 of a licensee, endorsee or exempt person shall physically go to
20 the land and perform the survey.

21 (e) The field survey shall consist of the following:

22 (1) A field search for controlling evidence;

23 (2) A discussion of evidence with the owner or client;

24 (3) A reasonable attempt at notifying the adjoining;

25 (4) A reasonable attempt of talking to the adjoining or
26 others having knowledge of the boundaries; and

27 (5) The location of evidence by appropriate methods and
28 procedures.

29 (f) The surveyor shall use methods and equipment suitable
30 for the purpose of the survey and the field notes shall be
31 retained as a permanent record.

32 (g) Distance shall be reported in feet or meters, or parts
33 thereof, and angles or directions shall be reported in degrees or
34 parts thereof. The observations shall be measured to a precision
35 that will produce the desired level of accuracy. The area of the
36 tract being surveyed shall be measured and reported to a
37 precision consistent with the purpose of the survey. All
38 measuring devices shall be checked periodically for accuracy
39 and condition.

40 (h) Monumentation is required for all new or reestablished
41 corners, or reference monument for inaccessible corners, and is
42 encouraged at intervisible points between corners. Set monu-
43 ments shall be made of durable material and set firmly in the
44 ground. Pipes shall have a minimum inside diameter of one
45 inch, while rebars shall have a minimum outside diameter of
46 five-eighths inch and both shall have a minimum length of
47 thirty inches. Other markers shall have a minimum cross-
48 sectional area of one-half square inch and shall be made of
49 durable material, identifiable and unique. Natural objects
50 chosen for corners shall be durable, unique and easily identifi-
51 able.

52 (i) All rebars, pipes and other markers, except natural
53 objects, shall have caps bearing the surveyor's license number
54 or company name.

55 (j) A plat shall be prepared for all boundary or partition
56 surveys, unless specifically prohibited by the client in the
57 contract. The plat shall show the results of the field survey and
58 be provided to the client. Plats shall be to a scale large enough
59 to show significant details.

60 (k) The following information shall be shown on plats,
61 when applicable:

62 (1) A north arrow and a basis of bearings;

- 63 (2) The date of the survey;
- 64 (3) The measured length and direction of each boundary
65 line by distance, bearing and quadrant: *Provided*, That in the
66 case of a strip survey the station and offset method may be
67 utilized to describe the strip;
- 68 (4) General location information;
- 69 (5) Ties to significant objects;
- 70 (6) The evidence of possession on or near the property line;
- 71 (7) The description of all corners or reference monuments,
72 including whether the corners were found (fd) or set;
- 73 (8) The outlined area of the property and all significant
74 parts, including streets, alleys and nonlotted areas of a subdivi-
75 sion;
- 76 (9) The ares, acreage or square footage of the property;
- 77 (10) Any overlaps and gaps in record lines, former deed or
78 grant lines, as needed;
- 79 (11) The subdivision name, lot, block and plat reference;
- 80 (12) The tax map and parcel number, if available, of all the
81 tracts shown on the plat;
- 82 (13) The name of the current or past owners of the subject
83 property, or both;
- 84 (14) The name of the adjoining landowners;
- 85 (15) The current conveyance reference for the subject
86 property;

87 (16) The current conveyance reference for the adjoining
88 landowners;

89 (17) The name and location of any creeks, rivers or roads
90 near the property to help locate the property;

91 (18) The plat's title for reference when recording;

92 (19) The district or municipality, county and state where the
93 property is located; and

94 (20) The name, address, license number, signature and seal
95 of the surveyor.

96 (1) A description of survey shall be prepared for all bound-
97 ary, partition and retracement surveys, except mortgage
98 inspection surveys, and be provided to the client.

99 (m) The following shall be included in a description of
100 survey, when applicable:

101 (1) A metes and bounds description, or strip description, if
102 applicable, of the property;

103 (2) The point of beginning;

104 (3) The description of monumentation at each corner and
105 objects encountered along the line, including the adjoining
106 landowners;

107 (4) The length and direction of each line;

108 (5) The radius, chord bearing and distance of a curved
109 boundary line;

110 (6) The lot and block numbers for newly platted partitions
111 or subdivisions;

- 112 (7) The acreage or square footage of the property;
- 113 (8) The watershed or topographic location where the
114 property is located;
- 115 (9) A reference to the conveyance by which the current
116 owner claims title, including the grantor, grantee, date and
117 recording reference;
- 118 (10) A reference to the accompanying plat;
- 119 (11) The district or municipality, county and state where the
120 property is located; and
- 121 (12) The name of the individual preparing the description
122 of the survey.
- 123 (n) The report of survey shall be used when the plat and the
124 description of survey do not adequately address all matters
125 considered by the surveyor in performing the survey and should
126 be provided to the client with the plat and the description of
127 survey.
- 128 (o) The report of survey shall include all unusual circum-
129 stances surrounding the survey, with weight being given to
130 conflicting evidence and encroachments, overlaps or gaps and
131 how they were resolved and the names of adjoiningers contacted
132 and the information they supplied.
- 133 (p) A mortgage/loan inspection survey in which boundaries
134 on a property have not been surveyed in accordance with the
135 methods set forth by the board, then the plat must be stamped
136 “a mortgage inspection survey only, not a boundary survey”.
137 The surveyor must notify a landowner or other person commis-
138 sioning their services if a survey or an inspection was per-
139 formed.

§30-13A-27. “West Virginia Coordinate Systems”; definition; plane coordinates, limitations of use.

1 (a) The systems of plane coordinates which have been
2 established by the national ocean survey/national geodetic
3 survey (formerly the United States coast and geodetic survey)
4 or its successors for defining and stating the geographic
5 position or locations of points on the surface of the earth within
6 the state of West Virginia are hereafter to be known and
7 designated as the “West Virginia Coordinate System of 1927”
8 and the “West Virginia Coordinate System of 1983”.

9 (b) For the purpose of the use of this system the state is
10 divided into a “North Zone” and a “South Zone”.

11 The area now included in the following counties shall
12 constitute the north zone: Barbour, Berkeley, Brooke,
13 Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison,
14 Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan,
15 Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler,
16 Wetzel, Wirt and Wood.

17 The area now included in the following counties shall
18 constitute the south zone: Boone, Braxton, Cabell, Calhoun,
19 Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis,
20 Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe,
21 Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph,
22 Roane, Summers, Upshur, Wayne, Webster and Wyoming.

23 (c) As established for use in the north zone, the West
24 Virginia coordinate system of 1927 or the West Virginia
25 coordinate system of 1983 shall be named and in any land
26 description in which it is used it shall be designated the “West
27 Virginia Coordinate System of 1927 North Zone” or “West
28 Virginia Coordinate System of 1983 North Zone”.

29 As established for use in the south zone, the West Virginia
30 coordinate system of 1927 or the West Virginia coordinate

31 system of 1983 shall be named and in any land description in
32 which it is used it shall be designated the “West Virginia
33 Coordinate System of 1927 South Zone” or “West Virginia
34 Coordinate System of 1983 South Zone”.

35 (d) The plane coordinate values for a point on the earth’s
36 surface, used to express the geographic position or location of
37 such point in the appropriate zone of this system, shall consist
38 of two distances, expressed in U. S. survey feet and decimals of
39 a foot when using the West Virginia coordinate system of 1927
40 and determined in meters and decimals when using the West
41 Virginia coordinate system of 1983, but which may be con-
42 verted to and expressed in feet and decimals of a foot. One of
43 these distances, to be known as the “x-coordinate”, shall give
44 the position in an east-and-west direction. The other, to be
45 known as the “y-coordinate”, shall give the position in a north-
46 and-south direction.

47 These coordinates shall be made to depend upon and
48 conform to plane rectangular coordinate values for the
49 monumented points of the north American horizontal geodetic
50 control network as published by the national ocean sur-
51 vey/national geodetic survey (formerly the United States coast
52 and geodetic survey), or its successors, and whose plane
53 coordinates have been computed on the system defined by this
54 section. Any such station may be used for establishing a survey
55 connection to either West Virginia coordinate system.

56 (e) For purposes of describing the location of any survey
57 station or land boundary corner in the state of West Virginia, it
58 shall be considered a complete, legal and satisfactory descrip-
59 tion of such location to give the position of said survey station
60 or land boundary corner on the system of plane coordinates
61 defined in this section. Nothing contained in this section shall
62 require a purchaser or mortgagee of real property to rely wholly
63 on a land description, any part of which depends exclusively
64 upon either West Virginia coordinate system.

65 (f) When any tract of land to be defined by a single descrip-
66 tion extends from one into the other of the coordinate zones
67 specified in this section, the position of all points on its
68 boundaries may refer to either of the two zones. The zone
69 which is being used specifically shall be named in the descrip-
70 tion.

71 (g) (1) For purposes of more precisely defining the West
72 Virginia coordinate system of 1927, the following definition by
73 the United States coast and geodetic survey (now national ocean
74 survey/national geodetic survey) is adopted:

75 The "West Virginia Coordinate System of 1927 North
76 Zone" is a Lambert conformal conic projection of the Clarke
77 Spheroid of 1866, having standard parallels at north latitudes 39
78 degrees and 00 minutes and 40 degrees and 15 minutes, along
79 which parallels the scale shall be exact. The origin of coordi-
80 nates is at the intersection of the meridian 79 degrees 30
81 minutes west of Greenwich and the parallel 38 degrees 30
82 minutes north latitude. This origin is given the coordinates: x
83 = 2,000,000 feet and $y = 0$ feet.

84 The "West Virginia Coordinate System of 1927 South
85 Zone" is a Lambert conformal conic projection of the Clarke
86 Spheroid of 1866, having standard parallels at north latitudes 37
87 degrees 29 minutes and 38 degrees 53 minutes, along which
88 parallels the scale shall be exact. The origin of coordinates is
89 at the intersection of the meridian 81 degrees 00 minutes west
90 of Greenwich and the parallel 37 degrees 00 minutes north
91 latitude. This origin is given the coordinates: $x = 2,000,000$
92 feet and $y = 0$ feet.

93 (2) For purposes of more precisely defining the West
94 Virginia coordinate system of 1983, the following definition by
95 the national ocean survey/national geodetic survey is adopted:

96 The “West Virginia Coordinate System of 1983 North
97 Zone” is a Lambert conformal conic projection of the north
98 American datum of 1983, having standard parallels at north
99 latitudes 39 degrees and 00 minutes and 40 degrees and 15
100 minutes, along which parallels the scale shall be exact. The
101 origin of coordinates is at the intersection of the meridian 79
102 degrees 30 minutes west of Greenwich and the parallel 38
103 degrees 30 minutes north latitude. This origin is given the
104 coordinates: $x = 600,000$ meters and $y = 0$ meters.

105 The “West Virginia Coordinate System of 1983 South
106 Zone” is a Lambert conformal conic projection of the north
107 American datum of 1983, having standard parallels at north
108 latitudes 37 degrees 29 minutes and 38 degrees 53 minutes,
109 along which parallels the scale shall be exact. The origin of
110 coordinates is at the intersection of the meridian 81 degrees 00
111 minutes west of Greenwich and the parallel 37 degrees 00
112 minutes north latitude. This origin is given the coordinates: x
113 $= 600,000$ meters and $y = 0$ meters.

114 (h) No coordinates based on the West Virginia coordinate
115 system, purporting to define the position of a point on a land
116 boundary, shall be presented to be recorded in any public
117 records or deed records unless such point is based on a public
118 or private monumented horizontal control station established in
119 conformity with the standards of accuracy and specifications for
120 first order or better geodetic surveying as prepared and pub-
121 lished by the federal geodetic control committee (FGCC) of the
122 United States department of commerce. Standards and specifi-
123 cations of the FGCC or its successor in force on date of said
124 survey shall apply. The publishing of the existing control
125 stations, or the acceptance with intent to publish the newly
126 established control stations, by the national ocean sur-
127 vey/national geodetic survey will constitute evidence of
128 adherence to the FGCC specifications. The limitations speci-

129 fied in this section may be modified by a duly authorized state
130 agency to meet local conditions.

131 (i) The use of the term “West Virginia Coordinate System
132 of 1927 North or South Zone” or “West Virginia Coordinate
133 System of 1983 North or South Zone” on any map, report or
134 survey or other document shall be limited to coordinates based
135 on the West Virginia coordinate system as defined in this
136 section.

137 (j) A plat and a description of survey must show the basis
138 of control identified by the following:

139 (1) The monument name or the point identifier on which the
140 survey is based;

141 (2) The order of accuracy of the base monument; and

142 (3) The coordinate values used to compute the corner
143 positions.

144 (k) Nothing in this section shall prevent the recordation in
145 any public record of any deed, map, plat, survey, description or
146 of any other document or writing of whatever nature which
147 would otherwise constitute a recordable instrument or docu-
148 ment even though the same is not based upon or done in
149 conformity with the West Virginia coordinate system estab-
150 lished by this section, nor shall such nonconformity with such
151 system invalidate any deed, map, plat, survey, description or
152 other document which is otherwise proper.

§30-13A-28. Complaints; investigations.

1 (a) The board may, on its own motion, conduct an investi-
2 gation to determine whether there are any grounds for disciplin-
3 ary action against a licensee, endorsee, certificate holder or
4 certificate of authorization holder. The board shall, upon the

5 verified written complaint of any person, conduct an investiga-
6 tion to determine whether there are any grounds for disciplinary
7 action against a licensee, endorsee, certificate holder or
8 certificate of authorization holder.

9 (b) Upon receipt of a written complaint filed against any
10 licensee, endorsee, certificate holder or certificate of authoriza-
11 tion holder, the board shall provide a copy of the complaint to
12 the licensee, endorsee, certificate holder or certificate of
13 authorization holder.

14 (c) If the board finds, upon investigation, that probable
15 cause exists that the licensee, endorsee, certificate holder or
16 certificate of authorization holder has violated any provision of
17 this article or the rules promulgated hereunder, then the board
18 shall serve the licensee, endorsee, certificate holder or certifi-
19 cate of authorization holder with a written statement of charges
20 and a notice specifying the date, time and place of the hearing.
21 The hearing shall be held in accordance with the provisions of
22 this article.

**§30-13A-29. Refusal to issue or renew, suspension or revocation;
disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew, suspend,
2 revoke or limit any licensee, endorsee, certificate holder or
3 certificate of authorization holder, or practice privilege of a
4 licensee, endorsee, certificate holder or certificate of authoriza-
5 tion holder, and may take disciplinary action against a licensee,
6 endorsee, certificate holder or certificate of authorization holder
7 who, after notice and a hearing, has been adjudged by the board
8 as unqualified for any of the following reasons:

9 (1) Fraud or deceit in obtaining or maintaining a license,
10 endorsement, certificate or certificate of authorization;

11 (2) Failure by any licensee, endorsee, certificate holder or
12 certificate of authorization holder to maintain compliance with
13 the requirements for the issuance or renewal of a license,
14 endorsement, certificate or certificate of authorization;

15 (3) Dishonesty, fraud, professional negligence in the
16 performance of land surveying or underground surveying
17 services, or a willful departure from the accepted standards of
18 surveying and the professional conduct of surveyors;

19 (4) Violation of any provision of this article, any rule
20 promulgated hereunder, any professional standard or rule of
21 professional conduct;

22 (5) Failure to comply with the provisions of this article, any
23 rule promulgated hereunder or any order or final decision of the
24 board;

25 (6) Failure to respond to a request or action of the board;

26 (7) Has been convicted of a crime involving moral turpi-
27 tude;

28 (8) Conviction of a felony or a crime involving dishonesty
29 or fraud under the laws of the United States or this state, or
30 conviction of any similar crime under the laws of any other
31 state, if the underlying act or omission involved would have
32 constituted a crime under the laws of this state;

33 (9) Any conduct adversely affecting the licensee's, en-
34 dorsee's, certificate holder's or certificate of authorization
35 holder's fitness to perform surveying or underground surveying
36 services; or

37 (10) Knowingly using any false or deceptive statements in
38 advertising.

39 (b) If the board suspends, revokes, refuses to issue, refuses
40 to renew or limits any license, endorsement, certificate,
41 certificate of authorization or practice privilege, the board shall
42 make and enter an order to that effect and give written notice of
43 the order to the person by certified mail, return receipt re-
44 quested, which order shall include a statement of the charges
45 setting forth the reasons for the action, and notice of the date,
46 time and place of the hearing. If a license, endorsement,
47 certificate or certificate of authorization is ordered suspended
48 or revoked, then the licensee, endorsee, certificate holder or
49 certificate of authorization holder shall, within twenty days
50 after receipt of the order, return the license, endorsement,
51 certificate or certificate of authorization to the board. The
52 hearing shall be held in accordance with the provisions of this
53 article.

54 (c) Disciplinary action includes, but is not limited to, a
55 reprimand, censure, probation, administrative fines, and
56 mandatory attendance at continuing education seminars.

§30-13A-30. Hearing and judicial review.

1 (a) Any person adversely affected by an order entered by
2 the board is entitled to a hearing. A hearing on a statement of
3 the charges shall be held in accordance with the provisions for
4 hearings set forth in section eight, article one of this chapter and
5 the procedures specified by the board by rule.

6 (b) Any licensee, endorsee, certificate holder or certificate
7 of authorization holder, adversely affected by any decision of
8 the board entered after a hearing, may obtain judicial review of
9 the decision in accordance with section four, article five,
10 chapter twenty-nine-a of this code and may appeal any ruling
11 resulting from judicial review in accordance with article five,
12 chapter twenty-nine-a of this code.

§30-13A-31. Reinstatement.

1 If the board has suspended, revoked or refused to renew a
2 license, endorsement, certificate or certificate of authorization,
3 the licensee, endorsee, certificate holder or certificate of
4 authorization holder shall be afforded an opportunity to
5 demonstrate his, her or its qualifications to resume practice.
6 The application for reinstatement shall be in writing and subject
7 to the procedures specified by the board.

§30-13A-32. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice surveying or underground surveying in this state
3 without a license or endorsement issued under the provisions of
4 this article, or advertise or use any title or description tending
5 to convey the impression that they are a licensed surveyor or an
6 endorsed underground surveyor, unless such person has been
7 duly licensed or endorsed under the provisions of this article.

8 (b) It is unlawful for any firm to practice or offer to practice
9 surveying or underground surveying in this state without a
10 certificate of authorization issued under the provisions of this
11 article, or advertise or use any title or description tending to
12 convey the impression that it is a surveying or underground
13 surveying firm, unless such firm has been issued a certificate of
14 authorization under the provisions of this article.

§30-13A-33. Injunctions.

1 (a) When, by reason of an investigation under this article or
2 otherwise, the board or any other interested person believes that
3 a person has violated or is about to violate any provision of this
4 article, any rule promulgated hereunder, any order of the board
5 or any final decision of the board, the board or any other
6 interested person may apply to any court of competent jurisdic-

7 tion for an injunction against such person enjoining such person
8 from the violation. Upon a showing that the person has
9 engaged in or is about to engage in any prohibited act or
10 practice, an injunction, restraining order or other appropriate
11 order may be granted by the court without bond.

12 (b) The board may fine and issue cease and desist orders
13 against individuals or firms found to be in violation of the
14 provisions of this article or any rule adopted thereunder.

15 (c) A cause of action by the board may be brought in the
16 circuit court of the county where the board's office is located or
17 in the circuit court of the county where the cause of action took
18 place.

§30-13A-34. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a person has
3 knowingly violated the provisions of this article, the board may
4 bring its information to the attention of the relevant county
5 prosecuting attorney or other appropriate law-enforcement
6 officer who may cause appropriate criminal proceedings to be
7 brought.

8 (b) If a court of law finds that a person knowingly violated
9 any provision of this article, any rule promulgated hereunder,
10 any order of the board or any final decision of the board, then
11 the person is guilty of a misdemeanor and, upon conviction
12 thereof, shall be fined no less than one hundred dollars and no
13 more than one thousand dollars for each violation, confinement
14 in a regional correctional facility for up to thirty days for each
15 violation, or both fined and confined.

§30-13A-35. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act prohib-
3 ited by this article is sufficient to justify a penalty, injunction,
4 restraining order or conviction without evidence of a general
5 course of conduct.

§30-13A-36. Exemption from licensing and regulation.

1 (a) The following persons are exempt from licensing and
2 regulation under the provisions of this article:

3 (1) Any employee or agent of a person, firm, association or
4 corporation, when such employee or agent is engaged in the
5 practice of land surveying exclusively for the person, firm,
6 association or corporation by which employed, or, if a corpora-
7 tion, its parents, affiliates or subsidiaries, and such person, firm,
8 association or corporation does not hold himself, herself or
9 itself out to the public as being engaged in the business of land
10 surveying.

11 (2) Any employee or officer of the United States, this state
12 or any political subdivision thereof, or their agents, when such
13 employee is engaged in the practice of land surveying exclu-
14 sively for such governmental unit.

15 (b) The minimum standards for boundary surveys contained
16 in section twenty-six of this article apply, notwithstanding the
17 exemptions provided by this section.

§30-13A-37. Continuation of board.

1 The West Virginia board of professional surveyors 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 six, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

CHAPTER 202

(S. B. 718 — By Senators Kessler, Caldwell, Fanning, Hunter, Jenkins, Minard, Oliverio, Rowe, Snyder, Deem, McKenzie and Smith)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-21-8 and §30-21-9 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-21-10a, all relating to authorizing the board of examiners of psychologists to set fees and other requirements by legislative rule.

Be it enacted by the Legislature of West Virginia:

That §30-21-8 and §30-21-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §30-21-10a, all to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-8. Issuance of license; renewal of license; renewal fee; display of license.

§30-21-9. Temporary permits.

§30-21-10a. Rulemaking.

§30-21-8. Issuance of license; renewal of license; renewal fee; display of license.

1 (a) The board shall issue a license to engage in the practice
2 of psychology to those persons who meet the requirements of
3 this article.

4 (b) The license shall be valid for a period of two years from
5 the date issued and may be renewed for a period of two years

6 without examination upon application for renewal on a form
7 prescribed by the board and payment to the board of a reason-
8 able renewal fee to be set by the board by legislative rule::
9 *Provided*, That the board may deny an application for renewal
10 for any reason which would justify the denial of an original
11 application for a license.

12 (c) The board shall prescribe the form of licenses and each
13 license shall be conspicuously displayed by the licensee at his
14 principal place of practice.

§30-21-9. Temporary permits.

1 (a) Upon proper application, the board may issue, without
2 examination, a temporary permit to engage in the practice of
3 psychology in this state:

4 (1) Pending examination, to an applicant who meets the
5 qualifications of subdivisions (1), (2), (3), (4), (6) and (7),
6 subsection (a), section seven of this article, which temporary
7 permit shall expire thirty days after the board gives written
8 notice of the results of the examination held next following the
9 issuance of such temporary permit and such permit may not be
10 renewed nor may another permit be issued to the same person;
11 and

12 (2) To a psychologist who is not a resident of this state and
13 who meets the requirements of subdivisions (1), (2), (3), (4), (6)
14 and (7), subsection (a), section seven of this article, which
15 temporary permit shall be valid only for a period of ninety days
16 in the calendar year in which issued, and such permit may not
17 be renewed nor may another permit be issued to the same
18 person in the same calendar year.

19 (b) The fee for any temporary permit shall be set by the
20 board by legislative rule.

§30-21-10a. Rulemaking.

1 (a) The board may propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to provide for:

4 (1) Licensure requirements, including requirements for
5 applications, examinations, reciprocity, temporary permits and
6 reinstatement;

7 (2) Fees for licenses, renewals of licenses and other
8 services provided by the board;

9 (3) Experience, education and continuing education
10 requirements and approval of courses; and

11 (4) Any other purpose to carry out the requirements of this
12 article.

13 (b) Any rules in effect as of the passage of this article will
14 remain in effect until amended, modified, repealed or replaced.

CHAPTER 203

**(H. B. 4641 — By Delegates Michael, Leach, Long,
Kominar, Foster, Beane and Perdue)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6, all relating to the delegation of dialysis care; authorizing delegation under certain

circumstances; providing for training and testing standards; providing for approval or disapproval of training programs and testing organizations; providing for exceptions to training and testing requirements; authorizing rulemaking and emergency rulemaking; requiring facilities to provide information to the board; and providing for the expiration of authority in absence of sunrise application.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6, all to read as follows:

ARTICLE 7C. DELEGATION OF DIALYSIS CARE.

§30-7C-1. Definitions.

§30-7C-2. Authority to delegate care.

§30-7C-3. Training and testing standards; approval.

§30-7C-4. Rule-making authority.

§30-7C-5. Facilities to determine qualifications and provide information to board.

§30-7C-6. Authority contingent upon submission of application to regulate dialysis technicians.

§30-7C-1. Definitions.

1 As used in this article:

2 (1) "Approved dialysis technician training program" means
3 any board approved program used to train dialysis technicians
4 including, but not limited to, a board approved dialysis facil-
5 ity-sponsored training program or another state approved
6 program.

7 (2) "Board" means the West Virginia board of examiners
8 for registered professional nurses.

9 (3) "Dialysis care" means performing and monitoring
10 dialysis procedures which includes initiating and discontinuing

11 dialysis, drawing blood, and administering the following
12 medications:

13 (A) Heparin either to prime the pump, initiate treatment or
14 for administration throughout the treatment, in an amount
15 prescribed by a physician or other practitioner duly authorized
16 to so prescribe. This may be done either intravenously, periph-
17 erally via a fistula needle or in another clinically acceptable
18 manner;

19 (B) Normal saline via the dialysis extracorporeal circuit as
20 needed throughout the dialysis procedure; and

21 (C) Intradermal anesthetic in an amount prescribed by a
22 physician or other practitioner duly authorized to so prescribe.

23 (4) "Direct supervision" means initial and ongoing direc-
24 tion, procedural guidance, observation, and evaluation, and the
25 on-site presence of a registered nurse or physician.

26 (5) "West Virginia dialysis technician or dialysis techni-
27 cian" means an individual who has successfully completed an
28 approved dialysis technician training program and who has
29 achieved national certification as a dialysis technician, or an
30 individual who meets the requirements set forth in the board's
31 rule pertaining to dialysis technicians practicing prior to the
32 first day of July, two thousand four.

§30-7C-2. Authority to delegate care.

1 (a) A person licensed as a registered professional nurse
2 under the provisions of article seven of this chapter may
3 delegate dialysis care to a dialysis technician if:

4 (1) The dialysis technician has completed the requirements
5 set forth in this article and established by the board by rule;

6 (2) The registered professional nurse considers the dialysis
7 technician to be competent; and,

8 (3) The dialysis technician provides the care under the
9 direct supervision of the registered professional nurse.

10 (b) A person licensed as a registered professional nurse
11 under the provisions of article seven of this chapter may not
12 delegate dialysis care to a person who is listed on the nurse aide
13 abuse registry with a substantiated finding of abuse, neglect or
14 misappropriation of property.

§30-7C-3. Training and testing standards; approval.

1 (1) The board shall prescribe standards for an approved
2 dialysis technician training program, and prescribe testing
3 standards and requirements, by legislative rule.

4 (2) Persons and organizations providing training programs
5 and testing services must be approved by the board.

6 (3) Approval may be denied or withdrawn for failure to
7 meet the standards set out in code or rule, or failure to meet the
8 requirements of section five of this article.

§30-7C-4. Rule-making authority.

1 (a) The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of the code to:

4 (1) Prescribe standards for training programs;

5 (2) Prescribe testing standards and requirements;

6 (3) Prescribe requirements for persons and organizations
7 providing training programs and testing services;

8 (4) Assess fees for the approval of training programs, tests
9 and providers of training programs and testing services;

10 (5) Prescribe standards for individuals who are practicing
11 as dialysis technicians prior to the first day of July, two
12 thousand four, in the transition of meeting the requirements of
13 this article; and

14 (6) Provide for any other requirements to carry out the
15 purposes of this article.

16 (b) The board may promulgate emergency rules pursuant to
17 the provisions of section fifteen, article three, chapter twenty-
18 nine-a of this code for the purposes set forth in subsection (a)
19 of this section.

§30-7C-5. Facilities to determine qualifications and provide information to board.

1 (a) Facilities which provide dialysis care through the
2 employment of dialysis technicians shall determine that the
3 dialysis technicians in their employment have met the standards
4 and requirements of this article and the legislative rules
5 promulgated pursuant to this article, including determining
6 whether any dialysis technician is listed on the nurse aide abuse
7 registry with a substantiated finding of abuse, neglect or
8 misappropriation of property.

9 (b) On or before the first day of July of each year, every
10 facility in the state of West Virginia which provides dialysis
11 care through the employment of dialysis technicians shall
12 provide a list to the board of the names and addresses of all
13 dialysis technicians employed at the facility.

§30-7C-6. Authority contingent upon submission of application to regulate dialysis technicians.

1 The authority to delegate the performance of dialysis care
2 pursuant to the provisions of this article shall cease on the first
3 day of August, two thousand five, unless an application to
4 regulate dialysis technicians is submitted by the first day of

5 December, two thousand four, in accordance with the provi-
6 sions of article one-a of this chapter on or before that date.

CHAPTER 204

(Com. Sub. for S. B. 456 — By Senators Bowman and McKenzie)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §12-4-14 of the code of West Virginia, 1931, as amended, relating to requiring state agencies administering funds or grants to notify grantees of certain audit reporting requirements; barring grantees not complying with reporting requirements from subsequently receiving funds or grants; and allowing audits to be filed electronically.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 (a) Any corporation, association or other organization in
2 West Virginia that is not a local government as defined in
3 section one-a, article nine, chapter six of this code and which
4 receives state funds or grants in the amount of fifteen thousand
5 dollars or more shall file an audit of the disbursement of funds
6 with the legislative auditor's office. The audit shall be filed
7 within two years of the disbursement of funds or grants by the
8 grantor and shall be made by an independent certified public

9 accountant at the cost of the grantee and show that the funds or
10 grants were spent for the purposes intended when the grant was
11 made. The state agency administering the funds or grants shall
12 notify the grantee of the reporting requirements set forth in this
13 section. A grantee failing to file a required audit within the
14 two-year time period is barred from subsequently receiving
15 state funds or grants until the grantee has filed the audit and is
16 otherwise in compliance with the provisions of this section.

17 (b) Audits of state funds or grants under fifteen thousand
18 dollars may be authorized by the joint committee on govern-
19 ment and finance to be conducted by the legislative auditor's
20 office, at no cost to the grantee: *Provided*, That volunteer fire
21 departments satisfy the audit requirements of this section by
22 submitting a sworn statement of annual expenditures to the
23 legislative auditor's office, along with a filing fee of seventy-
24 five dollars, on or before the fourteenth day of February of each
25 year, if the volunteer fire department elects not to be audited.
26 The sworn statement of expenditures shall be signed by the
27 chief or director of the volunteer fire department, and shall be
28 made under oath and acknowledged before a notary public. An
29 additional filing fee of twenty-five dollars shall be included
30 with the sworn statement of annual expenditures if the state-
31 ment is submitted between the fifteenth day of February and the
32 fifteenth day of March. An additional filing fee of fifty dollars
33 shall be included with the sworn statement of annual expendi-
34 tures if the statement is submitted between the sixteenth day of
35 March and the fifteenth day of April. If the sworn statement is
36 not submitted on or before the fifteenth day of April, the
37 volunteer fire department shall file an audit of the disbursement
38 of funds, made by an independent certified public accountant,
39 with the legislative auditor's office no later than the first day of
40 July. The audit shall be made at the cost of the volunteer fire
41 department. If the audit made by the independent certified
42 public accountant is not filed with the legislative auditor by the
43 first day of July, the legislative auditor shall notify the state

44 treasurer who shall withhold payment of one thousand dollars
45 from any amount that would otherwise be distributed to the fire
46 department under the provisions of sections fourteen-d and
47 thirty-three, article three, chapter thirty-three of this code and
48 section sixteen-a, article twelve of said chapter and pay the
49 amount withheld to the fund from which it was distributed to be
50 redistributed the following year pursuant to the applicable
51 provisions of those sections. If the volunteer fire department
52 does not timely file a sworn statement of annual expenditures
53 or an audit of the disbursement of funds, made by an independ-
54 ent certified public accountant, with the legislative auditor's
55 office for three consecutive years, the legislative auditor shall
56 notify the state treasurer who shall withhold payment of any
57 amount that would otherwise be distributed to the fire depart-
58 ment under the provisions of sections fourteen-d and
59 thirty-three, article three, chapter thirty-three of this code and
60 section sixteen-a, article twelve of said chapter and pay the
61 amount withheld to the fund from which it was distributed to be
62 redistributed the following year pursuant to the applicable
63 provisions of those sections.

64 (c) The office of the legislative auditor may assign an
65 employee or employees to perform audits at the direction of the
66 legislative auditor of the disbursement of funds or grants to
67 volunteer fire departments. The volunteer fire department shall
68 cooperate with the legislative auditor, the legislative auditor's
69 employees and the state auditor in performing their duties under
70 this section. If the legislative auditor determines a volunteer
71 fire department is not cooperating, the legislative auditor shall
72 notify the state treasurer who shall withhold payment of any
73 amount that would otherwise be distributed to the fire depart-
74 ment under the provisions of sections fourteen-d and thirty-
75 three, article three, chapter thirty-three of this code and section
76 sixteen-a, article twelve of said chapter until the legislative
77 auditor informs the treasurer that the fire department has
78 cooperated as required by this section. The state treasurer shall

79 pay the amount withheld into a special revenue account hereby
80 created in the state treasury and designated the “Volunteer Fire
81 Department Audit Account”. If, after one year from payment
82 of the amount withheld into the special revenue account, the
83 legislative auditor informs the state treasurer of continued
84 noncooperation by the fire department, the state treasurer shall
85 pay the amount withheld to the fund from which it was distrib-
86 uted to be redistributed the following year pursuant to the
87 applicable provisions of those sections.

88 (d) Filing fees paid by volunteer fire departments pursuant
89 to this section shall be paid into a special revenue account
90 created in the state treasury known as the “Special Legislative
91 Audit Fund”. Expenditures from the fund are authorized to be
92 made by the legislative auditor’s office solely for the purposes
93 of payment of costs associated with the audits conducted
94 pursuant to this section. Any person who files a fraudulent
95 sworn statement of expenditures under this section is guilty of
96 a felony and, upon conviction thereof, shall be fined not less
97 than one thousand dollars nor more than five thousand dollars
98 or imprisoned in a state correctional facility for not less than
99 one year nor more than five years, or both fined and impris-
100 oned.

101 (e) Whenever the state auditor performs an audit of a
102 volunteer fire department for any purpose the auditor shall also
103 conduct an audit of other state funds received by the fire
104 department pursuant to sections fourteen-d and thirty-three,
105 article three, chapter thirty-three of this code and section
106 sixteen-a, article twelve of said chapter. The auditor shall send
107 a copy of any such audit to the legislative auditor. The legisla-
108 tive auditor may accept an audit performed by the auditor in
109 lieu of performing an audit under this section.

110 (f) Any audit submitted pursuant to the provisions of this
111 section may be filed electronically in accordance with the
112 provisions of article one, chapter thirty-nine-a of this code.

CHAPTER 205

**(Com. Sub. for H. B. 4559 — By Delegates Beane,
Walters and Webster)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §8-27-23 of the code of West Virginia, 1931, as amended, relating generally to the procurement of supplies, equipment, materials and contracts for the construction of facilities by urban mass transportation systems.

Be it enacted by the Legislature of West Virginia:

That §8-27-23 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 (a) Any contract for the construction of facilities by any
2 authority, when the expenditure required exceeds the sum of ten
3 thousand dollars, shall be based solely on competitive sealed
4 bids.

5 (b) Except as provided below, the procurement of all
6 supplies, equipment and materials, where the expenditure
7 required exceeds the sum of ten thousand dollars, shall be based
8 on the competitive procedure that is best suited under the
9 circumstances of the procurement.

10 (c) In determining the competitive bid procedures that is
11 best suited under the circumstances, an authority shall conduct:

12 (1) Competitive sealed bidding if:

13 (A) Time permits a competitive bid process to be used;

14 (B) The award of the bid will be made primarily on price
15 and price-related factors;

16 (C) It is likely to be unnecessary to conduct discussions
17 with suppliers regarding bids, including discussions regarding
18 price; and

19 (D) There is a reasonable expectation of receiving more
20 than one sealed bid; or

21 (2) Competitive negotiation where competitive sealed
22 bidding is not best suited under the circumstances.

23 (d) Notwithstanding the provisions of subsections (b) and
24 (c) of this section, an authority may provide for the procure-
25 ment of property or services covered by this section using other
26 than competitive procedures only when:

27 (1) The property or services needed are available only from
28 one responsible source and no other type of property or service
29 will satisfy the authority's needs;

30 (2) The authority's need for the property or service is
31 urgent, unusual and compelling because the authority would be
32 seriously injured unless the authority is permitted to limit the
33 number of sources from which it solicits;

34 (3) It is necessary to award a contract to a particular source
35 or sources in order to maintain a facility, producer, manufac-
36 turer or other supplier in case of emergency; or

37 (4) It is necessary to establish or maintain an alternative
38 source or sources of supply for the property or service to
39 increase or maintain competition.

40 (e) All sealed bids or competitive negotiated proposals
41 received in response to a solicitation or request for bid may be
42 rejected if an authority determines that the action is in the
43 public interest.

44 (f) Sealed bids shall be opened publicly at the time and
45 place stated in the solicitation and the authority shall evaluate
46 the bids without discussions with bidders and award a contract
47 with reasonable promptness to the responsible source whose bid
48 conforms to the solicitation and is most advantageous to the
49 authority, considering only price and other price-related factors
50 included in the solicitation.

51 (g) The evaluation of competitive proposals may include
52 written or oral discussions conducted with all responsible
53 bidders or suppliers at any time after receipt of the proposals
54 and before the award or may be made without discussions. In
55 either event, the award shall be made to the lowest responsible
56 bidder or supplier.

57 (h) Adequate public notice of the solicitation of bids and
58 proposals shall be given. Public notice shall be given not less
59 than seven days before the date set for bid opening or, in the
60 case of competitive negotiation, not less than seven days before
61 the due date for receipt of proposals: *Provided*, That bids for the
62 construction of facilities shall be obtained by public notice
63 published as a Class I legal advertisement in compliance with
64 the provisions of article three, chapter fifty-nine of this code,
65 with such publication being made at least fourteen days before
66 the final date for submitting bids.

CHAPTER 206

(Com. Sub. for S. B. 271 — By Senators Hunter,
Rowe, Weeks, Caldwell, Jenkins and Unger)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17G-1-1, §17G-1-2, §17G-1-3, §17G-2-1, §17G-2-2 and §17G-2-3, all relating to racial profiling data collection; defining terms; requiring all state law-enforcement officers to collect certain data during traffic stops; requiring the division of motor vehicles to develop forms and compile the data collected; establishing penalties for agencies which fail to comply; providing limited civil liability protection for officers collecting data; providing form content; providing consultation with law-enforcement organizations relating to developing forms; requiring director of the governor's committee on crime, delinquency and correction to conduct analysis and distribute data; requiring promulgation of emergency and legislative rules; providing effective date for requiring collection of data; providing for annual report to the Legislature; and expiring data collection requirements.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17G-1-1, §17G-1-2, §17G-1-3, §17G-2-1, §17G-2-2 and §17G-2-3, all to read as follows:

CHAPTER 17G. RACIAL PROFILING DATA COLLECTION ACT.

Article

- 1. Racial Profiling Data Collection.**
- 2. Analysis of Traffic Stops Study and Annual Report by Director of the Governor's Committee on Crime, Delinquency and Correction.**

ARTICLE 1. RACIAL PROFILING DATA COLLECTION.

§17G-1-1. Definitions.

§17G-1-2. Information obtained by law-enforcement officers during a traffic stop.

§17G-1-3. Law-enforcement officer exemption from civil liability.

§17G-1-1. Definitions.

1 The following words and phrases, when used in this
2 chapter, shall, for the purposes of this chapter, have the
3 meanings respectively ascribed to them in this article:

4 (a) "Gross data" means aggregate data regarding the
5 information obtained under section two of this article.

6 (b) "Law-enforcement agency" means every state, county
7 or municipal agency with officers who are authorized to direct
8 or regulate traffic or to make arrests or issue citations or
9 warnings for violations of traffic laws and ordinances.

10 (c) "Minority group" means individuals of any ethnic
11 descent, including, but not limited to, African-American,
12 Hispanic, Native American, Middle Eastern, Asian or Pacific
13 Islander.

§17G-1-2. Information obtained by law-enforcement officers during a traffic stop.

1 Each time a law-enforcement officer stops a driver of a
2 motor vehicle for a violation of any motor vehicle statute or
3 ordinance, other than for a nonviolation stop, including, but not
4 limited to, a checkpoint for driving under the influence, license,
5 registration or seat belts, the officer shall obtain and prepare a
6 brief report based on the officer's visual observation and

7 perception of basic information about the nature, duration and
8 outcome of the stop, including, but not limited to, information
9 relating to the perceived racial characteristics of each operator
10 stopped. The report is to be provided to the West Virginia
11 law-enforcement agency which employs the law-enforcement
12 officer: *Provided*, That the failure of the law-enforcement
13 officer to obtain and report racial profiling data shall not affect
14 the validity of the underlying traffic citation or warning.

15 The information to be collected shall include:

16 (a) The identifying characteristics of the operator stopped,
17 including perceived race, ethnicity or national origin, gender
18 and age;

19 (b) The location and duration of the stop;

20 (c) The traffic violation or violations alleged to have been
21 committed that led to the stop;

22 (d) Whether or not a warning or citation was issued as a
23 result of the stop and if so, the specific violation, if any,
24 charged or warning given;

25 (e) Whether a search was performed as a result of the stop;

26 (f) If a search was performed, whether the person consented
27 to the search, the probable cause or reasonable suspicion for the
28 search, whether the person was searched, whether the person's
29 property was searched and the duration of the search;

30 (g) If a search was of a passenger in the motor vehicle, the
31 perceived age, gender and race or minority group of the
32 passenger;

33 (h) Whether any contraband was discovered or seized in the
34 course of the search and the type of any contraband discovered
35 or seized;

36 (i) Identify whether the search involved canine units or
37 advanced technology; and

38 (j) Any additional information which the law-enforcement
39 agency considers appropriate.

§17G-1-3. Law-enforcement officer exemption from civil liability.

1 Any law-enforcement officer who, in good faith, records
2 traffic stop information under the requirements of section two
3 of this article may not be held civilly liable for the act of
4 inaccurately recording the information unless the officer's
5 conduct was unconstitutional, unreasonable, intentional or
6 reckless.

**ARTICLE 2. ANALYSIS OF TRAFFIC STOPS STUDY AND ANNUAL
REPORT BY DIRECTOR OF THE GOVERNOR'S
COMMITTEE ON CRIME, DELINQUENCY AND
CORRECTION.**

§17G-2-1. Format of traffic stops data collection forms.

§17G-2-2. Law-enforcement agency traffic stops data collection and submission.

§17G-2-3. Analysis of traffic stop statistics, annual report and legislative rules.

§17G-2-1. Format of traffic stops data collection forms.

1 The division of motor vehicles shall provide a form as
2 required by section three of this article, in both printed and
3 electronic format, to be used by law-enforcement officers when
4 making a traffic stop to record the information listed in section
5 two, article one of this chapter.

**§17G-2-2. Law-enforcement agency traffic stops data collection
and submission.**

1 (a) Each law-enforcement agency shall report its data
2 described in section two, article one of this chapter to the
3 division of motor vehicles in a report format as prescribed by
4 the division.

5 (b) If a law-enforcement agency fails to comply with the
6 provisions of this section, the division of motor vehicles shall
7 notify the agency by certified mail of its failure to comply. If
8 the agency continues to fail to comply, the governor may
9 withhold state-controlled funds appropriated to the
10 noncompliant law-enforcement agency until reports are made
11 as required by this article.

§17G-2-3. Analysis of traffic stop statistics, annual report and legislative rules.

1 (a) To facilitate the commencement of data collection on
2 the first day of January, two thousand five, the director of the
3 governor's committee on crime, delinquency and corrections,
4 in consultation with the division of motor vehicles, shall
5 propose emergency and legislative rules in accordance with
6 article three, chapter twenty-nine-a of this code. These rules
7 shall include, but are not limited to:

8 (1) The manner of reporting the information to the division
9 of motor vehicles;

10 (2) Promulgation of a form or forms for reporting purposes
11 by various law-enforcement agencies;

12 (3) A means of reporting the information required in section
13 two, article one of this chapter on warning citations to the
14 division of motor vehicles;

15 (4) In consultation with the fraternal order of police, the
16 sheriff's association, the deputy sheriff's association and
17 representatives of law-enforcement agencies, a means of
18 providing training to law-enforcement officers on completion
19 and submission of the data on the proposed form;

20 (5) A means of reporting back to individual law-enforce-
21 ment agencies, from time to time, at the request of a law-

22 enforcement agency on findings specific to that agency in an
23 agreed-upon format to allow the agency to evaluate independ-
24 ently the data provided;

25 (6) A limitation that the data is to be used solely for the
26 purposes of this chapter;

27 (7) Safeguards to protect the identity of individual law-
28 enforcement officers collecting data required by section two,
29 article one of this chapter when no citation or warning is issued;

30 (8) Methodology for collection of gross data by law-
31 enforcement agencies and the analysis of the data;

32 (9) The number of motor vehicle stops and searches of
33 motor vehicles occupied by members of a perceived minority
34 group; the number of motor vehicle stops and searches of motor
35 vehicles occupied by persons who are not members of a
36 minority group; the population of minorities in the areas where
37 the stops occurred; estimates of the number of all vehicles
38 traveling on the public highways where the stops occurred;
39 factors to be included in any evaluation that the data may
40 indicate racial profiling, racial stereotyping or other race-based
41 discrimination or selective enforcement; and other data deemed
42 appropriate by the governor's committee on crime, delinquency
43 and correction for the analysis of the protection of constitu-
44 tional rights; and

45 (10) Protocols for reporting collected data by the division
46 of motor vehicles to the governor's committee on crime,
47 delinquency and correction and the analysis thereof.

48 (b) On or before the first day of February, two thousand six
49 and each year thereafter, the director of the governor's commit-
50 tee on crime, delinquency and correction shall publish a public
51 report of the data collected and provide a copy thereof to all
52 law-enforcement agencies subject to this chapter and provide a

53 copy of the report and analysis of the data collected to the
54 governor and to the joint committee on government and
55 finance.

56 (c) The provisions of sections two and three, article one of
57 this chapter and section two of this article shall become
58 effective after the thirty-first day of December, two thousand
59 four.

60 (d) The provisions of this chapter shall be of no force or
61 effect after the thirty-first day of December, two thousand
62 seven.

CHAPTER 207

**(Com. Sub. for S. B. 596 — By Senators Tomblin,
Mr. President, and Kessler)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-5 of the code of West Virginia, 1931, as amended, relating to the powers and duties of the board of directors of the state board of risk and insurance management with respect to the purchase of or contracting for insurance on state properties, activities and responsibilities; clarifying the power of the board to reasonably limit the amount, kind and types of insurance and the conditions, limitations and exclusions of such insurance covering state property, activities and responsibilities; and giving the board of risk and insurance management general powers to determine under what conditions an offer of property or liability insurance coverage should be made to a political subdivision, charitable or public service organization or an emergency medical services agency.

Be it enacted by the Legislature of West Virginia:

That §29-12-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

1 (a) (1) The board has, without limitation and in its discre-
2 tion as it seems necessary for the benefit of the insurance
3 program, general supervision and control over the insurance of
4 state property, activities and responsibilities, including:

5 (A) The acquisition and cancellation of state insurance;

6 (B) Determination of the kind or kinds of coverage;

7 (C) Determination of the amount or limits for each kind of
8 coverage;

9 (D) Determination of the conditions, limitations, exclu-
10 sions, endorsements, amendments and deductible forms of
11 insurance coverage;

12 (E) Inspections or examinations relating to insurance
13 coverage of state property, activities and responsibilities;

14 (F) Reinsurance; and,

15 (G) Any and all matters, factors and considerations entering
16 into negotiations for advantageous rates on and coverage of
17 such state property, activities and responsibilities.

18 (2) The board shall endeavor to secure reasonably broad
19 protection against loss, damage or liability to state property and
20 on account of state activities and responsibilities by proper,
21 adequate, available and affordable insurance coverage and

22 through the introduction and employment of sound and ac-
23 cepted principles of insurance, methods of protection and
24 principles of loss control and risk.

25 (3) The board is not required to provide insurance for every
26 state property, activity or responsibility.

27 (4) Any policy of insurance purchased or contracted for by
28 the board shall provide that the insurer shall be barred and
29 estopped from relying upon the constitutional immunity of the
30 state of West Virginia against claims or suits: *Provided*, That
31 nothing herein shall bar a state agency or state instrumentality
32 from relying on the constitutional immunity granted the state of
33 West Virginia against claims or suits arising from or out of any
34 state property, activity or responsibility not covered by a policy
35 or policies of insurance: *Provided, however*, That nothing
36 herein shall bar the insurer of political subdivisions from
37 relying upon any statutory immunity granted such political
38 subdivisions against claims or suits.

39 (5) The board shall make a complete survey of all presently
40 owned and subsequently acquired state property subject to
41 insurance coverage by any form of insurance, which survey
42 shall include and reflect inspections, appraisals, exposures, fire
43 hazards, construction and any other objectives or factors
44 affecting or which might affect the insurance protection and
45 coverage required.

46 (6) The board shall keep itself currently informed on new
47 and continuing state activities and responsibilities within the
48 insurance coverage herein contemplated. The board shall work
49 closely in cooperation with the state fire marshal's office in
50 applying the rules of that office insofar as the appropriations
51 and other factors peculiar to state property will permit.

52 (7) The board may negotiate and effect settlement of any
53 and all insurance claims arising on or incident to losses of and

54 damages to covered state properties, activities and responsibili-
55 ties hereunder and shall have authority to execute and deliver
56 proper releases of all such claims when settled. The board may
57 adopt rules and procedures for handling, negotiating and
58 settlement of all such claims. Any discussion or consideration
59 of the financial or personal information of an insured may be
60 held by the board in executive session closed to the public,
61 notwithstanding the provisions of article nine-a, chapter six of
62 this code.

63 (8) The board may employ an executive director for an
64 annual salary of seventy thousand dollars and such other
65 employees, including legal counsel, as may be necessary to
66 carry out its duties. The legal counsel may represent the board
67 before any judicial or administrative tribunal and perform such
68 other duties as may be requested by the board.

69 (9) The board may enter into any contracts necessary to the
70 execution of the powers granted to it by this article or to further
71 the intent of this article.

72 (10) The board may make rules governing its functions and
73 operations and the procurement of state insurance. Except
74 where otherwise provided by statute, rules of the board are
75 subject to the provisions of article three, chapter twenty-nine-a
76 of this code.

77 (11) The funds received by the board, including, but not
78 limited to, state agency premiums, mine subsidence premiums
79 and political subdivision premiums, shall be deposited with the
80 West Virginia investment management board with the interest
81 income and returns on investment a proper credit to such
82 property insurance trust fund or liability insurance trust fund as
83 applicable.

84 (b) (1) *Definitions.* — The following words and phrases
85 when used in this subsection, for the purposes of this subsec-

86 tion, have the meanings respectively ascribed to them in this
87 subsection;

88 (A) "Political subdivision" has the same meaning as in
89 section three, article twelve-a of this chapter;

90 (B) "Charitable" or "public service organization" means
91 any hospital in this state which has been certified as a critical
92 access hospital by the federal centers for medicare and
93 medicaid upon the designation of the state office of rural health
94 policy, the office of community and rural health services, the
95 bureau for public health or the department of health and human
96 resources and any bona fide, not-for-profit, tax-exempt,
97 benevolent, educational, philanthropic, humane, patriotic, civic,
98 religious, eleemosynary, incorporated or unincorporated
99 association or organization or a rescue unit or other similar
100 volunteer community service organization or association, but
101 does not include any nonprofit association or organization,
102 whether incorporated or not, which is organized primarily for
103 the purposes of influencing legislation or supporting or promot-
104 ing the campaign of any candidate for public office; and

105 (C) "Emergency medical service agency" has the same
106 meaning as in section three, article four-c, chapter sixteen of
107 this code.

108 (2) If requested by a political subdivision, a charitable or
109 public service organization or an emergency medical services
110 agency, the board may, but is not required to, provide property
111 and liability insurance to insure the property, activities and
112 responsibilities of the political subdivision, charitable or public
113 service organization or emergency medical services agency.
114 The board may enter into any contract necessary to the execu-
115 tion of the powers granted by this article or to further the intent
116 of this article.

117 (A) Property insurance provided by the board pursuant to
118 this subsection may also include insurance on property leased
119 to or loaned to the political subdivision, a charitable or public
120 service organization or an emergency medical services agency
121 which is required to be insured under a written agreement.

122 (B) The cost of insurance, as determined by the board, shall
123 be paid by the political subdivision, the charitable or public
124 service organization or the emergency medical services agency
125 and may include administrative expenses. For purposes of this
126 section, if an emergency medical services agency is a for-profit
127 entity, its claims history may not adversely affect other partici-
128 pants' rates in the same class.

129 (c) (1) The board has general supervision and control over
130 the optional medical liability insurance programs providing
131 coverage to health care providers as authorized by the provi-
132 sions of article twelve-b of this chapter. The board is hereby
133 granted and may exercise all powers necessary or appropriate
134 to carry out and effectuate the purposes of this article.

135 (2) The board shall:

136 (A) Administer the preferred medical liability program and
137 the high risk medical liability program and exercise and
138 perform other powers, duties and functions specified in this
139 article;

140 (B) Obtain and implement, at least annually, from an
141 independent outside source, such as a medical liability actuary
142 or a rating organization experienced with the medical liability
143 line of insurance, written rating plans for the preferred medical
144 liability program and high-risk medical liability program on
145 which premiums shall be based;

146 (C) Prepare and annually review written underwriting
147 criteria for the preferred medical liability program and the high-

148 risk medical liability program. The board may utilize review
149 panels, including, but not limited to, the same specialty review
150 panels to assist in establishing criteria;

151 (D) Prepare and publish, before each regular session of the
152 Legislature, separate summaries for the preferred medical
153 liability program and high-risk medical liability program
154 activity during the preceding fiscal year, each summary to be
155 included in the board of risk and insurance management audited
156 financial statements as “other financial information” and which
157 shall include a balance sheet, income statement and cash flow
158 statement, an actuarial opinion addressing adequacy of reserves,
159 the highest and lowest premiums assessed, the number of
160 claims filed with the program by provider type, the number of
161 judgments and amounts paid from the program, the number of
162 settlements and amounts paid from the program and the number
163 of dismissals without payment;

164 (E) Determine and annually review the claims history debit
165 or surcharge for the high-risk medical liability program;

166 (F) Determine and annually review the criteria for transfer
167 from the preferred medical liability program to the high-risk
168 medical liability program;

169 (G) Determine and annually review the role of independent
170 agents, the amount of commission, if any, to be paid therefor
171 and agent appointment criteria;

172 (H) Study and annually evaluate the operation of the
173 preferred medical liability program and the high-risk medical
174 liability program and make recommendations to the Legisla-
175 ture, as may be appropriate, to ensure their viability, including,
176 but not limited to, recommendations for civil justice reform
177 with an associated cost-benefit analysis, recommendations on
178 the feasibility and desirability of a plan which would require all
179 health care providers in the state to participate with an associ-

180 ated cost-benefit analysis, recommendations on additional
181 funding of other state run insurance plans with an associated
182 cost-benefit analysis and recommendations on the desirability
183 of ceasing to offer a state plan with an associated analysis of a
184 potential transfer to the private sector with a cost-benefit
185 analysis, including impact on premiums;

186 (I) Establish a five-year financial plan to ensure an adequate
187 premium base to cover the long tail nature of the claims-made
188 coverage provided by the preferred medical liability program
189 and the high risk medical liability program. The plan shall be
190 designed to meet the program's estimated total financial
191 requirements, taking into account all revenues projected to be
192 made available to the program, and apportioning necessary
193 costs equitably among participating classes of health care
194 providers. For these purposes, the board shall:

195 (i) Retain the services of an impartial, professional actuary,
196 with demonstrated experience in analysis of large group
197 malpractice plans, to estimate the total financial requirements
198 of the program for each fiscal year and to review and render
199 written professional opinions as to financial plans proposed by
200 the board. The actuary shall also assist in the development of
201 alternative financing options and perform any other services
202 requested by the board or the executive director. All reasonable
203 fees and expenses for actuarial services shall be paid by the
204 board. Any financial plan or modifications to a financial plan
205 approved or proposed by the board pursuant to this section shall
206 be submitted to and reviewed by the actuary and may not be
207 finally approved and submitted to the governor and to the
208 Legislature without the actuary's written professional opinion
209 that the plan may be reasonably expected to generate sufficient
210 revenues to meet all estimated program and administrative
211 costs, including incurred but not reported claims, for the fiscal
212 year for which the plan is proposed. The actuary's opinion for

213 any fiscal year shall include a requirement for establishment of
214 a reserve fund;

215 (ii) Submit its final, approved five-year financial plan, after
216 obtaining the necessary actuary's opinion, to the governor and
217 to the Legislature no later than the first day of January preced-
218 ing the fiscal year. The financial plan for a fiscal year becomes
219 effective and shall be implemented by the executive director on
220 the first day of July of the fiscal year. In addition to each final,
221 approved financial plan required under this section, the board
222 shall also simultaneously submit an audited financial statement
223 based on generally accepted accounting practices (GAAP) and
224 which shall include allowances for incurred but not reported
225 claims: *Provided*, That the financial statement and the ac-
226 crual-based financial plan restatement shall not affect the
227 approved financial plan. The provisions of chapter twenty-
228 nine-a of this code shall not apply to the preparation, approval
229 and implementation of the financial plans required by this
230 section;

231 (iii) Submit to the governor and the Legislature a prospec-
232 tive five-year financial plan beginning on the first day of
233 January, two thousand three, and every year thereafter, for the
234 programs established by the provisions of article twelve-b of
235 this chapter. Factors that the board shall consider include, but
236 shall not be limited to, the trends for the program and the
237 industry; claims history, number and category of participants in
238 each program; settlements and claims payments; and judicial
239 results;

240 (iv) Obtain annually, certification from participants that
241 they have made a diligent search for comparable coverage in
242 the voluntary insurance market and have been unable to obtain
243 the same;

244 (J) Meet on at least a quarterly basis to review implementa-
245 tion of its current financial plan in light of the actual experience
246 of the medical liability programs established in article twelve-b
247 of this chapter. The board shall review actual costs incurred
248 any revised cost estimates provided by the actuary, expendi-
249 tures and any other factors affecting the fiscal stability of the
250 plan and may make any additional modifications to the plan
251 necessary to ensure that the total financial requirements of these
252 programs for the current fiscal year are met;

253 (K) To analyze the benefit of and necessity for excess
254 verdict liability coverage;

255 (L) Consider purchasing reinsurance, in the amounts as it
256 may from time to time determine is appropriate, and the cost
257 thereof shall be considered to be an operating expense of the
258 board;

259 (M) Make available to participants, optional extended
260 reporting coverage or tail coverage: *Provided*, That, at least five
261 working days prior to offering such coverage to a participant or
262 participants, the board shall notify the president of the Senate
263 and the speaker of the House of Delegates in writing of its
264 intention to do so and such notice shall include the terms and
265 conditions of the coverage proposed;

266 (N) Review and approve, reject or modify rules that are
267 proposed by the executive director to implement, clarify or
268 explain administration of the preferred medical liability
269 program and the high risk medical liability program. Notwith-
270 standing any provisions in this code to the contrary, rules
271 promulgated pursuant to this paragraph are not subject to the
272 provisions of sections nine through sixteen, inclusive, article
273 three, chapter twenty-nine-a of this code. The board shall
274 comply with the remaining provisions of article three and shall
275 hold hearings or receive public comments before promulgating

276 any proposed rule filed with the secretary of state: *Provided,*
277 That the initial rules proposed by the executive director and
278 promulgated by the board shall become effective upon approval
279 by the board notwithstanding any provision of this code;

280 (O) Enter into settlements and structured settlement
281 agreements whenever appropriate. The policy may not require
282 as a condition precedent to settlement or compromise of any
283 claim the consent or acquiescence of the policy holder. The
284 board may own or assign any annuity purchased by the board to
285 a company licensed to do business in the state;

286 (P) Refuse to provide insurance coverage for individual
287 physicians whose prior loss experience or current professional
288 training and capability are such that the physician represents an
289 unacceptable risk of loss if coverage is provided;

290 (Q) Terminate coverage for nonpayment of premiums upon
291 written notice of the termination forwarded to the health care
292 provider not less than thirty days prior to termination of
293 coverage;

294 (R) Assign coverage or transfer insurance obligations
295 and/or risks of existing or in-force contracts of insurance to a
296 third-party medical professional liability insurance carrier with
297 the comparable coverage conditions as determined by the
298 board. Any transfer of obligation or risk shall effect a novation
299 of the transferred contract of insurance and if the terms of the
300 assumption reinsurance agreement extinguish all liability of the
301 board and the state of West Virginia such extinguishment shall
302 be absolute as to any and all parties; and

303 (S) Meet and consult with and consider recommendations
304 from the medical malpractice advisory panel established by the
305 provisions of article twelve-b of this chapter.

306 (d) If, after the first day of September, two thousand two,
307 the board has assigned coverages or transferred all insurance
308 obligations and/or risks of existing or in-force contracts of
309 insurance to a third-party medical professional liability insur-
310 ance carrier, and the board otherwise has no covered partici-
311 pants, then the board shall not thereafter offer or provide
312 professional liability insurance to any health care provider
313 pursuant to the provisions of subsection (c) of this section or the
314 provisions of article twelve-b of this chapter unless the Legisla-
315 ture adopts a concurrent resolution authorizing the board to
316 reestablish medical liability insurance programs.

CHAPTER 208

(S. B. 402 — By Senators Ross, Minard, Snyder,
Unger, Boley and Minear)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-14 of the code of West Virginia, 1931, as amended, relating to the authority of the board of risk and insurance management to promulgate legislative rules setting minimum contract terms for entities participating in insurance programs and mandatory waiting periods for reentry into insurance programs for entities which have terminated coverage through the board.

Be it enacted by the Legislature of West Virginia:

That §29-12-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 setting minimum contract terms for entities participating in
5 insurance programs and mandatory waiting periods for reentry
6 into insurance programs for entities which have terminated
7 coverage through the board.

CHAPTER 209

**(H. B. 4745 — By Delegates Warner, Michael, Stalnaker,
Proudfoot, Boggs, Ashley and G. White)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-2A-23 of the code of West Virginia, 1931, as amended, relating to administration of repairs to vehicles and equipment by the division of highways; and providing for decertification of certified vendors in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §17-2A-23 of the code of West Virginia, 1931, as amended, be amended and reenacted 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 which fails to guarantee its work for at
34 least one year, or which fails to guarantee its work for a longer
35 period if the longer period is comparable to that offered by local
36 rebuild or repair shops, or which fails to complete any work
37 order in the time specified within the work order, or which fails
38 to complete any work order to the specifications of the work
39 order, shall be decertified for a period of one year.

40 Nothing herein requires the commissioner of highways to
41 issue a work order to any particular commercial vendor.

42 The commissioner of highways shall propose a legislative
43 rule pursuant to article three, chapter twenty-nine-a of this code
44 regarding certification of qualified vendors and awarding work
45 orders. The legislative rule may include provisions for devia-
46 tions from the standard cost principles in special situations and
47 circumstances.

CHAPTER 210

**(Com. Sub. for H. B. 4033 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-16A-11 of the code of West Virginia, 1931, as amended, relating to authorizing the issuance of new parkway revenue bonds; establishing a two hundred million dollar ceiling on the aggregate outstanding principal amount of such parkway revenue bonds issued under such section from time to time outstanding; setting forth method of calculation of outstanding bond indebtedness; limitations; authorized expendi-

tures of bond proceeds; specifying condition precedent to issuance of additional bonds; and limiting effect of amendments to section.

Be it enacted by the Legislature of West Virginia:

That §17-16A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-11. Parkway revenue bonds—West Virginia turnpike; related projects.

1 (a) The parkways authority is authorized to provide by
2 resolution, at one time or from time to time, for the issuance of
3 parkway revenue bonds of the state in an aggregate outstanding
4 principal amount not to exceed, from time to time, two hundred
5 million dollars for the purpose of paying: (i) All or any part of
6 the cost of the West Virginia turnpike, which may include, but
7 not be limited to, an amount equal to the state funds used to
8 upgrade the West Virginia turnpike to federal interstate stan-
9 dards; (ii) all or any part of the cost of any one or more parkway
10 projects that involve improvements to or enhancements of the
11 West Virginia turnpike, including, without limitation,
12 lane-widening on the West Virginia turnpike and that are or
13 have been recommended by the parkways authority's traffic
14 engineers or consulting engineers or by both of them prior to the
15 issuance of parkway revenue bonds for the project or projects;
16 and (iii) to the extent permitted by federal law, all or any part of
17 the cost of any related parkway project. For purposes of this
18 section only, a "related parkway project" means any information
19 center, visitors' center or rest stop, or any combination thereof,
20 and any expressway, turnpike, trunkline, feeder road, state local
21 service road or park and forest road which connects to or
22 intersects with the West Virginia turnpike and is located within

23 seventy-five miles of the turnpike as it exists on the first day of
24 June, one thousand nine hundred eighty-nine, or any subsequent
25 expressway, trunkline, feeder road, state local service road or
26 park and forest road constructed pursuant to this article:
27 *Provided*, That nothing in this section shall be construed as
28 prohibiting the parkways authority from issuing parkway
29 revenue bonds pursuant to section ten of this article for the
30 purpose of paying all or any part of the cost of any related
31 parkway project: *Provided, however*, That none of the proceeds
32 of the issuance of parkway revenue bonds under this section
33 shall be used to pay all or any part of the cost of any economic
34 development project, except as provided in section twenty-three
35 of this article: *Provided further*, That nothing in this section
36 shall be construed as prohibiting the parkways authority from
37 issuing additional parkway revenue bonds to the extent permit-
38 ted by applicable federal law for the purpose of constructing,
39 maintaining and operating any highway constructed in whole or
40 in part with money obtained from the Appalachian regional
41 commission as long as the highway connects to the West
42 Virginia turnpike as it existed as of the first day of June, one
43 thousand nine hundred eighty-nine: *And provided further*, That,
44 for purposes of this section, in determining the amount of bonds
45 outstanding, from time to time, within the meaning of this
46 section: Original par amount or original stated principal amount
47 at the time of issuance of bonds shall be used to determine the
48 principal amount of bonds outstanding, except that the amount
49 of parkway revenue bonds outstanding under this section may
50 not include any bonds that have been retired through payment,
51 defeased through the deposit of funds irrevocably set aside for
52 payment or otherwise refunded so that they are no longer
53 secured by toll revenues of the West Virginia turnpike: *And*
54 *provided further*, That the authorization to issue bonds under
55 this section is in addition to the authorization and power to
56 issue bonds under any other section of this code: *And provided*
57 *further*, That, without limitation of the authorized purposes for

58 which parkway revenue bonds are otherwise permitted to be
59 issued under this section, and without increasing the maximum
60 principal par amount of parkway revenue bonds permitted to be
61 outstanding, from time to time, under this section, the authority
62 is specifically authorized by this section to issue, at one time or
63 from time to time, by resolution or resolutions under this
64 section, parkway revenue bonds under this section for the
65 purpose of paying all or any part of the cost of one or more
66 parkway projects that: (i) Consist of enhancements or improve-
67 ments to the West Virginia turnpike, including, without limita-
68 tion, projects involving lane widening, resurfacing, surface
69 replacement, bridge replacement, bridge improvements and
70 enhancements, other bridge work, drainage system improve-
71 ments and enhancements, drainage system replacements, safety
72 improvements and enhancements, and traffic flow improve-
73 ments and enhancements; and (ii) have been recommended by
74 the authority's consulting engineers or traffic engineers, or both,
75 prior to the issuance of the bonds. Except as otherwise specifi-
76 cally provided in this section, the issuance of parkway revenue
77 bonds pursuant to this section, the maturities and other details
78 of the bonds, the rights of the holders of the bonds, and the
79 rights, duties and obligations of the parkways authority in
80 respect of the bonds shall be governed by the provisions of this
81 article insofar as the provisions are applicable.

82 (b) Notwithstanding the provisions of subsection (a) of this
83 section, no additional bonds authorized by the amendments to
84 this section enacted during the regular session of the Legislature
85 in the year two thousand four may be issued until the parkways
86 authority has adopted by written resolution a final, irrevocable
87 decision to fully fund and complete the construction of a Shady
88 Spring connector and interchange connecting to the West
89 Virginia turnpike from its toll funds or from the proceeds of
90 bonds issued for that purpose pursuant to subsection (a) of this
91 section, or from both, or funded, in whole or in part, by federal
92 highway funds if they are available.

CHAPTER 211

(S. B. 673 — By Senator Ross)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17C-17-8a, §17C-17-9 and §17C-17-11d of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17C-17-9a; and to amend and reenact §17C-17A-1, §17C-17A-3, §17C-17A-6 and §17C-17A-12 of said code, all relating generally to regulating the weights of vehicles on roads and highways; authorizing tolerances for certain gross weight vehicle loads; requiring compliance with weight load limits on the national system of interstate and defense highways; providing tolerance limits for maximum gross vehicle weights; adding roads and highways eligible to qualify as part of the coal resource transportation road system; limiting certain reporting requirements relating to coal hauled on coal resource transportation roads; requiring certain receivers to report receiving vehicles transporting coal in excess of eighty-eight thousand pounds on non-coal transportation highways to the public service commission; and authorizing the commissioner of the division of highways to designate certain public roads, highways and bridges as feeder roads and designate them on a temporary basis as being qualified for inclusion in the coal resource transportation system.

Be it enacted by the Legislature of West Virginia:

That §17C-17-8a, §17C-17-9 and §17C-17-11d of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated

§17C-17-9a; and that §17C-17A-1, §17C-17A-3, §17C-17A-6 and §17C-17A-12 of said code be amended and reenacted, all to read as follows:

Article

17. Size, Weight and Load.

17A. Regulation of the Commercial Transportation of Coal.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-8a. Tandem-axle load limit for the national system of interstate and defense highways.

§17C-17-9. Gross weight of vehicles and loads for the national system of interstate and defense highways.

§17C-17-9a. Gross weight of vehicles and loads.

§17C-17-11d. Establishing maximum road highway weights.

§17C-17-8a. Tandem-axle load limit for the national system of interstate and defense highways.

1 (a) The gross weight imposed on the national system of
2 interstate and defense highways by the wheels of a tandem-axle
3 of a vehicle shall not exceed thirty-four thousand pounds.

4 (b) For the purpose of this article a tandem-axle load shall
5 be defined as the total load transmitted to the road by two or
6 more consecutive axles whose centers may be included between
7 parallel transverse vertical planes spaced more than forty inches
8 and not more than ninety-six inches apart, extending the full
9 width of the vehicle.

§17C-17-9. Gross weight of vehicles and loads for the national system of interstate and defense highways.

1 (a) It shall be unlawful for any owner, lessee or borrower of
2 a vehicle or combination of vehicles to operate on any national
3 system of interstate and defense highways such vehicle or
4 combination of vehicles with a gross weight in excess of the
5 gross weight for which such vehicle or combination of vehicles
6 is registered or in excess of any weight limitation set forth in

7 this chapter, whether such limitation be specifically stated in
8 this chapter or set by express authority granted in this chapter.

9 (b) Subject to the limit upon the weight imposed upon the
10 highway through any one axle as set forth in section eight of
11 this article, or the limit imposed upon the highway through any
12 tandem-axle as set forth in section eight-a of this article, the
13 total gross weight with load imposed upon the highway by any
14 one group of two or more consecutive axles of a vehicle or
15 combination of vehicles shall not exceed the gross weight given
16 for the respective distance between the first and last axle of the
17 total group of axles measured longitudinally to the nearest foot
18 as set forth in the following table:

19	20 Distance in feet be- 21 tween the 22 extremes of any 23 groups of two 24 or more 25 consecutive axles		26 Maximum load in pounds			
			27 carried on any group of 28 two or more consecutive axles			
	2 axles	3 axles	4 axles	5 axles	6 axles	
26	4	34000				
27	5	34000				
28	6	34000				
29	7	34000				
30	8	34000	34000			
31	9	39000	42500			
32	10	40000	43500			
33	11		44000			
34	12		45000	50000		
35	13		45500	50500		
36	14		46500	51500		
37	15		47000	52000		
38	16		48000	52500	58000	

39	17	48500	53500	58500	
40	18	49500	54000	59000	
41	19	50000	54500	60000	
42	20	51000	55500	60500	66000
43	21	51500	56000	61000	66500
44	22	52500	56500	61500	67000
45	23	53000	57500	62500	68000
46	24	54000	58000	63000	68500
47	25	54500	58500	63500	69000
48	26	55500	59500	64000	69500
49	27	56000	60000	65000	70000
50	28	57000	60500	65500	71000
51	29	57500	61500	66000	71500
52	30	58500	62000	66500	72000
53	31	59000	62500	67500	72500
54	32	60000	63500	68000	73000
55	33		64000	68500	74000
56	34		64500	69000	74500
57	35		65500	70000	75000
58	36		66000	70500	75500
59	37		66500	71000	76000
60	38		67500	72000	77000
61	39		68000	72500	77500
62	40		68500	73000	78000
63	41		69500	73500	78500
64	42		70000	74000	79000
65	43		70500	75000	80000
66	44		71500	75500	80500
67	45		72000	76000	81000
68	46		72500	76500	81500
69	47		73500	77500	82000
70	48		74000	78000	83000
71	49		74500	78500	83500
72	50		75500	79000	84000
73	51		76000	80000	84500

74	52	76500	80500	85000
75	53	77500	81000	86000
76	54	78000	81500	86500
77	55	78500	82500	87000
78	56	79500	83000	87500
79	57	80000	83500	88000
80	58		84000	89000
81	59		85000	89500
82	60		85500	90000

83 *Provided*, That no vehicle or combination of vehicles shall
84 have a gross weight, including the load, in excess of sixty-five
85 thousand pounds, except that the maximum gross weight of
86 vehicles operating on the national system of interstate and
87 defense highways and any highway providing reasonable access
88 to and from terminals and facilities for food, fuel, repairs and
89 rest within the state shall not be in excess of eighty thousand
90 pounds and except as otherwise provided in this article.
91 Notwithstanding the limits prescribed in this subsection, two
92 consecutive sets of tandem-axles may carry a gross load of
93 thirty-four thousand pounds each providing the overall distance
94 between the first and last axles of such consecutive sets of
95 tandem-axles is thirty-six feet or more: *Provided, however*,
96 That the limits prescribed in this subsection shall not prohibit
97 the operation of any vehicle or combination of vehicles of a
98 type which could be lawfully operated in accordance with gross
99 vehicle weights in effect on the first day of January, one
100 thousand nine hundred seventy-five: *Provided further*, That no
101 maximum weight in excess of or in conflict with any weight
102 limitations prescribed by or pursuant to any act of Congress
103 shall be permitted on the national system of interstate and
104 defense highways.

§17C-17-9a. Gross weight of vehicles and loads.

- 1 (a) It shall be unlawful for any owner, lessee or borrower of
- 2 a vehicle or combination of vehicles to operate on any highway

3 other than the national system of interstate and defense high-
4 ways such vehicle or combination of vehicles with a gross
5 weight in excess of the gross weight for which such vehicle or
6 combination of vehicles is registered or in excess of any weight
7 limitation set forth in this chapter, whether such limitation be
8 specifically stated in this chapter or set by express authority
9 granted this chapter.

10 (b) Subject to the limit upon the weight imposed upon the
11 highway through any one axle as set forth in section eight of
12 this article, the total gross weight on vehicles or combination of
13 vehicles operated on any highway other than the national
14 system of interstate and defense highways shall be as follows:

15 (1) A single unit truck having one steering axle and two
16 axles in tandem shall be limited to a maximum gross weight of
17 sixty thousand pounds with a tolerance of ten percent.

18 (2) A single unit truck having one steering axle and three
19 axles in tridem arrangement shall be limited to a maximum
20 gross weight of seventy thousand pounds with a tolerance of ten
21 percent.

22 (3) A tractor-semitrailer combination with five axles shall
23 be limited to a maximum gross weight of eighty thousand
24 pounds with a tolerance of ten percent.

25 (4) A tractor-semitrailer combination with six or more axles
26 shall be limited to a maximum gross weight of eighty thousand
27 pounds with a tolerance of ten percent.

§17C-17-11d. Establishing maximum road highway weights.

1 Effective the first day of July, two thousand four, the
2 maximum gross vehicle weight on existing state-maintained
3 roads and public highways designated for gross weight vehicle
4 load of sixty-five thousand pounds, seventy-three thousand five

5 hundred pounds and eighty thousand pounds shall have a
6 tolerance of ten percent. All requirements for vehicle design
7 and axle weights otherwise established under this code remain
8 applicable. In no case may the commissioner authorize weight
9 limits on any state-maintained road or public highway that
10 would jeopardize or otherwise limit federal highway fund
11 appropriations to this state. The commissioner of highways
12 shall, by the thirty-first day of December, two thousand four,
13 review and revise, as the commissioner deems appropriate,
14 weight limits for all state-maintained roads and public high-
15 ways and provide to the joint committee on government and
16 finance a report denoting all weight limits as they have been
17 designated on state-maintained roads and public highways.

**ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTA-
TION OF COAL.**

§17C-17A-1. Legislative findings and creation of program.

§17C-17A-3. Authority of the division of highways and public service commission generally.

§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

§17C-17A-1. Legislative findings and creation of program.

1 (a) The Legislature finds and declares that:

2 (1) No other economic undertaking in the history of West
3 Virginia has had a greater impact upon the citizens of this state,
4 providing such an economic force and affecting the social
5 construct and day-to-day life and environment of the people and
6 communities of this state, than the activities associated with the
7 extraction, transportation and consumption of coal or its
8 byproducts. In areas of this state where the coal industry exists,
9 the economic benefits of coal production are an indispensable
10 part of the local community's vitality.

11 (2) The historic progression of the coal industry has
12 resulted in an increasing use of the public highways of this state
13 for the transportation of coal to river ports, power generators or
14 rail loading facilities. Roads where coal is transported are
15 mainly two-lane rural roads and highways of varying grades
16 and conditions. The daily presence of large commercial motor
17 vehicles on these roads and highways causes significant impact
18 to local communities and the local transportation infrastructure.
19 Local residents are exposed on a daily basis to the dangers
20 associated with sharing the road with a large number of these
21 vehicles.

22 (3) The increased capacity and ability of coal-hauling
23 vehicles, tied with increased economic pressures to reduce
24 industry transportation costs, have created economic incentives
25 for transporting coal at higher than legal limits and for drivers
26 to drive long hours and operate these vehicles at higher rates of
27 speed. Consequently, average vehicle weights have increased
28 and many coal transport vehicles regularly exceed the lawful
29 limit by more than one hundred percent. The excessive weights
30 of these vehicles have also resulted in the rapid deterioration of
31 state roads and bridges, creating significant costs to the state of
32 millions of dollars in lost road and bridge use and life.

33 (4) Advances in truck stability, braking and safety technol-
34 ogy have made modern coal transporters much safer convey-
35 ances than those used by the industry when the state's current
36 weight laws were enacted. Further advances in technology
37 have made tracking and recording individual vehicles, their
38 operators and loads significantly more efficient.

39 (5) Enforcement of truck safety and driver safety laws has
40 been divided between various jurisdictions such as local and
41 state law enforcement, the division of highways and the public
42 service commission. As a result, local and state enforcement of

43 those comprehensive laws has not been uniform, with the result
44 that many of these laws have not been enforced.

45 (6) The resulting need for a remedy for hauling these
46 additional amounts of coal is most severe in a limited and
47 discrete geographic area of the state where the limited access to
48 rail and river transportation options and economic conditions
49 require a regulatory program that allows a greater weight
50 allowance for coal-hauling vehicles to address the unique
51 economic circumstances of that region.

52 (7) That this limited highway system must include addi-
53 tional safety protections for the public sharing the roads with a
54 large coal-hauling vehicle fleet and specialized training for
55 operators of these vehicles, requiring the program be designed
56 to assure that state weight and safety requirements be effec-
57 tively administered and enforced.

58 (b) A special regulatory program with administrative
59 enforcement authority over all vehicles hauling coal in West
60 Virginia is created. This program is designed to address the
61 economic needs of the state coal industry within the confines of
62 the ability of the transportation infrastructure to accommodate
63 these needs and in careful consideration for road safety and
64 maintenance requirements of these vehicles by providing for
65 coal truck weight reporting requirements on coal resource
66 transportation roads and allowing a limited statewide increase
67 in weights for commercial vehicles and an additional, limited
68 increase for vehicles hauling coal where the greater increase is
69 required.

**§17C-17A-3. Authority of the division of highways and public
service commission generally.**

1 (a) The division of highways shall establish all legal vehicle
2 weight limits for all public highways including roads within the

3 coal resource transportation road system. Public highways shall
4 be designated as coal resource transportation roads by the
5 commissioner of the division of highways pursuant to this
6 article. Only state-maintained roads and public highways found
7 in the following areas: Boone; Fayette; Lincoln; Logan;
8 McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming
9 counties; in Greenbrier County, routes west of Sam Black
10 Church and southwest to the Summers County line; in Clay
11 County, routes 4 and 16; in Nicholas County, routes 16, 19, 20,
12 39, 41, 55 and 82; in Webster County, routes 9, 20 and 82; and
13 all state-maintained roads and public highways found in
14 Washington, Malden, Loudon and Cabin Creek districts,
15 Kanawha County, are eligible to qualify as part of the coal
16 resource transportation road system. The division shall post
17 signs on roads informing the public of the designation and shall
18 also list a toll free telephone line for public reporting of poor
19 driving or law violations by special permit operators. The
20 division shall provide periodic reports to the commercial motor
21 vehicle weight and safety enforcement advisory committee as
22 established in section two, article one-a, chapter twenty-four-a
23 of this code relating to the study of coal resource transportation
24 roads. The periodic reports shall include the following at a
25 minimum: (1) Citations issued for violations of this chapter;
26 (2) disposition of the violations; (3) road conditions and
27 maintenance; and (4) the amount of undue road damage
28 attributable to coal resource transportation road system permit
29 use.

30 (b) The public service commission shall administer the coal
31 resource transportation road permitting program and otherwise
32 enforce the provisions of this article. The commission shall
33 establish requirements for vehicle operators holding coal
34 resource transportation road permits pursuant to section five of
35 this article consistent with federal statutory and regulatory
36 requirements.

37 (1) The commission may, during normal business hours,
38 conduct inspections of all trucking-related records of shippers,
39 vehicle operators, vehicle owners and receivers engaged in the
40 transportation of coal. Copies of records shall be provided to
41 commission employees upon request. This provision may not
42 be construed to authorize the commission to reveal trade secrets
43 or other confidential financial information of those persons
44 inspected; however the commission may use any weight
45 measurement records as evidence of a violation of this article.

46 (2) The commission shall establish and maintain a toll-free
47 telephone line for public reporting of poor driving or law
48 violations by special permit operators. In addition, the commis-
49 sion shall require all vehicles operating under a permit issued
50 pursuant to the provisions of this article to clearly display on
51 the vehicle the toll-free telephone number.

52 (3) The commission shall implement a study of commercial
53 vehicle safety-related issues, including using higher education
54 institutions and other research organizations. The commission
55 shall provide periodic reports to the commercial motor vehicle
56 weight and safety enforcement advisory committee as estab-
57 lished in section two, article one-a, chapter twenty-four-a of this
58 code relating to the study of motor vehicle weight and safety
59 enforcement.

60 (4) The commission shall establish procedures to use
61 electronic real time reporting of coal vehicle weights on coal
62 resource transportation roads by shippers and receivers. The
63 commission may require daily certified reports from shippers
64 or receivers if electronic reporting methods are not used. The
65 commission may authorize alternative measures of reporting
66 that require same-day reporting of weight measurements by
67 shippers and receivers.

68 (5) The commission shall impose and collect from shippers
69 of coal on the coal resource transportation road system through

70 the use of the special permit, issued pursuant to section five of
71 this article, for the privilege of loading coal in excess of
72 eighty-eight thousand pounds for transport on a coal resource
73 transportation road. The fee shall be assessed in the amount of
74 five cents per ton of coal hauled over the road. Revenue from
75 the fees shall be deposited in the coal resource transportation
76 fund created in said section.

77 (c) Notwithstanding the provisions of section three, article
78 one, chapter twenty-nine-a of this code, the commission and the
79 division shall each propose legislative rules for promulgation in
80 accordance with the provisions of article three of said chapter
81 to carry out their duties and responsibilities pursuant to the
82 provisions of this article.

§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.

1 (a) Every shipper of coal for transport on a coal resource
2 transportation road in this state that loads vehicles shall be
3 required to report to the commission weight and other transport-
4 related data as required in this article. The commission shall by
5 rule establish special recording and reporting methods for
6 timely and accurate disclosure of all shipments of coal made
7 upon any coal resource transportation road of this state. The
8 rules shall provide for administrative penalties to be imposed
9 for failure to timely or accurately report weight or other
10 required data.

11 (b) Every vehicle owner who transports coal on a coal
12 resource transportation road of this state is subject to the
13 provisions of this article and any rules established by the
14 commission requiring reporting, monitoring or removal from
15 service of any unsafe vehicle or driver.

16 (c) Every receiver of coal transported on a coal resource
17 transportation road in this state that unloads or causes to be
18 unloaded any shipment of coal shall report to the commission
19 the weight of the shipment and other data related to the ship-
20 ment as required by rules promulgated by the commission. The
21 rules shall provide for administrative penalties to be imposed
22 for failure to timely or accurately report the weight or other
23 data. Compliance with the reporting requirements shall cause
24 the receiver to be immune from any and all criminal, civil and
25 administrative liability, damages, costs, fines and penalties
26 based on, arising out of or resulting from the receiver's receipt
27 or acceptance of the shipment.

28 (d) The commission shall by rule establish special record-
29 ing and reporting methods for timely and accurate disclosure of
30 all shipments of coal made by commercial motor vehicles upon
31 a coal resource transportation road of this state.

32 (e) Any receiver receiving any vehicle transporting coal in
33 excess of eighty-eight thousand pounds on any non-coal
34 transportation highways shall file a report with the public
35 service commission, identifying the vehicle and its driver
36 within twenty-four hours of being received. The reports shall
37 be subject to freedom of information requests in accordance
38 with chapter twenty-nine-b of this code. Nothing contained in
39 this subsection shall be construed to restrict application of any
40 other provision of this chapter or any rules promulgated
41 pursuant to this chapter.

**§17C-17A-12. Designating special coal resource transportation
roads, highways and bridges.**

1 (a) From those counties and districts described in subdivi-
2 sion (a), section two of this article, the commissioner of the
3 division of highways shall identify those public roads, high-
4 ways and bridges used during the previous twelve-month period

5 for transportation of quantities of coal in excess of fifty
6 thousand tons or projected to be used for transporting quantities
7 of coal in excess of fifty thousand tons during the ensuing year.
8 The identification process shall include the following as to each
9 discretely identifiable section of the public highway:

10 (1) The current condition of the public roads, highways and
11 bridges;

12 (2) The estimated quantities of coal transported;

13 (3) Any planned or necessary maintenance or improvement;

14 (4) The number of truck loads of coal transported in an
15 average day;

16 (5) Any anticipated increase or decrease in the quantity of
17 coal being transported; and

18 (6) Other information determined by the commissioner to
19 be relevant.

20 (b) Upon completion of the identification process, but in no
21 event later than the first day of July, two thousand three, the
22 commissioner shall designate by order an interim coal resource
23 transportation road system consisting of those public roads,
24 highways, bridges or segments thereof which may be used as
25 special coal haulage roads consistent with the authority con-
26 tained in this article. The commissioner shall establish a
27 process for the receipt and evaluation of public comment on the
28 designations contained within the interim coal resource
29 transportation road system, and designate weight limits and
30 other conditions for use of the coal resource transportation road
31 system as public interest so provides. The commissioner shall
32 publish a directory, including supporting maps and other
33 documents, of the interim coal resource transportation road
34 system.

35 (c) By no later than the first day of January, two thousand
36 four, the commissioner shall designate by order the coal
37 resource transportation road system and shall publish a direc-
38 tory, including supporting maps and other documents, of that
39 road system.

40 (d) The commissioner shall establish a process for periodic
41 evaluation of the designations contained in the coal resource
42 transportation road system in order to add to or delete from the
43 road system certain additional sections of public highways:
44 *Provided*, That the evaluations and modifications of the road
45 system shall be completed at a minimum on an annual basis.

CHAPTER 212

**(S. B. 717 — Originating in the Committee
on Government Organization)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:

That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance 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 five: Department
5 of tax and revenue; West Virginia public land corporation;
6 office of insurance commissioner; James "Tiger" Morton
7 catastrophic illness commission; department of health and
8 human resources; department of environmental protection;
9 state police; school building authority; consolidated public
10 retirement board; workers' compensation; and tourism func-
11 tions within the development office.

12 (2) On the first day of July, two thousand six: Division of
13 motor vehicles.

14 (3) On the first day of July, two thousand seven: Office of
15 health facilities licensure and certification within the depart-
16 ment of health and human resources; development office;
17 parkways, economic development and tourism authority;
18 division of highways; and division of personnel.

19 (4) On the first day of July, two thousand eight: Purchas-
20 ing division within the department of administration; division
21 of rehabilitation services; division of corrections; division of
22 labor; investment management board; and division of natural
23 resources.

24 (5) On the first day of July, two thousand nine: Office of
25 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 perfor-
mance reviews.**

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a preliminary
3 performance review has been conducted upon the agency:

4 (1) On the first day of July, one thousand nine hundred
5 ninety-six: Juvenile facilities review panel.

6 (2) On the first day of July, one thousand nine hundred
7 ninety-seven: Public employees insurance agency advisory
8 board; cable television advisory board.

9 (3) On the first day of July, one thousand nine hundred
10 ninety-nine: Tree fruit industry self-improvement assessment
11 program.

12 (4) On the first day of July, two thousand: Terms of family
13 law master and family law master system.

14 (5) On the first day of July, two thousand 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: Workers'
18 compensation appeal board; and public energy authority and
19 public energy authority board.

20 (7) On the first day of July, two thousand five: Health care
21 authority; clean coal technology council; manufactured
22 housing construction and safety board; commission for the deaf
23 and hard-of-hearing; oral health program; rural health advisory
24 panel; state board of risk and insurance management; steel
25 advisory commission and steel futures program; public
26 employees insurance agency finance board; public defender
27 services; and emergency medical services advisory council.

28 (8) On the first day of July, two thousand six: Family
29 protection services board; medical services fund advisory
30 council; West Virginia stream partners program; Ohio River
31 valley water sanitation commission; state lottery commission;
32 whitewater commission within the division of natural re-
33 sources; unemployment compensation; women's commission;
34 personal assistance services program; contractor licensing
35 board; state rail authority; office of explosives and blasting;
36 waste tire fund; real estate commission; care home advisory
37 board; capitol building commission; records management and
38 preservation board; public employees insurance agency; and
39 soil conservation committee.

40 (9) On the first day of July, two thousand seven: Human
41 rights commission; office of coalfield community develop-
42 ment; state fire commission; children's health insurance board;
43 board of banking and financial institutions; lending and credit
44 rate board; governor's cabinet on children and families; and
45 state geological and economic survey.

46 (10) On the first day of July, two thousand eight: Ethics
47 commission; public service commission; parks section and
48 parks function of the division of natural resources; office of
49 water resources of the department of environmental protection;
50 and marketing and development division of department of
51 agriculture.

52 (11) On the first day of July, two thousand nine: Driver's
53 licensing advisory board; West Virginia commission for
54 national and community service; membership in the southern
55 regional education board; bureau of senior services; oil and gas
56 inspector's examining board; division of protective services;
57 motorcycle safety awareness board; and commission on
58 holocaust education.

59 (12) On the first day of July, two thousand ten: Meat
60 inspection program of the department of agriculture; motor
61 vehicle dealers advisory board; interstate commission on
62 uniform state laws; design-build board; center for professional
63 development board; state rail authority; and interstate commis-
64 sion on the Potomac River basin.

**§4-10-5a. Termination of agencies previously subject to prelimi-
nary 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 five: Bureau for
9 child support enforcement.

10 (3) On the first day of July, two thousand seven: Office of
11 the environmental advocate; racing commission; and educa-
12 tional broadcasting authority.

13 (4) On the first day of July, two thousand eight: Environ-
14 mental quality board.

15 (5) On the first day of July, two thousand ten: Veterans'
16 council; and oil and gas conservation commission.

**§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 five: Board of
14 accountancy; board of veterinary medicine; acupuncture board;
15 and real estate appraiser licensing and certification board.

16 (2) On the first day of July, two thousand six: Board of
17 examiners in counseling; board of osteopathy; board of
18 examiners of land surveyors; board of dental examiners; and
19 board of licensed dietitians.

20 (3) On the first day of July, two thousand seven: Board of
21 registration for sanitarians; board of embalmers and funeral
22 directors; board of optometry; board of social work examiners;
23 and board of respiratory care practitioners.

24 (4) On the first day of July, two thousand eight: Nursing
25 home administrators board; board of hearing aid dealers; board
26 of pharmacy; board of medicine; and board of barbers and
27 cosmetologists.

28 (5) On the first day of July, two thousand nine: Board of
29 physical therapy; board of chiropractic examiners; board of
30 landscape architects; and board of occupational therapy.

31 (6) On the first day of July, two thousand ten: Board of
32 registration for professional engineers; board of examiners for
33 registered professional nurses; board of examiners for licensed
34 practical nurses; board of examiners for speech language
35 pathology and audiology; board of registration for foresters;
36 and radiologic technology board of examiners.

37 (7) On the first day of July, two thousand twelve: Board of
38 examiners of psychologists.

39 (8) On the first day of July, two thousand fourteen: Board
40 of architects.

41 (9) On the first day of July, two thousand fifteen: Massage
42 therapy licensure board.

CHAPTER 213

(H. B. 4531 — By Delegates Beane, Ennis, Manuel and Yeager)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5-16-4 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-16-4a, all relating to continuation of the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5-16-4a, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses.

§5-16-4a. Continuation of the public employees insurance agency finance board.

***§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses.**

* **CLERK'S NOTE:** This section was also amended by H. B. 4008 (Chapter 8), which passed subsequent to this act.

1 (a) There is hereby continued the public employees
2 insurance agency finance board, which consists of the director
3 and six members appointed by the governor with the advice and
4 consent of the Senate for terms of four years and until the
5 appointment of their successors: *Provided*, That of the two
6 members added to the board by the amendment of this section,
7 enacted during the regular legislative session, one thousand
8 nine hundred ninety-nine, the at-large member shall be ap-
9 pointed for an initial term of two years and the member
10 representing organized labor shall be appointed for a term of
11 four years. Members may be reappointed for successive terms.
12 No more than four members (including the director) may be of
13 the same political party.

14 (b) Of the six members appointed by the governor, one
15 member shall represent the interests of education employees,
16 one shall represent the interests of public employees, one shall
17 represent the interests of organized labor and three shall be
18 selected from the public at large. The governor shall appoint the
19 member representing the interests of education employees from
20 a list of three names submitted by the largest organization of
21 education employees in this state. The governor shall appoint
22 the member representing the interests of organized labor from
23 a list of three names submitted by the state's largest organiza-
24 tion representing labor affiliates. The three members appointed
25 from the public shall each have experience in the financing,
26 development or management of employee benefit programs. All
27 new appointments made after the first day of July, one thousand
28 nine hundred ninety-four, shall be selected to represent the
29 different geographical areas within the state and all members
30 shall be residents of West Virginia. No member may be
31 removed from office by the governor except for official
32 misconduct, incompetence, neglect of duty, neglect of fiduciary
33 duty or other specific responsibility imposed by this article, or
34 gross immorality.

35 (c) The director shall serve as chairperson of the finance
36 board, which shall meet at times and places specified by the call
37 of the director or upon the written request to the director of at
38 least two members. Notice of each meeting shall be given in
39 writing to each member by the director at least three days in
40 advance of the meeting. Four members constitutes a quorum.
41 The board shall pay each member the same compensation and
42 expense reimbursement as is paid to members of the Legislature
43 for their interim duties, as recommended by the citizens
44 legislative compensation commission and authorized by law for
45 each day or portion of a day engaged in the discharge of official
46 duties.

47 (d) Upon termination of the board and notwithstanding any
48 provisions in this article to the contrary, the director is autho-
49 rized to assess monthly employee premium contributions and
50 to change the types and levels of costs to employees only in
51 accordance with this subsection. Any assessments or changes
52 in costs imposed pursuant to this subsection shall be imple-
53 mented by legislative rule proposed by the director for promul-
54 gation pursuant to the provisions of article three, chapter
55 twenty-nine-a of this code; any employee assessments or costs
56 previously authorized by the finance board shall then remain in
57 effect until amended by rule of the director promulgated
58 pursuant to this subsection.

**§5-16-4a. Continuation of the public employees insurance agency
finance board.**

1 The public employees insurance agency finance 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 214

(H. B. 4304 — By Delegates Beane, Ennis, Hatfield,
Yeager, Blair, Frich and Schoen)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-4a; and to amend and reenact §5-16B-8 of said code, all relating to continuation of the children's health insurance board.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-4a; and that §5-16B-8 of said code be amended and reenacted, all to read as follows:

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

§5-16B-4a. Continuation of children's health insurance board.

§5-16B-8. Termination and reauthorization.

§5-16B-4a. Continuation of children's health insurance board.

1 The children's health insurance board 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.

§5-16B-8. Termination and reauthorization.

1 (a) The program established in this article abrogates and
2 shall be of no further force and effect, without further action by
3 the Legislature, upon the occurrence of any of the following:

4 (1) The date of entry of a final judgment or order by a court
5 of competent jurisdiction which disallows the program;

6 (2) The effective date of any reduction in annual federal
7 funding levels below the amounts allocated and/or projected in
8 Title XXI of the Social Security Act of 1997; or

9 (3) The effective date of any federal rule or regulation
10 negating the purposes or effect of this article;

11 (4) For purposes of subdivisions (2) and (3) of this subsec-
12 tion, if a later effective date for such reduction or negation is
13 specified, such date will control.

14 (b) Upon termination of the board and notwithstanding any
15 provisions to the contrary, the director may change the levels of
16 costs to covered families only in accordance with rules pro-
17 posed to the Legislature pursuant to the provisions of chapter
18 twenty-nine-a of this code.

CHAPTER 215

**(S. B. 578 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler,
Minard, Rowe, Snyder, White, Boley, Minear and Weeks)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact §5-22A-15 of the code of West Virginia, 1931, as amended, relating to continuation of the design-build board.

Be it enacted by the Legislature of West Virginia:

That §5-22A-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-15. Continuation of board.

1 The design-build board shall continue to exist until the first
2 day of July, two thousand ten, unless sooner terminated,
3 continued or reestablished, pursuant to the provisions of article
4 ten, chapter four of this code.

CHAPTER 216

**(S. B. 269 — By Senators Bowman, Bailey, Caldwell, Chafin,
Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White,
Boley, Minear, Smith and Weeks)**

[Passed March 3, 2004; in effect ninety days from passage Approved by the Governor.]

AN ACT to amend and reenact §5A-3-57 of the code of West Virginia, 1931, as amended, relating to continuation of the division of purchasing within the department of administration.

Be it enacted by the Legislature of West Virginia:

That §5A-3-57 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Continuation of the division of purchasing.

1 The division of purchasing within the department of
 2 administration 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 eight, unless sooner terminated, contin-
 5 ued or reestablished pursuant to the provisions of that article.

CHAPTER 217

**(H. B. 4479 — By Delegates Beane, Ennis, Hatfield,
 Manchin, Talbott, Wright and Blair)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9-2-1a of the code of West Virginia, 1931, as amended, relating to continuation of the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

That §9-2-1a of the code of West Virginia, 1931, 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 five, unless sooner termi-
6 nated, continued or reestablished pursuant to the provisions of
7 that article.

CHAPTER 218

(H. B. 4083 — By Delegates Beane, Ennis, Yeager,
Tucker, Butcher, Azinger and Schoen)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9A-1-2a of the code of West Virginia, 1931, as amended, relating to continuation of the veterans' council.

Be it enacted by the Legislature of West Virginia:

That §9A-1-2a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-2a. Continuation of council.

1 The veterans' council shall continue to exist, pursuant to
2 the provisions of article ten, chapter four of this code, until the
3 first day of July, two thousand ten, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 219

**(H. B. 4350 — By Delegates Beane, Ennis, Hatfield,
Tucker, Yeager, Blair and Romine)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-50 of the code of West Virginia, 1931, as amended, relating to continuation of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

That §15-2-50 of the code of West Virginia, 1931, 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 five, unless
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 220

**(H. B. 4581 — By Delegates Beane, Ennis,
Hatfield, Manchin and Frich)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2D-6 of the code of West Virginia, 1931, as amended, relating to continuation of the division of protective services.

Be it enacted by the Legislature of West Virginia:

That §15-2D-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-6. Continuation of the division.

1 The division of protective 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 221

(S. B. 268 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 3, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-2-24 of the code of West Virginia, 1931, as amended, relating to continuation of the division of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That §17A-2-24 of the code of West Virginia, 1931, 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,
 2 pursuant to the provisions of article ten, chapter four of this
 3 code, until the first day of July, two thousand six, unless sooner
 4 terminated, continued or reestablished pursuant to the provi-
 5 sions of that article.

CHAPTER 222

**(S. B. 575 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler,
 Minard, Rowe, Snyder, White, Boley, Minear and Weeks)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-6-18b of the code of West Virginia, 1931, as amended, relating to continuation of the motor vehicle dealers advisory board.

Be it enacted by the Legislature of West Virginia:

That §17A-6-18b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
 DISMANTLERS; SPECIAL PLATES; TEMPORARY
 PLATES OR MARKERS.**

§17A-6-18b. Continuation of board.

1 The motor vehicle dealers advisory board shall continue to
 2 exist, until the first day of July, two thousand ten unless sooner

3 terminated, continued or reestablished pursuant to the provi-
4 sions of article ten, chapter four of this code.

CHAPTER 223

**(S. B. 296 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler,
McCabe, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)**

[Passed March 5, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-3A-4, relating to continuation of the center for professional development board.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-3A-4, to read as follows:

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-4. Continuation of center for professional development board.

1 The center for professional development board shall
2 continue to exist until the first day of July, two thousand ten,
3 unless sooner terminated, continued or reestablished pursuant
4 to the provisions of article ten, chapter four of this code.

CHAPTER 224

**(H. B. 4157 — By Delegates Beane, Ennis, Butcher,
Hatfield, Perdue, Yeager and Schoen)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18B-16-6b of the code of West Virginia, 1931, as amended, relating to continuation of the rural health advisory panel.

Be it enacted by the Legislature of West Virginia:

That §18B-16-6b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6b. Continuation of advisory panel.

- 1 The rural health advisory panel 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
- 4 sooner terminated, continued or reestablished pursuant to the
- 5 provisions of that article.

CHAPTER 225

(H. B. 4530 — By Delegates Beane, Ennis, Perdue, Blair and Frich)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §19-2B-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2B-1a, all relating to continuation of the meat and poultry inspection program.

Be it enacted by the Legislature of West Virginia:

That §19-2B-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §19-2B-1a, all to read as follows:

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-1. Purpose and construction.

§19-2B-1a. Continuation of meat and poultry inspection program.

§19-2B-1. Purpose and construction.

1 Subject to the provisions of section seven of this article, the
2 basic purpose of this article is to provide for the inspection,
3 labeling and disposition of animals, poultry, carcasses, meat
4 products and poultry products which are to be sold or offered
5 for sale through commercial outlets for human consumption,
6 the licensing of commercial slaughterers, custom slaughterers
7 and processors, and the inspection of slaughterhouses and
8 processing plants located in the state of West Virginia. This
9 article, being intended to protect the health of the citizens of
10 West Virginia, shall be liberally construed.

§19-2B-1a. Continuation of meat and poultry inspection program.

1 The meat and poultry inspection 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 ten, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 226

**(S. B. 323 — By Senators Bowman, Bailey, Caldwell,
Jenkins, Minard, Rowe, White, Boley and Weeks)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22-3A-11 of the code of West Virginia, 1931, as amended, relating to continuation of the office of explosives and blasting.

Be it enacted by the Legislature of West Virginia:

That §22-3A-11 of the code of West Virginia, 1931, 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 until the first day of July, two thousand six, unless sooner
- 3 terminated, continued or reestablished pursuant to the provi-
- 4 sions of article ten, chapter four of this code.

CHAPTER 227

**(H. B. 4248 — By Delegates Beane, Ennis, Hatfield,
Spencer, Wright, Azinger and Frich)**

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22-20-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-20-2, all relating to continuation of the office of environmental advocate.

Be it enacted by the Legislature of West Virginia:

That §22-20-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22-20-2, all to read as follows:

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary.

§22-20-2. Continuation of environmental advocate.

§22-20-1. Appointment of environmental advocate; powers and duties; salary.

1 The director of the division of environmental protection
2 shall appoint a person to serve as the environmental advocate
3 within the division of environmental protection, and shall adopt
4 and promulgate rules in accordance with the provisions of
5 article three, chapter twenty-nine-a of this code governing and
6 controlling the qualifications, powers and duties of the person
7 to be appointed to the position of environmental advocate. The
8 environmental advocate shall serve at the will and pleasure of
9 the director, who shall also set the salary of the environmental
10 advocate. All funding for the office of environmental advocate
11 shall be from existing funds of the division of environmental
12 protection. The director shall provide an office and secretarial
13 and support staff as needed.

§22-20-2. Continuation of environmental advocate.

1 The office of environmental advocate 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 228

**(S. B. 469 — By Senators Bowman, Bailey, Jenkins,
 Kessler, McCabe, Minard, Rowe, Snyder,
 White, Boley and Minear)**

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-1A-5 of the code of West Virginia, 1931, as amended, relating to continuation of the interstate commission on uniform state laws.

Be it enacted by the Legislature of West Virginia:

That §29-1A-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-5. Continuation of commission.

1 The interstate commission on uniform state laws shall
 2 continue to exist until the first day of July, two thousand ten,
 3 unless sooner terminated, continued or reestablished pursuant
 4 to the provisions of article ten, chapter four of this code.

CHAPTER 229

(H. B. 4532 — By Delegates Beane, Ennis, Wright and Frich)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-3-31 of the code of West Virginia, 1931, as amended, relating to continuation of the state fire commission.

Be it enacted by the Legislature of West Virginia:

That §29-3-31 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-31. Continuation of the state fire commission.

- 1 The state fire commission shall continue to exist, pursuant
- 2 to the provisions of article ten, chapter four of this code, until
- 3 the first day of July, two thousand seven, unless sooner termi-
- 4 nated, continued or reestablished pursuant to the provisions of
- 5 that article.

CHAPTER 230

**(S. B. 324 — By Senators Bowman, Bailey, Caldwell, Jenkins,
Minard, Rowe, White, Boley and Weeks)**

[Passed March 3, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-6-5a of the code of West Virginia, 1931, as amended, relating to continuation of the division of personnel.

Be it enacted by the Legislature of West Virginia:

That §29-6-5a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5a. Continuation of division.

- 1 The division of personnel shall continue to exist until the
- 2 first day of July, two thousand seven, unless sooner terminated,
- 3 continued or reestablished pursuant to the provisions of article
- 4 ten, chapter four of this code.

CHAPTER 231

(S. B. 471 — By Senators Bowman, Bailey, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley and Minear)

[Passed March 5, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-12 of the code of West Virginia, 1931, as amended, relating to continuation of the state board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That section §29-12-12 of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.**§29-12-12. Continuation of state board of risk and insurance management.**

1 After having conducted a performance and fiscal audit
 2 through its joint committee on government operations, pursuant
 3 to section nine, article ten, chapter four of this code, the
 4 Legislature finds and declares that the state board of insurance
 5 should be continued, but shall be known and referred to as the
 6 state board of risk and insurance management.

7 The state board of risk and insurance management shall
 8 continue to exist until the first day of July, two thousand five,
 9 unless sooner terminated, continued or reestablished pursuant
 10 to the provisions of article ten, chapter four of this code.

CHAPTER 232

**(S. B. 576 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler,
 Minard, Rowe, Snyder, White, Boley, Minear and Weeks)**

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-18-24 of the code of West Virginia, 1931, as amended, relating to continuation of the West Virginia state rail authority.

Be it enacted by the Legislature of West Virginia:

That §29-18-24 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-24. Continuation of state rail authority.

1 The West Virginia state rail authority shall continue to
 2 exist until the first day of July, two thousand ten, unless sooner
 3 terminated, continued or reestablished pursuant to the provi-
 4 sions of article ten, chapter four of this code.

CHAPTER 233

**(H. B. 4418 — By Delegates Beane, Ennis, Manchin,
 Talbott, Yost, Caruth and Walters)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-12-15 of the code of West Virginia, 1931, as amended, relating to continuation of the board of architects.

Be it enacted by the Legislature of West Virginia:

That §30-12-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. ARCHITECTS.

§30-12-15. Continuation of board.

1 The board of architects shall continue to exist, pursuant to
 2 the provisions of article ten, chapter four of this code, until the
 3 first day of July, two thousand fourteen, unless sooner termi-
 4 nated, continued or reestablished pursuant to the provisions of
 5 that article.

CHAPTER 234

(S. B. 577 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-19-11, relating to continuation of the board of registration for foresters.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-19-11, to read as follows:

ARTICLE 19. FORESTERS.

§30-19-11. Continuation of board.

- 1 The board of registration for foresters shall continue to exist
- 2 until the first day of July, two thousand ten, unless sooner
- 3 terminated, continued or reestablished pursuant to the provi-
- 4 sions of article ten, chapter four of this code.

CHAPTER 235

(H. B. 4419 — By Delegates Beane, Ennis, Iaquina, Talbott, Yost, Caruth and Walters)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-22-18, relating to continuation of the board of landscape architects.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-22-18, to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-18. Continuation of board.

- 1 The board of landscape architects 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 236

(S. B. 470 — By Senators Bowman, Bailey, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley and Minear)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-38-19 of the code of West Virginia, 1931, as amended, relating to continuation of the real estate appraiser licensing and certification board.

Be it enacted by the Legislature of West Virginia:

That §30-38-19 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-19. Continuation of board.

1 The real estate appraiser licensing and certification board
2 shall continue to exist until the first day of July, two thousand
3 five, unless sooner terminated, continued or reestablished
4 pursuant to the provisions of article ten, chapter four of this
5 code.

CHAPTER 237

(S. B. 726 — Originating in the Committee on Government Organization)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §31-16-5 of the code of West Virginia, 1931, as amended, relating to continuation of the steel advisory commission and steel futures program.

Be it enacted by the Legislature of West Virginia:

That §31-16-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-5. Continuation of commission and program.

1 The steel advisory commission and the steel futures
2 program shall continue to exist until the first day of July, two
3 thousand five, unless sooner terminated, continued or reestab-
4 lished pursuant to the provisions of article ten, chapter four of
5 this code.

CHAPTER 238

(H. B. 4624 — By Delegates Michael, Doyle, H. White,
Campbell, Browning, Proudfoot and Ashley)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §7-11B-2, §7-11B-3, §7-11B-4, §7-11B-6, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-11, §7-11B-12, §7-11B-13, §7-11B-15, §7-11B-16, §7-11B-17, §7-11B-18, §7-11B-19, §7-11B-20, §7-11B-21, §7-11B-22, §7-11B-23, §7-11B-24 and §7-11B-26 of the code of West Virginia, 1931, as amended, all relating generally to tax increment financing; defining certain terms and phrases; providing additional requirements for development or redevelopment project plans; providing for Class II legal advertisements for public hearings; providing mechanism for more than one development or redevelopment project plan per development or redevelopment district; revising conflict of interest provisions; providing for issuance of parity and subordinate bonds; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §7-11B-2, §7-11B-3, §7-11B-4, §7-11B-6, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-11, §7-11B-12, §7-11B-13, §7-11B-15, §7-11B-16, §7-11B-17, §7-11B-18, §7-11B-19, §7-11B-20, §7-11B-21, §7-11B-22, §7-11B-23, §7-11B-24 and §7-11B-26 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-2. Findings and legislative purpose.

- §7-11B-3. Definitions.
- §7-11B-4. Powers generally.
- §7-11B-6. Application for development or redevelopment plan.
- §7-11B-7. Creation of a development or redevelopment or district.
- §7-11B-8. Project plan – approval.
- §7-11B-9. Project plan – amendment.
- §7-11B-10. Termination of development or redevelopment district.
- §7-11B-11. Costs of formation of development or redevelopment district.
- §7-11B-12. Overlapping districts prohibited.
- §7-11B-13. Conflicts of interest; required disclosures and abstention.
- §7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority; development office to provide manual and assistance.
- §7-11B-16. Valuation of real property.
- §7-11B-17. Division of ad valorem real property tax revenue.
- §7-11B-18. Payments in lieu of taxes and other revenues.
- §7-11B-19. Tax increment obligations generally.
- §7-11B-20. Tax increment financing obligations — authority to issue.
- §7-11B-21. Tax increment financing obligations — authorizing resolution.
- §7-11B-22. Tax increment financing obligations — terms, conditions.
- §7-11B-23. Tax increment financing obligations — security — marketability.
- §7-11B-24. Tax increment financing obligations — special fund for repayment.
- §7-11B-26. Excess funds.

§7-11B-2. Findings and legislative purpose.

1 (a) It is found and declared to be the policy of this state to
2 promote and facilitate the orderly development and economic
3 stability of its communities. County commissions need the
4 ability to raise revenue to finance capital improvements and
5 facilities that are designed to encourage economic growth and
6 development in geographic areas characterized by high levels
7 of unemployment, stagnant employment, slow income growth,
8 contaminated property or inadequate infrastructure. The
9 construction of necessary capital improvements in accordance
10 with local economic development plans will encourage invest-
11 ing in job-producing private development and expand the public
12 tax base.

13 (b) It is also found and declared that capital improvements
14 or facilities in any area that result in the increase in the value of

15 property located in the area or encourage increased employment
16 within the area will serve a public purpose for each taxing unit
17 possessing the authority to impose ad valorem taxes in the area.

18 (c) It is the purpose of this article:

19 (1) To encourage local levying bodies to cooperate in the
20 allocation of future tax revenues that are used to finance capital
21 improvements and facilities designed to encourage private
22 development in selected areas; and

23 (2) To assist local governments that have a competitive
24 disadvantage in their ability to attract business, private invest-
25 ment or commercial development due to their location; to
26 encourage remediation of contaminated property; to prevent or
27 arrest the decay of selected areas due to the inability of existing
28 financing methods to provide capital improvements and
29 facilities; and to encourage private investment designed to
30 promote and facilitate the orderly development or redevelop-
31 ment of selected areas.

§7-11B-3. Definitions.

1 (a) *General.* — When used in this article, words and
2 phrases defined in this section shall have the meanings ascribed
3 to them in this section unless a different meaning is clearly
4 required either by the context in which the word or phrase is
5 used or by specific definition in this article.

6 (b) *Words and phrases defined.* —

7 (1) “Agency” includes a municipality, a county or municipi-
8 pal development agency established pursuant to authority
9 granted in section one, article twelve of this chapter, a port
10 authority, an airport authority or any other entity created by this
11 state or an agency or instrumentality of this state that engages
12 in economic development activity.

13 (2) “Base assessed value” means the taxable assessed value
14 of all real and tangible personal property, excluding personal
15 motor vehicles, having a tax situs within a development or
16 redevelopment district as shown upon the landbooks and
17 personal property books of the assessor on the first day of July
18 of the calendar year preceding the effective date of the order or
19 ordinance creating and establishing the development or
20 redevelopment district.

21 (3) “Blighted area” means an area within the boundaries of
22 a development or redevelopment district located within the
23 territorial limits of a municipality or county in which the
24 structures, buildings or improvements, by reason of dilapida-
25 tion, deterioration, age or obsolescence, inadequate provision
26 for access, ventilation, light, air, sanitation, open spaces, high
27 density of population and overcrowding or the existence of
28 conditions which endanger life or property, are detrimental to
29 the public health, safety, morals or welfare. “Blighted area”
30 includes any area which, by reason of the presence of a substan-
31 tial number of substandard, slum, deteriorated or deteriorating
32 structures, predominance of defective or inadequate street
33 layout, faulty lot layout in relation to size, adequacy, accessibil-
34 ity or usefulness, unsanitary or unsafe conditions, deterioration
35 of site or other improvements, diversity of ownership, defective
36 or unusual conditions of title or the existence of conditions
37 which endanger life or property by fire and other causes, or any
38 combination of such factors, substantially impairs or arrests the
39 sound growth of a municipality, retards the provision of
40 housing accommodations or constitutes an economic or social
41 liability and is a menace to the public health, safety, morals or
42 welfare in its present condition and use, or any area which is
43 predominantly open and which because of lack of accessibility,
44 obsolete platting, diversity of ownership, deterioration of
45 structures or of site improvements, or otherwise, substantially
46 impairs or arrests the sound growth of the community.

47 (4) "Conservation area" means any improved area within
48 the boundaries of a development or redevelopment district
49 located within the territorial limits of a municipality or county
50 in which fifty percent or more of the structures in the area have
51 an age of thirty-five years or more. A conservation area is not
52 yet a blighted area but is detrimental to the public health, safety,
53 morals or welfare and may become a blighted area because of
54 any one or more of the following factors: Dilapidation; obsoles-
55 cence; deterioration; illegal use of individual structures;
56 presence of structures below minimum code standards; abandon-
57 ment; excessive vacancies; overcrowding of structures and
58 community facilities; lack of ventilation, light or sanitary
59 facilities; inadequate utilities; excessive land coverage; deleteri-
60 ous land use or layout; depreciation of physical maintenance;
61 and lack of community planning. A conservation area shall
62 meet at least three of the factors provided in this subdivision.

63 (5) "County commission" means the governing body of a
64 county of this state and, for purposes of this article only,
65 includes the governing body of a Class I or II municipality in
66 this state.

67 (6) "Current assessed value" means the annual taxable
68 assessed value of all real and tangible personal property,
69 excluding personal motor vehicles, having a tax situs within a
70 development or redevelopment district as shown upon the
71 landbook and personal property records of the assessor.

72 (7) "Development office" means the West Virginia devel-
73 opment office created in section one, article two, chapter five-b
74 of this code.

75 (8) "Development project" or "redevelopment project"
76 means a project undertaken in a development or redevelopment
77 district for eliminating or preventing the development or spread
78 of slums or deteriorated, deteriorating or blighted areas, for

79 discouraging the loss of commerce, industry or employment, for
80 increasing employment or for any combination thereof in
81 accordance with a tax increment financing plan. A development
82 or redevelopment project may include one or more of the
83 following:

84 (A) The acquisition of land and improvements, if any,
85 within the development or redevelopment district and clearance
86 of the land so acquired; or

87 (B) The development, redevelopment, revitalization or
88 conservation of the project area whenever necessary to provide
89 land for needed public facilities, public housing, or industrial or
90 commercial development or revitalization, to eliminate un-
91 healthful, unsanitary or unsafe conditions, to lessen density,
92 mitigate or eliminate traffic congestion, reduce traffic hazards,
93 eliminate obsolete or other uses detrimental to public welfare
94 or otherwise remove or prevent the spread of blight or deterio-
95 ration;

96 (C) The financial or other assistance in the relocation of
97 persons and organizations displaced as a result of carrying out
98 the development or redevelopment project and other improve-
99 ments necessary for carrying out the project plan, together with
100 those site improvements that are necessary for the preparation
101 of any sites and making any land or improvements acquired in
102 the project area available, by sale or lease, for public housing or
103 for development, redevelopment or rehabilitation by private
104 enterprise for commercial or industrial uses in accordance with
105 the plan;

106 (D) The construction of capital improvements within a
107 development or redevelopment district designed to increase or
108 enhance the development of commerce, industry or housing
109 within the development project area; or

110 (E) Any other projects the county commission or the
111 agency deems appropriate to carry out the purposes of this
112 article.

113 (9) "Development or redevelopment district" means an area
114 proposed by one or more agencies as a development or redevel-
115 opment district, which may include one or more counties, one
116 or more municipalities or any combination thereof, that has
117 been approved by the county commission of each county in
118 which the project area is located if the project is located outside
119 the corporate limits of a municipality, or by the governing body
120 of a municipality if the project area is located within a munici-
121 pality, or by both the county commission and the governing
122 body of the municipality when the development or redevel-
123 opment district is located both within and without a municipality.

124 (10) "Economic development area" means any area or
125 portion of an area within the boundaries of a development or
126 redevelopment district located within the territorial limits of a
127 municipality or county that does not meet the requirements of
128 subdivisions (3) and (4) of this subsection and for which the
129 county commission finds that development or redevelopment
130 will not be solely used for development of commercial busi-
131 nesses that will unfairly compete in the local economy and that
132 development or redevelopment is in the public interest because
133 it will:

134 (A) Discourage commerce, industry or manufacturing from
135 moving their operations to another state;

136 (B) Result in increased employment in the municipality or
137 county, whichever is applicable; or

138 (C) Result in preservation or enhancement of the tax base
139 of the county or municipality.

140 (11) "Governing body of a municipality" means the city
141 council of a Class I or Class II municipality in this state.

142 (12) "Incremental value", for any development or redevelop-
143 opment district, means the difference between the base assessed
144 value and the current assessed value. The incremental value will
145 be positive if the current value exceeds the base value and the
146 incremental value will be negative if the current value is less
147 than the base assessed value.

148 (13) "Includes" and "including", when used in a definition
149 contained in this article, shall not be deemed to exclude other
150 things otherwise within the meaning of the term being defined.

151 (14) "Local levying body" means the county board of
152 education, and the county commission, and includes the
153 governing body of a municipality when the development or
154 redevelopment district is located, in whole or in part, within the
155 boundaries of the municipality.

156 (15) "Obligations" or "tax increment financing obligations"
157 means bonds, loans, debentures, notes, special certificates or
158 other evidences of indebtedness issued by a county commission
159 or municipality pursuant to this article to carry out a develop-
160 ment or redevelopment project or to refund outstanding
161 obligations under this article.

162 (16) "Order" means an order of the county commission
163 adopted in conformity with the provisions of this article and as
164 provided in this chapter.

165 (17) "Ordinance" means a law adopted by the governing
166 body of a municipality in conformity with the provisions of this
167 article and as provided in chapter eight of this code.

168 (18) "Payment in lieu of taxes" means those estimated
169 revenues from real property and tangible personal property

170 having a tax situs in the area selected for a development or
171 redevelopment project, which revenues according to the
172 development or redevelopment project or plan are to be used for
173 a private use, which levying bodies would have received had a
174 county or municipality not adopted one or more tax increment
175 financing plans and which would result from levies made after
176 the date of adoption of a tax increment financing plan during
177 the time the current assessed value of all taxable real and
178 tangible personal property in the area selected for the develop-
179 ment or redevelopment project exceeds the total base assessed
180 value of all taxable real and tangible personal property in the
181 development or redevelopment district until the designation is
182 terminated as provided in this article.

183 (19) "Person" means any natural person, and any corpora-
184 tion, association, partnership, limited partnership, limited
185 liability company or other entity, regardless of its form,
186 structure or nature, other than a government agency or instru-
187 mentality.

188 (20) "Private project" means any project that is subject to
189 ad valorem property taxation in this state or to a payment in lieu
190 of tax agreement that is undertaken by a project developer in
191 accordance with a tax increment financing plan in a develop-
192 ment or redevelopment district.

193 (21) "Project" means any capital improvement, facility or
194 both, as specifically set forth and defined in the project plan,
195 requiring an investment of capital, including, but not limited to,
196 extensions, additions or improvements to existing facilities,
197 including water or wastewater facilities, and the remediation of
198 contaminated property as provided for in article twenty-two,
199 chapter twenty-two of this code, but does not include perfor-
200 mance of any governmental service by a county or municipal
201 government.

202 (22) “Project area” means an area within the boundaries of
203 a development or redevelopment district in which a develop-
204 ment or redevelopment project is undertaken, as specifically set
205 forth and defined in the project plan.

206 (23) “Project costs” means expenditures made in prepara-
207 tion of the development or redevelopment project plan and
208 made, or estimated to be made, or monetary obligations
209 incurred, or estimated to be incurred, by the county commission
210 which are listed in the project plan as capital improvements
211 within a development or redevelopment district, plus any costs
212 incidental thereto. “Project costs” include, but are not limited
213 to:

214 (A) Capital costs, including, but not limited to, the actual
215 costs of the construction of public works or improvements,
216 capital improvements and facilities, new buildings, structures
217 and fixtures, the demolition, alteration, remodeling, repair or
218 reconstruction of existing buildings, structures and fixtures,
219 environmental remediation, parking and landscaping, the
220 acquisition of equipment and site clearing, grading and prepara-
221 tion;

222 (B) Financing costs, including, but not limited to, an
223 interest paid to holders of evidences of indebtedness issued to
224 pay for project costs, all costs of issuance and any redemption
225 premiums, credit enhancement or other related costs;

226 (C) Real property assembly costs, meaning any deficit
227 incurred resulting from the sale or lease as lessor by the county
228 commission of real or personal property having a tax situs
229 within a development or redevelopment district for consider-
230 ation that is less than its cost to the county commission;

231 (D) Professional service costs, including, but not limited to,
232 those costs incurred for architectural planning, engineering and
233 legal advice and services;

234 (E) Imputed administrative costs, including, but not limited
235 to, reasonable charges for time spent by county employees or
236 municipal employees in connection with the implementation of
237 a project plan;

238 (F) Relocation costs, including, but not limited to, those
239 relocation payments made following condemnation and job
240 training and retraining;

241 (G) Organizational costs, including, but not limited to, the
242 costs of conducting environmental impact and other studies,
243 and the costs of informing the public with respect to the
244 creation of a development or redevelopment district and the
245 implementation of project plans;

246 (H) Payments made, in the discretion of the county com-
247 mission or the governing body of a municipality, which are
248 found to be necessary or convenient to creation of development
249 or redevelopment districts or the implementation of project
250 plans; and

251 (I) That portion of costs related to the construction of
252 environmental protection devices, storm or sanitary sewer lines,
253 water lines, amenities or streets or the rebuilding or expansion
254 of streets, or the construction, alteration, rebuilding or expan-
255 sion of which is necessitated by the project plan for a develop-
256 ment or redevelopment district, whether or not the construction,
257 alteration, rebuilding or expansion is within the area or on land
258 contiguous thereto.

259 (24) "Project developer" means any person who engages in
260 the development of projects in the state.

261 (25) "Project plan" means the plan for a development or
262 redevelopment project that is adopted by a county commission
263 or governing body of a municipality in conformity with the

264 requirements of this article and this chapter or chapter eight of
265 this code.

266 (26) "Real property" means all lands, including improve-
267 ments and fixtures on them and property of any nature appurte-
268 nant to them or used in connection with them and every estate,
269 interest and right, legal or equitable, in them, including terms
270 of years and liens by way of judgment, mortgage or otherwise,
271 and indebtedness secured by the liens.

272 (27) "Redevelopment area" means an area designated by a
273 county commission, or the governing body of a municipality, in
274 respect to which the commission or governing body has made
275 a finding that there exist conditions which cause the area to be
276 classified as a blighted area, a conservation area, an economic
277 development area or a combination thereof, which area includes
278 only those parcels of real property directly and substantially
279 benefitted by the proposed redevelopment project located
280 within the development or redevelopment district or land
281 contiguous thereto.

282 (28) "Redevelopment plan" means the comprehensive
283 program under this article of a county or municipality for
284 redevelopment intended by the payment of redevelopment costs
285 to reduce or eliminate those conditions, the existence of which
286 qualified the redevelopment area as a blighted area, conserva-
287 tion area, economic development area or combination thereof,
288 and to thereby enhance the tax bases of the levying bodies
289 which extend into the redevelopment area. Each redevelopment
290 plan shall conform to the requirements of this article.

291 (29) "Tax increment" means the amount of regular levy
292 property taxes attributable to the amount by which the current
293 assessed value of real and tangible personal property having a
294 tax situs in a development or redevelopment district exceeds the
295 base assessed value of the property.

296 (30) "Tax increment financing fund" means a separate fund
297 for a development or redevelopment district established by the
298 county commission, or governing body of the municipality, into
299 which all tax increment revenues and other pledged revenues
300 are deposited and from which projected project costs, debt
301 service and other expenditures authorized by this article are
302 paid.

303 (31) "This code" means the code of West Virginia, one
304 thousand nine hundred thirty-one, as amended by the Legisla-
305 ture.

306 (32) "Total ad valorem property tax regular levy rate"
307 means the aggregate levy rate of all levying bodies on all
308 taxable property having a tax situs within a development or
309 redevelopment district in a tax year but does not include excess
310 levies, levies for general obligation bonded indebtedness or any
311 other levies that are not regular levies.

§7-11B-4. Powers generally.

1 In addition to any other powers conferred by law, a county
2 commission or governing body of a Class I or II municipality
3 may exercise any powers necessary and convenient to carry out
4 the purpose of this article, including the power to:

5 (1) Create development and redevelopment areas or
6 districts and to define the boundaries of those areas or districts;

7 (2) Cause project plans to be prepared, to approve the
8 project plans, and to implement the provisions and effectuate
9 the purposes of the project plans;

10 (3) Establish tax increment financing funds for each
11 development or redevelopment district;

12 (4) Issue tax increment financing obligations and pledge tax
13 increments and other revenues for repayment of the obligations;

14 (5) Deposit moneys into the tax increment financing fund
15 for any development or redevelopment district;

16 (6) Enter into any contracts or agreements, including, but
17 not limited to, agreements with project developers, consultants,
18 professionals, financing institutions, trustees and bondholders
19 determined by the county commission to be necessary or
20 convenient to implement the provisions and effectuate the
21 purposes of project plans;

22 (7) Receive from the federal government or the state loans
23 and grants for, or in aid of, a development or redevelopment
24 project and to receive contributions from any other source to
25 defray project costs;

26 (8) Exercise the right of eminent domain to condemn
27 property for the purposes of implementing the project plan. The
28 rules and procedures set forth in chapter fifty-four of this code
29 shall govern all condemnation proceedings authorized in this
30 article;

31 (9) Make relocation payments to those persons, businesses,
32 or organizations that are displaced as a result of carrying out the
33 development or redevelopment project;

34 (10) Clear and improve property acquired by the county
35 commission pursuant to the project plan and construct public
36 facilities on it or contract for the construction, development,
37 redevelopment, rehabilitation, remodeling, alteration or repair
38 of the property;

39 (11) Cause parks, playgrounds or water, sewer or drainage
40 facilities or any other public improvements, including, but not
41 limited to, fire stations, community centers and other public
42 buildings, which the county commission is otherwise authorized
43 to undertake to be laid out, constructed or furnished in connec-
44 tion with the development or redevelopment project. When the

45 public improvement of the county commission is to be located,
46 in whole or in part, within the corporate limits of a municipal-
47 ity, the county commission shall consult with the mayor and the
48 governing body of the municipality regarding the public
49 improvement and shall pay for the cost of the public improve-
50 ment from the tax increment financing fund;

51 (12) Lay out and construct, alter, relocate, change the grade
52 of, make specific repairs upon or discontinue public ways and
53 construct sidewalks in, or adjacent to, the project area: *Pro-*
54 *vided*, That when the public way or sidewalk is located within
55 a municipality, the governing body of the municipality shall
56 consent to the same and if the public way is a state road, the
57 consent of the commissioner of highways shall be necessary;

58 (13) Cause private ways, sidewalks, ways for vehicular
59 travel, playgrounds or water, sewer or drainage facilities and
60 similar improvements to be constructed within the project area
61 for the particular use of the development or redevelopment
62 district or those dwelling or working in it;

63 (14) Construct any capital improvements of a public nature;

64 (15) Construct capital improvements to be leased or sold to
65 private entities in connection with the goals of the development
66 or redevelopment project;

67 (16) Cause capital improvements owned by one or more
68 private entities to be constructed within the development or
69 redevelopment district;

70 (17) Designate one or more official or employee of the
71 county commission to make decisions and handle the affairs of
72 development and redevelopment project areas or districts
73 created by the county commission pursuant to this article;

74 (18) Adopt orders, ordinances or bylaws or repeal or
75 modify such ordinances or bylaws or establish exceptions to

76 existing ordinances and bylaws regulating the design, construc-
77 tion and use of buildings within the development or redevelop-
78 ment district created by a county commission or governing
79 body of a municipality under this article;

80 (19) Enter orders, adopt bylaws or repeal or modify such
81 orders or bylaws or establish exceptions to existing orders and
82 bylaws regulating the design, construction and use of buildings
83 within the development or redevelopment district created by a
84 county commission or governing body of a municipality under
85 this article;

86 (20) Sell, mortgage, lease, transfer or dispose of any
87 property or interest therein, by contract or auction, acquired by
88 it pursuant to the project plan for development, redevelopment
89 or rehabilitation in accordance with the project plan;

90 (21) Expend project revenues as provided in this article;
91 and

92 (22) Do all things necessary or convenient to carry out the
93 powers granted in this article.

§7-11B-6. Application for development or redevelopment plan.

1 (a) An agency or a project developer may apply to a county
2 commission or the governing body of a municipality for
3 adoption of a development or redevelopment project plan. The
4 application shall state the project's economic impact, viability,
5 estimated revenues and potential for job creation and such other
6 information as the county commission or the governing body of
7 the municipality may require.

8 (b) Copies of the application shall be made available to the
9 public in the county clerk's office or the municipal recorder's
10 office when the application is filed with the governing body of
11 a municipality.

§7-11B-7. Creation of a development or redevelopment or district.

1 (a) County commissions and the governing bodies of Class
2 I and II municipalities, upon their own initiative or upon
3 application of an agency or a developer, may propose creation
4 of a development or redevelopment district and designate the
5 boundaries of the district: *Provided*, That a district may not
6 include noncontiguous land.

7 (b) The county commission or municipality proposing
8 creation of a development or redevelopment district shall then
9 hold a public hearing at which interested parties are afforded a
10 reasonable opportunity to express their views on the proposed
11 creation of a development or redevelopment district and its
12 proposed boundaries.

13 (1) Notice of the hearing shall be published as a Class II
14 legal advertisement in accordance with section two, article
15 three, chapter fifty-nine of this code.

16 (2) The notice shall include the time, place and purpose of
17 the public hearing, describe in sufficient detail the tax incre-
18 ment financing plan, the proposed boundaries of the develop-
19 ment or redevelopment district and, when a development or
20 redevelopment project plan is being proposed, the proposed tax
21 increment financing obligations to be issued to finance the
22 development or redevelopment project costs.

23 (3) Prior to the first day of publication, a copy of the notice
24 shall be sent by first-class mail to the director of the develop-
25 ment office and to the chief executive officer of all other local
26 levying bodies having the power to levy taxes on real and
27 tangible personal property located within the proposed develop-
28 ment or redevelopment district.

29 (4) All parties who appear at the hearing shall be afforded
30 an opportunity to express their views on the proposal to create
31 the development or redevelopment district and, if applicable,
32 the development or redevelopment project plan and proposed
33 tax increment financing obligations.

34 (c) After the public hearing, the county commission, or the
35 governing body of the municipality, shall finalize the bound-
36 aries of the development or redevelopment district, the develop-
37 ment or redevelopment project plan, or both, and submit the
38 same to the director of the development office for his or her
39 review and approval. The director, within sixty days after
40 receipt of the application, shall approve the application as
41 submitted, reject the application or return the application to the
42 county commission or governing body of the municipality for
43 further development or review in accordance with instructions
44 of the director of the development office. A development or
45 redevelopment district or development or redevelopment
46 project plan may not be adopted by the county commission or
47 the governing body of a municipality until after it has been
48 approved by the executive director of the development office.

49 (d) Upon approval of the application by the development
50 office, the county commission may enter an order and the
51 governing body of the municipality proposing the district or
52 development or redevelopment project plan may adopt an
53 ordinance, that:

54 (1) Describes the boundaries of a development or redevelop-
55 ment district sufficiently to identify with ordinary and
56 reasonable certainty the territory included in the district, which
57 boundaries shall create a contiguous district;

58 (2) Creates the development or redevelopment district as of
59 a date provided in the order or ordinance;

60 (3) Assigns a name to the development or redevelopment
61 district for identification purposes.

62 (A) The name may include a geographic or other designa-
63 tion, shall identify the county or municipality authorizing the
64 district and shall be assigned a number, beginning with the
65 number one.

66 (B) Each subsequently created district in the county or
67 municipality shall be assigned the next consecutive number;

68 (4) Contains findings that the real property within the
69 development or redevelopment district will be benefitted by
70 eliminating or preventing the development or spread of slums
71 or blighted, deteriorated or deteriorating areas, discouraging the
72 loss of commerce, industry or employment, increasing employ-
73 ment or any combination thereof;

74 (5) Approves the development or redevelopment project
75 plan, if applicable;

76 (6) Establishes a tax increment financing fund as a separate
77 fund into which all tax increment revenues and other revenues
78 designated by the county commission, or governing body of the
79 municipality, for the benefit of the development or redevelop-
80 ment district shall be deposited, and from which all project
81 costs shall be paid, which may be assigned to and held by a
82 trustee for the benefit of bondholders if tax increment financing
83 obligations are issued by the county commission or the govern-
84 ing body of the municipality; and

85 (7) Provides that ad valorem property taxes on real and
86 tangible personal property having a tax situs in the development
87 or redevelopment district shall be assessed, collected and
88 allocated in the following manner, commencing upon the date
89 of adoption of such order or ordinance and continuing for so
90 long as any tax increment financing obligations are payable

91 from the tax increment financing fund, hereinafter authorized,
92 are outstanding and unpaid:

93 (A) For each tax year, the county assessor shall record in
94 the land and personal property books both the base assessed
95 value and the current assessed value of the real and tangible
96 personal property having a tax situs in the development or
97 redevelopment district;

98 (B) Ad valorem taxes collected from regular levies upon
99 real and tangible personal property having a tax situs in the
100 district that are attributable to the lower of the base assessed
101 value or the current assessed value of real and tangible personal
102 property located in the development project area shall be
103 allocated to the levying bodies in the same manner as applicable
104 to the tax year in which the development or redevelopment
105 project plan is adopted by order of the county commission or by
106 ordinance adopted by the governing body of the municipality;

107 (C) The tax increment with respect to real and tangible
108 personal property in the development or redevelopment district
109 shall be allocated and paid into the tax increment financing fund
110 and shall be used to pay the principal of and interest on tax
111 increment financing obligations issued to finance the costs of
112 the development or redevelopment projects in the development
113 or redevelopment district. Any levying body having a develop-
114 ment or redevelopment district within its taxing jurisdiction
115 shall not receive any portion of the annual tax increment except
116 as otherwise provided in this article; and

117 (D) In no event shall the tax increment include any taxes
118 collected from excess levies, levies for general obligation
119 bonded indebtedness or any levies other than the regular levies
120 provided for in article eight, chapter eleven of this code.

121 (e) Proceeds from tax increment financing obligations
122 issued under this article may only be used to pay for costs of

123 development and redevelopment projects to foster economic
124 development in the development or redevelopment district or
125 land contiguous thereto.

126 (f) Notwithstanding subsection (e) of this section, a county
127 commission may not enter an order approving a development
128 or redevelopment project plan unless the county commission
129 expressly finds and states in the order that the development or
130 redevelopment project is not reasonably expected to occur
131 without the use of tax increment financing.

132 (g) Notwithstanding subsection (e) of this section, the
133 governing body of a municipality may not adopt an ordinance
134 approving a development or redevelopment project plan unless
135 the governing body expressly finds and states in the ordinance
136 that the development or redevelopment project is not reasonably
137 expected to occur without the use of tax increment financing.

138 (h) No county commission shall establish a development or
139 redevelopment district any portion of which is within the
140 boundaries of a Class I, II, III or IV municipality without the
141 formal consent of the governing body of such municipality.

142 (i) A tax increment financing plan that has been approved
143 by a county commission or the governing body of a municipal-
144 ity may be amended by following the procedures set forth in
145 this article for adoption of a new development or redevelop-
146 ment project plan.

147 (j) The county commission may modify the boundaries of
148 the development or redevelopment district, from time to time,
149 by entry of an order modifying the order creating the develop-
150 ment or redevelopment district.

151 (k) The governing body of a municipality may modify the
152 boundaries of the development or redevelopment district, from

153 time to time, by amending the ordinance establishing the
154 boundaries of the district.

155 (l) Before a county commission or the governing body of a
156 municipality may amend such an order or ordinance, the county
157 commission or municipality shall give the public notice, hold
158 a public hearing and obtain the approval of the director of the
159 development office, following the procedures for establishing
160 a new development or redevelopment district. In the event any
161 tax increment financing obligations are outstanding with respect
162 to the development or redevelopment district, any change in the
163 boundaries shall not reduce the amount of tax increment
164 available to secure the outstanding tax increment financing
165 obligations.

§7-11B-8. Project plan – approval.

1 (a) The county commission or municipality creating the
2 district shall cause the preparation of a project plan for each
3 development or redevelopment district and the project plan
4 shall be adopted by order of the county commission, or ordi-
5 nance adopted by the governing body of the municipality, after
6 it is approved by the executive director of the development
7 office. This process shall conform to the procedures set forth in
8 this section.

9 (b) Each project plan shall include:

10 (1) A statement listing the kind, number and location of all
11 proposed public works or other improvements within the
12 district and on land outside but contiguous to the district;

13 (2) A cost-benefit analysis showing the economic impact of
14 the plan on each levying body that is at least partially within the
15 boundaries of the development or redevelopment district. This
16 analysis shall show the impact on the economy if the project is
17 not built and is built pursuant to the development or redevelo-

18 ment plan under consideration. The cost-benefit analysis shall
19 include a fiscal impact study on every affected levying body
20 and sufficient information from the developer for the agency,
21 if any proposing the plan, the county commission be asked to
22 approve the project and the development office to evaluate
23 whether the project as proposed is financially feasible;

24 (3) An economic feasibility study;

25 (4) A detailed list of estimated project costs;

26 (5) A description of the methods of financing all estimated
27 project costs, including the issuance of tax increment obliga-
28 tions and the time when the costs or monetary obligations
29 related thereto are to be incurred;

30 (6) A certification by the county assessor of the base
31 assessed value of real and tangible personal property having a
32 tax situs in a development or redevelopment district: *Provided,*
33 That if such certification is made during the months of January
34 or February of each year, the county assessor may certify an
35 estimated base assessed value of real and tangible personal
36 property having a tax situs in a development or redevelopment
37 district: *Provided, however,* That prior to issuance of tax
38 increment obligations, the county assessor shall certify a final
39 base assessed value for the estimated base assessed value
40 permitted by this section;

41 (7) The type and amount of any other revenues that are
42 expected to be deposited to the tax increment financing fund of
43 the development or redevelopment district;

44 (8) A map showing existing uses and conditions of real
45 property in the development or redevelopment district;

46 (9) A map of proposed improvements and uses in the
47 district;

- 48 (10) Proposed changes of zoning ordinances, if any;
- 49 (11) Appropriate cross-references to any master plan, map,
50 building codes and municipal ordinances or county commission
51 orders affected by the project plan;
- 52 (12) A list of estimated nonproject costs;
- 53 (13) A statement of the proposed method for the relocation
54 of any persons, businesses or organizations to be displaced;
- 55 (14) A certificate from the executive director of the
56 workers' compensation commission, the commissioner of the
57 bureau of employment programs and the state tax commissioner
58 that the project developer is in good standing with the workers'
59 compensation commission, the bureau of employment programs
60 and the state tax division; and
- 61 (15) A certificate from the sheriff of the county or counties
62 in which the development or redevelopment district is located
63 that the project developer is not delinquent on payment of any
64 real and personal property taxes in such county.
- 65 (c) If the project plan is to include tax increment financing,
66 the tax increment financing portion of the plan shall set forth:
- 67 (1) The amount of indebtedness to be incurred pursuant to
68 this article;
- 69 (2) An estimate of the tax increment to be generated as a
70 result of the project;
- 71 (3) The method for calculating the tax increment, which
72 shall be in conformance with the provisions of this article,
73 together with any provision for adjustment of the method of
74 calculation;

75 (4) Any other revenues, such as payment in lieu of tax
76 revenues, to be used to secure the tax increment financing; and

77 (5) Any other provisions as may be deemed necessary in
78 order to carry out any tax increment financing to be used for the
79 development or redevelopment project.

80 (d) If less than all of the tax increment is to be used to fund
81 a development or redevelopment project or to pay project costs
82 or retire tax increment financing, the project plan shall set forth
83 the portion of the tax increment to be deposited in the tax
84 increment financing fund of the development or redevelopment
85 district and provide for the distribution of the remaining portion
86 of the tax increment to the levying bodies in whose jurisdiction
87 the district lies.

88 (e) The county commission or governing body of the
89 municipality that established the tax increment financing fund
90 shall hold a public hearing at which interested parties shall be
91 afforded a reasonable opportunity to express their views on the
92 proposed project plan being considered by the county commis-
93 sion or the governing body of the municipality.

94 (1) Notice of the hearing shall be published as a Class II
95 legal advertisement in accordance with section two, article
96 three, chapter fifty-nine of this code.

97 (2) Prior to this publication, a copy of the notice shall be
98 sent by first-class mail to the chief executive officer of all other
99 levying bodies having the power to levy taxes on property
100 located within the proposed development or redevelopment
101 district.

102 (f) Approval by the county commission or the governing
103 body of a municipality of an initial development or redevelo-
104 pment project plan must be within one year after the date of the
105 county assessor's certification required by subdivision (6),

106 subsection (b) of this section: *Provided*, That additional
107 development or redevelopment project plans may be approved
108 by the county commission or the governing body of a municipi-
109 pality in subsequent years, so long as the development or
110 redevelopment district continues to exist. The approval shall be
111 by order of the county commission or ordinance of the municipi-
112 pality, which shall contain a finding that the plan is economi-
113 cally feasible.

§7-11B-9. Project plan – amendment.

1 (a) The county commission may by order, or the governing
2 body of a municipality by ordinance, adopt an amendment to a
3 project plan.

4 (b) Adoption of an amendment to a project plan shall be
5 preceded by a public hearing held by the county commission,
6 or governing body of the municipality, at which interested
7 parties shall be afforded a reasonable opportunity to express
8 their views on the amendment.

9 (1) Notice of the hearing shall be published as a Class II
10 legal advertisement in accordance with section two, article
11 three, chapter fifty-nine of this code.

12 (2) Prior to publication, a copy of the notice shall be sent by
13 first-class mail to the chief executive officer of all other local
14 levying bodies having the power to levy taxes on property
15 within the development or redevelopment district.

16 (3) Copies of the proposed plan amendments shall be made
17 available to the public at the county clerk's office or municipal
18 clerk's office at least fifteen days prior to the hearing.

19 (c) One or more existing development or redevelopment
20 districts may be combined pursuant to lawfully adopted
21 amendments to the original plans for each district: *Provided*,

22 That the county commission, or governing body of the municipi-
23 pality, finds that the combination of the districts will not impair
24 the security for any tax increment financing obligations
25 previously issued pursuant to this article.

§7-11B-10. Termination of development or redevelopment district.

1 (a) No development or redevelopment district may be in
2 existence for a period longer than thirty years and no tax
3 increment financing obligations may have a final maturity date
4 later than the termination date of the area or district.

5 (b) The county commission or governing body of the
6 municipality creating the development or redevelopment
7 district may set a shorter period for the existence of the district.
8 In this event, no tax increment financing obligations may have
9 a final maturity date later than the termination date of the
10 district.

11 (c) Upon termination of the district, no further ad valorem
12 tax revenues shall be distributed to the tax increment financing
13 fund of the district.

14 (d) The county commission shall adopt, upon the expiration
15 of the time periods set forth in this section, an order terminating
16 the development or redevelopment district created by the
17 county commission: *Provided*, That no district shall be termi-
18 nated so long as bonds with respect to the district remain
19 outstanding.

20 (e) The governing body of the county commission shall
21 repeal, upon the expiration of the time periods set forth in this
22 section, the ordinance establishing the development or redevel-
23 opment district: *Provided*, That no district shall be terminated
24 so long as bonds with respect to the district remain outstanding.

§7-11B-11. Costs of formation of development or redevelopment district.

1 (a) The county commission, or the governing body of a
2 municipality, may pay, but shall have no obligation to pay, the
3 costs of preparing the project plan or forming the development
4 or redevelopment district created by them.

5 (b) If the county commission, or the governing body of the
6 municipality, elects not to incur those costs, they shall be made
7 project costs of the district and reimbursed from bond proceeds
8 or other financing or may be paid by developers, property
9 owners or other persons interested in the success of the devel-
10 opment or redevelopment project.

§7-11B-12. Overlapping districts prohibited.

1 The boundaries of any development and redevelopment
2 districts shall not overlap with any other development or
3 redevelopment district.

§7-11B-13. Conflicts of interest; required disclosures and abstention.

1 (a) If any member of the governing body of an agency
2 applying for a development or redevelopment district or a
3 development or redevelopment project plan, a member of the
4 county commission considering the application or a member of
5 the governing body of a municipality considering the applica-
6 tion owns or controls an interest, direct or indirect, in any
7 property included in the development or redevelopment district,
8 or proposed development or redevelopment district, he or she
9 shall refrain from any further official involvement in regard to
10 such application, shall abstain from voting on any matter
11 pertaining to such application, and shall abstain from communi-
12 cating with other members concerning any matter pertaining to
13 such application.

14 (b) With respect to development or redevelopment projects,
15 the provisions of subsection (a), section fifteen, article ten,
16 chapter sixty-one of this code do not apply to any person who,
17 or person whose spouse, is a salaried employee of a project
18 developer under a contract subject to the provisions of said
19 subsection if the employee, his or her spouse or child:

20 (1) Is not a party to the contract;

21 (2) Is not an owner, a shareholder, a director or an officer
22 of a private entity under the contract;

23 (3) Receives no commission, bonus or other direct remuner-
24 ation or thing of value by virtue of the contract;

25 (4) Does not participate in the deliberations or awarding of
26 the contract; and

27 (5) Does not approve, vote for or otherwise authorize the
28 payment of public funds, including, but not limited to, tax
29 increment revenues, pursuant to or as a result of the contract.

30 (c) Additionally, no member of the county commission or
31 governing body of a municipality considering a development or
32 redevelopment district or project plan, no member of the
33 governing body of an agency proposing a development or
34 redevelopment district or project plan, or any employee of the
35 county, municipality or agency shall acquire any interest, direct
36 or indirect, in any property in a development or redevelopment
37 district or project area, or a proposed development or redevel-
38 opment district or project area, during the period of time
39 between when the individual first obtains personal knowledge
40 of the development or redevelopment district or project plan
41 and the completion of the public hearing regarding the develop-
42 ment or redevelopment district or project plan or on a date
43 which the county commission or governing body of a munici-

44 pality publicly announces that the development or redevelop-
45 ment district or project plan is no longer under consideration.

**§7-11B-15. Reports by county commissions and municipalities,
contents, and publication; procedure to determine
progress of project; reports by development
office, content of reports; rule-making authority;
development office to provide manual and assis-
tance.**

1 (a) Each year, the county commission, or its designee, and
2 the governing body of a municipality, or its designee, that has
3 approved a development or redevelopment project plan shall
4 prepare a report giving the status of each plan and each devel-
5 opment and redevelopment project included in the plan and file
6 it with the executive director of the development office by the
7 first day of October each year. The report shall include the
8 following information:

9 (1) The aggregate amount and the amount by source of
10 revenue in the tax increment financing fund;

11 (2) The amount and purpose of expenditures from the tax
12 increment financing fund;

13 (3) The amount of any pledge of revenues, including
14 principal and interest on any outstanding tax increment financ-
15 ing indebtedness;

16 (4) The base assessed value of the development or redevelop-
17 ment project or the development or redevelopment district,
18 as appropriate;

19 (5) The assessed value for the current tax year of the
20 development or redevelopment project property or of the
21 taxable property having a tax situs in the development or
22 redevelopment district, as appropriate;

23 (6) The assessed value added to base assessed value of the
24 development or redevelopment project or the taxable property
25 having a tax situs in the development or redevelopment district,
26 as the case may be;

27 (7) Payments made in lieu of taxes received and expended;

28 (8) Reports on contracts made incidental to the implementa-
29 tion and furtherance of a development or redevelopment plan or
30 project;

31 (9) A copy of any development or redevelopment plan,
32 which shall include the required findings and cost-benefit
33 analysis;

34 (10) The cost of any property acquired, disposed of,
35 rehabilitated, reconstructed, repaired or remodeled;

36 (11) The number of parcels of land acquired by or through
37 initiation of eminent domain proceedings;

38 (12) The number and types of jobs projected by the project
39 developer to be created, if any, and the estimated annualized
40 wages and benefits paid or to be paid to persons filling those
41 jobs;

42 (13) The number, type and duration of the jobs created, if
43 any, and the annualized wages and benefits paid;

44 (14) The amount of disbursements from the tax increment
45 financing fund during the most recently completed fiscal year,
46 in the aggregate and in such detail as the executive director of
47 the development office may require;

48 (15) An annual statement showing payments made in lieu
49 of taxes received and expended during the fiscal year;

50 (16) The status of the development or redevelopment plan
51 and projects therein;

52 (17) The amount of outstanding tax increment financing
53 obligations; and

54 (18) Any additional information the county commission or
55 the municipality preparing the report deems necessary or that
56 the executive director of the development office may by
57 procedural rule require.

58 (b) Data contained in the report required by subsection (a)
59 of this section shall be deemed a public record as defined in
60 article one, chapter twenty-nine-b of this code.

61 (1) The county commission's annual report shall be
62 published on its web site, if it has a web site. If the county does
63 not have a web site, the annual report shall be published on the
64 web site of the development office.

65 (2) The municipality's annual report shall be published on
66 its web site, if it has a web site. If the municipality does not
67 have a web site, the annual report shall be published on the web
68 site of the development office.

69 (c) After the close of the fiscal year, but on or before the
70 first day of October each year, the county commission and the
71 governing body of a municipality that approved a development
72 or redevelopment plan shall publish in a newspaper of general
73 circulation in the county or municipality, as appropriate, an
74 annual statement showing for each development or redevelop-
75 ment project or plan for which tax increment financing obliga-
76 tions have been issued:

77 (1) A summary of receipts and disbursements, by major
78 category, of moneys in the tax increment financing fund during
79 that fiscal year;

80 (2) A summary of the status of the development or redevelop-
81 ment plan and each project therein;

82 (3) The amount of tax increment financing principal
83 outstanding as of the close of the fiscal year; and

84 (4) Any additional information the county commission or
85 municipality deems necessary or appropriate to publish.

86 (d) Five years after the establishment of a development or
87 redevelopment plan, and every five years thereafter, the county
88 commission or municipality that approved the plan shall hold
89 a public hearing regarding that development or redevelopment
90 plan and the projects created or to be created in the develop-
91 ment or redevelopment district pursuant to this article.

92 (1) The purpose of the public hearing is to determine if the
93 development or redevelopment plan and the proposed project or
94 projects are making satisfactory progress under the proposed
95 time schedule contained within the approved plans for comple-
96 tion of the projects.

97 (2) Notice of this public hearing shall be given in a newspa-
98 per of general circulation in the county, or in the municipality
99 for a municipal plan, once each week for four successive weeks
100 immediately prior to the hearing.

101 (3) Public hearings on development and redevelopment
102 plans and projects may be held as part of a regular or special
103 meeting of the county commission, or governing body of the
104 municipality, that adopted the plan.

105 (e) The executive director of the development office shall
106 submit a report to the governor, the speaker of the House of
107 Delegates and the president of the Senate no later than February
108 first of each year. The report shall contain a summary of all

109 information received by the executive director pursuant to this
110 section.

111 (f) For the purpose of facilitating and coordinating the
112 reports required by this section, the executive director of the
113 development office may promulgate procedural rules in the
114 manner provided in article three, chapter twenty-nine-a of this
115 code to ensure compliance with this section.

116 (g) The executive director of the development office shall
117 provide information and technical assistance, as requested by a
118 county commission or the governing body of a municipality, on
119 the requirements of this article. The information and technical
120 assistance shall be provided in the form of a manual, written in
121 an easy-to-follow manner, and through consultations with staff
122 of the development office.

123 (h) By the first day of October each year, each agency that
124 proposed a development or redevelopment plan that was
125 approved by a county commission, or the governing body of a
126 municipality, and each county commission, or governing body
127 of a municipality, that approved a development or redevelop-
128 ment plan that was not proposed by an agency shall report to
129 the executive director of the development office the name,
130 address, phone number and primary line of business of any
131 business that relocates to the development or redevelopment
132 district during the immediately preceding fiscal year of the
133 state. The executive director shall compile and report the same
134 to the governor, the speaker of the House of Delegates and the
135 president of the Senate by the first day of February of the next
136 calendar year.

§7-11B-16. Valuation of real property.

1 (a) Upon and after the effective date of the creation of a
2 development or redevelopment district, the county assessor of
3 the county in which the district is located shall transmit to the

4 county clerk a certified statement of the base assessed value,
5 total ad valorem regular levy rate, total general obligation bond
6 debt service ad valorem rate and total excess levy rate applica-
7 ble for the development or redevelopment district.

8 (1) The assessor shall undertake, upon request of the county
9 commission, or the governing body of the municipality,
10 creating the development or redevelopment district, an investi-
11 gation, examination and inspection of the taxable real and
12 tangible personal property having a tax situs in the district and
13 shall reaffirm or revalue the base value for assessment of the
14 property in accordance with the findings of the investigation,
15 examination and inspection.

16 (2) The county assessor shall determine, according to his or
17 her best judgment from all sources available to him or her, the
18 full aggregate assessed value of the taxable property in the
19 district, which aggregate assessed valuation, upon certification
20 thereof by the assessor to the clerk, constitutes the base value
21 of the development or redevelopment district.

22 (b) The county assessor shall give notice annually to the
23 designated finance officer of each levying body having the
24 power to levy taxes on property within each district of the
25 current value and the incremental value of the property in the
26 development or redevelopment district.

27 (c) The assessor shall also determine the tax increment by
28 applying the applicable ad valorem regular levy rates to the
29 incremental value.

30 (d) The notice shall also explain that the entire amount of
31 the tax increment allocable to property within the development
32 or redevelopment district will be paid to the tax increment
33 financing fund of the development or redevelopment district
34 until it is terminated.

35 (e) The assessor shall identify upon the landbooks those
36 parcels of property that are within each existing development or
37 redevelopment district, specifying on landbooks the name of
38 each district.

§7-11B-17. Division of ad valorem real property tax revenue.

1 (a) For so long as the development or redevelopment
2 district exists, the county sheriff shall divide the ad valorem tax
3 revenue collected, with respect to taxable property in the
4 district, as follows:

5 (1) The assessor shall determine for each tax year:

6 (A) The amount of ad valorem property tax revenue that
7 should be generated by multiplying the assessed value of the
8 property for the then current tax year by the aggregate of
9 applicable levy rates for the tax year;

10 (B) The amount of ad valorem tax revenue that should be
11 generated by multiplying the base assessed value of the
12 property by the applicable regular ad valorem levy rates for the
13 tax year;

14 (C) The amount of ad valorem tax revenue that should be
15 generated by multiplying the assessed value of the property for
16 the current tax year by the applicable levy rates for general
17 obligation bond debt service for the tax year;

18 (D) The amount of ad valorem property tax revenue that
19 should be generated by multiplying the assessed value of the
20 property for the current tax year by the applicable excess levy
21 rates for the tax year; and

22 (E) The amount of ad valorem property tax revenue that
23 should be generated by multiplying the incremental value by
24 the applicable regular levy rates for the tax year.

25 (2) The sheriff shall determine from the calculations set
26 forth in subdivision (1) of this subsection the percentage share
27 of total ad valorem revenue for each levying body according to
28 paragraphs (B) through (D), inclusive, of said subdivision by
29 dividing each of such amounts by the total ad valorem revenue
30 figure determined by the calculation in paragraph (A) of said
31 subdivision; and

32 (3) On each date on which ad valorem tax revenue is to be
33 distributed to the levying bodies, such revenue shall be distrib-
34 uted by:

35 (A) Applying the percentage share determined according to
36 paragraph (B), subdivision (1) of this subsection to the revenues
37 received and distributing such share to the levying bodies
38 entitled to such distribution pursuant to current law;

39 (B) Applying the percentage share determined according to
40 paragraph (C), subdivision (1) of this subsection to the revenues
41 received and distributing such share to the levying bodies
42 entitled to such distribution by reason of having general
43 obligation bonds outstanding;

44 (C) Applying the percentage share determined according to
45 paragraph (D), subdivision (1) of this subsection to the revenues
46 received and distributing such share to the levying bodies
47 entitled to such distribution by reason of having excess levies
48 in effect for the tax year; and

49 (D) Applying the percentage share determined according to
50 paragraph (E), subdivision (1) of this subsection to the revenues
51 received and distributing such share to the tax increment
52 financing fund of the development or redevelopment district.

53 (b) In each year for which there is a positive tax increment,
54 the county sheriff shall remit to the tax increment financing
55 fund of the development or redevelopment district that portion

56 of the ad valorem property taxes collected that consists of the
57 tax increment.

58 (c) Any additional moneys appropriated to the development
59 or redevelopment district pursuant to an appropriation by the
60 county commission that created the district and any additional
61 moneys dedicated to the fund from other sources shall be
62 deposited to the tax increment financing fund for the develop-
63 ment or redevelopment district by the sheriff.

64 (d) Any funds deposited into the tax increment financing
65 fund of the development or redevelopment district may be used
66 to pay project costs, principal and interest on bonds and the cost
67 of any other improvements in the development or redevelo-
68 ment district deemed proper by the county commission.

69 (e) Unless otherwise directed pursuant to any agreement
70 with the holders of tax increment financing obligations, moneys
71 in the tax increment financing fund may be temporarily
72 invested in the same manner as other funds of the county
73 commission, or the municipality, that established the fund.

74 (f) If less than all of the tax increment is to be used for
75 project costs or pledged to secure tax increment financing as
76 provided in the plan for the development or redevelopment
77 district, the sheriff shall account for that fact in distributing the
78 ad valorem property tax revenues.

§7-11B-18. Payments in lieu of taxes and other revenues.

1 (a) The county commission or municipality that created the
2 development or redevelopment district shall deposit in the tax
3 increment financing fund of the development or redevelopment
4 district all payments in lieu of taxes received pursuant to any
5 agreement entered into on or subsequent to the date of creation
6 of a development or redevelopment district on tax exempt

7 property located within the development or redevelopment
8 district.

9 (b) The lessee of property that is exempt from property
10 taxes because it is owned by this state, a political subdivision of
11 this state or an agency or instrumentality thereof, which is the
12 lessee of any facilities financed, in whole or in part, with tax
13 increment financing obligations, shall execute a payment in lieu
14 of tax agreement that shall remain in effect until the tax
15 increment financing obligations are paid, during which period
16 of time the lessee agrees to pay to the county sheriff an amount
17 equal to the amount of ad valorem property taxes that would
18 have been levied against the assessed value of the property were
19 it owned by the lessee rather than a tax exempt entity. The
20 portion of the payment in lieu of taxes attributable to the
21 incremental value shall be deposited in the tax increment
22 financing fund. The remaining portion of the in lieu payment
23 shall be distributed among the levying bodies as follows:

24 (1) The portion of the in lieu tax payment attributable to the
25 base value of the property shall be distributed to the levying
26 bodies in the same manner as taxes attributable to the base
27 value of other property in the district are distributed; and

28 (2) The portions of the in lieu tax payment attributable to
29 levies for bonded indebtedness and excess levies shall be
30 distributed in the same manner as those levies on other property
31 in the district are distributed.

32 (c) Other revenues to be derived from the development or
33 redevelopment district may also be deposited in the tax incre-
34 ment financing fund at the direction of the county commission.

§7-11B-19. Tax increment obligations generally.

1 (a) Tax increment obligations may be issued by a county
2 commission, or the governing body of the municipality, to pay

3 project costs for projects included in the development or
4 redevelopment plan approved by the development office and
5 adopted by the county commission, or the governing body of
6 the municipality, that are located in a development or redevelop-
7 ment district or on land not in the district that is contiguous
8 to the district and which contain infrastructure or other facilities
9 which serve the district.

10 (1) Tax increment financing obligations may be issued for
11 project costs, as defined in section three of this article, which
12 may include interest prior to and during the acquisition,
13 construction and equipping of a project and for a reasonable
14 time thereafter, with such reserves as may be required by any
15 agreement securing the obligations and all other expenses
16 incidental to planning, carrying out and financing the project.

17 (2) The proceeds of tax increment financing obligations
18 may also be used to reimburse the costs of any interim financ-
19 ing or cash expenditures entered on behalf of projects in the
20 development or redevelopment district.

21 (b) Tax increment financing obligations issued under this
22 article shall be payable solely from the tax increment or other
23 revenues deposited to the credit of the tax increment financing
24 fund of the development or redevelopment district.

25 (c) Under no event shall tax increment financing obliga-
26 tions be secured or be deemed to be secured by the full faith
27 and credit of the county commission or the municipality issuing
28 the tax increment financing obligations.

29 (d) Every tax increment financing bond, note or other
30 obligation issued under this article shall recite on its face that
31 it is a special obligation payable solely from the tax increment
32 and other revenues pledged for its repayment.

§7-11B-20. Tax increment financing obligations — authority to issue.

1 For the purpose of paying project costs, or for the purpose
2 of refunding notes issued under this article for the purpose of
3 paying project costs, the county commission or municipality
4 creating the development or redevelopment district may issue
5 tax increment financing obligations payable out of tax incre-
6 ments and other revenues deposited to the tax increment
7 financing fund of the development or redevelopment district.

§7-11B-21. Tax increment financing obligations — authorizing resolution.

1 (a) Issuance of tax increment financing obligations shall be
2 authorized by order of the county commission, or resolution of
3 the municipality, that created the development or redevelop-
4 ment district.

5 (b) The order, or resolution, shall state the name of the
6 development or redevelopment district, the amount of tax
7 increment financing obligations authorized, the type of obliga-
8 tion authorized and the interest rate or rates to be borne by the
9 bonds, notes or other tax increment financing obligations.

10 (c) The order or ordinance may prescribe the terms, form
11 and content of the tax increment financing obligations and other
12 particulars or information the county commission, or governing
13 body of the municipality, issuing the obligations deems useful
14 or it may include by reference the terms and conditions set forth
15 in a trust indenture or other document securing the development
16 or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — terms, conditions.

1 (a) Tax increment financing obligations may not be issued
2 in an amount exceeding the estimated aggregate project costs,
3 including all costs of issuance of the tax increment financing
4 obligations.

5 (b) Tax increment financing obligations shall not be
6 included in the computation of the constitutional debt limitation
7 of the county commission or municipality issuing the tax
8 increment financing obligations.

9 (c) Tax increment financing obligations shall mature over
10 a period not exceeding thirty years from the date of entry of the
11 county commission's order, or the effective date of the municipi-
12 pal ordinance, creating the development or redevelopment
13 district and approving the development or redevelopment plan,
14 or a period terminating with the date of termination of the
15 development or redevelopment district, whichever period
16 terminates earlier.

17 (d) Tax increment financing obligations may contain a
18 provision authorizing their redemption, in whole or in part, at
19 stipulated prices, at the option of the county commission or
20 municipality issuing the obligations, and, if so, the obligations
21 shall provide the method of selecting the tax increment financ-
22 ing obligations to be redeemed.

23 (e) The principal and interest on tax increment financing
24 obligations may be payable at any place set forth in the resolu-
25 tion, trust indenture or other document governing the obliga-
26 tions.

27 (f) Bonds or notes shall be issued in registered form.

28 (g) Bonds or notes may be issued in any denomination.

29 (h) Each tax increment financing obligation issued under
30 this article is declared to be a negotiable instrument.

31 (i) The tax increment financing obligations may be sold at
32 public or private sale.

33 (j) Insofar as they are consistent with subsections (a), (b)
34 and (c) of this section, the procedures for issuance, form,
35 contents, execution, negotiation and registration of county and
36 municipal industrial or commercial revenue bonds set forth in
37 article two-c, chapter thirteen of this code are incorporated by
38 reference herein.

39 (k) The bonds may be refunded or refinanced and refunding
40 bonds may be issued in any principal amount: *Provided*, That
41 the last maturity of the refunding bonds shall not be later than
42 the last maturity of the bonds being refunded.

**§7-11B-23. Tax increment financing obligations — security —
marketability.**

1 To increase the security and marketability of tax increment
2 financing obligations, the county commission or municipality
3 issuing the obligations may:

4 (1) Create a lien for the benefit of the holders of the
5 obligations upon any capital improvements, facilities or both
6 financed by the obligations; or

7 (2) Make such covenants and do any and all such actions,
8 not inconsistent with the constitution of this state, which may
9 be necessary, convenient or desirable in order to additionally
10 secure the obligations or which tend to make the obligations
11 more marketable according to the best judgment of the county
12 commission or municipality issuing the tax increment financing
13 obligations.

**§7-11B-24. Tax increment financing obligations — special fund
for repayment.**

1 (a) Tax increment financing obligations issued by a county
2 commission or municipality are payable out of the tax incre-

3 ment financing fund created for each development and redevelop-
4 opment district created under this article.

5 (b) The county commission or municipality issuing the tax
6 increment financing obligations shall irrevocably pledge all or
7 part of the tax increment financing fund to the payment of the
8 obligations. The tax increment financing fund, or the designated
9 part thereof, may thereafter be used only for the payment of the
10 obligations and their interest until they have been fully paid.

11 (c) A holder of the tax increment financing obligations shall
12 have a lien against the tax increment financing fund for
13 payment of the obligations and interest on them and may bring
14 suit to enforce the lien.

15 (d) A county commission or municipality may issue and
16 secure additional bonds payable out of the tax increment fund
17 created for each development or redevelopment district created
18 under this article, which bonds may rank on a parity with, or be
19 subordinate or superior to, other bonds issued by the county
20 commission or municipality from each such tax increment fund.

§7-11B-26. Excess funds.

1 (a) Moneys received in the tax increment financing fund of
2 the development or redevelopment district in excess of amounts
3 needed to pay project costs and debt service may be used by the
4 county commission or municipality that created the develop-
5 ment or redevelopment district for other projects within the
6 district or distributed to the levying bodies as provided in this
7 article.

8 (b) Upon termination of the district, all amounts in the tax
9 increment financing fund of the district shall be paid over to the
10 levying bodies in the same proportion that ad valorem property
11 taxes on the base value was paid over to those levying bodies
12 for the tax year in which the district is terminated.

CHAPTER 239

**(Com. Sub. for S. B. 149 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §5A-2-2, §5A-2-3, §5A-2-4, §5A-2-5, §5A-2-6, §5A-2-7, §5A-2-8, §5A-2-9, §5A-2-10, §5A-2-11, §5A-2-12, §5A-2-13, §5A-2-14, §5A-2-14a, §5A-2-15, §5A-2-16, §5A-2-17, §5A-2-18, §5A-2-19, §5A-2-20, §5A-2-21, §5A-2-22, §5A-2-23, §5A-2-26, §5A-2-27, §5A-2-28, §5A-2-29, §5A-2-30 and §5A-2-31 of the code of West Virginia, 1931, as amended; to amend and reenact §5A-1-2, §5A-1-4 and §5A-1-5 of said code; to amend and reenact §5A-2-1, §5A-2-24 and §5A-2-32 of said code; and to amend said code by adding thereto a new chapter, designated §11B-1-1, §11B-1-2, §11B-1-3, §11B-1-4, §11B-1-5, §11B-1-6, §11B-1-7, §11B-2-1, §11B-2-2, §11B-2-3, §11B-2-4, §11B-2-5, §11B-2-6, §11B-2-7, §11B-2-8, §11B-2-9, §11B-2-10, §11B-2-11, §11B-2-12, §11B-2-13, §11B-2-14, §11B-2-15, §11B-2-16, §11B-2-17, §11B-2-18, §11B-2-19, §11B-2-20, §11B-2-21, §11B-2-22, §11B-2-23, §11B-2-24, §11B-2-25, §11B-2-26, §11B-2-27, §11B-2-28, §11B-2-29, §11B-2-30 and §11B-2-31, all relating generally to department of tax and revenue and office of secretary of tax and revenue and their powers, duties and responsibilities; changing the name of department of tax and revenue to department of revenue; changing name of office of secretary of tax and revenue to office of secretary of revenue; increasing membership of council of finance and administration by making secretary of revenue an ex officio member; continuing misdemeanor penalties for noncom-

pliance by secretaries and spending officers with requirements to provide certain budget and budget-related information; identifying agencies, boards, commissions, division and offices comprising department of revenue; specifying powers and duties of secretary; requiring periodic reports; authorizing delegations of authority; providing rules for safeguarding confidential information; providing right of appeal from interference with functioning of an agency; transferring budget section of finance division of department of administration to department of revenue and making secretary of revenue state budget director; providing rules to effectuate transfer of budget section and transition; moving language pertaining to work of budget section and preparation of budget to new chapter of the code; and making other technical or conforming changes to implement or effectuate these various changes.

Be it enacted by the Legislature of West Virginia:

That §5A-2-2, §5A-2-3, §5A-2-4, §5A-2-5, §5A-2-6, §5A-2-7, §5A-2-8, §5A-2-9, §5A-2-10, §5A-2-11, §5A-2-12, §5A-2-13, §5A-2-14, §5A-2-14a, §5A-2-15, §5A-2-16, §5A-2-17, §5A-2-18, §5A-2-19, §5A-2-20, §5A-2-21, §5A-2-22, §5A-2-23, §5A-2-26, §5A-2-27, §5A-2-28, §5A-2-29, §5A-2-30 and §5A-2-31 of the code of West Virginia, 1931, as amended, be repealed; that §5A-1-2, §5A-1-4 and §5A-1-5 of said code be amended and reenacted; that §5A-2-1, §5A-2-24 and §5A-2-32 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §11B-1-1, §11B-1-2, §11B-1-3, §11B-1-4, §11B-1-5, §11B-1-6, §11B-1-7, §11B-2-1, §11B-2-2, §11B-2-3, §11B-2-4, §11B-2-5, §11B-2-6, §11B-2-7, §11B-2-8, §11B-2-9, §11B-2-10, §11B-2-11, §11B-2-12, §11B-2-13, §11B-2-14, §11B-2-15, §11B-2-16, §11B-2-17, §11B-2-18, §11B-2-19, §11B-2-20, §11B-2-21, §11B-2-22, §11B-2-23, §11B-2-24, §11B-2-25, §11B-2-26, §11B-2-27, §11B-2-28, §11B-2-29, §11B-2-30 and §11B-2-31, all to read as follows:

Chapter**5A. Department of Administration.****11B. Department of Revenue.****CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.****Article****1. Department of Administration.****2. Finance Division.****ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; division directors.

§5A-1-4. Council of finance and administration.

§5A-1-5. Reports by secretary.

***§5A-1-2. Department of administration and office of secretary;
secretary; division of finance and administration
abolished; division directors.**

1 (a) The department of administration and the office of
2 secretary of administration are hereby continued in the execu-
3 tive branch of state government. The secretary shall be the
4 chief executive officer of the department and shall be appointed
5 by the governor, by and with the advice and consent of the
6 Senate, for a term not exceeding the term of the governor. The
7 department of administration is hereby authorized to receive
8 federal funds.

9 (b) The secretary shall serve at the will and pleasure of the
10 governor. The annual compensation of the secretary shall be as
11 specified in section two-a, article seven, chapter six of this
12 code.

13 (c) There shall be in the department of administration a
14 finance division, a general services division, an information

* **CLERK'S NOTE:** This section was also amended by H. B. 4008 (Chapter 8), which passed subsequent to this act.

15 services and communications division, an insurance and
16 retirement division, a personnel division and a purchasing
17 division. The insurance and retirement division shall be
18 comprised of the public employees retirement system and board
19 of trustees, the public employees insurance agency and public
20 employees advisory board, the teachers retirement system and
21 teachers retirement board, and the board of risk and insurance
22 management. Each division shall be headed by a director who
23 may also head any and all sections within that division and who
24 shall be appointed by the secretary. In addition to the divisions
25 enumerated above, there shall also be in the department of
26 administration those agencies, boards, commissions and
27 councils specified in section one, article two, chapter five-f of
28 this code.

§5A-1-4. Council of finance and administration.

1 (a) The council of finance and administration is hereby
2 created and shall be composed of eleven members, five of
3 whom shall serve ex officio and six of whom shall be appointed
4 as herein provided. The ex officio members shall be the
5 secretary of the department of administration, the secretary of
6 revenue, the attorney general or his or her designee, the state
7 treasurer or his or her designee and the state auditor or his or
8 her designee; such designees being authorized voting ones.
9 From the membership of the Legislature, the president of the
10 Senate shall appoint three senators as members of the council,
11 not more than two of whom shall be members of the same
12 political party, and the speaker of the House of Delegates shall
13 appoint three delegates as members of the council, not more
14 than two of whom shall be members of the same political party.
15 Members of the council appointed by the president of the
16 Senate and the speaker of the House of Delegates shall serve at
17 the will and pleasure of the officer making their appointment.
18 The secretary of administration shall serve as chairman of the
19 council. Meetings of the council shall be upon call of the

20 chairman or a majority of the members thereof. It shall be the
21 duty of the chairman to call no less than four meetings in each
22 fiscal year, one in each quarter, or more often as necessary, and
23 all meetings shall be open to the public. All meetings of the
24 council shall be held at the capitol building in a suitable
25 committee room which shall be made available by the Legisla-
26 ture for such purpose: *Provided*, That the second quarterly
27 meeting in each fiscal year shall be held in November and shall
28 be a joint meeting with the joint committee on government and
29 finance of the Legislature called jointly by the president of the
30 Senate, speaker of the House of Delegates and secretary of
31 administration.

32 (b) The council shall serve the department of administration
33 and the director of the budget in an advisory capacity for
34 purposes of reviewing the performance of the administrative
35 and fiscal procedures of the state, including the oversight of all
36 federal funds, and shall have the following duties:

37 (1) To advise with the director of the budget in respect to
38 matters of budgetary intent and efficiency, including the budget
39 bill and budget document detail and format;

40 (2) To advise with the secretary and the director of the
41 budget concerning studies of government and administration
42 concerning fiscal policy as it considers appropriate;

43 (3) To advise with the secretary and the director of the
44 budget in the preparation of studies designed to provide long-
45 term capital planning and finance for state institutions and
46 agencies; and

47 (4) To advise with the secretary and the director of the
48 budget in respect to the application for, and receipt and expen-
49 diture of, anticipated or unanticipated federal funds.

50 (c) The appointed, non ex officio members of the council
51 shall be entitled to receive compensation and reimbursement for
52 expenses in connection with performance of their duties, during
53 interim periods, if not otherwise receiving the same for identi-
54 cal periods, as is authorized by the applicable sections of article
55 two-a, chapter four of the code in respect to performance of
56 duties either within the state or, if necessary, out of state.
57 Compensation and expenses shall be incurred and paid only
58 after approval by the joint committee on government and
59 finance.

§5A-1-5. Reports by secretary.

1 The secretary shall make an annual report to the governor
2 concerning the conduct of the department and the administra-
3 tion of the state finances as they pertain to programs adminis-
4 tered by the department of administration. The secretary shall
5 also make other reports as the governor may require.

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance division created; director; sections; powers and duties.

§5A-2-24. Management accounting.

§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor;
misdemeanor penalty for noncompliance.

**§5A-2-1. Finance division created; director; sections; powers and
duties.**

1 (a) The finance division of the department of administration
2 is hereby continued except that the budget section is transferred
3 to and shall become a part of the department of revenue on the
4 effective date of this section as amended in the year two
5 thousand four. The finance division shall be under the supervi-
6 sion and control of a director, who shall be appointed by the
7 secretary. There shall be in the finance division an accounting
8 section and a financial accounting and reporting section.

9 (b) The accounting section shall have the duties conferred
10 upon it by this article and by the secretary, including, but not
11 limited to, general financial accounting, payroll, accounts
12 payable and accounts receivable for the department of adminis-
13 tration.

14 (c) The financial accounting and reporting section shall
15 establish and maintain the centralized accounting system
16 required by section twenty-four of this article and issue annual
17 general purpose financial statements in accordance with
18 generally accepted accounting principles and with this article.

§5A-2-24. Management accounting.

1 (a) It is the intent of this section to establish a centralized
2 accounting system for the offices of the auditor, treasurer, board
3 of investments, secretary of administration and each spending
4 unit of state government to provide more accurate and timely
5 financial data and increase public accountability.

6 (b) Notwithstanding any provision of this code to the
7 contrary, the secretary of administration shall develop and
8 implement a new centralized accounting system for the plan-
9 ning, reporting and control of state expenditures in accordance
10 with generally accepted accounting principles to be used by the
11 auditor, treasurer, board of investments, secretary and all
12 spending units. The accounting system shall provide for
13 adequate internal controls, accounting procedures, recording
14 income collections, systems operation procedures and manuals,
15 and periodic and annual general purpose financial statements,
16 as well as provide for the daily exchange of needed information
17 among users.

18 (c) The financial statements shall be audited annually by
19 outside independent certified public accountants, who shall also
20 issue an annual report on federal funds in compliance with
21 federal requirements.

22 (d) The secretary shall implement the centralized account-
23 ing system no later than the thirty-first day of December, one
24 thousand nine hundred ninety-three, and, after approval of the
25 system by the governor, shall require its use by all spending
26 units. The auditor, treasurer, board of investments, secretary
27 and every spending unit shall maintain their computer systems
28 and data files in a standard format in conformity with the
29 requirements of the centralized accounting system. Any system
30 changes must be approved in advance of the change by the
31 secretary. The auditor, treasurer, board of investments, budget
32 director and secretary of administration shall provide on-line
33 interactive access to the daily records maintained by their
34 offices.

**§5A-2-32. Submission of requests, amendments, reports, etc., to
legislative auditor; misdemeanor penalty for non-
compliance.**

1 (a) The provisions of section twenty-five of this article
2 requiring the secretary to supply copies of the documents
3 specified therein to the legislative auditor shall be strictly
4 adhered to by the secretary.

5 (b) Any failure by a secretary to comply with the provisions
6 of subsection (a) of this section shall be a misdemeanor and,
7 upon conviction thereof, the secretary shall be fined the sum of
8 one thousand dollars. This penalty shall be in addition to other
9 penalties provided elsewhere in this article and other remedies
provided by law.

CHAPTER 11B. DEPARTMENT OF REVENUE.

Article

1. **Department of Revenue.**
2. **State Budget Office.**

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-1. Department of tax and revenue renamed department of revenue; office of secretary of tax and revenue renamed office of secretary of revenue.

§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

§11B-1-3. Powers and duties of secretary, administrators, division heads and employees.

§11B-1-4. Reports by secretary.

§11B-1-5. Delegation of powers and duties by secretary.

§11B-1-6. Confidentiality of information.

§11B-1-7. Right of appeal from interference with functioning of agency.

§11B-1-1. Department of tax and revenue renamed department of revenue; office of secretary of tax and revenue renamed office of secretary of revenue.

1 (a) The department of tax and revenue and the office of
2 secretary of tax and revenue are hereby renamed, respectively,
3 the department of revenue and the office of secretary of revenue
4 and continued in the executive branch of state government.
5 Wherever in this code the words “office of secretary of tax and
6 revenue” or “secretary of tax and revenue” are used, such words
7 shall now mean the office of secretary of revenue or the
8 secretary of revenue.

9 (b) The secretary of revenue shall be the chief executive
10 officer of the department and director of the budget. The
11 secretary shall be appointed by the governor, by and with the
12 advice and consent of the Senate, for a term not exceeding the
13 term of the governor.

14 (c) The department of revenue is hereby authorized to
15 receive federal funds.

16 (d) The secretary shall serve at the will and pleasure of the
17 governor. The annual compensation of the secretary shall be as
18 specified in section two-a, article seven, chapter six of this
19 code.

§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

1 (a) There shall be in the department of revenue the follow-
2 ing agencies, boards, commissions, divisions and offices,
3 including all of the allied, advisory, affiliated or related entities
4 which are incorporated in and shall be administered as part of
5 the department of revenue:

6 (1) The alcohol beverage control commissioner provided
7 for in article sixteen, chapter eleven of this code and article one,
8 chapter sixty of this code;

9 (2) The division of banking provided for in article two,
10 chapter thirty-one-a of this code;

11 (3) The board of banking and financial institutions provided
12 for in article three, chapter thirty-one-a of this code;

13 (4) The state budget office, heretofore known as the budget
14 section of the finance division, department of administration,
15 previously provided for in article two, chapter five-a of this
16 code and now provided for in article two of this chapter;

17 (5) The agency of insurance commissioner provided for in
18 article two, chapter thirty-three of this code;

19 (6) The lending and credit rate board provided for in
20 chapter forty-seven-a of this code;

21 (7) The lottery commission and the position of lottery
22 director provided for in article twenty-two, chapter twenty-nine
23 of this code;

24 (8) The municipal bond commission provided for in article
25 three, chapter thirteen of this code;

26 (9) The office of tax appeals provided for in article ten-a,
27 chapter eleven of this code;

28 (10) The state athletic commission provided for in article
29 five-a, chapter twenty-nine of this code;

30 (11) The tax division provided for in article one, chapter
31 eleven of this code; and

32 (12) The West Virginia racing commission provided for in
33 article twenty-three, chapter nineteen of this code.

34 (b) The department shall also include any other agency,
35 board, commission, division, office or unit subsequently
36 incorporated in the department by the Legislature.

§11B-1-3. Powers and duties of secretary, administrators, division heads and employees.

1 (a) The secretary shall have control and supervision of the
2 department of revenue and shall be responsible for the work of
3 each of its employees.

4 (b) The secretary shall have the power and authority
5 specified in this article and article two, chapter five-f of this
6 code and as specified elsewhere in this code, whether heretofore
7 or hereinafter enacted by the Legislature and whether the code
8 provision refers to the secretary of revenue or to the secretary
9 of tax and revenue.

10 (c) The secretary has authority to assess agencies, boards,
11 commissions, divisions and offices in the department of
12 revenue for the payment of expenses of the office of the
13 secretary.

14 (d) The secretary shall have plenary power and authority
15 within and for the department to employ professional staff,
16 including, but not limited to, certified public accountants,

17 economists and attorneys, assistants and other employees as
18 necessary for the efficient operation of the department.

19 (e) The secretary and administrators, division heads and
20 other employees of the department shall perform the duties
21 specified in this code for their respective offices or positions
22 and shall also perform other duties as the governor prescribes.

§11B-1-4. Reports by secretary.

1 The secretary shall make an annual report to the governor
2 concerning the conduct of the department and the administra-
3 tion of the budget. The secretary shall also make other reports
4 as the governor may require.

§11B-1-5. Delegation of powers and duties by secretary.

1 The secretary may delegate powers and duties vested in the
2 secretary to his or her assistants and employees, but the
3 secretary shall be responsible for all official acts of the depart-
4 ment.

§11B-1-6. Confidentiality of information.

1 (a) *Information provided to secretary under expectation of*
2 *confidentiality.* -- Information that would be confidential under
3 the laws of this state when provided to a division, agency,
4 board, commission or office within the department of revenue
5 shall be confidential when that information is provided to the
6 secretary of the department of revenue or to an employee in the
7 office of the secretary. The confidential information may be
8 disclosed only: (1) To the applicable agency, board, commis-
9 sion or division of the department to which the information
10 relates; or (2) in the manner authorized by provisions of this
11 code applicable to that agency, board, commission or division.
12 This confidentiality rule is a specific exemption from disclosure
13 under article one, chapter twenty-nine-b of this code.

14 (b) *Interdepartmental communication of confidential*
15 *information.* -- Notwithstanding any provision of this code to
16 the contrary, information that by statute is confidential in the
17 possession of any division, agency, board, commission or office
18 of the department of revenue may be disclosed to the secretary,
19 or an employee in the office of the secretary, who must safe-
20 guard the information and may not further disclose the informa-
21 tion except under the same conditions, restrictions and limita-
22 tions applicable to the administrator of the agency, board,
23 commission, division or office of the department in whose
24 hands the information is confidential: *Provided,* That nothing
25 contained in this section shall be construed to require the
26 disclosure to the secretary or to an employee in the office of the
27 secretary of individually identifiable health care or other
28 information that, under federal law, may not be disclosed by the
29 administrator without subjecting the administrator or the
30 agency, board, commission, division or office to sanctions or
31 other penalties by the United States or any agency thereof. This
32 confidentiality rule is a specific exemption from disclosure
33 under article one, chapter twenty-nine-b of this code.

**§11B-1-7. Right of appeal from interference with functioning of
agency.**

1 Upon occasion of a showing that the application of the
2 authority vested under the provisions of this article may
3 interfere with the successful functioning of any department,
4 institution or agency of the government, that department,
5 institution or agency has the right of appeal to the governor for
6 review of the case and the decision or conclusion of the
7 governor shall control in appeals.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-1. Budget office.

§11B-2-2. General powers and duties of secretary as director of budget.

§11B-2-3. Requests for appropriations; copies to legislative auditor.

- §11B-2-4. Contents of requests.
- §11B-2-5. Form of requests.
- §11B-2-6. Information concerning state finances.
- §11B-2-7. Appropriations for judiciary.
- §11B-2-8. Examination of requests for appropriations.
- §11B-2-9. Appropriation requests by other than spending units.
- §11B-2-10. Powers of secretary in administration of expenditures.
- §11B-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.
- §11B-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.
- §11B-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.
- §11B-2-14. Reserves for emergencies.
- §11B-2-15. Reserves for public employees insurance program.
- §11B-2-16. Limitation on expenditures.
- §11B-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.
- §11B-2-18. Expenditure of excess in collections; notices to auditor and treasurer.
- §11B-2-19. Reports by spending units; copies to legislative auditor.
- §11B-2-20. Reduction of appropriations; powers of governor; revenue shortfall reserve fund and permissible expenditures therefrom.
- §11B-2-21. Reduction of appropriations -- Reduction of appropriations from general revenue.
- §11B-2-22. Reduction of appropriations -- Reduction of appropriations from other funds.
- §11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary; and consolidated report of federal funds.
- §11B-2-24. Expenditure of appropriations -- Generally.
- §11B-2-25. Expenditure of appropriations -- Other than for purchases of commodities.
- §11B-2-26. Expenditure of appropriations -- Purchases of commodities.
- §11B-2-27. Expenditure of appropriations -- Payment of personal services.
- §11B-2-28. Expenditure of appropriations -- Legislative and judicial expenditures.
- §11B-2-29. Appropriations for officers, commissions, boards or institutions without office at capitol.
- §11B-2-30. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.
- §11B-2-31. Effectuation of transfer of budget section and transition.

§11B-2-1. Budget office.

1 The budget section of the department of administration is
2 hereby transferred to the department of revenue and continued
3 as the budget office. The budget office shall act as staff agency
4 for the governor in the exercise of his powers and duties under
5 section fifty-one, article VI of the Constitution of West Virginia
6 and shall exercise and perform the other powers and duties of
7 the budget office set forth in this article or previously conferred
8 upon the budget section of the finance division, department of
9 administration, prior to the effective date of this section in
10 calendar year two thousand four, and set forth whether in article
11 two, chapter five-a of this code, prior to the effective date of
12 this section in calendar year two thousand four, this article or
13 elsewhere in this code.

§11B-2-2. General powers and duties of secretary as director of budget.

1 The secretary of revenue, under the immediate supervision
2 of the governor, shall have the power and duty to:

- 3 (1) Exercise general supervision of, and make rules and
4 regulations for, the government of this division;
- 5 (2) Administer the budget in accordance with this article;
- 6 (3) Serve the governor in the consideration of requests for
7 appropriations and the preparation of the budget document;
- 8 (4) Make investigations and submit reports as the governor
9 requires;
- 10 (5) Make a continuous study of state expenditures and
11 eligibility for federal matching dollars and make recommenda-
12 tions to the governor for the more economical use of state funds
13 as he or she shall find practicable;

14 (6) Render assistance to spending officers with respect to
15 the fiscal affairs of spending units; and

16 (7) Exercise other powers as are vested in the secretary by
17 this article, or which may be appropriate to the discharge of the
18 secretary's duties under this article.

§11B-2-3. Requests for appropriations; copies to legislative auditor.

1 (a) The spending officer of each spending unit, other than
2 the legislative and the judicial branches of state government,
3 shall, on or before the first day of September of each year,
4 submit to the secretary a request for appropriations for the fiscal
5 year next ensuing. On or before the same date, the spending
6 officer shall also transmit two copies of the request to the
7 legislative auditor for the use of the finance committees of the
8 Legislature.

9 (b) If the spending officer of any spending unit fails to
10 transmit to the legislative auditor two copies of the request for
11 appropriations within the time specified in this section, the
12 legislative auditor or the state budget office shall notify the
13 secretary, auditor and treasurer of the failure. Upon notifica-
14 tion, no funds appropriated to that spending unit shall be
15 encumbered or expended until the spending officer thereof has
16 transmitted two copies of the request for appropriation to the
17 legislative auditor.

18 (c) If a spending officer submits to the secretary an amend-
19 ment to the request for appropriations, two copies of the
20 amendment shall forthwith be transmitted to the legislative
21 auditor.

22 (d) Notwithstanding any provision in this section to the
23 contrary, the state superintendent of schools shall, on or before
24 the fifteenth day of December of each year, submit to the

25 secretary a request for appropriations for the fiscal year next
26 ensuing for state aid to schools and submit two copies of the
27 request to the legislative auditor for the use of the finance
28 committees of the Legislature. The request for appropriation
29 shall be accompanied with copies of certified enrollment and
30 employee lists from all county superintendents for the current
31 school year. If certified enrollment and employee lists are not
32 available to the state superintendent from any of the county
33 school boards, the state superintendent shall notify those school
34 boards and no funds shall be expended for salary or compensa-
35 tion to their county superintendent until the certified lists of
36 enrollment and employees are submitted.

§11B-2-4. Contents of requests.

1 A request for an appropriation for a spending unit shall
2 specify and itemize in written form:

3 (1) A statement showing the amount and kinds of revenue
4 and receipts collected for use of the spending agency during the
5 next preceding fiscal year and anticipated collections for the
6 fiscal year next ensuing;

7 (2) A statement by purposes and objects of the amount of
8 appropriations requested for the spending unit without deduct-
9 ing the amount of anticipated collections of special revenue,
10 federal funds or other receipts;

11 (3) A statement showing the actual expenditures of the
12 spending unit for the preceding year and estimated expenditures
13 for the current fiscal year itemized by purposes and objects,
14 including those from regular and supplementary appropriations,
15 federal funds, private contributions, transfers, allotments from
16 an emergency or contingency fund and any other expenditures
17 made by or for the spending unit;

18 (4) A statement showing the number, classification and
19 compensation of persons employed by the spending unit

20 distinguishing between regular, special and casual employees
21 during the preceding fiscal year and during the current fiscal
22 year. The statement shall show the personnel requirements in
23 similar form for the ensuing fiscal year for which appropria-
24 tions are requested;

25 (5) A statement showing in detail the purposes for which
26 increased amounts of appropriations, if any, are requested and
27 giving a justification statement for the expenditure of the
28 increased amount. A construction or other improvement
29 request shall show in detail the kind and scope of construction
30 or improvement requested;

31 (6) A statement of money claims against the state arising
32 out of the activities of the spending unit; and

33 (7) Any other information as the secretary requests.

§11B-2-5. Form of requests.

1 The secretary shall specify the form and detail of itemiza-
2 tion of requests for appropriations and statements to be submit-
3 ted by a spending unit: *Provided*, That a request for appropria-
4 tions must include at a minimum the information required by
5 section four of this article. The secretary shall furnish blank
6 forms for this purpose.

§11B-2-6. Information concerning state finances.

1 The secretary shall ascertain for the preceding year and as
2 estimated for the current fiscal year:

3 (1) The condition of each of the funds of the state;

4 (2) A statement of all revenue collections both general and
5 special; and

6 (3) Any other information relating to the finances of the
7 state as the governor requests.

§11B-2-7. Appropriations for judiciary.

1 The governor shall transmit to the secretary the appropria-
2 tions required by law for the judiciary for the fiscal year next
3 ensuing and which have been certified to the governor by the
4 auditor. The auditor shall certify the appropriations to the
5 governor in accordance with section fifty-one, article VI of the
6 Constitution of West Virginia on or before the first day of
7 September of each year.

§11B-2-8. Examination of requests for appropriations.

1 (a) The secretary shall examine the requests of a spending
2 unit with respect to requested appropriations, itemization,
3 sufficiency of justification statements and accuracy and
4 completeness of all other information which the spending
5 officer is required to submit.

6 (b) If the secretary finds a request, report or statement of a
7 spending unit inaccurate, incomplete or inadequate, he or she
8 shall consult with the spending officer of the unit and require
9 the submission of the requests in proper form and content. The
10 secretary shall assist spending officers in the preparation of
11 their requests.

§11B-2-9. Appropriation requests by other than spending units.

1 A person or organization, other than a spending officer,
2 who desires to request a general appropriation in the state
3 budget, shall submit his or her request to the secretary on or
4 before the first day of September of each year. The request
5 shall be in the form prescribed by the secretary and shall be
6 accompanied by a justification statement.

§11B-2-10. Powers of secretary in administration of expenditures.

1 (a) The secretary shall supervise and control the expendi-
2 ture of appropriations made by the Legislature excluding those
3 made to the Legislature and those made to the judicial branch
4 of the state government.

5 (b) The expenditure of an appropriation made by the
6 Legislature, except made for the Legislature itself and the
7 judicial branch of state government, shall be conditioned upon
8 compliance by the spending unit with the provisions of this
9 article.

10 (c) An appropriation made by the Legislature, except made
11 for the Legislature itself and the judicial branch of state
12 government, shall be expended only in accordance with this
13 article.

**§11B-2-11. Estimates of revenue; reports on revenue collections;
withholding department funds on noncompliance.**

1 (a) Prior to the beginning of each fiscal year, the secretary
2 shall estimate the revenue to be collected month by month by
3 each classification of tax for that fiscal year as it relates to the
4 official estimate of revenue for each tax for that fiscal year and
5 the secretary shall certify this estimate to the governor and the
6 legislative auditor and the West Virginia investment manage-
7 ment board by the first day of July for that fiscal year.

8 (1) The secretary shall ascertain the collection of the
9 revenue of the state and shall determine for each month of the
10 fiscal year the proportion which the amount actually collected
11 during a month bears to the collection estimated by him or her
12 for that month. The secretary shall certify to the governor, the
13 legislative auditor and the investment management board, as
14 soon as possible after the close of each month, and not later

15 than the fifteenth day of each month, and at other times as the
16 governor, the legislative auditor or the investment management
17 board may request, the condition of the state revenues and of
18 the several funds of the state and the proportion which the
19 amount actually collected during the preceding month bears to
20 the collection estimated by him or her for that month. The
21 secretary shall include in this certification the same information
22 previously certified for prior months in each fiscal year. For
23 the purposes of this section, the secretary shall have the
24 authority to require all necessary estimates and reports from any
25 spending unit of the state government.

26 (2) If the secretary fails to certify to the governor, the
27 legislative auditor and the investment management board the
28 information required by this subsection within the time speci-
29 fied herein, the legislative auditor shall notify the auditor and
30 treasurer of the failure and thereafter no funds appropriated to
31 the department of revenue may be expended until the secretary
32 has certified the information required by this subsection.

33 (b) Prior to the first day of July of each fiscal year, the
34 secretary shall estimate daily revenue flows for the general
35 revenue fund for the next fiscal year as it relates to the official
36 estimate of revenue. Subsequent to the end of each fiscal year,
37 the secretary shall compare the projected daily revenue flows
38 with the actual daily revenue flows from the previous year. The
39 secretary may for any month or months, at his or her discretion,
40 revise the annual projections of the daily revenue flows. The
41 secretary shall certify to the governor, the legislative auditor
42 and the investment management board, as soon as possible after
43 the close of each month and not later than the fifteenth day of
44 each month, and at other times as the governor, the legislative
45 auditor or the investment management board may request, the
46 condition of the general revenue fund and the comparison of the
47 projected daily revenue flows with the actual daily revenue
48 flows. If the secretary fails to certify to the governor, the

49 legislative auditor and the investment management board the
50 information required by this subsection within the time speci-
51 fied herein, the legislative auditor shall notify the auditor and
52 treasurer of the failure and thereafter no funds appropriated to
53 the department of revenue may be expended until the secretary
54 has certified the information required by this subsection.

**§11B-2-12. Submission of expenditure schedules; contents;
submission of information on unpaid obligations;
copies to legislative auditor.**

1 (a) Prior to the beginning of each fiscal year, the spending
2 officer of a spending unit shall submit to the secretary a detailed
3 expenditure schedule for the ensuing fiscal year. The schedule
4 shall be submitted in such form and at such time as the secre-
5 tary may require. The schedule shall show:

6 (1) A proposed monthly rate of expenditure for amounts
7 appropriated for personal services;

8 (2) Each and every position budgeted under personal
9 services for the next ensuing fiscal year, with the monthly
10 salary or compensation of each position;

11 (3) A proposed quarterly rate of expenditure for amounts
12 appropriated for employee benefits, current expenses, equip-
13 ment and repairs and alterations classified by a uniform system
14 of accounting as called for in section twenty-five of this article
15 for each item of every appropriation;

16 (4) A proposed yearly plan of expenditure for amounts
17 appropriated for buildings and lands; and

18 (5) A proposed quarterly plan of receipts itemized by type
19 of revenue.

20 (b) The secretary may accept a differently itemized
21 expenditure schedule from a spending unit to which the above
22 itemizations are not applicable.

23 (c) The secretary shall consult with and assist spending
24 officers in the preparation of expenditure schedules.

25 (d) Within fifteen days after the end of each month of the
26 fiscal year, the head of every spending unit shall certify to the
27 legislative auditor the status of obligations and payments of the
28 spending unit for amounts of employee benefits, including, but
29 not limited to, obligations and payments for social security
30 withholding and employer matching, public employees insur-
31 ance premiums and public employees retirement and teachers
32 retirement systems.

33 (e) In the event the legislative auditor determines from
34 certified reports or from other sources that any spending unit is
35 not making all payments and transfers for employee benefits
36 from funds appropriated for that purpose, the legislative auditor
37 shall notify the secretary of administration, auditor and trea-
38 surer of the determination and thereafter no funds appropriated
39 to the spending unit shall be encumbered or expended for the
40 salary or compensation to the head of the spending unit until the
41 legislative auditor determines that the payments or transfers are
42 being made on a timely basis.

43 (f) When a spending officer submits an expenditure
44 schedule to the secretary as required by this section, the
45 spending officer shall at the same time transmit a copy thereof
46 to the legislative auditor and the joint committee on government
47 and finance or its designee. If a spending officer of a spending
48 unit fails to transmit a copy to the legislative auditor on or
49 before the beginning of the fiscal year, the legislative auditor
50 shall notify the secretary, auditor and treasurer of the failure
51 and thereafter no funds appropriated to the spending unit shall

52 be encumbered or expended until the spending officer thereof
53 has transmitted a copy to the legislative auditor.

**§11B-2-13. Examination and approval of expenditure schedules;
amendments; copies to legislative auditor.**

1 (a) The secretary shall examine the expenditure schedule of
2 each spending unit and if it conforms to the appropriations
3 made by the Legislature, the requirements of this article and is
4 in accordance with sound fiscal policy, the secretary shall
5 approve the schedule. In addition, the secretary shall give
6 special consideration in the approval of expenditure schedules
7 to accounts in which the appropriations consist predominantly
8 of personal services funds so that the quarterly allotments of
9 funds to the various spending units are sufficient to pay
10 personnel costs in the quarter in which they are due.

11 (b) The expenditure of the appropriations made to a
12 spending unit shall be only in accordance with the approved
13 expenditure schedule unless the schedule is amended with the
14 consent of the secretary, or unless appropriations are reduced in
15 accordance with the provisions of sections twenty to twenty-
16 two, inclusive, of this article. The spending officer of a
17 spending unit shall transmit to the legislative auditor a copy of
18 each and every requested amendment to the schedule at the
19 same time that the requested amendment is submitted to the
20 secretary. The secretary shall send to the legislative auditor
21 copies of any schedule amended with the secretary's approval.

§11B-2-14. Reserves for emergencies.

1 The secretary, with the approval of the governor, may
2 require that an expenditure schedule provide for a reserve for
3 emergencies out of the total amount appropriated to the
4 spending unit. The amount of the reserve shall be determined
5 by the secretary in consultation with the spending officer.

§11B-2-15. Reserves for public employees insurance program.

1 (a) There is hereby continued a special revenue account in
2 the state treasury, designated the “Public Employees Insurance
3 Reserve Fund”, which is an interest-bearing account and may
4 be invested in accordance with the provisions of article six,
5 chapter twelve of this code, with the interest income a proper
6 credit to the fund.

7 (b) The fund shall consist of moneys appropriated by the
8 Legislature and moneys transferred annually pursuant to the
9 provisions of subsection (c) of this section. These moneys shall
10 be held in reserve and appropriated by the Legislature only for
11 the support of the programs provided by the public employees
12 insurance agency: *Provided*, That in only the fiscal year
13 beginning the first day of July, two thousand two, and in each
14 of the next two fiscal years thereafter, and ending on the
15 thirtieth day of June, two thousand five, the moneys held in the
16 fund may be appropriated to the bureau of medical services of
17 the department of health and human resources.

18 (c) Annually each state agency, except for the higher
19 education central office created in article four, chapter eigh-
20 teen-b of this code; the higher education governing boards as
21 defined in articles two and three of said chapter; and the state
22 institutions of higher education as defined in section two, article
23 one of said chapter shall transfer one percent of its annualized
24 expenditures from state funds, excluding federal funds based on
25 filled full-time equivalents as determined by the state budget
26 office as of the first day of April for that fiscal year, to the
27 public employees insurance reserve fund. The secretary may
28 exempt that transfer only upon a showing by the requesting
29 agency that the continued operation of that agency is dependent
30 upon receipt of the exemption.

31 (d) Annually the secretary shall provide a report to the
32 governor and the Legislature on the amount of reserves estab-

33 lished pursuant to the provisions of this section, the number of
34 exemptions granted and the agencies receiving those exemp-
35 tions.

§11B-2-16. Limitation on expenditures.

1 The expenditures of a spending unit during a quarter of the
2 fiscal year shall not exceed the amount of the approved allot-
3 ment, unless the governor approves the expenditure of a larger
4 amount. Any amounts remaining unexpended at the close of
5 the quarter shall be available for reallocation and expenditure
6 during any succeeding quarter of the same fiscal year.

**§11B-2-17. Transfers between items of appropriation of execu-
tive, legislative and judicial branches.**

1 Notwithstanding any other provision of law to the contrary,
2 there shall be no transfer of amounts between items of appropri-
3 ations nor shall moneys appropriated for any particular purpose
4 be expended for any other purpose by any spending unit of the
5 executive, legislative or judicial branch except as hereinafter
6 provided:

7 (1) Any transfer of amounts between items of appropria-
8 tions for the executive branch of state government shall be
9 made only as authorized by the Legislature.

10 (2) Any transfer of amounts between items of appropria-
11 tions for the legislative branch of state government shall be
12 made only pursuant to the joint rules adopted by the body and
13 any amendments thereto, as certified to the state auditor, the
14 state treasurer and the legislative auditor.

15 (3) Any transfer of amounts between items of appropria-
16 tions for the judicial branch of state government shall be made
17 only pursuant to rules adopted by the supreme court of appeals
18 and any amendments thereto, as certified to the state auditor,
19 the state treasurer and the legislative auditor.

§11B-2-18. Expenditure of excess in collections; notices to auditor and treasurer.

1 (a) If the amount actually collected by a spending unit
2 exceeds the amount which it is authorized to expend from
3 collections, the excess in collections shall be set aside in a
4 special surplus fund for the spending unit. Expenditures from
5 this fund shall be made only in accordance with the following
6 procedure:

7 (1) The spending officer shall submit to the secretary:

8 (A) A plan of expenditure showing the purposes for which
9 the excess is to be expended; and

10 (B) A justification statement showing the reasons why the
11 expenditure is necessary and desirable.

12 (2) The secretary shall submit the request to the governor
13 with his or her recommendation.

14 (3) If the governor approves the plan of expenditure and
15 justification statement and is satisfied that the expenditure is
16 required to defray the additional cost of the service or activity
17 of the spending unit and that the expenditure is in accordance
18 with sound fiscal policy, he or she may authorize the use of the
19 excess during the current fiscal year. Notices of the authoriza-
20 tion shall be sent to the state auditor, the state treasurer and the
21 legislative auditor.

22 (b) An expenditure from a special surplus fund without the
23 authorization of the governor, or other than in accordance with
24 this section, shall be an unlawful use of public funds.

§11B-2-19. Reports by spending units; copies to legislative auditor.

1 A spending unit shall submit to the secretary reports with
2 respect to the work and expenditures of the unit as the secretary
3 may request for the purposes of this article. Upon receipt
4 thereof, the secretary shall immediately send a copy of each
5 report to the legislative auditor.

**§11B-2-20. Reduction of appropriations; powers of governor;
revenue shortfall reserve fund and permissible
expenditures therefrom.**

1 (a) Notwithstanding any provision of this section, the
2 governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of this
4 article. The governor may, in lieu of imposing a reduction in
5 appropriations, request an appropriation by the Legislature from
6 the revenue shortfall reserve fund established in this section.

7 (b) A revenue shortfall reserve fund is hereby continued
8 within the state treasury. The revenue shortfall reserve fund
9 shall be funded as set forth in this subsection from surplus
10 revenues, if any, in the state fund, general revenue, as the
11 surplus revenues may accrue from time to time. Within sixty
12 days of the end of each fiscal year, the secretary shall cause to
13 be deposited into the revenue shortfall reserve fund the first
14 fifty percent of all surplus revenues, if any, determined to have
15 accrued during the fiscal year just ended. The revenue shortfall
16 reserve fund shall be funded continuously and on a revolving
17 basis in accordance with this subsection up to an aggregate
18 amount not to exceed five percent of the total appropriations
19 from the state fund, general revenue, for the fiscal year just
20 ended. If at the end of any fiscal year the revenue shortfall
21 reserve fund is funded at an amount equal to or exceeding five
22 percent of the state's general revenue fund budget for the fiscal
23 year just ended, then there shall be no further obligation of the
24 secretary under the provisions of this section to apply any
25 surplus revenues as set forth in this subsection until that time
26 the revenue shortfall reserve fund balance is less than five

27 percent of the total appropriations from the state fund, general
28 revenue.

29 (c) Not earlier than the first day of November of each
30 calendar year, if the state's fiscal circumstances are such as to
31 otherwise trigger the authority of the governor to reduce
32 appropriations under this section or section twenty-one or
33 section twenty-two of this article, then in that event the gover-
34 nor may notify the presiding officers of both houses of the
35 Legislature in writing of his or her intention to convene the
36 Legislature pursuant to section nineteen, article VI of the
37 Constitution of West Virginia for the purpose of requesting the
38 introduction of a supplementary appropriation bill or to request
39 a supplementary appropriation bill at the next preceding regular
40 session of the Legislature to draw money from the surplus
41 revenue shortfall reserve fund to meet any anticipated revenue
42 shortfall. If the Legislature fails to enact a supplementary
43 appropriation from the revenue shortfall reserve fund during
44 any special legislative session called for the purposes set forth
45 in this section or during the next preceding regular session of
46 the Legislature, then the governor may proceed with a reduction
47 of appropriations pursuant to sections twenty-one and twenty-
48 two of this article. Should any amount drawn from the revenue
49 shortfall reserve fund pursuant to an appropriation made by the
50 Legislature prove insufficient to address any anticipated
51 shortfall, then the governor may also proceed with a reduction
52 of appropriations pursuant to sections twenty-one and twenty-
53 two of this article.

54 (d) Upon the creation of the fund, the Legislature is
55 authorized and may make an appropriation from the revenue
56 shortfall reserve fund for revenue shortfalls, for emergency
57 revenue needs caused by acts of God or natural disasters or for
58 other fiscal needs as determined solely by the Legislature.

59 (e) Prior to the thirty-first day of October, in any fiscal year
60 in which revenues are inadequate to make timely payments of

61 the state's obligations, the governor may by executive order,
62 after first notifying the presiding officers of both houses of the
63 Legislature in writing, borrow funds from the revenue shortfall
64 reserve fund. The amount of funds borrowed under this
65 subsection shall not exceed one and one-half percent of the
66 general revenue estimate for the fiscal year in which the funds
67 are to be borrowed, or the amount the governor determines is
68 necessary to make timely payment of the state's obligations,
69 whichever is less. Any funds borrowed pursuant to this
70 subsection shall be repaid, without interest, and redeposited to
71 the credit of the revenue shortfall reserve fund within ninety
72 days of their withdrawal.

§11B-2-21. Reduction of appropriations -- Reduction of appropriations from general revenue.

1 If the governor determines that the amounts, or parts
2 thereof, appropriated from the general revenue cannot be
3 expended without creating an overdraft or deficit in the general
4 fund, he or she may instruct the secretary to reduce all appropri-
5 ations out of general revenue in a degree as necessary to
6 prevent an overdraft or a deficit in the general fund.

§11B-2-22. Reduction of appropriations -- Reduction of appropriations from other funds.

1 (a) The governor, in the manner set forth in section twenty-
2 one of this article, may reduce appropriations from:

3 (1) Funds supported by designated taxes or fees; and

4 (2) Fees or other collections set aside for the support of
5 designated activities or services.

6 (b) Each fund and each fee or collection account shall be
7 treated separately.

§11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state

agencies; copies or sufficient summary information to be furnished to secretary; and consolidated report of federal funds.

1 (a) Every agency of the state government when making
2 requests or preparing budgets to be submitted to the federal
3 government for funds, equipment, material or services, the
4 grant or allocation of which is conditioned upon the use of state
5 matching funds, shall have the request or budget approved in
6 writing by the secretary before submitting it to the proper
7 federal authority. When the federal authority has approved the
8 request or budget, the agency of the state government shall
9 resubmit it to the secretary for recording before any allotment
10 or encumbrance of the federal funds can be made. Whenever
11 any agency of the state government receives from any agency
12 of the federal government a grant or allocation of funds which
13 do not require state matching, the state agency shall report to
14 the secretary the amount of the federal funds granted or
15 allocated.

16 (b) Unless contrary to federal law, any agency of state
17 government, when making requests or preparing budgets to be
18 submitted to the federal government for funds for personal
19 services, shall include in the request or budget the amount of
20 funds necessary to pay for the costs of any fringe benefits
21 related to the personal service. For the purposes of this section,
22 "fringe benefits" means any employment benefit granted by the
23 state which involves state funds, including, but not limited to,
24 contributions to insurance, retirement and social security and
25 which does not affect the basic rate of pay of an employee.

26 (c) In addition to the other requirements of this section, the
27 secretary shall, as soon as possible after the end of each fiscal
28 year but no later than the thirty-first day of December of each
29 year, submit to the governor a consolidated report which shall
30 contain a detailed itemization of all federal funds received by
31 the state during the preceding and current fiscal years, as well

32 as those scheduled or anticipated to be received during the next
33 ensuing fiscal year. The itemization shall show:

34 (1) Each spending unit which has received or is scheduled
35 or expected to receive federal funds in either of the fiscal years;

36 (2) The amount of each separate grant or distribution
37 received or to be received; and

38 (3) A brief description of the purpose of every grant or
39 other distribution, with the name of the federal agency, bureau
40 or department making the grant or distribution: *Provided*, That
41 it is not necessary to include in the report an itemization of
42 federal revenue sharing funds deposited in and appropriated
43 from the revenue sharing trust fund, or federal funds received
44 for the benefit of the division of highways of the department of
45 transportation.

46 (d) The secretary may obtain from the spending units any
47 and all information necessary to prepare a report.

48 (e) Notwithstanding the other provisions of this section and
49 in supplementation of the provisions of this section, the
50 Legislature hereby determines that the department of revenue
51 and its secretary need to be the single and central agency for
52 receipt of information and documents in respect of applications
53 for, and changes, receipt and expenditure of, federal funds by
54 state agencies. Every agency of state government, when
55 making application for federal funds in the nature of a grant,
56 allocation or otherwise; when amending the applications or
57 requests; when in receipt of federal funds; or when undertaking
58 any expenditure of federal funds, in all respective instances,
59 shall provide to the secretary of revenue document copies or
60 sufficient summary information in respect of the federal funds
61 to enable the secretary to provide approval in writing for any
62 activity in respect to the federal funds.

§11B-2-24. Expenditure of appropriations -- Generally.

1 The expenditure of an appropriation made by the Legisla-
2 ture shall be conditioned upon compliance by the spending unit
3 with sections twenty-five, twenty-six, twenty-seven, twenty-
4 eight and twenty-nine of this article.

§11B-2-25. Expenditure of appropriations -- Other than for purchases of commodities.

1 A requisition for expenditure, other than an order for the
2 purchase of commodities, shall be submitted as follows:

3 (1) The spending officer shall prepare and submit to the
4 director a requisition showing the amount, purpose and appro-
5 priation from which the expenditure is requested;

6 (2) The director of the budget shall examine the requisition
7 and determine whether the amount is within the quarterly
8 allotment, is in accordance with the approved expenditure
9 schedule and otherwise conforms to the provisions of this
10 article;

11 (3) If the director approves the requisition, he or she shall
12 encumber the proper account in the amount of the requisition
13 and shall transmit the requisition to the auditor for disbursement
14 in accordance with law; and

15 (4) If the director disapproves the requisition, he or she
16 shall return it to the spending unit with a statement of his or her
17 reasons.

§11B-2-26. Expenditure of appropriations -- Purchases of commodities.

1 If a requisition is a request for a purchase of commodities,
2 the spending unit shall transmit the requisition to the state
3 budget office for the purpose of ascertaining whether it con-

4 forms to the expenditure schedule. If it does not conform, the
5 requisition shall be returned by the state budget office to the
6 spending unit. If it conforms, the state budget office shall
7 transmit the requisition to the purchasing division of the
8 department of administration for purchase in accordance with
9 article three, chapter five-a of this code. When a copy of the
10 purchase order issued pursuant thereto is received from the
11 purchasing division by the director in accordance with the
12 provisions of section fourteen, article three, chapter five-a of
13 this code, the director shall ascertain whether the unencumbered
14 balance in the appropriation concerned, in excess of all unpaid
15 obligations, is sufficient to defray the cost of the order and, if
16 so, shall encumber the proper account and certify the fact to the
17 purchasing division and, if not, shall notify the purchasing
18 division which, upon receipt of notification, shall return the
19 requisition to the spending unit.

§11B-2-27. Expenditure of appropriations -- Payment of personal services.

1 A requisition for the payment of personal services shall
2 upon receipt by the director of the budget be checked against
3 the personnel schedule of the spending unit making the requisition.
4 The director shall approve a requisition for personal
5 services only if the amounts requested are in accordance with
6 the personnel schedule of the spending unit.

§11B-2-28. Expenditure of appropriations -- Legislative and judicial expenditures.

1 (a) The provisions of sections twenty-six and twenty-seven
2 of this article shall not apply to the expenditure of amounts
3 appropriated for the use of the Legislature or for the judiciary.

4 (b) In the case of appropriations made for the Legislature,
5 the clerk of the House of Delegates or the clerk of the Senate
6 shall present his or her requisition directly to the auditor.

7 (c) In the case of appropriations made for the judiciary, the
8 clerk of the court shall present his or her requisition or claim
9 directly to the auditor.

10 (d) In the case of appropriations made for criminal charges,
11 the clerk or the proper officer shall present his or her claim
12 directly to the auditor.

§11B-2-29. Appropriations for officers, commissions, boards or institutions without office at capitol.

1 All appropriations now or hereafter made for officers,
2 commissions, boards or institutions, public or private, other
3 than state institutions of higher education, state charitable
4 institutions, state hospitals and sanitariums and state penal and
5 correctional institutions, not having an office at the state
6 capitol, shall, unless otherwise provided by law, be expended
7 on requisitions of the officer, commission, board or institution,
8 after approval by the secretary of the department of revenue.

§11B-2-30. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.

1 (a) The provisions of sections three, eleven, twelve,
2 thirteen, nineteen and twenty-three of this article and section
3 twenty-five, article two, chapter five-a of this code requiring the
4 secretary or the spending officer of the spending units to supply
5 copies of the documents specified therein to the legislative
6 auditor shall be strictly adhered to by all persons.

7 (b) Any failure by any person to comply with the provisions
8 of subsection (a) of this section shall be a misdemeanor and,
9 upon conviction thereof, the person shall be fined the sum of
10 one thousand dollars. This penalty shall be in addition to other
11 penalties provided elsewhere in this article and other remedies
12 provided by law.

§11B-2-31. Effectuation of transfer of budget section and transition.

1 To effectuate the transfer of the budget section of the
2 finance division, department of administration to the depart-
3 ment of revenue upon the effective date of this section in the
4 year two thousand four:

5 (1) All employees, records, responsibilities, obligations,
6 assets and property, of whatever kind and character, of the
7 budget section, finance division of the department of adminis-
8 tration are hereby transferred to the state budget office of the
9 department of revenue beginning the effective date of this
10 section in the year two thousand four.

11 (2) The unencumbered balances of all funds allocated to the
12 budget section of the division of finance for fiscal years ending
13 the thirtieth day of June, two thousand four, and the fiscal year
14 ending the thirtieth day of June, two thousand five, are hereby
15 transferred to the state budget office of the department of
16 revenue on the effective date of this section in the year two
17 thousand four.

18 (3) All orders, determinations, rules, permits, grants,
19 contracts, certificates, licenses, waivers, bonds, authorizations
20 and privileges which have been issued, made, granted or
21 allowed to become effective by the governor, any state depart-
22 ment or agency or official thereof, or by a court of competent
23 jurisdiction, in the performance of functions which have been
24 transferred to the secretary of the department of revenue or to
25 the department of revenue, and were in effect on the date the
26 transfer occurred continue in effect, for the benefit of the
27 department, according to their terms until modified, terminated,
28 superseded, set aside, or revoked in accordance with the law by
29 the governor, the secretary of revenue, or other authorized
30 official, a court of competent jurisdiction or by operation of
31 law.

32 (4) Any proceedings, including, but not limited to, notices
33 of proposed rulemaking, in which the budget section, finance
34 division of the department of administration was an initiating
35 or responding party are not affected by the transfer of the
36 budget section to the department of revenue. Orders issued in
37 any proceedings continue in effect until modified, terminated,
38 superseded or revoked by the governor, the secretary of
39 revenue, by a court of competent jurisdiction or by operation of
40 law. Nothing in this subdivision prohibits the discontinuance
41 or modification of any proceeding under the same terms and
42 conditions and to the same extent that a proceeding could have
43 been discontinued or modified if the division had not been
44 transferred to the department of revenue. Transfer of the
45 budget section of the finance division does not affect suits
46 commenced prior to the effective date of the transfer and all
47 such suits and proceedings shall be had, appeals taken and
48 judgments rendered in the same manner and with like effect as
49 if the transfer had not occurred, except that the secretary of the
50 department of revenue or other officer may, in an appropriate
51 case, be substituted or added as a party.

CHAPTER 240

(S. B. 148 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-10D-1, §11-10D-2, §11-10D-3, §11-10D-4, §11-10D-5, §11-10D-6, §11-10D-7, §11-10D-8, §11-10D-9, §11-10D-10, §11-10D-11, §11-10D-12 and

§11-10D-13; to amend and reenact §11-12-5 of said code; to amend and reenact §11A-1-7 of said code; and to amend and reenact §11A-2-11 of said code, all relating generally to the collection of delinquent taxes; granting persons who owe but have not paid one or more taxes administered under West Virginia tax procedure and administration act an amnesty period during which past-due taxes may be paid or payment agreements acceptable to tax commissioner executed; providing for waiver of additions to tax, money penalties and fifty percent of accrued interest on past-due taxes; prohibiting criminal prosecution for default for which tax amnesty is granted; providing a penalty of ten percent for failure to take advantage of this amnesty program; setting forth legislative findings and declarations; establishing requirements of and exceptions and limitations to tax amnesty program; defining certain terms; authorizing tax commissioner to do all things necessary to implement two-month tax amnesty program during current calendar year; requiring tax commissioner to report certain information to Legislature and governor after conclusion of tax amnesty program; authorizing tax commissioner to suspend a business registration certificate for failure to pay delinquent personal property taxes; requiring the tax commissioner to refuse to issue or renew a business registration certificate upon certain notice from the sheriff that the registrant has not paid delinquent personal property taxes; requiring tax commissioner to propose legislative rules establishing ancillary procedures for the tax commissioner's suspension of business registration certificates; requiring sheriff to decline to receive current taxes due on any personal property where a prior year's taxes are unpaid; and providing language for inclusion in publication giving notice of that license to do business in state will be suspended for failure to pay delinquent personal property taxes.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-10D-1, §11-10D-2,

§11-10D-3, §11-10D-4, §11-10D-5, §11-10D-6, §11-10D-7, §11-10D-8, §11-10D-9, §11-10D-10, §11-10D-11, §11-10D-12 and §11-10D-13; to amend and reenact §11-12-5 of said code; to amend and reenact §11A-1-7 of said code; and to amend and reenact §11A-2-11 of said code, all to read as follows:

Chapter

11. Taxation.

11A. Collection and Enforcement of Property Taxes.

CHAPTER 11. TAXATION.

Article

10D. Tax Amnesty Program.

12. Business Registration Tax.

ARTICLE 10D. TAX AMNESTY PROGRAM.

§11-10D-1. Short title.

§11-10D-2. Legislative intent and findings.

§11-10D-3. Definitions.

§11-10D-4. Development and administration of tax amnesty program, implementation of article.

§11-10D-5. Duration and application of program.

§11-10D-6. Waiver of penalties; criminal immunity; exceptions and limitations.

§11-10D-7. Application for amnesty; requirements; deficiency assessment.

§11-10D-8. Publicity efforts.

§11-10D-9. Examination of amnesty returns and taxpayer books and records.

§11-10D-10. Disposition of revenue collected.

§11-10D-11. Penalty on liabilities eligible for amnesty for which taxpayer did not apply for amnesty.

§11-10D-12. Report to Legislature and governor.

§11-10D-13. Suspension of inconsistent code provisions.

§11-10D-1. Short title.

- 1 This article may be cited as the “West Virginia Tax
- 2 Amnesty Program of 2004”.

§11-10D-2. Legislative intent and findings.

- 1 (a) *Intent.* — It is the intent of the Legislature in enacting
- 2 the tax amnesty program provided by this article to improve

3 compliance with this state's tax laws and to accelerate and
4 increase collections of certain taxes currently owed to this state.

5 (b) *Findings.* — The Legislature finds and declares that a
6 public purpose is served by the waiver of tax penalties, addi-
7 tions to tax, a portion of accrued interest, and criminal prosecu-
8 tion in return for the immediate reporting and payment of
9 previously underreported, unreported, unpaid or underpaid tax
10 liabilities that are due and owing and are delinquent as of the
11 first day of January, two thousand four. Benefits gained by this
12 program include, among other things, accelerated receipt of
13 certain currently owed taxes, permanently bringing into the tax
14 system taxpayers who have been evading tax and providing an
15 opportunity for taxpayers to clear their records and satisfy tax
16 obligations. It is further the intent of the Legislature in enacting
17 this article that the tax amnesty program be a one-time occur-
18 rence which shall not be repeated in the future, since taxpayers'
19 expectations of future amnesty programs could have a counter-
20 productive effect on compliance today.

§11-10D-3. Definitions.

1 (a) *General rule.* — Terms used in this article shall have
2 the meaning ascribed to them in section four, article ten of this
3 chapter, unless the context in which the term is used in this
4 article clearly requires a different meaning, or the term is
5 defined in subsection (b) of this section.

6 (b) *Terms defined.* — For purposes of this article, the term:

7 (1) "Additions to tax" means that amount imposed by
8 section eighteen or eighteen-a, article ten of this chapter, for
9 failure to file a return or pay tax due, or for negligence or
10 intentional disregard of rules and regulations of the tax commis-
11 sioner, for filing a false or fraudulent return, or for failure to
12 pay estimated tax, and includes "additions to tax" imposed by

13 any other article of chapter eleven of the code administered
14 under article ten of this chapter;

15 (2) “Applicant” means any person who timely files an
16 application for amnesty under this article;

17 (3) “Interest” means interest imposed pursuant to sections
18 seventeen and seventeen-a, article ten of this chapter;

19 (4) “Penalty” means civil money penalties imposed by
20 section nineteen, article ten of this chapter and any other civil
21 money penalty imposed by any article of this chapter adminis-
22 tered under article ten;

23 (5) “Specified tax” shall mean the tax or taxes and the
24 periods thereof for which the taxpayer applies for amnesty
25 under this article.

**§11-10D-4. Development and administration of tax amnesty
program, implementation of article.**

1 (a) *General.* — The tax commissioner shall develop and
2 administer the tax amnesty program provided in this article,
3 notwithstanding any provision of this article to the contrary.
4 The tax commissioner shall develop and issue the forms,
5 instructions and guidelines as the commissioner believes to be
6 necessary, and take any other action needed to implement this
7 article.

8 (b) *Rules.* — The tax commissioner may promulgate rules,
9 including emergency rules, that implement, clarify or explain
10 the tax amnesty program, in the manner provided in article
11 three, chapter twenty-nine-a of this code.

§11-10D-5. Duration and application of program.

1 The tax commissioner shall establish a two-month tax
2 amnesty program to be conducted during the calendar year, two

3 thousand four. The program shall apply to payments and
4 returns required pursuant to any tax administered under article
5 ten of this chapter, but only if the obligation for payment or
6 filing of a return, or both, arose after the first day of January,
7 one thousand nine hundred eighty-six, and prior to the first day
8 of January, two thousand four, provided: (1) The tax return was
9 due before the first day of January, two thousand four; (2) the
10 amount of tax shown to be due on the tax return was due and
11 payable to the tax commissioner before the first day of January,
12 two thousand four; or (3) if no tax return was required by law
13 to be filed, the tax was due and payable to the tax commissioner
14 before the first day of January, two thousand four.

**§11-10D-6. Waiver of penalties; criminal immunity; exceptions
and limitations.**

1 (a) *Waiver of penalty, addition to tax and interest.* — For
2 any taxpayer who meets the requirements of section seven of
3 this article and except as otherwise specifically provided in this
4 article:

5 (1) *Waiver.* — The tax commissioner shall waive all
6 penalties and additions to tax and fifty percent of the interest
7 imposed on the late filing of a return or the late payment of any
8 tax for which tax amnesty is granted, which is owed as a result
9 of nonpayment, underpayment, nonreporting or underreporting
10 of tax liabilities; and

11 (2) *Criminal penalties.* — No criminal action may be
12 brought against the taxpayer for the default for which tax
13 amnesty is granted under this article.

14 (b) *Exceptions.* — This section does not apply to nonpay-
15 ment or underpayment of tax liabilities, or to nonreported,
16 misreported or underreported tax liabilities for which amnesty
17 is sought if, as of the date the taxpayer's application for
18 amnesty is filed:

19 (1) The taxpayer is the subject of a criminal investigation
20 by any agency of this state; or

21 (2) An administrative proceeding or a civil or criminal court
22 proceeding has been initiated or is pending in any administra-
23 tive agency or court of this state or of the United States for
24 nonpayment, delinquency, fraud or other event of noncompli-
25 ance in relation to any of the taxes administered under article
26 ten of this chapter. An administrative or civil proceeding shall
27 not be deemed to be pending if the taxpayer withdraws with
28 prejudice from the proceeding prior to the granting of amnesty,
29 pays in full the outstanding tax liability plus fifty percent of the
30 accrued interest thereon and otherwise cures any default which
31 is the subject of the proceeding.

32 (c) *No refund or credit.* — No refund or credit may be
33 granted for any penalty, addition to tax or interest paid prior to
34 the date the taxpayer files his or her application for tax amnesty
35 pursuant to section seven of this article. Additionally, no
36 refund or credit shall be granted for any tax or interest paid
37 under this program unless the tax commissioner, on his or her
38 own motion, redetermines the amount of tax or accrued interest
39 thereon.

40 (d) *Bar to amnesty.* — A taxpayer shall not be eligible for
41 amnesty for any tax liability if the taxpayer has other liabilities
42 outstanding for any tax administered under article ten of this
43 chapter, for which the taxpayer has not applied for amnesty.
44 This includes tax deficiencies pending before the office of tax
45 appeals or a court in this state.

§11-10D-7. Application for amnesty; requirements; deficiency assessment.

1 (a) *Timely application required.* — The provisions of this
2 article apply to any taxpayer who, on or after the date of
3 commencement of the tax amnesty program and on or before

4 the termination date of the program designated by the tax
5 commissioner, files an application for tax amnesty on or before
6 the last day of the second calendar month of the amnesty
7 program and does the following:

8 (1) Voluntarily completes, signs and files amended tax
9 returns to report transactions and other material matters not
10 included on original returns and pays in full all additional taxes
11 shown to be due on the amended return or returns and fifty
12 percent of the interest imposed on the additional taxes by article
13 ten of this chapter;

14 (2) Voluntarily completes, signs and files all delinquent tax
15 returns and pays in full all taxes shown to be due on the return
16 or returns and fifty percent of the interest imposed on the taxes
17 by article ten of this chapter;

18 (3) Voluntarily completes, signs and files amended tax
19 returns to correct all incorrect, deficient or incomplete original
20 returns and pays in full all taxes shown to be due on the
21 amended return or returns and fifty percent of the interest
22 imposed on the tax or taxes by article ten of this chapter; and

23 (4) Voluntarily pays in full all previously assessed tax
24 liabilities and other taxes legally collectible under section
25 eleven, article ten of this chapter and fifty percent of the interest
26 due thereon imposed by article ten of this chapter.

27 (b) *Due date of tax for which amnesty granted.* — Except
28 as provided in subsection (d) of this section, all taxes for which
29 tax amnesty is sought plus fifty percent of interest accrued to
30 the date of payment shall be paid not later than the last day of
31 the month next succeeding the termination of the amnesty
32 program. Interest on the amount of tax due shall be calculated
33 as prescribed in article ten of this chapter and shall continue to
34 accrue until the tax liability is paid.

35 (c) *Payments.* — Payments made by the taxpayer under this
36 tax amnesty program shall be in United States currency or by
37 certified check, cashier's check or post office money order,
38 payable to the tax commissioner of this state.

39 (d) *Installment payment agreements.* — The tax commis-
40 sioner may, at his or her discretion and upon such terms and
41 conditions as the commissioner may prescribe, enter into an
42 installment payment agreement with the taxpayer, which
43 installment payment agreement shall be in lieu of the full
44 immediate payment required by subsection (b) of this section:
45 *Provided,* That the length of the installment payment may not
46 exceed twelve months.

47 (1) Each installment payment agreement shall provide for
48 payment of the tax due and fifty percent of the statutory interest
49 on the outstanding amount of tax due, computed to the date the
50 installment payment agreement is executed by the taxpayer.
51 The amount of tax and interest due from the taxpayer shall be
52 stated in the installment payment agreement and constitute the
53 installment payment agreement amount.

54 (2) *Down payment.* — The installment payment agreement
55 shall require payment of twenty-five percent of the installment
56 payment agreement amount or one thousand dollars, whichever
57 amount is the greater, at the time the installment payment
58 agreement is submitted to the tax commissioner for acceptance
59 and signature.

60 (3) *Interest.* — Interest on the installment payment agree-
61 ment amount shall be calculated at the rates determined under
62 sections seventeen and seventeen-a, article ten of this chapter,
63 as applicable to the installment payment period, and shall
64 accrue on the declining balance of the installment payment
65 agreement amount from the date the installment payment
66 agreement is signed by the taxpayer to the date the last install-
67 ment payment is made by the taxpayer.

68 (4) *Lien securing payment.* — When payments are made
69 under an installment payment agreement, the amount due shall
70 be secured by recordation of a tax lien against the property of
71 the taxpayer and recordation of a tax lien against the property
72 of any person guaranteeing payment of the installment payment
73 agreement amount, should there be a guarantor, unless the tax
74 commissioner determines that existing recorded tax liens are
75 adequate to secure the payment. Liens required by this subdivi-
76 sion shall be recorded in each county of this state in which the
77 taxpayer and the guarantor, if any, owns an interest in property
78 and shall be released by the tax commissioner upon full
79 payment of the amount stated in the installment payment
80 agreement plus applicable interest.

81 (5) *Failure to comply with installment payment agreement.*
82 — Failure of the taxpayer to fully comply with the terms of the
83 installment payment agreement shall render the waiver of
84 penalties, additions to tax and interest under this amnesty
85 program null and void, unless the tax commissioner determines
86 that the failure was due to reasonable cause. In the event of an
87 unexcused noncompliance with the terms of the installment
88 payment agreement, the taxpayer shall immediately pay the
89 unpaid balance of the installment payment agreement amount
90 plus the interest and all additions to tax and penalties waived
91 under section six of this article.

92 (6) *Late payment of installment payment.* — Notwithstand-
93 ing the provisions of subdivision (5) of this subsection, payment
94 of an installment payment after the date the installment pay-
95 ment is due under the installment payment agreement shall not
96 void the agreement provided the amount of the installment
97 payment, plus a late payment fee of ten dollars or one half of
98 one percent of the amount of the late installment payment,
99 whichever is the greater amount, is paid within twenty days
100 after the installment payment was due under the installment
101 payment agreement.

102 (7) *Failure to timely pay current taxes.* — If a taxpayer
103 with an installment payment agreement fails to timely file
104 returns and remit current tax liabilities by their statutory due
105 date or dates, the installment payment agreement shall be
106 rendered null and void, unless the tax commissioner determines
107 that the failure was due to reasonable cause. In the event an
108 installment payment agreement becomes null and void, tax-
109 payer shall immediately pay the unpaid balance of the install-
110 ment payment agreement plus interest and all additions to tax
111 and penalties waived when the tax commissioner accepted the
112 installment payment agreement.

113 (e) *Understatement of tax due.* — If, subsequent to termina-
114 tion of this tax amnesty program, the tax commissioner
115 determines there was a defect in the amnesty application or in
116 the materials submitted in support of the amnesty application
117 and subsequently issues a deficiency assessment upon the
118 application or a return or amended return filed pursuant to this
119 article, the tax commissioner has the authority to collect the
120 additional tax due, impose applicable penalties, additions to tax
121 and interest and to pursue any criminal prosecution as may
122 ordinarily be brought with respect to the defect as if no amnesty
123 had been granted the taxpayer.

124 (f) *Mistake or misrepresentation of material fact.* — The
125 tax commissioner may review all cases in which amnesty has
126 been granted and may on the basis of a mistake or misrepresen-
127 tation of a material fact, rescind the grant of amnesty, or in lieu
128 thereof, appropriate review of the grant of amnesty may be
129 obtained by proceeding under article nine or ten, or both, of this
130 chapter. The taxpayer may appeal the tax commissioner's order
131 rescinding the grant of amnesty by filing a petition for appeal
132 with the office of tax appeals, established in article ten-a of this
133 chapter, within thirty days after receipt of the tax commis-
134 sioner's order, which shall be served by personal service or by
135 certified mail.

136 (g) *False or fraudulent amnesty return.* — Any taxpayer
137 who files an amnesty tax return or amended return that is false
138 or fraudulent shall be subject to applicable civil penalties and
139 be referred for criminal prosecution.

140 (h) *Attempt to evade or defeat tax.* — Any taxpayer who
141 files a false amnesty application or attempts in any manner to
142 defeat or evade payment of tax or interest under this amnesty
143 program, shall be subject to applicable civil penalties and be
144 referred for criminal prosecution.

§11-10D-8. Publicity efforts.

1 The tax commissioner shall cause the tax amnesty program
2 to be adequately publicized so as to maximize public awareness
3 of and participation in the program.

§11-10D-9. Examination of amnesty returns and taxpayer books and records.

1 Nothing in this article shall prevent the tax commissioner
2 or any authorized employee or agent of the commissioner from
3 examining the books, paper, records and equipment of any
4 taxpayer or other person in order to verify the accuracy and
5 completeness of the application for amnesty or of any tax return
6 filed or payment made under this article, as provided in article
7 ten of this chapter, and to ascertain and assess any tax or other
8 liability owed to the state for any tax administered under article
9 ten of this chapter.

§11-10D-10. Disposition of revenue collected.

1 There is hereby created in the state treasury a special fund
2 to be known as the “tax amnesty fund” into which shall be
3 deposited all payments received under the tax amnesty pro-
4 gram. On a monthly basis, the tax amnesty fund shall be
5 distributed as follows:

6 (1) *Dedicated taxes.* — A dedicated tax and applicable
7 interest collected under the tax amnesty program shall be
8 deposited in the fund or account in which the tax would have
9 been deposited had the tax been timely paid; and

10 (2) *Other taxes.* — After complying with subdivision (1) of
11 this section, all other funds collected under the tax amnesty
12 program shall be deposited into the general revenue fund.

§11-10D-11. Penalty on liabilities eligible for amnesty for which taxpayer did not apply for amnesty.

1 (a) If a taxpayer has a liability that would be eligible for
2 amnesty under this article but the taxpayer fails to apply for
3 amnesty within the designated amnesty period as determined in
4 this article, or, after applying for amnesty, fails to satisfy all of
5 the requirements for amnesty, then a penalty in the amount of
6 ten percent of the unpaid liability shall be added to the amount
7 of any unpaid taxes eligible for amnesty.

8 (b) The tax commissioner shall assess the penalty provided
9 in subsection (a) of this section unless:

10 (1) Taxpayer provides evidence satisfactory to the commis-
11 sioner which demonstrates that taxpayer's failure to apply for
12 amnesty or his or her failure to satisfy all of the requirements
13 for amnesty was not an intentional attempt to avoid the payment
14 of taxes and was based on the taxpayer's mistaken belief that he
15 or she did not have any liability eligible for amnesty; or

16 (2) Taxpayer's failure to apply for amnesty, in the case of
17 an assessment issued before the start of or during the amnesty
18 period, is due to taxpayer contesting in an administrative or
19 judicial forum the disputed liability.

§11-10D-12. Report to Legislature and governor.

1 On or before the first day of July, two thousand five, the tax
2 commissioner shall issue a report to the Legislature and the
3 governor detailing the implementation and results of the tax
4 amnesty program provided in this article. This report shall
5 include, but not be limited to, the following information:

6 (1) A detailed breakdown of the tax commissioner's
7 administrative costs in implementing the program;

8 (2) The total number of tax amnesty returns filed, by tax
9 and by whether the returns are new returns or amended returns;

10 (3) The gross tax amnesty revenues collected by tax, which
11 shall also be broken down into the following categories:

12 (A) Amounts represented by assessments made, but not
13 finalized, and by liens filed by the tax commissioner before the
14 first day of the amnesty period; and

15 (B) All other amounts;

16 (4) The total dollar amount of revenue collected by the
17 program to a date no earlier than thirty days before the date of
18 the report required by this section, which shall be further
19 allocated by type of tax, interest on the tax to which the
20 payment relates;

21 (5) The total amount of interest forgiven under the program;

22 (6) The total amount of additions to tax forgiven under the
23 program;

24 (7) The total amount of penalties (not including additions
25 to tax or interest) collected under the program; and

26 (8) Any other statistical information that the tax commis-
27 sioner determines to be necessary to measure the net impact of
28 this tax amnesty program.

§11-10D-13. Suspension of inconsistent code provisions.

1 All provisions of article ten, chapter eleven of this code and
2 all provisions of tax statutes administered under article ten of
3 this chapter that are inconsistent with the provisions of this
4 article are suspended to the extent necessary to carry out the
5 provisions of this article.

ARTICLE 12. BUSINESS REGISTRATION TAX.**§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.**

1 (a) *Registration period.* — All business registration certifi-
2 cates issued under the provisions of section four of this article are
3 for the period of one year beginning the first day of July and
4 ending the thirtieth day of the following June: *Provided*, That
5 beginning on or after the first day of July, one thousand nine
6 hundred ninety-nine, all business registration certificates issued
7 under the provisions of section four of this article shall be
8 issued for two fiscal years of this state, subject to the following
9 transition rule. If the first year for which a business was issued
10 a business registration certificate under this article began on the
11 first day of July of an even-numbered calendar year, then the
12 tax commissioner may issue a renewal certificate to that
13 business for the period beginning the first day of July, one
14 thousand nine hundred ninety-nine, and ending the thirtieth day
15 of June, two thousand, upon receipt of fifteen dollars for each
16 such one-year certificate. Thereafter, only certificates covering
17 two fiscal years of this state shall be issued.

18 (b) *Revocation or suspension of certificate.* —

19 (1) The tax commissioner may cancel or suspend a business
20 registration certificate at any time during a registration period
21 if:

22 (A) The registrant filed an application for a business
23 registration certificate, or an application for renewal thereof, for
24 the registration period that was false or fraudulent.

25 (B) The registrant willfully refused or neglected to file a tax
26 return or to report information required by the tax commis-
27 sioner for any tax imposed by or pursuant to this chapter.

28 (C) The registrant willfully refused or neglected to pay any
29 tax, additions to tax, penalties or interest, or any part thereof,
30 when they became due and payable under this chapter, deter-
31 mined with regard to any authorized extension of time for
32 payment.

33 (D) The registrant neglected to pay over to the tax commis-
34 sioner on or before its due date, determined with regard to any
35 authorized extension of time for payment, any tax imposed by
36 this chapter which the registrant collects from any person and
37 holds in trust for this state.

38 (E) The registrant abused the privilege afforded to it by
39 article fifteen or fifteen-a of this chapter to be exempt from
40 payment of the taxes imposed by such articles on some or all of
41 the registrant's purchases for use in business upon issuing to the
42 vendor a properly executed exemption certificate, by failing to
43 timely pay use tax on taxable purchase for use in business, or
44 by failing to either pay the tax or give a properly executed
45 exemption certificate to the vendor.

46 (F) The registrant has failed to pay in full delinquent
47 personal property taxes owing for the calendar year immedi-
48 ately preceding the calendar year in which the application is
49 made.

50 (2) Before canceling or suspending any business registra-
51 tion certificate, the tax commissioner shall give written notice
52 of his or her intent to suspend or cancel the business registration

53 certificate of the taxpayer, the reason for the suspension or
54 cancellation, the effective date of the cancellation or suspension
55 and the date, time and place where the taxpayer may appear and
56 show cause why such business registration certificate should
57 not be canceled or suspended. This written notice shall be
58 served on the taxpayer in the same manner as a notice of
59 assessment is served under article ten of this chapter, not less
60 than twenty days prior to the date of the show cause informal
61 hearing. The taxpayer may appeal cancellation or suspension
62 of its business registration certificate in the same manner as a
63 notice of assessment is appealed under article ten-a of this
64 chapter: *Provided*, That the filing of a petition for appeal does
65 not stay the effective date of the suspension or cancellation. A
66 stay may be granted only after a hearing is held on a motion to
67 stay filed by the registrant, upon finding that state revenues will
68 not be jeopardized by the granting of the stay. The tax commis-
69 sioner may, in his or her discretion and upon such terms as he
70 or she may specify, agree to stay the effective date of the
71 cancellation or suspension until another date certain.

72 (3) On or before the first day of July, two thousand five, the
73 tax commissioner shall propose for promulgation legislative
74 rules establishing ancillary procedures for the tax commis-
75 sioner's suspension of business registration certificates for
76 failure to pay delinquent personal property taxes pursuant to
77 paragraph (F), subdivision (1) of this section. The rules shall at
78 a minimum establish any additional requirements for the
79 provision of notice deemed necessary by the tax commissioner
80 to meet requirements of law; establish protocols for the
81 communication and verification of information exchanged
82 between the tax commissioner, sheriffs and others; and estab-
83 lish fees to be assessed against delinquent taxpayers that shall
84 be deposited into a special fund which is hereby created and
85 expended for general tax administration by the tax division of
86 the department of tax and revenue and for operation of the tax
87 division. Upon authorization of the Legislature, the rules shall

88 have the same force and effect as if set forth herein. No
89 provision of this subdivision may be construed to restrict in any
90 manner the authority of the tax commissioner to suspend such
91 certificates for failure to pay delinquent personal property taxes
92 under paragraph (C) or (F), subdivision (1) of this section or
93 under any other provision of this code prior to the authorization
94 of the rules.

95 (c) *Refusal to renew.* — The tax commissioner may refuse
96 to issue or renew a business registration certificate if the
97 registrant is delinquent in the payment of any tax administered
98 by the tax commissioner under article ten of this chapter or the
99 corporate license tax imposed by article twelve-c of this
100 chapter, until the registrant pays in full all the delinquent taxes
101 including interest and applicable additions to tax and penalties.
102 In his or her discretion and upon such terms as he or she may
103 specify, the tax commissioner may enter into an installment
104 payment agreement with the taxpayer in lieu of the complete
105 payment. Failure of the taxpayer to fully comply with the terms
106 of the installment payment agreement shall render the amount
107 remaining due thereunder immediately due and payable and the
108 tax commissioner may suspend or cancel the business registra-
109 tion certificate in the manner provided in this section.

110 (d) *Refusal to renew due to delinquent personal property*
111 *tax.* — The tax commissioner shall refuse to issue or renew a
112 business registration certificate when informed in writing,
113 signed by the county sheriff, that personal property owned by
114 the applicant and used in conjunction with the business activity
115 of the applicant is subject to delinquent property taxes. The tax
116 commissioner shall forthwith notify the applicant that the
117 commissioner will not act upon the application until informa-
118 tion is provided evidencing that the taxes due are either
119 exonerated or paid.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

Article

1. **Accrual and Collection of Taxes.**
2. **Delinquency and Methods of Enforcing Payment.**

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-7. No collection of current taxes until delinquent taxes are paid.

1 The sheriff, in preparing his or her tax receipts for any
2 current year shall examine and compare them with the delin-
3 quent list for the preceding year in his or her hands, and if any
4 tract or personal property is found to be delinquent for the
5 preceding year, he or she shall note the fact on his or her current
6 receipts and shall decline to receive current taxes on any land
7 or personal property where it appears to his or her office that a
8 prior year's taxes are unpaid. Acceptance of current taxes
9 through oversight shall not relieve the owner of any land or
10 personal property, of the liability to pay prior taxes and
11 penalties imposed for nonpayment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAY- MENT.

§11A-2-11. Delinquent lists; oath.

1 The sheriff, after ascertaining which of the taxes assessed
2 in his or her county are delinquent, shall, on or before the first
3 day of May next succeeding the year for which the taxes were
4 assessed, prepare the following delinquent lists, arranged by
5 districts and alphabetically by name of the person charged, and
6 showing in respect to each the amount of taxes remaining
7 delinquent on April thirtieth: (1) A list of property in the land
8 book improperly entered or not ascertainable; (2) a list of other
9 delinquent real estate; and (3) a list of all other delinquent
10 taxes: *Provided*, That the list shall conclude with a notice,

11 substantially as follows: “Any person holding a West Virginia
12 business registration certificate under the authority of article
13 twelve, chapter eleven of this code who does not pay all
14 delinquent personal property taxes shall have his or her license
15 to do business in this state suspended until the delinquency is
16 cured.”

17 The sheriff on returning each list shall, at the foot thereof,
18 subscribe an oath, which shall be subscribed before and
19 certified by some person duly authorized to administer oaths, in
20 form or effect as follows:

21 I,, sheriff (or deputy sheriff or collector) of the
22 County of, do swear that the foregoing list is, to the best
23 of my knowledge and belief, complete and accurate, and that I
24 have received none of the taxes listed therein.

25 Except for the oath, the auditor shall prescribe the form of
26 the delinquent lists.

CHAPTER 241

(Com. Sub. for S. B. 404 — By Senator Helmick)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-13A-2 of the code of West Virginia, 1931, as amended, relating to severance taxes; clarifying the term “behavioral health services”; and removing the term “community care services”.

Be it enacted by the Legislature of West Virginia:

That §11-13A-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitions.

1 (a) *General rule.* — When used in this article, or in the
2 administration of this article, the terms defined in subsection
3 (b), (c) or (d) of this section shall have the meanings ascribed
4 to them by this section, unless a different meaning is clearly
5 required by the context in which the term is used or by specific
6 definition.

7 (b) *General terms defined.* — Definitions in this subsection
8 apply to all persons subject to the taxes imposed by this article.

9 (1) “Business” includes all activities engaged in, or caused
10 to be engaged in, with the object of gain or economic benefit,
11 direct or indirect, and whether engaged in for profit, or not for
12 profit, or by a governmental entity: *Provided*, That “business”
13 does not include services rendered by an employee within the
14 scope of his or her contract of employment. Employee services,
15 services by a partner on behalf of his or her partnership and
16 services by a member of any other business entity on behalf of
17 that entity are the business of the employer or partnership, or
18 other business entity as the case may be, and reportable as such
19 for purposes of the taxes imposed by this article.

20 (2) “Corporation” includes associations, joint-stock
21 companies and insurance companies. It also includes govern-
22 mental entities when and to the extent such governmental
23 entities engage in activities taxable under this article.

24 (3) “Delegate” in the phrase “or his delegate”, when used
25 in reference to the tax commissioner, means any officer or
26 employee of the state tax division of the department of tax and

27 revenue duly authorized by the tax commissioner directly, or
28 indirectly by one or more redelegations of authority, to perform
29 the function mentioned or described in this article or regulations
30 promulgated thereunder.

31 (4) "Fiduciary" means and includes a guardian, trustee,
32 executor, administrator, receiver, conservator or any person
33 acting in any fiduciary capacity for any person.

34 (5) "Gross proceeds" means the value, whether in money or
35 other property, actually proceeding from the sale or lease of
36 tangible personal property, or from the rendering of services,
37 without any deduction for the cost of property sold or leased or
38 expenses of any kind.

39 (6) "Includes" and "including", when used in a definition
40 contained in this article, shall not be deemed to exclude other
41 things otherwise within the meaning of the term being defined.

42 (7) "Partner" includes a member of a syndicate, group,
43 pool, joint venture or other organization which is a "partner-
44 ship" as defined in this section.

45 (8) "Partnership" includes a syndicate, group, pool, joint
46 venture or other unincorporated organization through or by
47 means of which any privilege taxable under this article is
48 exercised and which is not within the meaning of this article a
49 trust or estate or corporation. "Partnership" includes a limited
50 liability company which is treated as a partnership for federal
51 income tax purposes.

52 (9) "Person" or "company" are herein used interchangeably
53 and include any individual, firm, partnership, mining partner-
54 ship, joint venture, association, corporation, trust or other
55 entity, or any other group or combination acting as a unit, and
56 the plural as well as the singular number, unless the intention to
57 give a more limited meaning is declared by the context.

58 (10) “Sale” includes any transfer of the ownership or title
59 to property, whether for money or in exchange for other
60 property or services, or any combination thereof. “Sale”
61 includes a lease of property, whether the transaction be charac-
62 terized as a rental, lease, hire, bailment or license to use. “Sale”
63 also includes rendering services for a consideration, whether
64 direct or indirect.

65 (11) “Service” includes all activities engaged in by a person
66 for a consideration which involve the rendering of a service as
67 distinguished from the sale of tangible personal property:
68 *Provided*, That “service” does not include: (A) Services
69 rendered by an employee to his or her employer under a
70 contract of employment; (B) contracting; or (C) severing or
71 processing natural resources.

72 (12) “Tax” means any tax imposed by this article and, for
73 purposes of administration and collection of such tax, it
74 includes any interest, additions to tax or penalties imposed with
75 respect thereto under article ten of this chapter.

76 (13) “Tax commissioner” or “commissioner” means the tax
77 commissioner of the state of West Virginia or his or her
78 delegate.

79 (14) “Taxable year” means the calendar year, or the fiscal
80 year ending during such calendar year, upon the basis of which
81 a tax liability is computed under this article. In the case of a
82 return made under this article, or regulations of the tax commis-
83 sioner, for a fractional part of a year, the term “taxable year”
84 means the period for which such return is made.

85 (15) “Taxpayer” means any person subject to any tax
86 imposed by this article.

87 (16) “This code” means the code of West Virginia, one
88 thousand nine hundred thirty-one, as amended.

89 (17) "This state" means the state of West Virginia.

90 (18) "Withholding agent" means any person required by
91 law to deduct and withhold any tax imposed by this article or
92 under regulations promulgated by the tax commissioner.

93 (c) *Specific definitions for producers of natural resources.* —

94 (1) "Barrel of oil" means forty-two U. S. gallons of two
95 hundred thirty-one cubic inches of liquid at a standard tempera-
96 ture of sixty degrees Fahrenheit.

97 (2) "Coal" means and includes any material composed
98 predominantly of hydrocarbons in a solid state.

99 (3) "Cubic foot of gas" means the volume of gas contained
100 in one cubic foot at a standard pressure base of fourteen point
101 seventy-three pounds per square inch (absolute) and a standard
102 temperature of sixty degrees Fahrenheit.

103 (4) "Economic interest" for the purpose of this article is
104 synonymous with the economic interest ownership required by
105 Section 611 of the Internal Revenue Code in effect on the
106 thirty-first day of December, one thousand nine hundred eighty-
107 five, entitling the taxpayer to a depletion deduction for income
108 tax purposes: *Provided*, That a person who only receives an
109 arm's length royalty shall not be considered as having an
110 economic interest.

111 (5) "Extraction of ores or minerals from the ground"
112 includes extraction by mine owners or operators of ores or
113 minerals from the waste or residue of prior mining only when
114 such extraction is sold.

115 (6) "Gross value" in the case of natural resources means the
116 market value of the natural resource product, in the immediate
117 vicinity where severed, determined after application of post

118 production processing generally applied by the industry to
119 obtain commercially marketable or usable natural resource
120 products. For all natural resources, “gross value” is to be
121 reported as follows:

122 (A) For natural resources severed or processed (or both
123 severed and processed) and sold during a reporting period,
124 gross value is the gross proceeds received or receivable by the
125 taxpayer.

126 (B) In a transaction involving related parties, gross value
127 shall not be less than the fair market value for natural resources
128 of similar grade and quality.

129 (C) In the absence of a sale, gross value shall be the fair
130 market value for natural resources of similar grade and quality.

131 (D) If severed natural resources are purchased for the
132 purpose of processing and resale, the gross value is the amount
133 received or receivable during the reporting period reduced by
134 the amount paid or payable to the taxpayer actually severing the
135 natural resource. If natural resources are severed outside the
136 state of West Virginia and brought into the state of West
137 Virginia by the taxpayer for the purpose of processing and sale,
138 the gross value is the amount received or receivable during the
139 reporting period reduced by the fair market value of natural
140 resources of similar grade and quality and in the same condition
141 immediately preceding the processing of the natural resources
142 in this state.

143 (E) If severed natural resources are purchased for the
144 purpose of processing and consumption, the gross value is the
145 fair market value of processed natural resources of similar
146 grade and quality reduced by the amount paid or payable to the
147 taxpayer actually severing the natural resource. If severed
148 natural resources are severed outside the state of West Virginia
149 and brought into the state of West Virginia by the taxpayer for

150 the purpose of processing and consumption, the gross value is
151 the fair market value of processed natural resources of similar
152 grade and quality reduced by the fair market value of natural
153 resources of similar grade and quality and in the same condition
154 immediately preceding the processing of the natural resources.

155 (F) In all instances, the gross value shall be reduced by the
156 amount of any federal energy tax imposed upon the taxpayer
157 after the first day of June, one thousand nine hundred ninety-
158 three, but shall not be reduced by any state or federal taxes,
159 royalties, sales commissions or any other expense.

160 (G) For natural gas, gross value is the value of the natural
161 gas at the wellhead immediately preceding transportation and
162 transmission.

163 (H) For limestone or sandstone quarried or mined, gross
164 value is the value of such stone immediately upon severance
165 from the earth.

166 (7) "Mining" includes not merely the extraction of ores or
167 minerals from the ground, but also those treatment processes
168 necessary or incidental thereto.

169 (8) "Natural resources" means all forms of minerals
170 including, but not limited to, rock, stone, limestone, coal, shale,
171 gravel, sand, clay, natural gas, oil and natural gas liquids which
172 are contained in or on the soils or waters of this state and
173 includes standing timber.

174 (9) "Processed" or "processing" as applied to:

175 (A) Oil and natural gas shall not include any conversion or
176 refining process; and

177 (B) Limestone or sandstone quarried or mined shall not
178 include any treatment process or transportation after the
179 limestone or sandstone is severed from the earth.

180 (10) “Related parties” means two or more persons, organi-
181 zations or businesses owned or controlled directly or indirectly
182 by the same interests. Control exists if a contract or lease,
183 either written or oral, is entered into whereby one party mines
184 or processes natural resources owned or held by another party
185 and the owner or lessor participates in the severing, processing
186 or marketing of the natural resources or receives any value
187 other than an arm’s length passive royalty interest. In the case
188 of related parties, the tax commissioner may apportion or
189 allocate the receipts between or among such persons, organiza-
190 tions or businesses if he determines that such apportionment or
191 allocation is necessary to more clearly reflect gross value.

192 (11) “Severing” or “severed” means the physical removal
193 of the natural resources from the earth or waters of this state by
194 any means: *Provided*, That “severing” or “severed” shall not
195 include the removal of natural gas from underground storage
196 facilities into which the natural gas has been mechanically
197 injected following its initial removal from earth: *Provided*,
198 *however*, That “severing” or “severed” oil and natural gas shall
199 not include any separation process of oil or natural gas com-
200 monly employed to obtain marketable natural resource prod-
201 ucts.

202 (12) “Stock” includes shares in an association, joint-stock
203 company or corporation.

204 (13) “Taxpayer” means and includes any individual,
205 partnership, joint venture, association, corporation, receiver,
206 trustee, guardian, executor, administrator, fiduciary or represen-
207 tative of any kind engaged in the business of severing or
208 processing (or both severing and processing) natural resources
209 in this state for sale or use. In instances where contracts (either
210 oral or written) are entered into whereby persons, organizations
211 or businesses are engaged in the business of severing or
212 processing (or both severing and processing) a natural resource
213 but do not obtain title to or do not have an economic interest

214 therein, the party who owns the natural resource immediately
215 after its severance or has an economic interest therein is the
216 taxpayer.

217 (d) *Specific definitions for persons providing health care*
218 *items or services.* —

219 “Behavioral health services” means services provided for
220 the care and treatment of persons with mental illness, mental
221 retardation, developmental disabilities or alcohol or drug abuse
222 problems in an inpatient, residential or outpatient setting,
223 including, but not limited to, habilitative or rehabilitative
224 interventions or services and cooking, cleaning, laundry and
225 personal hygiene services provided for such care: *Provided,*
226 That gross receipts derived from providing behavioral health
227 services that are included in the provider’s measure of tax under
228 article twenty-seven of this chapter shall not be included in that
229 provider’s measure of tax under this article. The amendment to
230 this definition in the year two thousand four is intended to
231 clarify the intent of the Legislature as to the activities that
232 qualify as behavioral health services, and this clarification shall
233 be applied retrospectively to the effective date of the amend-
234 ment to this section in which the definition of “behavioral
235 health services” was originally provided as enacted during the
236 first extraordinary session of the Legislature in the year one
237 thousand nine hundred ninety-three.

CHAPTER 242

**(Com. Sub. for S. B. 204 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 13, 2004; to take effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §11-13R-6, §11-13R-11 and §11-13R-12 of the code of West Virginia, 1931, as amended, all relating to the strategic research and development tax credit; providing that the credit may be refundable for small qualified research and development companies; specifying limitations on credit; requiring certain reporting; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That §11-13R-6, §11-13R-11 and §11-13R-12 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-6. Application of credit.

§11-13R-11. Tax credit review and accountability.

§11-13R-12. Effective date.

§11-13R-6. Application of credit.

1 (a) *Credit allowed.* — Beginning in the year that the annual
2 combined qualified research and development expenditure is
3 paid or incurred, eligible taxpayers and owners of eligible
4 taxpayers described in subsections (d) and (f) of this section are
5 allowed a credit against the taxes imposed by articles twenty-
6 three, twenty-four and twenty-one of this chapter, in that order,
7 as specified in this section.

8 (b) *Business franchise tax.* — The credit is first applied to
9 reduce the taxes imposed by article twenty-three of this chapter
10 for the taxable year, determined after application of the credits
11 against tax provided in section seventeen of said article, but
12 before application of any other allowable credits against tax.

13 (c) *Corporation net income taxes.* — After application of
14 subsection (b) of this section, any unused credit is next applied

15 to reduce the taxes imposed by article twenty-four of this
16 chapter for the taxable year, determined before application of
17 allowable credits against tax.

18 (d) If the eligible taxpayer is a limited liability company,
19 small business corporation or a partnership, then any unused
20 credit after application of subsections (b) and (c) of this section
21 is allowed as a credit against the taxes imposed by article
22 twenty-four of this chapter on owners of the eligible taxpayer
23 on the conduit income directly derived from the eligible
24 taxpayer by its owners. Only those portions of the tax imposed
25 by article twenty-four of this chapter that are imposed on
26 income directly derived by the owner from the eligible tax-
27 payer are subject to offset by this credit.

28 (1) Small business corporations, limited liability compa-
29 nies, partnerships and other unincorporated organizations shall
30 allocate the credit allowed by this article among their members
31 in the same manner as profits and losses are allocated for the
32 taxable year.

33 (2) No credit is allowed under this article against any
34 withholding tax imposed by, or payable under, article twenty-
35 one of this chapter.

36 (e) *Personal income tax taxes.* — After application of
37 subsections (b), (c) and (d) of this section, any unused credit is
38 next applied to reduce the taxes imposed by article twenty-one
39 of this chapter for the taxable year determined before applica-
40 tion of allowable credits against tax of the eligible taxpayer.

41 (f) If the eligible taxpayer is a limited liability company,
42 small business corporation or a partnership, then any unused
43 credit after application of subsections (b), (c), (d) and (e) of this
44 section is allowed as a credit against the taxes imposed by
45 article twenty-one of this chapter on owners of the eligible
46 taxpayer on the conduit income directly derived from the

47 eligible taxpayer by its owners. Only those portions of the tax
48 imposed by article twenty-one of this chapter that are imposed
49 on income directly derived by the owner from the eligible
50 taxpayer are subject to offset by this credit.

51 (1) Small business corporations, limited liability compa-
52 nies, partnerships and other unincorporated organizations shall
53 allocate the credit allowed by this article among their members
54 in the same manner as profits and losses are allocated for the
55 taxable year.

56 (2) No credit is allowed under this article against any
57 withholding tax imposed by, or payable under, article twenty-
58 one of this chapter.

59 (g) The total amount of tax credit that may be used in any
60 taxable year by any eligible taxpayer in combination with the
61 owners of the eligible taxpayer under subsections (d) and (f) of
62 this section, and including any refundable credit claimed under
63 subsection (i) of this section, may not exceed two million
64 dollars.

65 (h) *Unused credit carry forward.* — Except to the extent
66 excess credit is refunded as provided in subsection (i) of this
67 section, if the credit allowed under this article in any taxable
68 year exceeds the sum of the taxes enumerated in subsections
69 (b), (c), (d), (e) and (f) of this section for that taxable year, the
70 eligible taxpayer and owners of eligible taxpayers described in
71 subsections (d) and (f) of this section may apply the excess as
72 a credit against those taxes, in the order and manner stated in
73 this section, for succeeding taxable years until the earlier of the
74 following:

75 (1) The full amount of the excess credit is used; or

76 (2) The expiration of the tenth taxable year after the taxable
77 year in which the annual combined qualified research and

78 development expenditure was paid or incurred. Credit remain-
79 ing thereafter is forfeited.

80 (i) *Refundable credit for “small qualified research and*
81 *development company”*. — If the eligible taxpayer, including
82 the controlled group, if a member of a controlled group, has
83 gross revenues of not more than twenty million dollars and a
84 payroll of not more than two million five hundred thousand
85 dollars, and the credit allowed under this article in any taxable
86 year exceeds the sum of taxes enumerated in subsections (b),
87 (c), (d), (e) and (f) of this section for that taxable year, the
88 eligible taxpayer and owners of the eligible taxpayers described
89 in subsections (d) and (f) of this section may claim for that year
90 the excess amount as a refundable credit, not to exceed one
91 hundred thousand dollars per taxpayer, including owners and
92 the controlled group, if applicable: *Provided*, That not more
93 than one million dollars of the unused credits described in this
94 subsection may be approved for refundable credit by the tax
95 commissioner during any fiscal year. Priority for approval of
96 refundable credit is determined based on the filing date of the
97 claim for refund with earlier claims having priority over later
98 claims.

99 (j) *Application for certification*. — No credit is allowed or
100 may be applied under this article until the person seeking to
101 claim the credit has filed a written application for certification
102 of the proposed research and development program or project
103 with the tax commissioner and has received certification of the
104 research and development program or project from the tax
105 commissioner pursuant to that written application. The
106 certification of the program or project must be received by the
107 eligible taxpayer from the tax commissioner prior to any credit
108 being claimed or allowed for any annual combined qualified
109 research and development expenditure for any research activity
110 or project. This application shall be filed, in the form pre-

111 scribed by the tax commissioner, no later than the last day for
112 filing the tax returns, determined by including any authorized
113 extension of time for filing the return, required under article
114 twenty-one or twenty-four of this chapter for the taxable year
115 in which the property to which the credit relates is placed in
116 service or use, or the qualified research and development
117 expenses to which the credit relates are incurred by the
118 taxpayer, and all information required by the form shall be
119 provided by the taxpayer.

120 (1) In the case of owners of eligible taxpayers described in
121 subsection (d) or (f) of this section, the application for certifi-
122 cation filed under this section by the limited liability company,
123 small business corporation or partnership owned by the person
124 is considered to be filed on behalf of the owner and no separate
125 filing of the application is required of the owner.

126 (2) *Form of application.* — The application for certifica-
127 tion must be filed in the form as the tax commissioner pre-
128 scribes and shall contain the information as the tax commis-
129 sioner requires to determine whether the project should be
130 certified as eligible for credit under this article.

131 (3) *Time period covered by certification.* — The applica-
132 tion may request certification of the research and development
133 program for one taxable year or multiple taxable years, as
134 applicable, based on the nature and character of the program or
135 project plan for the particular research and development project
136 or activity.

137 (4) *Requirements for application.* — The application shall
138 specifically set forth a written research and development
139 program plan generally describing the nature of the research
140 and development to be undertaken, the number and types of
141 jobs, if any, created by the applicant as a direct result of the
142 research and development program and the average wages and

143 benefits paid to those employees, the projected time period
144 over which the research and development shall be carried out,
145 the period of time for which the applicant seeks certification of
146 the program or project and other information as the tax
147 commissioner requires.

148 (5) *Certification.* — The tax commissioner may issue
149 certification of a research and development program or project
150 if it appears to the tax commissioner that the applicant intends
151 to engage in a bona fide research and development activity, as
152 described in this article, and will otherwise comply with the
153 requirements of this article and all rules and requirements
154 applicable thereto.

155 (6) *Time period covered by certification.* — The tax
156 commissioner may issue certification for the period of time for
157 which the eligible taxpayer seeks certification or a different
158 period of time, within the discretion of the tax commissioner.
159 In his or her discretion, the tax commissioner may require that
160 a separate application be filed for each tax year in which
161 qualified research and development activity is to be undertaken
162 or in which qualified research and development property is to
163 be placed in service or use.

164 (7) *Failure to file.* — The failure to timely file the applica-
165 tion for certification of a research and development program or
166 project under this section results in forfeiture of one hundred
167 percent of the annual credit otherwise allowable under this
168 article. This penalty applies annually until the application is
169 filed.

170 (8) *Research and development undertaken without certifi-*
171 *cation.* — If a person has filed an application for certification
172 of a research and development program or project and has
173 failed to receive certification of the plan or program from the
174 tax commissioner, no credit is allowed under this article for the

175 research and development activity or investment relating
176 thereto.

177 (9) *Failure to comply with terms of certification.* — If a
178 person has filed an application for certification of a research
179 and development program or project and has received certifica-
180 tion of the plan or program from the tax commissioner, but
181 fails to conform to the terms of the certification, no credit is
182 allowed under this article for the research and development
183 activity or for investment in the research and development
184 activity by the eligible taxpayer. This restriction may be
185 waived by the tax commissioner upon a finding that the
186 research and development undertaken was within the require-
187 ments of this article and that there was no intent to defraud the
188 state or willful neglect in the applicant's failure to conform to
189 the terms of the certification.

190 (10) *Failure to comply with certification time restrictions.*
191 — If a person has filed an application for certification of a
192 research and development program or project and has received
193 certification of the plan or program from the tax commissioner,
194 but fails to conform to the time periods specified therein for the
195 certified research and development program or project, or fails
196 to renew the certification so as to cover ongoing or subsequent
197 research and development activity, the research and develop-
198 ment activity is out of compliance with the terms of the
199 certification and no credit is allowed under this article for, or
200 relating to, the research and development activity by any
201 person or taxpayer. This restriction may be waived by the tax
202 commissioner upon a finding that the research and develop-
203 ment thus undertaken was within the requirements of this
204 article and that there was no intent to defraud the state or
205 willful neglect in the applicant's failure to conform to the terms
206 of the certification.

§11-13R-11. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year thereafter,
3 the commissioner shall submit to the governor, the president of
4 the Senate and the speaker of the House of Delegates a tax
5 credit review and accountability report evaluating the cost
6 effectiveness of the credit allowed under this article during the
7 most recent three-year period for which information is avail-
8 able. The criteria to be evaluated includes, but is not limited to,
9 for each year of the three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number, type and duration of new jobs created
12 by all taxpayers claiming the credit and wages and benefits
13 paid;

14 (3) The cost of the credit;

15 (4) The cost of the credit per new job created;

16 (5) Comparison of employment trends for the industry and
17 for taxpayers within the industry that claim the credit; and

18 (6) The amount of excess credit refunded to small qualified
19 research and development companies pursuant to subsection
20 (i), section six of this article.

21 (b) Taxpayers claiming the credit shall provide information
22 as the tax commissioner requires to prepare the report: *Pro-*
23 *vided*, That the information shall be subject to the confidential-
24 ity and disclosure provisions of sections five-d and five-s,
25 article ten of this chapter.

§11-13R-12. Effective date.

1 The provisions of this article become effective on the first
2 day of January, two thousand three, and apply only to qualified

3 investment made on or after that date, except that the amend-
4 ments to this article enacted in two thousand four shall become
5 effective for taxable years beginning on or after the first day of
6 July, two thousand four, and apply only to unused credit
7 attributable to qualified investment made on or after that date
8 and prior to the first day of January, two thousand eight.

CHAPTER 243

(Com. Sub. for H. B. 4047 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13U-1, §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-6, §11-13U-7, §11-13U-8, §11-13U-9 and §11-13U-10, all relating to the high-growth business investment tax credit.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13U-1, §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-6, §11-13U-7, §11-13U-8, §11-13U-9 and §11-13U-10, all to read as follows:

ARTICLE 13U. HIGH-GROWTH BUSINESS INVESTMENT TAX CREDIT.

- §11-13U-1. Short title.
- §11-13U-2. Legislative finding and purpose.
- §11-13U-3. Definitions.
- §11-13U-4. High-growth business investment tax credit.

- §11-13U-5. Restrictions on investment.
- §11-13U-6. Penalty.
- §11-13U-7. Disclosure of tax credits.
- §11-13U-8. Tax credit review and accountability.
- §11-13U-9. Rules.
- §11-13U-10. Effective date; expiration of credit.

§11-13U-1. Short title.

- 1 This article may be cited as the “High-Growth Business
- 2 Investment Tax Credit”.

§11-13U-2. Legislative finding and purpose.

- 1 The Legislature finds the encouragement of investment in
- 2 potentially high-growth research and development businesses
- 3 in this state is in the public interest and promotes economic
- 4 growth and development for the people of this state. In order to
- 5 encourage investment in start-up, growth-oriented, research and
- 6 development businesses in this state and thereby increase
- 7 employment and economic development, there is hereby
- 8 provided a high-growth business investment tax credit.

§11-13U-3. Definitions.

- 1 As used in this article, the following terms have the
- 2 meanings ascribed to them in this section, unless the context in
- 3 which the term is used clearly requires another meaning or a
- 4 specific different definition is provided:

- 5 (1) “Alter ego” means a qualified research and development
- 6 company where one or more of the following criteria are
- 7 satisfied in relation to the eligible taxpayer:

- 8 (A) The ownership of the business is “substantially related”
- 9 to the ownership of the eligible taxpayer. “Substantially
- 10 related” means a five percent or more common ownership
- 11 interest; or

12 (B) The board of directors of the qualified research and
13 development company is controlled by the eligible taxpayer:
14 *Provided*, That an eligible taxpayer is deemed to have control
15 of the board of directors of a qualified research and develop-
16 ment company if it controls a simple majority of the board of
17 directors.

18 (2) "Corporate headquarters" means the place at which the
19 corporation has its commercial domicile and from which the
20 business of the corporation is primarily conducted.

21 (3) "Eligible taxpayer" means a person that has received
22 certification from the economic development authority that a
23 portion of the annual available high growth business investment
24 credit has been allocated to it, that is subject to the tax imposed
25 by either article twenty-three, article twenty-four or article
26 twenty-one of this chapter, and that has made a qualified
27 investment in a qualified research and development credit
28 company.

29 (4) "Person" includes any natural person, corporation,
30 limited liability company, or partnership.

31 (5) "Qualified investment" means an equity financing of a
32 West Virginia qualified strategic research and development
33 company. The investment must be in cash or cash equivalents
34 and may not be an exchange of in-kind property.

35 (6) "Qualified research and development company" for
36 purposes of the high growth business investment tax credit
37 means an entity that has been certified by the state tax commis-
38 sioner as eligible for the West Virginia research and develop-
39 ment tax credit set forth in article thirteen-r, chapter eleven of
40 this code, that has annual gross receipts of less than twenty
41 million dollars and has annual payroll of less than two million
42 five hundred thousand dollars.

43 (7) "Tax credit" means the high-growth business develop-
44 ment tax credit authorized by this article.

45 (8) "Taxable year" means the tax year of the eligible
46 taxpayer.

§11-13U-4. High-growth business investment tax credit.

1 (a) *Credit allowed.* — There shall be allowed to each
2 eligible taxpayer in a qualified research and development
3 company that maintains its corporate headquarters in West
4 Virginia a tax credit for the taxable year in which the invest-
5 ment was made. The total tax credit that may be used by an
6 eligible taxpayer shall be equal to fifty percent of the total value
7 of the qualified investment in the taxable year the qualified
8 investment was actually made.

9 (b) No more than one million dollars of the tax credits
10 allowed under subsection (a) of this section shall be allocated
11 by the economic development authority during any fiscal year.
12 The economic development authority shall allocate the tax
13 credits in the order the applications therefor are received.

14 (c) *Business franchise tax.* — The tax credit is first applied
15 to reduce the taxes imposed upon the eligible taxpayer by
16 article twenty-three of this chapter for the taxable year (deter-
17 mined after application of the credits against tax provided in
18 section seventeen of said article, but before application of any
19 other allowable credits against tax).

20 (d) *Corporation net income taxes.* — After application of
21 subsection (c) of this section, any unused tax credit is next
22 applied to reduce the taxes imposed upon the eligible taxpayer
23 by article twenty-four of this chapter for the taxable year
24 (determined before application of allowable credits against tax).

25 (e) If the eligible taxpayer is a limited liability company, an
26 electing small business corporation (as defined in section 1361
27 of the United States Internal Revenue Code of 1986, as
28 amended), or a partnership, any unused tax credit remaining
29 after application of subsections (c) and (d) of this section is
30 allowed as a tax credit against the taxes imposed by article
31 twenty-four of this chapter on owners of the eligible taxpayer.

32 (1) Electing small business corporations (as defined above
33 in subsection (e)), limited liability companies, and partnerships
34 shall allocate the tax credit allowed by this article among their
35 members in the same manner as profits and losses are allocated
36 for the taxable year.

37 (2) No tax credit is allowed under this article against any
38 withholding tax imposed by, or payable under, article twenty-
39 one of this chapter.

40 (f) *Personal income tax taxes.* — After application of
41 subsections (c), (d) and (e) of this section, any unused tax credit
42 is next applied to reduce the taxes imposed by article twenty-
43 one of this chapter for the taxable year (determined before
44 application of allowable credits against tax) of the eligible
45 taxpayer.

46 (g) If the eligible taxpayer is a limited liability company, an
47 electing small business corporation (as defined in subsection (e)
48 of this section) or a partnership, any unused tax credit remain-
49 ing after application of subsections (c), (d), (e) and (f) of this
50 section is allowed as a tax credit against the taxes imposed by
51 article twenty-one of this chapter on owners of the eligible
52 taxpayer.

53 (1) Electing small business corporations (as defined in
54 subsection (e) of this section), limited liability companies, and
55 partnerships shall allocate the tax credit allowed by this article

56 among their members in the same manner as profits and losses
57 are allocated for the taxable year.

58 (2) No tax credit is allowed under this article against any
59 withholding tax imposed by, or payable under, article twenty-
60 one of this chapter.

61 (h) The total amount of tax credit that may be used in any
62 taxable year by any eligible taxpayer in combination with the
63 owners of the eligible taxpayer under subsections (e) and (g) of
64 this section may not exceed fifty thousand dollars. The total
65 amount of qualified investment that a qualified research and
66 development company may accept from all eligible taxpayers
67 in any taxable year is one million dollars.

68 (i) *Unused credit carry forward.* — If the tax credit allowed
69 under this article in any taxable year exceeds the sum of the
70 taxes enumerated in subsections (c), (d), (e), (f) and (g) of this
71 section for that taxable year, the eligible taxpayer and owners
72 of eligible taxpayers described in subsections (e) and (g) of this
73 section may apply the excess as a tax credit against those taxes,
74 in the order and manner stated in this section, for succeeding
75 taxable years until the earlier of the following:

76 (1) The full amount of the excess tax credit is used; or

77 (2) The expiration of the fourth taxable year after the
78 taxable year in which the investment was made. The tax credit
79 remaining thereafter is forfeited.

80 (j) No tax credit is allowed or may be applied under this
81 article until the taxpayer seeking to claim the tax credit has:

82 (1) Filed with the economic development authority a
83 written application for the tax credit;

84 (2) Filed with the economic development authority the
85 research and development program or project certification

86 issued pursuant to section six, article thirteen-r of this chapter
87 for the qualified research and development company that will
88 benefit from the investment;

89 (3) Filed with the economic development authority the
90 certificate of incorporation for the qualified research and
91 development company that will benefit from the investment;
92 and

93 (4) Received from the economic development authority
94 certification of the amount of tax credit to be allocated to the
95 eligible taxpayer.

§11-13U-5. Restrictions on investment.

1 (a) No qualified investment may be made in a qualified
2 research and development company that is the alter ego of the
3 eligible taxpayer.

4 (b) The eligible taxpayer shall maintain its qualified
5 investment for a minimum period of five years: Provided, That
6 an eligible taxpayer receiving repayment or return of a qualified
7 investment (exclusive of interest, dividends or other earnings on
8 the investment) shall within three calendar months from the
9 date of repayment or return reinvest the repaid or returned
10 amount of the initial investment in another qualified research
11 and development company for a period of time at least equal to
12 the remainder of the initial five-year term.

§11-13U-6. Penalty.

1 An eligible taxpayer that fails to maintain a qualified
2 investment for the required period of time stated in section five
3 of this article shall pay to the state tax commissioner a penalty
4 equal to all of the tax credits asserted under this article by the
5 eligible taxpayer with interest, calculated at the rate set forth in
6 section seventeen-a, article ten of this chapter, from the date the

7 tax credits were certified as allocated to the eligible taxpayer.
8 The tax commissioner shall give notice to the eligible taxpayer
9 of any penalties imposed under this section. The penalty shall
10 be assessed and collected in the same manner as tax. The tax
11 commissioner shall deposit any amounts received under this
12 subsection in the general revenue fund.

§11-13U-7. Disclosure of tax credits.

1 Notwithstanding any provision in this code to the contrary,
2 the tax commissioner shall annually publish in the state register
3 the name and address of every eligible taxpayer and the amount
4 of any tax credit asserted under this article.

§11-13U-8. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year thereafter,
3 the tax commissioner shall submit to the governor, the president
4 of the Senate and the speaker of the House of Delegates a tax
5 credit review and accountability report evaluating the cost
6 effectiveness of the tax credit allowed under this article during
7 the most recent three-year period for which information is
8 available: *Provided*, That the requirement to file the credit
9 review and accountability report terminates the thirtieth day of
10 June, two thousand eleven, unless the termination of entitlement
11 to the tax credit as stated in section ten of this article termi-
12 nates. The criteria to be evaluated includes, but is not limited to,
13 for each year of the three-year period:

14 (1) The numbers of eligible taxpayers claiming the tax
15 credit;

16 (2) The net number, type, and duration of new jobs created
17 by all qualified research and development companies in which
18 taxpayers claiming the credit made investment in and the wages
19 and benefits paid by such companies;

- 20 (3) The cost of the tax credit;
- 21 (4) The cost of the tax credit per new job created; and
- 22 (5) Comparison of employment trends for the industry and
23 for taxpayers within the industry that claim the tax credit.
- 24 (b) Eligible taxpayers claiming the tax credit shall provide
25 any information required by the tax commissioner for the
26 purpose of preparing the report: *Provided*, That such informa-
27 tion shall be subject to the confidentiality and disclosure
28 provisions of sections five-d and five-s, article ten of this
29 chapter.

§11-13U-9. Rules.

1 The state tax department and the economic development
2 authority may promulgate rules in accordance with article three,
3 chapter twenty-nine-a of this code to carry out the policy and
4 purposes of this article, to provide any necessary clarification
5 of the provisions of this article and to efficiently provide for the
6 general administration of this article.

§11-13U-10. Effective date; expiration of credit.

1 The provisions of this article become effective on the first
2 day of July, two thousand five, and apply only to qualified
3 investment made on or after that date: *Provided*, That no
4 entitlement to the tax credit shall result from any qualified
5 investment made after the thirtieth day of June, two thousand
6 eight: *Provided, however*, That unless sooner terminated by
7 law, the high growth business investment tax credit act will
8 terminate on the first day of July, two thousand eight. Taxpay-
9 ers who have gained entitlement to the tax credit pursuant to
10 qualified investment prior to the earlier of the first day of July,
11 two thousand eight, or termination of the tax credit prior to that
12 date shall retain that entitlement and apply the credit in due

13 course pursuant to the requirements and limitations of this
14 article.

CHAPTER 244

**(H. B. 4567 — By Delegates Craig, Morgan, Leach, Kominar,
Amores, H. White and R. M. Thompson)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended; and to further amend and reenact §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code, all relating to the motor carrier road tax and international fuel tax agreement; defining certain motor carrier road tax terms; applying motor carrier road tax to household goods carriers and independent contractors; establishing liability for tax between lessors and lessees; restating method of computing tax; revising time for payment of taxes and filing reports; providing penalty for failure to maintain certain records; authorizing tax commissioner to issue assessment for erroneously calculated tax; requiring identification markers and providing for the revocation and removal thereof; prohibiting trip permits for certain motor carriers; providing civil penalty of revocation when taxpayer acts contrary to law; establishing new crimes and providing criminal penalties therefor; providing for administration of certain credits against motor carrier road tax; eliminating requirement for surety bond conditioned on compliance with law; authorizing disposition of taxes collected under article fourteen-b, chapter eleven of this code;

increasing penalty for failure to file return when no tax due; authorizing interest rate on delinquent motor carrier road tax to be one percent per month; establishing effective date of amendments; defining certain international fuel tax agreement terms; establishing identification marker requirements; reserving authority of state to determine applicability of state law; establishing application of article fourteen-a, chapter eleven of this code; specifying those subject to the provisions of article fourteen-a, chapter eleven of this code; authorizing audits by the tax commissioner; and providing that state law controls in the event of inconsistency with the international fuel tax agreement.

Be it enacted by the Legislature of West Virginia:

That §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code be amended and reenacted, all to read as follows:

Article

14A. Motor Carrier Road Tax.

14B. International Fuel Tax Agreement.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-2. Definitions.

§11-14A-3a. Leased motor carriers, household goods carriers, and independent contractors.

§11-14A-4. Computation of tax.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

§11-14A-6. Payment of tax.

§11-14A-7. Identification markers; fees; civil penalties; criminal penalties.

§11-14A-9. Credits against tax.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

§11-14A-13. Disposition of tax collected.

§11-14A-16. Civil penalty for failure to file required return when no tax due.

§11-14A-27. General procedure and administration.

§11-14A-28. Effective date.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Average fuel consumption factor" means the miles
3 driven by the fleet of motor carriers for each gallon of motor
4 fuel consumed in that activity (miles per gallon), and is
5 calculated by dividing the total distance driven in all jurisdic-
6 tions during the reporting period by the total quantity of motor
7 fuel consumed in the operation of the motor carrier in all
8 jurisdictions during the same reporting period.

9 (2) "Commissioner" or "tax commissioner" means the tax
10 commissioner of the state of West Virginia or his or her duly
11 authorized agent.

12 (3) "Fleet" means, for purposes of administering the tax
13 imposed by this article, one or more motor carriers operated by
14 the same person.

15 (4) "Gallon" means two hundred thirty-one cubic inches of
16 liquid measurement, by volume: *Provided*, That the commis-
17 sioner may by rule prescribe other measurement or definition of
18 gallon.

19 (5) "Gasoline" means any product commonly or commer-
20 cially known as gasoline, regardless of classification, suitable
21 for use as fuel in an internal combustion engine, except special
22 fuel as hereinafter defined: *Provided*, That in the event there is
23 a question as to the proper classification of any product,
24 "gasoline" has the same meaning as in article fourteen-c of this
25 chapter.

26 (6) "Highway" means every way or place of whatever
27 nature open to the use of the public as a matter of right for the

28 purpose of vehicular travel, which is maintained by this state or
29 some taxing subdivision or unit thereof or the federal govern-
30 ment or any of its agencies.

31 (7) "Household goods carrier" means a person that uses a
32 motor carrier for the movement of another's household goods.

33 (8) "Identification marker" means the decal issued by the
34 commissioner for display upon a particular motor carrier and
35 authorizing a person to operate or cause to be operated a motor
36 carrier upon any highway of the state: *Provided*, That an
37 identification marker shall include decals issued under the
38 authority of article fourteen-b of this chapter to persons licensed
39 thereunder: *Provided, however*, That said decals shall comply
40 with the international fuel tax agreement requirements refer-
41 enced under the said article fourteen-b.

42 (9) "Independent contractor" means a person that uses its
43 motor carrier or motor carriers in its own or another person's
44 business for the purpose of transporting passengers or the goods
45 of a third party.

46 (10) "Lease" means any oral or written contract for
47 valuable consideration granting the use of a motor carrier.

48 (11) "Motor carrier" means any vehicle used, designed or
49 maintained for the transportation of persons or property and
50 having two axles and a gross vehicle weight exceeding twenty-
51 six thousand pounds or eleven thousand seven hundred ninety-
52 seven kilograms, or having three or more axles regardless of
53 weight, or is used in combination when the weight of the
54 combination exceeds twenty-six thousand pounds or eleven
55 thousand seven hundred ninety-seven kilograms gross vehicle
56 weight or registered gross vehicle weight. The term motor
57 carrier does not include any type of recreational vehicle.

58 (12) “Motor fuel” means motor fuel as defined in article
59 fourteen-c of this chapter effective the first day of January, two
60 thousand four.

61 (13) “Operation” means any operation of any motor carrier,
62 whether loaded or empty, whether for compensation or not, and
63 whether owned by or leased to the person who operates or
64 causes to be operated any motor carrier.

65 (14) “Person” means and includes any individual, firm,
66 partnership, limited partnership, joint venture, association,
67 company, corporation, organization, syndicate, receiver, trust
68 or any other group or combination acting as a unit, in the plural
69 as well as the singular number, and includes the officers,
70 directors, trustees or members of any firm, partnership, limited
71 partnership, joint venture, association, company, corporation,
72 organization, syndicate, receiver, trust or any other group or
73 combination acting as a unit, in the plural as well as the singular
74 number, unless the intention to give a more limited meaning is
75 disclosed by the context.

76 (15) “Pool operation” means any operation whereby two or
77 more taxpayers combine to operate or cause to be operated a
78 motor carrier or motor carriers upon any highway in this state.

79 (16) “Purchase” means and includes any acquisition of
80 ownership of property or of a security interest for a consider-
81 ation.

82 (17) “Recreational vehicles” means vehicles such as motor
83 homes, pickup trucks with attached campers and buses, when
84 used exclusively for personal pleasure by an individual. In order
85 to qualify as a recreational vehicle, the vehicle shall not be used
86 in connection with any business endeavor.

87 (18) “Road tractor” means every motor carrier designed and
88 used for drawing other vehicles and not constructed as to carry

89 any load thereon either independently or any part of the weight
90 of a vehicle or load so drawn.

91 (19) "Sale" means any transfer, exchange, gift, barter or
92 other disposition of any property or security interest for a
93 consideration.

94 (20) "Special fuel" means any gas or liquid, other than
95 gasoline, used or suitable for use as fuel in an internal combus-
96 tion engine. The term "special fuel" includes products com-
97 monly known as natural or casing-head gasoline but shall not
98 include any petroleum product or chemical compound such as
99 alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not
100 commonly used nor practicably suited for use as fuel in an
101 internal combustion engine: *Provided*, That in the event there
102 is a question as to the proper classification of any gas or liquid,
103 "special fuel" has the same meaning as in article fourteen-c of
104 this chapter.

105 (21) "Tax" includes, within its meaning, interest, additions
106 to tax and penalties, unless the intention to give it a more
107 limited meaning is disclosed by the context.

108 (22) "Taxpayer" means any person liable for any tax,
109 interest, additions to tax or penalty under the provisions of this
110 article.

111 (23) "Tractor truck" means every motor carrier designed
112 and used primarily for drawing other vehicles and not con-
113 structed as to carry a load other than a part of the weight of the
114 vehicle and load so drawn.

115 (24) "Truck" means every motor carrier designed, used or
116 maintained primarily for the transportation of property and
117 having more than two axles.

**§11-14A-3a. Leased motor carriers, household goods carriers,
and independent contractors.**

1 (a) Motor carriers.

2 (1) *Motor carriers leased for less than thirty days.* — A
3 lessor of motor carriers who is regularly engaged in the
4 business of leasing or renting motor carriers with or without
5 drivers to licensees or other lessees for a period of less than
6 thirty days is primarily liable for payment of the taxes and fees
7 imposed by this article unless:

8 (A) The lessor has a written lease contract that designates
9 the lessee as the party liable for reporting and paying the tax
10 imposed by this article; and

11 (B) If the lessee is subject to article fourteen-b of this
12 chapter, the lessor has a copy of the lessee's license issued
13 thereunder and the license is valid for the term of the lease.

14 (2) *Motor carriers leased for thirty days or more.* — A
15 licensee or other lessee who leases or rents a motor carrier with
16 or without drivers for a period of thirty days or more is primar-
17 ily liable for payment of the taxes and fees imposed by this
18 article.

19 (b) Household goods carriers.

20 (1) Each household goods carrier operating only in West
21 Virginia that uses its own motor carriers or that leases a motor
22 carrier or motor carriers, with or without drivers, from inde-
23 dependent contractors or others under intermittent leases for
24 periods of thirty days or more is liable for the tax imposed by
25 this article: *Provided*, That the lessor is liable for the tax
26 imposed by this article when the lease periods are for less than
27 thirty days.

28 (2) Each household goods carrier subject to article fourteen-
29 b of this chapter that uses its own motor carriers or that leases
30 a motor carrier or motor carriers, with or without drivers, from

31 independent contractors or others under intermittent leases is
32 liable for the tax imposed by this article when the motor carrier
33 is operated under the lessee's jurisdictional operating authority:
34 *Provided*, That when the motor carrier is operated under the
35 lessors jurisdictional operating authority, the lessor is liable for
36 the tax imposed by this article.

37 (c) Independent contractors.

38 (1) An independent contractor operating only in West
39 Virginia, when leased to a person also operating only in West
40 Virginia, and the lease is for a period of less than thirty days is
41 liable for the tax imposed by this article: *Provided*, That if the
42 lease is for a period of thirty days or more, the lessee is
43 responsible for the tax imposed by this article.

44 (2) A person subject to article fourteen-b of this chapter that
45 leases an independent contractor for thirty days or more is
46 responsible for the tax imposed by this article unless there is a
47 written contract stating that the lessor is liable for the tax
48 imposed by this article.

49 (d) The provision of subsections (a), (b) and (c) of this
50 section shall govern the primary liability of lessors and licens-
51 ees or other lessees of motor carriers. If a lessor or licensee or
52 other lessee primarily liable fails, in whole or in part, to
53 discharge his or her liability, the failing party and other party to
54 the transaction, whether denominated as a lessor, licensee or
55 other lessee, is jointly and severally responsible and liable for
56 compliance with the provisions of this article and for payment
57 of any tax or fees due under this article: *Provided*, That the
58 aggregate of taxes and fees collected by the commissioner shall
59 not exceed the total amount or amounts of taxes and fees due
60 under this article on account of the transactions in question plus
61 interest, additions to tax, other penalties and costs, if any, that
62 may be imposed: *Provided, however*, That no person, other than

63 the person primarily responsible for the taxes and fees under
64 this article, may be assessed penalties or additions to tax
65 resulting from the failure of the party primarily liable for taxes
66 and fees to pay: *Provided further*, That once the other party to
67 the transaction who is not primarily liable for the taxes under
68 this article but who is made jointly and severally liable under
69 this subsection for taxes is assessed for those taxes and fees and
70 fails to discharge the assessment within the time prescribed
71 therefor, or within thirty days after receiving the assessment if
72 no time is so prescribed, nothing herein shall prohibit the
73 commissioner from imposing additions to tax or penalties upon
74 that person for failing to pay the assessment issued in his or her
75 name.

§11-14A-4. Computation of tax.

1 Computation of the tax is based upon the amount of gallons
2 of motor fuel used in the operation of any motor carrier within
3 this state and shall be calculated by dividing the total number of
4 taxable miles traveled in this state during the reporting period
5 by the average fuel consumption factor calculated for that same
6 reporting period.

§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 last
4 day of January, April, July and October of every calendar year
5 make to the commissioner reports of its operations during the
6 quarter ending the last day of the preceding month as the
7 commissioner requires and other reports from time to time as
8 the commissioner considers necessary. For good cause shown,
9 the commissioner may extend the time for filing the reports for
10 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 motor fuel upon which the tax
16 imposed by article fourteen of this chapter has been paid shall,
17 in lieu of filing the quarterly reports required by subsection (a)
18 of this section, 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) of this
28 section, file an annual report for the fiscal year on or before the
29 last day of July of each calendar year: *Provided, however*, That
30 effective the first day of January, two thousand five, every
31 motor carrier which operates exclusively in this state and during
32 the calendar year consumes in its operation only motor fuel
33 upon which the tax imposed by article fourteen-c of this chapter
34 has been paid shall, in lieu of filing the quarterly reports
35 required by subsection (a) of this section, file before the last
36 day of January an annual report for the calendar year ending on
37 the last day of the immediately preceding December. For good
38 cause shown, the commissioner may extend the time for filing
39 the report for a period of thirty days.

40 (c) Two or more taxpayers regularly engaged in the
41 transportation of passengers on through buses on through
42 tickets in pool operation may, at their option and upon proper
43 notice to the commissioner, make joint reports of their entire
44 operations in this state in lieu of the separate reports required by
45 subsection (a) of this section. The taxes imposed by this article

46 are calculated on the basis of the joint reports as though the
47 taxpayers were a single taxpayer; and the taxpayers making the
48 reports are jointly and severally liable for the taxes shown to be
49 due. The joint reports shall show the total number of miles
50 traveled in this state and the total number of gallons of motor
51 fuel purchased in this state by the reporting taxpayers. Credits
52 to which the taxpayers making a joint return are entitled are not
53 allowed as credits to any other taxpayer; but taxpayers filing
54 joint reports shall permit all taxpayers engaged in this state in
55 pool operations with them to join in filing joint reports.

56 (d)(1) A taxpayer shall keep records necessary to verify the
57 total miles traveled within and without the state of West
58 Virginia, the number of gallons of motor fuel used and pur-
59 chased within and without West Virginia and any other records
60 which the commissioner by regulation may prescribe. A finding
61 by the tax commissioner on the basis of the best information
62 available that the taxpayer has failed to maintain records
63 prescribed by the tax commissioner, or that the taxpayer refused
64 to make available upon written request the records prescribed
65 by the tax commissioner, is sufficient cause for the commis-
66 sioner of motor vehicles to revoke the identification markers
67 issued to the taxpayer: *Provided*, That upon request of the
68 taxpayer, a hearing shall be provided, under the authority of
69 articles ten and ten-a of this chapter prior to the revocation
70 becoming final.

71 (2) If the tax commissioner determines that a taxpayer used
72 an incorrect average fuel consumption factor resulting in the
73 filing of incorrect returns, the tax commissioner shall determine
74 the correct average fuel consumption factor, calculate the
75 correct amount of tax due under this article, and under the
76 authority of article ten of this chapter issue an assessment for
77 the amount of tax, interest, penalties and additions due and
78 owing: *Provided*, That absent adequate information to the
79 contrary, the average fuel consumption factor is four miles per
80 gallon (one and seven tenths kilometers per liter).

81 (e) In addition to the tax commissioner's powers set forth
82 in sections five-a and five-b, article ten of this chapter, the
83 commissioner may inspect or examine the records, books,
84 papers, storage tanks, meters and any equipment records or
85 records of highway miles traveled within and without West
86 Virginia and the records of any other person to verify the truth
87 and accuracy of any statement or report to ascertain whether the
88 tax imposed by this article has been properly paid.

89 (f) In addition to the tax commissioner's powers set forth in
90 sections five-a and five-b, article ten of this chapter, and as a
91 further means of obtaining the records, books and papers of a
92 taxpayer or any other person and ascertaining the amount of
93 taxes and reports due under this article, the commissioner has
94 the power to examine witnesses under oath; and if any witness
95 shall fail or refuse at the request of the commissioner to grant
96 access to the books, records and papers, the commissioner shall
97 certify the facts and names to the circuit court of the county
98 having jurisdiction of the party and the court shall thereupon
99 issue a subpoena duces tecum to the party to appear before the
100 commissioner, at a place designated within the jurisdiction of
101 the court, on a day fixed.

§11-14A-6. Payment of tax.

1 The tax hereby imposed by this article shall be paid by each
2 taxpayer annually to the tax commissioner on or before the last
3 day of January of each calendar year, and calculated upon the
4 amount of motor fuel used as fuel in the operation of each
5 motor carrier operated or caused to be operated by the taxpayer
6 during the year ending with the last day of the preceding month:
7 *Provided*, That each person subject to the provisions of article
8 fourteen-b of this chapter shall pay quarterly to the tax commis-
9 sioner on or before the last day of January, April, July and
10 October of each calendar year, the correct amount of motor fuel
11 use taxes imposed by each state on motor carriers using the

12 highways of those states during the quarter ending with the last
13 day of the preceding month, the taxes to be calculated in
14 accordance with the instructions provided by those respective
15 states.

§11-14A-7. Identification markers; fees; civil penalties; criminal penalties.

1 (a) *Registration of motor carriers.* — No person may
2 operate, or cause to be operated, in this state any motor carrier
3 subject to this article without first securing from the commis-
4 sioner of motor vehicles an identification marker for each motor
5 carrier, except as provided in subsection (b) or (c) of this
6 section. A person who operates, or causes to be operated, in this
7 state more than one motor carrier may obtain an identification
8 marker for each motor carrier: *Provided*, That such person may
9 also obtain an additional number of identification markers equal
10 to twenty-five percent of the total number of motor carriers in
11 the person's fleet of motor carriers that require identification
12 markers.

13 (1) Each identification marker for a particular motor carrier
14 shall bear a number. This identification marker shall be
15 displayed on the driver's side of the motor carrier as required
16 by the commissioner of motor vehicles: *Provided*, That the
17 identification markers issued under the authority of article
18 fourteen-b of this chapter shall be displayed on the exterior
19 portion of both sides of the motor carrier.

20 (2) The tax commissioner, after issuance of any identifica-
21 tion marker to a motor carrier, shall cause an internal cross-
22 check to be made in his or her office as to any state tax which
23 he or she administers, to aid in determination of any noncompli-
24 ance in respect to failure to file returns or payment of tax
25 liabilities. If the tax commissioner determines the motor carrier
26 is not in compliance with the requirement to file any tax return

27 or pay any tax liability required by any tax governed by article
28 ten of this chapter, the identification markers issued to that
29 motor carrier by the commissioner of motor vehicles shall be
30 revoked until all the returns are filed and payments made.

31 (3) The identification markers provided for in this section
32 are valid for a period of one year, ending the thirty-first day of
33 December each year. A fee of five dollars shall be paid to the
34 commissioner of motor vehicles for issuing each identification
35 marker which is reasonably related to the commissioner of
36 motor vehicles' costs of issuing each identification marker.

37 (4) All tax or returns due under this article shall be paid or
38 returns filed before the issuance of a new identification marker.
39 If the tax commissioner determines that a person subject to the
40 requirements of this article has failed to file any return or pay
41 the taxes imposed by this article, the commissioner of motor
42 vehicles shall revoke each identification marker previously
43 issued to that person and shall refuse to issue a new identifica-
44 tion marker to that person until all returns are filed and all taxes
45 imposed by this article paid.

46 (5) Each identification marker shall be removed from a
47 motor carrier:

48 (A) Prior to the motor carrier being sold or traded in for a
49 different motor carrier;

50 (B) When a motor carrier registered under subsection (a) of
51 this section ceases doing business in this state, or requests
52 cancellation of the account authorized under article fourteen-b
53 of this chapter; or

54 (C) When the identification marker issued under subsection
55 (a) of this section is revoked.

56 (6) Each identification marker so removed and any addi-
57 tional identification markers issued under the authority of

58 subsection (a) of this section shall within thirty days of removal
59 be returned to the commissioner of motor vehicles.

60 (b) *Trip permit.* — A motor carrier that does not have a
61 motor carrier identification marker issued under subsection (a)
62 of this section may obtain a trip permit which authorizes the
63 motor carrier specified therein to be operated in this state
64 without an identification marker for a period of not more than
65 ten consecutive days beginning and ending on the dates
66 specified on the face of the permit: *Provided*, That if a motor
67 carrier's identification marker, whether issued by this state or
68 another jurisdiction, has been revoked, the motor carrier may
69 not be issued a trip permit. The fee for this permit is twenty-
70 four dollars.

71 (1) Fees for trip permits shall be in lieu of the tax otherwise
72 due under this article on account of the vehicles specified in the
73 permit operating in this state during the period of the permit,
74 and no reports of mileage shall be required with respect to that
75 vehicle.

76 (2) A trip permit shall be carried in the cab of the motor
77 vehicle for which it was issued at all times while it is in this
78 state.

79 (3) A trip permit may be obtained from the commissioner
80 of motor vehicles or from wire services authorized by the
81 commissioner to issue trip permits. The cost of the telegram or
82 similar transmissions is the responsibility of the motor carrier
83 requesting the trip permit.

84 (c) *Transportation permit.* — The commissioner of motor
85 vehicles is hereby authorized to grant, in his or her discretion,
86 a special permit to a new motor vehicle dealer for use on new
87 motor vehicles driven under their own power from the factory
88 or distributing place of a manufacturer, or other dealer, to a

89 place of business of the new vehicle dealer, or from the place of
90 business of a new vehicle dealer to a place of business of
91 another dealer, or when delivered from the place of business of
92 the new vehicle dealer to the place of business of a purchaser to
93 whom title passes on delivery. A transporter's permit must be
94 carried in the cab of the motor vehicle being transported. A
95 person to whom a transporter's permit is issued shall file the
96 reports required by section five of this article and pay any tax
97 due. The fee for a transporter's permit is fifteen dollars and a
98 transporter's permit is valid for the fiscal year for which it is
99 issued unless surrendered or revoked by the tax commissioner.

100 (d) *Civil penalties.* — Upon a finding by the tax commis-
101 sioner based upon the best evidence available that a taxpayer,
102 whether the owner, licensee or lessee, or the employee, servant
103 or agent thereof, has performed any of the following acts, the
104 commissioner of motor vehicles shall revoke and refuse to
105 renew the taxpayer's identification marker or trip permit until
106 the cause for the revocation is corrected:

107 (1) Maintains inaccurate or incomplete records;

108 (2) Fails to respond to written requests for information;

109 (3) Fails to make records available upon request;

110 (4) Falsified application for identification markers or trip
111 permit;

112 (5) Has a prior revocation of identification markers in
113 another jurisdiction without reinstatement in that jurisdiction;

114 (6) Is delinquent in payment of taxes, but only after the
115 assessment of those taxes is finalized;

116 (7) Transfers or sells an identification marker or trip permit;

117 or

118 (8) Receives or purchases from any person not the commis-
119 sioner of motor vehicles an identification marker or trip permit.

120 Upon request of the taxpayer, a hearing shall be provided,
121 under the authority of articles ten and ten-a of this chapter prior
122 to the revocation becoming final.

123 (e) *Criminal penalties.* –

124 (1) Any person, whether the person be the owner, licensee
125 or lessee, or the employee, servant or agent thereof, who
126 operates or causes to be operated in this state, a motor carrier in
127 violation of this section, is guilty of a misdemeanor and, upon
128 conviction thereof, shall be fined not less than fifty nor more
129 than five hundred dollars; and each day the violation continues
130 or reoccurs constitutes a separate offense.

131 (2) Any person, whether the person be the owner, licensee
132 or lessee, or the employee, servant or agent thereof, who
133 transfers or sells an identification marker or trip permit is guilty
134 of a felony and, upon conviction thereof, shall be fined not less
135 than five thousand dollars nor more than ten thousand dollars.

136 (3) Any person, whether the person be the owner, licensee
137 or lessee, or the employee, servant or agent thereof, who
138 receives or purchases from any person not the commissioner of
139 motor vehicles an identification marker or trip permit is guilty
140 of a felony and, upon conviction thereof, shall be fined not less
141 than five thousand dollars nor more than ten thousand dollars.

142 (f) Notwithstanding the provisions of section five-d, article
143 ten of this chapter, the tax commissioner shall deliver to or
144 receive from the commissioner of the division of motor vehicles
145 and the commissioner of the public service commission, the
146 information contained in the application filed by a motor carrier
147 for a trip permit under this section, when the information is
148 used to administer a combined trip permit registration program

149 for motor carriers operating in this state, which program may be
150 administered by one agency or any combination of the three
151 agencies, as embodied in a written agreement executed by the
152 head of each agency participating in the program. The agencies
153 have authority to enter into an agreement notwithstanding any
154 provision of this code to the contrary; and the fee for a com-
155 bined trip permit is twenty-four dollars, which shall be in lieu
156 of the fee set forth in subsection (b) of this section.

§11-14A-9. Credits against tax.

1 Every taxpayer subject to the road tax imposed in this
2 article is entitled to a credit on the tax equivalent to the amount
3 of tax per gallon of gasoline or special fuel imposed by article
4 fourteen of this chapter on all gasoline or special fuel purchased
5 by the taxpayer for fuel in each motor carrier which it operates
6 or causes to be operated within this state, and upon which
7 gasoline or special fuel the tax imposed by the laws of this state
8 has been paid: *Provided*, That the credit is not allowed for any
9 gasoline or special fuel taxes for which any taxpayer has
10 applied or received a refund of gasoline or special fuel tax
11 under article fourteen of this chapter: *Provided, however*, That
12 effective the first day of January, two thousand four, every
13 taxpayer subject to said road tax is entitled to a credit against
14 the tax equivalent to the amount of the flat rate of tax per gallon
15 of motor fuel imposed by article fourteen-c of this chapter on
16 all motor fuel purchased by the taxpayer and used as motor fuel
17 in motor carriers which it operates or causes to be operated
18 within this state, and upon which the motor fuel tax imposed by
19 the laws of this state has been paid: *Provided further*, That no
20 credit is allowed for any motor fuel taxes for which the tax-
21 payer has applied or received a refund of motor fuel tax under
22 article fourteen-c of this chapter. Evidence of the payment of
23 the tax in the form as required by the commissioner shall be
24 furnished by the taxpayer claiming the credit allowed in this
25 section. When the amount of the credit provided for in this

26 section exceeds the amount of the tax for which the taxpayer is
27 liable in the same quarter, the excess, if less than twenty
28 dollars, shall be used as a credit on the tax for which the
29 taxpayer would be otherwise liable for any of the eight succeed-
30 ing quarters: *And provided further*, That if the taxpayer has
31 ceased to do business in this state under either this article or
32 article fourteen-b of this chapter, the amount of the credit shall
33 be refunded in accordance with section eleven of this article:
34 *And provided further*, That if the amount of the credit provided
35 in this section exceeds by twenty dollars or more the amount of
36 the tax for which the taxpayer is liable in the same quarter, the
37 entire amount, upon the written request by the taxpayer, shall
38 be allowed as a credit on the tax for which the taxpayer would
39 otherwise be liable for any of the succeeding eight quarters:
40 *And provided further*, That any credit not used within the eight
41 succeeding quarters after the credit is established shall be
42 forfeited.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

1 The commissioner is hereby authorized to refund from the
2 funds collected under the provisions of this article and article
3 fourteen of this chapter, the amount of the credit accrued for
4 gallons of motor fuel purchased in this state but consumed
5 outside of this state, if the taxpayer by duly filed claim requests
6 the commissioner to issue a refund and if the commissioner is
7 satisfied that the taxpayer is entitled to the refund and that the
8 taxpayer has not applied for a refund of the tax imposed by
9 article fourteen of this chapter: *Provided*, That effective the first
10 day of January, two thousand four, the refunds authorized in
11 this section shall be made from the funds collected under the
12 provisions of this article and from the flat rate of tax imposed
13 under section five, article fourteen-c of this chapter: *Provided*,
14 *however*, That unless the taxpayer has ceased doing business in
15 this state under either this article or article fourteen-b of this

16 chapter, any amount less than twenty dollars may not be
17 refunded but shall be used as a credit in accordance with the
18 provisions of section nine of this article: *Provided further*, That
19 the commissioner shall not approve a claim for refund when the
20 claim for a refund is filed after thirteen months from the close
21 of the quarter in which the tax was paid or the credit, as
22 provided in section nine of this article, was allowed: *And*
23 *provided further*, That effective the first day of April, two
24 thousand four, the commissioner shall not approve a claim for
25 refund when the claim for refund is filed after eight quarters
26 from the close of the quarter in which the tax was paid or the
27 credit, as provided in section nine of this article, was allowed:
28 *And provided further*, That any refund or credit due a taxpayer
29 subject to article fourteen-b of this chapter shall be withheld if
30 the taxpayer is delinquent on any fuel taxes due any other state:
31 *And provided further*, That the credit or refund shall in no case
32 be allowed to reduce the amount of tax to be paid by a taxpayer
33 below the amount due as tax on gasoline or special fuel used as
34 fuel in this state as provided by article fourteen of this chapter:
35 *And provided further*, That effective the first day of January,
36 two thousand four, the credit or refund shall in no case be
37 allowed to reduce the amount of tax to be paid by a taxpayer
38 below the amount due as tax on motor fuel used in this state as
39 provided by article fourteen-c of this chapter. The right to
40 receive any refund under the provisions of this article is not
41 assignable and any attempt at assignment thereof is void and of
42 no effect. The claim for refund or credit shall also be subject to
43 the provisions of section fourteen, article ten of this chapter.

§11-14A-13. Disposition of tax collected.

1 All tax collected under the provisions of this article shall be
2 paid into the state treasury and shall be used only for the
3 purpose of construction, reconstruction, maintenance and repair
4 of highways, and payment of the interest and sinking fund
5 obligations on state bonds issued for highway purposes:

6 *Provided*, That the taxes collected under the provisions of this
7 article but for the purposes of article fourteen-b of this chapter
8 shall be disposed of in accordance with the provisions of
9 section eleven, article fourteen-b of this chapter.

10 Unless necessary for the bond requirements, five four-
11 tenths of the tax collected under the provisions of this article
12 shall be used for feeder and state local service highway pur-
13 poses.

**§11-14A-16. Civil penalty for failure to file required return when
no tax due.**

1 In the case of any failure to make or file a return when no
2 tax is due, as required by this article, on the date prescribed
3 therefor, unless it can be shown that the failure is due to
4 reasonable cause and not due to willful neglect, there shall be
5 collected a civil penalty of fifty dollars or ten percent of the net
6 tax due, whichever is greater, for each month of the failure or
7 fraction thereof. The civil penalty prescribed under this section
8 shall be assessed, collected and paid in the same manner as the
9 motor carrier road tax.

§11-14A-27. General procedure and administration.

1 Each and every provision of the “West Virginia Tax
2 Procedure and Administration Act” set forth in article ten of
3 this chapter shall apply to the motor carrier road tax imposed by
4 this article with like effect as if said act were applicable only to
5 the motor carrier road tax imposed by this article and were set
6 forth with respect thereto *in extenso* in this article: *Provided*,
7 That for purposes of the tax imposed by this article and
8 notwithstanding sections seventeen and seventeen-a, article ten
9 of this chapter, the annual rate of interest in effect at the time of
10 assessment or when the payment of delinquent tax is made shall
11 be one percent per month, calculated for each month or part

12 thereof from the date prescribed for payment to the date the
13 payment is made.

§11-14A-28. Effective date.

1 The provisions of this article take effect on the first day of
2 April, one thousand nine hundred eighty-nine: *Provided*, That
3 the amendments to this article made during the two thousand
4 four legislative session shall be effective the first day of July,
5 two thousand four.

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-1. Purpose.

§11-14B-2. Definitions.

§11-14B-3. Registration of motor carriers.

§11-14B-5. Scope of agreement.

§11-14B-6. Effect of international fuel tax agreement on the administration or
application of motor fuel use taxes imposed by this state.

§11-14B-10. Audits.

§11-14B-14. General procedure and administration.

§11-14B-1. Purpose.

1 This article is enacted to conform laws of this state relating
2 to registration of motor carriers and reporting and payment of
3 motor fuel use taxes with requirements of the “Intermodal
4 Surface Transportation and Efficiency Act of 1991”, Public
5 Law 102-240. More specifically:

6 (1) Section 4005 of said act requires establishment of a
7 single state registration system for motor carriers. Under this
8 system, a motor carrier is required to register annually only
9 with one state. Single state registration is considered to satisfy
10 the registration requirements of all other states.

11 (2) Section 4008 of said act mandates state participation in
12 the international registration plan and adoption of the interna-

13 tional fuel tax agreement by providing that after the thirtieth
14 day of September, one thousand nine hundred ninety-six:

15 (A) No state, other than a state participating in the interna-
16 tional registration plan, may establish, maintain or enforce any
17 motor carrier registration law, regulation or agreement which
18 limits the operation of any motor carrier within its borders
19 which is not registered under the laws of the state if the motor
20 carrier is registered under the laws of any other state participat-
21 ing in the international registration plan;

22 (B) No state may establish, maintain or enforce any law or
23 regulation which has fuel use tax reporting requirements
24 including tax reporting forms which are not in conformity with
25 the international fuel tax agreement; and

26 (C) No state may establish, maintain or enforce any law or
27 regulation which provides for the payment of a fuel use tax
28 unless the law or regulation is in conformity with the interna-
29 tional fuel tax agreement with respect to collection of tax by a
30 single base jurisdiction and proportional sharing of fuel use
31 taxes charged among the states in which a motor carrier is
32 operated.

§11-14B-2. Definitions.

1 For purposes of this article:

2 (a) "Base jurisdiction" means the member jurisdiction
3 where a motor carrier is based for vehicle registration purposes
4 and:

5 (1) Where the operational control and operational records
6 of the licensee's motor carriers are maintained or can be made
7 available; and

8 (2) Where some travel is accrued by motor carriers within
9 the fleet.

10 (b) “Fuel use tax” means a tax imposed on or measured by
11 the consumption of fuel in a motor carrier.

12 (c) “International fuel tax agreement” means the interna-
13 tional agreement for the collection and distribution of fuel use
14 taxes paid by motor carriers, developed under the auspices of
15 the national governors’ association: *Provided*, That this term
16 includes amendments to the international fuel tax agreement.

17 (d) “International registration plan” means the interstate
18 agreement for the apportionment of vehicle registration fees
19 paid by motor carriers developed by the American association
20 of motor vehicle administrators.

21 (e) “Licensee” means a person who holds an uncanceled
22 license issued by a base jurisdiction in accordance with the
23 international fuel tax agreement.

24 (f) “Motor carrier”:

25 (1) As used with respect to the international registration
26 plan, has the meaning the term “apportionable vehicle” has
27 under that plan; and

28 (2) As used with respect to the international fuel tax
29 agreement, has the meaning the term “qualified motor vehicle”
30 has under that agreement.

31 (g) “Motor fuel” means motor fuel as defined in article
32 fourteen-c of this chapter.

33 (h) “Motor fuel use taxes imposed by this state” means the
34 aggregate amount of taxes, expressed in cents per gallon,
35 imposed by this state, under articles fourteen-a and fifteen-a of

36 this chapter, on motor fuel consumed in this state by a motor
37 carrier.

38 (i) "State" means any of the forty-eight contiguous states
39 and the District of Columbia, and any other jurisdiction which
40 imposes a motor fuel use tax and is a member of the interna-
41 tional fuel tax agreement.

§11-14B-3. Registration of motor carriers.

1 (a) To facilitate adoption of the single point registration
2 system in this state, the powers, duties and responsibilities of
3 the tax commissioner under section seven, article fourteen-a of
4 this chapter, are transferred to the commissioner of the division
5 of motor vehicles effective with the registration year that begins
6 the first day of July, one thousand nine hundred ninety-five:
7 *Provided*, That no identification marker or trip permit is
8 required under section seven, article fourteen-a of this chapter
9 of a motor carrier based in another state which is a member of
10 the international fuel tax agreement.

11 (b) Beginning with the registration year specified in
12 subsection (a) of this section, the commissioner of motor
13 vehicles shall furnish the tax commissioner with motor carrier
14 registration information and information pertaining to the trip
15 permit registration program for use by the tax commissioner in
16 collecting motor fuel taxes.

17 (c) Also beginning with the registration year specified in
18 subsection (a) of this section, the tax commissioner shall
19 furnish the commissioner of motor vehicles with the taxpayer
20 identity information for any motor carrier which fails to file
21 required returns or report for, or to pay, the motor fuel use taxes
22 imposed by this state. This information may give the commis-
23 sioner of motor vehicles sufficient cause to revoke or refuse to
24 renew the identification marker previously issued under section
25 seven, article fourteen-a of this chapter.

26 (d) Information exchanged pursuant to this section shall be
27 used solely for tax administration and motor carrier registration
28 purposes and treated as confidential information for all other
29 purposes as provided in article ten of this chapter.

§11-14B-5. Scope of agreement.

- 1 An international fuel tax agreement may provide for:
- 2 (a) Determining the base jurisdiction of motor carriers;
- 3 (b) Making and retaining of records by motor carriers;
- 4 (c) Auditing the books and records of motor carriers and
5 auditing procedures;
- 6 (d) Exchanging information for purposes of motor fuel use
7 tax administration and collection;
- 8 (e) Determining persons eligible for a motor carrier tax
9 license or registration;
- 10 (f) Defining qualified motor carriers;
- 11 (g) Determining if or when bonding is required;
- 12 (h) Specify reporting requirements and periods;
- 13 (i) Specifying uniform penalty and interest rates for late
14 reporting and payment of motor fuel use taxes;
- 15 (j) Determining methods for collecting and forwarding of
16 motor fuel use taxes and penalties to another jurisdiction; and
- 17 (k) Any other provision which the parties to the agreement
18 believe will facilitate administration of the agreement and
19 collection of motor fuel use taxes from interstate motor carriers.

§11-14B-6. Effect of international fuel tax agreement on the administration or application of motor fuel use taxes imposed by this state.

1 (a) Even though the state of West Virginia is a member of
2 the international fuel tax agreement, the state of West Virginia
3 retains substantive authority to determine when the motor fuel
4 use taxes imposed by this state apply, the applicable rate of tax,
5 the applicable interest rate, and any other substantive tax issues
6 related to the administration or application of those taxes.

7 (b) The provisions of article fourteen-a of this chapter shall
8 apply to every licensee that is subject to the provisions of this
9 article: *Provided, That, The amount of international fuel tax*
10 *agreement taxes reported as due and owing by a motor carrier*
11 *based in this state shall for purposes of articles nine and ten of*
12 *this chapter be treated as taxes due and owing to the state of*
13 *West Virginia: and,*

14 (c) Every motor carrier that is not a licensee, every motor
15 carrier based in another state which is not a member of the
16 international fuel tax agreement and every West Virginia
17 intrastate motor carrier shall continue to be subject to the
18 provisions of article fourteen-a of this chapter, and any subse-
19 quent amendments thereto.

§11-14B-10. Audits.

1 (a) The international fuel tax agreement provides that each
2 base jurisdiction audit the records of motor carriers based in
3 that jurisdiction to determine if the motor fuel taxes due all
4 other base jurisdictions are properly reported and paid. When
5 a base jurisdiction performs a motor fuel use tax audit on an
6 interstate motor carrier based in that jurisdiction, it shall
7 forward the findings of the audit to each base jurisdiction in
8 which the interstate motor carrier has taxable use of motor
9 fuels.

10 (b) The tax commissioner is authorized to participate in
11 auditing motor carriers in other base jurisdictions to determine
12 if the motor fuel taxes due this state are properly reported and
13 paid: *Provided*, That any other base jurisdiction may participate
14 with the tax commissioner in auditing motor carriers based in
15 this state to determine if motor fuel taxes due that base jurisdic-
16 tion are properly reported and paid.

17 (c) No international fuel tax agreement entered into under
18 this article may preclude the tax commissioner from auditing
19 the records of any person covered by the provisions of this
20 article.

§11-14B-14. General procedure and administration.

1 (a) All of the provisions of the “West Virginia Tax Proce-
2 dure and Administration Act” set forth in article ten of this
3 chapter, including amendments thereto, apply to motor fuel
4 taxes collected under an international fuel tax agreement.

5 (b) In the event of any inconsistency between the provisions
6 of article ten of this chapter and the terms of the international
7 fuel tax agreement, the terms of said article ten control.

CHAPTER 245

(Com. Sub. for S. B. 420 — By Senator Bowman)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-14C-6, §11-14C-7, §11-14C-9,
§11-14C-13, §11-14C-20, §11-14C-22, §11-14C-24, §11-14C-25,
§11-14C-26, §11-14C-29, §11-14C-30, §11-14C-31, §11-14C-34,

§11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, all relating generally to motor fuels excise tax; requiring tax on unaccounted-for motor fuel losses be calculated using invoiced gallons; changing aircraft fuel to aviation fuel to be consistent with definitions; repealing five hundred gallon-minimum purchase by government entities to qualify for exemption; clarifying bond requirements; specifying election by supplier for motor fuel exported to another state; requiring that all reports and returns, except those filed by terminal operators, specify invoiced gallons; requiring all reports and returns filed by terminal operators specify gross and net gallons; requiring use of machine-generated shipping documents and authorizing commissioner to allow use of manually prepared shipping documents; requiring use of diversion procedure if destination state changes prior to transport leaving rack; correcting reference to section requiring return information; authorizing refunds for motor fuel used for agricultural purposes and clarifying time for claiming refunds; correcting reference authorizing inspections; and establishing a revolving fund for general administration of taxes.

Be it enacted by the Legislature of West Virginia:

That §11-14C-6, §11-14C-7, §11-14C-9, §11-14C-13, §11-14C-20, §11-14C-22, §11-14C-24, §11-14C-25, §11-14C-26, §11-14C-29, §11-14C-30, §11-14C-31, §11-14C-34, §11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUELS EXCISE TAX.

- §11-14C-6. Point of imposition of motor fuels tax.
- §11-14C-7. Tax on unaccounted-for motor fuel losses; liability.
- §11-14C-9. Exemptions from tax; claiming refunds of tax.
- §11-14C-13. Bond requirements.
- §11-14C-20. Remittance of tax to supplier or permissive supplier.
- §11-14C-22. Information required on return filed by supplier or permissive supplier.
- §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-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-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.

§11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.

§11-14C-47. Disposition of tax collected.

§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
13 state;

14 (2) From the bulk transfer/terminal system outside this
15 state for delivery to a location in this state as represented on the
16 shipping papers: *Provided*, That the supplier imports the motor
17 fuel for the account of the supplier; and

18 (3) Upon sale or transfer in a terminal or refinery in this
19 state to any person not holding a supplier's license and payable
20 by the person selling or transferring the motor fuel.

21 (c) The tax levied pursuant to section five of this article
22 upon motor fuel removed from a refinery or terminal in this

23 state shall be collected by the supplier, as shown in the records
24 of the terminal operator, acting as trustee, from the person
25 removing the motor fuel from the facility.

26 (d) The tax levied pursuant to section five of this article
27 shall not apply to motor fuel imported into this state in the
28 motor fuel supply tank or tanks of a motor vehicle: *Provided,*
29 That the person owning or operating as a motor carrier is not
30 relieved of any taxes imposed by article fourteen-a of this
31 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
36 which the tax is payable is the difference, if any, between the
37 number of invoiced gallons of blended motor fuel made and
38 the number of invoiced gallons of previously taxed motor fuel
39 used to make the blended 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
53 from 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 the
58 terminal operator provides any person with any bill of lading,
59 shipping paper or similar document indicating that the motor
60 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
2 specified by section five of this article on taxable unaccounted-
3 for motor fuel losses at a terminal in this state. "Taxable
4 unaccounted-for motor fuel losses" means the number of
5 gallons of unaccounted-for motor fuel losses that exceed one
6 half of one percent of the number of invoiced gallons removed
7 from the terminal during the year by a bulk transfer or at the
8 terminal rack. "Unaccounted-for motor fuel losses" means the
9 difference between: (1) The amount of motor fuel in inventory
10 at the terminal at the beginning of the year plus the amount of
11 motor 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
15 which have been approved by the commissioner or motor fuel
16 losses constituting part of a transmix shall not constitute
17 unaccounted-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
26 return as having been removed from the terminal, was an
27 accounted-for loss or constitutes part of a transmix.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions for flat rate.* — Sales of motor fuel
2 to the following, or as otherwise stated in this subsection, are
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
6 state or nation: *Provided*, That the supplier collects and remits
7 to the destination state or nation the appropriate amount of tax
8 due on the motor fuel transported to that state or nation:
9 *Provided, however*, That this exemption shall not apply to any
10 motor fuel which is transported and delivered outside this state
11 in the motor fuel supply tank of a highway vehicle;

12 (2) Sales of aviation 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
30 this 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 this subdivision and subdivisions (1) through (5),
49 inclusive, of this subsection shall be used in vehicles or
50 equipment owned and operated by the respective government
51 entity or government agency or authority;

52 (7) All invoiced gallons of motor fuel purchased by a
53 licensed exporter and subsequently exported from this state to
54 any other state or nation: *Provided*, That the exporter has paid
55 the applicable motor fuel tax to the destination state or nation
56 prior to claiming this refund or the exporter has reported to the
57 destination state or nation that the motor fuel was sold in a
58 transaction not subject to tax in that state or nation: *Provided*,
59 *however*, That a refund shall not be granted on any motor fuel
60 which is transported and delivered outside this state in the
61 motor fuel supply tank of a highway vehicle;

62 (8) All gallons of motor fuel used and consumed in
63 stationary off-highway turbine engines;

64 (9) All gallons of special fuel used for heating any public
65 or private dwelling, building or other premises;

66 (10) All gallons of special fuel used for boilers;

67 (11) All gallons of motor fuel used as a dry cleaning
68 solvent or commercial or industrial solvent;

69 (12) All gallons of motor fuel used as lubricants, ingredi-
70 ents or components of any manufactured product or compound;

71 (13) All gallons of motor fuel sold for use or used as a
72 motor fuel for commercial watercraft;

73 (14) All gallons of special fuel sold for use or consumed in
74 railroad diesel locomotives;

75 (15) All gallons of motor fuel purchased in quantities of
76 twenty-five gallons or more for use as a motor fuel for internal
77 combustion engines not operated upon highways of this state;

78 (16) All gallons of motor fuel purchased in quantities of
79 twenty-five gallons or more and used to power a power take-

80 off unit on a motor vehicle. When a motor vehicle with
81 auxiliary equipment uses motor fuel and there is no auxiliary
82 motor for the equipment or separate tank for a motor, the
83 person claiming the refund may present to the tax commis-
84 sioner a statement of his or her claim and is allowed a refund
85 for motor fuel used in operating a power take-off unit on a
86 cement mixer truck or garbage truck equal to twenty-five
87 percent of the tax levied by this article paid on all motor fuel
88 used in such a truck;

89 (17) Motor fuel used by any person regularly operating any
90 vehicle under a certificate of public convenience and necessity
91 or under a contract carrier permit for transportation of persons
92 when purchased in an amount of twenty-five gallons or more:
93 *Provided*, That the amount refunded is equal to six cents per
94 gallon: *Provided, however*, That the gallons of motor fuel shall
95 have been consumed in the operation of urban and suburban
96 bus lines and the majority of passengers use the bus for
97 traveling a distance not exceeding forty miles, measured one
98 way, on the same day between their places of abode and their
99 places of work, shopping areas or schools; and

100 (18) All gallons of motor fuel that are not otherwise
101 exempt under subdivisions (1) through (6), inclusive, of this
102 subsection and that are purchased and used by any bona fide
103 volunteer fire department, nonprofit ambulance service or
104 emergency rescue service that has been certified by the
105 municipality or county wherein the bona fide volunteer fire
106 department, nonprofit ambulance service or emergency rescue
107 service is located.

108 (d) *Refundable exemptions for variable rate.* — Any of the
109 following persons may claim an exemption to the variable rate
110 of the tax levied by section five of this article on the purchase
111 and use of motor fuel by first paying the tax levied by this
112 article and then applying to the tax commissioner for a refund.

- 113 (1) The United States or any agency thereof;
- 114 (2) This state and its institutions;
- 115 (3) Any county government or unit or agency thereof;
- 116 (4) Any municipal government or any agency thereof;
- 117 (5) Any county boards of education;
- 118 (6) Any urban mass transportation authority created
119 pursuant to the provisions of article twenty-seven, chapter eight
120 of this code;
- 121 (7) Any municipal, county, state or federal civil defense or
122 emergency service program pursuant to a government contract
123 for use in conjunction therewith, or to any person on whom is
124 imposed a requirement to maintain an inventory of motor fuel
125 for the purpose of the program: *Provided*, That fueling facili-
126 ties used for these purposes are not capable of fueling motor
127 vehicles and the person in charge of the program has in his or
128 her possession a letter of authority from the tax commissioner
129 certifying his or her right to the exemption;
- 130 (8) Any bona fide volunteer fire department, nonprofit
131 ambulance service or emergency rescue service that has been
132 certified by the municipality or county wherein the bona fide
133 volunteer fire department, nonprofit ambulance service or
134 emergency rescue service is located; or
- 135 (9) All invoiced gallons of motor fuel purchased by a
136 licensed exporter and subsequently exported from this state to
137 any other state or nation: *Provided*, That the exporter has paid
138 the applicable motor fuel tax to the destination state or nation
139 prior to claiming this refund: *Provided, however*, That a refund
140 shall not be granted on any motor fuel which is transported and

141 delivered outside this state in the motor fuel supply tank of a
142 highway vehicle.

143 (e) The provision in subdivision (9), subsection (a), section
144 nine, article fifteen of this chapter that exempts as a sale for
145 resale those sales of gasoline and special fuel by a distributor
146 or importer to another distributor shall not apply to sales of
147 motor fuel under 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
4 in this section: *Provided*, That if a person has filed applications
5 for licenses for more than one activity, the commissioner may
6 combine the amount of the cash bond or continuous surety
7 bond required for each licensed activity into one amount that
8 shall be no less than the largest amount required for any of
9 those activities for which the license applications are filed:
10 *Provided, however*, That if a continuous surety bond is filed, an
11 annual notice of renewal shall be filed thereafter: *Provided*
12 *further*, That if the continuous surety bond includes the
13 requirements that the commissioner is to be notified of cancel-
14 lation at least sixty days prior to the continuous surety bond
15 being canceled, an annual notice of renewal is not required.
16 The bond, whether a cash bond or a continuous surety bond,
17 shall be conditioned upon compliance with the requirements of
18 this article, be payable to this state, and be in the form required
19 by the commissioner. The amount of the bond is as follows:

20 (1) For a supplier license, the amount shall be a minimum
21 of one hundred thousand dollars or an amount equal to three
22 months' tax liability, whichever is greater: *Provided*, That the
23 amount shall not exceed two million dollars: *Provided*,
24 *however*, That when required by the commissioner to file a

25 cash bond or a continuous surety bond in an additional amount,
26 the licensee shall comply with the commissioner's notification
27 within thirty days after receiving that notification;

28 (2) For a permissive supplier license, the amount shall be
29 a minimum of one hundred thousand dollars or an amount
30 equal to three months' tax liability, whichever is greater:
31 *Provided*, That the amount shall not exceed two million
32 dollars: *Provided, however*, That when required by the com-
33 missioner to file a cash bond or a continuous surety bond in an
34 additional amount, the licensee shall comply with the commis-
35 sioner's notification within thirty days after receiving that
36 notification;

37 (3) For a terminal operator license, the amount shall be a
38 minimum of one hundred thousand dollars or an amount equal
39 to three months' tax liability, whichever is greater: *Provided*,
40 That the amount shall not exceed two million dollars: *Pro-*
41 *vided, however*, That when required by the commissioner to
42 file a cash bond or a continuous surety bond in an additional
43 amount, the licensee shall comply with the commissioner's
44 notification within thirty days after receiving that notification;

45 (4) For an importer license for a person, other than a
46 supplier, that imports by transport vehicle or another means of
47 transfer outside the bulk transfer/terminal system motor fuel
48 removed from a terminal located in another state in which: (A)
49 The state from which the motor fuel is imported does not
50 require the seller of the motor fuel to collect a motor fuel
51 excise tax on the removal either at that state's rate or the rate of
52 the destination state; and (B) the seller of the motor fuel is not
53 a permissive supplier, the amount shall be a minimum of one
54 hundred thousand dollars or an amount equal to three months'
55 tax liability, whichever is greater: *Provided*, That the amount
56 shall not exceed two million dollars: *Provided, however*, That
57 when required by the commissioner to file a cash bond or a

58 continuous surety bond in an additional amount, the licensee
59 shall comply with the commissioner's notification within thirty
60 days after receiving that notification;

61 (5) For an importer license for a person that imports by
62 transport vehicle or another means outside the bulk trans-
63 fer/terminal system motor fuel removed from a terminal located
64 in another state in which: (A) The state from which the motor
65 fuel is imported requires the seller of the motor fuel to collect
66 a motor fuel excise tax on the removal either at that state's rate
67 or the rate of the destination state; or (B) the seller of the motor
68 fuel is a permissive supplier, the amount shall be a minimum
69 of two thousand dollars or an amount equal to three months'
70 tax liability, whichever is greater: *Provided*, That the amount
71 shall not exceed three hundred thousand dollars: *Provided*,
72 *however*, That when required by the commissioner to file a
73 cash bond or a continuous surety bond in an additional amount,
74 the licensee shall comply with the commissioner's notification
75 within thirty days after receiving that notification;

76 (6) For a license as both a distributor and an importer as
77 described in subdivision (4) of this subsection, the amount
78 shall be a minimum of one hundred thousand dollars or an
79 amount equal to three months' tax liability, whichever is
80 greater: *Provided*, That the amount shall not exceed two
81 million dollars: *Provided, however*, That when required by the
82 commissioner to file a cash bond or a continuous surety bond
83 in an additional amount, the licensee shall comply with the
84 commissioner's notification within thirty days after receiving
85 that notification;

86 (7) For a license as both a distributor and an importer as
87 described in subdivision (5) of this subsection, the amount
88 shall be a minimum of two thousand dollars or an amount
89 equal to three months' tax liability, whichever is greater:
90 *Provided*, That the amount shall not exceed three hundred

91 thousand dollars: *Provided, however,* That when required by
92 the commissioner to file a cash bond or a continuous surety
93 bond in an additional amount, the licensee shall comply with
94 the commissioner's notification within thirty days after
95 receiving that notification;

96 (8) For an exporter license, the amount shall be a minimum
97 of two thousand dollars or an amount equal to three months'
98 tax liability, whichever is greater: *Provided,* That the amount
99 shall not exceed three hundred thousand dollars: *Provided,*
100 *however,* That when required by the commissioner to file a
101 cash bond or a continuous surety bond in an additional amount,
102 the licensee shall comply with the commissioner's notification
103 within thirty days after receiving that notification;

104 (9) For a blender license, the amount shall be a minimum
105 of two thousand dollars or an amount equal to three months'
106 tax liability, whichever is greater: *Provided,* That the amount
107 shall not exceed three hundred thousand dollars: *Provided,*
108 *however,* That when required by the commissioner to file a
109 cash bond or a continuous surety bond in an additional amount,
110 the licensee shall comply with the commissioner's notification
111 within thirty days after receiving that notification;

112 (10) For a distributor license, the amount shall be a
113 minimum of two thousand dollars or an amount equal to three
114 months' tax liability, whichever is greater: *Provided,* That the
115 amount shall not exceed three hundred thousand dollars:
116 *Provided, however,* That when required by the commissioner
117 to file a cash bond or a continuous surety bond in an additional
118 amount, the licensee shall comply with the commissioner's
119 notification within thirty days after receiving that notification;

120 (11) For a motor fuel transporter license, there shall be no
121 bond; and

122 (12) An applicant for a licensed activity listed under
123 subdivisions (1) through (10), inclusive, of this subsection may
124 in lieu of posting either the cash bond or continuous surety
125 bond required by this subsection provide proof of financial
126 responsibility acceptable to the commissioner: *Provided*, That
127 the proof of financial responsibility shall demonstrate the
128 absence of circumstances indicating risk with the collection of
129 taxes from the applicant: *Provided, however*, That the follow-
130 ing shall constitute proof of financial responsibility:

131 (A) Proof of five million dollars' net worth shall constitute
132 evidence of financial responsibility in lieu of posting the
133 required bond;

134 (B) Proof of two million five hundred thousand dollars' net
135 worth constitutes financial responsibility in lieu of posting fifty
136 percent of the required bond; and

137 (C) Proof of one million two hundred fifty thousand
138 dollars' net worth constitutes financial responsibility in lieu of
139 posting twenty-five percent of the required bond. Net worth is
140 calculated on a business, not individual basis.

141 (13) In lieu of providing either cash bond, a continuance
142 surety bond or proof of financial responsibility acceptable to
143 the commissioner, an applicant for a licensed activity listed
144 under this subsection that has established with the state tax
145 division a good filing record that is accurate, complete and
146 timely for the preceding eighteen months shall be granted a
147 waiver of the requirement to file either a cash bond or continu-
148 ance surety bond: *Provided*, That when a licensee that has been
149 granted a waiver of the requirement to file a bond violates a
150 provision of this article, the licensee shall file the applicable
151 bond as stated in this subsection.

152 (14) Any licensee who disagrees with the commissioner's
153 decision requiring new or additional security may seek a

154 hearing by filing a petition with the office of tax appeals in
155 accordance with the provisions of section nine, article ten-a of
156 this chapter: *Provided*, That the hearing shall be provided
157 within thirty days after receipt by the office of tax appeals of
158 the petition for the hearing.

159 (b) The surety must be authorized under article nineteen,
160 chapter thirty-three of this code to engage in business of
161 transacting surety insurance within this state. The cash bond
162 and the continuous surety bond are conditioned upon faithful
163 compliance with the provisions of this article, including the
164 filing of the returns and payment of all tax prescribed by this
165 article. The cash bond and the continuous surety bond shall be
166 approved by the commissioner as to sufficiency and form and
167 shall indemnify the state against any loss arising from the
168 failure of the taxpayer to pay for any cause whatever the motor
169 fuel excise tax levied by this article.

170 (c) Any surety on a continuous surety bond furnished
171 hereunder shall be relieved, released and discharged from all
172 liability accruing on the bond after the expiration of sixty days
173 from the date the surety shall have lodged, by certified mail,
174 with the commissioner a written request to be discharged.
175 Discharge from the continuous surety bond shall not relieve,
176 release or discharge the surety from liability already accrued or
177 which shall accrue before the expiration of the sixty-day
178 period. Whenever any surety seeks discharge as herein
179 provided, it is the duty of the principal of the bond to supply
180 the commissioner with another continuous surety bond or a
181 cash bond prior to the expiration of the original bond. Failure
182 to provide a new continuous surety bond or a cash bond shall
183 result in the commissioner canceling each license and registra-
184 tion previously issued to the person.

185 (d) Any taxpayer that has furnished a cash bond hereunder
186 shall be relieved, released and discharged from all liability

187 accruing on the cash bond after the expiration of sixty days
188 from the date the taxpayer shall have lodged, by certified mail,
189 with the commissioner a written request to be discharged and
190 the amount of the cash bond refunded: *Provided*, That the
191 commissioner may retain all or part of the cash bond until such
192 time as the commissioner may perform an audit of the tax-
193 payer's business or three years, whichever first occurs.
194 Discharge from the cash bond shall not relieve, release or
195 discharge the taxpayer from liability already accrued or which
196 shall accrue before the expiration of the sixty-day period.
197 Whenever any taxpayer seeks discharge as herein provided, it
198 is the duty of the taxpayer to provide the commissioner with
199 another cash bond or a continuous surety bond prior to the
200 expiration of the original cash bond. Failure to provide either
201 a new cash bond or a continuous surety bond shall result in the
202 commissioner canceling each license and registration previ-
203 ously issued to the taxpayer.

§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
8 five 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

16 this 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 supplier may elect
26 to either collect the tax levied by section five of this article or,
27 in lieu thereof, take from the exporter documentation sufficient
28 to establish: (i) That the motor fuel was immediately exported
29 to another state and the name of that state; (ii) that the entire
30 amount of motor fuel exported was reported to the destination
31 state and the tax imposed on the motor fuel by the destination
32 state was paid by the exporter; (iii) the name and address of the
33 person to which the motor fuel was sold and the quantity of
34 motor fuel sold to that person; and (iv) that the exporter shall
35 pay the tax levied by section five of this article if the foregoing
36 documentation is not provided: *Provided, however*, That until
37 such time as either the tax imposed by this state is paid, the tax
38 imposed by the destination state is paid or the motor fuel is
39 sold in a transaction not subject to tax in the destination state,
40 both the supplier and the exporter shall be jointly liable for the
41 tax levied by section five of this article.

42 (c) All tax payments received by a supplier or permissive
43 supplier shall be held in trust by the supplier or permissive
44 supplier until the supplier or permissive supplier remits the tax
45 payment to this state or to another state and the supplier or
46 permissive supplier shall constitute the trustee for the tax
47 payments.

48 (d) The license of a licensed distributor, exporter or
49 importer who fails to pay the full amount of tax required by
50 this article is subject to cancellation.

§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 invoiced 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 or motor fuel transporter;

8 (b) The number of invoiced gallons of motor fuel removed
9 at 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 or motor fuel transporter;

12 (c) The number of invoiced 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 state
15 and carrier or motor fuel transporter; and

16 (d) The number of invoiced 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 or
21 motor fuel transporter.

§11-14C-24. Duties of supplier or permissive supplier as trustee.

1 (a) All tax payments due to this state that are received by
2 a supplier or permissive supplier shall be held by the supplier

3 or 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 invoiced gallons received.
11 The supplier or permissive supplier shall give this notice after
12 the end of each reporting period and before the licensee is
13 required 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
19 return. The notice shall be transmitted to the commissioner in
20 the form 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 invoiced 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 invoiced gallons of imported motor fuel
8 acquired from a person who did not collect the tax due this
9 state on the motor fuel, listed by type of motor fuel, source
10 state, person and terminal;

11 (3) The number of invoiced 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 (3) of this subsection, as
17 applicable, and was removed from a terminal or bulk plant.

18 (b) An importer that imports by transport vehicle or
19 another means of transfer outside the terminal transfer system
20 motor fuel removed from a terminal located in another state in
21 which: (1) The state from which the motor fuel is imported
22 does not require the seller of the motor fuel to collect a motor
23 fuel excise tax on the removal either at that state's rate or the
24 rate of the destination state; and (2) the seller of the motor fuel
25 is not a licensed supplier or permissive supplier, who timely
26 files a return with the payment due, may deduct, from the
27 amount of tax payable with the return, an administrative
28 discount of one tenth of one percent of the amount of tax
29 payable by the importer to this state not to exceed five thou-
30 sand dollars per 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.
4 The return is due by the last day of the month following the
5 month covered by the return. The return shall contain the
6 following information and any other information required by
7 the commissioner:

8 (1) The beginning and ending inventory which pertains to
9 the applicable reporting month;

10 (2) The number of gross and net gallons of motor fuel
11 received in inventory at the terminal during the month and each
12 position holder for the motor fuel;

13 (3) The number of gross and net gallons of motor fuel
14 removed from inventory at the terminal during the month and,
15 for each removal, the position holder for the motor fuel and the
16 destination state of the motor fuel; and

17 (4) The number of gross and net gallons of motor fuel
18 gained or lost 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-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 eighteen of this article.

**§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
7 state, that loses any invoiced gallons of motor fuel through fire,
8 lightning, breakage, flood or other casualty, which gallons
9 having been previously included in the tax by or for that
10 person, may claim a refund of a sum equal to the amount of the
11 flat rate of the tax levied by section five of this article paid
12 upon the invoiced gallons lost.

13 (c) Any dealer as defined in section two, article eleven-c,
14 chapter forty-seven of the code, and any bulk plant in this state
15 that purchases or receives motor fuel in this state upon which
16 the tax levied by section five of this article has been paid, is
17 entitled to an annual refund of the flat rate of the tax levied by
18 section five of this article for invoiced gallons lost through
19 evaporation: *Provided*, That only the owner of the bulk plant
20 that is also the owner of the fuel in the bulk plant may claim
21 this refund for invoiced gallons lost through evaporation. The
22 refund is computed at the flat rate of tax levied per gallon
23 under this article on all invoiced gallons of motor fuel actually
24 lost due to evaporation, not exceeding one half of one percent
25 of the adjusted total accountable gallons, computed as deter-
26 mined by the commissioner.

27 (d) Every supplier, distributor or producer, retail dealer,
28 exporter or importer is entitled to a refund of the flat rate of the
29 tax levied by section five of this article from this state of the
30 amount resulting from a change of rate decreasing the tax
31 under the provisions of this article on motor fuel on hand and
32 in inventory on the effective date of the rate change, which
33 motor fuel has been included in any previous computation by
34 which the tax levied by this article has been paid.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to subsection (c),
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 (15), subsection (c), section nine
13 of this article when the motor fuel is used to operate tractors
14 and gas engines or threshing machines for agricultural pur-
15 poses.

16 (b) Any person claiming a refund pursuant to section thirty
17 of this article shall file a petition in writing with the commis-
18 sioner. The petition shall be in the form and with supporting
19 records as required by the commissioner and made under the
20 penalty of perjury.

21 (c) The right to receive any refund under the provisions of
22 this section is not assignable and any assignment thereof is
23 void and of no effect. No payment of any refund may be made
24 to any person other than the original person entitled. The
25 commissioner shall cause a refund to be made under the
26 authority of this section only when the claim for refund is filed
27 with the commissioner within the following time periods:

28 (1) A petition for refund under section thirty of this article,
29 other than for evaporation loss, shall be filed with the commis-
30 sioner within three years from the end of the month in which
31 the tax was erroneously or illegally paid or the gallons were

32 exported or lost by casualty or in which a change of rate took
33 effect;

34 (2) A petition for refund under section thirty of this article
35 for evaporation loss shall be filed within three years from the
36 end of the year in which the evaporation occurred;

37 (3) A petition for refund under subsection (c), section nine
38 of this article shall be filed with the commissioner within six
39 months from the month of purchase or delivery of the motor
40 fuel: *Provided*, That any application for refund made under
41 authority of subdivision(15), of said subsection when the motor
42 fuel is used to operate tractors and gas engines or threshing
43 machines for agricultural purposes shall be filed within twelve
44 months from the month of purchase or delivery of the motor
45 fuel: *Provided, however*, That all persons authorized to claim
46 a refundable exemption under the authority of subdivisions (1)
47 through (6), inclusive, subsection (c), section nine of this
48 article and subdivisions (1) through (6), inclusive, subsection
49 (d) of said section shall do so no later than the thirty-first day
50 of August for the purchases of motor fuel made during the
51 preceding fiscal year ending the thirtieth day of June.

52 (d) Any petition for a refund not timely filed is not
53 construed to be or constitute a moral obligation of the state of
54 West Virginia for payment. Every petition for refund is subject
55 to the provisions of section fourteen, article ten of this chapter.

56 (e) The commissioner may make any investigation consid-
57 ered necessary before refunding to a person the tax levied by
58 section five of this article. The commissioner may also subject
59 to audit the records related to a refund of the tax levied by
60 section five of this article.

**§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 machine-generated shipping document,
4 including applicable multiple copies thereof, for the motor fuel
5 that complies with this section: *Provided*, That in the event a
6 terminal operator or operator of a bulk plant does not have
7 installed on the first day of January, two thousand four, an
8 automated machine that will print machine-generated shipping
9 documents, the commissioner may authorize the terminal
10 operator or operator of a bulk plant to issue manually prepared
11 shipping documents: *Provided, however*, That in the event of
12 an extraordinary unforeseen circumstance, including an act of
13 God, that temporarily interferes with the ability to issue an
14 automated machine-generated shipping document, a manually
15 prepared shipping document that contains all of the informa-
16 tion required by subsection (b) of this section shall be substi-
17 tuted for the machine-generated shipping document. A
18 terminal operator or operator of a bulk plant shall give a
19 shipping document to the person who operates the barge,
20 watercraft, railroad tank car or transport vehicle into which
21 motor fuel is loaded at the terminal rack or bulk plant rack.

22 (b) The shipping document issued by the terminal operator
23 or operator of a bulk plant shall contain the following informa-
24 tion and any other information required by the commissioner:

25 (1) Identification, including address, of the terminal or bulk
26 plant from which the motor fuel was received;

27 (2) Date the motor fuel was loaded;

28 (3) Invoiced gallons loaded;

29 (4) Destination state of the motor fuel as represented by the
30 purchaser of the motor fuel or the purchaser's agent;

31 (5) In the case of aviation jet fuel, the shipping document
32 shall be marked with the phrase "Aviation Jet Fuel, Not for On-
33 road Use" or a similar phrase;

34 (6) In the case of dyed diesel fuel, the shipping document
35 shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable
36 Use Only, Penalty for Taxable Use" or a similar phrase; and

37 (7) If the document is issued by a terminal operator, the
38 invoiced gallons loaded and a statement indicating the name of
39 the supplier that is responsible for the tax due on the motor
40 fuel.

41 (c) A terminal operator or bulk plant operator may rely on
42 the representation made by the purchaser of motor fuel or the
43 purchaser's agent concerning the destination state of the motor
44 fuel. In the event that either the terminal operator, bulk plant
45 operator, purchaser or transporter determines prior to the
46 shipment of motor fuel leaving the terminal or bulk plant that
47 the destination state indicated on the shipping document is
48 incorrect, the diversion procedure provided in subdivision (3),
49 subsection (d) of this section shall be used to obtain authoriza-
50 tion to deliver the motor fuel to a different state. A purchaser
51 is liable for any tax due as a result of the purchaser's diversion
52 of motor fuel from the represented destination state.

53 (d) A person to whom a shipping document was issued
54 shall:

55 (1) Carry the shipping document in the means of convey-
56 ance for which it was issued when transporting the motor fuel
57 described;

58 (2) Show the shipping document upon request to any law-
59 enforcement officer, representative of the commissioner and

60 any other authorized individual when transporting the motor
61 fuel described;

62 (3) Deliver motor fuel to the destination state printed on the
63 shipping document unless the person:

64 (A) Notifies the commissioner before transporting the
65 motor fuel into a state other than the printed destination state
66 that the person has received instructions after the shipping
67 document was issued to deliver the motor fuel to a different
68 destination state;

69 (B) Receives from the commissioner a confirmation
70 number authorizing the diversion; and

71 (C) Writes on the shipping document the change in
72 destination state and the confirmation number for the diver-
73 sion; and

74 (4) Gives a copy of the shipping document to the person to
75 whom the motor fuel is delivered.

76 (e) The person to whom motor fuel is delivered by barge,
77 watercraft, railroad tank car or transport vehicle shall not
78 accept delivery of the motor fuel if the destination state shown
79 on the shipping document for the motor fuel is a state other
80 than West Virginia: *Provided*, That delivery may be accepted
81 if the destination state is other than West Virginia if the
82 document contains a diversion number authorized by the
83 commissioner. The person to whom the motor fuel is delivered
84 shall examine the shipping document to determine that West
85 Virginia is the destination state and shall retain a copy of the
86 shipping document: (1) At the place of business where the
87 motor fuel was delivered for ninety days following the date of
88 delivery; and (2) at the place or another place for at least three
89 years following the date of delivery. The person who accepts

90 delivery of motor fuel in violation of this subsection and any
91 person liable for the tax on the motor fuel pursuant to section
92 five of this article is jointly and severally liable for any tax due
93 on the motor fuel.

94 (f) Any person who transports motor fuel in a barge,
95 watercraft, railroad tank car or transport vehicle without a
96 shipping document or with a false or an incomplete shipping
97 document, or delivers motor fuel to a destination state other
98 than the destination state shown on the shipping document, is
99 subject to the following civil penalty.

100 (1) If the motor fuel is transported in a barge, watercraft or
101 transport vehicle, the civil penalty shall be payable by the
102 person in whose name the means of conveyance is registered.

103 (2) If the motor fuel is transported in a railroad tank car, the
104 civil penalty shall be payable by the person responsible for
105 shipping the motor fuel in the railroad tank car.

106 (3) The amount of the civil penalty for a first violation is
107 five thousand dollars.

108 (4) The amount of the civil penalty for each subsequent
109 violation is ten thousand dollars.

110 (5) Civil penalties prescribed under this section are
111 assessed, collected and paid in the same manner as the motor
112 fuel excise tax imposed by this article.

**§11-14C-37. Refusal to allow inspection or taking of fuel sam-
ple; civil penalty.**

1 (a) Any person who refuses to allow an inspection autho-
2 rized by section forty-five of this article or to allow the taking
3 of a fuel sample authorized by said section is subject to a civil
4 penalty of five thousand dollars for each refusal. If the refusal

5 is for a sample to be taken from a vehicle, the person operating
6 the vehicle and the owner of the vehicle are jointly and
7 severally liable for payment of the civil penalty. If the refusal
8 is for a sample to be taken from any other storage tank or
9 container, the owner of the storage tank or container and the
10 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-47. Disposition of tax collected.

1 (a) There is hereby created and established in the state
2 treasury a special revolving fund to be known and designated
3 as the “motor fuel general tax administration fund”. The
4 commissioner is authorized to retain one half of one percent of
5 the tax collected pursuant to the provisions of this article:
6 *Provided*, That in any fiscal year in which the tax collected
7 pursuant to the provisions of this article exceed three hundred
8 million dollars, the commissioner is authorized to retain an
9 additional one percent of the tax in excess of the three hundred
10 million dollars that is collected. The amounts retained by the
11 commissioner under this subsection shall be deposited in the
12 motor fuel general tax administration fund and may be ex-
13 pended for the general administration of taxes imposed by this
14 chapter.

15 (b) All remaining tax collected under the provisions of this
16 article after deducting the amount of any refunds lawfully paid
17 shall be paid into the state road fund and used only for the
18 purpose of construction, reconstruction, maintenance and repair
19 of highways, matching of federal moneys available for high-
20 way purposes and payment of the interest and sinking fund
21 obligations on state bonds issued for highway purposes.

CHAPTER 246

**(H. B. 4349 — By Delegates Doyle, Campbell, Boggs, Stalnaker,
Houston, Anderson and G. White)**

[Passed February 24, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-15-9 of the code of West Virginia, 1931, as amended; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code; and to amend said code by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all relating generally to consumers sales and service tax; clarifying that exemption from tax for durable medical goods, mobility enhancing equipment and prosthetic devices purchased with prescription was not intended to be repealed when house bill 3014 was enacted during the two thousand three regular session of the Legislature; deleting language made obsolete when that bill was enacted; making technical corrections in streamlined sales and use tax administration act; updating certain definitions used in that act; providing sourcing rules and definitions for telecommunications services and retail floral sales based on streamlined sales and use tax agreement; clarifying application of hold harmless rule; deleting obsolete language; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all to read as follows:

Article**15. Consumers Sales and Service Tax.****15B. Streamlined Sales and Use Tax Administration Act.****ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.****§11-15-9. Exemptions.**

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.*— A person having a right or claim to any exemption set
3 forth in this subsection may, in lieu of paying the tax imposed
4 by this article and filing a claim for refund, execute a certificate
5 of exemption, in the form required by the tax commissioner,
6 and deliver it to the vendor of the property or service in the
7 manner required by the tax commissioner. However, the tax
8 commissioner may, by rule, specify those exemptions autho-
9 rized in this subsection for which exemption certificates are not
10 required. The following sales of tangible personal property and
11 services are exempt as provided in this subsection:

12 (1) Sales of gas, steam and water delivered to consumers
13 through mains or pipes and sales of electricity;

14 (2) Sales of textbooks required to be used in any of the
15 schools of this state or in any institution in this state which
16 qualifies as a nonprofit or educational institution subject to the
17 West Virginia department of education and the arts, the board
18 of trustees of the university system of West Virginia or the
19 board of directors for colleges located in this state;

20 (3) Sales of property or services to this state, its institutions
21 or subdivisions, governmental units, institutions or subdivisions
22 of other states: *Provided*, That the law of the other state
23 provides the same exemption to governmental units or subdivi-
24 sions of this state and to the United States, including agencies
25 of federal, state or local governments for distribution in public
26 welfare or relief work;

27 (4) Sales of vehicles which are titled by the division of
28 motor vehicles and which are subject to the tax imposed by
29 section four, article three, chapter seventeen-a of this code or
30 like tax;

31 (5) Sales of property or services to churches which make no
32 charge whatsoever for the services they render: *Provided*, That
33 the exemption granted in this subdivision applies only to
34 services, equipment, supplies, food for meals and materials
35 directly used or consumed by these organizations and does not
36 apply to purchases of gasoline or special fuel;

37 (6) Sales of tangible personal property or services to a
38 corporation or organization which has a current registration
39 certificate issued under article twelve of this chapter, which is
40 exempt from federal income taxes under Section 501(c)(3) or
41 (c)(4) of the Internal Revenue Code of 1986, as amended, and
42 which is:

43 (A) A church or a convention or association of churches as
44 defined in Section 170 of the Internal Revenue Code of 1986,
45 as amended;

46 (B) An elementary or secondary school which maintains a
47 regular faculty and curriculum and has a regularly enrolled
48 body of pupils or students in attendance at the place in this state
49 where its educational activities are regularly carried on;

50 (C) A corporation or organization which annually receives
51 more than one half of its support from any combination of gifts,
52 grants, direct or indirect charitable contributions or membership
53 fees;

54 (D) An organization which has no paid employees and its
55 gross income from fundraisers, less reasonable and necessary
56 expenses incurred to raise the gross income (or the tangible
57 personal property or services purchased with the net income),

58 is donated to an organization which is exempt from income
59 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue
60 Code of 1986, as amended;

61 (E) A youth organization, such as the girl scouts of the
62 United States of America, the boy scouts of America or the
63 YMCA Indian guide/princess program and the local affiliates
64 thereof, which is organized and operated exclusively for
65 charitable purposes and has as its primary purpose the
66 nonsectarian character development and citizenship training of
67 its members;

68 (F) For purposes of this subsection:

69 (i) The term "support" includes, but is not limited to:

70 (I) Gifts, grants, contributions or membership fees;

71 (II) Gross receipts from fundraisers which include receipts
72 from admissions, sales of merchandise, performance of services
73 or furnishing of facilities in any activity which is not an
74 unrelated trade or business within the meaning of Section 513
75 of the Internal Revenue Code of 1986, as amended;

76 (III) Net income from unrelated business activities, whether
77 or not the activities are carried on regularly as a trade or
78 business;

79 (IV) Gross investment income as defined in Section 509(e)
80 of the Internal Revenue Code of 1986, as amended;

81 (V) Tax revenues levied for the benefit of a corporation or
82 organization either paid to or expended on behalf of the
83 organization; and

84 (VI) The value of services or facilities (exclusive of
85 services or facilities generally furnished to the public without

86 charge) furnished by a governmental unit referred to in Section
87 170(c)(1) of the Internal Revenue Code of 1986, as amended,
88 to an organization without charge. This term does not include
89 any gain from the sale or other disposition of property which
90 would be considered as gain from the sale or exchange of a
91 capital asset or the value of an exemption from any federal,
92 state or local tax or any similar benefit;

93 (ii) The term “charitable contribution” means a contribution
94 or gift to or for the use of a corporation or organization,
95 described in Section 170(c)(2) of the Internal Revenue Code of
96 1986, as amended; and

97 (iii) The term “membership fee” does not include any
98 amounts paid for tangible personal property or specific services
99 rendered to members by the corporation or organization;

100 (G) The exemption allowed by this subdivision does not
101 apply to sales of gasoline or special fuel or to sales of tangible
102 personal property or services to be used or consumed in the
103 generation of unrelated business income as defined in Section
104 513 of the Internal Revenue Code of 1986, as amended. The
105 exemption granted in this subdivision applies only to services,
106 equipment, supplies and materials used or consumed in the
107 activities for which the organizations qualify as tax-exempt
108 organizations under the Internal Revenue Code and does not
109 apply to purchases of gasoline or special fuel;

110 (7) An isolated transaction in which any taxable service or
111 any tangible personal property is sold, transferred, offered for
112 sale or delivered by the owner of the property or by his or her
113 representative for the owner’s account, the sale, transfer, offer
114 for sale or delivery not being made in the ordinary course of
115 repeated and successive transactions of like character by the
116 owner or on his or her account by the representative: *Provided*,
117 That nothing contained in this subdivision may be construed to

118 prevent an owner who sells, transfers or offers for sale tangible
119 personal property in an isolated transaction through an auction-
120 eer from availing himself or herself of the exemption provided
121 in this subdivision, regardless of where the isolated sale takes
122 place. The tax commissioner may propose a legislative rule for
123 promulgation pursuant to article three, chapter twenty-nine-a of
124 this code which he or she considers necessary for the efficient
125 administration of this exemption;

126 (8) Sales of tangible personal property or of any taxable
127 services rendered for use or consumption in connection with the
128 commercial production of an agricultural product the ultimate
129 sale of which is subject to the tax imposed by this article or
130 which would have been subject to tax under this article:
131 *Provided*, That sales of tangible personal property and services
132 to be used or consumed in the construction of or permanent
133 improvement to real property and sales of gasoline and special
134 fuel are not exempt: *Provided, however*, That nails and fencing
135 may not be considered as improvements to real property;

136 (9) Sales of tangible personal property to a person for the
137 purpose of resale in the form of tangible personal property:
138 *Provided*, That sales of gasoline and special fuel by distributors
139 and importers is taxable except when the sale is to another
140 distributor for resale: *Provided, however*, That sales of building
141 materials or building supplies or other property to any person
142 engaging in the activity of contracting, as defined in this article,
143 which is to be installed in, affixed to or incorporated by that
144 person or his or her agent into any real property, building or
145 structure is not exempt under this subdivision;

146 (10) Sales of newspapers when delivered to consumers by
147 route carriers;

148 (11) Sales of drugs, durable medical goods, mobility-
149 enhancing equipment and prosthetic devices dispensed upon

150 prescription and sales of insulin to consumers for medical
151 purposes. The amendment to this subdivision shall apply to
152 sales made after the thirty-first day of December, two thousand
153 three;

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. For purposes of this subdivision,
164 the term “casual and occasional sales not conducted in a
165 repeated manner or in the ordinary course of repetitive and
166 successive transactions of like character” means sales of
167 tangible personal property or services at fundraisers sponsored
168 by a corporation or organization which is exempt, under
169 subdivision (6) of this subsection, from payment of the tax
170 imposed by this article on its purchases when the fundraisers
171 are of limited duration and are held no more than six times
172 during any twelve-month period and “limited duration” means
173 no more than eighty-four consecutive hours: *Provided*, That
174 sales for volunteer fire departments and volunteer school
175 support groups, with duration of events being no more than
176 eighty-four consecutive hours at a time, which are held no more
177 than eighteen times in a twelve-month period for the purposes
178 of this subdivision are considered “casual and occasional sales
179 not conducted in a repeated manner or in the ordinary course of
180 repetitive and successive transactions of a like character”;

181 (15) Sales of property or services to a school which has
182 approval from the board of trustees of the university system of

183 West Virginia or the board of directors of the state college
184 system to award degrees, which has its principal campus in this
185 state and which is exempt from federal and state income taxes
186 under Section 501(c)(3) of the Internal Revenue Code of 1986,
187 as amended: *Provided*, That sales of gasoline and special fuel
188 are taxable;

189 (16) Sales of lottery tickets and materials by licensed
190 lottery sales agents and lottery retailers authorized by the state
191 lottery commission, under the provisions of article twenty-two,
192 chapter twenty-nine of this code;

193 (17) Leases of motor vehicles titled pursuant to the provi-
194 sions of article three, chapter seventeen-a of this code to lessees
195 for a period of thirty or more consecutive days;

196 (18) Notwithstanding the provisions of section eighteen or
197 eighteen-b of this article or any other provision of this article to
198 the contrary, sales of propane to consumers for poultry house
199 heating purposes, with any seller to the consumer who may
200 have prior paid the tax in his or her price, to not pass on the
201 same to the consumer, but to make application and receive
202 refund of the tax from the tax commissioner pursuant to rules
203 which are promulgated after being proposed for legislative
204 approval in accordance with chapter twenty-nine-a of this code
205 by the tax commissioner;

206 (19) Any sales of tangible personal property or services
207 purchased and lawfully paid for with food stamps pursuant to
208 the federal food stamp program codified in 7 U. S. C. §2011, et
209 seq., as amended, or with drafts issued through the West
210 Virginia special supplement food program for women, infants
211 and children codified in 42 U. S. C. §1786;

212 (20) Sales of tickets for activities sponsored by elementary
213 and secondary schools located within this state;

214 (21) Sales of electronic data processing services and related
215 software: *Provided*, That, for the purposes of this subdivision,
216 “electronic data processing services” means:

217 (A) The processing of another’s data, including all pro-
218 cesses incident to processing of data such as keypunching,
219 keystroke verification, rearranging or sorting of previously
220 documented data for the purpose of data entry or automatic
221 processing and changing the medium on which data is sorted,
222 whether these processes are done by the same person or several
223 persons; and

224 (B) Providing access to computer equipment for the
225 purpose of processing data or examining or acquiring data
226 stored in or accessible to the computer equipment;

227 (22) Tuition charged for attending educational summer
228 camps;

229 (23) Dispensing of services performed by one corporation,
230 partnership or limited liability company for another corpora-
231 tion, partnership or limited liability company when the entities
232 are members of the same controlled group or are related
233 taxpayers as defined in Section 267 of the Internal Revenue
234 Code. “Control” means ownership, directly or indirectly, of
235 stock, equity interests or membership interests possessing fifty
236 percent or more of the total combined voting power of all
237 classes of the stock of a corporation, equity interests of a
238 partnership or membership interests of a limited liability
239 company entitled to vote or ownership, directly or indirectly, of
240 stock, equity interests or membership interests possessing fifty
241 percent or more of the value of the corporation, partnership or
242 limited liability company;

243 (24) Food for the following are exempt:

244 (A) Food purchased or sold by a public or private school,
245 school-sponsored student organizations or school-sponsored
246 parent-teacher associations to students enrolled in the school or
247 to employees of the school during normal school hours; but not
248 those sales of food made to the general public;

249 (B) Food purchased or sold by a public or private college or
250 university or by a student organization officially recognized by
251 the college or university to students enrolled at the college or
252 university when the sales are made on a contract basis so that
253 a fixed price is paid for consumption of food products for a
254 specific period of time without respect to the amount of food
255 product actually consumed by the particular individual contract-
256 ing for the sale and no money is paid at the time the food
257 product is served or consumed;

258 (C) Food purchased or sold by a charitable or private
259 nonprofit organization, a nonprofit organization or a govern-
260 mental agency under a program to provide food to low-income
261 persons at or below cost;

262 (D) Food sold by a charitable or private nonprofit organiza-
263 tion, a nonprofit organization or a governmental agency under
264 a program operating in West Virginia for a minimum of five
265 years to provide food at or below cost to individuals who
266 perform a minimum of two hours of community service for
267 each unit of food purchased from the organization;

268 (E) Food sold in an occasional sale by a charitable or
269 nonprofit organization, including volunteer fire departments
270 and rescue squads, if the purpose of the sale is to obtain revenue
271 for the functions and activities of the organization and the
272 revenue obtained is actually expended for that purpose;

273 (F) Food sold by any religious organization at a social or
274 other gathering conducted by it or under its auspices, if the
275 purpose in selling the food is to obtain revenue for the functions

276 and activities of the organization and the revenue obtained from
277 selling the food is actually used in carrying out those functions
278 and activities: *Provided*, That purchases made by the organiza-
279 tions are not exempt as a purchase for resale; or

280 (G) Food sold by volunteer fire departments and rescue
281 squads that are exempt from federal income taxes under Section
282 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
283 amended, when the purpose of the sale is to obtain revenue for
284 the functions and activities of the organization and the revenue
285 obtained is exempt from federal income tax and actually
286 expended for that purpose;

287 (25) Sales of food by little leagues, midget football leagues,
288 youth football or soccer leagues, band boosters or other school
289 or athletic booster organizations supporting activities for grades
290 kindergarten through twelve and similar types of organizations,
291 including scouting groups and church youth groups, if the
292 purpose in selling the food is to obtain revenue for the functions
293 and activities of the organization and the revenues obtained
294 from selling the food is actually used in supporting or carrying
295 on functions and activities of the groups: *Provided*, That the
296 purchases made by the organizations are not exempt as a
297 purchase for resale;

298 (26) Charges for room and meals by fraternities and
299 sororities to their members: *Provided*, That the purchases made
300 by a fraternity or sorority are not exempt as a purchase for
301 resale;

302 (27) Sales of or charges for the transportation of passengers
303 in interstate commerce;

304 (28) Sales of tangible personal property or services to any
305 person which this state is prohibited from taxing under the laws
306 of the United States or under the constitution of this state;

307 (29) Sales of tangible personal property or services to any
308 person who claims exemption from the tax imposed by this
309 article or article fifteen-a of this chapter pursuant to the
310 provision of any other chapter of this code;

311 (30) Charges for the services of opening and closing a
312 burial lot;

313 (31) Sales of livestock, poultry or other farm products in
314 their original state by the producer of the livestock, poultry or
315 other farm products or a member of the producer's immediate
316 family who is not otherwise engaged in making retail sales of
317 tangible personal property; and sales of livestock sold at public
318 sales sponsored by breeders or registry associations or livestock
319 auction markets: *Provided*, That the exemptions allowed by this
320 subdivision may be claimed without presenting or obtaining
321 exemption certificates provided the farmer maintains adequate
322 records;

323 (32) Sales of motion picture films to motion picture
324 exhibitors for exhibition if the sale of tickets or the charge for
325 admission to the exhibition of the film is subject to the tax
326 imposed by this article and sales of coin-operated video arcade
327 machines or video arcade games to a person engaged in the
328 business of providing the machines to the public for a charge
329 upon which the tax imposed by this article is remitted to the tax
330 commissioner: *Provided*, That the exemption provided in this
331 subdivision may be claimed by presenting to the seller a
332 properly executed exemption certificate;

333 (33) Sales of aircraft repair, remodeling and maintenance
334 services when the services are to an aircraft operated by a
335 certified or licensed carrier of persons or property, or by a
336 governmental entity, or to an engine or other component part of
337 an aircraft operated by a certificated or licensed carrier of
338 persons or property, or by a governmental entity and sales of

339 tangible personal property that is permanently affixed or
340 permanently attached as a component part of an aircraft owned
341 or operated by a certificated or licensed carrier of persons or
342 property, or by a governmental entity, as part of the repair,
343 remodeling or maintenance service and sales of machinery,
344 tools or equipment, directly used or consumed exclusively in
345 the repair, remodeling or maintenance of aircraft, aircraft
346 engines or aircraft component parts, for a certificated or
347 licensed carrier of persons or property, or for a governmental
348 entity;

349 (34) Charges for memberships or services provided by
350 health and fitness organizations relating to personalized fitness
351 programs;

352 (35) Sales of services by individuals who baby-sit for a
353 profit: *Provided*, That the gross receipts of the individual from
354 the performance of baby-sitting services do not exceed five
355 thousand dollars in a taxable year;

356 (36) Sales of services by public libraries or by libraries at
357 academic institutions or by libraries at institutions of higher
358 learning;

359 (37) Commissions received by a manufacturer's representa-
360 tive;

361 (38) Sales of primary opinion research services when:

362 (A) The services are provided to an out-of-state client;

363 (B) The results of the service activities, including, but not
364 limited to, reports, lists of focus group recruits and compilation
365 of data are transferred to the client across state lines by mail,
366 wire or other means of interstate commerce, for use by the
367 client outside the state of West Virginia; and

368 (C) The transfer of the results of the service activities is an
369 indispensable part of the overall service.

370 For the purpose of this subdivision, the term “primary
371 opinion research” means original research in the form of
372 telephone surveys, mall intercept surveys, focus group research,
373 direct mail surveys, personal interviews and other data collec-
374 tion methods commonly used for quantitative and qualitative
375 opinion research studies;

376 (39) Sales of property or services to persons within the state
377 when those sales are for the purposes of the production of
378 value-added products: *Provided*, That the exemption granted in
379 this subdivision applies only to services, equipment, supplies
380 and materials directly used or consumed by those persons
381 engaged solely in the production of value-added products:
382 *Provided, however*, That this exemption may not be claimed by
383 any one purchaser for more than five consecutive years, except
384 as otherwise permitted in this section.

385 For the purpose of this subdivision, the term “value-added
386 product” means the following products derived from processing
387 a raw agricultural product, whether for human consumption or
388 for other use. For purposes of this subdivision, the following
389 enterprises qualify as processing raw agricultural products into
390 value-added products: Those engaged in the conversion of:

391 (A) Lumber into furniture, toys, collectibles and home
392 furnishings;

393 (B) Fruits into wine;

394 (C) Honey into wine;

395 (D) Wool into fabric;

396 (E) Raw hides into semifinished or finished leather prod-
397 ucts;

398 (F) Milk into cheese;

399 (G) Fruits or vegetables into a dried, canned or frozen
400 product;

401 (H) Feeder cattle into commonly accepted slaughter
402 weights;

403 (I) Aquatic animals into a dried, canned, cooked or frozen
404 product; and

405 (J) Poultry into a dried, canned, cooked or frozen product;

406 (40) Sales of music instructional services by a music
407 teacher and artistic services or artistic performances of an
408 entertainer or performing artist pursuant to a contract with the
409 owner or operator of a retail establishment, restaurant, inn, bar,
410 tavern, sports or other entertainment facility or any other
411 business location in this state in which the public or a limited
412 portion of the public may assemble to hear or see musical
413 works or other artistic works be performed for the enjoyment of
414 the members of the public there assembled when the amount
415 paid by the owner or operator for the artistic service or artistic
416 performance does not exceed three thousand dollars: *Provided*,
417 That nothing contained herein may be construed to deprive
418 private social gatherings, weddings or other private parties from
419 asserting the exemption set forth in this subdivision. For the
420 purposes of this exemption, artistic performance or artistic
421 service means and is limited to the conscious use of creative
422 power, imagination and skill in the creation of aesthetic
423 experience for an audience present and in attendance and
424 includes, and is limited to, stage plays, musical performances,
425 poetry recitations and other readings, dance presentation,
426 circuses and similar presentations and does not include the
427 showing of any film or moving picture, gallery presentations of
428 sculptural or pictorial art, nude or strip show presentations,
429 video games, video arcades, carnival rides, radio or television

430 shows or any video or audio taped presentations or the sale or
431 leasing of video or audio tapes, air shows, or any other public
432 meeting, display or show other than those specified herein:
433 *Provided, however,* That nothing contained herein may be
434 construed to exempt the sales of tickets from the tax imposed in
435 this article. The state tax commissioner shall propose a legisla-
436 tive rule pursuant to article three, chapter twenty-nine-a of this
437 code establishing definitions and eligibility criteria for asserting
438 this exemption which is not inconsistent with the provisions set
439 forth herein: *Provided further,* That nude dancers or strippers
440 may not be considered as entertainers for the purposes of this
441 exemption;

442 (41) Charges to a member by a membership association or
443 organization which is exempt from paying federal income taxes
444 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
445 of 1986, as amended, for membership in the association or
446 organization, including charges to members for newsletters
447 prepared by the association or organization for distribution
448 primarily to its members, charges to members for continuing
449 education seminars, workshops, conventions, lectures or
450 courses put on or sponsored by the association or organization,
451 including charges for related course materials prepared by the
452 association or organization or by the speaker or speakers for use
453 during the continuing education seminar, workshop, conven-
454 tion, lecture or course, but not including any separate charge or
455 separately stated charge for meals, lodging, entertainment or
456 transportation taxable under this article: *Provided,* That the
457 association or organization pays the tax imposed by this article
458 on its purchases of meals, lodging, entertainment or transporta-
459 tion taxable under this article for which a separate or separately
460 stated charge is not made. A membership association or
461 organization which is exempt from paying federal income taxes
462 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
463 of 1986, as amended, may elect to pay the tax imposed under
464 this article on the purchases for which a separate charge or

465 separately stated charge could apply and not charge its mem-
466 bers the tax imposed by this article or the association or
467 organization may avail itself of the exemption set forth in
468 subdivision (9) of this subsection relating to purchases of
469 tangible personal property for resale and then collect the tax
470 imposed by this article on those items from its member;

471 (42) Sales of governmental services or governmental
472 materials by county assessors, county sheriffs, county clerks or
473 circuit clerks in the normal course of local government opera-
474 tions;

475 (43) Direct or subscription sales by the division of natural
476 resources of the magazine currently entitled "Wonderful West
477 Virginia" and by the division of culture and history of the
478 magazine currently entitled "Goldenseal" and the journal
479 currently entitled "West Virginia History";

480 (44) Sales of soap to be used at car wash facilities;

481 (45) Commissions received by a travel agency from an
482 out-of-state vendor;

483 (46) The service of providing technical evaluations for
484 compliance with federal and state environmental standards
485 provided by environmental and industrial consultants who have
486 formal certification through the West Virginia department of
487 environmental protection or the West Virginia bureau for public
488 health or both. For purposes of this exemption, the service of
489 providing technical evaluations for compliance with federal and
490 state environmental standards includes those costs of tangible
491 personal property directly used in providing such services that
492 are separately billed to the purchaser of such services and on
493 which the tax imposed by this article has previously been paid
494 by the service provider;

495 (47) Sales of tangible personal property and services by
496 volunteer fire departments and rescue squads that are exempt
497 from federal income taxes under Section 501(c)(3) or (c)(4) of
498 the Internal Revenue Code of 1986, as amended, if the sole
499 purpose of the sale is to obtain revenue for the functions and
500 activities of the organization and the revenue obtained is
501 exempt from federal income tax and actually expended for that
502 purpose;

503 (48) Lodging franchise fees, including royalties, marketing
504 fees, reservation system fees or other fees assessed after the
505 first day of December, one thousand nine hundred ninety-seven,
506 that have been or may be imposed by a lodging franchiser as a
507 condition of the franchise agreement; and

508 (49) Sales of the regulation size United States flag and the
509 regulation size West Virginia flag for display.

510 (b) *Refundable exemptions.* — Any person having a right or
511 claim to any exemption set forth in this subsection shall first
512 pay to the vendor the tax imposed by this article and then apply
513 to the tax commissioner for a refund or credit, or as provided in
514 section nine-d of this article, give to the vendor his or her West
515 Virginia direct pay permit number. The following sales of
516 tangible personal property and services are exempt from tax as
517 provided in this subsection:

518 (1) Sales of property or services to bona fide charitable
519 organizations who make no charge whatsoever for the services
520 they render: *Provided,* That the exemption granted in this
521 subdivision applies only to services, equipment, supplies, food,
522 meals and materials directly used or consumed by these
523 organizations and does not apply to purchases of gasoline or
524 special fuel;

525 (2) Sales of services, machinery, supplies and materials
526 directly used or consumed in the activities of manufacturing,

527 transportation, transmission, communication, production of
528 natural resources, gas storage, generation or production or
529 selling electric power, provision of a public utility service or the
530 operation of a utility service or the operation of a utility
531 business, in the businesses or organizations named in this
532 subdivision and does not apply to purchases of gasoline or
533 special fuel;

534 (3) Sales of property or services to nationally chartered
535 fraternal or social organizations for the sole purpose of free
536 distribution in public welfare or relief work: *Provided*, That
537 sales of gasoline and special fuel are taxable;

538 (4) Sales and services, fire fighting or station house
539 equipment, including construction and automotive, made to any
540 volunteer fire department organized and incorporated under the
541 laws of the state of West Virginia: *Provided*, That sales of
542 gasoline and special fuel are taxable; and

543 (5) Sales of building materials or building supplies or other
544 property to an organization qualified under Section 501(c)(3) or
545 (c)(4) of the Internal Revenue Code of 1986, as amended,
546 which are to be installed in, affixed to or incorporated by the
547 organization or its agent into real property or into a building or
548 structure which is or will be used as permanent low-income
549 housing, transitional housing, an emergency homeless shelter,
550 a domestic violence shelter or an emergency children and youth
551 shelter if the shelter is owned, managed, developed or operated
552 by an organization qualified under Section 501(c)(3) or (c)(4)
553 of the Internal Revenue Code of 1986, as amended.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-2. Definitions.

§11-15B-2a. Streamlined sales and use tax agreement defined.

§11-15B-14a. Application of general sourcing rules and exclusions from the rules.

§11-15B-15. General transaction sourcing rules.

- §11-15B-19. Telecommunications sourcing rule.
§11-15B-20. Telecommunication sourcing definitions.
§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.
§11-15B-32. Effective date.
§11-15B-36. Relief from certain liability for state and local taxes.

§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 subparagraphs (i)
49 through (v), inclusive, 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 CFR §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. The term "service"
266 or "selected service" does not include payments received by a
267 vendor of tangible personal property as an incentive to sell a
268 greater volume of such tangible personal property under a
269 manufacturer's, distributor's or other third-party's marketing
270 support program, sales incentive program, cooperative advertis-
271 ing agreement or similar type of program or agreement, and
272 these payments are not considered to be payments for a
273 "service" or "selected service" rendered, even though the
274 vendor may engage in attendant or ancillary activities associ-
275 ated with the sales of tangible personal property as required
276 under the programs or agreements.

277 (39) "State" means any state of the United States and the
278 District of Columbia.

279 (40) "Tangible personal property" means personal property
280 that can be seen, weighed, measured, felt, or touched, or that is
281 in any manner perceptible to the senses. "Tangible personal
282 property" includes, but is not limited to, electricity, water, gas,
283 and prewritten computer software.

284 (41) “Tax” includes all taxes levied under articles fifteen
285 and fifteen-a of this chapter, and additions to tax, interest and
286 penalties levied under article ten of this chapter.

287 (42) “Tax commissioner” means the state tax commissioner
288 or his or her delegate. The term “delegate” in the phrase “or his
289 or her delegate”, when used in reference to the tax commis-
290 sioner, means any officer or employee of the state tax division
291 duly authorized by the tax commissioner directly, or indirectly
292 by one or more redelegations of authority, to perform the
293 functions mentioned or described in this article or rules
294 promulgated for this article.

295 (43) “Taxpayer” means any person liable for the taxes
296 levied by articles fifteen and fifteen-a of this chapter or any
297 additions to tax, interest and penalties imposed by article ten of
298 this chapter.

299 (44) “Tobacco” means cigarettes, cigars, chewing or pipe
300 tobacco, or any other item that contains tobacco.

301 (45) “Use tax” means the tax levied under article fifteen-a
302 of this chapter.

303 (46) “Use-based exemption” means an exemption based on
304 the purchaser’s use of the product or service.

305 (47) “Vendor” means any person furnishing services taxed
306 by article fifteen or fifteen-a of this chapter, or making sales of
307 tangible personal property or custom software. “Vendor” and
308 “seller” are used interchangeably in this article and in article
309 fifteen and fifteen-a of this chapter.

310 (c) *Additional definitions.* — Other terms used in this
311 article are defined in articles fifteen and fifteen-a of this
312 chapter, which definitions are incorporated by reference into
313 this article. Additionally, other sections of this article may

314 define terms primarily used in the section in which the term is
315 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” includes amendments
9 to the agreement adopted by the implementing states in
10 calendar year two thousand three but does not include any
11 substantive changes in the agreement adopted after the thirty-
12 first day of December, two thousand three.

**§11-15B-14a. Application of general sourcing rules and exclusions
from the rules.**

1 (a) Sellers shall source the sale of a product in accordance
2 with section fifteen of this article. The provisions of said
3 section apply regardless of the characterization of the product
4 as tangible personal property, custom software, or a service.
5 The provisions of said section only apply to determine a seller’s
6 obligation to pay or collect and remit a sales or use tax with
7 respect to the seller’s sale of a product. These provisions do not
8 affect the obligation of a purchaser or lessee to remit tax on the
9 use of the product to the taxing jurisdiction of that use.

10 (b) Section fifteen of this article does not apply to sales or
11 use tax levied on telecommunication services as defined in
12 section twenty of this article. Telecommunication services shall
13 be sourced in accordance with section nineteen of this article.

§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 or custom software, other than property
35 identified in subsection (c) or (d) of this section, shall be
36 sourced as follows:

37 (1) For a lease or rental that requires recurring periodic
38 payments, the first periodic payment is sourced the same as a
39 retail sale in accordance with the provisions of subsection (a) of
40 this section. Periodic payments made subsequent to the first
41 payment are sourced to the primary property location for each
42 period covered by the payment. The primary property location
43 is as indicated by an address for the property provided by the
44 lessee that is available to the lessor from its records maintained
45 in the ordinary course of business, when use of this address
46 does not constitute bad faith. The property location may not be
47 altered by intermittent use at different locations, such as use of
48 business property that accompanies employees on business trips
49 and service calls.

50 (2) For a lease or rental that does not require recurring
51 periodic payments, the payment is sourced the same as a retail
52 sale in accordance with the provisions of subsection (a) of this
53 section.

54 (3) This subsection does not affect the imposition or
55 computation of sales or use tax on leases or rentals based on a
56 lump sum or accelerated basis, or on the acquisition of property
57 for lease.

58 (c) *Vehicles.*— The lease or rental of motor vehicles,
59 trailers, semi-trailers, or aircraft that do not qualify as transpor-
60 tation equipment, as defined in subsection (d) of this section,
61 shall be sourced as follows:

62 (1) For a lease or rental that requires recurring periodic
63 payments, each periodic payment is sourced to the primary
64 property location. The primary property location is indicated by

65 an address for the property provided by the lessee that is
66 available to the lessor from its records maintained in the
67 ordinary course of business, when use of this address does not
68 constitute bad faith. This location shall not be altered by
69 intermittent use at different locations.

70 (2) For a lease or rental that does not require recurring
71 periodic payments, the payment is sourced the same as a retail
72 sale in accordance with the provisions of subsection (a) of this
73 section.

74 (3) This subsection does not affect the imposition or
75 computation of sales or use tax on leases or rentals based on a
76 lump sum or accelerated basis, or on the acquisition of property
77 for lease.

78 (d) *Sale or lease or rental of transportation equipment.* –
79 The retail sale, including lease or rental, of transportation
80 equipment is sourced the same as a retail sale in accordance
81 with the provisions of subsection (a) of this section, notwith-
82 standing the exclusion of lease or rental in said subsection.
83 “Transportation equipment” means any of the following:

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), inclusive, of this subsection.

102 (e) *Exceptions.*— Subsections (a) and (b) of this section
103 shall not apply to the following goods or services:

104 (1) Telecommunications services, as set out in section
105 twenty of this article, shall be sourced in accordance with
106 section nineteen of this article; and

107 (2) Until the first day of January, two thousand six, a seller
108 who is primarily engaged in the retail sale of cut flowers and
109 flower arrangements taking the original order to sell tangible
110 personal property shall source the sale to the place where order
111 was taken. For purposes of this exception, “primarily” means
112 more than fifty percent of the seller’s total gross sales or
113 receipts are derived from that activity. In determining if a seller
114 is primarily a florist, the total sales price of cut flowers and
115 floral arrangements includes separately stated delivery or
116 service charges. After the thirty-first day of December, two
117 thousand five, sales by florists shall be subject to the general
118 sourcing rules stated in subsection (a) of this section.

119 (f) *Product defined.*— As used in subsection (a) of this
120 section, “product” includes tangible personal property, custom
121 software or a service, or any combination thereof.

§11-15B-19. Telecommunications sourcing rule.

1 (a) Except for the defined telecommunication services in
2 subsection (c) of this section, the sale of telecommunication

3 service sold on a call-by-call basis shall be sourced to: (1) Each
4 level of taxing jurisdiction where the call originates and
5 terminates in that jurisdiction; or (2) each level of taxing
6 jurisdiction where the call either originates or terminates and in
7 which the service address is also located.

8 (b) Except for the defined telecommunication services in
9 subsection (c) of this section, a sale of telecommunication
10 service sold on a basis other than a call-by-call basis is sourced
11 to the customer's place of primary use.

12 (c) The sale of the following telecommunication services
13 shall be sourced to each level of taxing jurisdiction as follows:

14 (1) A sale of mobile telecommunication service, other than
15 air-to-ground radiotelephone service and prepaid calling
16 service, is sourced to the customer's place of primary use, as
17 required by the Mobile Telecommunications Sourcing Act.

18 (2) A sale of post-paid calling service is sourced to the
19 origination point of the telecommunications signal as first
20 identified by either: The seller's telecommunications system, or
21 information received by the seller from its service provider,
22 where the system used to transport the signal is not that of the
23 seller.

24 (3) A sale of prepaid calling service is sourced in accor-
25 dance with section fifteen of this article: *Provided*, That in the
26 case of a sale of mobile telecommunication service that is a
27 prepaid telecommunication service, the rule provided in
28 subdivision (5), subsection (a), section fifteen of this article
29 shall include, as an option, the location associated with the
30 mobile telephone number.

31 (4) A sale of a private communication service is sourced as
32 follows:

33 (A) Service for a separate charge related to a customer
34 channel termination point is sourced to each level of jurisdic-
35 tion in which the customer channel termination point is located.

36 (B) Service where all customer termination points are
37 located entirely within one jurisdiction or levels of jurisdiction
38 is sourced in the jurisdiction in which the customer channel
39 termination points are located.

40 (C) Service for segments of a channel between two cus-
41 tomer channel termination points located in different jurisdic-
42 tions and which segment of channel are separately charged is
43 sourced fifty percent in each level of jurisdiction in which the
44 customer channel termination points are located.

45 (D) Service for segments of a channel located in more than
46 one jurisdiction or levels of jurisdiction and which segments are
47 not separately billed is sourced in each jurisdiction based on the
48 percentage determined by dividing the number of customer
49 channel termination points in the jurisdiction by the total
50 number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

1 For the purpose of section nineteen of this article, the
2 following definitions apply:

3 (1) "Air-to-ground radiotelephone service" means a radio
4 service, as that term is defined in 47 CFR 22.99, in which
5 common carriers are authorized to offer and provide radio
6 telecommunications service for hire to subscribers in aircraft.

7 (2) "Call-by-call basis" means any method of charging for
8 telecommunications services where the price is measured by
9 individual calls.

10 (3) “Communications channel” means a physical or virtual
11 path of communications over which signals are transmitted
12 between or among customer channel termination points.

13 (4) “Customer” means the person or entity that contracts
14 with the seller of telecommunications services. If the end user
15 of telecommunications services is not the contracting party, the
16 end user of the telecommunications service is the customer of
17 the telecommunication service, but this sentence only applies
18 for the purpose of sourcing sales of telecommunications
19 services under section nineteen of this article. “Customer” does
20 not include a reseller of telecommunications service or for
21 mobile telecommunications service of a serving carrier under
22 an agreement to serve the customer outside the home service
23 provider’s licensed service area.

24 (5) “Customer channel termination point” means the
25 location where the customer either inputs or receives the
26 communications.

27 (6) “End user” means the person who utilizes the telecom-
28 munication service. In the case of an entity, “end user” means
29 the individual who utilizes the service on behalf of the entity.

30 (7) “Home service provider” means the same as that term
31 is defined in Section 124(5) of Public Law 106-252 (Mobile
32 Telecommunications Sourcing Act).

33 (8) “Mobile telecommunications service” means the same
34 as that term is defined in Section 124(5) of Public Law 106-252
35 (Mobile Telecommunications Sourcing Act).

36 (9) “Place of primary use” means the street address
37 representative where the customer’s use of the telecommunica-
38 tion service primarily occurs, which must be the residential
39 street address or the primary business street address of the
40 customer. In the case of mobile telecommunications services,

41 “place of primary use” must be within the licensed service area
42 of the home service provider.

43 (10) “Post-paid calling service” means the telecommunica-
44 tion service obtained by making a payment on a call-by-call
45 basis, either through the use of a credit card or payment
46 mechanism such as a bank card, travel card, credit card, or debit
47 card, or by charge made to a telephone number which is not
48 associated with the origination or termination of the telecom-
49 munication service. A post-paid calling service includes a
50 telecommunication service that would be a prepaid calling
51 service except it is not exclusively a telecommunication service.

52 (11) “Prepaid calling service” means the right to access
53 exclusively telecommunications services, which must be paid
54 for in advance and which enables the origination of calls using
55 an access number or authorization code, whether manually or
56 electronically dialed, and that is sold in predetermined units or
57 dollars of which the number declines with use in a known
58 amount.

59 (12) “Private communication service” means a telecommu-
60 nication service that entitles the customer to exclusive or
61 priority use of a communications channel or group of channels
62 between or among termination points, regardless of the manner
63 in which the channel or channels are connected, and includes
64 switching capacity, extension lines, stations, and any other
65 associated services that are provided in connection with the use
66 of the channel or channels.

67 (13) “Service address” means:

68 (A) The location of the telecommunications equipment to
69 which a customer’s call is charged and from which the call
70 originates or terminates, regardless of where the call is billed or
71 paid;

72 (B) If the location in paragraph (A) of this subdivision is
73 not known, service address means the origination point of the
74 signal of the telecommunications services first identified by
75 either the seller's telecommunications system or in information
76 received by the seller from its service provider, where the
77 system used to transport the signals is not that of the seller; or

78 (C) If the location in paragraphs (A) and (B) of this
79 subdivision are not known, then "service address" means the
80 location of the customer's place of primary use.

**§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 Model I or II.*— A monetary allow-
37 ance to sellers under Model III and to all other sellers registered
38 under the agreement that are not sellers under Model I or II may
39 be allowed based on the 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 the
56 cost of collection study required by the agreement is completed
57 and the monetary allowances are based on the results of that
58 study, or on requirements of federal law requiring remote
59 sellers to collect sales and use taxes for states that have signed
60 the agreement.

§11-15B-32. Effective date.

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year two thousand
3 three, shall take effect the first day of January, two thousand
4 four, and apply to all sales made on or after that date and to all
5 returns and payments due on or after that day, except as
6 otherwise expressly provided in section five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 two thousand three, shall take effect the first day of January,
10 two thousand four, and apply to all sales made on or after that
11 date.

12 (c) The provisions of this article, as amended or added by
13 this act of the Legislature, shall apply to all sales made on or
14 after the date of passage of this act in the year two thousand
15 four.

§11-15B-36. Relief from certain liability for state and local taxes.

1 (a) *General.*— Sellers and certified service providers
2 registered under the streamlined sales and use tax agreement to

3 collect sales and use taxes imposed by this state or the eco-
4 nomic opportunity development district excise tax imposed by
5 a local jurisdiction of this state who charged and collected the
6 incorrect amount of sales or use taxes or district excise taxes
7 resulting from the seller or the certified service provider relying
8 on erroneous data provided by this state on tax rates, boundaries
9 or taxing jurisdiction assignments shall be held harmless by the
10 tax commissioner and the local taxing jurisdiction.

11 (b) *Exception.*— A state that is a member of the streamlined
12 sales and use tax agreement and provides an address-based
13 system for assigning taxing jurisdictions pursuant to subdivi-
14 sion (4), subsection (d), section thirty-five of this article, or
15 pursuant to the federal Mobile Telecommunications Sourcing
16 Act, is not required to provide liability relief for errors resulting
17 from reliance on information provided by the member state
18 under subdivision (3), subsection (d), section thirty-five of this
19 article.

CHAPTER 247

**(Com. Sub. for H. B. 4501 — By Delegates Campbell, Boggs,
Staton, Cann and Canterbury)**

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §11-15-9g of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15-9h, all relating to the sales tax holiday on back-to-school purchases; providing an exemption from consumers sales tax for sales of computer hardware and software directly incorporated into manufactured

products; creating exemptions for payment of certain licensing fees, for sales of computer hardware and software directly used in communication, for sales of electronic data processing services, for sales of certain educational software to be used in certain educational or nonprofit institutions, for sales of internet advertising of goods and services and for certain sales of high technology business services; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §11-15-9g of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-15-9h, all 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 four.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high technology business services directly used in fulfillment of a government contract; definitions.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand four.

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 four, and ending at 12 midnight eastern daylight time
17 on the following Sunday in August, two thousand four.

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.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high technology business services directly used in fulfillment of a government contract; definitions.

1 (a) In order to modernize the exemptions from tax con-
2 tained in this article as a result of technological advances in
3 computers and the expanded role of computers, the internet and
4 global instant communications in business, and to encourage
5 computer software developers, computer hardware designers,
6 systems engineering firms, electronic data processing compa-
7 nies and other high technology companies to locate and expand
8 their businesses in West Virginia the following sales of tangible
9 personal property and software are exempt:

10 (1) Sales of computer hardware or software (including
11 custom designed software) to be directly incorporated by a
12 manufacturer into a manufactured product. For purposes of this
13 subsection, the payment of licensing fees for the right to
14 incorporate hardware or software developed by persons other
15 than the manufacturer into a manufactured product is exempt
16 from the tax imposed by this article;

17 (2) Sales of computer hardware or software (including
18 custom designed software) directly used in communication as
19 defined in this article;

20 (3) Sales of electronic data processing services;

21 (4) Sales of educational software required to be used in any
22 of the public schools of this state or in any institution in this
23 state which qualifies as a nonprofit or educational institution
24 subject to administration, regulation, certification or approval
25 of the department of education, the department of education and
26 the arts or the higher education policy commission;

27 (5) Sales of internet advertising of goods and services; and

28 (6) Sales of high technology business services to high
29 technology businesses which enter into contracts with this state,
30 its institutions and subdivisions, governmental units, institu-
31 tions or subdivisions of other states, or with the United States,

32 including agencies of federal, state or local governments for
33 direct use in fulfilling the government contract.

34 (b) *Definitions.* — As used in this article, the following
35 terms have the following meanings:

36 (1) “Computer hardware” means a computer, as defined in
37 article fifteen-b of this chapter, and the directly and immedi-
38 ately connected physical equipment involved in the perfor-
39 mance of data processing or communications functions,
40 including data input, data output, data processing, data storage,
41 and data communication apparatus that is directly and immedi-
42 ately connected to the computer. The term “computer hard-
43 ware” does not include computer software.

44 (2) “High technology business” means and is limited to
45 businesses primarily engaged in the following activities:
46 Computer hardware design and development; computer
47 software design, development, customization and upgrade;
48 computer systems design and development; website design and
49 development; network design and development; design and
50 development of new manufactured products which incorporate
51 computer hardware and software; electronic data processing;
52 network management, maintenance, engineering, administration
53 and security services; website management, maintenance,
54 engineering, administration and security services and computer
55 systems management, maintenance, engineering, administration
56 and security services: *Provided*, That high technology business
57 as defined herein is intended to include businesses which
58 engage in the activities enumerated in this definition as their
59 primary business activity, and not as a secondary or incidental
60 activity and not as an activity in support of or incidental to
61 business activity not specifically enumerated in this definition.

62 (3) “High technology business services” means and is
63 limited to computer hardware design and development;
64 computer software design, development, customization and

65 upgrade; computer systems design and development; website
66 design and development; network design and development;
67 electronic data processing; computer systems management;
68 computer systems maintenance; computer systems engineering;
69 computer systems administration; and computer systems
70 security services.

CHAPTER 248

**(H. B. 4011— By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed February 24, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-21-9 of the code of West Virginia, 1931, 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 §11-21-9 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United
- 3 States relating to income taxes, unless a different meaning is
- 4 clearly required. Any reference in this article to the laws of the
- 5 United States means the provisions of the Internal Revenue

6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of May, two
10 thousand three, but prior to the first day of January, two
11 thousand four, 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 four, 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 four are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that began prior to the first day of June, two
36 thousand three, the law in effect for each of those years shall be
37 fully preserved as to that year, except as provided in this
38 section.

39 (e) For purposes of the refundable credit allowed to a low
40 income senior citizen for property tax paid on his or her
41 homestead in this state, the term “laws of the United States” as
42 used in subsection (a) of this section means and includes the
43 term “low income” as defined in subsection (b), section twenty-
44 one of this article and as reflected in the poverty guidelines
45 updated periodically in the federal register by the U.S. Depart-
46 ment of Health and Human Services under the authority of 42
47 U.S.C. 9902(2).

CHAPTER 249

(S. B. 321 — By Senators Bowman, McKenzie, Prezioso,
Facemyer, Jenkins and Plymale)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-21-12d of the code of West Virginia, 1931, as amended, relating to providing a personal income tax adjustment to the gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee.

Be it enacted by the Legislature of West Virginia:

That §11-21-12d of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12d. Additional modification reducing federal adjusted gross income.

1 In addition to amounts authorized to be subtracted from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any person who retires under an
4 employer-provided defined benefit pension plan that terminates
5 prior to or after the retirement of that person and the pension
6 plan is covered by a guarantor whose maximum benefit
7 guarantee is less than the maximum benefit to which the retiree
8 was entitled had the plan not terminated may subtract annually
9 from his or her federal adjusted income a sum equal to the
10 difference in the amount of the maximum annual pension
11 benefit the person would have received for such tax year had
12 the plan not terminated and the maximum annual pension
13 benefit actually received from the guarantor under a benefit
14 guarantee plan: *Provided*, That if the tax commissioner
15 determines that this adjustment reduces the revenues of the
16 state by two million dollars or more in any one year, then the
17 tax commissioner shall reduce the percentage of the reduction
18 to a level at which the commissioner believes will reduce the
19 cost of the adjustment to two million dollars for the next year.
20 This tax adjustment shall be effective for taxable years begin-
21 ning on and after the first day of January, two thousand one:
22 *Provided, however*, That the adjustment shall terminate for the
23 tax years on or after the first day of January, two thousand
24 seven. This modification is available regardless of the type of
25 return form filed.

CHAPTER 250

(Com. Sub. for H. B. 4318 — By Delegates Craig, Morgan, Leach,
Amores, Kominar, H. White and R. M. Thompson)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12f, relating to providing an increasing modification to federal adjusted gross income for determining West Virginia taxable income for personal income tax purposes in the amount of any deduction previously taken for West Virginia personal income tax purposes for amounts deposited into a prepaid tuition contract or other college savings plan administered by the board of trustees of the college prepaid tuition and savings program, pursuant to article thirty, chapter eighteen of the West Virginia code, and subsequently withdrawn from the prepaid tuition contract or other college savings plan, and used for purposes other than those qualified under section 529 of the Internal Revenue Code; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-12f, to read as follows.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12f. Additional modification increasing federal adjusted gross income.

1 In addition to amounts added to federal adjusted gross
2 income pursuant to subsection (b), section twelve of this article,
3 unless already included in federal adjusted gross income for the
4 taxable year, there shall be added to federal adjusted gross
5 income any amount previously deducted from federal adjusted
6 gross income under section twelve-a of this article for amounts
7 deposited into a prepaid tuition contract or other college savings
8 plan administered by the board of trustees of the college prepaid
9 tuition and savings program, pursuant to article thirty, chapter
10 eighteen of this code and subsequently withdrawn from the

11 prepaid tuition contract or other college savings plan, that was
12 used for purposes other than those qualified expenses autho-
13 rized by I.R.C. § 529. The provisions of this section are
14 effective for taxable years beginning after the thirty-first day of
15 December, two thousand three.

CHAPTER 251

**(H. B. 4012— By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed February 23, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-24-3 of the code of West Virginia, 1931, as amended, relating to updating meaning of federal taxable income and certain other 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 §11-24-3 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in

5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of May, two
11 thousand three, but prior to the first day of January, two
12 thousand four, 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 four, 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 four are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that began prior to the first day of June, two
35 thousand three, 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 252

(Com. Sub. for S. B. 700 — By Senators Love,
Dempsey, Sharpe and Minear)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-7-4a, relating to payments for telecommunications services; providing legislative findings; creating a special revenue account; requiring certain duties of the information services and communications division; requiring state spending units budget for telecommunications services and submit payment or transfer funds to pay for services; authorizing secretary of department of administration to transfer funds to pay for telecommunications services and certain fees and penalties from funds supporting the administration of a spending unit; providing for payment and determination of contested telecommunications charges; requiring payment of telecommunications services within ninety days of receipt of invoice; providing for discontinuance of telecommunications services; authorizing fees for administration of section; and authorizing legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-7-4a, to read as follows:

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS
DIVISION.**

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the information and communications division and secretary of administration.

1 (a) The Legislature finds that it is in the best interest of the
2 state, its spending units and those vendors supplying telecom-
3 munications services to the state and its spending units that any
4 properly registered and qualified vendor supplying telecommu-
5 nications services to two or more spending units under a shared
6 account is entitled to prompt payment upon presentation of a
7 legitimate uncontested invoice for telecommunications services
8 to the division, as provided in the following subsections.

9 (b) To facilitate the administration and payment of telecom-
10 munications services, there is hereby created in the state
11 treasury a special revenue account to be known as the “Tele-
12 communications Services Payment and Reserve Fund”. All
13 moneys transferred from state spending units pursuant to the
14 requirements of this section shall be deposited in the account.
15 Expenditures from the fund shall be made by the director for
16 the exclusive purposes set forth in this section: *Provided*, That
17 no more than one hundred and fifty thousand dollars or the
18 actual amount collected pursuant to subsection (i) of this
19 section in any fiscal year, whichever is less, may be expended
20 from the fund in any fiscal year to defray the costs of adminis-
21 tration of this section.

22 (c) Upon receipt of any telecommunications charges from
23 a properly registered and qualified vendor, the director shall
24 fully apportion telecommunications charges among spending
25 units based on the spending unit’s service and usage, as
26 determined by the director. The director shall send each
27 spending unit a statement of the spending unit’s proportionate
28 share of any telecommunications charges within thirty days of
29 receipt by the division of the invoice detailing the telecommuni-
30 cations charges. The statement is to provide a date of no more

31 than thirty calendar days from the date the division sends the
32 statement by which the spending unit shall submit payment or
33 transfer to the telecommunications services payment and
34 reserve fund all funds necessary to pay for the spending unit's
35 charges in full: *Provided*, That the statement sent in last month
36 of the fiscal year shall provide that the transfer shall be made by
37 the thirty-first day of July. If feasible for the spending unit, the
38 preferable method of payment is by intergovernmental transfer.

39 (d) All spending units shall budget for telecommunications
40 service expenses. Prior to the date provided in each statement
41 sent to a spending unit pursuant to subsection (c) of this section,
42 each spending unit shall pay or transfer the statement amount
43 to the telecommunications services payment and reserve fund.

44 (e) If a spending unit fails to pay or transfer funds by the
45 date specified in the statement sent pursuant to subsection (c)
46 of this section, the secretary of the department of administration
47 shall transfer to the telecommunications services payment and
48 reserve fund the statement amount plus an additional penalty in
49 the amount of three percent of the statement amount from any
50 funds supporting the administration of that spending unit:
51 *Provided*, That the secretary shall complete all such transfers by
52 the thirty-first day of July of each fiscal year. Upon exercising
53 a transfer under the authority of this subsection, the director
54 shall provide a notification to the spending unit, including, but
55 not limited to, the date, time, total amount of the transfer,
56 statement amount and penalty amount. If a participating
57 spending unit does not maintain funds in the state treasury, the
58 secretary may transfer funds by wire from any depository
59 outside the state treasury. A participating spending unit
60 maintaining funds in depositories outside the state treasury shall
61 furnish the secretary access to those funds for the exclusive
62 purposes of this section.

63 (f) If a spending unit contests any portion of its statement,
64 it shall nonetheless remit payment for the entire statement

65 amount and notify the division in writing within thirty days of
66 statement receipt by the spending unit. The secretary shall
67 consider any contested apportionments of charges and provide
68 a final determination on the apportionment of legitimate
69 charges. Corrections or adjustments to apportionments may be
70 effected on future transfer payments: *Provided*, That legitimate
71 vendor charges are to be fully apportioned. If the basis of the
72 contest is vendor error, overcharge, service failure, failure to
73 terminate services as required by the division, or other failure
74 of or error in vendor performance, the director shall withhold
75 the contested amount from current or future vendor payments,
76 pending resolution by the secretary, and the director shall bring
77 the contested matter to the attention of the vendor. The director
78 and the vendor shall attempt to resolve the matter in good faith.
79 Within ninety days of the receipt of the vendor's invoice or a
80 time period mutually agreed to by the vendor and secretary, the
81 secretary shall make the final decision as to the legitimacy of
82 the contested amount and determine if payment is warranted. If
83 the final decision of the secretary is to refuse to pay any
84 amount, the vendor may proceed in accordance with the
85 provisions of article two, chapter fourteen of this code.

86 (g) The director shall provide for full payment of legiti-
87 mate, uncontested telecommunications charges within ninety
88 days of receipt of an invoice detailing the telecommunications
89 charges by the division. Payment for the charges shall be made
90 by the director from the telecommunications services payment
91 and reserve fund.

92 (h) The director may direct the discontinuance of telecom-
93 munications services to any spending unit that fails to comply
94 with the provisions of this section and the vendor supplying
95 telecommunication services shall comply with the written
96 direction of the director on discontinuance of services.

97 (i) To help defray the additional cost of administering this
98 section, the director may assess a proportional fee of up to one

99 hundred fifty thousand dollars in aggregate per fiscal year to the
100 participating spending units based on each spending unit's
101 portion of service and usage. This fee is to be included in the
102 statement sent to spending units pursuant to subsection (c) of
103 this section and transferred to the telecommunications service
104 payment and reserve fund by the date specified in the statement
105 for the transfer of payment.

106 (j) Notwithstanding any other provision of this code to the
107 contrary, for purposes of this section, an invoice is considered
108 received by the division on the date on which the invoice is
109 marked as received by the division, or three business days after
110 the date of the postmark made by the United States postal
111 service as evidenced on the envelope in which the invoice is
112 mailed, whichever is earlier: *Provided*, That if an invoice is
113 received by the division prior to the date on which the telecom-
114 munications services covered by the invoice are delivered or
115 fully performed, for purposes of determining the ninety-day
116 time period for payment in subsection (g) of this section, the
117 invoice is considered received on the date on which the
118 telecommunications services covered by the invoice were
119 delivered or fully performed.

120 (k) For purposes of this section, "telecommunications
121 service" means and includes not only telephone service
122 regulated under chapter twenty-four of this code or under
123 federal law, but also may include, at the discretion of the
124 secretary of administration, wireless service, voice over internet
125 protocol service, internet service and any other service or
126 equipment used for the electronic transmission of voice or data.

127 (l) The director may propose rules for legislative approval
128 in accordance with the provisions of article three, chapter
129 twenty-nine-a of this code to effectuate the purposes of this
130 section. The initial rule filed by the division pursuant to this
131 subsection shall be filed as an emergency rule.

CHAPTER 253

(S. B. 671 — By Senators Ross and Love)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §4-11A-4 and §4-11A-5 of the code of West Virginia, 1931, as amended, all relating to the appeal bond that master settlement agreement signatories must post to stay the execution of a judgment pending appeal; and providing for effective date of this amendment.

Be it enacted by the Legislature of West Virginia:

That §4-11A-4 and §4-11A-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-4. Limitation on appeal bond.

§4-11A-5. Applicability.

§4-11A-4. Limitation on appeal bond.

1 The bond that any appellant who is a signatory or a
2 successor to a signatory of the master settlement agreement or
3 who controls or is under common control with a signatory of
4 the master settlement agreement may be required to post to stay
5 execution on a judgment during an appeal in any cause of
6 action shall be set in accordance with the provisions of section
7 fourteen, article five, chapter fifty-eight of this code and the
8 West Virginia rules of civil procedure: *Provided*, That an
9 appeal bond may not exceed one hundred million dollars for

10 compensatory damages and all other portions of a judgment
11 other than punitive damages and one hundred million dollars
12 for punitive damages unless the appellee proves by a prepon-
13 derance of the evidence that the appellant or appellants are
14 purposefully dissipating or diverting assets outside of the
15 ordinary course of its business to the effect that the ability to
16 pay the ultimate judgment is impaired. For purposes of this
17 section, multiple judgments resulting from cases that have been
18 consolidated or aggregated for purposes of trial proceedings
19 shall be treated as a single judgment.

§4-11A-5. Applicability.

1 The provisions of section four of this article, as originally
2 passed or later amended, apply to all actions pending in the
3 courts of this state on the effective date of this section and to
4 any action filed in this state on or after the effective date:
5 *Provided*, That the provisions of section four of this article
6 providing for the maximum amount of an appeal bond shall not
7 apply in any action brought by any signatory to the master
8 settlement agreement seeking to enforce compliance with the
9 terms of the master settlement agreement or for a breach of the
10 master settlement agreement.

CHAPTER 254

**(H. B. 4625 — By Delegates Cann, Warner, Stalnaker, Boggs,
Houston, Varner and Hall)**

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5B-2-12a, relating to

authorizing the tourism commission the use of the tourism promotion fund to support the 2004 Pete Dye West Virginia Classic to be held in this state in the year two thousand four.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5B-2-12a, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12a. Tourism fund support for 2004 Pete Dye West Virginia Classic in Harrison County.

1 Notwithstanding the provisions of section twelve of this
2 article, the tourism commission may expend moneys from the
3 tourism promotion fund in the amount necessary and up to but
4 not exceeding seven hundred fifty thousand dollars to support
5 the 2004 Pete Dye West Virginia Classic in Harrison County
6 which will be held in the month of July, two thousand four. Any
7 requirements for matching grants under the rules promulgated
8 pursuant to section twelve of this article shall not apply to this
9 section.

10 The provisions of this section shall expire on the thirtieth
11 day of December, two thousand four.

CHAPTER 255

**(Com. Sub. for S. B. 139 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2E-1, §5B-2E-2, §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9, §5B-2E-10 and §5B-2E-11; and to amend said code by adding thereto a new section, designated §11-15-34, all relating to the West Virginia tourism development act; establishing a tourism development project tax credit; specifying short titles; specifying legislative findings and purpose; defining terms; specifying additional powers and duties of the development office; specifying activity that qualifies for the credit; requiring filing of application for tax credit as condition precedent to claiming tax credit; specifying procedures for evaluation and approval of project; providing for hiring of consultants; specifying criteria for evaluating projects; specifying determination of amount of allowable tax credits; providing maximum amount of credit; specifying application of tax credits against sales tax collected; termination of applications after a certain date; providing for forfeiture of unused tax credits; providing for a recapture credit under certain circumstances; and specifying information required to be annually submitted to the state development office.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2E-1, §5B-2E-2, §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9, §5B-2E-10 and §5B-2E-11; and that said code be amended by adding thereto a new section, designated §11-15-34, all to read as follows:

Chapter

5B. Economic Development Act of 1985.

11. Taxation.

**CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.**

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-1. West Virginia Tourism Development Act.

§5B-2E-2. Legislative findings.

§5B-2E-3. Definitions.

§5B-2E-4. Additional powers and duties of the development office.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.

§5B-2E-6. Agreement between development office and approved company.

§5B-2E-7. Amount of credit allowed; approved projects.

§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.

§5B-2E-9. Promulgation of rules.

§5B-2E-10. Legislative review.

§5B-2E-11. Termination.

§5B-2E-1. West Virginia Tourism Development Act.

1 This article shall be referred to as the “West Virginia
2 Tourism Development Act”.

§5B-2E-2. Legislative findings.

1 The Legislature finds and declares that the general welfare
2 and material well-being of the citizens of the state depend, in
3 large measure, upon the development of tourism development
4 projects in the state and that it is in the best interest of the state
5 to induce the creation of new, or the expansion of existing,
6 tourism development projects within the state in order to
7 advance the public purposes of relieving unemployment by
8 preserving and creating jobs and by preserving and creating
9 new and greater sources of revenues for the support of public
10 services provided by the state; and that the inducement for the
11 creation or expansion of tourism development projects should
12 be in the form of a tax credit to be applied to consumers sales
13 and service taxes collected on the gross receipts generated
14 directly from the operations of the new or expanded tourism

15 development projects, in lieu of tax credits on income that are
16 largely deferred for a number of years after start up of a major
17 tourism development project; and all of which new or expanded
18 tourism developments are of paramount importance to the state
19 and its economy and for the state's contribution to the national
20 economy.

§5B-2E-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 otherwise:

3 (1) "Agreement" means a tourism development agreement
4 entered into, pursuant to section six of this article, between the
5 development office and an approved company with respect to
6 a tourism development project.

7 (2) "Approved company" means any eligible company
8 approved by the development office pursuant to section five of
9 this article seeking to undertake a tourism development project.

10 (3) "Approved costs" means:

11 (A) Included costs:

12 (i) Obligations incurred for labor and to vendors, contrac-
13 tors, subcontractors, builders, suppliers, delivery persons and
14 material persons in connection with the acquisition, construc-
15 tion, equipping, installation or expansion of a tourism develop-
16 ment project;

17 (ii) The costs of acquiring real property or rights in real
18 property and any costs incidental thereto;

19 (iii) The cost of contract bonds and of insurance of all kinds
20 that may be required or necessary during the course of the

21 acquisition, construction, equipping, installation or expansion
22 of a tourism development project which is not paid by the
23 vendor, supplier, delivery person, contractor or otherwise
24 provided;

25 (iv) All costs of architectural and engineering services,
26 including, but not limited to: Estimates, plans and specifica-
27 tions, preliminary investigations and supervision of construc-
28 tion, installation, as well as for the performance of all the duties
29 required by or consequent to the acquisition, construction,
30 equipping, installation or expansion of a tourism development
31 project;

32 (v) All costs required to be paid under the terms of any
33 contract for the acquisition, construction, equipping, installation
34 or expansion of a tourism development project;

35 (vi) All costs required for the installation of utilities,
36 including, but not limited to: Water, sewer, sewer treatment,
37 gas, electricity, communications and off-site construction of
38 utility extensions to the boundaries of the real estate on which
39 the facilities are located, all of which are to be used to improve
40 the economic situation of the approved company in a manner
41 that allows the approved company to attract persons; and

42 (vii) All other costs comparable with those described in this
43 subdivision;

44 (B) *Excluded costs.* -- The term "approved costs" does not
45 include any portion of the cost required to be paid for the
46 acquisition, construction, equipping and installation or expan-
47 sion of a tourism development project that is financed with
48 governmental incentives, grants or bonds or for which the
49 eligible taxpayer elects to qualify for other tax credits, includ-
50 ing, but not limited to, those provided by article thirteen-q,
51 chapter eleven of this code.

52 (4) “Base tax revenue amount” means the average monthly
53 amount of consumer sales and service tax collected by an
54 approved company, based on the twelve-month period ending
55 immediately prior to the opening of a new tourism development
56 project for business, as certified by the state tax commissioner.

57 (5) “Council” means the council for community and
58 economic development as provided in article two of this
59 chapter.

60 (6) “Development office” means the West Virginia devel-
61 opment office as provided in article two of this chapter.

62 (7) “Crafts and products center” means a facility primarily
63 devoted to the display, promotion and sale of West Virginia
64 products and at which a minimum of eighty percent of the sales
65 occurring at the facility are of West Virginia arts, crafts or
66 agricultural products.

67 (8) “Eligible company” means any corporation, limited
68 liability company, partnership, limited liability partnership, sole
69 proprietorship, business trust, joint venture or any other entity
70 operating or intending to operate a tourism development
71 project, whether owned or leased, within the state that meets the
72 standards required by the council. An eligible company may
73 operate or intend to operate directly or indirectly through a
74 lessee.

75 (9) “Entertainment destination center” means a facility
76 containing a minimum of two hundred thousand square feet of
77 building space adjacent or complementary to an existing
78 tourism attraction, an approved tourism development project or
79 a major convention facility and which provides a variety of
80 entertainment and leisure options that contain at least one major
81 theme restaurant and at least three additional entertainment
82 venues, including, but not limited to, live entertainment,
83 multiplex theaters, large-format theaters, motion simulators,

84 family entertainment centers, concert halls, virtual reality or
85 other interactive games, museums, exhibitions or other cultural
86 and leisure time activities. Entertainment and food and drink
87 options shall occupy a minimum of sixty percent of total gross
88 area, as defined in the application, available for lease and other
89 retail stores shall occupy no more than forty percent of the total
90 gross area available for lease.

91 (10) "Final approval" means the action taken by the council
92 qualifying the eligible company to receive the tax credits
93 provided in this article.

94 (11) "Preliminary approval" means the action taken by the
95 development office conditioning final approval by the council.

96 (12) "State agency" means any state administrative body,
97 agency, department, division, board, commission or institution
98 exercising any function of the state that is not a municipal
99 corporation or political subdivision.

100 (13) "Tourism attraction" means a cultural or historical site,
101 a recreation or entertainment facility, an area of natural
102 phenomenon or scenic beauty, a West Virginia crafts and
103 products center or an entertainment destination center. A
104 tourism development project or attraction shall not include any
105 of the following:

106 (A) Lodging facilities, unless:

107 (i) The facilities constitute a portion of a tourism develop-
108 ment project and represent less than fifty percent of the total
109 approved cost of the tourism development project, or the
110 facilities are to be located on recreational property owned or
111 leased by the state or federal government and the facilities have
112 received prior approval from the appropriate state or federal
113 agency.

114 (ii) The facilities involve the restoration or rehabilitation of
115 a structure that is listed individually in the national register of
116 historic places or are located in a national register historic
117 district and certified by the state historic preservation officer as
118 contributing to the historic significance of the district, and the
119 rehabilitation or restoration project has been approved in
120 advance by the state historic preservation officer; or

121 (iii) The facilities involve the construction, reconstruction,
122 restoration, rehabilitation or upgrade of a full-service lodging
123 facility or the reconstruction, restoration, rehabilitation or
124 upgrade of an existing structure into a full-service lodging
125 facility having not less than five hundred guest rooms, with
126 construction, reconstruction, restoration, rehabilitation or
127 upgrade costs exceeding ten million dollars;

128 (B) Facilities that are primarily devoted to the retail sale of
129 goods, other than an entertainment destination center, a West
130 Virginia crafts and products center or a tourism development
131 project where the sale of goods is a secondary and subordinate
132 component of the project; and

133 (C) Recreational facilities that do not serve as a likely
134 destination where individuals who are not residents of the state
135 would remain overnight in commercial lodging at or near the
136 new tourism development project or existing attraction.

137 (14) "Tourism development project" means the acquisition,
138 including the acquisition of real estate by a leasehold interest
139 with a minimum term of ten years, construction and equipping
140 of a tourism attraction; the construction and installation of
141 improvements to facilities necessary or desirable for the
142 acquisition, construction, installation or expansion of a tourism
143 attraction, including, but not limited to, surveys, installation of
144 utilities, which may include water, sewer, sewage treatment,
145 gas, electricity, communications and similar facilities; and off-

146 site construction of utility extensions to the boundaries of the
147 real estate on which the facilities are located, all of which are to
148 be used to improve the economic situation of the approved
149 company in a manner that allows the approved company to
150 attract persons.

151 (15) "Tourism development project tax credit" means the
152 tourism development project tax credit allowed by section
153 seven of this article.

§5B-2E-4. Additional powers and duties of the development office.

1 The development office has the following powers and
2 duties, in addition to those set forth in this case, necessary to
3 carry out the purposes of this article including, but not limited
4 to:

5 (1) Make preliminary approvals of all applications for
6 tourism development projects and enter into agreements
7 pertaining to tourism development projects with approved
8 companies;

9 (2) Employ fiscal consultants, attorneys, appraisers and
10 other agents as the executive director of the development office
11 finds necessary or convenient for the preparation and adminis-
12 tration of agreements and documents necessary or incidental to
13 any tourism development project; and

14 (3) Impose and collect fees and charges in connection with
15 any transaction.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.

1 (a) Each eligible company that seeks to qualify a tourism
2 development project for the tax credit provided by this article
3 must file a written application for approval of the project with
4 the development office.

5 (b) With respect to each eligible company making an
6 application to the development office for the tourism develop-
7 ment project tax credit, the development office shall make
8 inquiries and request documentation, including a completed
9 application, from the applicant that shall include: A description
10 and location of the project; capital and other anticipated
11 expenditures for the project and the sources of funding therefor;
12 the anticipated employment and wages to be paid at the project;
13 business plans that indicate the average number of days in a
14 year in which the project will be in operation and open to the
15 public; and the anticipated revenues and expenses generated by
16 the project.

17 (c) Based upon a review of the application and additional
18 documentation provided by the eligible company, if the director
19 of the development office determines that the applicant and the
20 tourism development project may reasonably satisfy the criteria
21 for final approval set forth in subsection (d) of this section, then
22 the director of the development office may grant a preliminary
23 approval of the applicant and the tourism development project.

24 (d) After preliminary approval by the director of the
25 development office, the development office shall engage the
26 services of a competent consulting firm or firms to analyze the
27 data made available by the applicant and to collect and analyze
28 additional information necessary to determine that, in the
29 independent judgment of the consultant, the tourism develop-
30 ment project:

31 (1) Likely will attract at least twenty-five percent of its
32 visitors from outside of this state;

33 (2) Will have approved costs in excess of one million
34 dollars;

35 (3) Will have a significant and positive economic impact on
36 the state considering, among other factors, the extent to which
37 the tourism development project will compete directly with or
38 complement existing tourism attractions in the state and the
39 amount by which increased tax revenues from the tourism
40 development project will exceed the credit given to the ap-
41 proved company;

42 (4) Will produce sufficient revenues and public demand to
43 be operating and open to the public for a minimum of one
44 hundred days per year; and

45 (5) Will provide additional employment opportunities in the
46 state.

47 (e) The applicant shall pay to the development office, prior
48 to the engagement of the services of a competent consulting
49 firm or firms pursuant to the provisions of subsection (d) of this
50 section, for the cost of the consulting report or reports and shall
51 cooperate with the consulting firm or firms to provide all of the
52 data that the consultant considers necessary or convenient to
53 make its determination under subsection (d) of this section.

54 (f) The director of the development office, within thirty
55 days following receipt of the consultant's report or reports,
56 shall decide whether to recommend the tourism development
57 project to the council for final approval. If the director of the
58 development office recommends the tourism development
59 project to the council, he or she shall submit the project
60 application, the consulting report or reports and other informa-
61 tion regarding the project to the council.

62 (g) The council shall review all applications properly
63 submitted to the council for conformance to statutory and

64 regulatory requirements, the reasonableness of the project's
65 budget and timetable for completion, and, in addition to the
66 criteria for final approval set forth in subsection (d) of this
67 section, the following criteria:

68 (1) The quality of the proposed tourism development
69 project and how it addresses economic problems in the area in
70 which the tourism development project will be located;

71 (2) Whether there is substantial and credible evidence that
72 the tourism development project is likely to be started and
73 completed in a timely fashion;

74 (3) Whether the tourism development project will, directly
75 or indirectly, improve the opportunities in the area where the
76 tourism development project will be located for the successful
77 establishment or expansion of other industrial or commercial
78 businesses;

79 (4) Whether the tourism development project will, directly
80 or indirectly, assist in the creation of additional employment
81 opportunities in the area where the tourism development project
82 will be located;

83 (5) Whether the project helps to diversify the local econ-
84 omy;

85 (6) Whether the project is consistent with the goals of this
86 article;

87 (7) Whether the project is economically and fiscally sound
88 using recognized business standards of finance and accounting;
89 and

90 (8) The ability of the eligible company to carry out the
91 tourism development project.

92 (h) The council may establish other criteria for consider-
93 ation when approving the applications.

94 (i) The council may give its final approval to the applicant's
95 application for a tourism development project and may grant to
96 the applicant the status of an approved company: *Provided*,
97 That the total amount of tourism development project tax
98 credits for all approved companies may not exceed one million
99 five hundred thousand dollars each calendar year. The council
100 shall act to approve or not approve any application within thirty
101 days following the receipt of the application or the receipt of
102 any additional information requested by the council, whichever
103 is later. The decision by the development office and the council
104 is final.

**§5B-2E-6. Agreement between development office and approved
company.**

1 The development office, upon grant of the council's final
2 approval, may enter into an agreement with any approved
3 company with respect to its tourism development project. The
4 terms and provisions of each agreement shall include, but not
5 be limited to:

6 (1) The amount of approved costs of the project that qualify
7 for the sales tax credit, provided for in section seven of this
8 article. Within three months of the completion date, the
9 approved company shall document the actual cost of the project
10 through a certification of the costs to the development office by
11 an independent certified public accountant acceptable to the
12 development office; and

13 (2) A date certain by which the approved company shall
14 have completed and opened the tourism development project to
15 the public. Any approved company that has received final
16 approval may request and the development office may grant an
17 extension or change, however, in no event shall the extension

18 exceed three years from the date of final approval to the
19 completion date specified in the agreement with the approved
20 company.

§5B-2E-7. Amount of credit allowed; approved projects.

1 (a) Approved companies are allowed a credit against the
2 West Virginia consumers sales and service tax imposed by
3 article fifteen, chapter eleven of this code and collected by the
4 approved company on sales generated by or arising from the
5 operations of the tourism development project: *Provided*, That
6 if the consumers sales and service tax collected by the approved
7 company is not solely attributable to sales resulting from the
8 operation of the new tourism development project, the credit
9 shall only be applied against that portion of the consumers sales
10 and service tax collected in excess of the base tax revenue
11 amount. The amount of this credit is determined and applied as
12 provided in this article.

13 (b) The maximum amount of credit allowable in this article
14 is equal to twenty-five percent of the approved company's
15 approved costs as provided in the agreement: *Provided*, That,
16 if the tourism development project site is located within the
17 permit area or an adjacent area of a surface mining operation,
18 as these terms are defined in section three, article three, chapter
19 twenty-two of this code, from which all coal has been or will be
20 extracted prior to the commencement of the tourism develop-
21 ment project, the maximum amount of credit allowable is equal
22 to fifty percent of the approved company's approved costs as
23 provided in the agreement.

24 (c) The amount of credit allowable must be taken over a
25 ten-year period, at the rate of one tenth of the amount thereof
26 per taxable year, beginning with the taxable year in which the
27 project is opened to the public, unless the approved company
28 elects to delay the beginning of the ten-year period until the

29 next succeeding taxable year. This election shall be made in the
30 first consumers sales and service tax return filed by the ap-
31 proved company following the date the project is opened to the
32 public. Once made, the election cannot be revoked.

33 (d) The amount determined under subsection (b) of this
34 section is allowed as a credit against the consumers sales and
35 service tax collected by the approved company on sales from
36 the operation of the tourism development project. The amount
37 determined under said subsection may be used as a credit
38 against taxes required to be remitted on the approved com-
39 pany's monthly consumers sales and service tax returns that are
40 filed pursuant to section sixteen, article fifteen, chapter eleven
41 of this code. The approved company shall claim the credit by
42 reducing the amount of consumers sales and service tax
43 required to be remitted with its monthly consumers sales and
44 service tax returns by the amount of its aggregate annual credit
45 allowance until such time as the full current year annual credit
46 allowance has been claimed. Once the total credit claimed for
47 the tax year equals the approved company's aggregate annual
48 credit allowance no further reductions to its monthly consumers
49 sales and service tax returns will be permitted.

50 (e) If any credit remains after application of subsection (d)
51 of this section, the amount of credit is carried forward to each
52 ensuing tax year until used or until the expiration of the third
53 taxable year subsequent to the end of the initial ten-year credit
54 application period. If any unused credit remains after the
55 thirteenth year, that amount is forfeited. No carryback to a
56 prior taxable year is allowed for the amount of any unused
57 portion of any annual credit allowance.

**§5B-2E-8. Forfeiture of unused tax credits; credit recapture;
recapture tax imposed; information required
to be submitted annually to development
office; transfer of tax credits to successors.**

1 (a) The approved company shall forfeit the tourism
2 development project tax credit allowed by this article with
3 respect to any calendar year and shall pay the recapture tax
4 imposed by subsection (b) of this section, if:

5 (1) In any year following the first calendar year the project
6 is open to the public, the tourism development project fails to
7 attract at least twenty-five percent of its visitors from among
8 persons who are not residents of the state;

9 (2) In any year following the first year the project is open
10 to the public, the tourism development project is not operating
11 and open to the public for at least one hundred days; or

12 (3) The approved company is not in good standing with the
13 state tax division, the workers' compensation commission or
14 the bureau of employment programs as of the beginning of each
15 calendar year.

16 (b) In addition to the loss of credit allowed under this article
17 for the calendar year, any approved company or successor
18 eligible company that forfeits the tourism development project
19 tax credit under the provisions of subsection (a) of this section,
20 credit recapture shall apply and the approved company, and
21 successor eligible companies, shall return to the state all
22 previously claimed tourism development project tax credit
23 allowed by this article. An amended return shall be filed with
24 the state tax commissioner for the prior calendar year, or
25 calendar years, for which credit recapture is required, along
26 with interest, as provided in section seventeen, article ten,
27 chapter eleven of this code: *Provided*, That the approved
28 company and successor eligible companies who previously
29 claimed the tourism development project tax credit allowed by
30 this article are jointly and severally liable for payment of any
31 recapture tax subsequently imposed under this section.

32 (c) Within forty-five days after the end of each calendar
33 year during the term of the agreement, the approved company
34 shall supply the development office with all reports and
35 certifications the development office requires demonstrating to
36 the satisfaction of the development office that the approved
37 company is in compliance with applicable provisions of law.
38 Based upon a review of these materials and other documents
39 that are available, the development office shall then certify to
40 the tax commissioner that the approved company is in compli-
41 ance with this section.

42 (d) The tax credit allowed in this article is transferable,
43 subject to the written consent of the development office, to an
44 eligible successor company that continues to operate the
45 approved tourism development project.

§5B-2E-9. Promulgation of rules.

1 The council may promulgate rules to implement the tourism
2 development project application approval process and to
3 describe the criteria and procedures it has established in
4 connection therewith. These rules are not subject to the
5 provisions of chapter twenty-nine-a of this code but shall be
6 filed with the secretary of state.

§5B-2E-10. Legislative review.

1 The development office shall report annually to the joint
2 commission on economic development by the first day of
3 December of each year on the number of applications received
4 from eligible companies as provided in this article, the status of
5 each application, the number of projects approved, the status of
6 each project, the amount of credit allowed and the amount of
7 consumers sales and service tax generated by each project.

§5B-2E-11. Termination.

1 The development office may not accept any new applica-
2 tion on or after the first day of January, two thousand seven,
3 and all applications submitted prior to the first day of January,
4 two thousand seven, that have not been previously approved or
5 not approved, shall be deemed not approved and shall be null
6 and void as of the first day of January, two thousand seven.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-34. Tourism development project tax credit.

1 (a) There is allowed as a credit against the consumers sales
2 and service tax collected and required to be remitted pursuant
3 to this article from the operation of an approved tourism
4 development project as defined in section three, article two-e,
5 chapter five-b of this code, the amount determined under
6 section eight, article two-e, chapter five-b of this code relating
7 to the tourism development project tax credit.

8 (b) The tax commissioner may propose legislative rules in
9 accordance with article three, chapter twenty-nine-a of this code
10 designed to require the filing of forms designed by the tax
11 commissioner to reflect the intent of this section and article
12 two-e, chapter five-b of this code.

CHAPTER 256

(H. B. 4746 — By Delegates Michael, R. M. Thompson,
H. White, Hall, Campbell and Leach)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended; to amend and reenact §12-2-1 of said code; to amend and reenact §12-3-1 and §12-3-1a of said code; to amend and reenact §12-3A-3, §12-3A-4 and §12-3A-6 of said code; to amend and reenact §12-5-1 and §12-5-5 of said code; and to amend and reenact §18-30-4 of said code, all relating generally to the state treasurer's office; designating financial institutions as depositories for state funds; adding state and federal savings and loan associations as candidates for depository banks; exceptions; defining spending unit for the purposes of chapter twelve of the code; allowing only the treasurer to enter into contracts for banking goods and services; exceptions; requiring financial institutions outside the state with state funds to meet the same collateral requirements for other depositories; clarifying that the treasurer may pay for banking goods and services by maintaining a compensating balance in an account other than only accounts that do not earn interest; adding electronic funds transfers to the methods the state uses to receive moneys; amending procedures for stale dated checks and requiring the treasurer to search for the payee; requiring spending units which have payments in which the checks have become stale to inform the treasurer's office when the stale dated checks contain federal funds, the amount of the federal funds and which account should receive the funds; specifying legal effect of documents and electronic signatures; adding the treasurer as additional administrator of the West Virginia check card; allowing the state treasurer to authorize spending units to assess and collect fees for electronic commerce receipts; requiring the state treasurer to issue legislative rules to authorize spending units to assess and collect fees for electronic commerce receipts; adding cash to the definition of securities; creating fund in treasury to allow for the deposit of cash into safekeeping and allowing the treasurer to invest the money and to prescribe forms and procedures for processing the moneys; changing the qualifications for certain members of the West

Virginia college prepaid tuition and savings program and changing the appointment process of two members of the West Virginia college prepaid tuition and savings program.

Be it enacted by the Legislature of West Virginia:

That §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §12-2-1 of said code be amended and reenacted; that §12-3-1 and §12-3-1a of said code be amended and reenacted; that §12-3A-3, §12-3A-4 and §12-3A-6 of said code be amended and reenacted; that §12-5-1 and §12-5-5 of said code be amended and reenacted; and that §18-30-4 of said code be amended and reenacted, all to read as follows:

Chapter

- 12. Public Moneys and Securities.**
- 18. Education.**

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

- 1. State Depositories.**
- 2. Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.**
- 3. Appropriations, Expenditures and Deductions.**
- 3A. Financial Electronic Commerce.**
- 5. Public Securities.**

ARTICLE 1. STATE DEPOSITORIES.

- §12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.
- §12-1-7. Rules; banking contracts and agreements; depositors; agreements.
- §12-1-12. Investing funds in treasury; depositories outside the state.
- §12-1-13. Payment of banking services and litigation costs for prior investment losses.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.

1 The state treasurer shall designate the state and national
2 banks and the state and federal savings and loan associations in
3 this state meeting the requirements of this chapter as deposito-
4 ries for all state funds placed in demand deposits.

5 Demand deposit accounts shall consist of receipt and
6 disbursement accounts. Receipt accounts are accounts in which
7 are deposited moneys belonging to or due the state of West
8 Virginia or any official, department, board, commission or
9 agency thereof.

10 Disbursement accounts are accounts from which are paid
11 moneys due from the state of West Virginia or any official,
12 department, board, commission, political subdivision or agency
13 thereof to any political subdivision, person, firm or corporation,
14 except moneys paid from investment accounts.

15 Investment accounts are accounts established by the West
16 Virginia investment management board or the state treasurer for
17 the buying and selling of securities for investment purposes.

18 The state treasurer shall promulgate rules, in accordance
19 with the provisions of article three, chapter twenty-nine-a of
20 this code, concerning depositories for receipt accounts prescrib-
21 ing the selection criteria, procedures, compensation and such
22 other contractual terms as it considers to be in the best interests
23 of the state giving due consideration to: (1) The activity of the
24 various accounts maintained therein; (2) the reasonable value
25 of the banking services rendered or to be rendered the state by
26 such depositories; and (3) the value and importance of such
27 deposits to the economy of the communities and the various
28 areas of the state affected thereby.

29 The state treasurer shall select depositories for disburse-
30 ment accounts through competitive bidding by eligible banks in
31 this state. If none of the eligible banks in this state are able to
32 provide the needed services, then the treasurer may include
33 eligible banks outside this state in the competitive bidding
34 process. The treasurer shall promulgate rules in accordance
35 with the provisions of article three, chapter twenty-nine-a of
36 this code, prescribing the procedures and criteria for the bidding
37 and selection. The treasurer shall, in the invitations for bids,
38 specify the approximate amounts of deposits, the duration of
39 contracts to be awarded and such other contractual terms as the
40 treasurer considers to be in the best interests of the state,
41 consistent with obtaining the most efficient service at the lowest
42 cost.

43 The amount of money needed for current operation pur-
44 poses of the state government, as determined by the state
45 treasurer, shall be maintained at all times in the state treasury,
46 in cash, in short term investments not to exceed five days, or in
47 disbursement accounts with financial institutions designated as
48 depositories in accordance with the provisions of this section.
49 No state officer or employee shall make or cause to be made
50 any deposits of state funds in banks not so designated. Only
51 banks and state and federal savings and loan associations
52 designated by the treasurer as depositories may accept deposits
53 of state funds. Boards, commissions and spending units with
54 authority pursuant to this code to deposit moneys in a financial
55 institution without approval of the state treasurer shall retain
56 that authority and are not required to have the treasurer desig-
57 nate a financial institution as a depository: *Provided*, That
58 boards, commissions and spending units with moneys deposited
59 in financial institutions not approved for that purpose by the
60 state treasurer shall submit a report on those moneys annually
61 to the legislative auditor. The provisions of this section shall not
62 apply to the proceeds from the sale of general obligation bonds
63 or bonds issued by the school building authority, the parkways,

64 economic development and tourism authority, the housing
65 development fund, the economic development authority, the
66 infrastructure and jobs development council, the water develop-
67 ment authority or the hospital finance authority.

68 As used in this chapter, “spending unit” means a depart-
69 ment, agency, board, commission or institution of state govern-
70 ment for which an appropriation is requested, or to which an
71 appropriation is made by the Legislature.

**§12-1-7. Rules; banking contracts and agreements; depositors;
agreements.**

1 In addition to rules specially authorized in this article, the
2 West Virginia investment management board and the state
3 treasurer are generally authorized to promulgate any rules
4 necessary to protect the interests of the state, its depositories
5 and taxpayers. All rules promulgated are subject to the provi-
6 sions of article three, chapter twenty-nine-a of this code. Any
7 rules previously established by the board of public works, the
8 board of investments, the investment management board or the
9 state treasurer pursuant to this article shall remain in effect until
10 amended, superseded or rescinded.

11 Only the treasurer may enter into contracts or agreements
12 with financial institutions for banking goods or services
13 required by spending units. Boards, commissions and spending
14 units with authority pursuant to this code to enter into contracts
15 or agreements with financial institution for banking goods and
16 services without approval of the state treasurer shall retain that
17 authority and are not required to have the treasurer designate a
18 financial institution as a depository. The provisions of this
19 section shall not apply to trust and investment accounts and
20 activities for general obligation bonds or bonds issued by the
21 school building authority, the parkways, economic development
22 and tourism authority, the housing development fund, the

23 economic development authority, the infrastructure and jobs
24 development council, the water development authority or the
25 hospital finance authority. A state spending unit requiring
26 banking goods or services shall submit a request for the goods
27 or services to the treasurer. If the treasurer enters into a contract
28 or agreement for the required goods or services, spending units
29 using the contract or agreement shall pay either the vendor or
30 the treasurer for the goods or services used.

31 The treasurer is also authorized to enter into any depositors'
32 agreements for the purpose of reorganizing or rehabilitating any
33 depository in which state funds are deposited, and for the
34 purpose of transferring the assets, in whole or in part, of any
35 depository to any other lawful depository when, in the judgment
36 of the treasurer, the interests of the state are promoted thereby,
37 and upon condition that no right of the state to preferred
38 payment is waived.

§12-1-12. Investing funds in treasury; depositories outside the state.

1 When the funds in the treasury exceed the amount needed
2 for current operational purposes, as determined by the treasurer,
3 the treasurer shall make all of such excess available for
4 investment by the investment management board which shall
5 invest the excess for the benefit of the general revenue fund:
6 *Provided*, That the state treasurer, after reviewing the cash flow
7 needs of the state, may withhold and invest amounts not to
8 exceed one hundred twenty-five million dollars of the operating
9 funds needed to meet current operational purposes. Investments
10 made by the state treasurer under this section shall be made in
11 short term investments not to exceed five days. Operating funds
12 means the consolidated fund established in section eight, article
13 six of this chapter, including all cash and investments of the
14 fund.

15 Spending units with authority to retain interest or earnings
16 on a fund or account may submit requests to the treasurer to
17 transfer moneys to a specific investment pool of the investment
18 management board and retain any interest or earnings on the
19 money invested. The general revenue fund shall receive all
20 interest or other earnings on money invested that are not
21 designated for a specific fund or account.

22 Whenever the funds in the treasury exceed the amount for
23 which depositories within the state have qualified, or the
24 depositories within the state which have qualified are unwilling
25 to receive larger deposits, the treasurer may designate deposito-
26 ries outside the state, disbursement accounts being bid for in the
27 same manner as required by depositories within the state, and
28 when depositories outside the state have qualified by giving the
29 bond prescribed in section four of this article, the state treasurer
30 shall deposit funds in the same manner as funds are deposited
31 in depositories within the state under this article.

32 The state treasurer may transfer funds to financial institu-
33 tions outside the state to meet obligations to paying agents
34 outside the state if the financial institution meets the same
35 collateral requirements as set forth in this article.

**§12-1-13. Payment of banking services and litigation costs for
prior investment losses.**

1 (a) The treasurer is authorized to pay for banking services,
2 and goods and services ancillary thereto, by either a compensat-
3 ing balance in an account maintained at the financial institution
4 providing the services or with a state warrant as described in
5 section one, article three of this chapter.

6 (b) The investment management board is authorized to pay
7 for the investigation and pursuit of claims against third parties
8 for the investment losses incurred during the period beginning
9 on the first day of August, one thousand nine hundred

10 eighty-four, and ending on the thirty-first day of August, one
11 thousand nine hundred eighty-nine. The payment may be in the
12 form of a state warrant.

13 (c) If payment is made by a state warrant, the investment
14 management board, at the request of the treasurer, is authorized
15 to establish within the consolidated fund an investment pool
16 which will generate sufficient income to pay for all banking
17 services provided to the state and to pay for the investigation
18 and pursuit of the prior investment loss claims. All income
19 earned by the investment pool shall be paid into a special
20 account of the treasurer known as the banking services account
21 to pay for all banking services and goods and services ancillary
22 to the banking services provided to the state, for the investiga-
23 tion and pursuit of the prior investment loss claims, and for
24 amortization of the balance in the investment imbalance fund.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.**

**§12-2-1. How and to whom taxes and other amounts due the state
or any political subdivision, official, department,
board, commission or other collecting agency
thereof may be paid.**

1 All persons, firms and corporations shall promptly pay all
2 taxes and other amounts due from them to the state, or to any
3 political subdivision, official, department, board, commission
4 or other collecting agency thereof authorized by law to collect
5 the taxes and other amounts due by any authorized commer-
6 cially acceptable means, in money, United States currency or by
7 check, bank draft, certified check, cashier's check, post office
8 money order, express money order or electronic funds transfer
9 payable and delivered to the official, department, board,
10 commission or collecting agency thereof authorized by law to
11 collect the taxes and other amounts due and having the account

12 upon which the taxes or amounts due are chargeable against the
13 payer of the taxes or amounts due. The duly elected or ap-
14 pointed officers of the state and of its political subdivisions,
15 departments, boards, commissions and collecting agencies
16 having the account on which the taxes or other amounts due are
17 chargeable against the payer of the taxes or other amounts due
18 and authorized by law to collect the taxes or other amounts due,
19 and their respective agents, deputies, assistants and employees
20 shall in no case be the agent of the payer in and about the
21 collection of the taxes or other amounts, but shall at all times
22 and under all circumstances be the agent of the state, its
23 political subdivision, official, department, board, commission
24 or collecting agency having the account on which the taxes or
25 amounts are chargeable against the payer of the taxes or other
26 amounts due and authorized by law to collect the same.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-1a. Payment by deposit in bank account.

§12-3-1. Manner of payment from treasury; form of checks.

1 (a) Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a warrant for
3 same. The auditor shall thereupon examine the claim, and the
4 vouchers, certificates and evidence, if any, offered in support
5 thereof, and for so much thereof as he or she finds to be justly
6 due from the state, if payment thereof is authorized by law, and
7 if there is an appropriation not exhausted or expired out of
8 which it is properly payable, the auditor shall issue his or her
9 warrant on the treasurer, specifying to whom and on what
10 account the money mentioned therein is to be paid, and to what
11 appropriation it is to be charged. The auditor shall present to the
12 treasurer daily reports on the number of warrants issued, the
13 amounts of the warrants and the dates on the warrants for the
14 purpose of effectuating the investment policies of the state

15 treasurer and the investment management board. On the
16 presentation of the warrant to the treasurer, the treasurer shall
17 ascertain whether there are sufficient funds in the treasury to
18 pay that warrant, and if he or she finds it to be so, he or she
19 shall in that case, but not otherwise, endorse his or her check
20 upon the warrant, directed to some depository, which check
21 shall be payable to the order of the person who is to receive the
22 money therein specified.

23 (b) If a check is not presented for payment within six
24 months after it is drawn, it is the duty of the treasurer to credit
25 it to the depository on which it was drawn, to credit the
26 "Treasurer's Stale Check Fund," which is hereby created in the
27 state treasury, and immediately notify the auditor to make
28 corresponding entries on the auditor's books. If the state
29 treasurer determines any funds deposited in the stale check
30 account are federal funds, the state treasurer shall notify the
31 spending unit authorizing the payment. Within six months
32 following issuance of the notice, the spending unit shall inform
33 the state treasurer of the amount of federal funds included in the
34 check, the account from which the federal funds were dis-
35 bursed, and the current fiscal year account to which the federal
36 funds are to be transferred. After receiving the information, the
37 state treasurer shall transfer the amount of federal funds
38 specified as a reimbursement to the current fiscal year account
39 specified to receive federal funds by the spending unit. For a
40 period of up to six months, the state treasurer shall endeavor to
41 pay the money in the stale check account to the payee. The
42 treasurer shall credit the money that has been in the stale check
43 account for six months, or for a shorter period as determined by
44 the treasurer, to the unclaimed property fund pursuant to the
45 provisions of article eight, chapter thirty-six of this code, and
46 shall immediately notify the auditor to make corresponding
47 entries on the auditor's books.

48 (c) No state depository may pay a check unless it is
49 presented within six months after it is drawn and every check
50 shall bear upon its face the words "Void, unless presented for
51 payment within six months."

52 (d) Any information or records maintained by the treasurer
53 concerning any check not presented for payment within six
54 months of the date of issuance is confidential and exempt from
55 disclosure under the provisions of article one, chapter
56 twenty-nine-b of this code, and is disclosable only to the state
57 spending unit authorizing the check, or to the payee, his or her
58 personal representative, next of kin or attorney-at-law.

59 (e) All claims required by law to be allowed by any court,
60 and payable out of the state treasury, shall have the seal of the
61 court allowing or authorizing the payment of the claim affixed
62 by the clerk of the court to his or her certificate of its allow-
63 ance. No claim may be audited and paid by the auditor unless
64 the seal of the court is thereto attached as aforesaid. No tax or
65 fee may be charged by the clerk for affixing his or her seal to
66 the certificate, referred to in this section. The treasurer shall
67 propose rules in accordance with the provisions of article three,
68 chapter twenty-nine-a of this code governing the procedure for
69 such payments from the treasury.

§12-3-1a. Payment by deposit in bank account.

1 The auditor may issue his warrant on the treasurer to pay
2 any person claiming to receive money from the treasury by
3 deposit to the person's account in any bank or other financial
4 institution by electronic funds transfer, if the person furnishes
5 authorization of the method of payment. The auditor shall
6 prescribe the form of the authorization. If the authorization is
7 in written form, it shall be sent to the auditor for review and
8 approval and then forwarded in electronic form to the treasurer.
9 If the authorization is in electronic form, it shall be sent to both

10 the auditor and the treasurer. The auditor must review and
11 approve the authorization. This section may not be construed to
12 require the auditor to utilize the method of payment authorized
13 by this section. An authorization furnished pursuant to this
14 section may be revoked by written notice furnished to the
15 auditor and then forwarded by the auditor in electronic form to
16 the treasurer or by electronic notice furnished to both the
17 auditor and the treasurer. Upon execution of the authorization
18 and its receipt by the office of the auditor, the warrant shall be
19 created in the manner specified on the authorization and
20 forwarded to the treasurer for further disposition to the desig-
21 nated bank or other financial institution specified on the
22 electronic warrant: *Provided*, That after the first day of July,
23 two thousand two, the state auditor shall cease issuing paper
24 warrants except for income tax refunds. After that date all
25 warrants except for income tax refunds, shall be issued by
26 electronic funds transfer: *Provided, however*, That the auditor,
27 in his or her discretion, may issue paper warrants on an emer-
28 gency basis.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-3. Financial electronic commerce.

§12-3A-4. Payment by the West Virginia check card.

§12-3A-6. Receipting of electronic commerce purchases.

§12-3A-3. Financial electronic commerce.

1 The state auditor and the state treasurer shall implement
2 electronic commerce capabilities for each of their offices to
3 facilitate the performance of their duties under this code. The
4 state treasurer shall competitively bid the selection of vendors
5 needed to provide the necessary banking, investment and
6 related goods and services, and the provisions of article one-b,
7 chapter five, and articles three and seven, chapter five-a of this
8 code shall not apply, unless requested by the state auditor or
9 state treasurer.

10 A record, an authentication, a document or a signature
11 issued or used by the auditor, the treasurer shall be considered
12 an original and may not be denied legal effect on the ground
13 that it is in electronic form.

14 The head of each spending unit is responsible for adopting
15 and implementing security procedures to ensure adequate
16 integrity, security, confidentiality, and auditability of the
17 business transactions of his or her spending unit when utilizing
18 electronic commerce.

§12-3A-4. Payment by the West Virginia check card.

1 The state auditor and the state treasurer may establish a
2 state debit card known as the “West Virginia Check Card” for
3 recipients of employee payroll or of retirement, benefits or
4 entitlement programs who are considered unbanked and who do
5 not possess a federally insured depository institution account.
6 The state auditor and the state treasurer shall use every reason-
7 able effort to make a federally insured depository account
8 available to a recipient, and to encourage all recipients to obtain
9 a federally insured depository account. Prior to issuing the West
10 Virginia check card, the state auditor and the state treasurer
11 shall first make a determination that a recipient has shown good
12 cause that an alternative method to direct deposit is necessary.
13 The state auditor and the state treasurer shall jointly issue a
14 request for proposals in accordance with section three of this
15 article to aid in the administration of the program and in the
16 establishment of state owned bank accounts and accommodate
17 accessible locations for use of the West Virginia check card. In
18 carrying out the purposes of this article, the state auditor and
19 state treasurer shall not compete with banks or other federally
20 insured financial institutions, or for profit.

§12-3A-6. Receipting of electronic commerce purchases.

1 (a) The state treasurer may establish a system for accep-
2 tance of credit card and other payment methods for electronic
3 commerce purchases from spending units. Notwithstanding any
4 other provision of this code to the contrary, each spending unit
5 utilizing WEB commerce, electronic commerce or other method
6 that offers products or services for sale shall utilize the state
7 treasurer's system for acceptance of payments.

8 (b) To facilitate electronic commerce, the state treasurer
9 may charge a spending unit for the banking and other expenses
10 incurred by the treasurer on behalf of the spending unit and for
11 any work performed, including, without limitation, assisting in
12 the development of a website and utilization of the treasurer's
13 payment gateway. A special revenue account, entitled the
14 "Treasurer's Financial Electronic Commerce Fund," is created
15 in the state treasury to receive the amounts charged by the
16 treasurer. The treasurer may expend the funds received in the
17 Treasurer's Financial Electronic Commerce Fund only for the
18 purposes of this article and for other purposes as determined by
19 the Legislature.

20 (c) The state treasurer may authorize a spending unit to
21 assess and collect a fee to recover or pay the cost of accepting
22 bank, charge, check, credit or debit cards from amounts
23 collected. The state treasurer shall propose legislative rules for
24 promulgation in accordance with the provisions of article three
25 of chapter twenty-nine-a of this code to establish the criteria
26 and procedures involved in granting the authorization and may
27 promulgate emergency rules in accordance with the provisions
28 of article three of chapter twenty-nine-a of the code to imple-
29 ment the provisions of this section prior to authorization of the
30 legislative rules.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-1. Securities defined.

§12-5-5. Protection and handling of securities.

§12-5-1. Securities defined.

1 The term “securities” when used in this article shall include
2 all bonds, securities, debentures, notes or other evidences of
3 indebtedness, and for purposes of this chapter all cash received
4 by any state spending unit intended to serve as security for a
5 legal obligation, whether pursuant to court order or otherwise.

§12-5-5. Protection and handling of securities.

1 (a) The noncash securities retained in the treasury shall be
2 kept in a vault. The treasurer shall use due diligence in protect-
3 ing the securities against loss from any cause. The treasurer
4 shall designate certain employees to take special care of the
5 securities. Only the treasurer and the designated employees may
6 have access to the securities, and at least two of these persons
7 shall be present whenever the securities are handled in any
8 manner. The treasurer may contract with one or more banking
9 institutions in or outside the state for the custody, safekeeping
10 and management of securities. The contract shall prescribe the
11 rules for the handling and protection of the securities.

12 (b) The “Treasurer’s Safekeeping Fund” is established in
13 the state treasury. The treasurer shall deposit moneys received
14 pursuant to this article in the Treasurer’s Safekeeping Fund.
15 The treasurer is authorized to invest the money in accordance
16 with this code and the restrictions placed on the money, with
17 earnings accruing to the moneys in the fund. The treasurer shall
18 prescribe the forms and procedures for processing the moneys.

CHAPTER 18. EDUCATION.**ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.****§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.**

1 (a) The West Virginia college prepaid tuition and savings
2 program is continued. The program consists of a prepaid tuition
3 plan and a savings plan.

4 (b) The board of the college prepaid tuition and savings
5 program is continued and all powers, rights and responsibilities
6 of the board of trustees of the prepaid tuition trust fund are
7 vested in the board of the college prepaid tuition and savings
8 program.

9 (c) The board consists of nine members and includes the
10 following:

11 (1) The secretary of education and the arts, or his or her
12 designee;

13 (2) The state treasurer, or his or her designee;

14 (3) Two representatives of the higher education policy
15 commission, who may or may not be members of the higher
16 education policy commission, appointed by the commission
17 who serve as voting members of the board, one of whom shall
18 represent the interests of the universities of West Virginia and
19 the state colleges and one of whom shall represent the interests
20 of community and technical colleges of West Virginia;

21 (4) Five other members, appointed by the governor, with
22 knowledge, skill and experience in an academic, business or
23 financial field, to be appointed as follows:

24 (A) Two private citizens not employed by, or an officer of,
25 the state or any political subdivision of the state;

26 (B) One member representing the interests of private
27 institutions of higher education located in this state appointed
28 from one or more nominees of the West Virginia association of
29 private colleges; and

30 (C) Two members representing the public.

31 (d) The public members and the member representing the
32 interests of private institutions of higher education are ap-
33 pointed by the governor with the advice and consent of the
34 Senate.

35 (e) Only state residents are eligible for appointment to the
36 board.

37 (f) Members appointed by the governor serve a term of five
38 years and are eligible for reappointment at the expiration of
39 their terms. In the event of a vacancy among appointed mem-
40 bers, the governor shall appoint a person representing the same
41 interests to fill the unexpired term.

42 (g) Members of the board serve until the later of the
43 expiration of the term for which the member was appointed or
44 the appointment of a successor. Members of the board serve
45 without compensation. The treasurer may pay all expenses,
46 including travel expenses, actually incurred by board members
47 in the conduct of their official duties. Expense payments are
48 made from the college prepaid tuition and savings program
49 administrative account, and are made at the same rate paid to
50 state employees.

51 (h) The treasurer may provide support staff and office space
52 for the board.

53 (i) The treasurer is the chairman and presiding officer of the
54 board, and may appoint the employees the board considers
55 advisable or necessary. A majority of the members of the board
56 constitute a quorum for the transaction of the business of the
57 board.

CHAPTER 257

(H. B. 4521 — By Delegates Mahan, Craig, Michael and Amores)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §22-17-20 of the code of West Virginia, 1931, as amended, relating to the underground storage tank act; increasing the annual registration fee; requiring emergency rule; increasing cap amount for underground storage tank fund; and requiring annual report to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That §22-17-20 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-20. Appropriation of funds; underground storage tank administrative fund.

1 (a) The secretary shall collect annual registration fees from
2 owners of underground storage tanks. The registration fee
3 collected under this section shall not exceed sixty-five dollars
4 per tank per year. All such registration fees and the net proceeds
5 of all fines, penalties and forfeitures collected under this article
6 including accrued interest shall be paid into the state treasury
7 into a special revenue fund designated “the underground storage
8 tank administrative fund” to be used to defray the cost of
9 administering this article in accordance with rules promulgated
10 pursuant to section six of this article. The secretary shall

11 promulgate an emergency rule in accordance with article three,
12 chapter twenty-nine-a of this code, implementing the increase
13 in registration fees. This fee of up to sixty-five dollars is
14 effective for the fiscal year ending the thirtieth day of June, two
15 thousand four.

16 (b) The total fee assessed shall be sufficient to assure a
17 balance in the fund not to exceed five hundred thousand dollars
18 at the beginning of each year.

19 (c) Any amount received pursuant to subsection (a) of this
20 section which exceeds the annual balance required in subsection
21 (b) of this section shall be deposited into the leaking under-
22 ground storage tank response fund established pursuant to this
23 article to be used for the purposes set forth for expenditure of
24 moneys in the fund.

25 (d) The net proceeds of all fines, penalties and forfeitures
26 collected under this article shall be appropriated as directed by
27 article XII, section 5 of the Constitution of West Virginia. For
28 the purposes of this section, the net proceeds of such fines,
29 penalties and forfeitures are the proceeds remaining after
30 deducting from the proceeds those sums appropriated by the
31 Legislature for defraying the cost of administering this article.
32 In making the appropriation for defraying the cost of adminis-
33 tering this article, the Legislature shall first take into account
34 the sums included in the special fund prior to deducting
35 additional sums as may be needed from the civil fines, civil
36 penalties and forfeitures collected pursuant to this article. At the
37 end of each fiscal year any unexpended balance of the collected
38 civil fines, civil penalties, forfeitures and registration fees shall
39 not be transferred to the general revenue fund but shall remain
40 in the fund.

41 (e) The secretary shall submit an annual report to the joint
42 committee on government and finance on or before the first day

43 of January each year providing information as to the status of
44 the underground storage tank fund, the registration fees or
45 forfeitures collected and any fines and penalties assessed
46 pursuant to this article, the amount of net proceeds of fines,
47 penalties and forfeitures paid into the fund and information as
48 to the progress of the underground storage tank program in the
49 protection of human health and the environment.

CHAPTER 258

(Com. Sub. for H. B. 4086 — By Delegates Beane and Frich)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9A-1-2 and §9A-1-3 of the code of West Virginia, 1931, as amended, all relating to the veterans' council; adding Gulf War veterans and Afghanistan conflict or Iraqi conflict veterans to the veterans' council; and deleting outdated language.

Be it enacted by the Legislature of West Virginia:

That §9A-1-2 and §9A-1-3 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-2. Veterans' council; administration of division.

§9A-1-3. Appointment of veterans' council members; term of office; removal.

§9A-1-2. Veterans' council; administration of division.

1 There is continued the "veterans' council" consisting of
2 nine members who must be citizens and residents of this state

3 and who have served in and been honorably discharged or
4 separated under honorable conditions from the armed forces of
5 the United States and whose service was within a time of war
6 as defined by the laws of the United States, either Public Law
7 No. 2 -- 73rd Congress, or Public Law No. 346 -- 78th Con-
8 gress, and amendments thereto. At least one member of the
9 council must be a veteran of World War II, at least one member
10 of the council must be a veteran of the Korean Conflict, at least
11 two members of the council must be veterans of the Vietnam
12 era, at least one member must be a veteran of the first Gulf War
13 and at least one member must be a veteran of the Afghanistan
14 or Iraqi Conflicts. The members of the veterans' council must
15 be selected with special reference to their ability and fitness to
16 effectuate the purposes of this article.

17 A director and such veterans' affairs officers, assistants and
18 employees as may be deemed advisable, shall administer the
19 West Virginia division of veterans' affairs.

**§9A-1-3. Appointment of veterans' council members; term of
office; removal.**

1 The term of office of the members of the veterans' council
2 is six years, and members must be appointed by the governor by
3 and with the advice and consent of the Senate: *Provided*, That
4 upon the expansion of the council from seven to nine members,
5 the governor shall initially appoint one new member for a term
6 of four years and shall initially appoint the other new member
7 for a term of six years. Thereafter the successors of these
8 members shall be appointed for the term of six years. In case of
9 a vacancy in the veterans' council, the appointment is for the
10 remainder of the unexpired term. A member of the veterans'
11 council is subject to removal by the governor for cause, but may
12 have upon his or her own request an open hearing before the
13 governor on the complaints or charges lodged against him or
14 her. The action of the governor is final.

CHAPTER 259

(H. B. 4627 — By Delegates Iaquina, Kuhn, Swartzmiller,
Paxton, Poling, Tucker and Smirl)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9A-1-4 of the code of West Virginia, 1931, as amended, relating to duties and functions of veterans' council; honoring academic achievement of West Virginians at military academies.

Be it enacted by the Legislature of West Virginia:

That §9A-1-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal; honoring academic achievement at military academies.

1 (a) It is the duty and function of the veterans' council to
2 advise the director on the general administrative policies of the
3 division, to select, at their first meeting in each fiscal year
4 commencing on the first day of July, a chairman to serve one
5 year, to advise the director on rules as may be necessary, to
6 advise the governor and the Legislature with respect to legisla-
7 tion affecting the interests of veterans, their widows, depend-
8 ents and orphans and to make annual reports to the governor
9 respecting the service of the division. The director has the same
10 eligibility and qualifications prescribed for members of the

11 veterans' council. The governor shall appoint a director for a
12 term of six years, by and with the advice and consent of the
13 Senate. Before making the appointment, the governor shall
14 request the council of the West Virginia division of veterans'
15 affairs to furnish a full and complete report concerning the
16 qualifications and suitability of the proposed appointee. The
17 director may only be removed by the governor for cause, but
18 shall have upon his or her own request an open hearing before
19 the governor on the complaints or charges lodged against him
20 or her. The action of the governor shall be final. The director ex
21 officio shall be the executive secretary of the veterans' council,
22 keep the minutes of each meeting and be in charge of all
23 records of the division.

24 (b) The veterans' council may annually honor each West
25 Virginian graduating from the U. S. Military Academy, the U.S.
26 Naval Academy, the U.S. Air Force Academy and the U.S.
27 Coast Guard Academy with the highest grade point average by
28 bestowing upon him or her the "West Augusta Award". The
29 award shall be in a design and form established by the council
30 and include the famous Revolutionary War phrase from which
31 the award's name is derived: "Once again our brethren from
32 West Augusta have answered the call to duty." The council
33 shall coordinate the manner of recognition of the recipient at
34 graduation ceremonies with each academy.

CHAPTER 260

(Com. Sub. for H. B. 2423 — By Delegate Louisos)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18-2-34 of the code of West Virginia, 1931, as amended, relating to authorizing awarding of high school diplomas to certain surviving veterans.

Be it enacted by the Legislature of West Virginia:

That §18-2-34 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-34. High school diplomas for surviving World War I, World War II, Korean Conflict, and Vietnam Conflict veterans.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the state board shall provide for the awarding of high
3 school diplomas, either by the county board in the county in
4 which the veteran resides or the county in which the veteran
5 would have received his or her diploma, whichever location the
6 veteran chooses, to any surviving World War I, World War II,
7 Korean Conflict or Vietnam Conflict veteran who:

8 (1) Left school prior to graduation and served in the armed
9 forces of the United States: *Provided*, That a veteran of the
10 Korean Conflict or the Vietnam Conflict must have been
11 attending high school at the time he or she left prior to graduat-
12 ing and served in the armed forces of the United States;

13 (2) Did not receive a high school diploma;

14 (3) Was discharged from the armed services under honor-
15 able conditions; and

16 (4) Completes the application process as provided by the
17 joint rules of the state board and the veterans' council.

18 (b) The state board and the veterans' council, created in
19 article one, chapter nine-a of this code, shall jointly propose
20 rules for the identification of eligible veterans and for the
21 awarding of high school diplomas. The rules shall provide for
22 an application process and the credentials required to receive
23 the high school diplomas.

24 (c) For purposes of this section:

25 (1) "World War I veteran" means any veteran who:

26 (A) Performed wartime service between April sixth, one
27 thousand nine hundred seventeen, and November eleventh, one
28 thousand nine hundred eighteen; or

29 (B) Has been awarded the World War I Victory Medal;

30 (2) "World War II veteran" means any veteran who
31 performed wartime service between September sixteenth, one
32 thousand nine hundred forty, and December thirty-first, one
33 thousand nine hundred forty-six;

34 (3) "Korean Conflict veteran" means any veteran who
35 performed military service between June twenty-seventh, one
36 thousand nine hundred fifty, and January thirty-first, one
37 thousand nine hundred fifty-five; and

38 (4) "Vietnam Conflict veteran" means any veteran who
39 performed military service between February twenty-eighth,
40 one thousand nine hundred sixty-one, and May seventh, one
41 thousand nine hundred seventy-five.

CHAPTER 261

**(S. B. 406 — By Senators Love, Dempsey, White, Ross,
McKenzie, Sharpe, Hunter, Jenkins and Rowe)**

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §61-11A-8 of the code of West Virginia, 1931, as amended, relating to allowing victims of crime to be notified by telephone when a specified defendant is released from custody.

Be it enacted by the Legislature of West Virginia:

That §61-11A-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-8. Notification to victim of offenders's release, placement, or escape from custody.

1 (a) At the time a criminal prosecution is commenced by the
2 filing of a complaint, if the complaint charges a person with
3 committing an offense described in subsection (e) of this
4 section, then in such case the prosecuting attorney is required
5 to provide notice, in writing or by telephone, to the victim or
6 a family member that he or she may request that they be
7 notified prior to or at the time of any release of the accused
8 from custody pending judicial proceedings.

9 (b) If a person is convicted of an offense described in
10 subsection (e) of this section, the prosecuting attorney is

11 required to provide notice, in writing or by telephone, to the
12 victim or a family member that he or she may request that they
13 be notified prior to or at the time of sentencing if the convicted
14 person will be placed on work release, home confinement or
15 probation.

16 (c) If a person is convicted of an offense described in
17 subsection (e) of this section and is imprisoned in a state
18 correctional facility or confined in a county or regional jail, the
19 commissioner of corrections, the regional jail supervisor or the
20 sheriff, as the case may be, is required to provide notice, in
21 writing or by telephone, to the victim or a family member that
22 he or she may request that they be notified prior to or at the
23 time of:

24 (1) Releasing the convicted person from imprisonment in
25 any correctional facility;

26 (2) Releasing the convicted person from confinement in
27 any county or regional jail;

28 (3) Placing the convicted person in a halfway house or
29 other non-secure facility to complete his or her sentence; or

30 (4) Any escape by the convicted person from a state
31 correctional facility or a county or regional jail.

32 (d) The notice shall include instructions for the victim or
33 the victim's family member on how to request the notification.

34 (e) Offenses which are subject to the provisions of this
35 section are as follows:

36 (1) Murder;

37 (2) Aggravated robbery;

- 38 (3) Sexual assault in the first degree;
- 39 (4) Kidnapping;
- 40 (5) Arson;
- 41 (6) Any sexual offense against a minor; or
- 42 (7) Any violent crime against a person.

43 (f) The commissioner of corrections, a regional jail
44 supervisor, a sheriff or a prosecuting attorney who receives a
45 written request for notification shall provide notice, in writing
46 or by telephone, to the last known address or addresses or
47 telephone number or numbers provided by the victim or a
48 member of the victim's family, or in the case of a minor child,
49 to the custodial parent of the child, in accordance with the
50 provisions of this section. In case of escape, notification shall
51 be by telephone, if possible.

52 (g) If one or more family members request notification and
53 if the victim is an adult and is alive and competent, notification
54 shall be sent to the victim, if possible, notwithstanding that the
55 victim did not request the notification.

56 (h) If notification by telephone to a victim is attempted,
57 notification is not complete unless it is given directly to the
58 person requesting notification and after that person's identity
59 has been verified. An attempted notification made to a voice
60 mail or another recording device or to another member of the
61 household is insufficient.

62 (i) For the purposes of this section, the following words or
63 phrases defined in this subsection have the meanings ascribed
64 to them. These definitions are applicable unless a different
65 meaning clearly appears from the context.

66 (1) "Filing of a complaint" means the filing of a complaint
67 in accordance with the requirements of rules promulgated by
68 the supreme court of appeals or the provisions of this code.

69 (2) "Victim" means a victim of a crime listed in subsection
70 (e) of this section who is alive and competent.

71 (3) "Victim's family member" means a member of the
72 family of a victim of a crime listed in subsection (e) of this
73 section who is not alive and competent.

CHAPTER 262

(H. B. 4330 — By Delegates Beane, Butcher, Ferrell,
Yeager, Blair, Romine and Schoen)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5-36, relating to vital statistics; authorizing electronic filing of certificates.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5-36, to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-36. Electronic filing.

1 That any certificate filed pursuant to this article may be
2 filed electronically.

CHAPTER 263

(Com. Sub. for H. B. 4455 — By Delegates Warner and Michael)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-24-4 and §17-24-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17-24-10, all relating to the waste tire remediation program; allowing balance in fund at end of fiscal year to be transferred to state road fund in certain circumstances; and continuation of the waste tire remediation program.

Be it enacted by the Legislature of West Virginia:

That §17-24-4 and §17-24-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17-24-10, all to read as follows:

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.
- §17-24-10. Continuation of waste tire remediation program.

§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 or the division of corrections, or
29 both, to remediate or assist in remediation of waste tire piles
30 throughout the state. Use of available department of health and
31 human resources and the division of corrections work programs
32 shall be given priority status in the contract process so long as

33 such programs prove a cost-effective method of remediating
34 waste 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 of this article, to the payment of debt service,
59 including the funding of reasonable reserves, on bonds issued
60 by the water development authority pursuant to section seven-
61 teen-a, article fifteen-a, chapter thirty-one of this code to
62 finance infrastructure projects relating to waste tire processing
63 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 certificate of
title.**

1 (a) There is continued in the state treasury a special revenue
2 fund known as the "A. James Manchin Fund". All moneys
3 appropriated, deposited or accrued in this fund shall be used
4 exclusively for remediation of waste tire piles as required by
5 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 consists of the proceeds
9 from the sale of waste tires; fees collected by the division of
10 motor vehicles as provided 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 unprogrammed
14 balance remaining in the fund at the end of any state fiscal year
15 shall be transferred to the state road fund.

16 (b) No further collections or deposits shall be made after
17 the commissioner certifies to the governor and the Legislature
18 that the remediation of all waste tire piles that were determined
19 by the commissioner to exist on the first day of June, two

20 thousand one, has been completed and that all infrastructure
21 bonds issued by the water development authority pursuant to
22 section seventeen-a, article fifteen-a of chapter thirty-one of this
23 code have been paid in full or legally defeased.

24 (c) If infrastructure bonds are not issued by the water
25 development authority pursuant to section seventeen-a, article
26 fifteen-a, chapter thirty-one of this code to finance infrastruc-
27 ture projects relating to waste tire processing facilities located
28 in this state on or before the thirty-first day of December, two
29 thousand six, all further collections and deposits to the A. James
30 Manchin fund which are not programmed for remediation or
31 disposal shall be transferred to the state road fund at the end of
32 each fiscal year.

§17-24-10. Continuation of waste tire remediation program.

1 The waste tire remediation program 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 six, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 264

(Com. Sub. for S. B. 163 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §22-26-1, §22-26-2, §22-

26-3, §22-26-4, §22-26-5 and §22-26-6, all relating to establishing the water resources protection act; providing legislative findings; finding that the state reserves a sovereign interest in the waters of the state as a valuable public resource; defining terms; declaring the state shall claim and protect state waters for the use and benefit of its citizens; providing for preservation of common law rights; providing that a water use survey and registration of large users of state waters be undertaken by the secretary of the department of environmental protection; requiring the secretary to coordinate survey with state agencies and report to a legislative oversight commission; requiring persons making withdrawals exceeding seven hundred fifty thousand gallons per month to participate in survey and registration; requiring the secretary to use reasonable alternatives for estimating usage; requiring persons participating in survey and registration to submit accurate information; providing limited exceptions to survey and registration participation; authorizing the secretary to coordinate with other state agencies and the United States geological survey; directing the department of environmental protection to propose a strategy for water management; authorizing secretary of department of environmental protection to promulgate rules; establishing confidentiality of submitted information and exceptions; providing criteria for requesting and receiving confidentiality designation; establishing requirements for requesting confidential documents and appeal process; establishing a joint legislative oversight commission to monitor survey and develop policies; and providing civil penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-26-1, §22-26-2, §22-26-3, §22-26-4, §22-26-5 and §22-26-6, all to read as follows:

ARTICLE 26. WATER RESOURCES PROTECTION ACT.

§22-26-1. Short title; legislative findings.

§22-26-2. Definitions.

§22-26-3. Waters claimed by state; water resources protection survey; need for study; registration requirements; agency cooperation; information gathering.

§22-26-4. Confidentiality.

§22-26-5. Joint legislative oversight commission on state water resources.

§22-26-6. Mandatory survey and registration compliance.

§22-26-1. Short title; legislative findings.

1 (a) Short title - This article may be known and cited as the
2 “Water Resources Protection Act”.

3 (b) Legislative findings:

4 (1) The West Virginia Legislature finds that it is the public
5 policy of the state of West Virginia to protect and conserve the
6 water resources for the state and to provide for the public
7 welfare. The state’s water resources are vital natural resources
8 of the state that are essential to maintain, preserve and promote
9 quality of life and economic vitality of the state.

10 (2) The West Virginia Legislature further finds that it is the
11 public policy of the state that the water resources of the state be
12 available for the benefit of the citizens of West Virginia,
13 consistent with and preserving all other existing rights and
14 remedies recognized in common law or by statute, while also
15 preserving this resource within its sovereign powers for the
16 common good.

§22-26-2. Definitions.

1 For purposes of this article, the following words have the
2 meanings assigned unless the context indicates otherwise:

3 (a) “Beneficial use” means uses that include, but are not
4 limited to, public or private water supplies, agriculture,

5 tourism, commercial, industrial, coal, oil and gas and other
6 mineral extraction, preservation of fish and wildlife habitat,
7 maintenance of waste assimilation, recreation, navigation and
8 preservation of cultural values.

9 (b) "Consumptive withdrawal" means any withdrawal of
10 water which returns less water to the water body than is
11 withdrawn.

12 (c) "Farm use" means irrigation of any land used for
13 general farming, forage, aquiculture, pasture, orchards,
14 nurseries, the provision of water supply for farm animals,
15 poultry farming or any other activity conducted in the course
16 of a farming operation.

17 (d) "Interbasin transfer" means the permanent removal of
18 water from the watershed from which it is withdrawn.

19 (e) "Maximum potential" means the maximum designed
20 capacity of a facility to withdraw water under its physical and
21 operational design.

22 (f) "Person", "persons" or "people" means an individual,
23 public and private business or industry, public or private water
24 service and governmental entity.

25 (g) "Nonconsumptive withdrawal" means any withdrawal
26 of water which is not a consumptive withdrawal as defined in
27 this section.

28 (h) "Secretary" means the secretary of the department of
29 environmental protection or his or her designee.

30 (i) "Water resources", "water" or "waters" means any and
31 all water on or beneath the surface of the ground, whether
32 percolating, standing, diffused or flowing, wholly or partially
33 within this state, or bordering this state and within its jurisdic-

34 tion, and includes, without limiting the generality of the
35 foregoing, natural or artificial lakes, rivers, streams, creeks,
36 branches, brooks, ponds, impounding reservoirs, springs, wells,
37 watercourses and wetlands: *Provided*, That farm ponds,
38 industrial settling basins and ponds and waste treatment
39 facilities are excluded from the waters of the state.

40 (j) "Watershed" means a hydrologic unit utilized by the
41 United States department of interior's geological survey,
42 adopted in 1974, as a framework for detailed water and related
43 land-resource planning, denoted by an eight digit hydrologic
44 unit code, and by which West Virginia is, as of the effective
45 date of the act, divided into thirty-two separate hydrologic
46 units.

47 (k) "Withdrawal" means the removal or capture of water
48 from a water resource of the state regardless of whether it is
49 consumptive or nonconsumptive: *Provided*, That water
50 encountered during coal, oil, gas or other mineral extraction
51 and diverted, but not used for any purpose and not a factor in
52 low flow conditions for any surface water or groundwater, is
53 not deemed a withdrawal.

**§22-26-3. Waters claimed by state; water resources protection
survey; need for study; registration require-
ments; agency cooperation; information gather-
ing.**

1 (a) The waters of the state of West Virginia are hereby
2 claimed as valuable public natural resources held by the state
3 for the use and benefit of its citizens. The state shall manage
4 the quantity of its waters effectively for present and future use
5 and enjoyment and for the protection of the environment.
6 Therefore, it is necessary for the state to determine the nature
7 and extent of its water resources, the quantity of water being
8 withdrawn or otherwise used and the nature of the withdrawals

9 or other uses: *Provided*, That no provisions of this article may
10 be construed to amend or limit any other rights and remedies
11 created by statute or common law in existence on the date of
12 the enactment of this article.

13 (b) The secretary shall conduct a water resources survey of
14 consumptive and nonconsumptive surface water and ground-
15 water withdrawals in this state. The secretary shall determine
16 the form and format of the information submitted, including
17 the use of electronic submissions. The survey shall collect
18 information covering the years two thousand three, two
19 thousand four and two thousand five. The secretary shall
20 establish a statewide registration program to monitor large
21 quantity users of water resources of this state beginning in two
22 thousand six.

23 (c) Beginning in the year two thousand three, every person
24 utilizing the state's water resources whose withdrawal from a
25 water resource during any month exceeds seven hundred fifty
26 thousand gallons, except those who purchase water from a
27 public or private water utility or other service that is reporting
28 its total withdrawal, shall provide all requested information
29 regarding withdrawals of the water resource. Multiple with-
30 drawals of water from a particular water resource that are made
31 or controlled by a single person and used at one facility or
32 location shall be considered a single withdrawal of water.
33 Water withdrawals for self-supplied farm use and private
34 households will be estimated. Water utilities regulated by the
35 public service commission pursuant to article two, chapter
36 twenty-four of the code are exempted from providing informa-
37 tion on interbasin transfers to the extent those transfers are
38 necessary to provide water utility services within the state.

39 (d) The secretary shall make a good faith effort to obtain
40 survey and registration information from persons who are

41 withdrawing water from an in-state water resource but who are
42 located outside the state borders.

43 (e) All state agencies that have a regulatory, research or
44 other function relating to water resources, including, but not
45 limited to, the state geological and economic survey, the
46 division of natural resources, the public service commission,
47 the bureau for public health, the commissioner of the depart-
48 ment of agriculture, the office of emergency services, Marshall
49 university and West Virginia university may enter into inter-
50 agency agreements with the secretary and shall cooperate by:
51 (i) Providing information relating to the water resources of the
52 state; and (ii) providing any necessary assistance to the
53 secretary in effectuating the purposes of this article. The
54 secretary shall determine the form and format of the informa-
55 tion submitted by these agencies.

56 (f) Persons required to participate in the survey and
57 registration shall provide any reasonably available information
58 on stream flow conditions that impact withdrawal rates.

59 (g) Persons required to participate in the survey and
60 registration shall provide the most accurate information
61 available on water withdrawal during seasonal conditions and
62 future potential maximum withdrawals or other information
63 that the secretary determines is necessary for the completion of
64 the survey or registration: *Provided*, That a coal-fired electric
65 generating facility shall also report the nominal design capacity
66 of the facility, which is the quantity of water withdrawn by the
67 facility's intake pumps necessary to operate the facility during
68 a calendar day.

69 (h) The secretary shall, to the extent reliable water with-
70 drawal data is reasonably available from sources other than
71 persons required to provide data and participate in the survey
72 and registration, utilize that data to fulfill the requirements of

73 this section. If the data is not reasonably available to the
74 secretary, persons required to participate in the survey and
75 registration are required to provide the data. Registered
76 persons that report withdrawals on an annual basis for a period
77 of three consecutive years are not required to register further
78 withdrawals unless the amount withdrawn annually varies by
79 more than ten percent from the three year average. Altering
80 locations of intakes and discharge points that result in an
81 impact to the withdrawal of the water resource by an amount of
82 ten percent or more from the consecutive three year average
83 shall also be reported.

84 (i) The secretary shall report regularly to the joint legisla-
85 tive oversight commission on state water resources to advise
86 the commission of the progress of the survey as well as any
87 problems that may be encountered in conducting the survey
88 and to make recommendations on policy and statutory changes
89 that may be needed.

90 (j) Upon completion of the survey, the secretary shall file
91 a final report with the joint committee on government and
92 finance no later than the thirty-first day of December, two
93 thousand six. In preparing the final report the secretary shall
94 consult with the commissioner of the department of agriculture,
95 the bureau for public health, the division of natural resources
96 and the public service commission. The final report shall
97 include the following:

98 (1) To the extent the information is available, the location
99 and quantity of all surface water and groundwater resources in
100 this state;

101 (2) A discussion of the consumptive and nonconsumptive
102 withdrawals of surface water and groundwater in this state;

103 (3) A listing of each person whose consumptive or
104 nonconsumptive withdrawal during any single month during

105 the calender year exceeds seven hundred fifty thousand
106 gallons, including the amount of water used, location of the
107 water resource, the nature of the use, location of each intake
108 and discharge point by longitude and latitude where available
109 and, if the use involves more than one watershed or basin, the
110 watersheds or basins involved and the amount transferred;

111 (4) A discussion of any area of concern regarding historical
112 or current conditions that indicate a low flow condition or
113 where a drought or flood has occurred or is likely to occur that
114 threatens the beneficial use of the surface water or groundwater
115 in the area;

116 (5) Current or potential in-stream or off-stream uses that
117 contribute to or are likely to exacerbate natural low flow
118 conditions to the detriment of the water resource;

119 (6) Discussion of a potential groundwater well network that
120 provides indicators that groundwater levels in an area are
121 declining or are expected to decline excessively;

122 (7) Potential growth areas where competition for water
123 resources may be expected;

124 (8) Any occurrence of two or more withdrawals that are
125 interfering or may reasonably be expected to interfere with one
126 another;

127 (9) Discussion of practices or methods persons have
128 implemented to reduce water withdrawals; and

129 (10) Any other information that may be beneficial in
130 adequately assessing water availability and withdrawal and in
131 determining the need for and the preparation of water resources
132 plans.

133 (k) In addition to any requirements for completion of the
134 survey established by the secretary, the survey must accurately
135 reflect both actual and maximum potential water withdrawal.
136 Actual withdrawal shall be established through metering,
137 measuring or alternative accepted scientific methods to obtain
138 a reasonable estimate or indirect calculation of actual use.

139 (l) Upon completion of the survey, the secretary shall make
140 recommendations to the joint legislative oversight commission
141 created in section five of this article relating to the need to
142 implement a water quantity management strategy for the state
143 or regions of the state where the quantity of water resources are
144 found to be currently stressed or likely to be stressed due to
145 emerging beneficial or other uses, ecological conditions or
146 other factors requiring the development of a strategy for
147 management of these water resources. The report shall include
148 an analysis of the costs and benefits upon persons potentially
149 impacted by the implementation of a water quantity manage-
150 ment strategy.

151 (m) The secretary may propose rules pursuant to article
152 three, chapter twenty-nine-a of this code as necessary to
153 implement the survey and registration requirements of this
154 article.

155 (n) The secretary is authorized to enter into cooperative
156 agreements with the United States geological survey to obtain
157 federal matching funds, conduct research and analyze survey
158 and registration data and other agreements as may be necessary
159 to carry out his or her duties under this article.

§22-26-4. Confidentiality.

1 (a) Information required to be submitted by a person as part
2 of the water withdrawal survey and registration that may be a
3 trade secret, contain protected information relating to homeland

4 security or be subject to another exemption provided by the
5 state freedom of information act may be deemed confidential.
6 Each such document shall be identified by that person as
7 confidential information. The person claiming confidentiality
8 shall provide written justification to the secretary at the time
9 the information is submitted stating the reasons for confidenti-
10 ality and why the information should not be released or made
11 public. The secretary has the discretion to approve or deny
12 requests for confidentiality as prescribed by this section.

13 (b) In addition to records or documents that may be
14 considered confidential under article one, chapter twenty-nine-
15 b of this code, confidential information means records, reports
16 or information, or a particular portion thereof, that if made
17 public would:

18 (1) Divulge production or sales figures or methods,
19 processes or production unique to the submitting person;

20 (2) Otherwise tend to adversely affect the competitive
21 position of a person by revealing trade secrets, including
22 intellectual property rights; or

23 (3) Present a threat to the safety and security of any water
24 supply, including information concerning water supply
25 vulnerability assessments.

26 (c) Information designated as confidential and the written
27 justification shall be maintained in a file separate from the
28 general records related to the person.

29 (d) Information designated as confidential may be released
30 when the information is contained in a report in which the
31 identity of the person has been removed and the confidential
32 information is aggregated by hydrologic unit or region.

33 (e) Information designated as confidential may be released
34 to governmental entities, their employees and agents when
35 compiling and analyzing survey and registration information
36 and as may be necessary to develop the legislative report
37 required by this section or to develop water resources plans.
38 Any governmental entity or person receiving information
39 designated confidential shall protect the information as
40 confidential.

41 (f) Upon receipt of a request for information that has been
42 designated confidential and prior to making a determination to
43 grant or deny the request, the secretary shall notify the person
44 claiming confidentiality of the request and may allow the
45 person an opportunity to respond to the request in writing
46 within five days.

47 (g) All requests to inspect or copy documents shall state
48 with reasonable specificity the documents or type of documents
49 sought to be inspected or copied. Within ten business days of
50 the receipt of a request, the secretary shall: (1) Advise the
51 person making the request in writing of the time and place
52 where the person may inspect and copy the documents which,
53 if the request addresses information claimed as confidential,
54 may not be sooner than twenty days following the date of the
55 determination to disclose, unless an earlier disclosure date is
56 agreed to by the person claiming confidentiality; or (2) deny
57 the request, stating in writing the reasons for denial. If the
58 request addresses information claimed as confidential, then
59 notice of the action taken pursuant to this subsection shall also
60 be provided to the person asserting the claim of confidentiality.

61 (h) Any person adversely affected by a determination
62 regarding confidential information under this article may
63 appeal the determination to the appropriate circuit court
64 pursuant to the provisions of article five, chapter twenty-nine-a
65 of this code. The filing of a timely notice of appeal shall stay

66 any determination to disclose confidential information pending
67 a final decision on appeal. The scope of review is limited to
68 the question of whether the portion of the records, reports, data
69 or other information sought to be deemed confidential,
70 inspected or copied is entitled to be treated as confidential
71 under this section. The secretary shall afford evidentiary
72 protection in appeals as necessary to protect the confidentiality
73 of the information at issue, including the use of in camera
74 proceedings and the sealing of records when appropriate.

§22-26-5. Joint legislative oversight commission on state water resources.

1 (a) The president of the Senate and the speaker of the
2 House of Delegates shall each designate five members of their
3 respective houses, at least one of whom shall be a member of
4 the minority party, to serve on a joint legislative oversight
5 commission charged with immediate and ongoing oversight of
6 the water resources survey and registration. This commission
7 shall be known as the "Joint Legislative Oversight Commission
8 on State Water Resources" and shall regularly investigate and
9 monitor all matters relating to the water resources survey and
10 the need for a water resources strategy and policy.

11 (b) The expenses of the commission, including the cost of
12 conducting the survey and monitoring any subsequent strategy
13 and those incurred in the employment of legal, technical,
14 investigative, clerical, stenographic, advisory and other
15 personnel, are to be approved by the joint committee on
16 government and finance and paid from legislative appropria-
17 tions.

18 (c) The secretary shall report, at a minimum of quarterly,
19 in sufficient detail for the commission to monitor the water
20 resources survey and to develop recommendations resulting
21 from the survey. The secretary shall submit an annual report

22 to the commission by the thirty-first day of December each
23 year. The secretary shall also file a final report on the water
24 resources survey no later than the thirty-first day of December,
25 two thousand six.

§22-26-6. Mandatory survey and registration compliance.

1 (a) The water resources survey and subsequent registry will
2 provide critical information for protection of the state's water
3 resources and, thus, mandatory compliance with the survey and
4 registry is necessary.

5 (b) Any person who fails to complete the survey or
6 register, provides false or misleading information on the survey
7 or registration, fails to provide other information as required by
8 this article may be subject to a civil administrative penalty not
9 to exceed five thousand dollars to be collected by the secretary
10 consistent with the secretary's authority pursuant to this
11 chapter. Every thirty days after the initial imposition of the
12 civil administrative penalty, another penalty may be assessed
13 if the information is not provided. The secretary shall provide
14 written notice of failure to comply with this section thirty days
15 prior to assessing the first administrative penalty.

CHAPTER 265

**(H. B. 4672 — By Delegates Michael, Boggs, Warner,
Browning, Cann, H. White and G. White)**

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §31B-12-1207 of the code of West Virginia, 1931, as amended, relating to calculation of workers'

compensation premiums for members of limited liability companies; and clarifying that workers' compensation coverage is not required for a person who is a member solely as an investor.

Be it enacted by the legislature of West Virginia:

That §31B-12-1207 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. MISCELLANEOUS PROVISIONS.

§31B-12-1207. Equality of workers' compensation treatment.

1 (a) Notwithstanding any provision of subdivision (3),
2 subsection (g), section one, article two, chapter twenty-three of
3 this code to the contrary, all covered members of limited
4 liability companies which are treated as partnerships for federal
5 income tax purposes shall be subject to the calculation of
6 premium on the members as provided for partners in a partner-
7 ship in section one-b, article two, chapter twenty-three of this
8 code. Any limited liability company excluding any member
9 from workers' compensation coverage or computing premiums
10 on such member as a partner prior to the effective date of this
11 section is deemed to have made an effective election in accor-
12 dance with the provisions of this section for all periods until
13 such limited liability company modifies the election.

14 (b) Notwithstanding any provision of subdivision (3),
15 subsection (g), section one, article two, chapter twenty-three of
16 this code to the contrary, a person is not a member of a limited
17 liability company for whom coverage is required under that
18 section if the person is a member solely as an investor and does
19 not participate in the direction, administration, or control of the
20 company and its activities or investments unless that person is
21 employed in the service of the company for the purpose of
22 carrying on the industry, business, service or work in which it
23 is engaged.

CHAPTER 266

(H. B. 4411 —By Delegates Mezzatesta, Cann,
Frederick, Stalnaker and Walters)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, all relating to the West Virginia workforce investment act; updating terms; outlining duties; and creating the workforce investment interagency collaborative team.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-2. Definitions.

§5B-2B-4. Duties of the workforce investment council.

§5B-2B-5. State agencies.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the executive director of the West Virginia development office.

§5B-2B-2. Definitions.

- 1 As used in this article, the following terms have the
- 2 following meanings, unless the context clearly indicates
- 3 otherwise:

4 (1) “Commission” or “legislative oversight commission”
5 means the legislative oversight commission on workforce
6 investment for economic development created pursuant to
7 section seven of this article.

8 (2) “Council” means the West Virginia workforce invest-
9 ment council.

10 (3) “Team” means the workforce investment interagency
11 collaborative team.

§5B-2B-4. Duties of the workforce investment council.

1 (a) The council shall assist the governor in the:

2 (1) Development and revision of a strategic five-year state
3 workforce investment plan, including the establishment of an
4 overall workforce investment public agenda with goals and
5 benchmarks of success for the state, state agencies and for local
6 workforce investment boards;

7 (2) Development and continuous improvement of a
8 statewide system of workforce investment activities including:

9 (A) Development of linkages in order to assure coordina-
10 tion and nonduplication of services and activities of workforce
11 investment programs conducted by various entities in the state;
12 and

13 (B) The review of strategic plans created and submitted by
14 local workforce investment boards;

15 (3) Commenting at least annually on the measures taken by
16 the state pursuant to the Carl D. Perkins Vocational and Applied
17 Technology Education Act, 20 U.S.C. §2323;

18 (4) Designation and revision of local workforce investment
19 areas;

20 (5) Development and revision of allocation formulas for the
21 distribution of funds for adult employment and training
22 activities and youth activities to local areas;

23 (6) Development and continuous improvement of compre-
24 hensive state performance measures, including state adjusted
25 levels of performance, to assess the effectiveness of the
26 workforce investment activities in the state;

27 (7) Preparation of the annual report to the secretary of labor
28 as required by the Workforce Investment Act, 29 U.S.C. §2871;

29 (8) Development and continued improvement of a statewide
30 employment statistics system; and

31 (9) Development and revision of an application for
32 workforce investment incentive grants.

33 (b) The council shall make a report to the legislative
34 oversight commission on or before the fifteenth day of January
35 of each year detailing: (1) All the publicly funded workforce
36 investment programs operating in the state, including the
37 amount of federal and state funds expended by each program,
38 how the funds are spent and the resulting improvement to the
39 workforce; (2) the council's recommendations concerning
40 future use of funds for workforce investment programs; (3) the
41 council's analysis of operations of local workforce investment
42 programs; (4) the council's recommendations for the establish-
43 ment of an overall workforce investment public agenda with
44 goals and benchmarks of success for the state, state agencies
45 and for local workforce investment boards; and (5) any other
46 information the commission may require.

§5B-2B-5. State agencies.

1 On or before the first day of November any state agency
2 that receives federal or state funding that has been used for

3 workforce investment activities for the past fiscal year shall
4 provide to the council a report, detailing the source and amount
5 of federal, state or other funds received; the purposes for which
6 the funds were provided; the services provided in each regional
7 workforce investment area; the measures used to evaluate
8 program performance, including current and baseline perfor-
9 mance data; and any other information requested by the council.
10 All reports submitted pursuant to this section are to be in a form
11 approved by the council.

**§5B-2B-9. Coordination between agencies providing workforce
investment programs, local workforce investment
boards and the executive director of the West
Virginia development office.**

1 (a) To provide on-going attention to addressing issues that
2 will build and continually improve the overall workforce
3 investment system, the workforce investment interagency
4 collaborative team is hereby created. The team shall be the
5 single state interagency source for addressing issues or concerns
6 related to building and maintaining the most effective and
7 efficient implementation of the federal workforce investment
8 act and the overall workforce development system in West
9 Virginia. The team shall focus on how best to collaborate
10 between and among the state agencies directly involved in
11 workforce investment activities and shall develop a strategic
12 plan to that end. The team shall serve as a forum for the council
13 to seek information or recommendations in furtherance of its
14 responsibilities under this article. The West Virginia develop-
15 ment office is the entity which shall convene the team at least
16 monthly and shall provide administrative and other services to
17 the team as the team requires.

18 (b) The team shall consist of members from each agency
19 subject to the reporting provisions of section five of this article.
20 Each agency shall appoint two representatives to the team

21 consisting of the chief official of the department or division and
22 the official within that department or division who is directly
23 responsible for overseeing the workforce investment program
24 or activities at the state level. A designee may be selected to
25 represent a member appointed to the team: *Provided*, That the
26 designee has policy-making decision authority regarding
27 workforce investment activities including program and fiscal
28 issues. The team members have authority to make decisions on
29 behalf of the agency at the level required for the team to address
30 issues and advance system improvements.

31 (c) The team shall coordinate the development of a self-
32 sufficiency standard study for the State of West Virginia. The
33 self-sufficiency standard is to measure how much income is
34 needed for a household of a given composition in a given place
35 to adequately meet its basic needs without public or private
36 assistance. Beginning on the first day of November, two
37 thousand four, and every two years thereafter, this study is to be
38 reported to the speaker of the House of Delegates, the president
39 of the Senate, the workforce investment council and the
40 legislative oversight commission on workforce investment for
41 economic development.

42 (d) Beginning the first day of January, two thousand three,
43 in order to lawfully continue any workforce investment
44 activities, any agency subject to the reporting provisions of
45 section five of this article shall enter into a memorandum of
46 understanding with the executive director of the West Virginia
47 development office and any local workforce investment board
48 representing an area of this state in which the agency is engaged
49 in workforce investment activities. To the extent permitted by
50 federal law, the agreements are to maximize coordination of
51 workforce investment activities and eliminate duplication of
52 services on both state and local levels.

53 (e) No memorandum of understanding may be effective for
54 more than one year without annual reaffirmation by the parties.

55 (f) Any state agency entering a memorandum of under-
56 standing shall deliver a copy thereof to both the West Virginia
57 workforce investment council and the legislative oversight
58 commission.

CHAPTER 267

(H. B. 4464 — By Delegates Craig, Morgan, Leach,
Smirl, Howard and Sobonya)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the governing body of the County Commission of Cabell County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election to consider an excess levy for fire protection service, firefighter training and economic development from the third Tuesday of April until the third Tuesday in May, two thousand four.

Be it enacted by the Legislature of West Virginia:

**COUNTY COMMISSION OF CABELL COUNTY MEETING AS LEVYING
BODY EXTENDED FOR ELECTION ON THE QUESTION OF AN
EXCESS LEVY.**

**§1. Extending the time for the County Commission of Cabell
County to meet as levying body for election to consider
an excess levy.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the County Commission
4 of Cabell County, West Virginia, is hereby authorized to extend
5 the time for its meeting as a levying body, setting the levying
6 rate and certifying its actions to the state tax commissioner
7 from the third Tuesday in April until the third Tuesday in May,
8 two thousand four, for the purpose of submitting to the voters
9 of Cabell County, West Virginia, an excess levy to be used for
10 fire protection service, firefighter training and economic
11 development in Cabell County.

CHAPTER 268

(Com. Sub. for S. B. 516 — By Senators Unger, Snyder and Rowe)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the West Virginia eastern panhandle transportation authority to include representatives from Berkeley, Jefferson and Morgan counties; appointment of officers; and powers of authority.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA EASTERN PANHANDLE TRANSPORTATION AUTHORITY.

§1. West Virginia eastern panhandle transportation authority created; purposes.

1 There is hereby created a West Virginia eastern panhandle
2 transportation authority to promote and advance the construc-

3 tion of a modern highway through Berkeley, Jefferson and
4 Morgan counties and to coordinate with counties, municipali-
5 ties, state and federal agencies, public nonprofit corporations,
6 private corporations, associations, partnerships and individuals
7 for the purpose of planning, assisting and establishing recre-
8 ational, tourism, industrial, economic and community develop-
9 ment of West Virginia Route 9 and the new Route 9 proposals
10 and construction from the Virginia line to Berkeley Springs,
11 Interstate 81, Route 11, Route 522, Route 340 and also any
12 existing and proposed by-passes around any municipalities, as
13 well as any other highways in those counties for the benefit of
14 West Virginians.

§2. Members; appointment; officers.

1 (a) The authority consists of nine voting members and three
2 ex officio nonvoting members. All members shall be appointed
3 before the first day of July, two thousand four.

4 (b) Each of the county commissions of the counties of
5 Berkeley, Jefferson, and Morgan shall appoint three voting
6 members to the authority. The terms of the voting members
7 initially appointed by a county commission are as follows: One
8 member shall be appointed for a term of two years and two
9 members shall be appointed for terms of four years. All
10 successive appointments shall be for four-year terms. Any
11 voting member may be removed for cause by the appointing
12 county commission.

13 (c) The three ex officio nonvoting members are the com-
14 missioner of highways or his or her designee, the director of the
15 parkways, economic development and tourism authority or his
16 or her designee and the executive director of the West Virginia
17 development office or his or her designee.

18 (d) Should a vacancy occur, the person appointed to fill the
19 vacancy shall serve only for the unexpired portion thereof. All
20 members are eligible for reappointment.

21 (e) The authority shall meet annually on the third Monday
22 in July and at such other times designated by the authority in its
23 bylaws. A special meeting may be called by the president, the
24 secretary or any two members of the authority and may be held
25 only after all members are given notice of the meeting in
26 writing. Five voting members constitute a quorum for all
27 meetings. At each annual meeting of the authority, it shall elect
28 a president, vice president, secretary and treasurer. The
29 authority shall adopt bylaws and rules as may be necessary for
30 its operation and management.

§3. Powers.

1 (a) The authority has all but only those powers necessary,
2 incidental, convenient and advisable for the following purposes:

3 (1) Promoting economic development and tourism along
4 West Virginia Route 9 and the new Route 9 proposals and
5 construction from the Virginia line to Berkeley Springs,
6 Interstate 81, Route 11, Route 522, Route 340 and also any
7 existing and proposed by-passes around any municipalities, as
8 well as any other highways in Berkeley, Jefferson and Morgan
9 counties;

10 (2) Advocating actions consistent with that plan or its
11 provisions to or before any governmental entity or any private
12 person or entity; and

13 (3) Otherwise acting in an advisory capacity with regard to
14 any aspects of West Virginia Route 9 and new Route 9 con-
15 struction and design and other highways in those counties at the
16 request of or without the request of any governmental entity or
17 private person or entity.

18 (b) The authority may not own any of the real estate or real
19 property herein described for development and may not be
20 responsible for operating or maintaining the highways de-
21 scribed herein.

CHAPTER 269

(H. B. 4763 — By Delegates Brown, Webb, Armstead,
Webster, Palumbo, Calvert and Amores)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT extending the time for the city council of Dunbar to meet as a levying body for the purpose of presenting to the voters of the city an election to continue an additional city levy to maintain the present salaries of all employees of the paid fire and paid police departments of the City of Dunbar and to repair and service existing police department and fire fighting equipment and to purchase additional fire fighting and police equipment where necessary from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand four.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF DUNBAR MEETING AS A LEVYING BODY
EXTENDED.**

§1. Extending time for the City of Dunbar to meet as a levying body for election of additional levies to maintain present salaries of employees of the paid fire and paid police departments, to repair and service existing police department and fire fighting equipment, and to purchase additional fire fighting and police department equipment.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the city council of
4 Dunbar is hereby authorized to extend the time for its meeting
5 as a levying body and certifying its actions to the state auditor
6 from between the seventh and twenty-eighth days of March and
7 the third Tuesday in April until the thirty-first of May, two
8 thousand four, for the purpose of submitting to the voters of the
9 City of Dunbar the continuation of an additional city levy to
10 maintain the present salaries of all employees of the paid fire
11 and paid police departments of the City of Dunbar and to repair
12 and service existing police department and fire fighting
13 equipment and to purchase additional fire fighting and police
14 equipment where necessary.

CHAPTER 270

**(H. B. 4456 — By Delegates Warner, Iaquinta,
Coleman, Cann and Fragale)**

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of continuing the excess levy for vital public services in Harrison County from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand four.

Be it enacted by the Legislature of West Virginia:

**HARRISON COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED.**

§1. Extending time for the Harrison County commission to meet as a levying body for an election continuing the excess levy for vital public services.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, 1931, as amended, the
3 county commission of Harrison County, West Virginia, is
4 hereby authorized to extend the time for its meeting as a
5 levying body, setting the levy rate and certifying its actions to
6 the state tax commissioner from between the seventh and
7 twenty-eighth days of March until the first Thursday in June,
8 two thousand four, for the purpose of submitting to the voters
9 of Harrison County the question of continuing the excess levy
10 for vital public services.

CHAPTER 271

(S. B. 734 — Originating in the Committee on the Judiciary)

[Passed March 12, 2004; in effect form passage. Approved by the Governor.]

AN ACT extending the time for the town council of Smithers to meet as a levying body for the purpose of presenting to the voters of the town an election to continue an additional town levy for solid waste services and retirement benefits from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand four.

Be it enacted by the Legislature of West Virginia:

**THE TOWN COUNCIL OF SMITHERS MEETING AS A LEVYING BODY
EXTENDED.**

§1. Extending time for the town council of Smithers to meet as a levying body for election of additional levy for solid waste services and retirement benefits.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the town
4 council of Smithers is hereby authorized to extend the time for
5 its meeting as a levying body and certifying its actions to the
6 state auditor from between the seventh and twenty-eighth days
7 of March and the third Tuesday in April until the thirty-first
8 day of May, two thousand four, for the purpose of submitting
9 to the voters of the town of Smithers the continuation of an
10 additional town levy for solid waste services and retirement
11 benefits.

LEGISLATURE OF WEST VIRGINIA

**CONSTITUTIONAL
AMENDMENT**

REGULAR SESSION, 2004

HOUSE JOINT RESOLUTION 114

**(By Mr. Speaker, Mr. Kiss, and Delegates Michael, Doyle,
Mezzatesta, Leach, Warner and Hall)**

[Adopted by the Legislature March 13, 2004.]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing appropriations and the issuance and sale of additional state bonds in an amount not exceeding eight million dollars for the purpose of paying bonuses to certain veterans or to relatives of certain veterans; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such 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 four, or at any special election held prior thereto, which proposed amendment is as follows:

1 VETERANS BONUS AMENDMENT
2 (Kosovo, Afghanistan, and Iraq)

3 The Legislature shall provide by law, either for the appro-
4 piation from the general revenues of the State, or for the
5 issuance and sale of state bonds, which shall be in addition to
6 all other state bonds heretofore issued, or a combination of both
7 as the Legislature may determine, for the purpose of paying a
8 cash bonus to: (1) Veterans of the armed forces of the United
9 States who served on active duty in areas of conflict in Iraq, or
10 were members of reserve components called to active duty by
11 the President of the United States under Title 10, United States
12 Code section 12301, 12302, 12303 or 12304 during the Iraqi
13 War, between the nineteenth day of March, two thousand three
14 and the date determined by the President or Congress of the
15 United States as the end of the involvement of the United States
16 armed forces in Iraq, both dates inclusive; or (2) veterans,
17 active service members, or members of reserve components of
18 the armed forces of the United States, who served on active
19 duty in one of the military operations for which he or she
20 received a campaign badge or expeditionary medal during the
21 periods hereinafter described. For purposes of this amendment,
22 periods of active duty in a campaign or expedition are desig-
23 nated as: The conflict in Kosovo between the twentieth day of
24 November, one thousand nine hundred ninety-five and the
25 thirty-first day of December, two thousand, both dates inclu-
26 sive; and the conflict in Afghanistan, between the seventh day

27 of October, two thousand one and the date determined by the
28 President or Congress of the United States as the end of the
29 involvement of the United States armed forces in Afghanistan,
30 both dates inclusive. For purposes of this amendment not more
31 than one bonus shall be paid to or on behalf of the service of a
32 veteran. In order to be eligible to receive a bonus, a veteran
33 must have been a bona fide resident of the State of West
34 Virginia at the time of his or her entry into active service and
35 for a period of at least six months immediately prior thereto,
36 and has not been separated from service under conditions other
37 than honorable. The bonus shall also be paid to any veteran
38 otherwise qualified pursuant to this amendment, who was
39 discharged within ninety days after entering the armed forces
40 because of a service-connected disability. The amount of the
41 bonus shall be six hundred dollars per eligible veteran who was
42 in active service, inside the combat zone in Kosovo, Afghani-
43 stan or Iraq as designated by the President or Congress of the
44 United States at anytime during the dates specified hereinabove.
45 In the case of the Iraqi War and the conflict in Afghanistan, the
46 amount of bonus shall be four hundred dollars per eligible
47 veteran who was in active service outside the combat zone
48 designated by the President or Congress of the United States
49 during the dates specified hereinabove. The bonus to which any
50 deceased veteran would have been entitled, if living, shall be
51 paid to the following surviving relatives of the veteran, if the
52 relatives are residents of the State when the application is made
53 and if the relatives are living at the time payment is made: Any
54 unmarried widow or widower, or, if none, all children,
55 stepchildren and adopted children under the age of eighteen, or,
56 if none, any parent, stepparent, adoptive parent or person
57 standing in loco parentis. The categories of persons listed shall
58 be treated as separate categories listed in order of entitlement
59 and where there is more than one member of a class, the bonus
60 shall be paid to each member according to his or her propor-
61 tional share. Where a deceased veteran's death was connected

62 with the service and resulted from the service during the time
63 period specified, however, the surviving relatives shall be paid,
64 in accordance with the same order of entitlement, the sum of
65 two thousand dollars in lieu of any bonus to which the deceased
66 might have been entitled if living. The person receiving the
67 bonus shall not be required to include the bonus as income for
68 state income tax purposes.

69 The principal amount of any bonds issued for the purpose
70 of paying the bonuses provided for in this amendment shall not
71 exceed the principal amount of eight million dollars, but may be
72 funded or refunded either on the maturity dates of the bonds or
73 on any date on which the bonds are callable prior to maturity,
74 and if any of the bonds have not matured or are not then
75 callable prior to maturity, the Legislature may nevertheless
76 provide at any time for the issuance of refunding bonds to fund
77 or refund the bonds on the dates when the bonds mature or on
78 any date on which the bonds are callable prior to maturity and
79 for the investment or reinvestment of the proceeds of the
80 refunding bonds in direct obligations of the United States of
81 America until the date or dates upon which the bonds mature or
82 are callable prior to maturity. The principal amount of any
83 refunding bonds issued under the provisions of this paragraph
84 shall not exceed the principal amount of the bonds to be funded
85 or refunded thereby.

86 The bonds may be issued from time to time for the purposes
87 authorized by this amendment as separate issues or as combined
88 issues.

89 Whenever the Legislature shall provide for the issuance of
90 any bonds under the authority of this amendment, it shall at the
91 same time provide for the levy, collection and dedication of an
92 additional tax, or enhancement to another tax as the Legislature
93 may determine, in an amount as may be required to pay

94 annually the interest on the bonds and the principal thereof
95 within and not exceeding fifteen years, and all taxes or charges
96 so levied shall be irrevocably dedicated for the payment of the
97 principal of and interest on the bonds until the principal of and
98 interest on the bonds are finally paid and discharged and any of
99 the covenants, agreements or provisions in the acts of the
100 Legislature levying the taxes or charges shall be enforceable in
101 any court of competent jurisdiction by any of the holders of said
102 bonds. Any revenue generated in excess of that which is
103 required to pay the bonuses herein and to pay any administra-
104 tive cost associated with the payment shall be used to pay the
105 principal and interest on any bonds issued as soon as is eco-
106 nomically practicable.

107 The Legislature shall have the power to enact legislation
108 necessary and proper to implement the provisions of this
109 amendment: *Provided*, That no bonus may be issued until the
110 Governor certifies a list of veterans and relatives of deceased
111 veterans eligible to receive such bonus to the Legislature at any
112 regular or special session of the Legislature as the Legislature
113 will provide by general law.

114 *Resolved further*, That in accordance with the provisions of
115 article eleven, chapter three of the code of West Virginia, one
116 thousand nine hundred thirty-one, as amended, such proposed
117 amendment is hereby numbered "Amendment No. 1" and
118 designated as the "Veterans Bonus Amendment of 2004," and
119 the purpose of the proposed amendment is summarized as
120 follows: "To amend the State Constitution to permit the
121 Legislature to appropriate general revenues or sell state bonds
122 for the payment of bonuses and death benefits to veterans of the
123 conflicts in Kosovo, Afghanistan and Iraq or to their relatives,
124 and to impose or increase a tax to pay for the bonds."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2004

CHAPTER 1

(S. B. 1002 — By Senator Helmick)

[Passed March 21, 2004; 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 four, to the department of health and human resources - division of human services - health care provider tax, fund 5090, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - health care provider tax, fund

5090, fiscal year 2004, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 5090, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND**
4 **HUMAN RESOURCES**

5 *131—Division of Human Services—*

6 *Health Care Provider Tax*

7 (WV Code Chapter 11)

8 Fund 5090 FY 2004 Org 0511

9		Act-	Other
10		ivity	Funds
11	1	Unclassified - Total	096 \$ 1,071,309

12 The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriation in the aforesaid
14 account for the designated spending unit for expenditure during
15 the fiscal year two thousand four.

CHAPTER 2

(S. B. 1003 — By Senator Helmick)

[Passed March 21, 2004; 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 four, to the department of health and human resources - division of health - hospital services revenue account, fund 5156, fiscal year 2004, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of health - hospital services revenue account, fund 5156, fiscal year 2004, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 5156, fiscal year 2004, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND HUMAN RE-**
4 **SOURCES**

5 *124—Division of Health—*

6 *Hospital Services Revenue Account*

7 *(Special Fund)*

8 *(Capital Improvement, Renovation and Operations)*

9 (WV Code Chapter 16)

10 Fund 5156 FY 2004 Org 0506

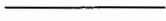
11			Act-	Other
12			ivity	Funds
13	2	Institutional Facilities		
14	3	Operations (R)	335	\$ 3,740,034

15 The purpose of this supplementary appropriation bill is to
16 supplement and increase items of appropriation in the aforesaid
17 account for the designated spending unit for expenditure during
18 the fiscal year two thousand four.



CHAPTER 3

(S. B. 1004 — By Senator Helmick)



[Passed March 21, 2004; 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 four, to the public service commission, fund 8623, fiscal year 2004, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the public service commission, fund 8623, fiscal year 2004, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June two thousand four; 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 four, to fund 8623, fiscal year 2004, organization 0926, 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	213--Public Service Commission--		
5	(WV Code Chapter 24)		
6	Fund <u>8623</u> FY <u>2004</u> Org <u>0926</u>		
7		Act-	Other
8		ivity	Funds
9	4	Unclassified	099 \$ 1,000,000

10 The purpose of this supplementary appropriation bill is to
11 supplement and increase items of appropriation in the aforesaid
12 account for the designated spending unit for expenditure during
13 the fiscal year two thousand four.

CHAPTER 4

(S. B. 1005 — By Senator Helmick)

[Passed March 21, 2004; 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 four, to the department of health and human resources - division of human services, fund 8722, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8722, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 **TITLE II--APPROPRIATIONS.**

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF HEALTH AND HUMAN RE-**
4 **SOURCES**

5 *268—Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Fund 8722 FY 2004 Org 0511

8		Act-	Federal
9		ivity	Funds

10 1 Unclassified - Total 096 \$33,000,000

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 four.



CHAPTER 5

(S. B. 1006 — By Senator Helmick)

[Passed March 21, 2004; 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 four, in the amount of \$19,418,121.38 from the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300, 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 four, by

supplementing, adding and increasing the department of agriculture - state conservation committee, fund 0132, fiscal year 2004, organization 1400, to the department of administration - public defender services, fund 0226, fiscal year 2004, organization 0221, to the state department of education, fund 0313, fiscal year 2004, organization 0402, to the division of human services, fund 0403, fiscal year 2004, organization 0511, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2004, organization 0608, to the department of military affairs and public safety - West Virginia state police, fund 0453, fiscal year 2004, organization 0612, to the division of forestry, fund 0250, fiscal year 2004, organization 0305, to the West Virginia development office, fund 0256, fiscal year 2004, organization 0307, to the department of tax and revenue - tax division, fund 0470, fiscal year 2004, organization 0702.

WHEREAS, The Legislature finds that the account balance in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and

WHEREAS, By the provision of the statement of the state fund, general revenue and this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300, be decreased by expiring the amount of \$19,418,121.38 to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand four, to fund 0132, fiscal year 2004, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 12—Department of Agriculture-

5 State Conservation Committee

6 (WV Code Chapter 19)

7 Fund 0132 FY 2004 Org 1400

8			General
9		Act-	Revenue
10		ivity	Fund

11 5 Soil Conservation Projects-

12 5a Surplus (R) 269 \$ 1,392,000

13 Any unexpended balance remaining in the appropriation for
 14 Soil Conservation Projects - Surplus (fund 0132, activity 269)
 15 at the close of the fiscal year two thousand four is hereby
 16 reappropriated for expenditure during the fiscal year two
 17 thousand five.

18 That the total appropriation for the fiscal year ending the
 19 thirtieth day of June, two thousand four, to fund 0226, fiscal
 20 year 2004, organization 0221, be supplemented and amended
 21 by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF ADMINISTRATION**

4 *27—Public Defender Services*

5 (WV Code Chapter 29)

6 Fund 0226 FY 2004 Org 0221

7			General
8		Act-	Revenue
9		ivity	Fund

10	8	Appointed Counsel Fees -		
11	8a	Surplus (R)	435	\$ 4,224,409

12 Any unexpended balance remaining in the appropriation for
 13 Appointed Counsel Fees - Surplus (fund 0226, activity 435) at
 14 the close of the fiscal year two thousand four is hereby
 15 reappropriated for expenditure during the fiscal year two
 16 thousand five.

17 That the total appropriation for the fiscal year ending the
 18 thirtieth day of June, two thousand four, to fund 0313, fiscal
 19 year 2004, organization 0402, be supplemented and amended
 20 by increasing and adding a new appropriation to the total
 21 appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION

4 34—*State Department of Education*—

5 (WV Code Chapters 18 and 18A)

6 Fund 0313 FY 2004 Org 0402

7						General
8						Revenue
9					Act-	Funds
					ivity	

10	26a	Traditional Student Increased				
11	26b	Enrollment - 5 years through				
12	26c	12th grade-Surplus	997	\$	615,000	
13	26d	River Cities Child Development				
14	26e	Center-Surplus	049		111,000	

15 That the total appropriation for the fiscal year ending the
16 thirtieth day of June, two thousand four, to fund 0403, fiscal
17 year 2004, organization 0511, be supplemented and amended
18 by increasing and adding an appropriation to the total appropri-
19 ation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RE-
4 SOURCES

5 50—*Division of Human Services*

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6 (WV Code Chapters 9, 48 and 49)

7 Fund 0403 FY 2004 Org 0511

8						General
9						Revenue
10						Fund

11 18 WV Teaching Hospitals

12 19 Tertiary/Safety Net - Surplus . . . 547 \$ 250,000

13 32a Pinecrest Hospital-Surplus (R) . . . 050 300,000

14 Any unexpended balance remaining in the appropriation for
15 Pinecrest Hospital-Surplus (fund 0403, activity 050) at the close
16 of the fiscal year two thousand four is hereby reappropriated for
17 expenditure during the fiscal year two thousand five.

18 That the total appropriation for the fiscal year ending the
19 thirtieth day of June, two thousand four, to fund 0450, fiscal
20 year 2004, organization 0608, be supplemented and amended
21 by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF MILITARY AFFAIRS**

4 **AND PUBLIC SAFETY**

5 *56—Division of Corrections—*

6 *Correctional Units*

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

8 Fund 0450 FY 2004 Org 0608

9				General
10			Act-	Revenue
11			ivity	Funds
12	9	Inmate Medical Expenses		
13	9a	- Surplus (R)	846	\$ 2,500,000
14	11	Payments to Federal, County, and/or		
15	12	Regional Jails - Surplus (R)	008	1,667,840
16	22	BRIM Premium - Surplus	914	560,660

17 Any unexpended balances remaining in the appropriations
 18 for Inmate Medical Expenses - Surplus (fund 0450, activity
 19 846) and Payments to Federal, County, and/or Regional Jails -
 20 Surplus (fund 0450, activity 008) at the close of the fiscal year
 21 two thousand four are hereby reappropriated for expenditure
 22 during the fiscal year two thousand five.

23 That the total appropriation for the fiscal year ending the
 24 thirtieth day of June, two thousand four, to fund 0453, fiscal
 25 year 2004, organization 0612, be supplemented and amended
 26 by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF MILITARY AFFAIRS**

4 **AND PUBLIC SAFETY**

5 *57—West Virginia State Police*

6 (WV Code Chapter 15)

7 Fund 0453 FY 2004 Org 0612

8				General
9			Act-	Revenue
10			ivity	Funds
11	3	Employee Benefits-Surplus	250	\$ 616,000
12	16	BRIM Premium-Surplus	914	623,348

13 That the total appropriation for the fiscal year ending the
 14 thirtieth day of June, two thousand four, to fund 0250, fiscal
 15 year 2004, organization 0305, be supplemented and amended
 16 by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUREAU OF COMMERCE

4 *71—Division of Forestry—*

5 (WV Code Chapter 19)

6 Fund 0250 FY 2004 Org 0305

7				General
8			Act-	Revenue
9			ivity	Funds
10	1	Personal Services - Surplus	243	\$ 140,277
11	2	Annual Increment - Surplus	010	1,500
12	3	Employee Benefits - Surplus	250	79,264

13 That the total appropriation for the fiscal year ending the
 14 thirtieth day of June, two thousand four, to fund 0256, fiscal
 15 year 2004, organization 0307, be supplemented and amended
 16 by increasing and adding a new appropriation to the total
 17 appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUREAU OF COMMERCE

4 73—West Virginia Development Office

5 (WV Code Chapter 5B)

6 Fund 0256 FY 2004 Org 0307

7 8 9		Act- ivity	General Revenue Funds
10	39 Local Economic		
11	40 Development Assistance		
12	40a -Surplus (R)	819	\$3,953,578
13	44a Tourism-Unclassified-		
14	Surplus (R)	662	1,983,245

15 Any unexpended balances remaining in the appropriations
16 for Local Economic Development Assistance - Surplus (fund
17 0256, activity 819) and Tourism - Unclassified - Surplus (fund
18 0256, activity 662) at the close of the fiscal year two thousand
19 four are hereby reappropriated for expenditure during the fiscal
20 year two thousand five.

21 That the total appropriation for the fiscal year ending the
22 thirtieth day of June, two thousand four, to fund 0470, fiscal
23 year 2004, organization 0702, be supplemented and amended
24 by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 **DEPARTMENT OF TAX AND REVENUE**4 *64—Tax Division*

5 (WV Code Chapter 11)

6 Fund 0470 FY 2004 Org 0702

7				General
8			Act-	Revenue
9			ivity	Funds
10	3	Employee Benefits - Surplus	250	\$ 605,000
11	4	Unclassified - Surplus (R)	097	610,000
12	7a	Tax Technology Upgrade -		
13		Surplus (R)	450	185,000

14 Any unexpended balances remaining in the appropriations
15 for Unclassified - Surplus (fund 0470, activity 097) and Tax
16 Technology Upgrade - Surplus (fund 0470, activity 450) at the
17 close of the fiscal year two thousand four are hereby
18 reappropriated for expenditure during the fiscal year two
19 thousand five.

20 The purpose of this supplemental appropriation bill is to
21 expire the sum of \$19,418,121.38 to the unappropriated surplus
22 balance in the state fund, general revenue from the tax reduc-
23 tion and federal funding increased compliance fund, fund 1732,
24 fiscal year 2004, organization 2300 and to supplement, establish
25 and increase items of appropriation in the aforesaid accounts for
26 the designated spending units for expenditure during the fiscal
27 year two thousand four.

CHAPTER 6

(S. B. 1007 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of ten million dollars from the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and in the amount of seven million five hundred six thousand forty-one dollars from the higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096.

WHEREAS, The Legislature finds that the account balances in the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096, will exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amount of ten million dollars from the higher
2 education improvement fund, fund 4297, fiscal year 2003,
3 organization 0441, activity 096, and the amount of seven
4 million five hundred six thousand forty-one dollars from the
5 higher education improvement fund, fund 4297, fiscal year
6 2002, organization 0441, activity 096, be expired to the
7 unappropriated balance of the state fund, general revenue, to be
8 available for appropriation during the fiscal year two thousand
9 five.

10 The purpose of this bill is to expire the sum of ten million
11 dollars from the higher education improvement fund, fund
12 4297, fiscal year 2003, organization 0441, activity 096, and
13 seven million five hundred six thousand forty-one dollars from
14 the higher education improvement fund, fund 4297, fiscal year
15 2002, organization 0441, activity 096, to the unappropriated
16 balance in the state fund, general revenue, for the fiscal year
17 ending the thirtieth day of June, two thousand five, to be
18 available for appropriation during the fiscal year two thousand
19 five.

CHAPTER 7

(S. B. 1008 — By Senator Helmick)

[Passed March 21, 2004; 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 four, to the department of environmental protection - division of environmental protection - stream restoration fund, fund 3349, fiscal year 2004, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of environmental protection - division of environmental protection - stream restoration fund, fund 3349, fiscal year 2004, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 3349, fiscal year 2004, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

1	TITLE II--APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF ENVIRONMENTAL		
4	PROTECTION		
5	<i>199—Division of Environmental Protection—</i>		
6	<i>Stream Restoration Fund</i>		
7	Fund <u>3349</u> FY <u>2004</u> Org <u>0313</u>		
8		Act-	Other
9		ivity	Funds
10	1	Unclassified — Total	096 \$ 500,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 the fiscal year two thousand four.



CHAPTER 8

(S. B. 1009 — By Senator Helmick)

[Passed March 21, 2004; 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 higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2004, organization 0442, the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2004, organization 0506, and the department of health and human resources - division of human services, fund 0403, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2004, organization 0442, be amended and reduced in the line items as follows:

- 1 TITLE II--APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **HIGHER EDUCATION POLICY COMMISSION**
- 4 *86—Higher Education Policy Commission—*
- 5 *System—*
- 6 *Control Account*
- 7 (WV Code Chapter 18B)
- 8 Fund 0586 FY 2004 Org 0442

Ch. 8]

APPROPRIATIONS

2421

9				General
10			Act-	Revenue
11			ivity	Funds
12	25	Marshall Medical School	173	\$ 3,227,042
13	31	WVU - School of Health Sciences .	174	27,416,873
14	32	WVU - School of Health Sciences -		
15	33	Charleston Division	175	1,302,188

16 And that the items of the total appropriations from the state
 17 fund, general revenue, to the department of health and human
 18 resources - consolidated medical service fund, fund 0525, fiscal
 19 year 2004, organization 0506, be amended and reduced in the
 20 line item as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF HEALTH AND HUMAN RE-**
 4 **SOURCES**

5 *47—Consolidated Medical Service Fund*

6 (WV Code Chapter 16)

7 Fund 0525 FY 2004 Org 0506

8				General
9			Act-	Revenue
10			ivity	Funds
11	8	Institutional Facilities		
12		Operations	335	\$ 1,072,823

13 And that the items of the total appropriations from the state
 14 fund, general revenue, to the department of health and human

15 resources - division of human services, fund 0403, fiscal year
16 2004, organization 0511, be amended and increased in the line
17 item as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RE-
4 SOURCES

5 50—*Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Fund 0403 FY 2004 Org 0511

8 9 10	Act- ivity	General Revenue Funds
11 8 Medical Services	189	\$ 33,018,926

12 The purpose of this supplementary appropriation bill is to
13 supplement, amend, reduce and increase items of existing
14 appropriations in the aforesaid accounts for the designated
15 spending units. The funds are for expenditure during the fiscal
16 year two thousand four with no new money being appropriated.



CHAPTER 9

(S. B. 1010 — By Senator Helmick)



[Passed March 21, 2004; 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 higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2005, organization 0506, and the department of health and human resources - division of human services, fund 0403, fiscal year 2005, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, be amended and reduced in the line items as follows:

- 1 **TITLE II--APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **HIGHER EDUCATION POLICY COMMISSION**
- 4 *86—Higher Education Policy Commission—*
- 5 *System—*
- 6 *Control Account*
- 7 (WV Code Chapter 18B)
- 8 Fund 0586 FY 2005 Org 0442

			Act- ivity	General Revenue Funds
9				
10				
11				
12	1	Marshall Medical School	173	\$ 4,016,335
13	2	WVU - School of Health Sciences .	174	34,129,924
14	3	WVU - School of Health Sciences -		
15	4	Charleston Division	175	1,621,133

16 And that the items of the total appropriations from the state
 17 fund, general revenue, to the department of health and human
 18 resources - consolidated medical service fund, fund 0525, fiscal
 19 year 2005, organization 0506, be amended and reduced in the
 20 line item as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RE-
 4 SOURCES

5 47—Consolidated Medical Service Fund

6 (WV Code Chapter 16)

7 Fund 0525 FY 2005 Org 0506

			Act- ivity	General Revenue Funds
8				
9				
10				
11	8	Institutional Facilities Operations . .	335	\$ 1,294,887

12 And that the items of the total appropriations from the state
 13 fund, general revenue, to the department of health and human
 14 resources - division of human services, fund 0403, fiscal year

15 2005, organization 0511, be amended and increased in the line
16 item as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 50—*Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Fund 0403 FY 2005 Org 0511

8 9 10		Act- ivity	General Revenue Funds
11	8 Medical Services	189	\$41,062,279

12 The purpose of this supplementary appropriation bill is to
13 supplement, amend, reduce and increase items of existing
14 appropriations in the aforesaid accounts for the designated
15 spending units. The funds are for expenditure during the fiscal
16 year two thousand five with no new money being appropriated.



CHAPTER 10

(S. B. 1011 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - West Virginia parole board, fund 0440, fiscal year 2004, organization 0605, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety - West Virginia parole board, fund 0440, fiscal year 2004, organization 0605, be amended and reduced in the existing line item as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 53—*West Virginia Parole Board*

6 (WV Code Chapter 62)

7 Fund 0440 FY 2004 Org 0605

8	9	10	Act- ivity	General Revenue Fund
11	7	BRIM Premium	913	\$ 6,550

12 And that the total appropriations from the state fund,
13 general revenue, to the department of military affairs and public
14 safety - West Virginia parole board, fund 0440, fiscal year

15 2004, organization 0605, be amended and increased in the
16 existing line item as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF MILITARY AFFAIRS**

4 **AND PUBLIC SAFETY**

5 *53—West Virginia Parole Board*

6 (WV Code Chapter 62)

7 Fund 0440 FY 2004 Org 0605

8 9 10		Act- ivity	General Revenue Funds
11	4 Unclassified	099	\$ 6,550

12 The purpose of this supplementary appropriation bill is to
13 supplement, amend, reduce and increase items of existing
14 appropriations in the aforesaid account for the designated
15 spending unit. The funds are for expenditure during the fiscal
16 year two thousand four with no new money being appropriated.

CHAPTER 11

(S. B. 1012 — By Senator Helmick)

[Passed March 21, 2004; 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 four, in the amount of five million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand four, to the governor's office - civil contingent fund, fund 0105, fiscal year 2004, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of five million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand four, to fund 0105, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1

TITLE II--APPROPRIATIONS

2

Section 1. Appropriations from general revenue.

3

EXECUTIVE

4

8—*Governor's Office*—

5

Civil Contingent Fund

6

(WV Code Chapter 5)

7

Fund 0105 FY 2004 Org 0100

8

General

9

Act-

Revenue

10

ivity

Fund

11 1 Civil Contingent Fund - Surplus . . . 263 \$ 5,000,000

12 The purpose of this bill is to expire the sum of five million
13 dollars from the revenue shortfall reserve fund, fund 2038,
14 organization 0201, and to supplement the governor’s office -
15 civil contingent fund, fund 0105, fiscal year 2004, organization
16 0100, in the budget act for the fiscal year ending the thirtieth
17 day of June, two thousand four, by adding five million dollars
18 to the appropriation for civil contingent fund - surplus for
19 expenditure during the fiscal year two thousand four.



CHAPTER 12

(S. B. 1014 — By Senator Helmick)



[Passed March 21, 2004; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, all supplementing and amending the

appropriations for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular appropriations for fiscal year two thousand five; and

WHEREAS, The governor, by executive message dated the twenty-first day of March, two thousand four, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the governor's statement of the state fund - general revenue and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 0586, fiscal year 2005, organization 0442, be supplemented and increased in the existing line item as follows:

- 1 **TITLE II--APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **HIGHER EDUCATION POLICY COMMISSION**
- 4 *86--Higher Education Policy Commission*

5 (WV Code Chapter 18B)

6 Fund 0586 FY 2005 Org 0442

7			General
8		Act-	Revenue
9		ivity	Funds

10 32 West Virginia University 459 \$ 17,500,000

11 The purpose of this supplementary appropriation bill is to
12 increase items of appropriations in the aforesaid account for the
13 designated spending unit for expenditure during the fiscal year
14 two thousand five.



CHAPTER 13

(H. B. 101 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Mezzatesta, Williams, Doyle, Leach and Tabb)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT to repeal §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended; to amend and reenact §18B-5-4 of said code; to amend said code by adding thereto a new section, designated §18B-9-2a; to amend and reenact §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code; to amend said code by adding thereto a new section, designated §18B-10-1c; and to amend and reenact §18C-3-1 of said code, all relating to fees collected and moneys expended by state institutions of higher education; tuition and fee simplifica-

tion for public higher education; clarifying authority of the West Virginia council for community and technical college education related to community and technical college tuition and fees; repealing obsolete language; expanding certain purchasing authority; modifying certain purchasing procedures; expanding certain employee classifications; creating classifications of fees; authorizing deferred payment plans for students; requiring maintenance of support for certain instructional and student activities; clarifying authority of commission to enter into trust agreements; clarifying purposes for which fees may be used; deleting certain restrictions on bookstore sales; clarifying certain tuition and fee waiver provisions; and clarifying terms and conditions for the health education student loan program.

Be it enacted by the Legislature of West Virginia:

That §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended, be repealed; that §18B-5-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-9-2a; that §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-1c; and that §18C-3-1 of said code be amended and reenacted, all to read as follows:

Chapter

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

CHAPTER 18B. HIGHER EDUCATION.

Article

5. Higher Education Budgets and Expenditures.

9. Classified Employee Salary Schedule and Classification System.

10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.**

1 (a) The council, commission and each governing board,
2 through the vice chancellor for administration, shall purchase
3 or acquire all materials, supplies, equipment, services and
4 printing required for that governing board or the council or
5 commission, as appropriate, and the state institutions of higher
6 education under their jurisdiction. The commission and council
7 jointly shall adopt rules governing and controlling acquisitions
8 and purchases in accordance with the provisions of this section.
9 The rules shall assure that the council, commission and govern-
10 ing boards:

11 (1) Do not preclude any person from participating and
12 making sales thereof to the governing board or to the council or
13 commission except as otherwise provided in section five of this
14 article. Provision of consultant services such as strategic
15 planning services will not preclude or inhibit the governing
16 boards, council or commission from considering any qualified
17 bid or response for delivery of a product or a commodity
18 because of the rendering of those consultant services;

19 (2) Establish and prescribe specifications, in all proper
20 cases, for materials, supplies, equipment, services and printing
21 to be purchased;

22 (3) Adopt and prescribe such purchase order, requisition or
23 other forms as may be required;

24 (4) Negotiate for and make purchases and acquisitions in
25 such quantities, at such times and under contract, in the open
26 market or through other accepted methods of governmental
27 purchasing as may be practicable in accordance with general
28 law;

29 (5) Advertise for bids on all purchases exceeding
30 twenty-five thousand dollars, to purchase by means of sealed
31 bids and competitive bidding or to effect advantageous pur-
32 chases through other accepted governmental methods and
33 practices;

34 (6) Post notices of all acquisitions and purchases for which
35 competitive bids are being solicited in the purchasing office of
36 the specified institution involved in the purchase, at least two
37 weeks prior to making such purchases and ensure that the notice
38 is available to the public during business hours;

39 (7) Provide for purchasing in the open market;

40 (8) Provide for vendor notification of bid solicitation and
41 emergency purchasing;

42 (9) Provide that competitive bids are not required for
43 purchases of twenty-five thousand dollars or less; and

44 (10) Provide for not fewer than three bids where bidding is
45 required. If fewer than three bids are submitted, an award may
46 be made from among those received.

47 (b) The council, commission or each governing board,
48 through the vice chancellor for administration, may issue a
49 check in advance to a company supplying postage meters for
50 postage used by that board, the council or commission and by
51 the state institutions of higher education under their jurisdiction.

52 (c) When a purchase is to be made by bid, any or all bids
53 may be rejected. However, all purchases based on advertised
54 bid requests shall be awarded to the lowest responsible bidder
55 taking into consideration the qualities of the articles to be
56 supplied, their conformity with specifications, their suitability
57 to the requirements of the governing boards, council or com-
58 mission and delivery terms. The preference for resident vendors

59 as provided in section thirty-seven, article three, chapter five-a
60 of this code apply to the competitive bids made pursuant to this
61 section.

62 (d) The governing boards, council and commission shall
63 maintain a purchase file, which shall be a public record and
64 open for public inspection. After the award of the order or
65 contract, the governing boards, council and commission shall
66 indicate upon the successful bid that it was the successful bid
67 and shall further indicate why bids are rejected and, if the
68 mathematical low vendor is not awarded the order or contract,
69 the reason therefor. A record in the purchase file may not be
70 destroyed without the written consent of the legislative auditor.
71 Those files in which the original documentation has been held
72 for at least one year and in which the original documents have
73 been reproduced and archived on microfilm or other equivalent
74 method of duplication may be destroyed without the written
75 consent of the legislative auditor. All files, no matter the
76 storage method, shall be open for inspection by the legislative
77 auditor upon request.

78 (e) The commission and council also jointly shall adopt
79 rules to prescribe qualifications to be met by any person who is
80 to be employed as a buyer pursuant to this section. These rules
81 shall require that a person may not be employed as a buyer
82 unless that person, at the time of employment, either is:

83 (1) A graduate of an accredited college or university; or

84 (2) Has at least four years' experience in purchasing for any
85 unit of government or for any business, commercial or indus-
86 trial enterprise.

87 (f) Any person making purchases and acquisitions pursuant
88 to this section shall execute a bond in the penalty of fifty
89 thousand dollars, payable to the state of West Virginia, with a
90 corporate bonding or surety company authorized to do business

91 in this state as surety thereon, in form prescribed by the
92 attorney general and conditioned upon the faithful performance
93 of all duties in accordance with this section and sections five
94 through eight, inclusive, of this article and the rules of the
95 governing board and the council and commission. In lieu of
96 separate bonds for such buyers, a blanket surety bond may be
97 obtained. Any such bond shall be filed with the secretary of
98 state. The cost of any such bond shall be paid from funds
99 appropriated to the applicable governing board or the council or
100 commission.

101 (g) All purchases and acquisitions shall be made in consid-
102 eration and within limits of available appropriations and funds
103 and in accordance with applicable provisions of article two,
104 chapter five-a of this code relating to expenditure schedules and
105 quarterly allotments of funds. Notwithstanding any other
106 provision of this code to the contrary, only those purchases
107 exceeding the dollar amount for competitive sealed bids in this
108 section are required to be encumbered and they may be entered
109 into the state's centralized accounting system by the staff of the
110 commission, council or governing boards to satisfy the require-
111 ments of article two, chapter five-a, and specifically sections
112 twenty-six, twenty-seven and twenty-eight of said article two,
113 to determine whether the amount of the purchase is within the
114 commission's, council's or governing board's quarterly
115 allotment, is in accordance with the approved expenditure
116 schedule, and otherwise conforms to the provisions of article
117 two, chapter five-a of this code.

118 (h) The governing boards, council and commission may
119 make requisitions upon the auditor for a sum to be known as an
120 advance allowance account, not to exceed five percent of the
121 total of the appropriations for the governing board, council or
122 commission, and the auditor shall draw a warrant upon the
123 treasurer for such accounts. All advance allowance accounts
124 shall be accounted for by the applicable governing board or the

125 council or commission once every thirty days or more often if
126 required by the state auditor.

127 (i) Contracts entered into pursuant to this section shall be
128 signed by the applicable governing board or the council or
129 commission in the name of the state and shall be approved as to
130 form by the attorney general. A contract which requires
131 approval as to form by the attorney general is considered
132 approved if the attorney general has not responded within
133 fifteen days of presentation of the contract. A contract or a
134 change order for that contract and notwithstanding any other
135 provision of this code to the contrary, associated documents
136 such as performance and labor/material payments, bonds and
137 certificates of insurance which use terms and conditions or
138 standardized forms previously approved by the attorney general
139 and do not make substantive changes in the terms and condi-
140 tions of the contract do not require approval by the attorney
141 general. The attorney general shall make a list of those changes
142 which he or she deems to be substantive and the list, and any
143 changes thereto, shall be published in the state register. A
144 contract that exceeds the dollar amount requiring competitive
145 sealed bids in this section shall be filed with the state auditor.
146 If requested to do so, the governing boards, council or commis-
147 sion shall make all contracts available for inspection by the
148 state auditor. The governing board, council or commission, as
149 appropriate, shall prescribe the amount of deposit or bond to be
150 submitted with a bid or contract, if any, and the amount of
151 deposit or bond to be given for the faithful performance of a
152 contract.

153 (j) If the governing board, council or commission purchases
154 or contracts for materials, supplies, equipment, services and
155 printing contrary to the provisions of sections four through
156 seven of this article or the rules pursuant thereto, such purchase
157 or contract is void and of no effect.

158 (k) Any governing board or the council or commission, as
159 appropriate, may request the director of purchases to make
160 available, from time to time, the facilities and services of that
161 department to the governing boards, council or commission in
162 the purchase and acquisition of materials, supplies, equipment,
163 services and printing and the director of purchases shall
164 cooperate with that governing board, council or commission, as
165 appropriate, in all such purchases and acquisitions upon such
166 request.

167 (l) Each governing board or the council or commission, as
168 appropriate, shall permit private institutions of higher education
169 to join as purchasers on purchase contracts for materials,
170 supplies, services and equipment entered into by that governing
171 board or the council or commission. Any private school
172 desiring to join as purchasers on such purchase contracts shall
173 file with that governing board or the council or commission an
174 affidavit signed by the president of the institution of higher
175 education or a designee requesting that it be authorized to join
176 as purchaser on purchase contracts of that governing board or
177 the council or commission, as appropriate. The private school
178 shall agree that it is bound by such terms and conditions as that
179 governing board or the council or commission may prescribe
180 and that it will be responsible for payment directly to the
181 vendor under each purchase contract.

182 (m) Notwithstanding any other provision of this code to the
183 contrary, the governing boards, council and commission, as
184 appropriate, may make purchases from cooperative buying
185 groups, consortia, the federal government or from federal
186 government contracts if the materials, supplies, services,
187 equipment or printing to be purchased is available from
188 cooperative buying groups, consortia, the federal government
189 or from a federal contract and purchasing from the cooperative
190 buying groups, consortia, federal government or from a federal

191 government contract would be the most financially advanta-
192 geous manner of making the purchase.

193 (n) An independent performance audit of all purchasing
194 functions and duties which are performed at any institution of
195 higher education shall be performed each fiscal year. The joint
196 committee on government and finance shall conduct the
197 performance audit and the governing boards, council and
198 commission, as appropriate, are responsible for paying the cost
199 of the audit from funds appropriated to the governing boards,
200 council or commission.

201 (o) The governing boards shall require each institution
202 under their respective jurisdictions to notify and inform every
203 vendor doing business with that institution of the provisions of
204 section fifty-four, article three, chapter five-a of this code, also
205 known as the "Prompt Pay Act of 1990".

206 (p) Consultant services, such as strategic planning services,
207 may not preclude or inhibit the governing boards, council or
208 commission from considering any qualified bid or response for
209 delivery of a product or a commodity because of the rendering
210 of those consultant services.

211 (q) After the commission or council, as appropriate, has
212 granted approval for lease-purchase arrangements by the
213 governing boards, a governing board may enter into
214 lease-purchase arrangements for capital improvements,
215 including equipment. Any lease-purchase arrangement so
216 entered shall constitute a special obligation of the state of West
217 Virginia. The obligation under a lease-purchase arrangement so
218 entered may be from any funds legally available to the institu-
219 tion and must be cancelable at the option of the governing
220 board or institution at the end of any fiscal year. The obligation,
221 any assignment or securitization thereof, never constitutes an
222 indebtedness of the state of West Virginia or any department,

223 agency or political subdivision thereof, within the meaning of
224 any constitutional provision or statutory limitation, and may not
225 be a charge against the general credit or taxing powers of the
226 state or any political subdivision thereof. Such facts shall be
227 plainly stated in any lease-purchase agreement. Further, the
228 lease-purchase agreement shall prohibit assignment or securiti-
229 zation without consent of the lessee and the approval of the
230 attorney general of West Virginia. Proposals for any arrange-
231 ment must be requested in accordance with the requirements of
232 this section and any rules or guidelines of the commission and
233 council. In addition, any lease-purchase agreement which
234 exceeds one hundred thousand dollars total shall be approved
235 by the attorney general of West Virginia. The interest compo-
236 nent of any lease-purchase obligation is exempt from all
237 taxation of the state of West Virginia, except inheritance, estate
238 and transfer taxes. It is the intent of the Legislature that if the
239 requirements set forth in the Internal Revenue Code of 1986, as
240 amended, and any regulations promulgated pursuant thereto are
241 met, the interest component of any lease-purchase obligation
242 also is exempt from the gross income of the recipient for
243 purposes of federal income taxation and may be designated by
244 the governing board or the president of the institution as a
245 bank-qualified obligation.

246 (r) Notwithstanding any other provision of this code to the
247 contrary, the commission, council and governing boards have
248 the authority, in the name of the state, to lease, or offer to lease,
249 as lessee, any grounds, buildings, office or other space in
250 accordance with this paragraph and as provided below:

251 (1) The commission, council and governing boards have
252 sole authority to select and to acquire by contract or lease all
253 grounds, buildings, office space or other space, the rental of
254 which is necessarily required by the commission, council or
255 governing boards for the institutions under their jurisdiction.

256 The chief executive officer of the commission, council or an
257 institution shall certify the following:

258 (A) That the grounds, buildings, office space or other space
259 requested is necessarily required for the proper function of the
260 commission, council or institution;

261 (B) That the commission, council or institution will be
262 responsible for all rent and other necessary payments in
263 connection with the contract or lease; and

264 (C) That satisfactory grounds, buildings, office space or
265 other space is not available on grounds and in buildings
266 currently owned or leased by the commission, council or the
267 institution.

268 Before executing any rental contract or lease, the commis-
269 sion, council or a governing board shall determine the fair
270 rental value for the rental of the requested grounds, buildings,
271 office space or other space, in the condition in which they exist,
272 and shall contract for or lease the premises at a price not to
273 exceed the fair rental value.

274 (2) The commission, council and governing boards are
275 authorized to enter into long-term agreements for buildings,
276 land and space for periods longer than one fiscal year but not to
277 exceed forty years. Any purchase of real estate, any
278 lease-purchase agreement and any construction of new build-
279 ings or other acquisition of buildings, office space or grounds
280 resulting therefrom, pursuant to the provisions of this subsec-
281 tion shall be presented by the policy commission or council, as
282 appropriate, to the joint committee on government and finance
283 for prior review. Any such lease shall contain, in substance, all
284 the following provisions:

285 (A) That the commission, council or governing board, as
286 lessee, has the right to cancel the lease without further obliga-

287 tion on the part of the lessee upon giving thirty days' written
288 notice to the lessor at least thirty days prior to the last day of the
289 succeeding month;

290 (B) That the lease is considered canceled without further
291 obligation on the part of the lessee if the Legislature or the
292 federal government fails to appropriate sufficient funds therefor
293 or otherwise acts to impair the lease or cause it to be canceled;
294 and

295 (C) That the lease is considered renewed for each ensuing
296 fiscal year during the term of the lease unless it is canceled by
297 the commission, council or governing board before the end of
298 the then-current fiscal year.

299 (3) The commission, council or institution which is granted
300 any grounds, buildings, office space or other space leased in
301 accordance with this section may not order or make permanent
302 changes of any type thereto, unless the commission, council or
303 governing board, as appropriate, has first determined that the
304 change is necessary for the proper, efficient and economically
305 sound operation of the institution. For purposes of this section,
306 a "permanent change" means any addition, alteration, improve-
307 ment, remodeling, repair or other change involving the expendi-
308 ture of state funds for the installation of any tangible thing
309 which cannot be economically removed from the grounds,
310 buildings, office space or other space when vacated by the
311 institution.

312 (4) Leases and other instruments for grounds, buildings,
313 office or other space, once approved by the commission,
314 council or governing board, may be signed by the chief execu-
315 tive officer of the commission, council or institution. Any lease
316 or instrument exceeding one hundred thousand dollars annually
317 shall be approved as to form by the attorney general. A lease or
318 other instrument for grounds, buildings, office or other space

319 that contains a term, including any options, of more than six
320 months for its fulfillment shall be filed with the state auditor.

321 (5) The commission and council jointly may promulgate
322 rules they consider necessary to carry out the provisions of this
323 section.

324 (s) Purchasing card use may be expanded by the council,
325 commission and state institutions of higher education pursuant
326 to the provisions of this subsection.

327 (1) The council and commission jointly shall establish
328 procedures to be implemented by the council, commission and
329 any institution under their respective jurisdictions using
330 purchasing cards. The procedures shall ensure that each
331 maintains:

332 (A) Appropriate use of the purchasing card system;

333 (B) Full compliance with the provisions of article three,
334 chapter twelve of this code relating to the purchasing card
335 program; and

336 (C) Sufficient accounting and auditing procedures for all
337 purchasing card transactions.

338 (2) By the first day of November, two thousand four, the
339 council and commission jointly shall present the procedures to
340 the legislative oversight commission on education accountabil-
341 ity for its adoption.

342 (3) Notwithstanding any other provision of this code to the
343 contrary, if the legislative oversight commission on education
344 accountability adopts the procedures, the council, commission,
345 and any institution authorized pursuant to subdivision (4) of this
346 subsection, may use purchasing cards for:

347 (A) Travel expenses directly related to the job duties of the
348 traveling employee, including fuel and food; and

349 (B) Any routine, regularly-scheduled payment, including,
350 but not limited to, utility payments and real property rental fees.
351 The council, commission and each institution annually by the
352 thirtieth day of June, shall provide to the state purchasing
353 division a list of all goods or services for which payment was
354 made pursuant to this provision during that fiscal year.

355 (4) The commission and council each shall evaluate the
356 capacity of each institution under its jurisdiction for complying
357 with the procedures established pursuant to subdivision (3) of
358 this subsection. The commission and council each shall
359 authorize expanded use of purchasing cards pursuant to said
360 subdivision (3) for any such institution it determines has the
361 capacity to comply.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-2a. Nonclassified employee limitation exemption.

1 The Legislature finds that the doctoral institutions, as
2 defined in section one, article eight of this chapter, have unique
3 staffing demands for their extensive research and doctoral
4 programs, and therefore require additional nonclassified staff.
5 Each doctoral institution may exceed the percentage of
6 nonclassified employees authorized in section two, article nine
7 of this chapter by an additional five percent.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-1c. Definitions.

§18B-10-2. Higher education resource assessment.

§18B-10-4. Medical education.

- §18B-10-4b. Additional fee waivers for health sciences and technology academy programs.
- §18B-10-5. Fee waivers — Undergraduate schools.
- §18B-10-6. Fee waivers — Professional and graduate schools.
- §18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.
- §18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.
- §18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.
- §18B-10-11. Fees and money derived from athletic contests.
- §18B-10-12. Student activities.
- §18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.
- §18B-10-14. Bookstores.
- §18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among the tuition and
5 fees any one or more of the following as defined in section
6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees
13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees
16 collected to support existing system-wide and institutional debt
17 service and future systemwide and institutional debt service,
18 capital projects and campus renewal for educational and general
19 facilities.

20 (4) Subject to any covenants or restrictions imposed with
21 respect to revenue bonds payable from such accounts, an
22 institution may expend funds from each such special revenue
23 account for any purpose for which funds were collected within
24 that account regardless of the original purpose for which the
25 funds were collected.

26 (c) The purposes for which tuition and fees may be ex-
27 pended include, but are not limited to, health services, student
28 activities, recreational, athletic and extracurricular activities.
29 Additionally, tuition and fees may be used to finance a stu-
30 dent's attorney to perform legal services for students in civil
31 matters at the institutions: *Provided*, That the legal services are
32 limited only to those types of cases, programs or services
33 approved by the administrative head of the institution where the
34 legal services are to be performed.

35 (d) The commission and council jointly shall propose a rule
36 for legislative approval in accordance with the provisions of
37 article three-a, chapter twenty-nine-a of this code to govern the
38 fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and,
40 therefore, the commission and council jointly shall file the rule
41 required by subsection (d) of this section as an emergency rule
42 pursuant to the provisions of article three-a, chapter
43 twenty-nine-a of this code, subject to the prior approval of the
44 legislative oversight commission on education accountability.

45 (f) The schedule of all tuition and fees, and any changes
46 therein, shall be entered in the minutes of the meeting of the
47 appropriate governing board and the board shall file with the
48 commission or council, or both, as appropriate, and the legisla-
49 tive auditor a certified copy of such schedule and changes.

50 (g) The boards shall establish the rates to be charged
51 full-time students, as defined in section one-b of this article,
52 who are enrolled during a regular academic term.

53 (1) Undergraduate students taking fewer than twelve credit
54 hours in a regular term shall have their fees reduced pro rata
55 based upon one twelfth of the full-time rate per credit hour and
56 graduate students taking fewer than nine credit hours in a
57 regular term shall have their fees reduced pro rata based upon
58 one ninth of the full-time rate per credit hour.

59 (2) Fees for students enrolled in summer terms or other
60 nontraditional time periods shall be prorated based upon the
61 number of credit hours for which the student enrolls in accor-
62 dance with the above provisions.

63 (h) All fees are due and payable by the student upon
64 enrollment and registration for classes except as provided in
65 this subsection:

66 (1) The governing boards shall permit fee payments to be
67 made in installments over the course of the academic term. All
68 fees shall be paid prior to the awarding of course credit at the
69 end of the academic term.

70 (2) The governing boards also shall authorize the accep-
71 tance of credit cards or other payment methods which may be
72 generally available to students for the payment of fees. The
73 governing boards may charge the students for the reasonable
74 and customary charges incurred in accepting credit cards and
75 other methods of payment.

76 (3) If a governing board determines that a student's
77 finances are affected adversely by a legal work stoppage, it may
78 allow the student an additional six months to pay the fees for
79 any academic term. The governing board shall determine on a
80 case-by-case basis if the finances of a student are affected
81 adversely.

82 (4) The commission and council jointly shall propose a rule
83 in accordance with the provisions of article three-a, chapter
84 twenty-nine-a of this code, defining conditions under which an
85 institution may offer tuition and fee deferred payment plans
86 through the institution or through third parties.

87 (5) An institution may charge interest or fees for any
88 deferred or installment payment plans.

89 (i) In addition to the other fees provided in this section,
90 each governing board may impose, collect and distribute a fee
91 to be used to finance a nonprofit, student-controlled public
92 interest research group if the students at the institution demon-
93 strate support for the increased fee in a manner and method
94 established by that institution's elected student government.
95 The fee may not be used to finance litigation against the
96 institution.

97 (j) Institutions shall retain tuition and fee revenues not
98 pledged for bonded indebtedness or other purposes in accor-
99 dance with the tuition rule proposed by the commission and
100 council jointly pursuant to this section. The tuition rule shall:

101 (1) Provide a basis for establishing nonresident tuition and
102 fees;

103 (2) Allow institutions to charge different tuition and fees
104 for different programs;

105 (3) Provide that a board of governors may propose to the
106 commission, council or both, as appropriate, a mandatory
107 auxiliary fee under the following conditions:

108 (A) The fee shall be approved by the commission, council
109 or both, as appropriate, and either the students below the senior
110 level at the institution or the Legislature before becoming
111 effective;

112 (B) Increases may not exceed previous state subsidies by
113 more than ten percent;

114 (C) The fee may be used only to replace existing state funds
115 subsidizing auxiliary services such as athletics or bookstores;

116 (D) If the fee is approved, the amount of the state subsidy
117 shall be reduced annually by the amount of money generated
118 for the institution by the fees. All state subsidies for the
119 auxiliary services shall cease five years from the date the
120 mandatory auxiliary fee is implemented;

121 (E) The commission, council or both, as appropriate, shall
122 certify to the Legislature by the first day of October in the fiscal
123 year following implementation of the fee, and annually thereaf-
124 ter, the amount of fees collected for each of the five years;

125 (4) Establish methodology, where applicable, to ensure that,
126 within the appropriate time period under the compact, commu-
127 nity and technical college tuition rates for community and
128 technical college students in all independently accredited
129 community and technical colleges will be commensurate with
130 the tuition and fees charged by their peer institutions.

131 (k) A penalty may not be imposed by the commission or
132 council upon any institution based upon the number of nonresi-
133 dents who attend the institution unless the commission or
134 council determines that admission of nonresidents to any

135 institution or program of study within the institution is imped-
136 ing unreasonably the ability of resident students to attend the
137 institution or participate in the programs of the institution. The
138 institutions shall report annually to the commission or council
139 on the numbers of nonresidents and such other enrollment
140 information as the commission or council may request.

141 (l) Tuition and fee increases of the governing boards are
142 subject to rules adopted by the commission and council jointly
143 pursuant to this section and in accordance with the provisions
144 of article three-a, chapter twenty-nine-a of this code.

145 (1) A governing board of an institution under the jurisdic-
146 tion of the commission may propose tuition and fee increases
147 of up to nine and one-half percent for undergraduate resident
148 students for any fiscal year. The nine and one-half percent total
149 includes the amount of increase over existing tuition and fees,
150 combined with the amount of any newly established, special-
151 ized fee which may be proposed by a governing board. A
152 governing board of an institution under the jurisdiction of the
153 council may propose tuition and fee increases of up to four and
154 three quarters percent. The four and three-quarters percent total
155 includes the amount of increase over existing tuition and fees,
156 combined with the amount of any newly established, special-
157 ized fee which may be proposed by a governing board. The
158 commission or council, as appropriate, shall examine individu-
159 ally each request from a governing board for an increase. Any
160 proposed increase requires the approval of the commission or
161 council, as appropriate.

162 In determining whether to approve or disapprove the
163 governing board's request, the commission or council shall
164 determine the progress the institution has made toward meeting
165 the conditions outlined in this subdivision and shall make this
166 determination the predominate factor in its decision. The

167 commission or council shall consider the degree to which each
168 institution has met the following conditions:

169 (A) Has maximized resources available through nonresident
170 tuition and fee charges to the satisfaction of the commission or
171 council;

172 (B) Is consistently achieving the benchmarks established in
173 the compact of the institution pursuant to the provisions of
174 article one-a of this chapter;

175 (C) Is continuously pursuing the statewide goals for
176 post-secondary education and the statewide compact established
177 in articles one and one-a of this chapter;

178 (D) Is implementing the efficiency measures required by
179 section nine, article five of this chapter;

180 (E) Has demonstrated to the satisfaction of the commission
181 or council that an increase will be used to maintain high-quality
182 programs at the institution;

183 (F) Has demonstrated to the satisfaction of the commission
184 or council that the institution is making adequate progress
185 toward achieving the goals for education established by the
186 southern regional education board; and

187 (G) To the extent authorized, will increase by up to five
188 percent the available tuition and fee waivers provided by the
189 institution. The increased waivers may not be used for athletics.

190 (2) This section does not require equal increases among
191 institutions or require any level of increase at an institution.

192 (3) The commission and council shall report to the legisla-
193 tive oversight commission on education accountability regard-
194 ing the basis for each approval or denial as determined using
195 the criteria established in subdivision (1) of this subsection.

196 (4) For fiscal year two thousand five only, a governing
197 board of any institution under the jurisdiction of the commis-
198 sion may increase tuition and fees for undergraduate resident
199 students by one and one-half percent greater than the amount
200 authorized by the commission pursuant to the provisions of this
201 section.

202 (m) The amount of fees assessed immediately prior to the
203 effective date of this act under the provisions of this article
204 relating to a higher education resource fee, a faculty improve-
205 ment fee, a medical education fee, a health professions fee and
206 a student activities fee are included in the appropriate tuition or
207 fees classifications established under subsection (a) of this
208 section.

§18B-10-1c. Definitions.

1 For the purposes of this article, the following words have
2 the meanings specified unless the context clearly indicates a
3 different meaning:

4 (a) “Auxiliary capital fees” means charges levied on
5 students to support debt service, capital projects and campus
6 maintenance and renewal for the auxiliary facilities of the
7 institutions;

8 (b) “Auxiliary fees” means charges levied on all students to
9 support auxiliary enterprises or optional charges levied only on
10 students using the auxiliary service. Auxiliary fees include sales
11 and service revenue from entities that exist predominately to
12 furnish goods or services to students, faculty or staff such as
13 residence halls, faculty and staff housing, food services,
14 intercollegiate athletics, student unions, bookstores, parking and
15 other service centers;

16 (c) “Full-time graduate student” means a graduate student
17 who is enrolled for nine or more credit hours in a regular term;

18 (d) "Full-time undergraduate student" means an undergrad-
19 uate student who is enrolled for twelve or more credit hours in
20 a regular term;

21 (e) "Required educational and general capital fees" means:

22 (1) Charges levied on all students to support debt service of
23 systemwide bond issues; and

24 (2) Charges levied on all students to support debt service,
25 capital projects and campus maintenance and renewal for an
26 institution's educational and general educational facilities; and

27 (f) "Tuition and required educational and general fees"
28 means:

29 (1) Charges levied on all students of that class or category
30 to support educational and general program services; and

31 (2) Optional charges levied for education and general
32 services collected only from students using the service or from
33 students for whom the services are made available. Educational
34 and general expenditures are categorized as instruction,
35 research, academic support, student services, institutional
36 support, operation and maintenance of plant and scholarships
37 and fellowships. Education and general expenditures do not
38 include expenditures for auxiliary enterprises, hospitals or
39 independent operations.

§18B-10-2. Higher education resource assessment.

1 (a) Pursuant to the authority granted by section four, article
2 one-b of this chapter, and section six, article two-b of this
3 chapter, the commission and council jointly shall establish a
4 higher education resource assessment per student for each state
5 institution of higher education under their respective jurisdic-
6 tions. Community and technical colleges shall transfer all funds

7 collected pursuant to this section to the council. All other
8 institutions shall transfer all funds collected pursuant to this
9 section to the commission. Any reference in this code to higher
10 education resource fee means this higher education resource
11 assessment.

12 (b) The commission and council jointly shall fix the
13 assessment for the various institutions and classes of students
14 and may periodically change these assessments. The amount of
15 the assessment for each institution shall be prorated for
16 part-time students.

17 (c) Each institution shall maintain a level of support for
18 libraries and library supplies, including books, periodicals,
19 subscriptions and audiovisual materials, instructional equip-
20 ment and materials; and for the improvement in quality and
21 scope of student services comparable to that level supported by
22 the higher education resource fee previously authorized by this
23 section.

24 (d) The assessment shall be expended or allocated by the
25 commission or council to meet its general operating expenses
26 or to fund statewide programs. To the maximum extent
27 practicable, the commission and council shall offset the impact,
28 if any, on financially needy students of any potential assessment
29 increase under this section by allocating an appropriate amount
30 of the revenue to the state scholarship program to be expended
31 in accordance with the provisions of article five, chapter
32 eighteen-c of this code.

§18B-10-4. Medical education.

1 The commission shall determine an appropriate portion of
2 all tuition and fees paid by medical students enrolled for credit
3 at the West Virginia university school of medicine, Marshall
4 university school of medicine and the West Virginia school of

5 osteopathic medicine to be used to support the health education
6 student loan fund. The portion determined by the commission
7 for this purpose shall be deposited into the health education
8 student loan fund account in accordance with the provisions of
9 article three, chapter eighteen-c of this code.

§18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

1 (a) In addition to the number of fee waivers permitted in
2 sections five and six of this article for undergraduate, graduate
3 and professional schools, each state institution of higher
4 education may waive all fees or any part thereof for students
5 who are residents of West Virginia and who successfully
6 complete the health sciences and technology academy affiliated
7 programs.

8 (b) For purposes of this section, “Health Sciences and
9 Technology Academy Programs” means those programs in the
10 health sciences designed to assist junior high and high school
11 students in conjunction with their parents and teachers, to
12 enhance their knowledge and abilities in subject matters which
13 will further a career in the field of health sciences.

§18B-10-5. Fee waivers — Undergraduate schools.

1 Each governing board periodically may establish fee
2 waivers for students in undergraduate studies at institutions
3 under its jurisdiction entitling recipients to waiver of tuition,
4 capital and other fees subject to the following conditions and
5 limitations:

6 (a) A state institution of higher education may not have in
7 effect at any time a number of undergraduate fee waivers which
8 exceeds five percent of the number of full-time equivalent
9 undergraduate students registered during the fall semester of the
10 immediately preceding academic year.

11 (b) Each undergraduate fee waiver entitles the recipient
12 thereof to attend a designated state institution of higher educa-
13 tion without payment of the tuition, capital and other fees as
14 may be prescribed by the governing board and is for a period of
15 time not to exceed eight semesters of undergraduate study.

16 (c) The governing board shall make rules governing the
17 award of undergraduate fee waivers; the issuance and cancella-
18 tion of certificates entitling the recipients to the benefits
19 thereof; the use of the fee waivers by the recipients; and the
20 rights and duties of the recipients with respect to the fee
21 waivers. These rules may not be inconsistent with the provi-
22 sions of this section.

23 (d) The awarding of undergraduate fee waivers shall be
24 entered in the minutes of the meetings of the governing board.

25 (e) Students enrolled in an administratively-linked commu-
26 nity and technical college shall be awarded a proportionate
27 share of the total number of undergraduate fee waivers awarded
28 by a governing board. The number to be awarded to students of
29 the community and technical college is based upon the full-time
30 equivalent enrollment of that institution.

§18B-10-6. Fee waivers – Professional and graduate schools.

1 In addition to the fee waivers authorized for undergraduate
2 study by the provisions of section five of this article, each
3 governing board periodically may establish fee waivers for
4 study in graduate and professional schools under its jurisdic-
5 tion, including medicine and dentistry, entitling the recipients
6 to waiver of tuition, capital, and other fees, subject to the
7 following conditions and limitations:

8 (a) West Virginia university may not have in effect at any
9 time graduate and professional school fee waivers in a number
10 which exceeds ten percent of the number of full-time equivalent

11 graduate and professional students registered during the
12 corresponding fall semester, spring semester and summer term
13 of the immediately preceding academic year. In addition to the
14 above ten percent, all graduate assistants employed by West
15 Virginia university shall be granted a fee waiver.

16 (b) Institutions of higher education other than West
17 Virginia university may not have in effect at any time a number
18 of graduate and professional school fee waivers which exceeds
19 five percent of the number of full-time equivalent graduate and
20 professional students registered during the corresponding fall
21 semester, spring semester and summer term of the immediately
22 preceding academic year. In addition to the above five percent,
23 all graduate assistants employed by these institutions shall be
24 granted a fee waiver.

25 (c) Each graduate or professional school fee waiver entitles
26 the recipient to waiver of the tuition, capital, and other fees as
27 may be prescribed by the governing boards and is for a period
28 of time not to exceed the number of semesters normally
29 required in the recipient's academic discipline.

30 (d) The governing boards shall make rules governing the
31 award of graduate and professional school fee waivers; the
32 issuance and cancellation of certificates entitling the recipients
33 to the benefits thereof; the use of the fee waivers by the
34 recipients; and the rights and duties of the recipients with
35 respect to the fee waivers. These rules may not be inconsistent
36 with the provisions of this section.

37 (e) The awarding of graduate and professional school fee
38 waivers shall be entered in the minutes of the meeting of each
39 governing board.

**§18B-10-7a. Tuition and fee waivers or adjustments for residents
at least sixty-five years old.**

1 (a) Each governing board shall promulgate a rule establish-
2 ing a reduced tuition and fee program for senior citizens. The
3 rule shall include at least the following:

4 (1) One option for individuals who attend undergraduate
5 and graduate courses without receiving credit and one option
6 for those who attend undergraduate and graduate courses for
7 credit;

8 (2) A requirement that the following conditions be met
9 under either option of the program:

10 (A) The participant is a resident of West Virginia;

11 (B) The participant is sixty-five years of age or older; and

12 (C) Classroom space is available;

13 (3) A method of establishing priority for allowing a
14 participant to attend a class or course;

15 (4) A determination of whether to require participants to
16 pay special fees, including laboratory fees, if the fees are
17 required of all other students;

18 (5) A determination of whether to require participants to
19 pay for parking;

20 (6) Requirements for participants in the program under the
21 no credit option:

22 (A) A grade or credit may not be given; and

23 (B) The total tuition and fees charged for each course or
24 class, excluding laboratory and parking fees, may not exceed
25 fifty dollars. After the first day of July, two thousand four, the
26 governing boards may change the maximum fee; and

27 (7) A requirement for participants in the program under the
28 for credit option that tuition and fee rates may not exceed fifty
29 percent of the normal rates charged to state residents by the
30 institution.

31 (b) The provisions of this section apply to both classroom-
32 based courses, electronic and internet-based courses, and all
33 other distance education delivery.

**§18B-10-8. Collection; disposition and use of capital and auxiliary
capital fees; creation of special capital and auxil-
iary capital improvements funds; revenue bonds.**

1 (a) Effective the first day of July, two thousand four, this
2 section, and any rules adopted by the commission, council, or
3 both, in accordance with this section and article three-a, chapter
4 twenty-nine-a of this code, govern the collection, disposition
5 and use of the capital and auxiliary capital fees authorized by
6 section one of this article. Prior to the first day of July, two
7 thousand four, the statutory provisions governing collection and
8 disposition of capital funds in place prior to the enactment of
9 this section remain in effect.

10 (b) *Fees for full-time students.* — The governing boards
11 shall fix capital and auxiliary capital fees for full-time students
12 at each state institution of higher education per semester. For
13 institutions under its jurisdiction, a governing board may fix
14 such fees at higher rates for students who are not residents of
15 this state.

16 (c) *Fees for part-time students.* — For all part-time students
17 and for all summer school students, the governing boards shall
18 impose and collect such fees in proportion to, but not exceed-
19 ing, the fees paid by full-time students. Refunds of such fees
20 may be made in the same manner as any other fee collected at
21 state institutions of higher education.

22 (d) There is created in the state treasury a special capital
23 improvements fund and special auxiliary capital improvements
24 fund for each state institution of higher education and the
25 commission into which shall be paid all proceeds, respectively,
26 of:

27 (1) The capital and auxiliary capital fees collected from
28 students at all state institutions of higher education pursuant to
29 this section; and

30 (2) The fees collected from such students pursuant to
31 section one of this article.

32 The fees shall be expended by the commission and govern-
33 ing boards for the payment of the principal of or interest on any
34 revenue bonds issued by the board of regents or the succeeding
35 governing boards for which such fees were pledged prior to the
36 enactment of this section.

37 (e) The governing boards may make expenditures from any
38 of the special capital improvements funds or special auxiliary
39 capital improvement funds established in this section to finance,
40 in whole or in part, together with any federal, state or other
41 grants or contributions, for any one or more of the following
42 projects:

43 (1) The acquisition of land or any rights or interest therein;

44 (2) The construction or acquisition of new buildings;

45 (3) The renovation or construction of additions to existing
46 buildings;

47 (4) The acquisition of furnishings and equipment for any
48 such buildings; and

49 (5) The construction or acquisition of any other capital
50 improvements or capital education facilities at such state

51 institutions of higher education, including any roads, utilities or
52 other properties, real or personal, or for other purposes neces-
53 sary, appurtenant or incidental to the construction, acquisition,
54 financing and placing in operation of such buildings, capital
55 improvements or capital education facilities, including student
56 unions, dormitories, housing facilities, food service facilities,
57 motor vehicle parking facilities and athletic facilities.

58 (f) The governing boards, in their discretion, may use the
59 moneys in such special capital improvements funds and special
60 auxiliary improvement funds to finance the costs of the above
61 purposes on a cash basis. The commission, when singly or
62 jointly requested by the governing boards, periodically may
63 issue revenue bonds of the state as provided in this section to
64 finance all or part of such purposes and pledge all or any part of
65 the moneys in such special funds for the payment of the
66 principal of and interest on such revenue bonds, and for
67 reserves therefor. Any pledge of such special funds for such
68 revenue bonds shall be a prior and superior charge on such
69 special funds over the use of any of the moneys in such funds
70 to pay for the cost of any of such purposes on a cash basis. Any
71 expenditures from such special funds, other than for the
72 retirement of revenue bonds, may be made by the commission
73 or governing boards only to meet the cost of a predetermined
74 capital improvements program for one or more of the state
75 institutions of higher education, in such order of priority as was
76 agreed upon by the governing board or boards and the commis-
77 sion and for which the aggregate revenue collections projected
78 are presented to the governor for inclusion in the annual budget
79 bill, and are approved by the Legislature for expenditure.

80 (g) Such revenue bonds periodically may be authorized and
81 issued by the commission or governing boards to finance, in
82 whole or in part, the purposes provided in this section in an
83 aggregate principal amount not exceeding the amount which the
84 commission determines can be paid as to both principal and

85 interest and reasonable margins for a reserve therefor from the
86 moneys in such special funds.

87 (h) The issuance of such revenue bonds shall be authorized
88 by a resolution adopted by the governing board receiving the
89 proceeds and the commission and such revenue bonds shall bear
90 such date or dates; mature at such time or times not exceeding
91 forty years from their respective dates; be in such form either
92 coupon or registered, with such exchangeability and
93 interchangeability privileges; be payable in such medium of
94 payment and at such place or places, within or without the state;
95 be subject to such terms of prior redemption at such prices not
96 exceeding one hundred five per centum of the principal amount
97 thereof; and shall have such other terms and provisions as
98 determined by the governing board receiving the proceeds and
99 the commission. Such revenue bonds shall be signed by the
100 governor and by the chancellor of the commission or the chair
101 of the governing boards authorizing the issuance thereof, under
102 the great seal of the state, attested by the secretary of state, and
103 the coupons attached thereto shall bear the facsimile signature
104 of the chancellor of the commission or the chair of the appropri-
105 ate governing boards. Such revenue bonds shall be sold in such
106 manner as the commission or governing board determines is for
107 the best interests of the state.

108 (i) The commission or governing boards may enter into
109 trust agreements with banks or trust companies, within or
110 without the state, and in such trust agreements or the resolutions
111 authorizing the issuance of such bonds may enter into valid and
112 legally binding covenants with the holders of such revenue
113 bonds as to the custody, safeguarding and disposition of the
114 proceeds of such revenue bonds, the moneys in such special
115 funds, sinking funds, reserve funds or any other moneys or
116 funds; as to the rank and priority, if any, of different issues of
117 revenue bonds by the commission or governing boards under
118 the provisions of this section; as to the maintenance or revision

119 of the amounts of such fees; as to the extent to which swap
120 agreements, as defined in section two-h, article two-g, chapter
121 thirteen of this code shall be used in connection with such
122 revenue bonds, including such provisions as payment, term,
123 security, default and remedy provisions as the commission shall
124 consider necessary or desirable, if any, under which such fees
125 may be reduced; and as to any other matters or provisions
126 which are considered necessary and advisable by the commis-
127 sion or governing boards in the best interests of the state and to
128 enhance the marketability of such revenue bonds.

129 (j) After the issuance of any of such revenue bonds, the fees
130 at the state institutions of higher education pledged to the
131 payment thereof may not be reduced as long as any of such
132 revenue bonds are outstanding and unpaid except under such
133 terms, provisions and conditions as shall be contained in the
134 resolution, trust agreement or other proceedings under which
135 such revenue bonds were issued. Such revenue bonds shall be
136 and constitute negotiable instruments under the uniform
137 commercial code of this state; shall, together with the interest
138 thereon, be exempt from all taxation by the state of West
139 Virginia, or by any county, school district, municipality or
140 political subdivision thereof; and such revenue bonds may not
141 be considered to be obligations or debts of the state and the
142 credit or taxing power of the state may not be pledged therefor,
143 but such revenue bonds shall be payable only from the revenue
144 pledged therefor as provided in this section.

145 (k) Additional revenue bonds may be issued by the com-
146 mission or governing boards pursuant to this section and
147 financed by additional revenues or funds dedicated from other
148 sources. It is the intent of the Legislature to authorize over a
149 five-year period beginning on the first day of July, two thou-
150 sand four, additional sources of revenue and funds to effect
151 such funding for capital improvement.

152 (l) Funding of systemwide and campus-specific revenue
153 bonds under any other section of this code is hereby continued
154 and authorized pursuant to the terms of this section. Revenues
155 of any state institution of higher education pledged to the
156 repayment of any revenue bonds issued pursuant to this code
157 shall remain pledged.

158 (m) Any revenue bonds for state institutions of higher
159 education proposed to be issued under this section or other
160 sections of this code first must be approved by the commission.

161 (n) Revenue bonds issued pursuant to this code may be
162 issued by the commission or governing boards, either singly or
163 jointly.

164 (o) Fees pledged for repayment of revenue bonds issued
165 under this section or article twelve-b, chapter eighteen prior to
166 the effective date of this section shall be transferred to the
167 commission in a manner prescribed by the commission. The
168 commission shall have the authority to transfer funds from the
169 accounts of institutions pledged for the repayment of revenue
170 bonds issued prior to the effective date of this section or issued
171 subsequently by the commission upon the request of institu-
172 tions, if an institution fails to transfer the pledged revenues to
173 the commission in a timely manner.

174 (p) Effective the first day of July, two thousand four, the
175 capital and auxiliary capital fees authorized by this section and
176 section one of this article are in lieu of any other fees set out in
177 this code for capital and auxiliary capital projects to benefit
178 public higher education institutions. Notwithstanding any other
179 provisions of this code to the contrary, in the event any capital,
180 tuition, registration or auxiliary fees are pledged to the payment
181 of any revenue bonds issued pursuant to any general bond
182 resolutions of the commission, any of its predecessors or any
183 institution, adopted prior to the effective date of this section,

184 such fees shall remain in effect in amounts not less than the
185 amounts in effect as of that date, until such time as the revenue
186 bonds payable from any of such fees have been paid or the
187 pledge of such fees is otherwise legally discharged.

§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

1 Whenever the cost of any institute, workshop, special
2 course, or other educational program is wholly financed by a
3 grant from any federal, state or local agency or from any
4 foundation, corporation or other association or person, except
5 for indirect costs of administration and other overhead ex-
6 penses, such as the cost of providing classrooms and other
7 facilities, the governing board of the state institution of higher
8 education administering the program has the authority to excuse
9 all students enrolled in such program from the payment of
10 tuition and other fees.

§18B-10-11. Fees and money derived from athletic contests.

1 The governing board of a state institution of higher educa-
2 tion may fix and charge admission fees to athletic contests at
3 institutions under its jurisdiction. The governing board may
4 enter into contracts and spend and receive money under such
5 contracts for the student athletic teams of the institutions to
6 contest with other athletic teams inside or outside the state. All
7 money received from such fees and contracts shall be deposited
8 in the auxiliary operating account of the institution and ex-
9 pended for any purpose considered necessary and proper by the
10 governing board.

§18B-10-12. Student activities.

1 (a) The governing board of a state institution of higher
2 education may make funds available from tuition and fees to

3 support extracurricular activities of the students as considered
4 necessary.

5 (b) Each institution shall maintain a level of support for
6 extracurricular activities of the students comparable to that
7 level supported by student activities fees previously authorized
8 by this section.

**§18B-10-13. Fees from operation of dormitories, faculty homes,
dining halls and cafeterias.**

1 The appropriate governing board of each state institution of
2 higher education shall fix the fees to be charged students and
3 faculty members for rooms, board and meals at the dormitories,
4 faculty homes, dining halls and cafeterias operated by such
5 board at the institution. Such fees shall be commensurate with
6 the complete cost of such services.

7 All fees collected for such services shall be used first to
8 meet interest, principal and sinking fund requirements due on
9 any outstanding revenue bonds for which the receipts may have
10 been pledged as security and to pay the operating and mainte-
11 nance costs of the dormitories, faculty homes, dining halls and
12 cafeterias. Any such receipts not needed for these purposes may
13 be expended by the appropriate governing board for any other
14 auxiliary enterprise or educational and general instructional
15 costs.

§18B-10-14. Bookstores.

1 (a) Each governing board may establish and operate a
2 bookstore at the institutions under its jurisdiction to sell books,
3 stationery and other school and office supplies generally carried
4 in college bookstores.

5 (b) The prices to be charged may not be less than the prices
6 fixed by any fair trade agreements and shall, in all cases,

7 include in addition to the purchase price paid by the bookstore
8 a sufficient handling charge to cover all expenses incurred for
9 personal and other services, supplies and equipment, storage
10 and other operating expenses.

11 (c) Each governing board also shall ensure that bookstores
12 operated at institutions under its jurisdiction meet the additional
13 objective of minimizing the costs to students of purchasing
14 textbooks by adopting policies which may require the repur-
15 chase and resale of textbooks on an institutional or a statewide
16 basis and provide for the use of certain basic textbooks for a
17 reasonable number of years.

18 (d) All moneys derived from the operation of the bookstore
19 shall be paid into a special revenue fund as provided in section
20 two, article two, chapter twelve of this code. Subject to the
21 approval of the governor, each governing board periodically
22 shall change the amount of the revolving fund necessary for the
23 proper and efficient operation of each bookstore.

24 (e) Moneys derived from the operation of the bookstore
25 shall be used first to replenish the stock of goods and to pay the
26 costs of operating and maintaining the bookstore. Notwith-
27 standing any other provision of this section, any institution that
28 has contracted with a private entity for bookstore operation
29 shall deposit into an appropriate account all revenue generated
30 by the operation and enuring to the benefit of the institution.
31 The institution shall use the funds for nonathletic scholarships.

**§18B-10-15. Authority of educational institutions to provide
special services and programs; collection and
disposition of fees therefor.**

1 (a) The governing board of each state institution of higher
2 education may provide special services and special programs at
3 such institutions and may fix and collect special fees or charges

4 therefor. Such special services and special programs include,
5 but are not limited to, any of the following:

6 (1) The conduct of music camps and band, orchestra or
7 voice clinics for secondary school students or other youth
8 groups; summer tutoring programs for primary and secondary
9 school students; speech therapy clinics and services; educa-
10 tional and psychological testing programs; student guidance
11 programs; and statistical studies and calculations by an elec-
12 tronic computer service.

13 (2) Rental of lockers or other storage facilities and the
14 maintenance and operation of parking facilities for use by
15 students, faculty, staff and visitors.

16 (3) Rental of musical recordings, educational films, slides
17 and other audiovisual aids.

18 (4) Microfilming or other mechanical reproduction of
19 records and noncopyrighted library reference materials.

20 (5) Institutes, conferences, workshops, postgraduate and
21 refresher noncredit courses and any other special program or
22 special service customarily provided by institutions of higher
23 education.

24 (6) Motor pools consisting of motor vehicles for the use of
25 their employees when carrying on the business and affairs of
26 the institutions.

27 (b) All fees or charges collected for any such special
28 services or programs shall cover the total cost of the service or
29 program.

**CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS
AND STATE AID.**

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**§18C-3-1. Health education loan program; establishment; administration; eligibility and loan cancellation; required report.**

1 (a) For the purposes of this section, vice chancellor of
2 administration means the person employed pursuant to section
3 two, article four, chapter eighteen-b of this code.

4 (b) There is continued a special revolving fund account
5 under the commission in the state treasury to be known as the
6 health education student loan fund which shall be used to carry
7 out the purposes of this section. The fund consists of:

8 (1) All funds on deposit in the medical student loan fund in
9 the state treasury or which are due or become due for deposit in
10 the fund as obligations made under the previous enactment of
11 this section;

12 (2) Those funds provided pursuant to the provisions of
13 section four, article ten, chapter eighteen-b of this code;

14 (3) Appropriations provided by the Legislature;

15 (4) Repayment of any loans made under this section;

16 (5) Amounts provided by medical associations, hospitals,
17 or other medical provider organizations in this state, or by
18 political subdivisions of the state, under an agreement which
19 requires the recipient to practice his or her health profession in
20 this state or in the political subdivision providing the funds for
21 a predetermined period of time and in such capacity as set forth
22 in the agreement; and

23 (6) Other amounts which may be available from external
24 sources.

25 Balances remaining in the fund at the end of the fiscal year
26 do not expire or revert. All costs associated with administering
27 this section shall be paid from the health education student loan
28 fund.

29 (c) The vice chancellor for administration may utilize any
30 funds in the health education student loan fund for the purposes
31 of the medical student loan program. The commission shall give
32 priority for the loans to residents of this state, as defined by the
33 commission. An individual is eligible for loan consideration if
34 the individual:

35 (1) Demonstrates financial need;

36 (2) Meets established academic standards;

37 (3) Is enrolled or accepted for enrollment at one of the
38 aforementioned schools of medicine in a program leading to the
39 degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

40 (4) The individual has not yet received one of the degrees
41 provided in subdivision (3) of this subsection; and

42 (5) Is not in default of any previous student loan.

43 (d) At the end of each fiscal year, any individual who has
44 received a medical student loan and who has rendered services
45 as a medical doctor or a doctor of osteopathy in this state in a
46 medically underserved area or in a medical specialty in which
47 there is a shortage of physicians, as determined by the division
48 of health at the time the loan was granted, may submit to the
49 commission a notarized, sworn statement of service on a form
50 provided for that purpose. Upon receipt of the statement the
51 commission shall cancel five thousand dollars of the outstand-
52 ing loan or loans for every full twelve consecutive calendar
53 months of such service.

54 (e) No later than thirty days following the end of each fiscal
55 year, the vice chancellor for administration shall prepare and
56 submit a report to the commission for inclusion in the statewide
57 report card required under section eight, article one-b, chapter
58 eighteen-b of this code to be submitted to the legislative
59 oversight commission on education accountability established
60 under section eleven, article three-a, chapter twenty-nine-a of
61 this code. At a minimum, the report shall include the following
62 information:

63 (1) The number of loans awarded;

64 (2) The total amount of the loans awarded;

65 (3) The amount of any unexpended moneys in the fund; and

66 (4) The rate of default during the previous fiscal year on the
67 repayment of previously awarded loans.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2004

CHAPTER 1

**(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue to the department of military affairs and public safety - division of juvenile services, fund 0570, fiscal year 2005, organization 0621, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, to fund 0570, fiscal year 2005, organization 0621, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 62—*Division of Juvenile Services*

6 (WV Code Chapter 49)

7 Fund 0570 FY 2005 Org 0621

8					
9				Act-	General
10				ivity	Revenue
					Funds
11	1	Robert L. Shell Juvenile Center	267	\$	1,573,072
12	2	Donald R. Kuhn			
13	3	Diagnostic Center	283		2,078,265
14	4	Central Office (R)	701		1,825,015
15	5	BRIM Premium	913		31,436
16	6	WV Industrial Home for Youth (R)	979		10,689,850
17	7	Davis Center (R)	980		2,117,417
18	8	Eastern Regional Juvenile Center (R)	981		1,257,152
19	9	Northern Regional			
20	10	Juvenile Center (R)	982		912,807
21	11	North Central Regional			
22	12	Juvenile Center (R)	983		1,602,290
23	13	Southern Regional			
24	14	Juvenile Center (R)	984		1,704,494
25	15	Tiger Morton Center (R)	985		1,814,195
26	16	Donald R. Kuhn Juvenile Center (R)	986		1,458,122

27	17	J.M. "Chick" Buckbee		
28	18	Juvenile Center (R)	987	1,834,552
29	19	Salem Canine (R)	988	87,651
30	20	Davis Canine (R)	989	83,611
31	21	The Academy (R)	990	128,857
32	22	Mt. Hope Juvenile Center (R)	991	<u>1,742,028</u>
33	23	Total		\$ 30,940,814

34 Any unexpended balances remaining in the appropriations
35 for Unclassified (fund 0570, activity 099), Central Office (fund
36 0570, activity 701), WV Industrial Home for Youth (fund 0570,
37 activity 979), Davis Center (fund 0570, activity 980), Eastern
38 Regional Juvenile Center (fund 0570, activity 981), Northern
39 Regional Juvenile Center (fund 0570, activity 982), North
40 Central Regional Juvenile Center (fund 0570, activity 983),
41 Southern Regional Juvenile Center (fund 0570, activity 984),
42 Tiger Morton Center (fund 0570, activity 985), Donald R. Kuhn
43 Juvenile Center (fund 0570, activity 986), J.M. "Chick"
44 Buckbee Juvenile Center (fund 0570, activity 987), Salem
45 Canine (fund 0570, activity 988), Davis Canine (fund 0570,
46 activity 989), The Academy (fund 0570, activity 990), Mt.
47 Hope Juvenile Center (fund 0570, activity 991) at the close of
48 the fiscal year 2004 is hereby reappropriated for expenditure
49 during the fiscal year 2005, with the exception of fund 0570,
50 fiscal year 2004, activity 979, (\$500,000); fund 0570, fiscal
51 year 2004, activity 983, (\$100,000); fund 0570, fiscal year
52 2004, activity 984, (\$100,000); fund 0570, fiscal year 2004,
53 activity 986, (\$710,257); fund 0570, fiscal year 2004, activity
54 987, (\$200,000); and fund 0570, fiscal year 2004, activity 991,
55 (\$100,000) which shall expire on June 30, 2004.

56 From the above appropriation, on July 1, 2004, the sum of
57 fifty thousand dollars shall be transferred to the department of
58 agriculture - land division as advance payment for the purchase
59 of food products; actual payments for such purchases shall not
60 be required until such credits have been completely expended.

61 The director of juvenile services shall also have the
 62 authority to transfer between line items appropriated to the
 63 individual juvenile centers above.

64 The purpose of this bill is to supplement this account in the
 65 budget act for the fiscal year ending the thirtieth day of June,
 66 two thousand five, by amending language with no additional
 67 funds being appropriated.

CHAPTER 2

**(H. B. 208 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to the public service commission, fund 8623, fiscal year 2004, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, to fund 8623, fiscal year 2004, organization 0926, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4

213—Public Service Commission

5

(WV Code Chapter 24)

6

Fund 8623 FY 2004 Org 0926

7

Act-**Other**

8

ivity**Funds**

9	1	Personal Services	001	\$ 8,122,612
10	2	Annual Increment	004	130,000
11	3	Employee Benefits	010	2,570,940
12	4	Unclassified	099	2,506,602
13	4a	Capital Outlay	511	1,000,000
14	5	Debt Payment/Capital Outlay	520	350,000
15	6	BRIM Premium	913	<u>139,752</u>
16	7	Total		\$ 14,819,906

17 The total amount of this appropriation shall be paid from a
 18 special revenue fund out of collections for special license fees
 19 from public service corporations as provided by law.

20 The Public Service Commission is authorized to spend up
 21 to \$560,000, from surplus funds in this account, to meet the
 22 expected deficiencies in the Motor Carrier Division account due
 23 to passage of enrolled house bill no. 2715, regular session,
 24 1997.

25 Any unexpended balance remaining in the appropriation for
 26 Capital Outlay (fund 8623, activity 511) at the close of the
 27 fiscal year 2004 is hereby reappropriated for expenditure during
 28 the fiscal year 2005.

29 The purpose of this bill is to supplement this account in the
 30 budget act for the fiscal year ending the thirtieth day of June,
 31 two thousand four, by decreasing an item of appropriation, by
 32 amending language and by providing for a new item of appro-

33 priation to be established therein for the designated spending
 34 unit during the fiscal year two thousand four.

CHAPTER 3

**(H. B. 209 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed June 15, 2004; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the bureau of commerce - division of miners' health, safety and training, fund 8709, fiscal year 2005, organization 0314, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established the availability of federal funds for a continuing program now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 8709, fiscal year 2005, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS

2 **Sec. 6. Appropriations of federal funds.**

3 **BUREAU OF COMMERCE**

4 *292—Division of Miners' Health,*

5 *Safety and Training*

6 (WV Code Chapter 22)

7 Fund 8709 FY 2005 Org 0314

8			Act-	
9			ivity	Federal
				Funds

10	1	Unclassified - Total	096	\$ 1,000,000
----	---	--------------------------------	-----	--------------

11 The purpose of this supplementary appropriation bill is to
 12 supplement and increase items of appropriation in the aforesaid
 13 account for the designated spending unit for expenditure during
 14 the fiscal year two thousand five.

CHAPTER 4

(H. B. 210 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; 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 five, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2005, organization 0606, all supplementing and amending the appropri-

ation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 8727, fiscal year 2005, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 276—*Office of Emergency Services*

6 (WV Code Chapter 15)

7 Fund 8727 FY 2005 Org 0606

8			Act-	Federal
9			ivity	Funds

10	1	Unclassified - Total	096	\$ 47,323,204
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11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand five.

CHAPTER 5

(H. B. 212 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by creating Title II, section eight-a to read as follows:

1 **Sec. 8a. Appropriations from general revenue surplus**
2 **accrued.**—The following items are hereby appropriated from
3 the state fund, general revenue, and are to be available for
4 expenditure during the fiscal year two thousand five out of
5 surplus funds only, accrued from the fiscal year ending the
6 thirtieth day of June, two thousand four, subject to the terms
7 and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriations be payable only from surplus accrued
10 as of the thirty-first day of July, two thousand four, from the
11 fiscal year ending the thirtieth day of June, two thousand four.

12 In the event that surplus revenues available on the thirty-
13 first day of July, two thousand four, are not sufficient to meet

14 all the appropriations made pursuant to this section, then the
 15 appropriations shall be made to the extent that surplus funds are
 16 available as of the date mandated and shall be allocated first to
 17 provide the necessary funds to meet the first appropriation of
 18 this section; next, to provide the funds necessary for the second
 19 appropriation of this section; and subsequently to provide the
 20 funds necessary for each appropriation in succession before any
 21 funds are provided for the next subsequent appropriation.

22 *314—Department of Administration—*

23 *Office of the Secretary*

24 (WV Code Chapter 5F)

25 Fund 0186 FY 2005 Org 0201

26	1	Lease Rental Payments -			
27	2	Surplus	081	\$	4,536,897

28 *315—Division of Human Services*

29 (WV Code Chapters 9, 48 and 49)

30 Fund 0403 FY 2005 Org 0511

31	1	Social Services - Surplus	082	\$	5,000,000
32	2	Rural Hospitals Under 150			
33	3	Beds - Surplus	046		<u>750,000</u>
34	4	Total		\$	5,750,000

35 *316—Division of Health—*

36 *Central Office*

37 (WV Code Chapter 16)

38 Fund 0407 FY 2005 Org 0506

Ch. 5]		APPROPRIATIONS		2483
39	1	Primary Care Centers - Mortgage		
40	2	Finance - Surplus	083	\$ 350,000
41		<i>317—West Virginia Conservation Agency</i>		
42		(WV Code Chapter 19)		
43		Fund <u>0132</u> FY <u>2005</u> Org <u>1400</u>		
44	1	Soil Conservation Projects -		
45	2	Surplus	269	\$ 750,000
46		<i>318—Adjutant General—</i>		
47		<i>State Militia</i>		
48		(WV Code Chapter 15)		
49		Fund <u>0433</u> FY <u>2005</u> Org <u>0603</u>		
50	1	Armory Capital Improvements -		
51	2	Surplus	325	\$ 2,000,000
52		<i>319—West Virginia Development Office</i>		
53		(WV Code Chapter 5B)		
54		Fund <u>0256</u> FY <u>2005</u> Org <u>0307</u>		
55	1	Local Economic Development		
56	2	Assistance - Surplus	266	\$ 5,000,000
57	3	Southern West Virginia Career Center -		
58	4	Surplus	591	<u>150,000</u>
59	5	Total		\$ 6,150,000
60		<i>320—Governor’s Office—</i>		
61		<i>Civil Contingent Fund</i>		

2484 APPROPRIATIONS [Ch. 5

62 (WV Code Chapter 5)

63 Fund 0105 FY 2005 Org 0100

64	1	Civil Contingent Fund - Surplus . . .	263	\$	400,000
65	2	Business & Economic Development			
66	3	Stimulus - Surplus	084	<u>1,500,000</u>	
67	4	Total		\$	1,900,000

68 From the above appropriation to civil contingent fund -
69 surplus, \$300,000 shall be allocated to Wyoming County and
70 \$100,000 shall be allocated to Greenbrier County for flood
71 reparations.

72 *321—West Virginia Development Office—*

73 *Division of Tourism*

74 (WV Code Chapter 5B)

75 Fund 0246 FY 2005 Org 0304

76	1	Hatfield McCoy Recreational			
77	2	Trail - Surplus	085	\$	400,000

78 *322—Tax Division*

79 (WV Code Chapter 11)

80 Fund 0470 FY 2005 Org 0702

81	1	Unclassified - Surplus	097	\$	75,250
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82 *323—Governor’s Office—*

83 *Governor’s Cabinet on Children and Families*

84 (WV Code Chapter 5)

85

Fund 0104 FY 2005 Org 0100

86 1 Starting Points Centers and Parent

87 2 Education Services - Surplus . 080 \$ 238,539

88 1 Total TITLE II, Section 8a -

89 2 General Revenue Surplus Accrued \$ 21,150,686

90 The purpose of this supplementary appropriation bill is to
 91 supplement and create items of appropriations in the aforesaid
 92 accounts for the designated spending units for expenditure
 93 during the fiscal year two thousand five.

CHAPTER 6

**(S. B. 2003 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]**

[Passed June 15, 2004; 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 four, in the amount of nine million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and in the amount of six million three hundred fifty-nine thousand one hundred dollars from the state excess lottery revenue fund, fund 7205, organization 0705, 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 four, to the governor's office - civil contingent fund, fund 0105, fiscal year 2004, organization 0100, to the department of health and human resources, division of human services, fund 0403, fiscal year 2004, organization 0511, to the department of military affairs and

public safety, division of corrections - correctional units, fund 0450, fiscal year 2004, organization 0608, and to the department of tax and revenue, tax division, fund 0470, fiscal year 2004, organization 0702.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The Legislature finds that the account balance in the state excess lottery revenue fund, fund 7205, fiscal year 2004, organization 0705, exceeds that which is necessary for the purpose for which the account was established; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of June, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand four; and

WHEREAS, It appears from the governor's statement of the state fund, general revenue, and by provisions of this legislation, there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, fiscal year 2004, organization 0201, be decreased by

expiring the amount of nine million dollars, and the state excess lottery revenue fund, fund 7205, fiscal year 2004, organization 0705, be decreased by expiring the amount of six million three hundred fifty-nine thousand one hundred 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 four, to fund 0105, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation in the existing and new line item as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2004 Org 0100

		Act- ivity	General Revenue Funds
1	1 Civil Contingent Fund -		
2	Surplus (R)	263	\$ 7,180,000
3	3a Stream Restoration -		
4	Surplus (R)	078	2,000,000
5	Any unexpended balances remaining in the appropriation		
6	for civil contingent fund - surplus (fund 0105, activity 263), and		
7	stream restoration - surplus (fund 0105, activity 078) at the		
8	close of the fiscal year two thousand four are hereby		

9 reappropriated for expenditure during the fiscal year two
10 thousand five.

11 And, that the total appropriation for the fiscal year ending
12 the thirtieth day of June, two thousand four, to fund 0403, fiscal
13 year 2004, organization 0511, be supplemented and amended
14 by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2004 Org 0511

		Act- ivity	General Revenue Funds
1	31 Indigent Burials - Surplus	076	\$ 290,000

2 And, that the total appropriation for the fiscal year ending
3 the thirtieth day of June, two thousand four, to fund 0450, fiscal
4 year 2004, organization 0608, be supplemented and amended
5 by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

56—*Division of Corrections*—

Correctional Units

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

Fund 0450 FY 2004 Org 0608

		Act- ivity	General Revenue Funds
1	11	Payments to Federal, County and/or	
2	12	Regional Jails - Surplus 008	\$ 7,600,000

3 And, that the total appropriation for the fiscal year ending
4 the thirtieth day of June, two thousand four, to fund 0470, fiscal
5 year 2004, organization 0702, be supplemented and amended
6 by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

64—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2004 Org 0702

		Act- ivity	General Revenue Funds
1	4	Unclassified - Surplus (R) 097	\$ 350,000

2 The purpose of this supplementary appropriation bill is to
3 expire funds to the unappropriated surplus balance in the state

4 fund, general revenue, and supplement and increase items of
5 appropriations in the aforesaid accounts for the designated
6 spending units for expenditure during the fiscal year two
7 thousand four.

CHAPTER 7

(S. B. 2005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 15, 2004; 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 five, to a new item of appropriation designated to the department of military affairs and public safety - office of the secretary, fund 8876, fiscal year 2005, organization 0601, all supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, 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 five, 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 four, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

TITLE II--APPROPRIATIONS

Sec. 6. Appropriations of federal funds.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

274a—Department of Military Affairs and Public Safety—

Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2005 Org 0601

		Act- ivity	Federal Funds
1	1	Unclassified - Total	096 \$ 10,000,000
2		The purpose of this supplementary appropriation bill is to	
3		supplement this account in the budget act for the fiscal year	
4		ending the thirtieth day of June, two thousand five, by provid-	
5		ing for a new item of appropriation to be established therein to	
6		appropriate federal funds for the designated spending unit for	
7		expenditure during the fiscal year two thousand five.	



CHAPTER 8

**(S. B. 2007 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**



[Passed June 15, 2004; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of lottery net profits to the state department of education, fund 3951, fiscal year 2005, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, to fund 3951, fiscal year 2005, organization 0402, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS

Sec. 4. Appropriations from lottery net profits.

DEPARTMENT OF EDUCATION

229—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2005 Org 0402

1	1	Safe Schools	143	\$	-0-
2	2	Unclassified	099		3,407,000
3	3	Technology Infrastructure			
4	4	Network	351		20,500,000
5	5	READS Program	365		-0-
6	6	MATH Program	368		300,000
7	7	Vocational Education			
8	8	Equipment Replacement	393		-0-
9	9	Assessment Program	396		6,430,943
10	10	Employment Programs			
11		Rate Relief	401		878,189
12	11	Teacher Reimbursement	573		150,000
13	12	Teacher Relocation	574		10,000

14	13	Technology Repair and		
15	14	Modernization	298	1,000,000
16	15	National Science Foundation		
17	16	Match/WV Science	578	300,000
18	17	Three Tier Funding	411	1,000,000
19	18	Educational Program Allowance ..	996	<u>250,000</u>
20	19	Total		\$ 34,226,132

21 Any unexpended balances remaining in the appropriations
22 for Computer Basic Skills (fund 3951, activity 145),
23 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair
24 and Modernization (fund 3951, activity 298), Technology and
25 Telecommunications Initiative (fund 3951, activity 596),
26 Technology Demonstration Project (fund 3951, activity 639),
27 Educational Development (fund 3951, activity 823) and
28 Computer Study (fund 3951, activity 998) at the close of the
29 fiscal year two thousand four are hereby reappropriated for
30 expenditure during the fiscal year two thousand five.

31 The above appropriation for Technology Infrastructure
32 Network shall be expended on the following programs and
33 technology; Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,
34 Technology Repair and Modernization, Technology and
35 Telecommunications Initiative and other programs in the field
36 that will benefit the counties. No more than forty percent of
37 the total appropriation shall be allotted to Computer Basic Skills
38 and S.U.C.C.E.S.S. Prior to the completion and presentation
39 of the Technology Study to the joint LOCEA committee, no
40 more than fifty percent of the total appropriation shall be spent.
41 The study is to be completed by the fifteenth day of January,
42 two thousand five.

43 The purpose of this bill is to supplement this account in the
44 budget act for the fiscal year ending the thirtieth day of June,
45 two thousand five, by amending language with no additional
46 funds being appropriated.

CHAPTER 9

**(S. B. 2009 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to the department of military affairs and public safety, West Virginia state police - surplus real property proceeds fund, fund 6516, fiscal year 2005, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, to fund 6516, fiscal year 2005, organization 0612, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

143—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2005 Org 0612

			Act- ivity	Other Funds
1	1	Unclassified	099	\$ 454,475
2	2	BRIM Premium	913	<u>63,294</u>
3	3	Total		\$ 517,769

4 Contingent upon the purchase of property owned by
5 Shawnee Hills, Inc., and the ARC of the Three Rivers, Inc., and
6 the reimbursement of funding from the regional jail and
7 correctional facility authority for the cost and acquisition of the
8 same properties, from the cash balance available, an amount
9 not to exceed \$1,200,000 may be transferred to fund 6519,
10 fiscal year 2005, organization 0612, as reimbursement for
11 funds transferred by the legislative action during the fiscal year
12 two thousand three.

13 The purpose of this bill is to supplement this account in the
14 budget act for the fiscal year ending the thirtieth day of June,
15 two thousand five, by amending language with no additional
16 funds being appropriated.

CHAPTER 10

(S. B. 2011 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending chapter thirteen, acts of the
Legislature, regular session, two thousand four, known as the

budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by amending Title II, section nine, to read as follows:

1 **Sec. 9. Appropriations from surplus accrued.**—The
2 following items are hereby appropriated from the state excess
3 lottery revenue fund and are to be available for expenditure
4 during the fiscal year two thousand five out of surplus funds
5 only, as determined by the director of the lottery, accrued from
6 the fiscal year ending the thirtieth day of June, two thousand
7 four, subject to the terms and conditions set forth in this
8 section.

9 It is the intent and mandate of the Legislature that the
10 following appropriations be payable only from surplus accrued
11 from the fiscal year ending the thirtieth day of June, two
12 thousand four.

13 In the event that surplus revenues available from the fiscal
14 year ending the thirtieth day of June, two thousand four, are not
15 sufficient to meet all the appropriations made pursuant to this
16 section, then the appropriations shall be made to the extent that
17 surplus funds are available and shall be allocated first to
18 provide the necessary funds to meet the first appropriation of
19 this section; next, to provide the funds necessary for the second
20 appropriation of this section, and, subsequently, to provide the
21 funds necessary for each appropriation in succession before
22 any funds are provided for the next subsequent appropriation.

Fund 1046 FY 2005 Org 0100

1	1	Publication of Papers and		
2	2	Transition Expenses -		
3	3	Lottery Surplus	066	\$ 325,000

325—Division of Corrections—

Correctional Units

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

Fund 6283 FY 2005 Org 0608

1	1	Payments to Federal, County and/or		
2	2	Regional Jails -		
3	3	Lottery Surplus	067	\$ 3,887,620

326—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2005 Org 0702

1	1	Remittance Processor -		
2	2	Lottery Surplus	054	\$ 200,000

327—West Virginia State Police

(WV Code Chapter 15)

Fund 6394 FY 2005 Org 0612

1	1	Handgun Replacement -		
2	2	Lottery Surplus	057	\$ 400,000

328—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 5219 FY 2005 Org 0506

1	1	Chief Medical Examiner -		
2	2	Capital Improvements -		
3	3	Lottery Surplus	051	\$ 1,050,000

329—Higher Education Policy Commission—

Administration

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2005 Org 0441

1	1	PROMISE Scholarship -		
2	2	Lottery Surplus	077	\$ 3,000,000

3 The above appropriation for PROMISE Scholarship -
 4 Lottery Surplus (activity 077) shall be transferred to the
 5 PROMISE Scholarship Fund (fund 4296, org 0441) established
 6 by section seven, article seven, chapter eighteen-c of the code
 7 of West Virginia.

330—Workers’ Compensation Commission

(WV Code Chapter 23)

Fund 3460 FY 2005 Org 0322

1	1	Self-Insured Security Pool -		
2	2	Lottery Surplus	072	<u>\$ 9,000,000</u>
3	1	Total TITLE II, Section 9 -		
4	2	Surplus Accrued		<u>\$ 17,862,620</u>

5 The purpose of this supplementary appropriation bill is to
6 supplement, amend, add and increase items of appropriations
7 in the aforesaid accounts for the designated spending units for
8 expenditure during the fiscal year two thousand five.

CHAPTER 11

**(S. B. 2013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the governor's office - governor's cabinet on children and families, fund 0104, fiscal year 2005, organization 0100, and the state department of education - state aid to schools, fund 0317, fiscal year 2005, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of June, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular appropriations for the fiscal year two thousand five; and

WHEREAS, It appears from the governor's statement of the state fund - general revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 0104, fiscal year 2005, organization 0100, be supplemented and increased in the existing line item as follows:

TITLE II--APPROPRIATIONS

Section 1. Appropriations from general revenue.

EXECUTIVE

7—Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2005 Org 0100

							General Revenue Funds
						Act- ivity	
1	7	Starting Point Centers and					
2	8	Parent Education Services (R)	.	316	\$	430,893	

3 And, that the total appropriation for the fiscal year ending
4 the thirtieth day of June, two thousand five, fund 0317, fiscal
5 year 2005, organization 0402, be supplemented and amended to
6 read as follows:

TITLE II--APPROPRIATIONS

Section 1. Appropriations from general revenue.**DEPARTMENT OF EDUCATION***36--State Department of Education--**State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2005 Org 0402

1	1	Other Current Expenses	022	\$ 125,826,312
2	2	Professional Educators	151	731,600,242
3	3	Service Personnel	152	243,025,520
4	4	Fixed Charges	153	88,788,405
5	5	Transportation	154	25,787,620
6	6	Administration	155	3,023,492
7	7	Improve Instructional		
8		Programs	156	<u>33,000,000</u>
9	8	Basic Foundation Allowance		1,251,051,591
10	9	Less Local Share		<u>(304,271,644)</u>
11	10	Total Basic State Aid		946,779,947
12	11	Early Childhood Collaborative	018	34,760,421
13	12	Public Employees		
14		Insurance Matching	012	177,271,016
15	13	Teachers Retirement System	019	345,376,678
16	14	School Building Authority	453	<u>21,561,365</u>
17	15	Total		\$ 1,525,749,427

18 The purpose of this supplementary appropriation bill is to
19 amend and increase items of appropriations in the aforesaid
20 accounts for the designated spending units for expenditure
21 during the fiscal year two thousand five.

CHAPTER 12

**(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter two hundred eighty-six, acts of the Legislature, regular session, two thousand, relating to giving the secretary of administration options on how to dispose of the land, together with the improvements thereon, known as Morris Square in Charleston, Kanawha County; and providing an exception for ownership of said land by the West Virginia Economic Development Authority for purpose of leasing it to the City of Charleston, West Virginia.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.

1 (a) The secretary of administration is hereby authorized to
2 negotiate a financial proposal for the property described in
3 subsection (b) of this act with the city of Charleston which
4 arrangement shall be in the best financial interest for the state.
5 Any financial proposal shall be funded either in cash or by a
6 purchase money mortgage at a value acceptable to the secretary.
7 The financial proposal must be made within ninety (90) days of
8 the effective date of this section. Any contract, sale or lease
9 shall be approved by the joint committee on government and
10 finance.

11 (b) The secretary is authorized to sell, grant and convey or
12 lease to the city of Charleston, all of those certain lots or parcels

13 of land, together with the improvements thereon and the
14 appurtenances thereunto belonging, being known as Lot "A-1"
15 containing 1.118 acres, more or less; and Lot "A-2" containing
16 0.587 acre, more or less, being situate in the city of Charleston,
17 Charleston East tax district, Kanawha County, West Virginia;
18 which property is more particularly bounded and described in
19 a deed dated October 29, 1996, from the Charleston building
20 corporation to the state building commission of West Virginia,
21 of record in the office of the clerk of the county commission of
22 Kanawha County, West Virginia, in Deed Book 2399 at page
23 79. Any sale and conveyance of the property is subject to all
24 restrictions, reservations, rights-of-way, easements, utilities,
25 covenants, leases, exclusions and other matters duly of record
26 affecting the property.

27 (c) If the subject property is not transferred to the city of
28 Charleston pursuant to subsections (a) and (b) of this act, then
29 the secretary shall solicit bids for sale by auction, sell, grant and
30 convey, for good and valuable consideration to the highest
31 responsible bidder, the property described in subsection (b) of
32 this act. Any sale and conveyance of the property is subject to
33 all restrictions, reservations, rights-of-way, easements, utilities,
34 covenants, leases, exclusions and other matters duly of record
35 affecting the property.

36 (d) The secretary is authorized to contract with an auction
37 company to sell the property. The auction may be oral, silent
38 or on the internet. The cost of the auction, as contracted by the
39 secretary with the auction company, is to be paid from the
40 proceeds of the sale.

41 (e) The property shall have a minimum bid price which
42 shall be set by the secretary, regardless of the appraised value,
43 for sale and conveyance of the property.

44 (f) The sale by auction shall take place no less than once a
45 year until the time the property is successfully sold.

46 (g) The money obtained from the property shall be depos-
47 ited in a special fund of the department of administration to be
48 known as “the Morris Square property fund” and is to be used
49 for improvements and renovations of the state capitol complex.

50 (h) Notwithstanding any other provision of law to the
51 contrary, the state, its subdivisions, agencies and instrumentalities,
52 except for the city of Charleston, are prohibited from
53 obtaining any interest, by way of purchase, lease, trade,
54 donation, condemnation, tax sale, or any other means whatsoever
55 in the property described in subsection (b) of this act, or
56 any interest therein, for so long as any building or structure or
57 any portion thereof situate on the property on the date of the
58 enactment of the provisions of this act remains so situated:
59 *Provided*, That the West Virginia economic development
60 authority may obtain such interest in any portion of the property
61 as may be necessary for the authority to enter into a lease-
62 purchase bond transaction with the city of Charleston: *Pro-*
63 *vided, however*, That no state agency may locate any state
64 government office or other state government operation within
65 said property: *Provided further*, That any such lease-purchase
66 transaction shall have no recourse to the authority.

67 (i) Notwithstanding anything in the code of West Virginia,
68 one thousand nine hundred thirty-one, as amended, to the
69 contrary, the provisions of this section prevail.

CHAPTER 13

(H. B. 201 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2D-7, relating to creating a special revenue fund in the state treasury designated the security enforcement fund.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2D-7, to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-7. Security enforcement fund.

1 There is hereby created in the state treasury a special
2 revenue fund designated the “security enforcement fund.” The
3 money of the fund shall be made available for investment under
4 the provisions of article six, chapter twelve of this code. The
5 fund shall consist of all gifts, grants, bequests, transfers,
6 appropriations or other donations which may be received from
7 any governmental entity or unit or any person, firm, foundation,
8 corporation, association or other entity, and all interest or other
9 return accruing to the fund.

10 The money in the fund shall be used for the operation of the
11 division and for the costs and expenses incurred pursuant to this
12 article. Any balance including accrued interest in the fund at
13 the end of any fiscal year shall not revert to the general fund but
14 shall remain in the fund for those purposes.

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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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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Senate Bills = 2, 3 Digits

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13	133	47	3189	81	4492
14	4348	48	4451	82	508
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2513

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2004

House Bills = 4 Digits

Senate Bills = 2, 3 Digits

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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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The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2004

House Bills = 4 Digits

Senate Bills = 2, 3 Digits

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