

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1996
First Extraordinary Session, 1996

Volume I
Chapters 1 — 149

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FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 72nd Legislature, 1996.

Second Regular Session, 1996

The Second Regular Session of the 72nd Legislature convened on January 10, 1996. The Constitutional sixty-day limit on the duration of the session was midnight, March 9, 1996. The Governor issued a proclamation on March 6, 1996, extending the session for a period of seven days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 15, 1996.

Bills totaling 1,645 were introduced in the two houses during the session (1,039 House, 168 of which were carryover bills from the 1995 Regular Session, and 606 Senate). The Legislature passed 275 bills, 149 House and 126 Senate.

The Governor vetoed eleven bills (H. B. 4484, Restricting municipal powers to limit the rights of persons with respect to firearms and ammunition; H. B. 4535, Authorizing the regional jail and correctional jail authority to assess a penalty against certain courts when such courts fail to remit moneys collected in proceedings; H. B. 4547, Supplemental appropriation to the Board of Investments, Acct. No. Fund 0513 FY 1996 Org 0920; H. B. 4645, Changing the closure date of Colin Anderson Center from December 31, 1996, to March 15, 1997; S. B. 37, Relating to exemptions from excise taxes and compliance generally; S. B. 87, Relating to certificate of title for factory-built homes; automobile auctions; S. B. 94, Relating to public defender services generally; S. B. 257, Permitting professional firefighters to run for office; exceptions; S. B. 412, Requiring sloped roofs on public-funded buildings; S. B. 427, Prohibiting change orders on state contracts exceeding certain percentage of original bid; and S. B. 588, Relating to procedural and administrative matters affecting exercise of judicial authority). The Legislature amended and again passed H. B. 4547, S. B. 37, S. B. 94 and S. B. 588. The Governor again vetoed S. B. 588. Two bills (H. B. 4795 and S. B. 326) were found to be technically deficient and void after having been signed by the Governor, leaving a net total of 265 bills, 145 House and 120 Senate, which became law.

Twenty-one House bills became law without the Governor's signature.

There were 94 Concurrent Resolutions introduced during the session, 55 House and 39 Senate, of which 17 House and 10

Senate were adopted. Twenty-one House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One House Joint Resolution, H. J. R. 22, Safe Roads Amendment of 1996, was adopted by the Legislature. The House introduced 24 House Resolutions and the Senate introduced 45 Senate Resolutions, of which 21 House and 44 Senate were adopted.

The Senate failed to pass 72 House bills passed by the House, and 32 Senate bills failed passage by the House. Two House bills and two Senate bills died in conference: H. B. 4011, Prohibiting passing in a center turn lane; H. B. 4369, Requiring employment of a certified full-time county director of school attendance; S. B. 149, Creating Court-Appointed Special Advocate; and S. B. 360, Removing excise tax on special dyed diesel fuel.

First Extraordinary Session, 1996

The Proclamation calling the Legislature into Extraordinary Session at 12:00 P.M., Noon, July 14, 1996, contained nine items for consideration.

The Governor issued a supplemental proclamation on July 16, 1996, containing an additional item for consideration by the Legislature, concerning enhanced emergency telephone systems.

The Legislature passed 9 bills, 5 House and 4 Senate. The Legislature adopted one Concurrent Resolution. The House adopted 3 House Resolutions and the Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on July 16, 1996.

* * * * *

These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Office of the Clerk of the House or from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

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

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1996**

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1996

OFFICERS

Speaker—Robert C. Chambers, Huntington

Clerk—Gregory M. Gray, Charleston

Sergeant at Arms—Oce Smith, Fairmont

Doorkeeper—¹John A. Roberts, Charles Town

District	Name	Address	Prior Legislative Service
First	Sam Love (D)	Weirton	66th-71st
	Tamara Pettit (D)	New Cumberland	Appt. 11/20/89, 69th; 70th-71st
Second	Timothy R. Ennis (D)	Wellsburg	
	Roy E. Givens (D)	Wellsburg	64th-69th
Third	Tal Hutchins (D)	Wheeling	
	Greg Martin (R)	Wheeling	70th
Fourth	Donald A. Haskins (R)	Glen Dale	70th
	Scott G. Varner (D)	Moundsville	71st
Fifth	Charles Clements (R)	New Martinsville	
Sixth	James E. Willison (R)	Sistersville	69th-71st
Seventh	Otis A. Leggett (R)	St. Marys	68th-71st
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st
Ninth	Larry Border (R)	Davisville	70th-71st
Tenth	Tom Azinger (R)	Vienna	
	J. D. Beane (D)	Parkersburg	70th-71st
	Edward B. Kime (R)	Vienna	Appt. 12/1/94
Eleventh	Bob Ashley (R)	Spencer	67th-71st
	Karen L. Facemyer (R)	Ripley	71st
Thirteenth	Jerry K. Kelley (D)	Red House	
	Gary Otho Tillis (D)	Bancroft	
Fourteenth	Kelly Given (R)	Hurricane	
	Mike Hall (R)	Hurricane	
Fifteenth	Robert Chambers (D)	Huntington	64th-71st
	Arley R. Johnson (D)	Huntington	
	Margarette R. Leach (D)	Huntington	71st
Sixteenth	Susan Hubbard (D)	Huntington	
	Evan H. Jenkins (D)	Huntington	
	Jody G. Smirl (R)	Huntington	58th-61st; 67th
Seventeenth	Kenneth R. Adkins (D)	Huntington	Appt. 1/20/92; 70th-71st
Eighteenth	Larry Jack Heck (D)	Huntington	71st
Nineteenth	K. Steven Kominar (D)	Kermit	
	Grant Preece (D)	Ragland	70th-71st
Twentieth	Tracy Dempsey (D)	Harts	70th-71st
	Danny L. Ellis (D)	Chapmanville	71st
	Tom Rose Tomblin (D)	Mitchell Heights	
	David E. Whitman (D)	Chapmanville	Appt. 2/17/89, 69th; 71st
Twenty-first	Earnest H. Kuhn (D)	Van	
Twenty-second	² Gloria B. Stewart (D)	Gary	
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st
Twenty-third	Richard Browning (D)	Oceana	69th-71st
	W. Richard Staton (D)	Mullens	69th-71st
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/29/93, 71st
Twenty-fifth	Homer Ball (D)	Athens	
	Elizabeth Osborne (D)	Princeton	Appt. 10/20/94, 71st
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-71st
Twenty-seventh	Robert S. Kiss (D)	Beckley	69th-71st
	Warren R. McGraw II (D)	Beckley	71st
	Robert P. Pulliam (D)	Beckley	71st
	Arnold W. Ryan (D)	Hinton	67th-69th; 71st
	Ron Thompson (D)	Beckley	

HOUSE OF DELEGATES

XXXV

Twenty-eighth ..	James J. Rowe (D)	Lewisburg	69th-71st
	Bill Wallace (R)	Clintonville	69th-71st
Twenty-ninth ...	Tom Louisos (D)	Oak Hill	67th-68th; 70th-71st
	Bruce N. Petersen (D)	Fayetteville	71st
	John Pino (D)	Oak Hill	67th-68th; 70th-71st
Thirtieth	Jon Amores (D)	Charleston	
	Ann Calvert (R)	Charleston	70th
	Joe Farris (D)	Charleston	70th-71st
	Dan Greear (R)	South Charleston ..	
	Margaret Miller (R)	South Charleston ..	69th-71st
	Rudy Seacrist (D)	Charleston	Appt. 6/25/77, 63rd; 65th-69th
	Vic Sprouse (R)	South Charleston ..	
Thirty-first	Mark A. Hunt (D)	Charleston	
Thirty-second ...	Steve Harrison (R)	Nitro	71st
	Dick Henderson (R)	St. Albans	71st
	Jay Nesbitt (R)	Cross Lanes	71st
	Ronald Neal Walters (R)	Cross Lanes	71st
Thirty-third	Clinton N. Nichols (D)	Clay	Appt. 10/14/93, 71st
Thirty-fourth ...	Marjorie H. Burke (D)	Sand Fork	Appt. 4/13/78, 63rd; 64th-69th
Thirty-fifth	George Kallai (D)	Summersville	
Thirty-sixth	Joseph B. Talbott (D)	Webster Springs ..	71st
Thirty-seventh ..	Joe Martin (D)	Elkins	Appt. 6/15/78, 63rd; 64th-71st
	William D. Proudfoot (D)	Elkins	70th-71st
Thirty-eighth	Douglas K. Stalnaker (R)	Weston	
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-71st
Fortieth	Richard H. Everson (D)	Philippi	71st
Forty-first	Samuel J. Cann (D)	Bridgeport	
	Ron Fragale (D)	Clarksburg	70th-71st
	Larry A. Linch (D)	Bridgeport	71st
	Barbara A. Warner (D)	Bridgeport	69th-71st
Forty-second	¹ Edward Kerns (D)	Grafton	
Forty-third	Nick Fantasia (D)	Kingmont	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/26/93, 71st
	Roman W. Prezioso (D)	Fairmont	69th-71st
	Paul E. Prunty (D)	Fairmont	61st; 63rd-65th; 67th-68th; 70th
Forty-fourth	Robert C. Beach (D)	Core	Appt. 7/27/90, 69th; 70th-71st
	Eric T. Blass (R)	Morgantown	
	Barbara Evans Fleischauer (D) ..	Morgantown	
	Brian Gallagher (D)	Morgantown	Appt. 5/22/89, 69th; 70th-71st
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st
Forty-sixth	David Collins (D)	Davis	70th-71st
Forty-seventh ...	Harold K. Michael (D)	Moorefield	69th-71st
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-71st
Forty-ninth	Carl Thomas (R)	Keyser	
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-71st
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs ..	71st
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-71st
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-71st
Fifty-fourth	John Overington (R)	Martinsburg	67th-71st
Fifty-fifth	John Dolyc (D)	Shepherdstown	66th-71st
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-71st

(D) Democrats		69
(R) Republicans		<u>31</u>
TOTAL		100

¹Elected Feb. 7, 1996, to fill the vacancy created by the resignation of Don Yoak.

²Appointed Feb. 1, 1996, to fill the vacancy created by the resignation of Ernest C. Moore.

³Appointed May 4, 1995, to fill the vacancy created by the death of John F. Bennett and subsequently appointed to the state Senate to fill the vacancy created by the resignation of David E. Miller.

Samuel A. Morasco appointed April 26, 1996, to fill the vacancy created by the resignation of Edward Kerns.

MEMBERS OF THE SENATE

REGULAR SESSION, 1996

OFFICERS

President—Earl Ray Tomblin, Logan

Clerk—Darrell E. Holmes, Charleston

Sergeant at Arms—Tony DeRaimo, Leewood

Doorkeeper—¹Andrew J. Trail, Charleston

District	Name	Address	Prior Legislative Service
First	Thais Blatnik (D)	Wheeling	(House 63rd; 65th-67th); 69th-71st
	Edwin J. Bowman (D)	Weirton	
Second	Don Macnaughtan (D)	New Martinsville	70th-71st
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th-71st
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-71st
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th)
Fourth	Oshel B. Craigo (D)	Hurricane	(House 65th); 66th-71st
	Robert L. Dittmar (D)	Ravenswood	69th-71st
Fifth	Robert H. Plymale (D)	Ceredo	71st
	Thomas F. Scott (R)	Huntington	
Sixth	H. Truman Chafin (D)	Williamson	66th-71st
	A. Keith Wagner (D)	Iaeger	69th-71st
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-71st
Eighth	Jack Buckalew (R)	Charleston	
	David Grubb (D)	Charleston	(House 69th-70th); 71st
Ninth	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91, 70th; 71st
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th-71st
Tenth	Leonard W. Anderson (D)	Hinton	70th-71st
	Tony E. Whitlow (D)	Princeton	(House 60th-61st; 63rd-66th); 67th-71st
Eleventh	Shirley D. Love (D)	Oak Hill	
	Randy Schoonover (D)	Clay	(House 69th-70th); Appt. 9/13/89, 71st
Twelfth	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-71st
	Rebecca I. White (D)	Jane Lew	
Thirteenth	Joe Manchin III (D)	Fairmont	(House 66th); 68th-71st
	Michael A. Oliverio II (D)	Morgantown	(House 71st)
Fourteenth	² David E. Miller (D)	Kingwood	(House 69th-70th); Appt. 9/27/93, 71st
	Sarah M. Minear (R)	Parsons	
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/25/89, 69th; 70th-71st
	Mike Ross (D)	Coalton	71st
Sixteenth	Harry E. Dugan (R)	Martinsburg	
	John C. Yoder (R)	Harpers Ferry	71st
Seventeenth	Larry Kimble (R)	Charleston	
	Martha Yeager Walker (D)	Charleston	(House 70th); 71st

(D)	Democrats	26
(R)	Republicans	8
	TOTAL	34

¹ Appointed to fill the vacancy created by the death of Porter Cotton.

² Edward Kerns appointed on April 1, 1996, to fill the vacancy created by the resignation of David E. Miller.

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1996

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (*Chair of Agriculture*), Dempsey (*Vice Chair of Agriculture*), Love (*Chair of Natural Resources*), Fragale (*Vice Chair of Natural Resources*), Ball, Burke, Ennis, Everson, Heck, Linch, Nichols, Osborne, Proudfoot, Prunty, Thompson, Tomblin, Williams, Anderson, Border, Evans, Facemyer, Henderson, Leggett, Riggs and Willison.

BANKING AND INSURANCE

Farris (*Chair of Banking*), Beane (*Vice Chair of Banking*), Gallagher (*Chair of Insurance*), Adkins (*Vice Chair of Insurance*), Cann, Dempsey, Douglas, Fantasia, Hunt, Hutchins, Kominar, Louisos, McGraw, Michael, Seacrist, Stewart, Thompson, Tillis, Azinger, Clements, Faircloth, Greear, Hall, Nesbitt and Walters.

CONSTITUTIONAL REVISION

Doyle (*Chair*), Talbott (*Vice Chair*), Browning, Collins, Ellis, Fleischauer, Frederick, Givens, Kelley, Jenkins, Leach, Linch, McGraw, Petersen, Preece, Pulliam, Ryan, Calvert, Given, Harrison, Overington, Smirl, Sprouse, Stalnaker and Wallace.

EDUCATION

Prezioso (*Chair*), Proudfoot (*Vice Chair*), Ball, Beach, Collins, Dempsey, Ellis, Ennis, Hubbard, Kallai, Kerns, Kuhn, Leach, McGraw, Stewart, Williams, Yeager, Anderson, Blass, Hall, Haskins, Henderson, Leggett, G. Martin and Overington.

FINANCE

Kiss (*Chair*), Browning (*Vice Chair*), Burke, Compton, Doyle, Farris, Frederick, Gallagher, Kelley, Leach, Mezzatesta, Petersen, Pettit, Seacrist, Talbott, Tomblin, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller, Wallace and Walters.

GOVERNMENT ORGANIZATION

J. Martin (*Chair*), Varner (*Vice Chair*), Adkins, Cann, Everson, Fantasia, Fragale, Heck, Kominar, Louisos, Love, Michael, Nichols, Osborne, Prunty, Pulliam, Thompson, Azinger, Calvert, Given, Harrison, Nesbitt, Sprouse, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Petersen (*Vice Chair*), Amores, Beach, Burke, Douglas, Doyle, Ellis, Fleischauer, Gallagher, Hubbard, Hunt, Hutchins, Leach, Manuel, Osborne, Pulliam, Warner, Given, Haskins, Henderson, G. Martin, Miller, Sprouse and Thomas.

INDUSTRY AND LABOR

Pettit (*Chair*), Whitman (*Vice Chair*), Beane, Cann, Farris, Frederick, Heck, Johnson, Kelley, Kuhn, Louisos, Prunty, Talbott, Tillis, Tomblin, Williams, Yeager, Azinger, Blass, Haskins, Kime, G. Martin, Overington, Thomas and Walters.

JUDICIARY

Staton (*Chair*), Pino (*Vice Chair*), Amores, Beane, Collins, Douglas, Fleischauer, Givens, Hunt, Hutchins, Jenkins, Johnson, Linch, Manuel, Preece, Ryan, Tillis, Whitman, Faircloth, Greear, Kime, Riggs, Smirl, Thomas and Trump.

POLITICAL SUBDIVISIONS

Manual (*Chair*), Collins (*Vice Chair*), Ball, Fantasia, Fragale, Givens, Jenkins, Johnson, Kallai, Kerns, Kuhn, Pettit, Proudfoot, Ryan, Seacrist, Varner, Yeager, Anderson, Calvert, Facemyer, Harrison, Smirl, Stalnaker, Trump and Willison.

ROADS AND TRANSPORTATION

Warner (*Chair*), Preece (*Vice Chair*), Adkins, Amores, Compton, Ennis, Everson, Hubbard, Kallai, Kerns, Kominar, Leach, Love, Nichols, Pino, Varner, Whitman, Blass, Border, Clements, Evans, Greear, Hall, Kime and Nesbitt.

RULES

Chambers (*Chair*), Kiss, J. Martin, Mezzatesta, Michael, Prezioso, Rowe, Staton, Ashley, Faircloth, Miller and Riggs.

JOINT

ENROLLED BILLS

Seacrist (*Chair*), Fantasia (*Vice Chair*), Overington and Willison.

GOVERNMENT AND FINANCE

Chambers (*Chair*), Kiss, J. Martin, Rowe, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS

J. Martin (*Chair*), Varner, Love, Nesbitt and Stalnaker.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Douglas (*Chair*), Linch (*Vice Chair*), Compton, Gallagher, Faircloth and Riggs.

PENSIONS AND RETIREMENT

Browning (*Chair*), Prezioso (*Vice Chair*), Frederick, Seacrist, Williams, Haskins and Wallace.

RULES

Chambers (*Cochair*), Rowe and Ashley.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION

J. Martin (*Chair*), Douglas, Mezzatesta, Michael and Willison.

INTERSTATE COOPERATION

Beane (*Chair*), Doyle, Farris, Fleischauer, Jenkins, Greear and Walters.

JUVENILE LAW

Givens (*Chair*), Douglas and Trump.

**OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Prezioso (*Chair*), Browning, Mezzatesta, Proudfoot, Yeager and Anderson.

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

Compton (*Chair*), Gallagher, Kiss, J. Martin, Petersen and Ashley.

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

Manuel (*Chair*), Leach, Pino, Whitman, Clements and Thomas.

SPECIAL INVESTIGATIONS

Chambers (*Chair*), J. Martin, Rowe, Faircloth and Trump.

COMMITTEES OF THE SENATE

Regular Session, 1996

STANDING

AGRICULTURE

Whitlow (*Chair*), White (*Vice Chair*), Anderson, Dittmar, Helmick, Love, Miller, Ross, Dugan and Minear.

BANKING AND INSURANCE

Manchin (*Chair*), Helmick (*Vice Chair*), Blatnik, Chafin, Craigo, Dittmar, Sharpe, Wagner, Wiedebusch, Wooton, Kimble, Scott and Yoder.

CONFIRMATIONS

Blatnik (*Chair*), Grubb (*Vice Chair*), Chafin, Jackson, Love, Oliverio, Wooton, Deem and Yoder.

EDUCATION

Jackson (*Chair*), Miller (*Vice Chair*), Bailey, Blatnik, Grubb, Helmick, Oliverio, Plymale, Schoonover, Wagner, White, Boley, Dugan and Minear.

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Oliverio (*Vice Chair*), Anderson, Bowman, Jackson, Macnaughtan, Manchin, Ross, Schoonover, Wagner, Whitlow, Deem, Dugan and Minear.

FINANCE

Craigo (*Chair*), Manchin (*Vice Chair*), Bailey, Blatnik, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Sharpe, Walker, Whitlow, Boley, Dugan, Kimble and Minear.

GOVERNMENT ORGANIZATION

Wagner (*Chair*), Bowman (*Vice Chair*), Bailey, Jackson, Macnaughtan, Manchin, Miller, Plymale, Walker, White, Wiedebusch, Wooton, Buckalew, Scott and Yoder.

HEALTH AND HUMAN RESOURCES

Walker (*Chair*), Macnaughtan (*Vice Chair*), Blatnik, Craigo, Grubb, Jackson, Manchin, Plymale, Ross, Sharpe, Wooton, Boley, Kimble and Scott.

INTERSTATE COOPERATION

Grubb (*Chair*), Anderson (*Vice Chair*), Bowman, Schoonover, Whitlow, Deem and Scott.

JUDICIARY

Wooton (*Chair*), Wiedebusch (*Vice Chair*), Anderson, Bowman, Dittmar, Grubb, Miller, Oliverio, Ross, Schoonover, Wagner, White, Buckalew, Deem, Scott and Yoder.

LABOR

Macnaughtan (*Chair*), Schoonover (*Vice Chair*), Bailey, Bowman, Love, Miller, Wagner, Wiedebusch, Deem and Minear.

MILITARY

Helmick (*Chair*), Bailey (*Vice Chair*), Dittmar, Love, Oliverio, Wiedebusch, Wooton, Buckalew and Kimble.

NATURAL RESOURCES

Dittmar (*Chair*), Whitlow (*Vice Chair*), Anderson, Bowman, Craigo, Grubb, Macnaughtan, Miller, Ross, White, Wiedebusch, Deem, Minear and Yoder.

PENSIONS

Plymale (*Chair*), Helmick (*Vice Chair*), Jackson, Manchin, Walker, Boley and Kimble.

RULES

Tomblin (*Chair*), Anderson, Chafin, Craigo, Manchin, Sharpe, Walker, Wooton, Boley and Buckalew.

SMALL BUSINESS

Anderson (*Chair*), Ross (*Vice Chair*), Blatnik, Craigo, Love, Oliverio, Plymale, Sharpe, Walker, Dugan, Scott and Yoder.

TRANSPORTATION

Miller (*Chair*), Love (*Vice Chair*), Dittmar, Oliverio, Plymale, Schoonover, Whitlow, Buckalew and Dugan.

JOINT

ENROLLED BILLS

Schoonover (*Chair*), Bailey, Walker, White and Kimble.

GOVERNMENT AND FINANCE

Tomblin (*Chair*), Chafin, Craigo, Sharpe, Wooton, Boley and Deem.

GOVERNMENT OPERATIONS

Wagner (*Chair*), Bowman, Wiedebusch, Minear and Yoder.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Ross (*Chair*), Grubb (*Vice Chair*), Anderson, Macnaughtan, Boley and Buckalew.

PENSIONS AND RETIREMENT

Plymale (*Chair*), Helmick (*Vice Chair*), Jackson, Manchin, Walker, Boley and Kimble.

RULES

Tomblin (*Chair*), Chafin and Boley.

STATUTORY LEGISLATIVE COMMISSIONS

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

Blatnik (*Chair*), Craigo, Helmick, Love, Wiedebusch and Yoder.

SPECIAL INVESTIGATIONS

Tomblin (*Chair*), Blatnik, Wooton, Buckalew and Boley.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1996

CHAPTER 1

(Com. Sub. for H. B. 4141—By Delegates Givens, Louisos, Osborne, Prunty, Varnor, Calvert and Given)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c; and to amend article seven, chapter fifty-five of said code by adding thereto a new section, designated section eighteen, all relating to establishing a central abuse registry; defining terms; requiring certain individuals convicted of a felony or misdemeanor offense with respect to a child or incapacitated adult to be placed on registry; requiring prosecuting attorneys to report certain convictions; permitting disclosure of certain information; providing for expungement of listings in certain circumstances; establishing user fees for registry purposes; establishing service provider responsibilities; and providing limited immunity from suit for residential care facilities, day care centers and home care service providers disclosing employment information.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-c; and that article seven, chapter fifty-five of said code be amended by adding thereto a new section, designated section eighteen, all to read as follows:

Chapter

15. Public Safety.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

§15-2C-2. Central abuse registry; required information; procedures.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

§15-2C-4. Disclosure of information.

§15-2C-5. Expungement of registry listing.

§15-2C-6. Fees.

§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.

§15-2C-8. Service provider responsibilities.

§15-2C-1. Definitions.

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in those
3 instances where the context clearly indicates a different
4 meaning:

5 (a) "Central abuse registry" or "registry" means the
6 registry created by this article which shall contain the
7 names of individuals who have been convicted of a felony
8 or a misdemeanor offense constituting abuse, neglect or
9 misappropriation of the property of a child or an incapac-
10 itated adult.

11 (b) "Child abuse and neglect" or "child abuse or ne-
12 glect" means those terms as defined in section three, article
13 one, chapter forty-nine of this code, and shall include any
14 act with respect to a child which is a crime against the
15 person pursuant to article two, chapter sixty-one of this
16 code, any act which is unlawful pursuant to article eight-d

17 of said chapter sixty-one, and any offense with respect to a
18 child which is enumerated in section three of this article.

19 (c) "Abuse or neglect of an incapacitated adult" means
20 "abuse" "neglect" and "incapacitated adult" as those terms
21 are defined in section one, article six, chapter nine, and
22 shall include any act with respect to an incapacitated adult
23 which is a crime against the person pursuant to article two,
24 chapter sixty-one of this code, and any offense with re-
25 spect to an incapacitated adult which is enumerated in
26 section three of this article.

27 (d) "Conviction" of a felony or a misdemeanor means
28 an adjudication of guilt by a court or jury following a
29 hearing on the merits, or entry of a plea of guilty or nolo
30 contendere.

31 (e) "Residential care facility" means any facility where
32 a child or an incapacitated adult resides which is subject to
33 registration, licensure or certification by the department of
34 health and human resources, and shall include nursing
35 homes, personal care homes, residential board and care
36 homes, adult family care homes, group homes, legally
37 unlicensed service providers, residential child care facili-
38 ties, family based foster care homes, specialized family
39 care homes and intermediate care facilities for the mental-
40 ly retarded.

41 (f) "Misappropriation of property" means any act
42 which is a crime against property under article three, chap-
43 ter sixty-one of this code with respect to a child in a resi-
44 dential care facility or an incapacitated adult in a residen-
45 tial care facility or a child or an incapacitated adult who is
46 a recipient of home care services.

47 (g) "Home care" or "home care services" means servic-
48 es provided to children or incapacitated adults in the home
49 through a hospice provider, a community care provider, a
50 home health agency, through the medicaid waiver pro-
51 gram, or through any person when that service is reim-
52 bursable under the state medicaid program.

53 (h) "Requester" means any residential care facility, any
54 state licensed day care center, or any provider of home
55 care services providing to the central abuse registry the
56 name of an individual and other information necessary to
57 identify that individual, and either (1) certifying that the
58 individual is being considered for employment by the
59 requester or for a contractual relationship with the request-
60 er wherein the individual will provide services to a child or
61 an incapacitated adult for compensation; or (2) certifying
62 that an allegation of abuse, neglect or misappropriation of
63 property has been made against the individual.

**§15-2C-2. Central abuse registry; required information; pro-
cedures.**

1 (a) The criminal identification bureau of the West
2 Virginia state police shall establish a central abuse registry,
3 to contain information relating to criminal convictions
4 following reports of child abuse or neglect, abuse or ne-
5 glect of an incapacitated adult, and misappropriation of
6 property.

7 (b) The central abuse registry shall contain, at a mini-
8 mum, information relating to: (1) Convictions of a misde-
9 meanor or a felony constituting abuse, neglect or misap-
10 propriation of property, by an individual performing
11 services for compensation, within the scope of the individ-
12 ual's employment or contract to provide services, in a
13 residential care facility, in a licensed day care center, or in
14 connection with the provision of home care services; (2)
15 information relating to individuals convicted of specific
16 offenses enumerated in subsection (a), section three of this
17 article with respect to a child or an incapacitated adult; and
18 (3) information relating to all individuals required to reg-
19 ister with the West Virginia state police as sex offenders
20 pursuant to the provisions of article eight-f, chapter
21 sixty-one of this code. The central abuse registry shall
22 contain the following information with respect to an indi-
23 vidual found to have committed an act of abuse, neglect or
24 misappropriation of property, or an individual convicted
25 of a felony offense:

- 26 (1) The individual's full name;
- 27 (2) Sufficient information to identify the individual,
28 including date of birth, social security number and finger-
29 prints, if available;
- 30 (3) Identification of the criminal offense constituting
31 abuse, neglect or misappropriation of property of a child
32 or an incapacitated adult;
- 33 (4) For cases involving abuse, neglect or misappropri-
34 ation of property of a child or an incapacitated adult in a
35 residential care facility or a day care center, or of a child
36 or an incapacitated adult receiving home care services,
37 sufficient information to identify the location where such
38 documentation of any investigation by the department of
39 health and human resources is on file and the location of
40 pertinent court files; and
- 41 (5) Any statement by the individual disputing the
42 conviction, if he or she chooses to make and file one.
- 43 (c) Upon conviction in the criminal courts of this state
44 of a misdemeanor or a felony offense constituting child
45 abuse or neglect or abuse or neglect of an incapacitated
46 adult, the individual so convicted shall be placed on the
47 central abuse registry.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

- 1 (a) The central abuse registry shall maintain informa-
2 tion relating to child abuse or neglect, abuse or neglect of
3 an incapacitated adult, and misappropriation of property
4 with respect to individuals convicted of certain offenses
5 pursuant to this code, when the victim of the crime is a
6 child or an incapacitated adult, to include:
- 7 (1) First or second degree murder pursuant to section
8 one, article two, chapter sixty-one of this code;
- 9 (2) Voluntary manslaughter pursuant to section four,
10 article two, chapter sixty-one of this code;

11 (3) Attempt to kill or injure by poison pursuant to
12 section seven, article two, chapter sixty-one of this code;

13 (4) Malicious or unlawful assault pursuant to section
14 nine, article two, chapter sixty-one of this code;

15 (5) Assault during commission of or attempt to com-
16 mit a felony pursuant to section ten, article two, chapter
17 sixty-one of this code;

18 (6) Extortion by threats pursuant to section thirteen,
19 article two, chapter sixty-one of this code;

20 (7) Abduction of a person or kidnapping or conceal-
21 ing a child pursuant to section fourteen, article two, chap-
22 ter sixty-one of this code;

23 (8) Enticing away or otherwise kidnapping any person
24 pursuant to section fourteen-a, article two, chapter
25 sixty-one of this code;

26 (9) A misdemeanor or felony sexual offense pursuant
27 to article eight-b, chapter sixty-one of this code;

28 (10) Filming of sexually explicit conduct of minors
29 pursuant to article eight-c, chapter sixty-one of this code;

30 (11) Misdemeanor or felony child abuse pursuant to
31 article eight-d, chapter sixty-one of this code;

32 (12) A violent crime against the elderly which is an
33 offense under the provisions of section nine or ten, article
34 two, chapter sixty-one of this code which is subject to the
35 sentencing provisions of section ten-a of said article two;
36 or

37 (13) A property offense pursuant to article three,
38 chapter sixty-one of this code, with respect to a child in a
39 residential care facility or an incapacitated adult in a resi-
40 dential care facility or a child or an incapacitated adult
41 who is a recipient of home care services, when the individ-
42 ual committing the offense was providing services for
43 compensation in the residential care facility or within the
44 home.

45 (b) The prosecuting attorneys in each of the fifty-five
46 counties within the state, upon conviction of a misdemean-
47 or, a felony or a lesser included misdemeanor offense for
48 those specific offenses set forth in subsection (a) of this
49 section, shall report the conviction to the central abuse
50 registry, together with such additional information, provid-
51 ed in such form, as may be required by the criminal iden-
52 tification bureau for registry purposes. Reporting proce-
53 dures shall be developed by the criminal identification
54 bureau in conjunction with the prosecuting attorneys'
55 institute and the office of the administrator of the supreme
56 court of appeals.

57 (c) Information relating to convictions prior to the
58 effective date of this section of a misdemeanor or a felony
59 constituting child abuse or abuse or neglect of an incapac-
60 itated adult shall, to the extent which is feasible and practi-
61 cable, be placed on the central abuse registry. When any
62 requester requests information related to a named individ-
63 ual, the criminal identification bureau may search and
64 release other information maintained by the bureau to
65 determine whether that individual has been convicted of
66 offenses which are subject to inclusion on the registry.

§15-2C-4. Disclosure of information.

1 (a) The information contained in the central abuse
2 registry is confidential, and may not be disclosed except as
3 specifically provided in this section. The criminal identifi-
4 cation bureau shall disclose the information described in
5 subdivisions (1) through (3) and subdivision (5), subsec-
6 tion (b), section two of this article to any requester, except
7 that the name of the victim of the act alleged shall not
8 appear on the information disclosed and shall be stricken
9 from any statement filed by an individual. The depart-
10 ment of health and human resources shall certify, not later
11 than fifteen days following the effective date of this sec-
12 tion, the list of requesters authorized to obtain registry
13 information, and shall inform the criminal identification
14 bureau promptly of subsequent additions and deletions
15 from the list. The information contained in the registry

16 with respect to an individual shall be provided to that indi-
17 vidual promptly upon request. Individuals on the registry
18 requesting registry information shall be afforded the op-
19 portunity to file statements correcting any misstatements
20 or inaccuracies contained in the registry. The criminal
21 identification bureau may disclose registry information to
22 authorized law-enforcement and governmental agencies of
23 the United States and its territories, of foreign states and of
24 the state of West Virginia upon proper request stating that
25 the information requested is necessary in the interest of
26 and will be used solely in the administration of official
27 duties and the criminal laws. Agreements with other states
28 providing for the reciprocal sharing of abuse registry
29 information are specifically authorized.

30 (b) An active file on requests for information by re-
31 questers shall be maintained by the criminal identification
32 bureau for a period of one year from the date of a re-
33 quest. If an individual who is the subject of the request is
34 placed on the registry with respect to any conviction with-
35 in one year of the date of the request, that information
36 shall promptly be disclosed to the requester.

§15-2C-5. Expungement of registry listing.

1 Registry listings of abuse, neglect or misappropriation
2 of property with respect to an individual shall promptly be
3 expunged in cases where a conviction is vacated or over-
4 turned following appeal by a court having jurisdiction;
5 where the record of a conviction is expunged by a court
6 having jurisdiction; or in cases where the individual so
7 convicted is granted executive clemency with respect to
8 the conviction.

§15-2C-6. Fees.

1 The criminal identification bureau may charge, and
2 any requester shall pay a user charge of ten dollars for
3 each request for information made by a requester to the
4 central abuse registry. In order to expedite requests by
5 requesters, the criminal identification bureau may establish
6 a procedure permitting service providers to deposit funds

7 with the bureau in anticipation of requests. Fees pursuant
8 to this section shall be paid into a special account in the
9 state treasury to be expended for registry purposes: *Pro-*
10 *vided*, That for and after the fiscal year ending the thirtieth
11 day of June, one thousand nine hundred ninety-eight, all
12 expenditures shall be made in accordance with appropria-
13 tion by the Legislature. Amounts collected which are
14 found from time to time to exceed the funds needed for
15 central abuse registry purposes may be transferred to
16 other accounts or funds and redesignated for other pur-
17 poses by appropriation of the Legislature.

**§15-2C-7. Registration of home care agencies required; form
of registration; information to be provided.**

1 (a) In order to permit providers of home care services
2 not otherwise required to be licensed, certified or regis-
3 tered with the department of health and human resources
4 by other provision of this code to access information in
5 the central abuse registry, all home care service providers
6 not currently licensed, certified or registered by the de-
7 partment shall register with the office of health facilities
8 licensure and certification. No fee may be charged for
9 registration. Registration information shall be provided
10 on a registration form, but no provision of information
11 shall be deemed to meet the registration requirement until
12 the signature of the service provider is recorded on the
13 registration form.

14 (b) Information required for registration shall include
15 the following:

16 (1) Name, address and telephone number of the ser-
17 vice provider;

18 (2) The geographic area where services are provided
19 to consumers, the number of homes where services are
20 provided and the number of consumers provided service;
21 and

22 (3) The services, such as nursing care or personal
23 assistance, provided to consumers.

§15-2C-8. Service provider responsibilities.

1 All residential care facilities, day care centers and
2 home care service providers authorized to operate in West
3 Virginia shall:

4 (1) Provide notice to current employees of the agency
5 and other persons providing services under a contract with
6 the agency within sixty days of the effective date of this
7 article, and provide notice to any newly hired employee or
8 person at the time an employment or contractual relation-
9 ship is entered into, which notice shall be in the following
10 form: "NOTICE: All service providers in the state of West
11 Virginia are subject to provisions of law creating a central
12 abuse registry. Any person providing services for com-
13 pensation to children or to incapacitated adults, who is
14 convicted of a misdemeanor or felony offense constituting
15 abuse, neglect or misappropriation of property of a child
16 or an incapacitated adult, is subject to listing on the central
17 abuse registry. The fact that a person is listed on the reg-
18 istry may be disclosed in specific instances provided by
19 law. Listing on the registry may limit future employment
20 opportunities, including opportunities for employment
21 with residential care facilities, day care centers and home
22 care agencies. It is the policy of _____
23 [name of agency] to promptly report all suspected in-
24 stances of abuse, neglect or misappropriation of property
25 to the proper authorities and to cooperate fully in the
26 prosecution of these offenses."

27 (2) Cooperate fully with law enforcement, prosecuting
28 attorneys and court personnel in criminal prosecutions of
29 acts of child abuse or neglect or abuse or neglect of an
30 incapacitated adult.

31 (3) Respond promptly to all requests by other service
32 providers for references for former or present employees
33 of the agency, which response may include a subjective
34 assessment as to whether the individual for whom the ref-
35 erence is sought is suited to provide services to children or
36 incapacitated adults.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-18. Limiting liability of home care service providers, day care centers and residential care facilities disclosing certain employment information.

1 When a residential care facility required to be regis-
2 tered, licensed or certified under the laws of the state, a
3 licensed day care center, or an agency providing services
4 in the home to children or incapacitated adults is asked to
5 provide an employment reference with respect to a named
6 individual who provided services to children or incapaci-
7 tated adults for compensation, no person shall be liable for
8 disclosing information related to the named individual's
9 employment history, including a subjective assessment of
10 whether the named individual is suited to provide services
11 to children or incapacitated adults, unless it is alleged and
12 proven that the information disclosed was false and dis-
13 closed with knowledge that the information was false.

CHAPTER 2

(H. B. 4344—By Delegates Beach and Riggs)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six and ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to agriculture; inspection of meat and poultry; definitions; inspections; additional prohibitions; and criminal offenses.

Be it enacted by the Legislature of West Virginia:

That sections two, six and ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted all to read as follows:

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-2. Definitions.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examination; rejection tags.

§19-2B-10. Additional prohibitions.

§19-2B-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Department" means the department of agriculture
4 of the state of West Virginia;

5 (b) "Commissioner" means the commissioner of agri-
6 culture of the state of West Virginia and duly authorized
7 representatives;

8 (c) "Person" means any individual, partnership, corpo-
9 ration, association, or other entity;

10 (d) "Contract veterinarian" means a graduate of a
11 school of veterinary medicine accredited by the American
12 Veterinary Medical Association who provides services for
13 the department under contract;

14 (e) "Veterinary supervisor" means a graduate of a
15 school of veterinary medicine accredited by the American
16 Veterinary Medical Association, employed by the depart-
17 ment and authorized by the commissioner to perform on
18 his or her behalf any inspection and supervisory functions
19 under this article;

20 (f) "Inspector" means an individual employed by the
21 department and authorized by the commissioner to per-
22 form on his or her behalf any inspection functions under
23 this article;

24 (g) "State inspection" means inspection services con-
25 ducted by the department at or in connection with estab-
26 lishments required to be licensed by this article;

27 (h) "W. Va. condemned," or abbreviation thereof,
28 means the animal or poultry so marked has been inspected
29 and found to be in a dying condition, or to be affected

30 with any other condition or disease that would require
31 condemnation of its carcass;

32 (i) "W. Va. inspected and condemned," or abbreviation
33 thereof, means that the carcass, meat product or poultry
34 product, so marked or so identified, is adulterated and
35 shall be disposed of in the manner prescribed by the com-
36 missioner;

37 (j) "W. Va. retained" means that the carcass, meat
38 product or poultry product or any ingredient used in
39 processing, or any direct or indirect container used for
40 meat products or poultry products so identified is held for
41 further examination by a veterinary supervisor or contract
42 veterinarian to determine its disposal;

43 (k) "W. Va. suspect" means that the animal or poultry
44 so marked and identified is suspected of being affected
45 with a disease or condition which may require its condem-
46 nation, in whole or in part, when slaughtered, and is sub-
47 ject to further examination by a contract veterinarian or
48 veterinary supervisor to determine its disposal;

49 (l) "W. Va. inspected and passed," or abbreviation
50 thereof, means that the carcass, meat product or poultry
51 product so marked or so identified, was at the time it was
52 so marked or so identified found to be wholesome;

53 (m) "Country" when used in the name of a meat prod-
54 uct or poultry product means that such meat product or
55 poultry product was actually prepared on a farm;

56 (n) "Federal inspection" means the meat and poultry
57 inspection service conducted by the food safety and in-
58 spection service of the United States department of agri-
59 culture;

60 (o) "Federal Meat Inspection Act" means the act so
61 entitled, approved March four, one thousand nine hundred
62 seven, as amended by the Wholesome Meat Act;

63 (p) "Federal Poultry Products Inspection Act" means
64 the act of Congress approved August twenty-eighth, one
65 thousand nine hundred fifty-seven, as amended;

66 (q) "Inspection legend" means a mark or a statement
67 on a carcass, meat product or poultry product indicating
68 the same has been inspected and passed in this state under
69 the provisions of this article;

70 (r) "Label" means a display of written, printed or
71 graphic matter on a container indicating the carcass, meat
72 product or poultry product contained therein has been
73 inspected and passed in this state under the provisions of
74 this article;

75 (s) "Official inspection mark" means any symbol pre-
76 scribed by the commissioner for the purpose of identify-
77 ing the inspection status of any meat product or poultry
78 product so inspected;

79 (t) "Establishment number" means an official number
80 assigned by the commissioner to each establishment and
81 included on the inspection legend and label to identify all
82 inspected and passed carcasses, meat product or poultry
83 product handled in that establishment;

84 (u) "Container" and "package" shall include, but not
85 be limited to, any box, can, tin, cloth, plastic or any other
86 receptacle, wrapper or cover;

87 (v) "Sell" means offer for sale, expose for sale, have in
88 possession for sale, exchange, barter or trade;

89 (w) "Animals" mean cattle, swine, sheep and goats;

90 (x) "Carcass" means all or any part of a slaughtered
91 animal or poultry, including viscera, which is capable of
92 being used for human consumption;

93 (y) "Meat" means the edible part of the muscle of
94 animals which is skeletal or which is found in the tongue,
95 in the diaphragm, in the heart or in the esophagus, with or
96 without the accompanying or overlying fat, and the por-
97 tions of bone, skin, sinew nerve and blood vessels which
98 normally accompany the muscle tissue and which are not
99 separated from it in the process of dressing; it does not
100 include the muscle found in the lips, snout or ears;

101 (z) "Meat food product" means any article of food for
102 human consumption or any article which enters into the

103 composition of food for human consumption, which is
104 derived or prepared in whole or in part from any portion
105 of any animal except organotherapeutic substances, meat
106 juices, meat extract and the like which are only for medi-
107 cal purposes and are advertised only to the medical pro-
108 fession; any edible part of the carcass which has been
109 manufactured, cured, smoked, processed or otherwise
110 treated shall be considered a meat food product;

111 (aa) "Meat by-product" means any edible part of an
112 animal or poultry other than meat or meat food product;

113 (bb) "Meat product" means any meat, meat food prod-
114 uct, and meat by-product capable of use as human food;

115 (cc) "Poultry" means any domesticated bird which is
116 used or intended to be used for human consumption;

117 (dd) "Poultry meat" means the carcass or parts of such
118 carcass of any poultry;

119 (ee) "Poultry food product" means any product of
120 poultry, other than eggs, capable of use as human food
121 which is made wholly or in part from any poultry meat or
122 other portion of the carcass of poultry;

123 (ff) "Poultry by-product" means any part or parts of
124 poultry, other than eggs, capable of use as human food,
125 other than poultry carcass which have been derived from
126 one or more birds;

127 (gg) "Poultry product" means any poultry meat, poul-
128 try food product, and poultry by-product capable of use
129 as human food;

130 (hh) "Process" means to cut up, bone, chop, mix,
131 grind, slice, cook, smoke, cure, salt, marinate, dry, can, or
132 otherwise manufacture, or package any meat product or
133 poultry product;

134 (ii) "Denature" means the uniform application of suf-
135 ficient quantities of crude carbolic acid, cresylic disinfect-
136 ant, or any other agent approved by the commissioner
137 upon and into the freely slashed flesh of any carcass or
138 product condemned;

139 (jj) "Decharacterization" means the uniform applica-
140 tion of sufficient quantities of dye, charcoal, malodorous
141 fish oil, or any other agent approved by the commissioner,
142 upon and into the freely slashed flesh of carcasses or meat
143 not being rendered, so as to unequivocally preclude its use
144 for human food;

145 (kk) "Inedible" means the carcass, meat product or
146 poultry product derived from 4-D or condemned animals
147 or poultry, or meat products or poultry products which
148 have deteriorated or are otherwise unfit for human con-
149 sumption;

150 (ll) "4-D animal or 4-D poultry" means an animal or
151 poultry that is dead, dying, down or diseased on arrival at
152 the slaughterhouse;

153 (mm) "Commercial slaughterer" means a person en-
154 gaged for profit in this state in the business of slaughtering
155 animals or poultry for human consumption which are
156 to be sold or offered for sale through a commercial outlet
157 or establishment, and shall include a person who in addi-
158 tion to such commercial slaughtering also engages in the
159 business of a custom slaughterer;

160 (nn) "Custom slaughterer" means a person engaged
161 for profit in this state in the business of slaughtering ani-
162 mals or poultry for human consumption which are not to
163 be sold or offered for sale through a commercial outlet,
164 commercial establishment, distributor, or to an individual,
165 and shall include the boning or cutting up of carcasses of
166 such animals or poultry and the grinding, chopping and
167 mixing of the carcasses thereof;

168 (oo) "Slaughterhouse" shall include, but not be limited
169 to, all buildings, structures and facilities used in the
170 slaughtering of animals or poultry for human consump-
171 tion;

172 (pp) "Distributor" means a person engaged for profit
173 in this state in the business where carcasses, meat products
174 or poultry products are received from state inspected es-
175 tablishments, or establishments inspected by the United
176 States department of agriculture and who stores and dis-

177 tributes to commercial outlets, processors or individuals
178 and who conducts no processing;

179 (qq) "Processor" means a person who engages for
180 profit in this state in the business of processing carcasses,
181 meat products or poultry products for human consump-
182 tion;

183 (rr) "Commercial processor" means a processor for
184 commercial outlets or distributors and shall include the
185 business of custom processing;

186 (ss) "Custom processor" means a processor in which
187 the carcass, meat products or poultry products derived
188 through processing cannot be sold or offered for sale
189 through a commercial outlet, commercial establishment,
190 distributor, or to an individual;

191 (tt) "Processing plant" shall include, but not be limited
192 to, all buildings, structures, chill rooms, aging rooms, pro-
193 cessing rooms, sanitary facilities, other facilities, and uten-
194 sils, used by or in connection with the operations of a
195 processor;

196 (uu) "Establishment" means any slaughterhouse, pro-
197 cessing plant or distributor in this state;

198 (vv) "Related industries" means rendering plants, re-
199 frigerated meat warehouses, food lockers, meat and poul-
200 try wholesalers, brokers, pet food manufacturers, other
201 animal food manufacturers, animal impoundments whose
202 main source of food supply is derived from the raw meats,
203 transportation firms and private carriers;

204 (ww) "Commercial outlet" means a place of business in
205 this state and shall include all retail stores and public eat-
206 ing places in which carcasses, meat products or poultry
207 products are stored, sold or offered for sale for human
208 consumption by the purchaser or other individual con-
209 sumers;

210 (xx) "Commercial dealer" means any person who
211 operates one or more commercial outlets and who sells or
212 offers for sale thereat any carcasses, meat products or
213 poultry products for human consumption, and who does
214 not can, cook, cure, dry, smoke or render any carcass,

215 meat products or poultry products at such outlets and who
216 conducts no slaughtering or preparing of carcasses, meat
217 products or poultry products at such outlets other than
218 boning or cutting up of carcasses, and other than grinding,
219 chopping and mixing operations at such outlets with re-
220 spect to trim or meat derived only from such boning or
221 cutting up operations;

222 (yy) "Custom slaughtered carcass, meat or poultry" or
223 "custom processed meat products or poultry products"
224 mean, respectively, carcasses, meat products or poultry
225 products which were slaughtered, or processed by a cus-
226 tom slaughterer;

227 (zz) "Wholesome" means sound, healthful, clean, and
228 otherwise fit for human consumption;

229 (aaa) "Adulterated" means and shall apply to any
230 carcass, part thereof, meat product or poultry product
231 under one or more of the following circumstances:

232 (1) If it bears or contains any poisonous or deleterious
233 substance which may render it injurious to health; but in
234 case the substance is not an added substance, such carcass,
235 meat product or poultry product shall not be considered
236 adulterated under this clause if the quantity of such sub-
237 stance in or on such carcass, meat product or poultry
238 product does not ordinarily render it injurious to health;

239 (2) (A) If it bears or contains (by reason of adminis-
240 tration of any substance to the live animal or poultry or
241 otherwise) any added poisonous or added deleterious
242 substance (other than one which is a pesticide chemical in
243 or on a raw agricultural commodity; a food additive; or a
244 color additive) which may, in the judgment of the com-
245 missioner make such carcass, meat product or poultry
246 product unfit for human food;

247 (B) If it is, in whole or in part, a raw agricultural com-
248 modity and such commodity bears or contains a pesticide
249 chemical which is unsafe within the meaning of the federal
250 Food, Drug and Cosmetic Act;

251 (C) If it bears or contains any food additive which is
252 unsafe within the meaning of the federal Food, Drug and
253 Cosmetic Act;

254 (D) If it bears or contains any color additive which is
255 unsafe within the meaning of the federal Food, Drug and
256 Cosmetic Act: *Provided*, That a carcass, meat product or
257 poultry product which is not adulterated under paragraph
258 (B), (C) or (D) of this subsection, shall nevertheless be
259 deemed adulterated if use of the pesticide chemical, food
260 additive, or color additive in or on such carcass, meat
261 product or poultry product is prohibited by rules in estab-
262 lishments at which inspection is maintained;

263 (3) If it consists in whole or in part of any filthy, pu-
264 trid, or decomposed substance or is for any other reason
265 unsound, unhealthful, unwholesome, or otherwise unfit for
266 human food;

267 (4) If it has been processed, packed, or held under
268 insanitary conditions whereby it may have become con-
269 taminated with filth or pathogenic microorganisms, or
270 whereby it may have been rendered injurious to health;

271 (5) If it is, in whole or in part, the product of an ani-
272 mal or poultry which has died otherwise than by slaughter;

273 (6) If its container is composed, in whole or in part, of
274 any poisonous or deleterious substance which may render
275 the contents injurious to health;

276 (7) If it has been intentionally subjected to radiation,
277 unless the use of the radiation was in conformity with a
278 regulation or exemption in effect pursuant to the federal
279 Food, Drug and Cosmetic Act;

280 (8) If any valuable constituent has been in whole or in
281 part omitted or abstracted therefrom; or if any substance
282 has been substituted, wholly or in part therefor; or if dam-
283 age or inferiority has been concealed in any manner; or if
284 any substance has been added thereto or mixed or packed
285 therewith so as to increase its bulk or weight, or reduce its
286 quality or strength, or make it appear better or of greater
287 value than it is;

288 (bbb) "Antemortem" means before death;

- 289 (ccc) "Postmortem" means after death;
- 290 (ddd) "Reinspection" means inspection of the process-
291 ing of carcass, meat products and poultry products, as well
292 as a reexamination of products previously inspected;
- 293 (eee) "Licensee" means any person licensed under the
294 provisions of this article;
- 295 (fff) "Misbranded" applies to any carcass, meat prod-
296 uct or poultry product under one or more of the following
297 circumstances:
- 298 (1) If its labeling is false or misleading in any particu-
299 lar;
- 300 (2) If it is offered for sale under the name of another
301 meat product or poultry product;
- 302 (3) If it is an imitation of another meat product or
303 poultry product; unless its label bears, in type of uniform
304 size and prominence, the word "imitation" and immediate-
305 ly thereafter, the name of the meat product or poultry
306 product imitated;
- 307 (4) If its container is made, formed or filled as to be
308 misleading;
- 309 (5) Unless it bears a label showing: (A) The name and
310 place of business of the establishment; and (B) an accurate
311 statement of the quantity of the contents in terms of
312 weight, measure or numerical count;
- 313 (6) If any word, statement or other information re-
314 quired by or under authority of this article to appear on
315 the label or other labeling is not prominently placed there-
316 on with such conspicuousness (as compared with other
317 words, statements, designs or devices, in the labeling) and
318 in such terms as to render it likely to be read and under-
319 stood by the ordinary individual under customary condi-
320 tions of purchase and use;
- 321 (7) If it purports to be or is represented as a meat
322 product or poultry product for which a definition and
323 standard of identity or composition has been prescribed
324 by rules promulgated by the commissioner unless: (A) It
325 conforms to such definition and standards; and (B) its
326 label bears the name of the meat product or poultry prod-

327 uct specified in the definition and standard of identity and
328 the common names of optional ingredients (other than
329 spices, flavoring and coloring) present in such products;

330 (8) If it is not subject to the provisions of subsection
331 (7), unless its label bears: (A) The common or usual name
332 of the meat product or poultry product, if any there be,
333 and (B) in case it is fabricated from two or more ingredi-
334 ents, the common or usual name of each such ingredient;
335 except that spices, flavorings and colorings may be desig-
336 nated as such without naming each;

337 (9) If it purports to be or is represented for special
338 dietary uses, unless its label bears such information con-
339 cerning its vitamin, mineral and other dietary properties as
340 the commissioner determines to be necessary in order
341 fully to inform purchasers as to its value for such uses;

342 (10) If it bears or contains any artificial flavoring,
343 artificial coloring, or chemical preservative, unless it bears
344 labeling stating that fact; or

345 (11) If it fails to bear, directly thereon or on its con-
346 tainer, as the commissioner may by rules prescribe, the
347 inspection legend and, unrestricted by any of the forego-
348 ing, such other information as the commissioner may
349 require in such rules to assure that it will not have false or
350 misleading labeling and that the public will be informed
351 of the manner of handling required to maintain the meat
352 product or poultry product in a wholesome condition.

**§19-2B-6. Inspection, marking, labeling, branding, etc.; quar-
antine; segregation; scheduling of operations;
disposition of carcasses, etc.; reinspection; health
examination; rejection tags.**

1 (a) The commissioner shall provide antemortem and
2 postmortem inspection of all animals and poultry which
3 are to be sold or offered for sale through a commercial
4 outlet, establishment or distributor.

5 (b) The commissioner shall provide reinspection of
6 carcasses, meat products and poultry products during
7 further processing which have previously been inspected.

8 (c) All inspections under the provisions of this article
9 shall be performed in accordance with reasonable rules
10 promulgated by the commissioner.

11 (d) The commissioner shall inspect all establishments
12 under state inspection to make certain that they are operat-
13 ing in accordance with the provisions of this article and all
14 reasonable rules promulgated by the commissioner.

15 (e) When one inspector is assigned to make inspec-
16 tions at two or more establishments where few animals or
17 poultry are slaughtered, or where small quantities of car-
18 casses, meat products or poultry products are processed, or
19 where the operations at such establishments are sporadic,
20 and such establishments in any of such cases are in rea-
21 sonable close proximity to one another, the commissioner,
22 giving full consideration to the convenience of the licens-
23 ees of such establishments and considering the available
24 inspection work force, may by written notice to such li-
25 censees specify a reasonable schedule for such operations:
26 *Provided*, That the commissioner may not require opera-
27 tions other than during normal working hours.

28 (f) Every conveyance used by any establishment un-
29 der state inspection, and, notwithstanding the provisions of
30 section seven of this article, every conveyance used by any
31 slaughterhouse, processing plant or distributor inspected
32 by the United States department of agriculture, for the
33 transportation of carcasses, meat products or poultry prod-
34 ucts shall be maintained in a clean and sanitary condition
35 and may be inspected in accordance with the provisions of
36 this article and reasonable rules promulgated by the com-
37 missioner.

38 (g) The commissioner shall require such quarantine
39 and segregation of animals or poultry, carcasses, meat
40 products or poultry products in establishments as is
41 deemed necessary to effectuate the provisions of this arti-
42 cle.

43 (h) The head, tongue, tail, thymus glands, viscera,
44 blood and other parts of any slaughtered animal shall be
45 retained in such a manner as to preserve their identity until
46 after the postmortem inspection has been completed.

47 (i) Each licensee shall pay for such devices for the
48 affixing of marks, brands, or stamps and for such labels as
49 may be prescribed for his or her establishment by the
50 commissioner. Such devices and labels shall be under the
51 exclusive control and supervision of the commissioner.
52 The label used by any licensee shall be of the form and
53 size prescribed by reasonable rules promulgated by the
54 commissioner.

55 (j) Each animal carcass that has been inspected and
56 passed in this state by the commissioner shall be marked at
57 the time of inspection with the inspection legend. Any
58 animal or poultry carcass which is not passed shall be
59 marked conspicuously by the commissioner at the time of
60 inspection in the following manner: "W. Va. inspected
61 and condemned," or any abbreviation thereof.

62 (k) Each primal part of an animal carcass that has
63 been inspected and passed shall be marked with the in-
64 spection legend, and each liver, beef heart and beef tongue
65 that has been inspected and passed shall be branded with
66 the inspection legend at the time of final inspection. Meat
67 that has been boned out, cut from primal parts or other-
68 wise changed so that the inspection legend is no longer
69 plainly visible, and meat products and poultry products
70 that are too small to be marked with the inspection legend
71 shall be packed in closed containers to which shall be
72 affixed the label indicating that the meat products or poul-
73 try products contained therein have been inspected and
74 passed. Upon removal of the contents of such containers
75 bearing such label, the label shall be defaced to prevent its
76 reuse.

77 (l) All carcasses, and meat products which have been
78 derived from an animal slaughtered by a custom slaugh-
79 terer or processed by a custom slaughterer or custom
80 processor shall be marked "W. Va. custom slaughtered" in
81 letters not less than three eighths of an inch in height.

82 (m) Each official inspection mark shall contain the
83 establishment number of the establishment involved, un-
84 less otherwise authorized by rules promulgated by the
85 commissioner.

86 (n) The commissioner is hereby authorized and em-
87 powered to seize and destroy: (1) Any animal or poultry
88 to be slaughtered in this state and thereafter sold or of-
89 fered for sale through a commercial outlet or distributor
90 which cannot be made fit for human consumption; (2)
91 any animal or poultry, carcass, meat product or poultry
92 product slaughtered or processed in this state in violation
93 of the provisions of this article or any reasonable rules
94 promulgated by the commissioner; (3) any carcass, meat
95 product or poultry product that does not bear an inspec-
96 tion legend or label provided for by this article or which
97 has not been inspected and passed under inspection pro-
98 vided by the United States department of agriculture and
99 which is intended to be sold or offered for sale through a
100 commercial outlet or distributor; and (4) any animal or
101 poultry, carcass, meat product or poultry product which is
102 adulterated.

103 Where appropriate, the commissioner may, in lieu of
104 destruction as aforesaid, denature, decharacterize, mutilate
105 or slash any carcass, meat product or poultry product
106 intended to be sold or offered for sale through a commer-
107 cial outlet or distributor. The commissioner is also autho-
108 rized and empowered to seize and retain under a retained
109 tag any animal or poultry, carcass, meat product or poul-
110 try product until the commissioner determines to destroy,
111 denature, decharacterize, mutilate, slash or release the
112 same. Whenever the commissioner is authorized or em-
113 powered to take any of the actions specified in this subsec-
114 tion, he or she may order and direct the person having
115 custody or possession of such animal or poultry, carcass,
116 meat product or poultry product, or the licensee of the
117 establishment in which it is found, to be responsible for
118 the disposition thereof, as well as any necessary storage,
119 handling or other incidentals related thereto. Such dispo-
120 sition shall be carried out only under the direction and
121 supervision of the commissioner.

122 (o) Whenever practicable, the commissioner shall fore-
123 go the actions authorized in the immediately preceding
124 subsection and permit reprocessing if such reprocessing
125 will correct or eliminate the conditions which would have
126 justified any of such actions. Any such reprocessing in

127 this state shall be under the supervision of the commis-
128 sioner.

129 (p) Whenever the commissioner has good cause to
130 believe that any carcass, meat product or poultry product
131 whether fresh, frozen, or processed, and which is intended
132 to be sold or offered for sale through a commercial outlet
133 or distributor, may be adulterated or otherwise injurious to
134 health, he or she may inspect or reinspect the same under
135 the provisions of this article and any reasonable rules
136 promulgated by him or her, even though such carcass,
137 meat product or poultry product may have been previous-
138 ly inspected and passed.

139 (q) No licensee shall employ in any establishment any
140 person who has any communicable disease or infected
141 wounds or who is a carrier of any communicable disease.
142 To enforce the provisions of this subsection, the commis-
143 sioner may require any employee or prospective employ-
144 ee to submit to a health examination by a physician and
145 furnish to the commissioner a certificate from such physi-
146 cian concerning his or her findings. The cost of conduct-
147 ing such examination and furnishing such certificate shall
148 be borne by the licensee concerned.

149 (r) Whenever the commissioner inspects any room,
150 compartment, equipment or utensil in any establishment
151 subject to state inspection and finds the same not to be
152 clean and sanitary or finds the same to be otherwise un-
153 suitable for the slaughtering or processing operations
154 carried on in such establishment, he or she shall affix
155 thereto a rejection tag or rejection notice. No such reject-
156 ed room, compartment, equipment or utensil shall be used
157 until the deficiencies requiring such rejection shall have
158 been fully and completely corrected and the rejection tag
159 or rejection notice has been removed. No person other
160 than the commissioner shall remove any such rejection tag
161 or notice.

162 (s) When any animal or poultry, carcass, meat product
163 or poultry product has been inspected hereunder, the
164 appropriate official inspection mark shall be affixed there-
165 to, and no person shall remove the same unless authorized
166 so to do by the commissioner.

§19-2B-10. Additional prohibitions.

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

3 (a) For any person to operate any establishment under
4 state inspection which is not clean and sanitary;

5 (b) To slaughter any adulterated animal or poultry
6 intended to be sold or offered for sale through a commer-
7 cial outlet or distributor;

8 (c) To sell or offer for sale through a commercial
9 outlet or distributor any carcass, meat product or poultry
10 product for human consumption which is adulterated;

11 (d) To slaughter for human consumption any animal
12 or poultry tagged or permanently identified as "W. Va.
13 condemned," or abbreviation thereof;

14 (e) To process, sell or offer for sale for human con-
15 sumption any carcass, meat product or poultry product
16 which is mislabeled with intent to deceive or which is
17 marked "W. Va. inspected and condemned," or abbrevia-
18 tion thereof;

19 (f) To process in an establishment under state inspec-
20 tion for sale through any commercial outlet or distributor
21 any carcass, meat product or poultry product intended for
22 human consumption and derived in whole or in part from
23 any calf, pig, kid, lamb, chicken or turkey which is so
24 immature as to be lacking in nutritional value;

25 (g) To knowingly or intentionally expose any carcass,
26 meat product and poultry product in any establishment
27 under state inspection to insects, live animals or any con-
28 tamination;

29 (h) To add kangaroo meat, horse meat, mule meat or
30 other equine meat to any animal meat, meat product or
31 poultry product and to be sold or offered for sale through
32 commercial outlets or distributors for human consump-
33 tion;

34 (i) To remove any hide, skin or any other part of an
35 unborn or stillborn animal in the confines of a room in an
36 establishment where any animals or poultry, carcasses,

37 meat products or poultry products are slaughtered or
38 processed, as the case may be, or to be sold or offered for
39 sale through a commercial outlet or distributor;

40 (j) To process for human consumption in any estab-
41 lishment subject to state inspection any carcass, meat prod-
42 uct and poultry product derived from any animal or poul-
43 try which died other than by slaughter;

44 (k) To transport to any commercial outlet or distribu-
45 tor for the purpose of being sold or offered for sale there-
46 in, any carcass, meat product or poultry product which is
47 not marked, branded or stamped as having been inspected
48 and passed by the commissioner or by the United States
49 department of agriculture;

50 (l) For any commercial outlet or distributor to receive,
51 for the purpose of being sold or offered for sale therein,
52 any carcass, meat product or poultry product which is not
53 marked, branded or stamped as having been inspected and
54 passed by the commissioner or by the United States de-
55 partment of agriculture;

56 (m) To slaughter any horse, mule or other equine in
57 any establishment under state inspection in which animals
58 or poultry are slaughtered for human consumption for the
59 purpose of being sold or offered for sale through com-
60 mercial outlets;

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

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

71 (p) For any person to use an establishment number
72 not assigned to him or her or to use an establishment
73 number in connection with operations concerning which a
74 different establishment number was assigned by the com-
75 missioner;

76 (q) To remove from any article any retained tag af-
77 fixed by the commissioner, unless such removal is autho-
78 rized by him or her;

79 (r) To remove from any room, compartment, equip-
80 ment or utensil any rejection tag or rejection notice af-
81 fixed by the commissioner, unless such removal is autho-
82 rized by him or her;

83 (s) For a licensee to use any container bearing an
84 official inspection mark unless it contains the exact car-
85 cass, meat product or poultry product which was in the
86 container at the time such contents were inspected and
87 passed: *Provided*, That such a container may be otherwise
88 used if such official inspection mark thereon is removed,
89 obliterated or destroyed, and such other use is authorized
90 by reasonable rules promulgated by the commissioner;

91 (t) For any person, other than the commissioner, to
92 possess, keep or use, except as authorized by the commis-
93 sioner, any label or device for the affixing of a mark,
94 brand or stamp prescribed for inspection purposes here-
95 under;

96 (u) For any person, with intent to deceive, to possess,
97 keep or use any label, mark, brand or stamp similar in
98 character or import to an official label, mark, brand or
99 stamp prescribed by the commissioner hereunder or to an
100 official label, mark, brand or stamp used by the United
101 States department of agriculture;

102 (v) To falsely make, falsely issue, falsely publish, alter,
103 forge, simulate or counterfeit any inspection certificate,
104 memorandum, label, mark, brand, or stamp, or device for
105 making an inspection mark, brand or stamp, or to possess,
106 keep or use the same, with intent to deceive;

107 (w) For any person to refuse to permit the commis-
108 sioner to enter and inspect at any time, upon presentation
109 of appropriate credentials, an establishment under state
110 inspection, or to interfere with any such lawful entry or
111 inspection;

112 (x) For any person to refuse to permit the commis-
113 sioner, upon presentation of appropriate credentials, to
114 examine and copy the records described in section five of
115 this article;

- 116 (y) For a person to prevent or fail to decharacterize or
117 denature carcasses, meat products or poultry products as
118 prescribed by reasonable rules promulgated by the com-
119 missioner;
- 120 (z) For a person to transport offal, blood, or inedible
121 and condemned parts of animal and poultry carcasses
122 from slaughterhouses, processing plants or other related
123 industries: *Provided*, That such products may be trans-
124 ported if placed in suitable containers with tight covers, or
125 watertight tanks so as not to contaminate the public high-
126 ways or private roadways while going to or from the
127 points of pickup;
- 128 (aa) For a person to store offal, blood, or inedible and
129 condemned parts of animal and poultry carcasses from
130 slaughterhouses, processing plants or other related indus-
131 tries during interim transit movement in refrigerated ware-
132 houses, food lockers or other related industries: *Provided*,
133 That such products may be otherwise stored if properly
134 marked "NOT FOR HUMAN FOOD" "FOR ANIMAL
135 FOOD ONLY" and identified as approved products to be
136 used for animal food;
- 137 (bb) For a person knowingly to deliver, a dead or
138 dying animal or poultry to an establishment in this state;
- 139 (cc) For any person to transport carcasses, meat prod-
140 ucts and poultry products that are intended for human
141 consumption in a manner which would permit the prod-
142 ucts to become adulterated;
- 143 (dd) For any person who forcibly assaults, resists,
144 opposes, impedes, intimidates, or interferes with the com-
145 missioner or his or her representative while engaged in or
146 on account of the performances of his or her official du-
147 ties;
- 148 (ee) For any person to deliver, with intent to deceive,
149 any graded meat product or poultry product to a state
150 institution that does not meet the grade specifications for
151 that grade when a specified grade is required in a contract.

CHAPTER 3

(Com. Sub. for H. B. 4106—By Delegates Kiss and Riggs)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to state aid for fairs; increasing the amount of state aid for certain exhibits encouraging agriculture; and increasing the aggregate amount authorized in each county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. STATE AID FOR FAIRS.

§19-7-1. Amount of state aid.

§19-7-2. State aid where more than one fair in county.

§19-7-1. Amount of state aid.

1 For the purpose of encouraging agriculture, any in-
 2 corporated agricultural association conforming to the
 3 requirements of this article shall receive from the state of
 4 West Virginia an annual sum equal to the amount paid by
 5 the association for exhibits of agriculture, horticulture,
 6 flora culture, livestock and home economics at its annual
 7 exhibition not to exceed twenty thousand dollars.

§19-7-2. State aid where more than one fair in county.

1 In case there is more than one association holding
 2 annual exhibitions in a county and eligible to receive the
 3 benefits of this article, the association is entitled to receive
 4 from the state a sum, not exceeding in the aggregate fifty
 5 thousand dollars, to be apportioned among the associa-
 6 tions according to the amount paid for the exhibits as are
 7 mentioned in section one of this article, at the annual exhi-
 8 bition of the associations.

CHAPTER 4

(Com. Sub. for H. B. 4472—By Delegates Beach and Riggs)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and nine, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing licensing requirements and fees for agents of nurserymen or dealers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

§19-12-9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.

§19-12-2. Definitions.

1 The following definitions shall apply in the interpreta-
2 tion and enforcement of this article. All words shall be
3 construed to import either the plural or the singular, as the
4 case demands:

5 (a) "Certificate" means a document issued or autho-
6 rized by the commissioner indicating that a regulated
7 article is not contaminated with a pest.

8 (b) "Commissioner" means the commissioner of agri-
9 culture of the state of West Virginia and his or her duly
10 authorized representatives.

11 (c) "Compliance agreement" means a written agree-
12 ment between the department and any person engaged in

13 growing, handling or moving articles, plants or plant prod-
14 ucts regulated under this article, wherein the person agrees
15 to comply with stipulated requirements.

16 (d) "Dealer" means any person who buys, receives on
17 consignment or otherwise acquires and has in his or her
18 possession nursery stock which that person has not grown
19 from propagative material such as tissue culture plants,
20 cuttings, liners, seeds or transplanted nursery stock for the
21 purpose of offering or exposing for sale, reselling, reship-
22 ping or distributing same. Each separate location shall
23 constitute a dealership.

24 (e) "Department" means the department of agriculture
25 of the state of West Virginia.

26 (f) "Genetically modified organism" means any organ-
27 ism altered or produced through genetic modification
28 from a donor, vector or recipient organism using modern
29 molecular techniques.

30 (g) "Host" means any plant or plant product upon
31 which a pest is dependent for completion of any portion
32 of its life cycle.

33 (h) "Infested area" means any area of uncontrolled
34 growth of insects, plant diseases, noxious weeds or other
35 plant pests.

36 (i) "Noxious weed" means any living plant, or part
37 thereof, declared by the commissioner, after public hear-
38 ing, to be detrimental to crops, other desirable plants, wa-
39 terways, livestock, land or other property, or to be injuri-
40 ous to public health or the economy.

41 (j) "Nursery" means any grounds or premises on or in
42 which nursery stock is being propagated or grown for sale
43 or distribution, including any grounds or premises on or
44 in which nursery stock is being fumigated, treated, packed
45 or stored or otherwise prepared or offered for sale or
46 movement to other localities.

47 (k) "Nurseryman" means and includes any person who
48 owns, leases, manages or is in charge of a nursery.

49 (l) "Nursery stock" means all trees, shrubs and woody
50 vines, including ornamentals, bush fruits, grapevines, fruit
51 trees and nut trees, whether cultivated, native or wild, and
52 all buds, grafts, scions, fruit pits and cuttings from such
53 plants. It also means sod, including sod plugs and
54 sod-producing plants, and such herbaceous plants, includ-
55 ing strawberry plants, narcissus plants and narcissus bulbs
56 as the commissioner declares by rule to be so included
57 whenever he or she considers control of the movement of
58 such plants and bulbs necessary for the control of any
59 destructive plant pest. Florists' or greenhouse plants for
60 inside culture or use, unless declared otherwise by the
61 commissioner, as herein authorized, shall not be consid-
62 ered nursery stock, except that all woody plants, whether
63 greenhouse or field grown, if for outside planting, are
64 hereby defined as nursery stock.

65 (m) "Permit" means a document issued or authorized
66 by the commissioner to provide for a movement of regu-
67 lated articles to restricted destinations for limited handling,
68 utilization or processing.

69 (n) "Person" means any individual or combination of
70 individuals, partnership, corporation, company, society,
71 association, governmental organization or other business
72 entity and each officer, agent or employee thereof.

73 (o) "Plant and plant products" means trees, shrubs,
74 vines; forage, fiber, cereal plants and all other plants; cut-
75 tings, grafts, scions, buds and lumber and all other parts of
76 plants and plant products; and fruit, vegetables, roots,
77 bulbs, seeds and wood.

78 (p) "Plant pest" means any living stage of: Any in-
79 sects, mites, nematodes, slugs, snails, protozoa or other
80 invertebrate animals, bacteria, fungi, other parasitic plants
81 or reproductive parts thereof, viruses or any organisms
82 similar to or allied with any of the foregoing, or any infec-
83 tious substances, and any genetically modified organisms

84 for which there is reason to believe may directly or indi-
85 rectly injure or cause disease or damage in any plants or
86 parts thereof, or any processed, manufactured or other
87 products of plants.

88 (q) "Quarantine" means a legal declaration by the
89 commissioner which specifies:

90 (1) The plant pest or noxious weeds.

91 (2) The articles to be regulated.

92 (3) Conditions governing movement.

93 (4) The area or areas quarantined.

94 (5) Exemptions.

95 (r) "Regulated article" means any article of any char-
96 acter, as described in quarantine or other order of the
97 commissioner carrying or capable of carrying a pest.

**§19-12-9. Certificate of registration for nurserymen, dealers,
etc.; refusal, suspension, etc., of certificates;
annual registration fees.**

1 It shall be unlawful for any nurseryman or dealer to
2 expose or offer for sale, sell, deliver or give away any
3 plants or parts of plants commonly known as nursery
4 stock unless such person shall have first secured from the
5 commissioner a certificate of registration. The commis-
6 sioner may refuse, suspend or cancel any certificate upon
7 satisfactory evidence that any of the provisions of this
8 article or rules governing the sale of nursery stock within
9 the state have been violated. The commissioner shall for
10 each certificate of registration issued and for each renewal
11 thereof, collect an annual registration fee in the amount of
12 ten dollars for each nurseryman and twenty dollars for
13 each dealer. All certificates or registration shall expire on
14 the thirtieth day of June next after issue.

CHAPTER 5

(H. B. 4751—By Delegates Beach and Riggs, By Request)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the number of days an animal which has bitten a person must be quarantined for rabies observation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

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

1 Any person who owns or harbors any dog, cat or other
2 domesticated animal, whether licensed or unlicensed,
3 which bites any person, shall forthwith confine and
4 quarantine the animal for a period of ten days for rabies
5 observation. If such animal is not so confined and
6 quarantined, the humane officer, dog warden or sheriff
7 may cause such animal to be placed in the custody and
8 care of a licensed veterinarian for such purpose at the
9 owner's expense. The penalty for any violation of this
10 section shall be a fine of fifty dollars or confinement in
11 the county jail for a period of no less than two nor more
12 than three days.

CHAPTER 6

(Com. Sub. for H. B. 4119—By Delegate Kiss)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to soil conservation districts; providing for the appointment of supervisors; payment of expenses; increasing the per diem of supervisors; providing for surety bonds; and removal of supervisors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

1 The governing body of the district shall consist of the
2 supervisors, appointed or elected, as provided in this
3 article. The two supervisors appointed by the committee
4 shall be persons who are by training and experience
5 qualified to perform the specialized skilled services which
6 will be required of them in the performance of their duties
7 under this section and must be legal residents and
8 landowners of the district.

9 The supervisors shall designate a chairman and may,
10 from time to time, change the designation. The term of
11 office of each supervisor is three years. A supervisor shall
12 hold office until his or her successor has been elected, or
13 appointed. In case a new county or portion of a county is
14 added to a district the committee may appoint a supervisor
15 to represent it until such time as the next regular election
16 of supervisors for the district takes place. In case a

17 vacancy occurs among the elected supervisors of a district
18 the committee shall appoint a successor from the same
19 county to fill the unexpired term. The appointment shall
20 be made from a name or list of names submitted by local
21 farm organizations and agencies. When any county or
22 portion of a county lying within the boundaries of a
23 district has in effect eight hundred or more signed
24 agreements of cooperation with occupiers of land located
25 within the county, then at the next regular election of
26 supervisors the land occupiers within the county or
27 portion of the county are entitled to elect two supervisors
28 to represent the county instead of one for the term and in
29 the manner prescribed in this section. A majority of the
30 supervisors constitutes a quorum and the concurrence of a
31 majority in any matter within their duties shall be required
32 for its determination. A supervisor is entitled to expenses,
33 and a per diem not to exceed twenty dollars when engaged
34 in the performance of his or her duties.

35 The supervisors may, with the approval of the state
36 committee, employ a secretary, technical experts, and any
37 other officers, agents, and employees, permanent and
38 temporary, as they may require, and shall determine their
39 qualifications, duties and compensation. The supervisors
40 may delegate to their chairman, to one or more supervi-
41 sors or to one or more agents, or employees, those
42 administrative powers and duties they consider proper.
43 The supervisors shall furnish to the state soil conservation
44 committee, upon request, copies of the ordinances, rules,
45 regulations, orders, contracts, forms, and other documents
46 they adopt or employ, and any other information
47 concerning their activities as it may require in the
48 performance of its duties under this article.

49 The supervisors shall provide for the execution of
50 surety bonds for all employees and officers who shall be
51 entrusted with funds or property; shall provide for the
52 keeping of a full and accurate record of all proceedings
53 and of all resolutions, regulations and orders issued or
54 adopted; and shall provide for an annual audit of the
55 accounts of receipts and disbursements. Any supervisor
56 may be removed by the state soil conservation committee

57 upon notice and hearing, for neglect of duty or malfea-
58 sance in office, but for no other reason.

59 The supervisors may invite the legislative body of any
60 municipality or county located near the territory com-
61 prised within the district to designate a representative to
62 advise and consult with the supervisors of a district on all
63 questions of program and policy which may affect the
64 property, water supply or other interests of the municipali-
65 ty or county.

CHAPTER 7

(S. B. 585—By Senators Wooton, Anderson, Bowman,
Dittmar, Grubb, Oliverio and Ross)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to alcoholic liquors; licenses to private clubs; prohibiting certain acts of licensees; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

- 1 (a) It is unlawful for any licensee, or agent, employee
- 2 or member thereof, on such licensee's premises to:
 - 3 (1) Sell or offer for sale any alcoholic liquors other
 - 4 than from the original package or container;
 - 5 (2) Authorize or permit any disturbance of the peace;
 - 6 obscene, lewd, immoral or improper entertainment, con-
 - 7 duct or practice, gambling or any slot machine, multiple

8 coin console machine, multiple coin console slot machine
9 or device in the nature of a slot machine;

10 (3) Sell, give away or permit the sale of, gift to or the
11 procurement of any nonintoxicating beer, wine or alco-
12 holic liquors for or to, or permit the consumption of non-
13 intoxicating beer, wine or alcoholic liquors on the licens-
14 ee's premises, by any person less than twenty-one years of
15 age;

16 (4) Sell, give away or permit the sale of, gift to or the
17 procurement of any nonintoxicating beer, wine or alco-
18 holic liquors, for or to any person known to be deemed
19 legally incompetent, or for or to any person who is physi-
20 cally incapacitated due to consumption of nonintoxicating
21 beer, wine or alcoholic liquor or the use of drugs;

22 (5) Sell, give or dispense nonintoxicating beer, wine or
23 alcoholic liquors in or on any licensed premises or in any
24 rooms directly connected therewith, between the hours of
25 three o'clock a.m. and one o'clock p.m. on any Sunday;

26 (6) Permit the consumption by, or serve to, on the
27 licensed premises any nonintoxicating beer, wine or alco-
28 holic liquors, covered by this article, to any person who is
29 less than twenty-one years of age;

30 (7) With the intent to defraud, alter, change or misrep-
31 resent the quality, quantity or brand name of any alcohol-
32 ic liquor;

33 (8) Sell or offer for sale any alcoholic liquor to any
34 person who is not a duly elected or approved dues paying
35 member in good standing of said private club or a guest
36 of such member;

37 (9) Sell, offer for sale, give away, facilitate the use of
38 or allow the use of carbon dioxide, cyclopropane, ethyl-
39 ene, helium or nitrous oxide for purposes of human con-
40 sumption except as authorized by the commissioner;

41 (10) (A) Employ any person who is less than eighteen
42 years of age in a position where the primary responsibility

43 for such employment is to sell, furnish or give nonintoxi-
 44 cating beer, wine or alcoholic liquors to any person;

45 (B) Employ any person who is between the ages of
 46 eighteen and twenty-one who is not directly supervised by
 47 a person aged twenty-one or over in a position where the
 48 primary responsibility for such employment is to sell,
 49 furnish or give nonintoxicating beer, wine or alcoholic
 50 liquors to any person; or

51 (11) Violate any reasonable rule of the commissioner.

52 (b) It is unlawful for any licensee to advertise in any
 53 news media or other means, outside of the licensee's pre-
 54 mises, the fact that alcoholic liquors may be purchased
 55 thereat.

56 (c) Any person who violates any of the foregoing
 57 provisions is guilty of a misdemeanor and, upon convic-
 58 tion thereof, shall be fined not less than five hundred dol-
 59 lars nor more than one thousand dollars, or imprisoned in
 60 the county jail for a period not to exceed one year, or
 61 both fined and imprisoned.

CHAPTER 8

(Com. Sub. for S. B. 25—By Senators Tomblin,
 Mr. President, and Boley)
 [By Request of the Executive]

[Passed March 15, 1996; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE I—GENERAL PROVISIONS.

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

TITLE I—GENERAL PROVISIONS.

1 **Section 1. General policy.**—The purpose of this bill
2 is to appropriate money necessary for the economical and
3 efficient discharge of the duties and responsibilities of the
4 state and its agencies during the fiscal year one thousand
5 nine hundred ninety-seven.

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

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

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

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

9 The "fiscal year one thousand nine hundred
10 ninety-seven" shall mean the period from the first day of
11 July, one thousand nine hundred ninety-six, through the
12 thirtieth day of June, one thousand nine hundred
13 ninety-seven.

14 "General revenue fund" shall mean the general operat-
15 ing fund of the state and includes all moneys received or
16 collected by the state except as provided in section two,
17 article two, chapter twelve of the code or as otherwise pro-
18 vided.

19 "Special revenue funds" shall mean specific revenue
20 sources which by legislative enactments are not required to
21 be accounted for as general revenue, including federal
22 funds.

23 "From collections" shall mean that part of the total
24 appropriation which must be collected by the spending

25 unit to be available for expenditure. If the authorized
26 amount of collections is not collected, the total appropri-
27 ation for the spending unit shall be reduced automatically
28 by the amount of the deficiency in the collections. If the
29 amount collected exceeds the amount designated "from
30 collections", the excess shall be set aside in a special sur-
31 plus fund and may be expended for the purpose of the
32 spending unit as provided by article two, chapter five-a of
33 the code.

1 **Sec. 3. Classification of appropriations.**—An appro-
2 priation for:

3 "Personal services" shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit but shall not include fees
6 or contractual payments paid to consultants or to indepen-
7 dent contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for "person-
9 al services" shall include salaries of heads of spending
10 units.

11 "Annual increment" shall mean funds appropriated for
12 "eligible employees" and shall be disbursed only in accor-
13 dance with article five, chapter five of the code.

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

17 "Employee benefits" shall mean social security match-
18 ing, workers' compensation, unemployment compensation,
19 pension and retirement contributions, public employees
20 insurance matching, personnel fees or any other benefit
21 normally paid by the employer as a direct cost of employ-
22 ment. Should the appropriation be insufficient to cover
23 such costs, the remainder of such cost shall be transferred
24 by each spending unit from its "personal services" line
25 item or its "unclassified" line item to its "employee bene-
26 fits" line item. If there is no appropriation for "employee
27 benefits", such costs shall be transferred by each spending
28 unit from its "personal services" line item or its "unclassi-
29 fied" line item. Each spending unit is hereby authorized

30 and required to make such payments in accordance with
31 the provisions of article two, chapter five-a of the code.

32 Each spending unit shall be responsible for all contri-
33 butions, payments or other costs related to coverage and
34 claims of its employees for unemployment compensation.
35 Such expenditures shall be considered an employee bene-
36 fit.

37 "Current expenses" shall mean operating costs other
38 than personal services and shall not include equipment,
39 repairs and alterations, buildings or lands.

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

45 "Equipment" shall mean equipment items which have
46 an appreciable and calculable period of usefulness in
47 excess of one year.

48 "Repairs and alterations" shall mean routine mainte-
49 nance and repairs to structures and minor improvements
50 to property which do not increase the capital assets.

51 "Buildings" shall include new construction and major
52 alteration of existing structures and the improvement of
53 lands and shall include shelter, support, storage, protection
54 or the improvement of a natural condition.

55 "Lands" shall mean the purchase of real property or
56 interest in real property.

57 "Capital outlay" shall mean and include buildings,
58 lands or buildings and lands, with such category or item of
59 appropriation to remain in effect as provided by section
60 twelve, article three, chapter twelve of the code.

61 From appropriations made to the spending units of
62 state government, upon approval of the governor there
63 may be transferred to a special account an amount suffi-
64 cient to match federal funds under any federal act.

65 Appropriations classified in any of the above catego-
66 ries shall be expended only for the purposes as defined
67 above and only for the spending units herein designated:
68 *Provided*, That the secretary of each department shall have
69 the authority to transfer within the department those gen-
70 eral revenue funds appropriated to the various agencies of
71 the department: *Provided, however*, That no more than
72 five percent of the general revenue funds appropriated to
73 any one agency or board may be transferred to other
74 agencies or boards within the department: *Provided fur-*
75 *ther*, That the secretary of each department and the direc-
76 tor, commissioner, executive secretary, superintendent,
77 chairman or any other agency head not governed by a
78 departmental secretary as established by chapter five-f of
79 the code shall have the authority to transfer funds appro-
80 priated to "personal services" and "employee benefits" to
81 other lines within the same account and no funds from
82 other lines shall be transferred to the "personal services"
83 line: *And provided further*, That if the Legislature by
84 subsequent enactment consolidates agencies, boards or
85 functions, the secretary may transfer the funds formerly
86 appropriated to such agency, board or function in order to
87 implement such consolidation. No funds may be trans-
88 ferred from a special revenue account, dedicated account,
89 capital expenditure account or any other account or fund
90 specifically exempted by the Legislature from transfer,
91 except that the use of the appropriations from the state
92 road fund transferred to the office of the secretary of the
93 department of transportation is not a use other than the
94 purpose for which such funds were dedicated and is per-
95 mitted.

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

1 **Sec. 4. Method of expenditure.**—Money appropriat-
2 ed by this bill, unless otherwise specifically directed, shall
3 be appropriated and expended according to the provisions
4 of article three, chapter twelve of the code or according to

5 any law detailing a procedure specifically limiting that
6 article.

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

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

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TITLE II—APPROPRIATIONS.

ORDER OF SECTIONS

- SECTION 1. Appropriations from general revenue.
- SECTION 2. Appropriations from state road fund.
- SECTION 3. Appropriations from other funds.
- SECTION 4. Appropriations from lottery net profits.
- SECTION 5. Appropriations of federal funds.
- SECTION 6. Appropriations from federal block grants.
- SECTION 7. Awards for claims against the state.
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- SECTION 9. Special revenue appropriations.
- SECTION 10. State improvement fund appropriations.
- SECTION 11. Specific funds and collection accounts.
- SECTION 12. Appropriations for refunding erroneous payment.
- SECTION 13. Sinking fund deficiencies.
- SECTION 14. Appropriations for local governments.
- SECTION 15. Total appropriations.
- SECTION 16. General school fund.

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

LEGISLATIVE

1—Senate

Account No.

Fund 0165 FY 1997 Org 2100

	Activity	General Revenue Fund
1 Compensation of Members (R) . . .	003	\$ 816,200
2 Compensation and Per Diem of		
3 Officers and Employees (R) ..	005	1,816,000
4 Employee Benefits (R)	010	360,000
5 Current Expenses and		
6 Contingent Fund (R)	021	560,000
7 Repairs and Alterations (R)	064	40,000
8 Computer Supplies (R)	101	15,000
9 Computer Systems (R)	102	80,000
10 Printing Blue Book (R)	103	150,000
11 Expenses of Members (R)	399	<u>445,000</u>
12 Total		\$ 4,282,200

13 The appropriations for the senate for the fiscal year
 14 1995-96 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1997. Any balances so
 16 reappropriated may be transferred and credited to the
 17 1996-97 accounts.

18 Upon the written request of the clerk of the senate, the
19 auditor shall transfer amounts between items of the total
20 appropriation in order to protect or increase the efficiency
21 of the service.

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

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

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

58 The distribution of the blue book shall be by the of-
 59 fice of the clerk of the senate and shall include
 60 seventy-five copies for each member of the Legislature
 61 and two copies for each classified and approved high
 62 school and junior high school and one copy for each
 63 elementary school within the state.

2—House of Delegates

Account No.

Fund 0170 FY 1997 Org 2200

1	Compensation of Members (R) . . .	003	\$ 2,200,000
2	Compensation and Per Diem of		
3	Officers and Employees (R) . .	005	521,162
4	Current Expenses and		
5	Contingent Fund (R)	021	2,000,000
6	Expenses of Members (R)	399	<u>1,120,000</u>
7	Total		\$ 5,841,162

8 The appropriations for the house of delegates for the
 9 fiscal year 1995-96 are to remain in full force and effect
 10 and are hereby reappropriated to June 30, 1997. Any
 11 balances so reappropriated may be transferred and credit-
 12 ed to the 1996-97 accounts.

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

17 The clerk of the house of delegates, with the approval
 18 of the speaker, is authorized to draw his or her requisitions
 19 upon the auditor, payable out of the Current Expenses and
 20 Contingent Fund of the house of delegates, for any bills
 21 for supplies and services that may have been incurred by
 22 the house of delegates and not included in the appropria-
 23 tion bill, for bills for services and supplies incurred in
 24 preparation for the opening of the session and after ad-
 25 journment, and for the necessary operation of the house
 26 of delegates' offices, the requisitions for which are to be

27 accompanied by bills to be filed with the auditor.

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

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

3—*Joint Expenses*

(WV Code Chapter 4)

Account No.

Fund 0175 FY 1997 Org 2300

1	Joint Committee on		
2	Government and Finance (R)	104	\$ 4,590,155
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	232,600
6	Work Force Development		
7	Council (R)	529	100,000

8	Legislative Computer System (R)	107	1,001,009
9	Joint Standing Committee		
10	on Education (R)	108	54,125
11	Joint Commission on Vocational-		
12	Technical-Occupational		
13	Education (R)	109	50,000
14	Southern Legislative Conference	377	<u>20,000</u>
15	Total		\$ 6,987,889

16 The appropriations for the joint expenses for the fiscal
 17 year 1995-96 are to remain in full force and effect and
 18 are hereby reappropriated to June 30, 1997. Any balanc-
 19 es so reappropriated may be transferred and credited to
 20 the 1996-97 accounts.

21 Upon the written request of the clerk of the senate,
 22 with the approval of the president of the senate, and the
 23 clerk of the house of delegates, with the approval of the
 24 speaker of the house of delegates, and a copy to the legis-
 25 lative auditor, the auditor shall transfer amounts between
 26 items of the total appropriation in order to protect or in-
 27 crease the efficiency of the service.

28 The reappropriation for the Tax Reduction and Feder-
 29 al Funding Increased Compliance (TRAFFIC) (fund 0175,
 30 activity 642) is intended for possible general state tax
 31 reductions or the offsetting of any reductions in federal
 32 funding for state programs. It is not intended as a general
 33 appropriation for expenditure by the Legislature.

JUDICIAL

4—Supreme Court—General Judicial

Account No.

Fund 0180 FY 1997 Org 2400

1	Personal Services (R)	001	\$ 27,079,388
2	Annual Increment (R)	004	367,365
3	Social Security Matching (R)	011	2,088,162

4	Public Employees' Insurance		
5	Matching (R)	012	2,790,646
6	Public Employees'		
7	Retirement Matching (R)	016	2,593,190
8	Other Expenses (R)	029	3,457,000
9	Judges' Retirement System (R) . . .	110	4,909,943
10	Other Court Costs (R)	111	2,400,000
11	Judicial Training Program (R) . . .	112	375,000
12	Mental Hygiene Fund (R)	113	975,000
13	Guardianship Attorney Fees (R) . .	588	125,000
14	Family Law Master Program (R) . .	190	<u>950,000</u>
15	Total		\$ 48,110,694

16 The appropriations to the supreme court of appeals
 17 for the fiscal years 1989-90, 1990-91, 1991-92, 1992-93,
 18 1993-94, 1994-95 and 1995-96 are to remain in full force
 19 and effect and are hereby reappropriated to June 30,
 20 1997. Any balances so reappropriated may be transferred
 21 and credited to the 1996-97 accounts.

22 This appropriation shall be administered by the ad-
 23 ministrative director of the supreme court of appeals, who
 24 shall draw his requisitions for warrants in payment in the
 25 form of payrolls, making deductions therefrom as re-
 26 quired by law for taxes and other items.

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Account No.

Fund 0101 FY 1997 Org 0100

1	Salary of Governor	002	\$	80,261
2	Personal Services	001		1,469,111
3	Annual Increment	004		15,500
4	Employee Benefits	010		401,611
5	National Governors' Association ..	123		63,600
6	Southern States Energy Board ...	124		28,732
7	Unclassified	099		584,860
8	Publication of Papers and			
9	Transition Expenses	465		<u>150,000</u>
10	Total		\$	2,793,675

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Account No.

Fund 0102 FY 1997 Org 0100

1	Unclassified—Total	096	\$	410,258
2	Any unexpended balance remaining in the appropria-			
3	tion for Unclassified-Surplus-Total (fund 0102, activity			
4	098) at the close of the fiscal year 1995-96 is hereby			
5	reappropriated for expenditure during the fiscal year			
6	1996-97.			
7	To be used for current general expenses, including			
8	compensation of employees, household maintenance, cost			
9	of official functions and additional household expenses			
10	occasioned by such official functions.			

7—Governor's Office—**Governor's Cabinet on Children and Families**

(WV Code Chapter 5)

Account No.

Fund 0104 FY 1997 Org 0100

1 Governor's Cabinet on Children
 2 and Families—Total (R) 116 \$ 300,000

3 Any unexpended balance remaining in the appropria-
 4 tion (fund 0104, activity 116) at the close of the fiscal
 5 year 1995-96 is hereby reappropriated for expenditure
 6 during the fiscal year 1996-97.

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

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1997 Org 0100

1 Civil Contingent Fund—Total (R) . 114 \$ 150,000

2 Any unexpended balances remaining in the appropri-
 3 ations for Civil Contingent Fund—Total (fund 0105, activi-
 4 ty 114, and activity 125); Unclassified-Surplus—Total
 5 (fund 0105, activity 098) Flood Recovery Assistance for
 6 Agriculture (fund 0105, activity 239) Civil Contingent
 7 Fund—Infrastructure and Economic Development Pro-
 8 jects—(fund 0105, activity 247), Flood Victims Assistance
 9 (fund 0105, activity 499) Civil Contingent Fund—Total
 10 (fund 0105, activity 114) Civil Contingent Fund—Surplus
 11 (fund 0105, activity 263), and Flood Recovery and Mitiga-
 12 tion Loans (Disaster Recovery Trust Fund) (fund 0105,
 13 activity 289) at the close of the fiscal year 1995-96 are
 14 hereby reappropriated for expenditure during the fiscal
 15 year 1996-97.

16 From this appropriation there may be expended, at the
 17 discretion of the governor, an amount not to exceed one
 18 thousand dollars as West Virginia's contribution to the
 19 interstate oil compact commission.

20 The above appropriation is intended to provide con-
 21 tingency funding for accidental, unanticipated, emergency
 22 or unplanned events which may occur during the fiscal
 23 year and is not to be expended for the normal day-to-day

24 operations of the governor's office.

**9—Governor's Office—
Infrastructure Improvements**

(WV Code Chapter 5)

Account No.

Fund 0106 FY 1997 Org 0100

1 Any unexpended balance remaining in the appropria-
2 tion for Unclassified—Total (fund 0106, activity 096) at
3 the close of the fiscal year 1995-96 is hereby reappropri-
4 ated for expenditure during the fiscal year 1996-97 and is
5 to be expended to fund grants and loans for water, sewage
6 and soil conservation projects.

**10—Auditor's Office—
General Administration**

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1997 Org 1200

1	Salary of Auditor	002	\$	57,446
2	Personal Services	001		1,668,463
3	Annual Increment	004		50,523
4	Employee Benefits	010		561,075
5	Unclassified (R)	099		650,733
6	Office Automation (R)	117		<u>790,000</u>
7	Total		\$	3,778,240

8 Any unexpended balances remaining in the appropri-
9 ations for Unclassified (fund 0116, activity 099), Office
10 Automation (fund 0116, activity 117) and Image Process-
11 ing and Printer Replacement (fund 0116, activity 240) at
12 the close of the fiscal year 1995-96 are hereby reappropri-
13 ated for expenditure during the fiscal year 1996-97.

***11—Auditor's Office—
Family Law Masters
Administration Fund***

(WV Code Chapter 48A)

Account No.

Fund 0117 FY 1997 Org 1200

1	Unclassified—Total	096	\$	450,000
2	The above appropriation shall be expended for the			
3	administrative expenses of the family law masters pro-			
4	gram, excluding personal services and employee benefits.			

12—Treasurer's Office

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1997 Org 1300

1	Salary of Treasurer	002	\$	57,099
2	Personal Services	001		493,960
3	Annual Increment	004		12,356
4	Employee Benefits	010		169,720
5	Unclassified	099		254,575
6	Abandoned Property Program . . .	118		325,877
7	Hardware/Software Upgrade	518		54,000
8	Total		\$	1,367,587

9 Any unexpended balances remaining in the surplus
10 appropriations for Check Encoder (fund 0126, activity
11 441) and Check Encoder (fund 0126, activity 668) at the
12 close of the fiscal year 1995-96 are hereby reappropriated
13 for expenditure during the fiscal year 1996-97 and redesi-
14 gnated as Imaging System (fund 0126, activity 006). The
15 redesignation of the line item shall be effective upon the
16 effective date of this bill.

13—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1997 Org 1400

1	Salary of Commissioner	002	\$	57,446
2	Personal Services	001		2,904,859
3	Annual Increment	004		60,945
4	Employee Benefits	010		1,037,202
5	Unclassified (R)	099		996,531
6	Gypsy Moth Program (R).	119		784,383
7	Farmers Market-Weston	421		50,000
8	Mingo County Surface			
9	Mine Project	296		150,000
10	Predator Control	470		50,000
11	Charleston Farmers Market	476		<u>150,000</u>
12	Total		\$	6,241,366

13 Any unexpended balances remaining in the appropri-
 14 ations for Gypsy Moth Program (fund 0131, activity 119),
 15 and the surplus appropriations for Mingo County Surface
 16 Mine Development Project-Total (fund 0131, activity 657)
 17 and Charleston Capitol Marketplace-Total (fund 0131,
 18 activity 671) at the close of the fiscal year 1995-96 are
 19 hereby reappropriated for expenditure during the fiscal
 20 year 1996-97.

21 Any unexpended balance remaining in the appropri-
 22 ation for Unclassified (fund 0131, activity 099) at the close
 23 of the fiscal year 1995-96 is hereby reappropriated for
 24 expenditure during the fiscal year 1996-97 for the pur-
 25 pose of funding building improvements for the
 26 Moorefield Field Office.

27 A portion of the Unclassified appropriation may be
 28 transferred to a special revenue fund for the purpose of

29 matching federal funds for marketing and development
30 activities.

***14—Department of Agriculture—
State Soil Conservation Committee***

(WV Code Chapter 19)

Account No.

Fund 0132 FY 1997 Org 1400

1	Personal Services	001	\$	394,045
2	Annual Increment	004		10,550
3	Employee Benefits	010		122,290
4	Unclassified (R)	099		284,758
5	Maintenance of Flood			
6	Control Projects (R)	522		1,700,000
7	Soil Conservation Projects (R)	120		<u>2,500,000</u>
8	Total		\$	5,011,643

9 Any unexpended balances remaining in the appropri-
10 ations for Unclassified (fund 0132, activity 099), Infra-
11 structure Projects—Total (fund 0538, activity 516), Main-
12 tenance of Flood Control Projects (fund 0132, activity
13 522) and Soil Conservation Projects (fund 0132, activity
14 120) at the close of the fiscal year 1995-96 are hereby
15 reappropriated for expenditure during the fiscal year
16 1996-97.

***15—Department of Agriculture—
Meat Inspection***

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1997 Org 1400

1	Personal Services	001	\$	350,629
2	Annual Increment	004		8,696

3	Employee Benefits	010	119,714
4	Unclassified	099	<u>63,103</u>
5	Total		\$ 542,142

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

***16—Department of Agriculture—
 Agricultural Awards***

(WV Code Chapter 19)

Account No.

Fund 0136 FY 1997 Org 1400

1	Agricultural Awards	121	\$ 66,066
2	Fairs and Festivals	122	<u>381,598</u>
3	Total		\$ 447,664

17—Attorney General

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

Account No.

Fund 0150 FY 1997 Org 1500

1	Salary of Attorney General	002	\$ 61,689
2	Personal Services (R)	001	1,995,790
3	Annual Increment (R)	004	27,850
4	Employee Benefits (R)	010	561,533
5	Unclassified (R)	099	<u>595,648</u>
6	Total		\$ 3,242,510

7 Any unexpended balance remaining in the appropria-
 8 tion at the close of the fiscal year 1995-96 is hereby reap-
 9 propriated for expenditure during the fiscal year 1996-97.

10 When legal counsel or secretarial help is appointed by
 11 the attorney general for any state spending unit, this ac-

12 count shall be reimbursed from such spending unit's spe-
 13 cifically appropriated account or from accounts appropri-
 14 ated by general language contained within this bill: *Pro-*
 15 *vided*, That the spending unit shall reimburse at a rate and
 16 upon terms agreed to by the state spending unit and the
 17 attorney general: *Provided, however*, That if the spending
 18 unit and the attorney general are unable to agree on the
 19 amount and terms of the reimbursement, the spending unit
 20 and the attorney general shall submit their proposed reim-
 21 bursement rates and terms to the joint committee on gov-
 22 ernment and finance for final determination.

18—Secretary of State

(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1997 Org 1600

1	Salary of Secretary of State	002	\$	53,204
2	Personal Services	001		547,001
3	Annual Increment	004		10,600
4	Employee Benefits	010		197,585
5	Unclassified (R)	099		<u>299,179</u>
6	Total		\$	1,107,569

7 Any unexpended balances remaining in the appropri-
 8 ations for Unclassified (fund 0155, activity 099) Adminis-
 9 trative Law Improvements (fund 0155, activity 617) and
 10 Imaging and Computerization Upgrade (fund 0155, activ-
 11 ity 244) at the close of the fiscal year 1995-96 are hereby
 12 reappropriated for expenditure during the fiscal year
 13 1996-97.

19—State Elections Commission

(WV Code Chapter 3)

Account No.

Fund 0160 FY 1997 Org 1601

1 Unclassified—Total 096 \$ 12,000

DEPARTMENT OF ADMINISTRATION

***20—Department of Administration—
Office of the Secretary***

(WV Code Chapter 5F)

Account No.

Fund 0186 FY 1997 Org 0201

1 Unclassified—Total 096 \$ 238,261

21—Consolidated Public Retirement Board

(WV Code Chapter 5)

Account No.

Fund 0195 FY 1997 Org 0205

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service commis-
3 sion and other departments or divisions operating from
4 special revenue funds and/or federal funds shall pay their
5 proportionate share of the retirement costs for their re-
6 spective divisions. When specific appropriations are not
7 made, such payments may be made from the balances in
8 the various special revenue funds in excess of specific
9 appropriations.

22—Division of Finance

(WV Code Chapter 5A)

Account No.

Fund 0203 FY 1997 Org 0209

1	Personal Services	001	\$	512,554
2	Annual Increment	004		11,090
3	Employee Benefits	010		142,770
4	Unclassified	099		549,176

5	GAAP Project (R)	125	<u>1,251,095</u>
6	Total		\$ 2,466,685
7	Any unexpended balance remaining in the appropria-		
8	tion for GAAP Project (fund 0203, activity 125) at the		
9	close of the fiscal year 1995-96 is hereby reappropriated		
10	for expenditure during the fiscal year 1996-97.		

23—Division of General Services

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1997 Org 0211

1	Personal Services	001	\$ 452,028
2	Annual Increment	004	20,300
3	Employee Benefits	010	196,238
4	Unclassified	099	706,441
5	Fire Service Fee	126	13,440
6	Capitol Complex Capital Outlay ..	417	<u>1,000,000</u>
7	Total		\$ 2,388,447

8 Any unexpended balances remaining in the appropri-

9 ations for Capitol Building Preservation (fund 0230, activ-

10 ity 503), and for surplus appropriations for Capitol Build-

11 ing Preservation (fund 0230, activity 675), Capital

12 Improvements-Capitol Complex (fund 0230, activity 676)

13 and Capitol Complex Master Plan-Total (fund 0230, activ-

14 ity 606) at the close of the fiscal year 1995-96 are hereby

15 reappropriated for expenditure during the fiscal year

16 1996-97.

24—Division of Purchasing

(WV Code Chapter 5A)

Account No.

Fund 0210 FY 1997 Org 0213

1	Personal Services	001	\$ 549,463
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2	Annual Increment	004	13,526
3	Employee Benefits	010	161,718
4	Unclassified	099	<u>52,800</u>
5	Total		\$ 777,507

6 The division of highways shall reimburse the Unclassi-
7 fied appropriation (fund 2031, activity 099) within the
8 division of purchasing for all actual expenses incurred
9 pursuant to the provisions of section thirteen, article two-a,
10 chapter seventeen of the code.

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Account No.

Fund 0214 FY 1997 Org 0217

1	Unclassified—Total	096	\$ 20,000
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2 To pay expenses of members of the commission on
3 uniform state laws.

**26—Board of Risk and
Insurance Management**

(WV Code Chapter 29)

Account No.

Fund 0217 FY 1997 Org 0218

1	Unclassified—Total	096	\$ -0-
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2	Unclassified	099	10,454,116
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3	Retro Payments	523	<u>4,850,000</u>
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4	Total		\$ 15,304,116
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5 The above appropriation includes funding for the
6 purpose of paying premiums, self-insurance losses, loss
7 adjustment expenses and loss prevention engineering fees
8 for property, casualty and fidelity insurance for the vari-
9 ous state agencies, except those operating from special
10 revenue funds, with such special revenue fund agencies to

11 be billed by the board of risk and insurance management
 12 and with such costs to be a proper charge against such
 13 spending units.

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

**27—Education and State Employees'
 Grievance Board**

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1997 Org 0219

1	Personal Services	001	\$	647,970
2	Annual Increment	004		7,683
3	Employee Benefits	010		180,505
4	Unclassified	099		<u>169,678</u>
5	Total		\$	1,005,836

28—Ethics Commission

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1997 Org 0220

1	Personal Services	001	\$	187,238
2	Annual Increment	004		1,250
3	Employee Benefits	010		48,283
4	Unclassified	099		<u>125,340</u>
5	Total		\$	362,111

29—Public Defender Services

(WV Code Chapter 29)

Account No.

Fund 0226 FY 1997 Org 0221

1	Personal Services	001	\$	246,747
2	Annual Increment	004		3,950
3	Employee Benefits	010		75,737
4	Unclassified (R)	099		98,455
5	Appointed Counsel Fees and			
6	Public Defender			
7	Corporations (R)	127		<u>14,210,905</u>
8	Total		\$	14,635,794
9	Any unexpended balances remaining in the appropri-			
10	ations for Unclassified (fund 0226, activity 099) and Ap-			
11	pointed Counsel Fees and Public Defender Corporations			
12	(fund 0226, activity 127) at the close of the fiscal year			
13	1995-96 are hereby reappropriated for expenditure dur-			
14	ing the fiscal year 1996-97.			

**30—Committee for the Purchase of
Commodities and Services from the Handicapped**

(WV Code Chapter 5A)

Account No.

Fund 0233 FY 1997 Org 0224

1	Unclassified—Total	096	\$	4,656
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31—Public Employees Insurance Agency

(WV Code Chapter 5)

Account No.

Fund 0200 FY 1997 Org 0225

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

3 sion and other departments or divisions operating from
 4 special revenue funds and/or federal funds shall pay their
 5 proportionate share of the public employees health insur-
 6 ance cost for their respective divisions. When specific
 7 appropriations are not made, such payments may be made
 8 from the balances in the various special revenue funds in
 9 excess of specific appropriations.

**32—West Virginia Prosecutor's
 Institute Association**

(WV Code Chapter 7)

Account No.

Fund 0557 FY 1997 Org 0228

1	Forensics Examination			
2	Laboratory—Total	491	\$	250,000

DEPARTMENT OF EDUCATION

**33—State Department of Education—
 School Lunch Program**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1997 Org 0402

1	Personal Services	001	\$	158,751
2	Annual Increment	004		2,842
3	Employee Benefits	010		50,097
4	Unclassified	099		<u>1,732,193</u>
5	Total		\$	1,943,883

**34—State FFA-FHA Camp and
 Conference Center**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1997 Org 0402

1	Personal Services	001	\$	99,511
2	Annual Increment	004		4,035
3	Employee Benefits	010		50,401
4	Unclassified	099		<u>157,484</u>
5	Total		\$	311,431
6	Any unexpended balance remaining in the surplus			
7	appropriation for Cedar Lakes-Total (fund 0306, activity			
8	638) at the close of the fiscal year 1995-96 is hereby			
9	reappropriated for expenditure during the fiscal year			
10	1996-97.			

35—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1997 Org 0402

1	Personal Services	001	\$	2,328,274
2	Annual Increment	004		45,411
3	Employee Benefits	010		732,947
4	Unclassified	099		4,000,000
5	WV Education Information			
6	System (WVEIS)	138		2,658,356
7	34/1000 Waiver	139		500,000
8	Increased Enrollment	140		2,000,000
9	Coordinator—Educational			
10	Medical Services	141		62,823
11	Governor's Honors Academy	478		190,000
12	County Boards of			
13	Education Lawsuits	128		-0-
14	Implementation of Norm			
15	Referenced Testing Program . .	297		1,695,900

16	National Science		
17	Foundation Match	142	139,500
18	WVGC Writing Project	482	25,000
19	Micro Computer Network	506	150,000
20	Technology and Telecom-		
21	munications Initiative (R)	596	2,001,706
22	Professional Certification	615	25,000
23	County Boards of Education-		
24	Tax Assessment Error	430	600,000
25	Adult Advisory Council	621	263,651
26	Pickens School Support and		
27	Hacker Valley School	622	250,000
28	Principals Mentorship	649	12,000
29	Safe Schools	143	2,000,000
30	Technology Repair and		
31	Modernization	298	500,000
32	Curriculum Technology		
33	Resource Center	300	250,000
34	Employment Programs		
35	Rate Relief	471	1,000,000
36	Technology Demonstration		
37	Project	301	<u>150,000</u>
38	Total		\$ 21,580,568

39 The above appropriation includes the state board of
40 education and their executive office.

41 Any unexpended balances remaining in the appropri-
42 ations for Computer Basic Skills (fund 0313, activity 145),
43 Computer Basic Skills-Surplus (fund 0313, activity 674)
44 Technology and Telecommunications Initiative (fund
45 0313, activity 596) and County Board of Education Law-
46 suits (fund 0313, activity 128) at the close of the fiscal
47 year 1995-96 are hereby reappropriated for expenditure

48 during the fiscal year 1996-97.

36—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1997 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions . .	160	2,680,023
3	Education of Institutionalized		
4	Juveniles	161	-0-
5	Education of Institutionalized		
6	Juveniles and Adults	472	4,319,049
7	Education of Juveniles Held in		
8	Predispositional Juvenile		
9	Detention Centers	302	<u>150,000</u>
10	Total		\$ 14,485,633

11 Any unexpended balance remaining in the appropria-
 12 tion for Education of Institutionalized Juveniles (fund
 13 0314, activity 161) at the close of the fiscal year 1995-96
 14 is hereby appropriated for expenditure during the fiscal
 15 year 1996-97 for the purpose of funding the education of
 16 youths at Davis-Stuart.

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Account No.

Fund 0317 FY 1997 Org 0402

1	Professional Educators	151	\$ 677,577,454
2	Service Personnel	152	209,019,083
3	Fixed Charges	153	78,552,457

4	Transportation	154	31,295,302
5	Administration	155	7,547,178
6	Other Current Expenses	022	99,115,736
7	Improve Instructional Programs ..	156	<u>32,520,994</u>
8	Basic Foundation Allowances		1,135,628,204
9	Less Local Share	332	<u>(233,945,032)</u>
10	Total Basic State Aid		901,683,172
11	Public Employees Insurance Match	012	120,210,002
12	Teachers' Retirement System	019	180,103,532
13	School Building Authority	453	23,352,844
14	Safe Schools	143	<u>-0-</u>
15	Total		\$ 1,225,349,550

**38—State Board of Education—
Vocational Division**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1997 Org 0402

1	Personal Services	001	\$ 697,839
2	Annual Increment	004	14,602
3	Employee Benefits	010	227,219
4	Unclassified	099	546,652
5	Wood Products—		
6	Forestry Vocational		
7	Program (R)	146	63,024
8	Albert Yanni Vocational Program .	147	139,300
9	Vocational Aid	148	11,530,319
10	Adult Basic Education	149	2,360,207

11	Equipment Replacement	150	1,019,750
12	Program Modernization	305	500,000
13	Aquaculture Support Program . . .	307	<u>200,000</u>
14	Total		\$ 17,298,912

15 Any unexpended balances remaining in the appropri-
 16 ations for Wood Products—Forestry Vocational Program
 17 (fund 0390, activity 146) and the surplus appropriation
 18 for Program Modernization—Total (fund 0390, activity
 19 598) at the close of the fiscal year 1995-96 are hereby
 20 reappropriated for expenditure during the fiscal year
 21 1996-97.

**39—West Virginia Schools for the
Deaf and the Blind**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0320 FY 1997 Org 0403

1	Personal Services	001	\$ 5,747,304
2	Annual Increment	004	3,850
3	Employee Benefits	010	1,943,663
4	Unclassified	099	<u>1,040,416</u>
5	Total		\$ 8,735,233

DEPARTMENT OF EDUCATION AND THE ARTS

**40—Department of Education and the Arts—
Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0294 FY 1997 Org 0431

1	Unclassified (R)	099	\$ 697,151
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2	Center for Professional		
3	Development (R)	115	2,000,042
4	Center for Professional		
5	Development-Principals		
6	Academy	415	500,000
7	Technical Preparation		
8	Program (R)	440	832,397
9	Arts Programs	500	40,000
10	WV Humanities Council	168	250,000
11	Community Schools/Mini Grants .	530	300,000
12	Marshall and West Virginia		
13	University Faculty and Course		
14	Development International Study		
15	Projects	549	35,000
16	Child Care Development	144	-0-
17	Hospitality Training	600	550,000
18	MA Public Health Program	623	75,000
19	Hospitality ABE Jobs	663	<u>-0-</u>
20	Total		\$ 5,279,590

21 Any unexpended balances remaining in the appropri-
 22 ations for Unclassified (fund 0294, activity 099), except
 23 fiscal year 1993-94, Center for Professional Development
 24 (fund 0294, activity 115), Technical Preparation Program
 25 (fund 0294, activity 440) and Rural Health Initiative Site
 26 Support (fund 0294, activity 295) at the close of the fiscal
 27 year 1995-96 are hereby reappropriated for expenditure
 28 during the fiscal year 1996-97.

**41—Office of the Secretary—
 Higher Education Efficiency Fund
 Control Account**

(WV Code Chapter 18B)

Fund 0556 FY 1997 Org 0431

1	Strategic Planning and		
2	Compliance Institutions	447	\$ 9,386,064
3	Strategic Planning and Compliance		
4	Central Office and WVNET ..	449	<u>113,936</u>
5	Total		\$ 9,500,000
6	The above appropriations to strategic planning and		
7	compliance—institutions, (fund 0556, activity 447) and		
8	strategic planning and compliance—central office and		
9	WVNET, (fund 0556, activity 449) shall be made in com-		
10	pliance with the provisions of chapter eighteen-b of the		
11	code of West Virginia.		

42—Division of Culture and History

(WV Code Chapter 29)

Account No.

Fund 0293 FY 1997 Org 0432

1	Personal Services	001	\$ 1,487,826
2	Annual Increment	004	36,425
3	Employee Benefits	010	489,226
4	Unclassified	099	546,468
5	Fairs and Festivals	122	1,000,000
6	Capitol Tourism Programs	601	150,000
7	Historical Preservation Grants	311	101,889
8	Grants for Competitive		
9	Arts Programs	624	1,000,000
10	West Virginia Public Theater	312	100,000
11	Theater Arts of West Virginia	464	<u>315,000</u>
12	Total		\$ 5,226,834

13 Any unexpended balances remaining in the appropri-
 14 ations for Capital Outlay, Repairs and Equipment (fund
 15 0293, activity 589) and the surplus appropriation for Cap-

16 ital Outlay, Repairs and Equipment (fund 0293, activity
17 677) at the close of the fiscal year 1995-96 are hereby
18 reappropriated for expenditure during the fiscal year
19 1996-97.

20 The Unclassified appropriation includes funding for
21 the arts funds, department programming funds, grants,
22 fairs and festivals and camp Washington Carver and shall
23 be expended only upon authorization of the division of
24 culture and history and in accordance with the provisions
25 of article three, chapter five-a, and chapter twelve of the
26 code.

27 All federal moneys received as reimbursement to the
28 division of culture and history for moneys expended from
29 the general revenue fund for the arts fund and historical
30 preservation are hereby reappropriated for the purposes as
31 originally made, including personal services, current ex-
32 penses and equipment.

43—Library Commission

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1997 Org 0433

1	Personal Services	001	\$ 1,029,682
2	Annual Increment	004	37,500
3	Employee Benefits	010	351,031
4	Unclassified	099	230,984
5	Books and Films	179	150,000
6	Services to State Institutions	180	156,310
7	Services to Blind and Handicapped . .	181	42,729
8	Grants to Public Libraries	182	6,738,884
9	Libraries—Special Projects	625	<u>300,000</u>
10	Total		\$ 9,037,120

44—Educational Broadcasting Authority

(WV Code Chapter 10)

Account No.

Fund 0300 FY 1997 Org 0439

1	Personal Services	001	\$ 3,123,186
2	Annual Increment	004	70,851
3	Employee Benefits	010	913,150
4	Unclassified	099	1,230,801
5	Capital Improvements-		
6	600 Capitol Street	313	<u>597,000</u>
7	Total		\$ 5,934,988

8 Any unexpended balance remaining in the surplus
 9 appropriation for Capital Improvements-Total (fund 0300,
 10 activity 672) is hereby reappropriated for expenditure
 11 during the fiscal year 1996-97.

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

**45—Board of Trustees of the University System
of West Virginia and Board of Directors of the
State College System
Central Office**

(WV Code Chapters 18B and 18C)

Account No.

Fund 0333 FY 1997 Org 0452

1	Unclassified	099	\$ 1,252,894
2	Higher Education Grant		
3	Program (R)	164	7,412,050
4	Tuition Contract Program (R)	165	703,540

5	Minority Doctoral Fellowship	166	100,000
6	Underwood-Smith Scholarship		
7	Program—Student Awards . . .	167	95,000
8	WVNET	169	2,252,842
9	Governing Boards'		
10	System Funds - SB547	157	-0-
11	Health Sciences - SB547	158	<u>-0-</u>
12	Total		\$ 11,816,326

13 Any unexpended balances remaining in the appropri-
 14 ation for Higher Education Grant Program (fund 0333,
 15 activity 164) and Tuition Contract Program (fund 0333,
 16 activity 165) at the close of the fiscal year 1995-96 are
 17 hereby reappropriated for expenditure during the fiscal
 18 year 1996-97.

**46—Board of Trustees of the
 University System of West Virginia
 Control Account**

(WV Code Chapter 18B)

Account No.

Fund 0327 FY 1997 Org 0461

1	Unclassified	099	\$153,346,509
2	Marshall University—		
3	Southern WV Community		
4	and Technical		
5	College 2+2 Program (R)	170	250,000
6	Marshall University—		
7	Autism Training Center	548	475,000
8	Marshall University—		
9	Forensic Lab	572	450,000
10	Jackson's Mill	461	350,000
11	West Virginia University—		

12	West Virginia Institute of		
13	Technology Base Transfer		
14	from Board of Directors	458	<u>9,622,254</u>
15	Total		\$164,493,763

16 The above appropriation for West Virginia Universi-
 17 ty—West Virginia Institute of Technology—Base Transfer
 18 from Board of Directors, (fund 0327, activity 458) is pur-
 19 suant to enrolled senate bill no. 591, regular session 1996
 20 and shall be used solely for the purpose of implementing
 21 the provisions of section nine, article two, chapter
 22 eighteen-b of the code of West Virginia.

23 Any unexpended balances remaining in the appropri-
 24 ations for Marshall University-Southern WV Community
 25 and Technical College 2+2 Program (fund 0327, activity
 26 170) and Colin Anderson Center (fund 0327, activity 435)
 27 at the close of the fiscal year 1995-96 are hereby reappro-
 28 priated for expenditure during the fiscal year 1996-97.

***47—Board of Trustees of the
 University System of West Virginia—
 University of West Virginia
 Health Sciences Account
 Control Account***

(WV Code Chapter 18B)

Account No.

Fund 0323 FY 1997 Org 0478

1	Medical Education	178	\$	-0-
2	School of Osteopathic Medicine . .	172		5,787,752
3	Marshall Medical School	173		10,419,602
4	WVU-School of Health Sciences . .	174		37,191,097
5	WVU-School of Health Sciences			
6	-Charleston Division	175		3,667,636
7	WVU Charleston Division—			
8	Poison Control Hot Line	510		290,000

9	Health Sciences Scholarship Fund .	176	148,500
10	Primary Health Education		
11	Program Support (R)	177	4,460,000
12	Rural Health Initiative		
13	Site Support (R)	295	2,980,000
14	Vice Chancellor for		
15	Health Sciences	473	246,342
16	Marshall Medical School—Retro		
17	Payments for FY 1993-1994		
18	and FY 1994-1995	651	-0-
19	School of Osteopathic Medicine—		
20	Retro Payments for FY 1993-		
21	1994 and FY 1994-1995	652	-0-
22	WVU—School of Health Sciences—		
23	Morgantown Retro Pay-		
24	ments for FY 1993-1994		
25	and FY 1994-1995	653	-0-
26	WVU—Health Career		
27	Opportunities	474	<u>75,000</u>
28	Total		\$ 65,265,929

29 Any unexpended balances remaining in the appropri-
 30 ations for Primary Health Education Program Support
 31 (fund 0323, activity 177) and Rural Health Initiative Site
 32 Support (fund 0323, activity 295) at the close of the fiscal
 33 year 1995-96 are hereby reappropriated for expenditure
 34 during the fiscal year 1996-97.

**48—Board of Directors of the
 State College System
 Control Account**

(WV Code Chapter 18B)

Account No.

Fund 0330 FY 1997 Org 0481

1	Unclassified	099	\$ 73,642,136
2	West Virginia University Institute of		
3	Technology Transfer to Board of		
4	Trustees-West Virginia University		
5	Institute of Technology Resource		
6	Allocation Policy Adjustment .	454	<u>284,526</u>
7	Total		\$ 73,926,662

8 The above appropriation for West Virginia University
 9 Institute of Technology Transfer to Board of Trustees-
 10 West Virginia University Institute of Technology Resource
 11 Allocation Policy Adjustment, (fund 0330, activity 454) is
 12 pursuant to enrolled senate bill no. 591 and shall be used
 13 solely for the purpose of implementing the provisions of
 14 section nine, article two, chapter eighteen-b of the code of
 15 West Virginia.

***49—State Board of Rehabilitation—
 Division of Rehabilitation Services***

(WV Code Chapter 18)

Account No.

Fund 0310 FY 1997 Org 0932

1	Personal Services	001	\$ 4,087,653
2	Annual Increment	004	124,961
3	Employee Benefits	010	1,392,449
4	Case Services	162	2,826,365
5	Workshop Development	163	<u>1,449,000</u>
6	Total		\$ 9,880,428

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

***50—Department of Health and Human Resources—
 Office of the Secretary***

(WV Code Chapter 5F)

Account No.

Fund 0400 FY 1997 Org 0501

1 Unclassified—Total 096 \$ 146,442

*51—Division of Health—
Central Office*

(WV Code Chapter 16)

Account No.

Fund 0407 FY 1997 Org 0506

1	Personal Services	001	\$ 6,109,973
2	Annual Increment	004	132,457
3	Employee Benefits	010	2,362,591
4	Unclassified	099	3,885,035
5	Corporate Nonprofit Community		
6	Health Centers—F.M.H.A.		
7	Mortgage Finance	184	167,968
8	State Aid to Local Agencies	209	7,880,684
9	Maternal and Child Health		
10	Clinics, Clinicians and		
11	Medical Contracts and Fees	575	4,673,043
12	Pediatric Dental Services	550	150,000
13	Appalachian State Low Level		
14	Radioactive Waste Commission	185	48,000
15	Safe Drinking Water Program	187	451,710
16	Women, Infants and Children	210	75,000
17	Vaccine for Children	551	431,480
18	Adult Influenza Vaccine	552	65,000
19	Cancer Registry	225	192,487
20	Revolving Loan Fund Assistance		
21	Technology	323	100,000

22	Tuberculosis Control	553	248,534
23	Epidemiology Support	626	438,914
24	EMS Area Entity	554	756,320
25	Rural EMS Equipment		
26	and Training	627	610,000
27	Regional EMS Entities	557	630,000
28	Early Intervention	223	2,018,357
29	Primary Care Support	628	6,862,084
30	Black Lung Clinics	467	<u>200,000</u>
31	Total		\$ 38,489,637

52—Consolidated Medical Service Fund

(WV Code Chapter 16)

Account No.

Fund 0525 FY 1997 Org 0506

1	Personal Services	001	\$ 1,204,389
2	Annual Increment	004	19,779
3	Employee Benefits	010	14,046,991
4	Special Olympics	208	26,074
5	Behavioral Health Program—		
6	Unclassified	219	11,457,975
7	Family Support Act	221	1,088,605
8	Institutional Facilities Operations .	335	<u>32,499,687</u>
9	Total		\$ 60,343,500

10 The secretary of the department of health and human
 11 resources, prior to the beginning of the fiscal year, shall
 12 file with the legislative auditor and the department of ad-
 13 ministration an expenditure schedule for each formerly
 14 separate spending unit which has been consolidated into
 15 the above account and which receives a portion of the

16 above appropriation for Institutional Facilities Operations.
 17 The secretary shall also, within fifteen days after the close
 18 of the six-month period of said fiscal year, file with the
 19 legislative auditor and the department of administration an
 20 itemized report of expenditures made during the preced-
 21 ing six-month period.

22 Additional funds have been appropriated in fund
 23 5156, fiscal year 1997, organization 0506, for the opera-
 24 tion of the institutional facilities. The secretary of the
 25 department of health and human resources is authorized
 26 to utilize up to ten percent of the funds from the Institu-
 27 tional Facilities Operations line item to facilitate cost effec-
 28 tive and cost saving services at the community level.

29 From the above appropriation to Institutional Facilities
 30 Operations, together with available funds from the division
 31 of health—hospital services revenue account (fund 5156,
 32 activity 335), on July 1, 1996, the sum of two hundred
 33 thousand dollars shall be transferred to the department of
 34 agriculture—land division as advance payment for the
 35 purchase of food products; actual payments for such pur-
 36 chases shall not be required until such credits have been
 37 completely expended.

53—Commission on Aging

(WV Code Chapter 29)

Account No.

Fund 0420 FY 1997 Org 0508

1	Personal Services	001	\$	114,507
2	Annual Increment	004		2,833
3	Employee Benefits	010		51,696
4	Unclassified	099		437,600
5	Local Programs Service			
6	Delivery Costs	200		2,475,250
7	Senior Citizens Centers—Land			
8	Acquisition, Construction and			
9	Repairs and Alterations (R) . . .	201		-0-

10	Silver Haired Legislature	202	14,400
11	Area Agencies Administration . . .	203	87,429
12	Foster Grandparents		
13	Stipends and Travel	205	57,734
14	In-Home Services for		
15	Senior Citizens	224	<u>700,000</u>
16	Total		\$ 3,941,449
17	Any unexpended balance remaining in the appropri-		
18	ation for Senior Citizens Centers—Land Acquisition, Con-		
19	struction and Repairs and Alterations (fund 0420, activity		
20	201) at the close of the fiscal year 1995-96 is hereby		
21	reappropriated for expenditure during the fiscal year		
22	1996-97.		

54—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 0416 FY 1997 Org 0510

1	Personal Services	001	\$ 520,739
2	Annual Increment	004	10,350
3	Employee Benefits	010	159,294
4	Unclassified	099	<u>147,971</u>
5	Total		\$ 838,354

55—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1997 Org 0511

1	Personal Services	001	\$ 16,839,565
2	Annual Increment	004	461,616
3	Employee Benefits	010	5,772,579

4	Medical Services Contracts and		
5	Office of Managed Care	183	1,501,363
6	Medicaid Management		
7	Information Technology	186	400,000
8	Unclassified	099	12,766,753
9	OSCAR and RAPIDS	515	3,165,201
10	Medical Services	189	162,045,670
11	In-Home Services for		
12	Senior Citizens	224	-0-
13	Women's Commission	191	80,351
14	Grants for Domestic		
15	Violence Shelters	629	280,000
16	Commission on Hearing Impaired ..	192	150,702
17	Public Assistance	193	27,601,731
18	Emergency Assistance	194	1,510,216
19	Social Services	195	19,901,180
20	Family Preservation Program	196	1,565,000
21	JOBS Program	197	3,730,069
22	Child Advocate	602	657,867
23	Child Welfare System	603	2,533,695
24	Child Protective Services and		
25	Medicaid Auditing	604	609,177
26	Child Care Development	144	1,300,000
27	Family Foster Care Payments	630	4,799,168
28	Child Protective Services		
29	Case Workers	468	<u>4,583,307</u>
30	Total		\$272,255,210

31 Notwithstanding the provisions of Title I, section two
32 of this bill, the secretary of the department of health and

33 human resources shall have the authority to transfer funds
 34 within the above account: *Provided*, That no more than
 35 ten percent of the funds appropriated to one line item may
 36 be transferred to other line items: *Provided, however*,
 37 That no funds from other line items shall be transferred to
 38 the personal services line item.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*56—Department of Military Affairs and
 Public Safety—*

Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 0430 FY 1997 Org 0601

1 Unclassified—Total 096 \$ 141,702

57—Adjutant General—State Militia

(WV Code Chapter 15)

Account No.

Fund 0433 FY 1997 Org 0603

1	Personal Services	001	\$	324,477
2	Annual Increment	004		9,150
3	Employee Benefits	010		108,360
4	Unclassified	099		3,416,324
5	College Education Fund	232		1,798,400
6	Armory Capital Improvements . . .	325		<u>300,000</u>
7	Total		\$	5,956,711

8 Any unexpended balance remaining in the surplus
 9 appropriation for Armory Construction-Capital Outlay-
 10 Total (fund 0433, activity 669) at the close of the fiscal
 11 year 1995-96 is hereby reappropriated for expenditure
 12 during the fiscal year 1996-97.

13 The College Education Fund line item above shall be
 14 the total annual appropriation for awarding scholarships.
 15 The secretary of the department of military affairs and
 16 public safety shall devise a method to equitably reimburse
 17 all eligible participants on a pro rata basis should the ap-
 18 propriation be insufficient to cover total annual eligible
 19 expenses.

58—West Virginia Parole Board

(WV Code Chapter 62)

Account No.

Fund 0440 FY 1997 Org 0605

1	Personal Services	001	\$	48,348
2	Annual Increment	004		1,400
3	Employee Benefits	010		72,122
4	Unclassified	099		52,375
5	Salaries of Members of West			
6	Virginia Parole Board	227		<u>200,000</u>
7	Total		\$	374,245

59—Office of Emergency Services

(WV Code Chapter 15)

Account No.

Fund 0443 FY 1997 Org 0606

1	Personal Services	001	\$	154,522
2	Annual Increment	004		4,750
3	Employee Benefits	010		58,403
4	Unclassified	099		10,952
5	Federal Emergency Manage-			
6	ment Agency Match	188		<u>237,610</u>
7	Total		\$	466,237

**60—Division of Corrections—
Central Office**

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

Account No.

Fund 0446 FY 1997 Org 0608

1	Personal Services	001	\$	349,734
2	Annual Increment	004		8,260
3	Employee Benefits	010		107,458
4	Unclassified	099		<u>111,004</u>
5	Total		\$	576,456

**61—Division of Corrections—
Correctional Units**

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

Account No.

Fund 0450 FY 1997 Org 0608

1	Personal Services	001	\$	12,130,887
2	Annual Increment	004		229,088
3	Employee Benefits	010		4,618,727
4	Unclassified	099		6,320,228
5	Payment to Counties and/or			
6	Regional Jails	229		1,666,250
7	Denmar Facility	448		2,402,991
8	Mt. Olive Correctional Complex ..	533		15,442,911
9	Northern Correctional Facility ...	534		5,154,519
10	Inmate Medical Expense	535		3,679,100
11	Capital Improvements (R)	338		<u>-0-</u>
12	Total		\$	51,644,701

13 Any unexpended balances remaining in the appropri-
 14 ations for Capital Improvements (fund 0450, activity 338)
 15 and the surplus appropriation for Capital Improvements
 16 (fund 0450, activity 661) are hereby reappropriated for
 17 expenditure during the fiscal year 1996-97.

18 The commissioner of corrections, prior to the begin-
 19 ning of the fiscal year, shall file with the legislative auditor
 20 and the department of administration an expenditure
 21 schedule for each formerly separate spending unit which
 22 has been consolidated into the above account and which
 23 receives a portion of the above appropriation. The com-
 24 missioner shall also, within fifteen days after the close of
 25 each six-month period of said fiscal year, file with the
 26 legislative auditor and the department of administration an
 27 itemized report of expenditures made during the preced-
 28 ing six-month period. Such report shall include the total
 29 of expenditures made for personal services, annual incre-
 30 ment, current expenses (inmate medical expenses and
 31 other), repairs and alterations and equipment.

32 From the above appropriation to Unclassified, on July
 33 1, 1996, the sum of two hundred thousand dollars shall be
 34 transferred to the department of agriculture — land divi-
 35 sion as advance payment for the purchase of food prod-
 36 ucts; actual payments for such purchases shall not be re-
 37 quired until such credits have been completely expended.

62—West Virginia State Police

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1997 Org 0612

1	Personal Services	001	\$ 20,967,426
2	Annual Increment	004	140,944
3	Employee Benefits	010	3,402,086
4	Unclassified	099	5,175,817
5	Barracks Maintenance and		
6	Construction (R)	494	113,947

7	Communications and		
8	Other Equipment	558	2,715,000
9	Overtime and Wage Court Awards .	568	2,000,000
10	Vehicle Purchase	451	1,000,000
11	Trooper Retirement Fund	605	7,366,721
12	COPS Program-Federal Match . . .	327	76,561
13	DNA Laboratory	479	<u>200,000</u>
14	Total		\$ 43,158,502

15 Any unexpended balance remaining in the appropria-
 16 tion for Barracks Maintenance and Construction (fund
 17 0453, activity 494) at the close of the fiscal year 1995-96
 18 is hereby reappropriated for expenditure during the fiscal
 19 year 1996-97.

63—Division of Veterans' Affairs

(WV Code Chapter 9A)

Account No.

Fund 0456 FY 1997 Org 0613

1	Personal Services	001	\$	671,639
2	Annual Increment	004		20,100
3	Employee Benefits	010		285,341
4	Unclassified	099		15,919
5	Veterans' Field Offices	228		129,692
6	Veterans' Toll Free Assistance			
7	Line (R)	328		25,000
8	Veterans' Reeducation			
9	Assistance (R)	329		270,000
10	Veterans' Field Office			
11	Improvements (R)	331		105,000
12	Veterans' Grant Program (R)	342		150,000

13	Barboursville Veterans' Home		
14	Improvements (R)	466	<u>450,000</u>
15	Total		\$ 2,122,691

16 Any unexpended balances remaining in the appropri-
 17 ations for Veterans' Toll Free Assistance Line (fund 0456,
 18 activity 328), Veterans' Reeducation Assistance (fund
 19 0456, activity 329), Veterans' Field Office Improvements
 20 (fund 0456, activity 331) and Barboursville Veterans'
 21 Home Improvements (fund 0456, activity 466), Veterans'
 22 Grant Program (fund 0456, activity 342) at the close of
 23 the fiscal year 1995-96 are hereby reappropriated for
 24 expenditure during the fiscal year 1996-97.

**64—Regional Jail and Correctional
 Facility Authority**

(WV Code Chapter 31)

Account No.

Fund 0536 FY 1997 Org 0615

1	Regional Jail—Capital Outlay—		
2	Total (R)	577	\$ 10,000,000

3 Any unexpended balance remaining in the appropria-
 4 tion (fund 0536, activity 577) at the close of the fiscal
 5 year 1995-96 is hereby reappropriated for expenditure
 6 during the fiscal year 1996-97.

**65—Division of Veterans' Affairs—
 Veterans' Home**

(WV Code Chapter 9A)

Account No.

Fund 0460 FY 1997 Org 0618

1	Personal Services	001	\$ 635,879
2	Annual Increment	004	16,050
3	Employee Benefits	010	288,555
4	Unclassified	099	<u>160,234</u>
5	Total		\$ 1,100,718

66—Fire Commission

(WV Code Chapter 29)

Account No.

Fund 0436 FY 1997 Org 0619

1	Personal Services	001	\$	533,000
2	Annual Increment	004		11,800
3	Employee Benefits	010		160,799
4	Unclassified	099		140,601
5	Office Relocation Expense	428		<u>65,000</u>
6	Total		\$	911,200

67—Division of Criminal Justice and Highway Safety

(Executive Order)

Account No.

Fund 0546 FY 1997 Org 0620

1	Personal Services	001	\$	92,002
2	Annual Increment	004		2,425
3	Employee Benefits	010		28,029
4	Unclassified	099		110,068
5	Statistical Analysis Program	597		<u>50,000</u>
6	Total		\$	282,524

DEPARTMENT OF TAX AND REVENUE**68—Department of Tax and Revenue—
Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0465 FY 1997 Org 0701

1	Unclassified—Total	096	\$	163,017
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69—Tax Division

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1997 Org 0702

1	Personal Services	001	\$	9,481,699
2	Annual Increment	004		222,224
3	Employee Benefits	010		3,014,232
4	Unclassified	099		6,034,282
5	Automation Project (R)	442		<u>-0-</u>
6	Total		\$	18,752,437

7 Any unexpended balances remaining in the appropri-
 8 ations for Automation Project (fund 0470, activity 442)
 9 and the surplus appropriation for Automation Project-
 10 Total (fund 0470, activity 673) at the close of the fiscal
 11 year 1995-96 are hereby reappropriated for expenditure
 12 during the fiscal year 1996-97.

**70—Division of Professional and
 Occupational Licenses—
 State Athletic Commission**

(WV Code Chapter 29)

Account No.

Fund 0523 FY 1997 Org 0933

1	Unclassified—Total	096	\$	4,719
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DEPARTMENT OF TRANSPORTATION

**71—Department of Transportation—
 Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0500 FY 1997 Org 0801

1	Unclassified	099	\$	155,272
2	Civil Air Patrol	234		86,952
3	Port Authority (R)	443		523,725
4	Potomac Highlands			
5	Airport Authority	444		120,000
6	Coal Heritage Trail			
7	Interpretive Center	475		<u>105,000</u>
8	Total		\$	990,949

9 Any unexpended balances remaining in the appropri-
10 ations for Port Authority (fund 0500, activity 443) and
11 Aeronautics Commission (fund 0500, activity 450) at the
12 close of the fiscal year 1995-96 are hereby reappropriated
13 for expenditure during the fiscal year 1996-97.

14 The above appropriation for Port Authority includes
15 two hundred fifty-five thousand five hundred twenty-five
16 dollars which may be used to match federal or other funds
17 for port authority feasibility studies.

72—State Rail Authority

(WV Code Chapter 29)

Account No.

Fund 0506 FY 1997 Org 0804

1	Unclassified—Total	096	\$	442,211
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2 Any unexpended balances remaining in the appropri-
3 ations for Capital Improvement and Equipment (fund
4 0506, activity 632), Capital Outlay-Railroad Maintenance
5 Authority (fund 0506, activity 309), Hampshire County
6 Railroad Siding (fund 0506, activity 497) and Duffield
7 Station (fund 0506, activity 559) at the close of the fiscal
8 year 1995-96 are hereby reappropriated for expenditure
9 during the fiscal year 1996-97.

73—Division of Public Transit

(WV Code Chapter 17)

Account No.

Fund 0510 FY 1997 Org 0805

1	Unclassified—Total	096	\$	872,680
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BUREAU OF COMMERCE**74—Division of Forestry**

(WV Code Chapter 19)

Account No.

Fund 0250 FY 1997 Org 0305

1	Personal Services	001	\$	1,308,956
2	Annual Increment	004		29,800
3	Employee Benefits	010		463,413
4	Communications Equipment (R)	502		-0-
5	Unclassified	099		<u>404,243</u>
6	Total		\$	2,206,412

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

10 Any unexpended balance remaining in the appropria-
 11 tion for Communications Equipment (fund 0250, activity
 12 502) at the close of the fiscal year 1995-96 is hereby
 13 reappropriated for expenditure during the fiscal year
 14 1996-97.

75—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

Fund 0253 FY 1997 Org 0306

1	Personal Services	001	\$	1,158,066
2	Annual Increment	004		29,866
3	Employee Benefits	010		352,934

4	Unclassified	099	151,859
5	Mineral Mapping System (R)	207	697,517
6	Geographic Information		
7	System (R)	214	500,000
8	Computer Upgrade	349	<u>57,000</u>
9	Total		\$ 2,947,242

10 Any unexpended balances remaining in the surplus
 11 appropriations for Mineral Mapping System (fund 0253,
 12 activity 610), Geographic Information System (fund 0253,
 13 activity 611), and Capital Outlay and Equipment (fund
 14 0253, activity 679) at the close of the fiscal year 1995-96
 15 are hereby reappropriated for expenditure during the
 16 fiscal year 1996-97.

17 The above Unclassified appropriation includes fund-
 18 ing to secure federal and other contracts and may be
 19 transferred to a special revolving fund (fund 3105, activity
 20 099) for the purpose of providing advance funding for
 21 such contracts.

76—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

Fund 0256 FY 1997 Org 0307

1	Personal Services	001	\$ 1,935,486
2	Annual Increment	004	30,800
3	Employee Benefits	010	523,490
4	Unclassified	099	2,475,624
5	Partnership Grants (R)	131	4,300,000
6	National Youth Science Camp	132	200,000
7	Local Economic Development		
8	Partnerships (R)	133	1,000,000
9	ARC Assessment	136	167,308

10	Guaranteed Work Force Grant (R) . . .	242	1,080,000
11	Leverage Technology and Small		
12	Business Development Program . .	525	800,000
13	WV Film Development Office	498	100,351
14	Empowerment Zone/Enterprise		
15	Community (R)	218	-0-
16	Tourism Development		
17	Representatives	351	140,660
18	Guaranteed Work Force		
19	Grant/Small Business Programs . . .	354	370,000
20	Small Business Financial Assistance . .	360	300,000
21	Industrial Park Assistance	480	800,000
22	Robert C. Byrd Institute for		
23	Advanced Flexible Manufactur-		
24	ing—Manufacturing Technology		
25	Outreach and Programs for		
26	Environmental and		
27	Advanced Technologies	367	<u>700,000</u>
28	Total		\$ 14,923,719

29 Any unexpended balances remaining in the appropri-
 30 ations for Partnership Grants (fund 0256, activity 131),
 31 Competitive Grants (fund 0256, activity 130), Guaranteed
 32 Work Force Grant (fund 0256, activity 242), Local Eco-
 33 nomic Development Partnerships (fund 0256, activity
 34 133) and Empowerment Zone/Enterprise Community
 35 (fund 0256, activity 218) at the close of the fiscal year
 36 1995-96 are hereby reappropriated for expenditure dur-
 37 ing the fiscal year 1996-97.

38 The above appropriation to Local Economic Develop-
 39 ment Partnerships shall be used by the West Virginia de-
 40 velopment office for the award of funding assistance to
 41 county and regional economic development corporations
 42 or authorities created under the plan developed by the
 43 council for community and economic development under
 44 the provisions of section three, article two, chapter five-b

45 of the code. The West Virginia development office shall
 46 award the funding assistance through a matching grant
 47 program, based upon criteria developed under the provi-
 48 sions of section three, article two, chapter five-b of the
 49 code and based upon a formula whereby funding assis-
 50 tance may not exceed twenty-five thousand dollars per
 51 county served by a regional economic development cor-
 52 poration or authority.

77—Division of Labor

(WV Code Chapters 21 and 47)

Account No.

Fund 0260 FY 1997 Org 0308

1	Personal Services	001	\$ 1,012,273
2	Annual Increment	004	19,277
3	Employee Benefits	010	380,356
4	Unclassified	099	604,019
5	Weights and Measures Program ..	483	<u>450,000</u>
6	Total		\$ 2,465,925

78—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 0265 FY 1997 Org 0310

1	Personal Services	001	\$ 7,914,521
2	Annual Increment	004	253,244
3	Employee Benefits	010	3,237,954
4	Unclassified	099	207,883
5	Nongame Wildlife	527	<u>550,000</u>
6	Total		\$ 12,163,602
7	Any revenue derived from mineral extraction at any		

8 state park shall be deposited in a special revenue account
 9 of the division of natural resources, first for bond debt
 10 payment purposes and with any remainder to be for park
 11 operation and improvement purposes.

**79—Division of Miners' Health,
 Safety and Training**

(WV Code Chapter 22)

Account No.

Fund 0277 FY 1997 Org 0314

1	Personal Services	001	\$ 3,101,583
2	Annual Increment	004	49,600
3	Employee Benefits	010	1,049,367
4	Unclassified	099	<u>266,810</u>
5	Total		\$ 4,467,360

**80—Board of Coal Mine
 Health and Safety**

(WV Code Chapter 22)

Account No.

Fund 0280 FY 1997 Org 0319

1	Personal Services	001	\$ 94,600
2	Annual Increment	004	1,200
3	Employee Benefits	010	25,102
4	Unclassified	099	<u>17,480</u>
5	Total		\$ 138,382

**81—Coal Mine Safety and
 Technical Review Committee**

(WV Code Chapter 22)

Account No.

Fund 0285 FY 1997 Org 0320

1	Unclassified—Total	096	\$	71,303
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BUREAU OF ENVIRONMENT**82—Environmental Quality Board**

(WV Code Chapter 20)

Account No.

Fund 0270 FY 1997 Org 0311

1	Personal Services	001	\$	62,331
2	Annual Increment	004		200
3	Employee Benefits	010		19,062
4	Unclassified	099		<u>32,786</u>
5	Total		\$	114,379

**83—Interstate Commission on
Potomac River Basin**

(WV Code Chapter 29)

Account No.

Fund 0263 FY 1997 Org 0313

1	West Virginia's Contribution			
2	to the Interstate Commission			
3	on Potomac River Basin—Total ..	134	\$	39,675

**84—Ohio River Valley Water
Sanitation Commission**

(WV Code Chapter 29)

Account No.

Fund 0264 FY 1997 Org 0313

1	West Virginia's Contribution			
2	to the Ohio River Valley Water			
3	Sanitation Commission—Total ...	135	\$	112,600

85—Division of Environmental Protection

(WV Code Chapter 22)

Account No.

Fund 0273 FY 1997 Org 0313

1	Personal Services	001	\$ 4,065,513
2	Annual Increment	004	78,608
3	Employee Benefits	010	1,266,424
4	Unclassified	099	675,372
5	Black Fly Control	137	240,148
6	Dam Safety	607	<u>123,351</u>
7	Total		\$ 6,449,416

86—Air Quality Board

(WV Code Chapter 16)

Account No.

Fund 0550 FY 1997 Org 0325

1	Unclassified—Total	096	\$ 75,786
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MISCELLANEOUS BOARDS AND COMMISSIONS**87—Board of Investments**

(WV Code Chapter 12)

Account No.

Fund 0513 FY 1997 Org 0920

1	Personal Services	001	\$ 1,041,964
2	Annual Increment	004	22,500
3	Employee Benefits	010	330,493
4	Unclassified	099	1,215,995
5	Debt Payment on Morris Street		
6	Workers' Compensation		
7	Building	'290	<u>2,000,000</u>
8	Total		\$ 4,610,952

**88—Board of Investments—
School Building Sinking Fund**

(WV Code Chapter 12)

Account No.

Fund 0526 FY 1997 Org 0920

1 Debt Service—Total (R) 310 \$ 10,242,000

2 Any unexpended balance remaining in the above
3 appropriation for Board of Investments—School Building
4 Sinking Fund-Debt Service-Total (fund 0526, activity
5 310) at the close of the fiscal year 1995-96 is hereby
6 reappropriated for expenditure during the fiscal year
7 1996-97.

1 Total TITLE II, Section 1—

2 General Revenue \$ 2,353,601,907

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

DEPARTMENT OF TRANSPORTATION

89—Division of Motor Vehicles

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

Account No.

Fund 9007 FY 1997 Org 0802

		State Road Fund
1	Personal Services 001	\$ 4,721,776
2	Annual Increment 004	80,501
3	Employee Benefits 010	1,697,009

APPROPRIATIONS

4	Unclassified	099	14,435,400
5	International Fuel Tax Agreement . .	536	620,000
6	Capital Outlay-Building	222	<u>2,125,000</u>
7	Total		\$ 23,679,686

90—Division of Highways

(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1997 Org 0803

1	Debt Service	040	\$ 39,300,000
2	ARC Assessment	136	794,000
3	Maintenance, Expressway,		
4	Trunkline and Feeder	270	82,823,000
5	Maintenance, State		
6	Local Services	271	122,433,000
7	Maintenance, Contract Paving		
8	and Secondary Road		
9	Maintenance	272	52,000,000
10	Bridge Repair and Replacement	273	30,000,000
11	Inventory Revolving	275	1,250,000
12	Equipment Revolving	276	15,000,000
13	General Operations	277	35,619,614
14	Interstate Construction	278	20,000,000
15	Other Federal Aid Programs	279	100,000,000
16	Appalachian Programs	280	100,000,000
17	Nonfederal Aid Construction	281	30,000,000
18	Highway Litter Control	282	<u>1,504,000</u>
19	Total		\$630,723,614

20 The above appropriations are to be expended in ac-

21 cordance with the provisions of chapters seventeen and
 22 seventeen-c of the code.

23 The commissioner of highways shall have the authori-
 24 ty to operate revolving funds within the state road fund for
 25 the operation and purchase of various types of equipment
 26 used directly and indirectly in the construction and main-
 27 tenance of roads and for the purchase of inventories and
 28 materials and supplies.

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

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

**91—Division of Highways—
 Federal Aid Highway Matching Fund**

(WV Code Chapters 17 and 17C)

Account No.

Fund 9018 FY 1997 Org 0803

1	Interstate Construction	278	\$ 20,000,000
2	Appalachian Program	280	100,000,000
3	Other Federal Aid Programs	279	<u>200,000,000</u>
4	Total		\$ 320,000,000
1	Total TITLE II, Section 2—		
2	State Road Fund		<u>\$ 974,403,300</u>

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

LEGISLATIVE

92—Crime Victims Compensation Fund

(WV Code Chapter 14)

Account No.

Fund 1731 FY 1997 Org 2300

		Activity	Other Funds
1	Personal Services	001	\$ 145,096
2	Annual Increment	004	1,625
3	Employee Benefits	010	48,400
4	Unclassified	099	32,000
5	Economic Loss Claim		
6	Payment Fund (R)	334	<u>2,000,000</u>
7	Total		\$ 2,227,121

8 Any unexpended balance remaining in the appropria-
 9 tion for Economic Loss Claim Payment Fund (fund 1731,
 10 activity 334) at the close of the fiscal year 1995-96 is
 11 hereby reappropriated for expenditure during the fiscal
 12 year 1996-97.

93—Tax Reduction and Federal Funding Increased Compliance Transfer Account— Division of Human Services

Account No.

Fund 1732 FY 1997 Org 2300

1	Transfer to Division of Human		
2	Services Medical Services		
3	Trust Fund (5185)—		
4	Total	487	\$ 10,000,000

EXECUTIVE

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

(WV Code Chapters 11A, 12 and 36)

Account No.

Fund 1206 FY 1997 Org 1200

1	Personal Services	001	\$	32,748
2	Annual Increment	004		3,000
3	Employee Benefits	010		14,591
4	Unclassified	099		<u>98,994</u>
5	Total		\$	149,333

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

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

(WV Code Chapter 32)

Account No.

Fund 1225 FY 1997 Org 1200

1	Personal Services	001	\$	218,700
2	Annual Increment	004		4,722
3	Employee Benefits	010		62,116
4	Unclassified	099		<u>168,943</u>
5	Total		\$	454,481

96—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 1401 FY 1997 Org 1400

1	Personal Services	001	\$	346,491
2	Annual Increment	004		3,243
3	Employee Benefits	010		110,227
4	Unclassified	099		<u>816,851</u>
5	Total		\$	1,276,812

97—Department of Agriculture—**West Virginia Rural Rehabilitation Program**

(WV Code Chapter 19)

Account No.

Fund 1408 FY 1997 Org 1400

1	Student and Farm Loans—Total ..	235	\$	535,984
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98—Department of Agriculture—**General John McCausland Memorial Farm**

(WV Code Chapter 19)

Account No.

Fund 1409 FY 1997 Org 1400

1	Personal Services	001	\$	20,684
2	Annual Increment	004		1,400
3	Employee Benefits	010		11,215
4	Unclassified	099		<u>51,493</u>
5	Total		\$	84,792

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

**99—Department of Agriculture—
Farm Operating Fund**

(WV Code Chapter 19)

Account No.

Fund 1412 FY 1997 Org 1400

1	Unclassified—Total	096	\$	950,000
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**100—Attorney General—
Anti-Trust Enforcement**

(WV Code Chapter 47)

Account No.

Fund 1507 FY 1997 Org 1500

1	Personal Services	001	\$	210,400
2	Annual Increment	004		935
3	Employee Benefits	010		60,892
4	Unclassified	099		<u>177,882</u>
5	Total		\$	450,109

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

(WV Code Chapter 47)

Account No.

Fund 1513 FY 1997 Org 1500

1	Unclassified—Total	096	\$	138,019
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**102—Attorney General—
Preneed Funeral Guarantee Fund**

(WV Code Chapter 47)

Account No.

Fund 1514 FY 1997 Org 1500

1	Unclassified—Total	096	\$	290,000
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DEPARTMENT OF ADMINISTRATION

*103—Division of Information Services
and Communications*

(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1997 Org 0210

1	Personal Services	001	\$	4,120,418
2	Annual Increment	004		84,385
3	Employee Benefits	010		1,265,538
4	Unclassified	099		<u>1,613,547</u>
5	Total		\$	7,083,888

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

10 There is hereby appropriated from this fund, in addi-
11 tion to the above appropriation, the necessary amount for
12 the expenditure of funds other than personal services or
13 employee benefits to enable the division to provide infor-
14 mation processing services to user agencies. These servic-
15 es include, but are not limited to, data processing equip-
16 ment, office automation and telecommunications.

17 Each spending unit operating from the general reve-
18 nue fund, from special revenue funds or receiving reim-
19 bursement for postage from the federal government shall
20 be charged monthly for all postage meter service and shall
21 reimburse the revolving fund monthly for all such
22 amounts.

*104—Division of Purchasing—
Revolving Fund*

(WV Code Chapter 5A)

Account No.

Fund 2320 FY 1997 Org 0216

1	Personal Services	001	\$	706,686
2	Annual Increment	004		33,802
3	Employee Benefits	010		269,039
4	Unclassified	099		<u>746,223</u>
5	Total		\$	1,755,750

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

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

105—Division of Personnel

(WV Code Chapter 29)

Account No.

Fund 2440 FY 1997 Org 0222

1	Personal Services	001	\$	2,060,908
2	Annual Increment	004		60,100
3	Employee Benefits	010		589,942
4	Unclassified	099		<u>762,121</u>
5	Total		\$	3,473,071

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of fees collected by the
 8 division of personnel.

106—WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Account No.

Fund 2521 FY 1997 Org 0228

1	Unclassified—Total	096	\$	150,814
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DEPARTMENT OF EDUCATION**107—State Department of Education—
School Building Authority**

(WV Code Chapter 18)

Account No.

Fund 3959 FY 1997 Org 0402

1	Personal Services	001	\$	394,395
2	Annual Increment	004		5,200
3	Employee Benefits	010		107,896
4	Unclassified	099		<u>284,210</u>
5	Total		\$	791,701

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

**108—State Department of Education—
FFA-FHA Camp and Conference Center**

(WV Code Chapter 18)

Account No.

Fund 3960 FY 1997 Org 0402

1	Personal Services	001	\$	694,039
2	Annual Increment	004		13,817
3	Employee Benefits	010		280,678

4	Unclassified	099	<u>944,383</u>
5	Total	\$	1,932,917

DEPARTMENT OF EDUCATION AND THE ARTS

***109—State College and University Systems—
State Systems Registration Fee—
Revenue Bond Construction Fund***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1997 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and the 1995-96 appropriations are hereby reap-
3 propriated for expenditure during the fiscal year 1996-97.

4 The total amount of this appropriation shall be paid
5 from the proceeds of revenue bonds issued pursuant to
6 section eight, article ten, chapter eighteen-b of the code.

***111—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4041 FY 1997 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and the 1995-96 appropriations are hereby reap-
3 propriated for expenditure during the fiscal year 1996-97.

4 The total amount of this appropriation shall be paid
5 from the proceeds of revenue bonds issued pursuant to
6 section eight, article twelve-b, chapter eighteen of the
7 code.

***112—State University System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)***

Control Account

(WV Code Chapters 18 and 18B)

Account No.

Fund 4007 FY 1997 Org 0461

1	Debt Service (R)	040	\$ 3,879,386
2	Capital Repairs and Alterations (R) ..	251	2,740,356
3	Miscellaneous Projects (R)	252	400,000
4	Computer and Telecommunications		
5	Technology (R)	438	736,427
6	West Virginia Institute of		
7	Technology Base		
8	Transfer from Board		
9	of Directors	458	<u>305,500</u>
10	Total		\$ 8,061,669

11 Any unexpended balances remaining in the prior
 12 years' and the 1995-96 appropriations (except fiscal year
 13 1994-95, activity 251 and activity 438) are hereby reap-
 14 propriated for expenditure during the fiscal year 1996-97.

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

20 The above appropriations, except for debt service, may
 21 be transferred to special revenue funds for capital im-
 22 provement projects at university system institutions.

23 Pursuant to the provisions of enrolled senate bill 591,
 24 regular session 1996, section nine, article two, chapter
 25 eighteen-b of the code of West Virginia, the amount of
 26 one hundred eleven thousand eight hundred eighty-nine
 27 dollars shall be transferred from the West Virginia univer-
 28 sity institute of technology base transfer from board of
 29 directors line (fund 4007, activity 458) to the state college
 30 system—state system registration fee—special capital im-

31 improvement fund (capital improvement and bond retire-
 32 ment fund) control account, fund 4289, fiscal year
 33 1996-97, organization 0481 for the purpose of bonded
 34 indebtedness liability attributable to West Virginia univer-
 35 sity institute of technology.

*113—State University System—
 State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4008 FY 1997 Org 0461

1	Debt Service (R)	040	\$ 5,078,144
2	Building and Campus Renewal (R) . .	258	10,874,640
3	Facilities Planning and		
4	Administration (R)	386	190,000
5	Computer and Telecommunications		
6	Technology (R)	438	736,427
7	West Virginia University Institute of		
8	Technology Base		
9	Transfer from Board		
10	of Directors	458	<u>712,800</u>
11	Total		\$ 17,592,011

12 Any unexpended balances remaining in the prior
 13 years' and the 1995-96 appropriations (except fiscal year
 14 1994-95, activity 258 and fiscal year 1994-95, activity
 15 438) are hereby reappropriated for expenditure during
 16 the fiscal year 1996-97.

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

22 The above appropriations, except for debt service, may
 23 be transferred to special revenue funds for capital im-
 24 provement projects at university system institutions.

25 Pursuant to the provisions of enrolled senate bill 591,
 26 regular session 1996, section nine, article two, chapter
 27 eighteen-b of the code of West Virginia, the amount of
 28 two hundred sixty-one thousand two hundred dollars shall
 29 be transferred from the West Virginia university institute
 30 of technology base transfer from board of directors line
 31 activity 458, to the state college system—state system tui-
 32 tion fee—special capital improvement fund (capital im-
 33 provement and bond retirement fund) control account,
 34 fund 4290, fiscal year 1996-97, organization 0481, for the
 35 purpose of bonded indebtedness liability attributable to
 36 West Virginia university institute of technology.

***114—State University System—
 West Virginia University Health Sciences Center
 Spending Authority***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1997 Org 0463

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

2 Any unexpended balance remaining in the fiscal year
 3 1995-96 appropriation for the West Virginia University
 4 Health Sciences Center is hereby reappropriated for ex-
 5 penditure during the fiscal year 1996-97.

***115—State College System—
 State System Registration Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4289 FY 1997 Org 0481

1	Debt Service (R)	040	\$ 2,055,959
2	Capital Repairs and Alterations (R) . .	251	1,460,389
3	West Virginia University Institute		
4	of Technology Debt Service		
5	Transfer from Board		
6	of Trustees	459	<u>111,889</u>
7	Total		\$ 3,574,237

8 Any unexpended balances remaining in the prior
9 years' and 1995-96 appropriations are hereby reappropri-
10 ated for expenditure during the fiscal year 1996-97.

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

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

19 Pursuant to the provisions of enrolled senate bill no.
20 591, regular session 1996, section nine, article two, chapter
21 eighteen-b of the code of West Virginia, the above appro-
22 priation in the amount of one hundred eleven thousand
23 eight hundred eighty-nine dollars in the West Virginia
24 university institute of technology debt service transfer
25 from board of trustees line, activity 459, shall be used
26 solely for the purpose of the bonded indebtedness liability
27 attributable to West Virginia university institute of technol-
28 ogy.

**116—State College System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account**

(WV Code Chapters 18 and 18B)

Account No.

Fund 4290 FY 1997 Org 0481

1	Debt Service (R)	040	\$	2,240,592
2	Capital Improvements (New) (R) . .	259		1,052,040
3	Building and Campus Renewal and			
4	Facilities Planning			
5	and Administration (R)	538		2,404,700
6	Capital Contingencies			
7	and Emergencies (R)	537		222,900
8	West Virginia University Institute of			
9	Technology Debt Service			
10	Transfer from			
11	Board of Trustees	459		<u>261,200</u>
12	Total		\$	6,181,432

13 Any unexpended balances remaining in the prior
 14 years' and 1995-96 appropriations are hereby reappropri-
 15 ated for expenditure during the fiscal year 1996-97.

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

21 The above appropriations, except for debt service, may
 22 be transferred to special revenue funds for capital im-
 23 provement projects at college system institutions.

24 Pursuant to the provisions of enrolled senate bill no.
 25 591, regular session 1996, section nine, article two, chapter
 26 eighteen-b of the code of West Virginia, the amount of
 27 two hundred sixty-one thousand two hundred dollars in
 28 the West Virginia institute of technology debt service
 29 transfer from the board of trustees line, activity 459, shall
 30 be used solely for the purpose of the bonded indebtedness
 31 liability attributable to West Virginia university institute of
 32 technology.

***117—State Board of Rehabilitation—
 Division of Rehabilitation Services—***

***West Virginia Rehabilitation Center
Special Account***

(WV Code Chapter 18)

Account No.

Fund 8664 FY 1997 Org 0932

1	Personal Services	001	\$	350,000
2	Workshop Development	163		450,000
3	Medical Services Trust			
4	Fund-Transfer	512		2,000,000
5	Workshop-Supported Employment . .	484		<u>50,000</u>
6	Total		\$	2,850,000

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

118—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Account No.

Fund 5425 FY 1997 Org 0505

1	Personal Services	001	\$	181,520
2	Annual Increment	004		4,661
3	Employee Benefits	010		57,705
4	Unclassified	099		<u>103,550</u>
5	Total		\$	347,436

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

***119—Division of Health—
Vital Statistics***

(WV Code Chapter 16)

Account No.

Fund 5144 FY 1997 Org 0506

1	Personal Services	001	\$	205,300
2	Annual Increment	004		8,203
3	Employee Benefits	010		99,871
4	Unclassified.	099		<u>82,650</u>
5	Total		\$	396,024

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

(WV Code Chapter 16)

Account No.

Fund 5156 FY 1997 Org 0506

1	Debt Service (R)	040	\$	2,740,000
2	Broad Based Provider Tax (R) ...	566		2,750,000
3	Institutional Facilities			
4	Operations (R)	335		37,171,693
5	Medical Services Trust			
6	Fund—Transfer (R)	512		<u>23,300,000</u>
7	Total		\$	65,961,693

8 Any unexpended balance remaining in the appropria-
9 tion for hospital services revenue account at the close of
10 the fiscal year 1995-96 is hereby reappropriated for ex-
11 penditure during the fiscal year 1996-97, except for fund
12 5156, activity 261 (fiscal year 1992-93), fund 5156, activ-
13 ity 335 (fiscal year 1993-94), and fund 5156, activity 040,
14 activity 512 and activity 566 (fiscal year 1994-95), which
15 shall expire on June 30, 1996.

16 The total amount of this appropriation shall be paid
17 from the hospital services revenue account special fund
18 created by section fifteen-a, article one, chapter sixteen of
19 the code, and shall be used for operating expenses and for

20 improvements in connection with existing facilities and
21 bond payments.

22 The secretary of the department of health and human
23 resources is authorized to utilize up to ten percent of the
24 funds from the above appropriation for Institutional Facil-
25 ities Operations line to facilitate cost effective and cost
26 saving services at the community level.

27 Necessary funds from the above appropriation may be
28 used for medical facilities operations, either in connection
29 with this account or in connection with the line item desig-
30 nated Institutional Facilities Operations in the consolidated
31 medical service fund (fund 0525, fiscal year 1997, organi-
32 zation 0506).

33 From the above appropriation to Institutional Facilities
34 Operations, together with available funds from the consoli-
35 dated medical services fund (fund 0525, activity 335), on
36 July 1, 1996, the sum of two hundred thousand dollars
37 shall be transferred to the department of agriculture—land
38 division as advance payment for the purchase of food
39 products; actual payments for such purchases shall not be
40 required until such credits have been completely expend-
41 ed.

***121—Division of Health—
Laboratory Services***

(WV Code Chapter 16)

Account No.

Fund 5163 FY 1997 Org 0506

1	Personal Services	001	\$	424,568
2	Annual Increment	004		9,450
3	Employee Benefits	010		141,586
4	Unclassified	099		<u>450,000</u>
5	Total		\$	1,025,604

***122—Division of Health—
Health Facility Licensing***

(WV Code Chapter 16)

Account No.

Fund 5172 FY 1997 Org 0506

1	Personal Services	001	\$	162,952
2	Annual Increment	004		2,250
3	Employee Benefits	010		57,791
4	Unclassified	099		<u>102,904</u>
5	Total		\$	325,897

***123—Division of Health—
Hepatitis B Vaccine***

(WV Code Chapter 16)

Account No.

Fund 5183 FY 1997 Org 0506

1	Personal Services	001	\$	49,300
2	Annual Increment	004		900
3	Employee Benefits	010		15,751
4	Unclassified	099		1,600,000
5	Vaccine for Volunteer Squads ...	565		<u>50,000</u>
6	Total		\$	1,715,951

124—Health Care Cost Review Authority

(WV Code Chapter 16)

Account No.

Fund 5375 FY 1997 Org 0507

1	Personal Services	001	\$	1,151,577
2	Annual Increment	004		11,328
3	Employee Benefits	010		386,119
4	Unclassified	099		<u>1,871,972</u>
5	Total		\$	3,420,996

6 The above appropriation is to be expended in accor-
 7 dance with and pursuant to the provisions of article
 8 twenty-nine-b, chapter sixteen of the code and from the
 9 special revolving fund designated health care cost review
 10 fund.

***125—Division of Human Services—
 Health Care Provider Tax***

(WV Code Chapter 11)

Account No.

Fund 5090 FY 1997 Org 0511

1	Unclassified—Total	096	\$ 127,250,459
2	Office Code Enhancements	389	<u>750,000</u>
3	Total		\$ 128,000,459

4 From the above appropriation, an amount not to ex-
 5 ceed two hundred thousand dollars shall be transferred to
 6 a special revenue account in the treasury for use by the
 7 department of health and human resources for administra-
 8 tive purposes. The remainder of all moneys deposited in
 9 the fund shall be transferred to the West Virginia medical
 10 services fund.

***126—Division of Human Services—
 Child Support Enforcement***

(WV Code Chapter 48A)

Account No.

Fund 5094 FY 1997 Org 0511

1	Personal Services	001	\$ -0-
2	Annual Increment	004	-0-
3	Employee Benefits	010	-0-
4	Unclassified	096	<u>21,181,935</u>
5	Total		\$ 21,181,935

**127—Division of Human Services—
Medical Services Trust Fund**

(WV Code Chapter 9)

Account No.

Fund 5185 FY 1997 Org 0511

1	Eligibility Expansion	582	\$	5,420,911
2	State Institutions DPSH Payments .	583		4,466,156
3	Hospice Services	584		340,115
4	Match Drop	585		<u>5,400,000</u>
5	Total		\$	15,627,182

6 The Match Drop line item above shall be used in con-
7 junction with funds appropriated to the division of human
8 services in the Medical Services line item (fund 0403,
9 activity 189).

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

**128—State Armory Board—
General Armory Fund**

(WV Code Chapter 15)

Account No.

Fund 6102 FY 1997 Org 0604

1	Unclassified—Total	096	\$	325,000
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**129—West Virginia Division of Corrections—
Parolee Supervision Fees**

(WV Code Chapter 62)

Account No.

Fund 6362 FY 1997 Org 0608

1	Personal Services	001	\$	82,928
2	Employee Benefits	010		35,664

3	Current Expenses	020	<u>115,408</u>
4	Total		\$ 234,000

***130—West Virginia State Police—
Motor Vehicle Inspection Fund***

(WV Code Chapter 17C)

Account No.

Fund 6501 FY 1997 Org 0612

1	Personal Services	001	\$ 626,191
2	Annual Increment	004	2,750
3	Employee Benefits	010	177,755
4	Unclassified	099	<u>866,221</u>
5	Total		\$ 1,672,917

6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees collected for
8 inspection stickers as provided by law.

***131—West Virginia State Police—
Drunk Driving Prevention Fund***

(WV Code Chapter 15)

Account No.

Fund 6513 FY 1997 Org 0612

1	Unclassified—Total	096	\$ 1,034,000
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2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of receipts collected
4 pursuant to sections nine-a and sixteen, article fifteen,
5 chapter eleven of the code and paid into a revolving fund
6 account in the state treasury.

***132—West Virginia State Police—
Surplus Real Property Proceeds Fund***

(WV Code Chapter 15)

Account No.

Fund 6516 FY 1997 Org 0612

1	Unclassified—Total	096	\$	500,000
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***133—West Virginia State Police—
Surplus Transfer Account***

(WV Code Chapter 15)

Account No.

Fund 6519 FY 1997 Org 0612

1	Unclassified—Total	096	\$	214,500
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***134—Regional Jail and Correctional
Facility Authority***

(WV Code Chapter 31)

Account No.

Fund 6675 FY 1997 Org 0615

1	Personal Services	001	\$	434,213
2	Annual Increment	004		6,750
3	Employee Benefits	010		147,172
4	Debt Service	040		10,000,000
5	Unclassified	099		<u>277,095</u>
6	Total		\$	10,865,230

***135—Division of Veterans' Affairs—
Veterans' Home***

(WV Code Chapter 19A)

Account No.

Fund 6754 FY 1997 Org 0618

1	Unclassified—Total	096	\$	240,000
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***136—Fire Commission—
Fire Marshal Fees***

(WV Code Chapter 29)

Account No.

Fund 6152 FY 1997 Org 0619

1	Personal Services	001	\$	391,785
2	Annual Increment	004		5,200
3	Employee Benefits	010		116,075
4	Unclassified	099		<u>296,080</u>
5	Total		\$	809,140

6 Any unexpended cash balance remaining in fund
 7 6152 at the close of the fiscal year 1995-96 is hereby
 8 available for expenditure as part of the fiscal year
 9 1996-97 appropriation.

DEPARTMENT OF TAX AND REVENUE*137—Division of Banking—
Lending and Credit Rate Board*

(WV Code Chapter 47A)

Account No.

Fund 3040 FY 1997 Org 0303

1	Personal Services	001	\$	10,586
2	Employee Benefits	010		4,411
3	Unclassified	099		<u>10,648</u>
4	Total		\$	25,645

138—Division of Banking

(WV Code Chapter 31A)

Account No.

Fund 3041 FY 1997 Org 0303

1	Personal Services	001	\$	1,110,253
2	Annual Increment	004		11,800
3	Employee Benefits	010		331,828

4	Unclassified	099	<u>525,540</u>
5	Total		\$ 1,979,421

***139—Tax Division—
Office of Chief Inspector***

(WV Code Chapter 6)

Account No.

Fund 7067 FY 1997 Org 0702

1	Personal Services	001	\$ 1,463,400
2	Annual Increment	004	24,100
3	Employee Benefits	010	449,289
4	Unclassified	099	<u>486,807</u>
5	Total		\$ 2,423,596

***140—Tax Division—
Cemetery Company Account***

(WV Code Chapter 35)

Account No.

Fund 7071 FY 1997 Org 0702

1	Personal Services	001	\$ 16,116
2	Employee Benefits	010	4,966
3	Unclassified	099	<u>10,918</u>
4	Total		\$ 32,000

***141—Tax Division—
Special Audit and Investigative Unit***

(WV Code Chapter 11)

Account No.

Fund 7073 FY 1997 Org 0702

1	Personal Services	001	\$ 645,846
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2	Annual Increment	004		3,000
3	Employee Benefits	010		216,503
4	Unclassified	099		<u>346,021</u>
5	Total		\$	1,211,370

***142—Insurance Commissioner—
Examination Revolving Fund***

(WV Code Chapter 33)

Account No.

Fund 7150 FY 1997 Org 0704

1	Personal Services	001	\$	409,390
2	Annual Increment	004		300
3	Employee Benefits	010		100,930
4	Unclassified	099		<u>313,500</u>
5	Total		\$	824,120

***143—Insurance Commissioner—
Consumer Advocate***

(WV Code Chapter 33)

Account No.

Fund 7151 FY 1997 Org 0704

1	Personal Services	001	\$	73,500
2	Annual Increment	004		450
3	Employee Benefits	010		29,226
4	Unclassified	099		<u>117,521</u>
5	Total		\$	220,697

144—Insurance Commissioner

(WV Code Chapter 33)

Account No.

Fund 7152 FY 1997 Org 0704

1	Personal Services	001	\$	1,581,988
2	Annual Increment	004		28,150
3	Employee Benefits	010		573,216
4	Unclassified	099		<u>852,900</u>
5	Total		\$	3,036,254

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of collections of fees and
 8 charges as provided by law.

***145—Racing Commission—
 Relief Fund***

(WV Code Chapter 19)

Account No.

Fund 7300 FY 1997 Org 0707

1	Medical Expenses—Total	245	\$	57,000
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2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of collections of license
 4 fees and fines as provided by law.

5 No expenditures shall be made from this account
 6 except for hospitalization, medical care and/or funeral
 7 expenses for persons contributing to this fund.

***146—Racing Commission—
 Administration and Promotion***

(WV Code Chapter 19)

Account No.

Fund 7304 FY 1997 Org 0707

1	Personal Services	001	\$	53,700
2	Annual Increment	004		850
3	Employee Benefits	010		22,947

4	Unclassified	099	<u>47,408</u>
5	Total		\$ 124,905

***147—Racing Commission—
General Administration***

(WV Code Chapter 19)

Account No.

Fund 7305 FY 1997 Org 0707

1	Personal Services	001	\$ 1,016,300
2	Annual Increment	004	14,900
3	Employee Benefits	010	291,353
4	Unclassified	099	<u>130,000</u>
5	Total		\$ 1,452,553

***148—Racing Commission—
Administration, Promotion and Education Fund***

(WV Code Chapter 19)

Account No.

Fund 7307 FY 1997 Org 0707

1	Unclassified—Total	096	\$ 35,000
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***149—Alcohol Beverage Control Administration—
Wine License Special Fund***

(WV Code Chapter 60)

Account No.

Fund 7351 FY 1997 Org 0708

1	Personal Services	001	\$ 200,408
2	Annual Increment	004	2,450
3	Employee Benefits	010	47,328
4	Unclassified	099	<u>183,477</u>
5	Total		\$ 433,663

150—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Account No.

Fund 7352 FY 1997 Org 0708

1	Personal Services	001	\$	2,455,256
2	Annual Increment	004		70,401
3	Employee Benefits	010		1,364,785
4	Unclassified	099		<u>2,023,296</u>
5	Total		\$	5,913,738

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the
9 commissioner and the salaries, expenses and equipment of
10 administrative offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in
12 addition to the above appropriation, the necessary amount
13 for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION**151—Division of Motor Vehicles—
Driver's License Reinstatement Fund**

(WV Code Chapter 17B)

Account No.

Fund 8213 FY 1997 Org 0802

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>444,773</u>
5	Total		\$	444,773

**152—Division of Motor Vehicles—
Driver Rehabilitation**

(WV Code Chapter 17C)

Account No.

Fund 8214 FY 1997 Org 0802

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>889,950</u>
5	Total		\$	889,950

**153—Division of Motor Vehicles—
Insurance Certificate Fees**

(WV Code Chapter 20)

Account No.

Fund 8215 FY 1997 Org 0802

1	Personal Services	001	\$	559,600
2	Annual Increment	004		13,400
3	Employee Benefits	010		234,911
4	Unclassified	099		<u>205,000</u>
5	Total		\$	1,012,911

**154—Division of Motor Vehicles—
Motorboat Licenses**

(WV Code Chapter 20)

Account No.

Fund 8216 FY 1997 Org 0802

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-

3	Employee Benefits	010		-0-
4	Unclassified	099		<u>145,938</u>
5	Total		\$	145,938

***155—Division of Motor Vehicles—
Returned Check Fees***

(WV Code Chapter 17)

Account No.

Fund 8217 FY 1997 Org 0802

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		<u>28,919</u>
5	Total		\$	28,919

BUREAU OF COMMERCE

156—Division of Forestry

(WV Code Chapter 19)

Account No.

Fund 3081 FY 1997 Org 0305

1	Personal Services	001	\$	272,688
2	Annual Increment	004		3,650
3	Employee Benefits	010		71,948
4	Unclassified	099		<u>353,789</u>
5	Total		\$	702,075

***157—Division of Forestry—
Timberland Enforcement Operations***

(WV Code Chapter 19)

Account No.

Fund 3082 FY 1997 Org 0305

1	Unclassified—Total	096	\$	250,000
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*158—Division of Forestry—
Severance Tax Operations*

(WV Code Chapter 11)

Account No.

Fund 3084 FY 1997 Org 0305

1	Unclassified—Total	096	\$	2,524,352
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159—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

Fund 3100 FY 1997 Org 0306

1	Personal Services	001	\$	40,432
2	Annual Increment	004		508
3	Employee Benefits	010		7,112
4	Unclassified	099		<u>177,983</u>
5	Total		\$	226,035

6 The above appropriation shall be used in accordance
7 with section four, article two, chapter twenty-nine of the
8 code.

*160—West Virginia Development Office—
Energy Assistance*

(WV Code Chapter 5B)

Account No.

Fund 3144 FY 1997 Org 0307

1 Any unexpended balances remaining in the appropri-
2 ations for Unclassified (fund 3144, activity 099), and
3 Energy Assistance—Total (fund 3144, activity 647) at the
4 close of the fiscal year 1995-96 are hereby reappropriated

5 for expenditure during the fiscal year 1996-97.

***161—Division of Labor—
Contractor Licensing Board Fund***

(WV Code Chapter 21)

Account No.

Fund 3187 FY 1997 Org 0308

1	Personal Services	001	\$	723,969
2	Annual Increment	004		9,928
3	Employee Benefits	010		282,828
4	Unclassified	099		<u>780,063</u>
5	Total		\$	1,796,788

***162—Division of Labor—
Elevator Safety Act***

(WV Code Chapter 21)

Account No.

Fund 3188 FY 1997 Org 0308

1	Personal Services	001	\$	185,205
2	Annual Increment	004		2,249
3	Employee Benefits	010		66,438
4	Unclassified	099		<u>289,328</u>
5	Total		\$	543,220

163—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 3200 FY 1997 Org 0310

1	Personal Services	001	\$	5,966,736
2	Annual Increment	004		141,632

3	Employee Benefits	010	2,306,718
4	Unclassified	099	3,522,244
5	Capital Improvements and		
6	Land Purchase (R)	248	<u>1,149,443</u>
7	Total		\$ 13,086,773

8 The total amount of this appropriation shall be paid
9 from a special revenue fund out of fees collected by the
10 division of natural resources.

11 Any unexpended balances remaining in the appropri-
12 ations for Renovation of Dams (fund 3200, activity 414)
13 and Capital Improvements and Land Purchase (fund 3200,
14 activity 248) at the close of the fiscal year 1995-96 are
15 hereby reappropriated for expenditure during the fiscal
16 year 1996-97.

***164—Division of Natural Resources—
Game, Fish and Aquatic Life Fund***

(WV Code Chapter 20)

Account No.

Fund 3202 FY 1997 Org 0310

1	Unclassified—Total	096	\$	6,000
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***165—Division of Natural Resources—
Nongame Fund***

(WV Code Chapter 20)

Account No.

Fund 3203 FY 1997 Org 0310

1	Personal Services	001	\$	83,522
2	Annual Increment	004		1,000
3	Employee Benefits	010		27,571
4	Unclassified	099		<u>31,603</u>
5	Total		\$	143,696

**166—Division of Natural Resources—
Planning and Development Division**

(WV Code Chapter 20)

Account No.

Fund 3205 FY 1997 Org 0310

1	Personal Services	001	\$	203,148
2	Annual Increment	004		3,250
3	Employee Benefits	010		78,792
4	Unclassified	099		<u>341,351</u>
5	Total		\$	626,541

**167—Division of Natural Resources—
Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

Account No.

Fund 3253 FY 1997 Org 0310

1	Unclassified—Total	096	\$	95,000
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**168—Division of Natural Resources—
Recycling Assistance Fund**

(WV Code Chapter 20)

Account No.

Fund 3254 FY 1997 Org 0310

1	Personal Services	001	\$	110,268
2	Annual Increment	004		2,300
3	Employee Benefits	010		47,772
4	Unclassified (R)	099		<u>2,639,914</u>
5	Total		\$	2,800,254
6	Any unexpended balance remaining in the appropriation			
7	for Unclassified (fund 3254, activity 099) at the close			

8 of the fiscal year 1995-96 is hereby reappropriated for
9 expenditure during the fiscal year 1996-97.

***169—Division of Natural Resources—
Whitewater Advertising and Promotion Fund***

(WV Code Chapter 20)

Account No.

Fund 3256 FY 1997 Org 0310

1 Unclassified—Total 096 \$ 20,000

BUREAU OF EMPLOYMENT PROGRAMS

***170—Bureau of Employment Programs—
Workers' Compensation Fund***

(WV Code Chapter 23)

Account No.

Fund 3440 FY 1997 Org 0322

1	Personal Services	001	\$ 15,114,407
2	Annual Increment	004	337,253
3	Employee Benefits	010	5,511,946
4	Unclassified (R)	099	29,176,878
5	Employer Excess Liability Fund . .	226	<u>112,798</u>
6	Total		\$ 50,253,282

7 Any unexpended balance remaining in the appropria-
8 tion for Unclassified (fund 3440, activity 099) at the close
9 of the fiscal year 1995-96 is hereby reappropriated for
10 expenditure during the fiscal year 1996-97.

11 There is hereby authorized to be paid out of the above
12 appropriation the amount necessary for the premiums on
13 bonds given by the treasurer as bond custodian for the
14 protection of the workers' compensation fund. This sum
15 shall be transferred to the board of risk and insurance
16 management.

BUREAU OF ENVIRONMENT***171—Solid Waste Management Board***

(WV Code Chapter 20)

Account No.

Fund 3288 FY 1997 Org 0312

1	Personal Services	001	\$	273,984
2	Annual Increment	004		3,200
3	Employee Benefits	010		89,389
4	Landfill Assistance	488		1,000,000
5	Unclassified	099		<u>1,971,455</u>
6	Total		\$	3,338,028

***172—Division of Environmental Protection—
Special Reclamation Fund***

(WV Code Chapter 22A)

Account No.

Fund 3321 FY 1997 Org 0313

1	Personal Services	001	\$	289,100
2	Annual Increment	004		6,900
3	Employee Benefits	010		96,349
4	Unclassified	099		<u>13,194,038</u>
5	Total		\$	13,586,387

***173—Division of Environmental Protection—
Oil and Gas Reclamation Trust***

(WV Code Chapter 22B)

Account No.

Fund 3322 FY 1997 Org 0313

1	Unclassified—Total	096	\$	465,000
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**174—Division of Environmental Protection—
Oil and Gas Operating Permits**

(WV Code Chapter 22B)

Account No.

Fund 3323 FY 1997 Org 0313

1	Personal Services	001	\$	206,500
2	Annual Increment	004		3,200
3	Employee Benefits	010		66,187
4	Unclassified	099		<u>487,466</u>
5	Total		\$	763,353

**175—Division of Environmental Protection—
Mines and Minerals Operations Fund**

(WV Code Chapter 22)

Account No.

Fund 3324 FY 1997 Org 0313

1	Personal Services	001	\$	2,250,951
2	Annual Increment	004		36,582
3	Employee Benefits	010		678,237
4	Unclassified	099		<u>954,929</u>
5	Total		\$	3,920,699

**176—Division of Environmental Protection—
Underground Storage Tanks
Administrative Fund**

(WV Code Chapter 20)

Account No.

Fund 3325 FY 1997 Org 0313

1	Personal Services	001	\$	312,050
2	Annual Increment	004		4,675

3	Employee Benefits	010		103,621
4	Unclassified	099		<u>156,356</u>
5	Total		\$	576,702

***177—Division of Environmental Protection—
Hazardous Waste Emergency and Response Fund***

(WV Code Chapter 20)

Account No.

Fund 3331 FY 1997 Org 0313

1	Personal Services	001	\$	344,028
2	Annual Increment	004		6,125
3	Employee Benefits	010		109,343
4	Unclassified	099		<u>1,008,331</u>
5	Total		\$	1,467,827

***178—Division of Environmental Protection—
Solid Waste Reclamation and
Environmental Response Fund***

(WV Code Chapter 20)

Account No.

Fund 3332 FY 1997 Org 0313

1	Personal Services	001	\$	155,584
2	Annual Increment	004		1,900
3	Employee Benefits	010		47,278
4	Landfill Assistance	488		1,000,000
5	Sludge Study	432		45,025
6	Unclassified	099		<u>960,720</u>
7	Total		\$	2,210,507

***179—Division of Environmental Protection—
Solid Waste Enforcement Fund***

(WV Code Chapter 20)

Account No.

Fund 3333 FY 1997 Org 0313

1	Personal Services	001	\$ 1,787,292
2	Annual Increment	004	28,581
3	Employee Benefits	010	576,488
4	Unclassified	099	1,332,767
5	Litter Control-Conservation Officers . .	564	<u>200,000</u>
6	Total		\$ 3,925,128

***180—Division of Environmental Protection—
Fees and Operating Expenses***

(WV Code Chapter 16)

Account No.

Fund 3336 FY 1997 Org 0313

1	Personal Services	001	\$ 2,571,800
2	Annual Increment	004	2,900
3	Employee Benefits	010	746,421
4	Unclassified	099	<u>1,165,434</u>
5	Total		\$ 4,486,555

***181—Division of Environmental Protection—
Environmental Laboratory
Certification Fund***

(WV Code Chapter 22)

Account No.

Fund 3343 FY 1997 Org 0313

1	Personal Services	001	\$ 87,324
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150		APPROPRIATIONS		[Ch. 8
2	Annual Increment	004		1,250
3	Employee Benefits	010		27,588
4	Unclassified	099		<u>34,188</u>
5	Total		\$	150,350

182—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Account No.

Fund 3371 FY 1997 Org 0315

1	Personal Services	001	\$	149,335
2	Annual Increment	004		1,200
3	Employee Benefits	010		26,833
4	Unclassified	099		<u>49,074</u>
5	Total		\$	226,442

MISCELLANEOUS BOARDS AND COMMISSIONS

183—Hospital Finance Authority

(WV Code Chapter 16)

Account No.

Fund 5475 FY 1997 Org 0509

1	Personal Services	001	\$	50,219
2	Annual Increment	004		200
3	Employee Benefits	010		15,228
4	Unclassified	099		<u>67,116</u>
5	Total		\$	132,763

6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees and collections
8 as provided by article twenty-nine-a, chapter sixteen of the
9 code.

184—Municipal Bond Commission

(WV Code Chapter 13)

Account No.

Fund 7253 FY 1997 Org 0706

1	Personal Services	001	\$	107,470
2	Annual Increment	004		2,700
3	Employee Benefits	010		37,424
4	Unclassified	099		<u>54,550</u>
5	Total		\$	202,144

**185—WV State Board of Examiners
for Licensed Practical Nurses**

(WV Code Chapter 30)

Account No.

Fund 8517 FY 1997 Org 0906

1	Unclassified—Total	096	\$	330,118
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**186—WV Board of Examiners for
Registered Professional Nurses**

(WV Code Chapter 30)

Account No.

Fund 8520 FY 1997 Org 0907

1	Unclassified—Total	096	\$	805,823
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**187—West Virginia Cable Television
Advisory Board**

(WV Code Chapter 5)

Account No.

Fund 8609 FY 1997 Org 0924

APPROPRIATIONS

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1	Personal Services	001	\$	151,640
2	Annual Increment	004		4,000
3	Employee Benefits	010		42,370
4	Unclassified	099		<u>60,268</u>
5	Total		\$	258,278

188—Public Service Commission

(WV Code Chapter 24)

Account No.

Fund 8623 FY 1997 Org 0926

1	Personal Services	001	\$	6,178,316
2	Annual Increment	004		90,279
3	Employee Benefits	010		1,904,176
4	Unclassified	099		2,452,000
5	750 KV Transmission Line Study .	608		-0-
6	Sewage Plant Assistance	400		<u>175,000</u>
7	Total		\$	10,799,771

8 The total amount of this appropriation shall be paid
 9 from a special revenue fund out of collections for special
 10 license fees from public service corporations as provided
 11 by law.

**189—Public Service Commission—
Gas Pipeline Division**

(WV Code Chapter 24B)

Account No.

Fund 8624 FY 1997 Org 0926

1	Personal Services	001	\$	133,750
2	Annual Increment	004		5,556
3	Employee Benefits	010		40,232

4	Unclassified	099	<u>98,500</u>
5	Total		\$ 278,038

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of receipts collected for
 8 or by the public service commission pursuant to and in the
 9 exercise of regulatory authority over pipeline companies
 10 as provided by law.

***190—Public Service Commission—
 Motor Carrier Division***

(WV Code Chapter 24A)

Account No.

Fund 8625 FY 1997 Org 0926

1	Personal Services	001	\$ 1,337,796
2	Annual Increment	004	34,723
3	Employee Benefits	010	405,827
4	Unclassified	099	<u>670,500</u>
5	Total		\$ 2,448,846

6 The total amount of this appropriation shall be paid
 7 from a special revenue fund out of receipts collected for
 8 or by the public service commission pursuant to and in the
 9 exercise of regulatory authority over motor carriers as
 10 provided by law.

***191—Public Service Commission—
 Consumer Advocate***

(WV Code Chapter 24)

Account No.

Fund 8627 FY 1997 Org 0926

1	Personal Services	001	\$ 368,595
2	Annual Increment	004	3,350
3	Employee Benefits	010	106,740

4	Unclassified	099	<u>336,784</u>
5	Total		\$ 815,469

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the public service commission.

192—Real Estate Commission

(WV Code Chapter 47)

Account No.

Fund 8635 FY 1997 Org 0927

1	Personal Services	001	\$ 289,132
2	Annual Increment	004	3,600
3	Employee Benefits	010	91,906
4	Unclassified	099	<u>269,400</u>
5	Total		\$ 654,038

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

193—WV Board of Respiratory Care

(WV Code Chapter 30)

Account No.

Fund 8676 FY 1997 Org 0935

1	Unclassified—Total	096	\$ 190,000
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194—Dietitians' Licensure Board

Account No.

Fund 8680 FY 1997 Org 0936

1	Unclassified—Total	096	\$ 105,000
1	Total TITLE II, Section 3—		
2	Other Funds		<u>\$ 484,379,840</u>

1 **Sec. 4. Appropriations from lottery net profits.—Net**

2 profits of the lottery, not to exceed fifty-nine million five
 3 hundred thousand dollars, are to be deposited by the lot-
 4 tery director to the following accounts in the amounts
 5 indicated. The auditor shall prorate each deposit of net
 6 profits by the lottery director among fund numbers 1020,
 7 3067, 3267, 3951, 3963, 4030, 5405 and 5063 in the
 8 proportion the appropriation for each account bears to the
 9 total of the appropriations for the eight accounts.

195—Governor's Office

(WV Code Chapter 5)

Account No.

Fund 1020 FY 1997 Org 0100

			Lottery
		Activity	Funds
1	Center for Arts, Sciences		
2	and Education-Total	230	\$ -0-

**196—West Virginia Development Office—
 Tourism Commission**

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1997 Org 0304

1	Tourism—Unclassified (R)	662	\$ 2,906,092
2	Tourism—Advertising (R)	618	2,240,000
3	Tourism—Telemarketing Center . .	463	100,000
4	State Parks and		
5	Recreation Advertising (R) . . .	619	<u>560,000</u>
6	Total		\$ 5,806,092
7	Any unexpended balances remaining in the appropri-		
8	ations for Unclassified (fund 3067, activity 099),		
9	Tourism-Advertising (fund 3067, activity 618), State Parks		
10	and Recreation Advertising (fund 3067, activity 619),		
11	Tourism-Unclassified (fund 3067, activity 662) and		

12 Advertising—Total (fund 3073, activity 541) are hereby
 13 reappropriated for expenditure during the fiscal year
 14 1996-97.

197—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1997 Org 0310

1	Capital Outlay—Parks (R)	288	\$	-0-
2	Coopers Rock—Land			
3	Acquisition (R)	439		200,000
4	Parks Operations—Unclassified ..	645		<u>1,473,908</u>
5	Total		\$	1,673,908

6 Any unexpended balances remaining in the appropri-
 7 ations for Unclassified (fund 3267, activity 099), Capital
 8 Outlay — Parks (fund 3267, activity 288) and Coopers
 9 Rock — Land Acquisition (fund 3267, activity 439) at the
 10 close of the fiscal year 1995-96 are hereby reappropriated
 11 for expenditure during the fiscal year 1996-97.

198—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 3951 FY 1997 Org 0402

1	Computer Basic Skills—Total (R) .	567	\$	7,500,000
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2 Any unexpended balances remaining in the appropri-
 3 ation for Elementary Computer Education—Total (fund
 4 3951, activity 285), Computer Basic Skills — Total (fund
 5 3951, activity 567) and Computer Basic Skills — Total
 6 (fund 3964, activity 567) at the close of the fiscal year
 7 1995-96 are hereby reappropriated for expenditure dur-
 8 ing the fiscal year 1996-97.

**199—State Department of Education—
School Building Authority**

(WV Code Chapter 18)

Account No.

Fund 3963 FY 1997 Org 0402

1 Debt Service—Total 310 \$ 18,000,000

**200—Board of Trustees of the
University System of West Virginia and
Board of Directors of the
State College System
Control Account**

(WV Code Chapter 18B)

Account No.

Fund 4030 FY 1997 Org 0453

1 Unclassified—Total 096 \$ 3,520,000

**201—Department of Education and the Arts—
Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 3505 FY 1997 Org 0431

1 Strategic Planning and Compliance-
2 Health Sciences 489 \$ 200,000

202—Commission on Aging

(WV Code Chapter 29)

Account No.

Fund 5405 FY 1997 Org 0508

1 In-Home Services for
2 Senior Citizens—Total 286 \$ -0-
3 Direct Services 481 2,800,000

4	Transfer to Division of Human		
5	Services for Health Care		
6	and Title XIX		
7	Waiver for Senior Citizens	539	8,500,000
8	Senior Citizen Centers		
9	and Programs	462	<u>1,000,000</u>
10	Total		\$ 12,300,000

11 The above appropriation for Health Care and Title
 12 XIX Waiver for Senior Citizens shall be used to expand
 13 the Title XIX waiver program statewide but not to increase
 14 the rate of reimbursement for services provided by Title
 15 XIX providers.

***203—Division of Human Services—
 Health Care and Title XIX Waiver for Senior Citizens***

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 5063 FY 1997 Org 0511

1	Health Care and Title XIX Waiver		
2	for Senior Citizens—Total . . .	434	\$ -0-

3 The above appropriation shall be used to expand the
 4 Title XIX waiver program statewide but not to increase the
 5 rates of reimbursement for services provided by Title XIX
 6 providers.

***204—Education, Arts, Sciences and Tourism
 Debt Service Fund***

(WV Code Chapter 5)

Account No.

Fund 2252 FY 1997 Org 0211

1	Debt Service—Total	310	\$ 10,500,000
1	Total TITLE II, Section 4—		
2	Lottery Funds		<u>\$ 59,500,000</u>

1 **Sec. 5. Appropriations of federal funds.**—In accor-
 2 dance with article eleven, chapter four of the code, from
 3 federal funds there are hereby appropriated conditionally
 4 upon the fulfillment of the provisions set forth in article
 5 two, chapter five-a of the code the following amounts, as
 6 itemized, for expenditure during the fiscal year one thou-
 7 sand nine hundred ninety-seven.

LEGISLATIVE

205—Crime Victims Compensation Fund

(WV Code Chapter 14)

Account No.

Fund 8738 FY 1997 Org 2300

	Activity		Federal Funds
1	Unclassified—Total	096 \$	920,000

JUDICIAL

***206—Supreme Court—
General Judicial***

Account No.

Fund 8805 FY 1997 Org 2400

1	Unclassified—Total	096 \$	123,584
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EXECUTIVE

***207—Governor's Office—
Governor's Cabinet on Children and Families***

(WV Code Chapter 5)

Account No.

Fund 8792 FY 1997 Org 0100

1	Unclassified—Total	096 \$	528,000
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**208—Governor's Office—
Governor's Cabinet on Children and Families—
Office of Economic Opportunity**

(WV Code Chapter 5)

Account No.

Fund 8797 FY 1997 Org 0100

1 Unclassified—Total 096 \$ 4,228,397

**209—Governor's Office—
Commission for National and Community Service**

(WV Code Chapter 5)

Account No.

Fund 8800 FY 1997 Org 0100

1 Unclassified—Total 096 \$ 892,000

210—Auditor's Office

(WV Code Chapter 12)

Account No.

Fund 8807 FY 1997 Org 1200

1 Unclassified—Total 096 \$ 3,900,000

211—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8735 FY 1997 Org 1400

1 Unclassified—Total 096 \$ 20,000

212—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8736 FY 1997 Org 1400

1 Unclassified—Total 096 \$ 2,813,085

**213—Department of Agriculture—
Meat Inspection**

(WV Code Chapter 19)

Account No.

Fund 8737 FY 1997 Org 1400

1 Unclassified—Total 096 \$ 610,311

**214—Department of Agriculture—
State Soil Conservation Committee**

(WV Code Chapter 19)

Account No.

Fund 8783 FY 1997 Org 1400

1 Unclassified—Total 096 \$ 94,000

DEPARTMENT OF EDUCATION

215—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 8712 FY 1997 Org 0402

1 Unclassified—Total 096 \$ 9,150,000

**216—State Department of Education—
School Lunch Program**

(WV Code Chapters 18 and 18A)

Account No.

Fund 8713 FY 1997 Org 0402

1 Unclassified—Total 096 \$ 58,483,000

**217—State Board of Education—
Vocational Division**

(WV Code Chapters 18 and 18A)

Account No.

Fund 8714 FY 1997 Org 0402

1 Unclassified—Total 096 \$ 12,635,000

**218—State Department of Education—
Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

Account No.

Fund 8715 FY 1997 Org 0402

1 Unclassified—Total 096 \$ 25,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

219—Division of Culture and History

(WV Code Chapter 29)

Account No.

Fund 8718 FY 1997 Org 0432

1 Unclassified—Total 096 \$ 2,048,255

220—Library Commission

(WV Code Chapter 10)

Account No.

Fund 8720 FY 1997 Org 0433

1 Unclassified—Total 096 \$ 1,992,560

221—Educational Broadcasting Authority

(WV Code Chapter 10)

Account No.

Fund 8721 FY 1997 Org 0439

1 Unclassified—Total 096 \$ 425,250

***222—State Board of Rehabilitation—
Division of Rehabilitation Services***

(WV Code Chapter 18)

Account No.

Fund 8734 FY 1997 Org 0932

1 Unclassified—Total 096 \$ 39,577,969

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

223—Consolidated Medical Service Fund

(WV Code Chapter 16)

Account No.

Fund 8723 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 3,300,000

224—Division of Health—

Central Office

(WV Code Chapter 16)

Account No.

Fund 8802 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 51,180,033

225—Commission on Aging

(WV Code Chapter 29)

Account No.

Fund 8724 FY 1997 Org 0508

1 Unclassified—Total 096 \$ 11,585,000

226—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 8725 FY 1997 Org 0510

1	Unclassified—Total	096	\$	151,352
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227—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 8722 FY 1997 Org 0511

1	Unclassified	099	\$	109,113,823
2	Medical Services	189		869,123,506
3	Behavioral Health			
4	Medical Services	664		145,021,240
5	Public Assistance	193		107,100,000
6	JOBS Program	197		<u>15,106,000</u>
7	Total		\$	1,245,464,569

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY****228—Adjutant General—State Militia**

(WV Code Chapter 15)

Account No.

Fund 8726 FY 1997 Org 0603

1	Unclassified—Total	096	\$	16,704,646
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229—Office of Emergency Services

(WV Code Chapter 15)

Account No.

Fund 8727 FY 1997 Org 0606

Unclassified—Total	096	\$	1,400,000
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230—West Virginia State Police

(WV Code Chapter 15)

Account No.

Fund 8741 FY 1997 Org 0612

1 Unclassified—Total 096 \$ 4,879,531

**231—Division of Veterans' Affairs—
Veterans' Home**

(WV Code Chapter 9A)

Account No.

Fund 8728 FY 1997 Org 0618

1 Unclassified—Total 096 \$ 496,000

**232—Division of Criminal Justice
and Highway Safety**

(Executive Order)

Account No.

Fund 8803 FY 1997 Org 0620

1 Unclassified—Total 096 \$ 12,300,000

DEPARTMENT OF TAX AND REVENUE**233—Tax Division**

(WV Code Chapter 11)

Account No.

Fund 7069 FY 1997 Org 0702

1 Unclassified—Total 096 \$ 75,000

DEPARTMENT OF TRANSPORTATION**234—Department of Transportation—
Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 8782 FY 1997 Org 0801

1 Unclassified—Total 096 \$ 405,000

235—State Rail Authority

(WV Code Chapter 29)

Account No.

Fund 8733 FY 1997 Org 0804

1 Unclassified—Total 096 \$ 1,096,279

236—Division of Public Transit

(WV Code Chapter 17)

Account No.

Fund 8745 FY 1997 Org 0805

1 Unclassified—Total 096 \$ 6,171,045

BUREAU OF COMMERCE*237—Division of Forestry*

(WV Code Chapter 19)

Account No.

Fund 8703 FY 1997 Org 0305

1 Unclassified—Total 096 \$ 1,073,500

238—Geological and Economic Survey

(WV Code Chapter 29)

Account No.

Fund 8704 FY 1997 Org 0306

1 Unclassified—Total 096 \$ 542,221

239—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

Fund 8705 FY 1997 Org 0307

1 Unclassified—Total 096 \$ 10,623,512

240—Division of Labor

(WV Code Chapters 21 and 47)

Account No.

Fund 8706 FY 1997 Org 0308

1 Unclassified—Total 096 \$ 319,000

241—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 8707 FY 1997 Org 0310

1 Unclassified—Total 096 \$ 8,261,711

*242—Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Account No.

Fund 8709 FY 1997 Org 0314

1 Unclassified—Total 096 \$ 530,332

BUREAU OF ENVIRONMENT

243—Division of Environmental Protection

(WV Code Chapter 22)

Account No.

Fund 8708 FY 1997 Org 0313

1 Unclassified—Total 096 \$ 112,901,239

MISCELLANEOUS BOARDS AND COMMISSIONS

*244—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Account No.

Fund 8743 FY 1997 Org 0926

1 Unclassified—Total 096 \$ 890,388

**245—Public Service Commission—
Gas Pipeline Division**

(WV Code Chapter 24B)

Account No.

Fund 8744 FY 1997 Org 0926

1 Unclassified—Total 096 \$ 255,764

1 Total TITLE II, Section 5—

2 Federal Funds \$ 1,654,047,5331 **Sec. 6. Appropriations from federal block grants.**2 —The following items are hereby appropriated from fed-
3 eral block grants to be available for expenditure during
4 the fiscal year 1996-97.**246—Governor's Office—
Governor's Cabinet on Children and Families**

Account No.

Fund 8799 FY 1997 Org 0100

1 Unclassified—Total 096 \$ 7,136,077

**247—West Virginia Development Office—
Community Development**

Account No.

Fund 8746 FY 1997 Org 0307

1 Unclassified—Total 096 \$ 21,000,000

**248—Bureau of Employment Programs—
Job Training Partnership Act**

Account No.

Fund 8749 FY 1997 Org 0323

1 Unclassified—Total 096 \$ 46,500,000

***249—State Department of Education—
Education Grant***

Account No.

Fund 8748 FY 1997 Org 0402

1 Unclassified—Total 096 \$ 74,470,000

***250—Division of Health—
Maternal and Child Health***

Account No.

Fund 8750 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 7,500,000

***251—Division of Health—
Preventive Health***

Account No.

Fund 8753 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 1,650,000

***252—Division of Health—
Substance Abuse Prevention and Treatment***

Account No.

Fund 8793 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 9,000,000

***253—Division of Health—
Community Mental Health Services***

Account No.

Fund 8794 FY 1997 Org 0506

1 Unclassified—Total 096 \$ 2,800,000

**254—Division of Human Services—
Energy Assistance**

Account No.

Fund 8755 FY 1997 Org 0511

1 Unclassified—Total 096 \$ 11,400,000

**255—Division of Human Services—
Child Care and Development**

Account No.

Fund 8756 FY 1997 Org 0511

1 Unclassified—Total 096 \$ 6,900,000

**256—Division of Human Services—
Social Services**

Account No.

Fund 8757 FY 1997 Org 0511

1 Unclassified—Total 096 \$ 20,000,000

**257—Division of Human Services—
Empowerment Zone and Enterprise Community Program**

Account No.

Fund 8806 FY 1997 Org 0511

1 Unclassified—Total 096 \$ 2,000,000

1 Total TITLE II, Section 6—

2 Federal Block Grants \$ 210,356,077

1 **Sec. 7. Awards for claims against the state.**—There
2 are hereby appropriated for the remainder of the fiscal
3 year 1995-96 and to remain in effect until the thirtieth
4 day of June, one thousand nine hundred ninety-seven,
5 from the funds as designated, in the amounts as specified
6 and for the claimants named in enrolled house bill no.
7 4660, regular session, one thousand nine hundred
8 ninety-six, crime victims compensation funds of \$86,500
9 for payment of claims against the state.

10 There are hereby appropriated for the fiscal year
11 1996-97 from the funds as designated in the amounts as
12 specified and for the claimants as named in enrolled sen-
13 ate bill no. 567, regular session, one thousand nine hun-
14 dred ninety-six, and enrolled house bill no. 4661, regular
15 session, one thousand nine hundred ninety-six, general
16 revenue funds in the amount of \$911,929.52. The total of
17 general revenue funds do not include payment for claims
18 in the amount of \$3,950 from the supreme court-general
19 judicial account no. fund 0180, FY 1996, org 2400, spe-
20 cifically made payable from the appropriation for fiscal
21 year 1995-96.

22 There are hereby appropriated for the fiscal year
23 1996-97 from the funds as designated, in the amounts as
24 specified and for the claimants as named in enrolled sen-
25 ate bill no. 567, regular session, one thousand nine hun-
26 dred ninety-six, special revenue funds in the amount of
27 \$50,488.43; state road funds in the amount of
28 \$223,790.54.

1 **Sec. 8. Appropriations from surplus accrued.**—The
2 following items are hereby appropriated from the state
3 fund, general revenue, and are to be available for expendi-
4 ture during the fiscal year 1996-97 out of surplus funds
5 only, subject to the terms and conditions set forth in this
6 section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus
9 accrued as of the thirty-first day of July, one thousand
10 nine hundred ninety-six. In the event that surplus revenues
11 available on the thirty-first day of July, one thousand nine
12 hundred ninety-six, are not sufficient to meet all of the
13 appropriations made pursuant to this section, then the
14 appropriations shall be made to the extent that surplus
15 funds are available as of the date mandated and shall be
16 allocated first to provide the necessary funds to meet the
17 first appropriation of this section; next, to provide the
18 funds necessary for the second appropriation of this sec-
19 tion; and subsequently to provide the funds necessary for
20 each appropriation in succession before any funds are
21 provided for the next subsequent appropriation.

258—West Virginia State Police

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1997 Org 0612

1	Capital Outlay			
2	and Equipment-Surplus-Total . . .	231	\$	-0-

259—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 0265 FY 1997 Org 0310

1	Capital Outlay-Parks-Surplus	233	\$	-0-
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**260—Department of Education and the Arts—
Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0294 FY 1997 Org 0431

1	Capital Outlay-Library Construction-			
2	Surplus-Total	236	\$	-0-

261—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1997 Org 0511

1	Child Care Development—Surplus . .	505	\$	700,000
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**262—Board of Trustees of the University System of
West Virginia and Board of Directors of the
State College System—
Central Office**

(WV Code Chapters 18B and 18C)

Account No.

Fund 0333 FY 1997 Org 0452

- 1 Higher Education Technology
- 2 Initiative—Surplus (R) 508 \$ 1,000,000

263—Board of Risk and Insurance Management

(WV Code Chapter 29)

Account No.

Fund 0217 FY 1997 Org 0218

- 1 County Boards of Education
- 2 Retro Payments—Surplus 509 \$ 1,000,000

264—Division of General Services

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1997 Org 0211

- 1 Capitol Complex Capital
- 2 Outlay—Surplus 526 \$ 2,000,000

265—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Central Office

(WV Code Chapters 18B and 18C)

Account No.

Fund 0333 FY 1997 Org 0452

- 1 Higher Education Technology
- 2 Initiative—Surplus (R) 508 \$ 1,000,000

266—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

Fund 0256 FY 1997 Org 0307

1	Guaranteed Work Force			
2	Grant—Surplus (R)	528	\$	1,000,000

**267—Department of Education and the Arts—
Office of the Secretary**

(WV Code Chapter 5)

Account No.

Fund 0294 FY 1997 Org 0431

1	Community Schools/Mini			
2	Grants—Surplus	531	\$	500,000
1	Total TITLE II, Section 7—			
2	Appropriations from			
3	Surplus Accrued		\$	<u>7,200,000</u>

1 **Sec. 9. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year
3 one thousand nine hundred ninety-seven appropriations
4 made by general law from special revenue which are not
5 paid into the state fund as general revenue under the pro-
6 visions of section two, article two, chapter twelve of the
7 code: *Provided*, That none of the money so appropriated
8 by this section shall be available for expenditure except in
9 compliance with and in conformity to the provisions of
10 articles two and three, chapter twelve and article two, chap-
11 ter five-a of the code, with due consideration to the digest
12 of legislative intent of the budget bill prepared pursuant to
13 article one, chapter four, unless the spending unit has filed
14 with the director of the budget, the auditor and the legisla-
15 tive auditor prior to the beginning of each fiscal year:

16 (a) An estimate of the amount and sources of all reve-
17 nues accruing to such fund;

18 (b) A detailed expenditure schedule showing for what
19 purposes the fund is to be expended.

1 **Sec. 10. State improvement fund appropriations.**
2 —Bequests or donations of nonpublic funds, received by
3 the governor on behalf of the state during the fiscal year
4 one thousand nine hundred ninety-seven, for the purpose

5 of making studies and recommendations relative to im-
6 provements of the administration and management of
7 spending units in the executive branch of state govern-
8 ment, shall be deposited in the state treasury in a separate
9 account therein designated state improvement fund.

10 There are hereby appropriated all moneys so deposit-
11 ed during the fiscal year one thousand nine hundred
12 ninety-seven to be expended as authorized by the gover-
13 nor, for such studies and recommendations which may
14 encompass any problems of organization, procedures,
15 systems, functions, powers or duties of a state spending
16 unit in the executive branch, or the betterment of the eco-
17 nomic, social, educational, health and general welfare of
18 the state or its citizens.

1 **Sec. 11. Specific funds and collection accounts.**—A
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection ac-
5 count and shall be expended according to the provisions
6 of article three, chapter twelve of the code.

1 **Sec. 12. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid, he
7 or she shall issue his or her requisition upon the auditor
8 for the refunding of the proper amount. The auditor shall
9 issue his or her warrant to the treasurer and the treasurer
10 shall pay the warrant out of the fund into which the
11 amount was originally paid.

1 **Sec. 13. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia housing devel-
5 opment fund which is under the supervision and control
6 of the municipal bond commission as provided by section
7 twenty-b, article eighteen, chapter thirty-one of the code,
8 or in the funds of the municipal bond commission be-

9 cause of the failure of any state agency for either general
10 obligation or revenue bonds or any local taxing district
11 for general obligation bonds to remit funds necessary for
12 the payment of interest and sinking fund requirements.
13 The governor is authorized to transfer from time to time
14 such amounts to the municipal bond commission as may
15 be necessary for these purposes.

16 The municipal bond commission shall reimburse the
17 state of West Virginia through the governor from the first
18 remittance collected from the West Virginia housing de-
19 velopment fund or from any state agency or local taxing
20 district for which the governor advanced funds, with inter-
21 est at the rate carried by the bonds for security or payment
22 of which the advance was made.

1 **Sec. 14. Appropriations for local governments.**

2 —There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as will
4 be necessary to pay taxes due counties, districts and mu-
5 nicipal corporations and which have been paid into the
6 treasury:

7 (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 15. Total appropriations.**—Where only a total
2 sum is appropriated to a spending unit, the total sum shall
3 include personal services, annual increment, employee
4 benefits, current expenses, repairs and alterations, equip-
5 ment and capital outlay, where not otherwise specifically
6 provided and except as otherwise provided in TITLE I
7 —GENERAL PROVISIONS, Sec. 3.

1 **Sec. 16. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appro-
4 priated for expenditure in accordance with section sixteen,
5 article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

TITLE III—ADMINISTRATION.

1 **Section 1. Appropriations conditional.**—The expen-
2 diture of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branch-
4 es of the state government, are conditioned upon the com-
5 pliance by the spending unit with the requirements of
6 article two, chapter five-a of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending units,
9 it is the intent of this act that reappropriations shall be to
10 the succeeding or later spending unit created, unless other-
11 wise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent juris-
3 diction, its decision shall not affect any portion of this act
4 which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 9

(H. B. 4742—By Delegates Burke, Frederick, Talbott, Border,
Evans, Facemyer and Leggett)

[Passed March 14, 1996: in effect from passage. Became law without signature of 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 department of agriculture, account no. fund 0131, fiscal year 1996, organization 1400.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of agriculture, account no. fund 0131, fiscal year 1996, organization 1400, be supplemented and amended by increasing the total appropriation by four hundred ten thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	<i>13—Department of Agriculture</i>		
4	(WV Code Chapter 19)		
5	Fund <u>0131</u> FY <u>1996</u> Org <u>1400</u>		
6			General
7		Act-	Revenue
8		ivity	Funds
9	5	Unclassified 099	\$ 410,000

10 The purpose of this bill is to supplement this account
 11 in the budget act for the fiscal year ending the thirtieth
 12 day of June, one thousand nine hundred ninety-six, by
 13 adding four hundred ten thousand dollars to the existing
 14 appropriation for the department of agriculture, account
 15 no. fund 0131, fiscal year 1996, organization 1400, to be
 16 used for capital outlay, equipment and related costs for the
 17 Moorefield laboratory building and office.

CHAPTER 10

(H. B. 4664—By Delegates Mezzatesta, Pettit, Border,
Clements, Evans, Leggett and Walters)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to legislative, joint expenses, account no. fund 0175, fiscal year 1996, organization 2300, and governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", and expiring the sum of ten million dollars from joint expenses, account no. fund 0175, fiscal year 1996, organization 2300, to the unappropriated balance in the state fund, general revenue, and making a supplemental appropriation in the amount of ten million dollars from the unappropriated balance in the state fund, general revenue.

Be it enacted by the Legislature of West Virginia:

That the amount of ten million dollars be reduced from legislative, joint expenses, account no. fund 0175, fiscal year 1996, organization 2300.

- 1 TITLE II — APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 *3—Joint Expenses*
- 4 (WV Code Chapter 4)
- 5 Account No.

6 Fund 0175 FY 1996 Org 2300

7 14 Tax Reduction and

8 15 Federal Funding

9 16 Increased Compliance 642 \$ 10,000,000

10 And, that the items of total appropriation from the
 11 general revenue, fund account no. fund 0105, fiscal year
 12 1996, organization 0100, be amended and increased in the
 13 line item as follows:

14 8—*Governor's Office* —15 *Civil Contingent Fund*

16 (WV Code Chapter 5)

17 Account No.

18 Fund 0105 FY 1996 Org 0100

19 8 Flood victims' assistance \$ 10,000,000

20 The purpose of this bill is to reduce the total
 21 appropriation to the item designated "tax reduction and
 22 federal funding increased compliance" in joint expenses,
 23 account no. fund 0175, fiscal year 1996, organization
 24 2300, by ten million dollars. The further purpose of the
 25 bill is to appropriate ten million dollars to the governor's
 26 office, civil contingent fund, account no. fund 0101, fiscal
 27 year 1996, organization 0100 to a new line item,
 28 designated "flood victims' assistance" to be used to provide
 29 funding assistance to flood victims. The bill also provides
 30 for the transfer of ten million dollars from the tax
 31 reduction and federal funding increased compliance
 32 appropriation to a special fund, account no. fund 1732.
 33 The transfer of funds authorized by this bill shall be
 34 completed on or before the fifteenth day of June, one
 35 thousand nine hundred ninety-six. All transferred funds
 36 shall be available for expenditure immediately upon the
 37 effective date of this bill.

CHAPTER 11

(S. B. 570—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from other funds to the department of administration, division of purchasing—revolving fund, account no. fund 2320, fiscal year 1996, organization 0216, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from other funds to account no. fund 2320, fiscal year 1996, organization 0216, be amended and reduced in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF ADMINISTRATION		
4	<i>100—Division of Purchasing—</i>		
5	<i>Revolving Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund 2320	FY 1996	Org 0216
9		Act-	Other
10		ivity	Funds
11	4	Unclassified	099 \$ 111,110

12 And, that the items of the total appropriations from
13 other funds to account no. fund 2320, fiscal year 1996,

14 organization 0216, be amended and increased in the line
15 items as follows:

16 TITLE II—APPROPRIATIONS.

17 **Sec. 3. Appropriations from other funds.**

18 DEPARTMENT OF ADMINISTRATION

19 *100—Division of Purchasing—*

20 *Revolving Fund*

21 (WV Code Chapter 5A)

22 Account No.

23 Fund 2320 FY 1996 Org 0216

24			Act-	Other
25			ivity	Funds
26	1	Personal Services	001	\$ 91,179
27	3	Employee Benefits	010	19,931

28 The purpose of this supplementary appropriation bill
29 is to supplement, amend, reduce and transfer between
30 existing items in the aforesaid account for the designated
31 spending unit. The item for unclassified is reduced by
32 one hundred eleven thousand one hundred ten dollars.
33 The item for personal services is increased by ninety-one
34 thousand one hundred seventy-nine dollars. The item for
35 employee benefits is increased by nineteen thousand nine
36 hundred thirty-one dollars. The amounts as itemized for
37 expenditure in the fiscal year ending the thirtieth day of
38 June, one thousand nine hundred ninety-six, shall be
39 available for expenditure immediately upon the effective
40 date of this bill.

CHAPTER 12

(S. B. 569—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the general revenue fund to the department of administration, ethics commission, account no. fund 0223, fiscal year 1996, organization 0220, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the general revenue fund to account no. fund 0223, fiscal year 1996, organization 0220, be amended and reduced in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue fund.		
3	DEPARTMENT OF ADMINISTRATION		
4	28— <i>Ethics Commission</i>		
5	(WV Code Chapter 6B)		
6	Account No.		
7	Fund 0223	FY 1996	Org 0220
8			General
9		Act-	Revenue
10		ivity	Fund
11	4	Unclassified	099 \$ 19,485

12 And, that the items of the total appropriations from the
 13 general revenue fund to account no. fund 0223, fiscal
 14 year 1996, organization 0220, be amended and increased
 15 in the line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Section 1. Appropriations from general revenue fund.

18 DEPARTMENT OF ADMINISTRATION

19 28—*Ethics Commission*

20 (WV Code Chapter 6B)

21 Account No.

22 Fund 0223 FY 1996 Org 0220

			Act-	General
			ivity	Revenue
				Fund
26	1	Personal Services	001	\$ 14,500
27	3	Employee Benefits	010	4,985

28 The purpose of this supplementary appropriation bill
 29 is to supplement, amend, reduce and transfer between
 30 existing items in the aforesaid account for the designated
 31 spending unit. The item for unclassified is reduced by
 32 nineteen thousand four hundred eighty-five dollars. The
 33 item for personal services is increased by fourteen
 34 thousand five hundred dollars. The item for employee
 35 benefits is increased by four thousand nine hundred
 36 eighty-five dollars. The amounts as itemized for
 37 expenditure in the fiscal year ending the thirtieth day of
 38 June, one thousand nine hundred ninety-six, shall be
 39 available for expenditure immediately upon the effective
 40 date of this bill.

CHAPTER 13

(H. B. 4544—By Delegates Kiss, Mezzatesta, Gallagher,
Leach, Miller, Walters and Wallace)

[Passed February 28, 1996; 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 department of administration, public defender services, account no. fund 0226, fiscal year 1996, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated January 10, 1996, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1995, and further included the estimate of revenues for fiscal year 1995-96, less net appropriation balances forwarded and regular appropriations for fiscal year 1995-96; and

WHEREAS, It thus appearing from the Governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0226, fiscal year 1996, organization 0221, be supplemented and amended by increasing the total appropriation by three million five hundred thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF ADMINISTRATION
- 4 29—*Public Defender Services*
- 5 (WV Code Chapter 29)

6	Account No.		
7	Fund <u>0226</u>	FY <u>1996</u>	Org <u>0221</u>
8		Act-	General
9		ivity	Revenue
10			Fund
11	5	Appointed Counsel Fees and	
12	6	Public Defender Corporations (R) . 127	\$ 3,500,000
13		Any unexpended balance remaining in the	
14		appropriation for Appointed Counsel Fees and Public	
15		Defender Corporations (fund 0226, activity 127) at the	
16		close of the fiscal year 1995-96 is hereby reappropriated	
17		for expenditure during the fiscal year 1996-97.	
18		The purpose of this bill is to supplement this account in	
19		the budget act for fiscal year ending the thirtieth day of	
20		June, one thousand nine hundred ninety-six, by adding	
21		three million five hundred thousand dollars to the existing	
22		appropriation for the payment of appointed counsel fees	
23		and public defender corporations.	

CHAPTER 14

(H. B. 4743—By Delegates Burke, Compton, Frederick,
Kelley, Warner, Clements and Facemyer)

[Passed March 14, 1996; in effect from passage. Became law without signature of 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 division of forestry, account no. fund 0250, fiscal year 1996, organization 0305.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the

thirtieth day of June, one thousand nine hundred ninety-six, to the division of forestry, account no. fund 0250, fiscal year 1996, organization 0305, be supplemented and amended by increasing the total appropriation by three hundred seventy-five thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	73—Division of Forestry		
4	(WV Code Chapter 19)		
5	Fund <u>0250</u> FY <u>1996</u> Org <u>0305</u>		
6			General
7		Act-	Revenue
8		ivity	Funds
9	4a Communications Equipment	502	\$ 375,000

10 The purpose of this bill is to supplement this account
 11 in the budget act for the fiscal year ending the thirtieth
 12 day of June, one thousand nine hundred ninety-six, by
 13 adding three hundred seventy-five thousand dollars to the
 14 existing appropriation for the division of forestry, account
 15 no. fund 0250, fiscal year 1996, organization 0305, to be
 16 used for communications equipment.

CHAPTER 15

(H. B. 4848—By Delegates Kiss, Mezzatesta, Talbott,
 Warner, Evans, Miller and Wallace)

[Passed March 9, 1996; in effect from passage. Became law without signature of 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, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, geological and economic survey, account no. fund 0253, fiscal year 1996, organization 0306.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, geological and economic survey, account no. fund 0253, fiscal year 1996, organization 0306, be supplemented and amended by increasing the total appropriation by seven hundred fifty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	74— <i>Geological and Economic Survey</i>		
4	(WV Code Chapter 29)		
5	Account No.		
6	Fund <u>0253</u> FY <u>1996</u> Org <u>0306</u>		
7			General
8		Act-	Revenue
9		ivity	Funds
10	4a Mineral Mapping System	207	\$750,000

11 The purpose of this bill is to supplement this account
 12 in the budget act for the fiscal year ending the thirtieth
 13 day of June, one thousand nine hundred ninety-six, by
 14 adding seven hundred fifty thousand dollars to the exist-
 15 ing appropriation for the bureau of commerce, geological
 16 and economic survey, account no. fund 0253, fiscal year
 17 1996, organization 0306, to be used for the mineral map-
 18 ping system.

CHAPTER 16

(H. B. 4847—By Delegates Talbott, Seacrist, Burke, Frederick, Tomblin, Clements and Facemyer)

[Passed March 14, 1996; in effect from passage. Became law without signature of 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, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	75—West Virginia Development Office—		
4	(WV Code Chapter 5B)		
5	Account No.		
6	Fund <u>0256</u> FY <u>1996</u> Org <u>0307</u>		
7			General
8		Act-	Revenue
9		ivity	Funds
10	19a Empowerment Zone/Enterprise		
11	19b Community	218	\$1,000,000

12 The purpose of this bill is to supplement this account
13 in the budget act for the fiscal year ending the thirtieth
14 day of June, one thousand nine hundred ninety-six, by
15 adding one million dollars to the existing appropriation
16 for the West Virginia development office, account no.
17 fund 0256, fiscal year 1996, organization 0307, to be used
18 for the empowerment zone/enterprise community.

CHAPTER 17

(S. B. 593—Originating in the Committee on Finance)

[Passed March 8, 1996; 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, one thousand nine hundred ninety-six, in the amount of two hundred fifty thousand dollars from the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, and 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 for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, tourism section, account no. fund 0555, fiscal year 1996, organization 0304.

WHEREAS, The Legislature finds that the account balance in the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine

hundred ninety-six to the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, be amended and decreased by expiring the amount of two hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue and a new appropriation be added for the fiscal year ending the thirtieth of June, one thousand nine hundred ninety-six, for the West Virginia development office—tourism section, account no. fund 0555, fiscal year 1996, organization 0304, in the amount of two hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 Bureau of Commerce.

4 75a—West Virginia Development Office—

5 Tourism Section

6 (WV Code Chapter 5B)

7 Account No.

8 Fund 0555 FY 1996 Org 0304

9			General
10		Act-	Revenue
11		ivity	Funds
12	1	Telemarketing Center—Total 255	\$ 250,000

13 The purpose of this bill is to expire the sum of two
 14 hundred fifty thousand dollars from the department of
 15 education and the arts, office of the secretary, account no.
 16 fund 0294, fiscal year 1996, organization 0431, activity
 17 663, and supplement account no. fund 0555, fiscal year
 18 1996, organization 0304, in the budget act for fiscal year
 19 ending the thirtieth day of June, one thousand nine
 20 hundred ninety-six, by adding two hundred fifty thousand
 21 dollars for a telemarketing center.

CHAPTER 18

(H. B. 4662—By Delegates Kiss, Browning, Compton,
Doyle, Mezzatesta, Border and Miller)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring amounts between appropriations from surplus accrued deposited in existing accounts of the department of education, account no. fund 3968, organization 0402, and account no. fund 3967, organization 0402 and transferring the total balances to the school building authority, school construction fund, account no. fund 3965, fiscal year 1996, organization 0402, and making an appropriation of public moneys in the amount of thirty-three million two hundred ninety thousand forty-two dollars to the school construction fund, account no. fund 3965, organization 0402, supplementing chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the total balance from surplus accrued be transferred from the 1996 construction account, fund 3968, to the unappropriated balance in the school construction fund, fund 3965, and that the total balance be transferred from the 1995 construction account, fund 3967, to the unappropriated balance in the school construction fund, fund 3965, and making an appropriation of public moneys in the amount of thirty-three million two hundred ninety thousand forty-two dollars to the school construction fund, account no. fund 3965, organization 0402.

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 8. Appropriations from surplus accrued.**
- 3 *245—State Department of Education*
- 4 (WV Code Chapters 18 and 18A)
- 5 Account No.

6 Fund 0313 FY 1996 Org 0402
 7 1 School Building Authority—
 8 Total 665 \$20,000,000

9 Any appropriation to the school building authority
 10 from surplus accrued shall be transferred from the 1996
 11 construction account, fund 3968, and the 1995 school
 12 construction account, fund 3967, and deposited into the
 13 school construction fund, fund 3965.

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 *102a—School Building Authority—*

4 *School Construction Fund*

5 (WV Code Chapter 18)

6 Account No.

7 Fund 3965 FY 1996 Org 0402

8 1 Hampshire County School Construction . . \$4,000,000
 9 2 Jefferson County School Construction 10,600,000
 10 3 Mason County School Construction 14,439,600
 11 4 Monroe County School Construction 4,250,442
 12 5 Total \$33,290,042

13 The purpose of this supplementary appropriation bill
 14 is to create a new account in the state budget and make an
 15 appropriation to the school building authority in the
 16 amount of thirty-three million two hundred ninety thou-
 17 sand forty-two dollars in the line items as designated here-
 18 in for the construction of schools. The further purpose of
 19 the bill is to amend the budget act for the fiscal year end-
 20 ing the thirtieth day of June, one thousand nine hundred
 21 ninety-six, by striking out language in the state depart-
 22 ment of education, account no. fund 0313, fiscal year
 23 1996, organization 0402.

CHAPTER 19

(H. B. 4744—By Delegates Browning, Compton, Farris,
Frederick, Pettit, Leggett and Miller)

[Passed March 14, 1996; in effect from passage. Became law without signature of 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 department of education, account no. fund 0313, fiscal year 1996, organization 0402.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education, account no. fund 0313, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by seven hundred thirteen thousand three hundred seven dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	34—State Department of Education		
4	(WV Code Chapters 18 and 18A)		
5	Fund <u>0313</u> FY <u>1996</u> Org <u>0402</u>		
6			General
7		Act-	Revenue
8		ivity	Funds
9	24a	County Boards of Education	
10		Lawsuits	655 \$ 713,307

12 The purpose of this bill is to supplement this account
13 in the budget act for fiscal year ending the thirtieth day of
14 June, one thousand nine hundred ninety-six, by adding
15 seven hundred thirteen thousand three hundred seven
16 dollars to the existing appropriation for the department of
17 agriculture, account no. fund 0313, fiscal year 1996, orga-
18 nization 0402, to be used for payment of county boards
19 of education lawsuits.

CHAPTER 20

(H. B. 4635—By Delegates Kiss, Mezzatesta, Talbott,
Burke, Facemyer, Evans and Wallace)

[Passed March 8, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public mon-
eys out of the treasury from the balance of moneys remain-
ing as an unappropriated balance in the state fund, general
revenue, to the department of education, West Virginia
schools for the deaf and blind, account no. fund 0320, fiscal
year 1996, organization 0403.

WHEREAS, There now remains an unappropriated surplus
balance in the state treasury which is available for appropriation
during the fiscal year ending the thirtieth day of June, one thou-
sand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirti-
eth day of June, one thousand nine hundred ninety-six, to the
department of education, West Virginia schools for the deaf and
blind, account no. fund 0320, fiscal year 1996, organization
0403, be supplemented and amended by increasing the total
appropriation by two hundred fifty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	<i>38—West Virginia Schools for the</i>		
4	<i>Deaf and Blind</i>		
5	(WV Code Chapters 18 and 18A)		
6	Account No.		
7	Fund <u>0320</u> FY <u>1996</u> Org <u>0403</u>		
8			General
9		Act-	Revenue
10		ivity	Funds
11	4a Roof repair and replacement . .	254	\$250,000

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-six, by
 15 adding two hundred fifty thousand dollars to the existing
 16 appropriation for the department of education, West
 17 Virginia schools for the deaf and blind, account no. fund
 18 0320, fiscal year 1996, organization 0403, to be used for
 19 the repair and replacement of roofs.

CHAPTER 21

(H. B. 4864—By Delegates Kiss, Browning, Gallagher,
 Petersen, Facemyer, Miller and Wallace)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the general revenue fund to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1996, organization 0511, as originally appropriated by chapter eight, acts of the Legislature, regular

session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the general revenue fund to account no. fund 0403, fiscal year 1996, organization 0511, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS		
2	Sec. 1. Appropriations from general revenue fund.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>53—Division of Human Services—</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1996</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	14 Public Assistance	193	\$4,626,586

13 And, that the items of the total appropriations from
14 general revenue fund to account no. fund 0403, fiscal
15 year 1996, organization 0511, be amended and increased
16 in the line items as follows:

17	TITLE II—APPROPRIATIONS.		
18	Sec. 1. Appropriations from general revenue fund.		
19	DEPARTMENT OF HEALTH AND HUMAN		
20	RESOURCES		
21	<i>53—Division of Human Services—</i>		
22	(WV Code Chapters 9, 48 and 49)		
23	Account no.		
24	Fund <u>0403</u> FY <u>1996</u> Org <u>0511</u>		

25			General
26		Act-	Revenue
27		ivity	Fund
28	16 Social Services	195	\$4,626,586

29 The purpose of this supplementary appropriation bill
30 is to supplement, amend, reduce and transfer between
31 existing items in the aforesaid account for the designated
32 spending unit. The item for public assistance is reduced
33 by four million six hundred twenty-six thousand five
34 hundred eighty-six dollars. The item for social services is
35 increased by four million six hundred twenty-six thousand
36 five hundred eighty-six dollars. The amounts as itemized
37 for expenditure in fiscal year ending the thirtieth day of
38 June, one thousand nine hundred ninety-six, shall be
39 available for expenditure immediately upon the effective
40 date of this bill.



CHAPTER 22

(S. B. 602—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble,
Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue to the department of health and human resources, division of health, central office, account no. fund 0407, fiscal year 1996, organization 0506, and department of health and human resources, consolidated medical service fund, account no. fund 0525, fiscal year 1996, organization 0506, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue to account no. fund 0407, fiscal year 1996,

organization 0506, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 49—*Division of Health—*

6 *Central Office*

7 (WV Code Chapter 16)

8 Account No.

9 Fund 0407 FY 1996 Org 0506

10				General
11			Act-	Revenue
12			ivity	Fund
13	4	Unclassified	099	\$ 55,804

14 And, that the items of the total appropriations from the
15 state fund, general revenue to account no. 0525, fiscal
16 year 1996, organization 0506, be amended and reduced in
17 the line items as follows:

18 TITLE II—APPROPRIATIONS.

19 Section 1. Appropriations from general revenue.

20 DEPARTMENT OF HEALTH AND HUMAN
21 RESOURCES

22 50—*Consolidated Medical Service Fund*

23 Account No.

24 Fund 0525 FY 1996 Org 0506

25				General
26			Act-	Revenue
27			ivity	Fund
28	14	Institutional Facilities		
29	15	Operations	335	\$ 83,996

30 And, that the items of the total appropriations from the
 31 state fund, general revenue to account no. fund 0407,
 32 fiscal year 1996, organization 0506, be amended and
 33 increased in the line items as follows:

34 TITLE II—APPROPRIATIONS.

35 Section 1. Appropriations from general revenue.

36 DEPARTMENT OF HEALTH AND HUMAN
 37 RESOURCES

38 49—Division of Health—

39 Central Office

40 (WV Code Chapter 16)

41 Account No.

42 Fund 0407 FY 1996 Org 0506

43 44 45		Act- ivity	General Revenue Fund
46	1 Personal Services	001	\$ 108,000
47	3 Employee Benefits	010	31,800

48 The purpose of this supplementary appropriation bill
 49 is to supplement, amend, reduce and transfer between
 50 existing items in the aforesaid accounts for the designated
 51 spending unit. The item for unclassified (fund 0407) is
 52 reduced by fifty-five thousand eight hundred four dollars.
 53 The item for institutional facilities operations (fund 0525)
 54 is decreased by eighty-three thousand nine hundred
 55 ninety-six dollars. The item for personal services (fund
 56 0407) is increased by one hundred eight thousand dollars.
 57 The item for employee benefits (fund 0407) is increased
 58 by thirty-one thousand eight hundred dollars. The
 59 amounts as itemized for expenditure in fiscal year ending
 60 the thirtieth day of June, one thousand nine hundred
 61 ninety-six, shall be available for expenditure immediately
 62 upon the effective date of this bill.

CHAPTER 23

(H. B. 4849—By Delegates Kelley, Seacrist, Frederick, Tomblin, Facemyer, Talbott and Leggett)

[Passed March 9, 1996; in effect from passage. Became law without signature of 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, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of tax and revenue, tax division, account no. fund 0407, fiscal year 1996, organization 0702.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of tax and revenue, tax division, account no. fund 0407, fiscal year 1996, organization 0702, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	68—Tax Division—		
4	(WV Code Chapter 11)		
5	Account No.		
6	Fund <u>0407</u> FY <u>1996</u> Org <u>0702</u>		
7			General
8		Act-	Revenue
9		ivity	Funds
10	4a Automation Project	442	\$1,000,000

11 The purpose of this bill is to supplement this account
 12 in the budget act for the fiscal year ending the thirtieth
 13 day of June, one thousand nine hundred ninety-six, by
 14 adding one million dollars to the existing appropriation
 15 for the department of tax and revenue, tax division,
 16 account no. fund 0407, fiscal year 1996, organization
 17 0702, to be used for the automation project.

CHAPTER 24

(H. B. 4836—By Delegates Kiss, Seacrist, Tomblin,
 Evans, Facemyer, Miller and Wallace)

[Passed March 8, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.
 2 **Sec. 1. Appropriations from general revenue.**
 3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
 4 SAFETY
 5 60—*Division of Corrections*—
 6 *Correctional Units*
 7 (WV Code Chapters 25, 28, 49 and 62)
 8 Fund 0450 FY 1996 Org 0608

9			General
10			Revenue
11		Act-	Fund
12		ivity	
12	4	Unclassified	099 \$ 50,000
13	12	Mt. Olive Correctional Complex . .	533 \$400,000

14 And, that the items of the total appropriations from the
 15 state fund, general revenue, to the department of military
 16 affairs and public safety, division of corrections,
 17 correctional units, account no. fund 0450, fiscal year
 18 1996, organization 0608, be amended and increased in the
 19 line items as follows:

20 TITLE II—APPROPRIATIONS.

21 Sec. 1. Appropriations from general revenue.

22 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
 23 SAFETY

24 60—Division of Corrections—

25 Correctional Units

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

27 Fund 0450 FY 1996 Org 0608

28			General
29			Revenue
30		Act-	Fund
31		ivity	
31	8	Payments to Counties and/or	
32	9	Regional Jails	229 \$ 450,000

33 The purpose of this supplementary appropriation bill
 34 is to supplement, amend, reduce and transfer between
 35 existing items in the aforesaid account for the designated
 36 spending unit. The item for unclassified is reduced by
 37 fifty thousand dollars. The item for Mt. Olive correctional
 38 complex is reduced by four hundred thousand dollars.
 39 The item for payments to counties and/or regional jails is
 40 increased by four hundred fifty thousand dollars. The
 41 amounts as itemized for expenditure in the fiscal year
 42 ending the thirtieth day of June, one thousand nine
 43 hundred ninety-six, shall be available for expenditure
 44 immediately upon the effective date of this bill.

CHAPTER 25

(H. B. 4843—By Delegates Kiss, Browning, Burke,
Leach, Warner, Border and Wallace)

[Passed March 14, 1996; in effect from passage. Became law without signature of 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, one thousand nine hundred ninety-six, in the amount of one million dollars from the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, and 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, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608.

WHEREAS, The Legislature finds that the account balance in the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, be amended and decreased by expiring the amount of one

million dollars to the unappropriated balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0450, fiscal year 1996, organization 0608, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC		
4	SAFETY		
5	<i>60—Division of Corrections—</i>		
6	<i>Correctional Units</i>		
7	(WV Code Chapters 25, 28, 49 and 62)		
8	Account No.		
9	Fund <u>0450</u> FY <u>1996</u> Org <u>0608</u>		
10		Act-	General
11		ivity	Revenue
12			Fund
13	8	Payments to Counties and/or	
14	9	Regional Jails	229 \$1,000,000

15 The purpose of this bill is to expire the sum of one
 16 million dollars from the department of military affairs and
 17 public safety, division of corrections, correctional units,
 18 account no. fund 0450, fiscal year 1995, organization
 19 0608, activity 338, and supplement account no. fund
 20 0450, fiscal year 1996, organization 0608, in the budget
 21 act for the fiscal year ending the thirtieth day of June, one
 22 thousand nine hundred ninety-six, by adding one million
 23 dollars to the existing appropriation for payments to
 24 counties and/or regional jails.

CHAPTER 26

(H. B. 4649—By Delegates Kiss, Burke, Frederick, Talbott,
Clements, Leggett and Wallace)

[Passed March 9, 1996; in effect from passage. Became law without signature of 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 department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1996, organization 0620.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1996, organization 0620, be supplemented and amended by increasing the total appropriation by forty-four thousand four hundred seventy-five dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 *65—Division of Criminal Justice and Highway Safety*
- 6 (Executive Order)
- 7 Account No.
- 8 Fund 0546 FY 1996 Org 0620

		Act- ivity	General Revenue Fund
9			
10			
11			
12	1 Personal Services	001	\$ 6,500
13	2 Annual Increment	004	72
14	3 Employee Benefits	010	1,948
15	4 Unclassified	099	35,955

16 The purpose of this bill is to supplement the
 17 department of military affairs and public safety, division
 18 of criminal justice and highway safety, account no. fund
 19 0546, fiscal year 1996, organization 0620, by adding
 20 thereto the sum of forty-four thousand four hundred
 21 seventy-five dollars to be used for the purpose of drawing
 22 down federal funds. These sums shall be available for
 23 immediate expenditure upon passage.

CHAPTER 27

(H. B. 4549—By Delegates Browning, Clements, Farris, Pettit,
 Warner, Kelley and Miller)

[Passed February 29, 1996; 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 unappropriated in the state fund, general revenue, in the amount of five hundred sixty-four thousand eight hundred fifty-four dollars and seventy-one cents, and transferring a like amount to the bureau of employment programs, workers' compensation fund, account no. fund 0554, fiscal year 1996, organization 0322, as originally appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-five, known as the "Budget Bill".

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0554, fiscal year 1996, organization 0322, be supplemented and amended by increasing the total appropriation by five hundred sixty-four thousand eight hundred fifty-four dollars and seventeen cents as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	BUREAU OF EMPLOYMENT PROGRAMS		
4	<i>87a—Bureau of Employment Programs</i>		
5	<i>Workers' Compensation Fund</i>		
6	(WV Code Chapter 23)		
7	Account No.		
8	Fund <u>0554</u> FY <u>1996</u> Org <u>0322</u>		
9		Act-	General
10		ivity	Revenue
11			Fund
12	1	Transfer to Workers'	
13	2	Compensation Fund—Total . 253	\$564,854.17

14 The purpose of this bill is to transfer the moneys
 15 collected in the civil action against former governor Arch
 16 A. Moore, Jr., and others, to the workers' compensation
 17 administrative claims fund, as it has been determined that
 18 this account was harmed by the wrongful actions giving
 19 rise to the civil action.

CHAPTER 28

(S. B. 580—Originating in the Committee on Finance)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1996, organization 0802, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1996, organization 0802, be amended and reduced in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 2. Appropriations from state road fund.		
3	DEPARTMENT OF TRANSPORTATION		
4	88—Division of Motor Vehicles		
5	(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)		
6	Account No.		
7	Fund <u>9007</u> FY <u>1996</u> Org <u>0802</u>		
8			State
9		Act-	Road
10		ivity	Fund
11	5	Optic Scan System 283	\$ 500,000

12 And, that the items of the total appropriations from the
13 state road fund to account no. fund 9007, fiscal year
14 1996, organization 0802, be amended and increased in the
15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Sec. 2. Appropriations from state road fund.

18 DEPARTMENT OF TRANSPORTATION

19 88—Division of Motor Vehicles

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

21 Account No.

22 Fund 9007 FY 1996 Org 0802

23			State
24			Road
25		Act- ivity	Fund
26	1 Personal Services	001	\$ 469,000
27	3 Employee Benefits	010	198,852
28	4 Unclassified	099	707,250
29	9a Capital Outlay	511	1,098,000

30 The appropriation for capital outlay (fund 9007,
31 activity 511) shall not be reappropriated into fiscal year
32 1996-97, but shall expire the thirtieth day of June, one
33 thousand nine hundred ninety-six.

34 The purpose of this supplementary appropriation bill
35 is to supplement, amend, reduce and transfer between
36 existing items in the aforesaid account for the designated
37 spending unit. The item for the optic scan system is
38 reduced by five hundred thousand dollars. The item for
39 personal services is increased by four hundred sixty-nine
40 thousand dollars. The item for employee benefits is
41 increased by one hundred ninety-eight thousand eight
42 hundred fifty-two dollars. The item for unclassified is
43 increased by seven hundred seven thousand two hundred
44 fifty dollars. A new item for capital outlay is added for
45 one million ninety-eight thousand dollars. The amounts
46 as itemized for expenditure in fiscal year ending the
47 thirtieth day of June, one thousand nine hundred
48 ninety-six, shall be available for expenditure immediately
49 upon the effective date of this bill.

CHAPTER 29

(H. B. 4871—By Delegate Kiss)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of five million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, 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, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the balance of funds available in the revenue shortfall reserve fund exceeds the funds needed for the purposes for which the fund was created, therefore pursuant to section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the amount of this supplementary appropriation is being redesignated for the purposes set forth herein; and

WHEREAS, The Legislature finds that the account balance in the revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, 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, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by five million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	<i>8—Governor's Office—</i>		
4	<i>Civil Contingent Fund</i>		
5	(WV Code Chapter 5A)		
6	Account No.		
7	Fund <u>0105</u> FY <u>1996</u> Org <u>0100</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	5	Flood Recovery and Mitigation	
12	6	Loans (Disaster Recovery	
13	7	Trust Fund)	289 \$5,000,000

14 The purpose of this bill is to expire the sum of five
 15 million dollars from the revenue shortfall reserve fund,
 16 account no. fund 2038, organization 0201, activity 999,
 17 and to supplement the governor's office, civil contingent
 18 fund, account no. fund 0105, fiscal year 1996, organiza-
 19 tion 0100, in the budget act for the fiscal year ending the
 20 thirtieth day of June, one thousand nine hundred
 21 ninety-six, by adding five million dollars to a new activity
 22 for flood recovery and mitigation loans (disaster recovery
 23 trust fund).

CHAPTER 30

(S. B. 577—Originating in the Committee on Finance)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of administration, division of personnel, account no. fund 2440, fiscal year 1996, organization 0222, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of administration, division of personnel, account no. fund 2440, fiscal year 1996, organization 0222, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 2440, fiscal year 1996, organization 0222, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF ADMINISTRATION
- 4 *101—Division of Personnel*
- 5 (WV Code Chapter 29)
- 6 Account No.
- 7 Fund 2440 FY 1996 Org 0222

		Act- ivity	Other Funds
8			
9			
10	4	Unclassified 099	\$ 450,000

11 The purpose of this supplementary appropriation bill
12 is to supplement this account in the budget act for the
13 fiscal year ending the thirtieth day of June, one thousand
14 nine hundred ninety-six, by adding four hundred fifty
15 thousand dollars to the existing appropriation for the
16 development of a human resource information system
17 (HRIS).

CHAPTER 31

(Com. Sub. for H. B. 4168—By Mr. Speaker, Mr. Chambers, and Delegates Kiss,
J. Martin, Mezzatesta, Michael, Rowe and Ashley)

[Passed January 26, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and four million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, 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, one thousand nine hundred ninety-six, to the governor's office—civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of three million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, be decreased by expiring the amount of four 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, one thousand nine hundred ninety-six, to "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.	
2	Sec. 1. Appropriations from general revenue.	
3	8—Governor's Office	
4	Civil Contingent Fund	
5	(WV Code Chapter 5A)	
6	"WVFIMS" Account Number	
7	Fund <u>0105</u> FY <u>1996</u> Org <u>0100</u>	
8	Act-	General
9	ivity	Revenue
10		Fund
11	1 Civil Contingent Fund—Total . . . 125	\$ 7,500,000

12 The purpose of this bill is to expire the sum of three
13 million five hundred thousand dollars from the West Vir-
14 ginia infrastructure general obligation debt service fund,
15 fund no. 3384, and four million dollars from the revenue
16 shortfall reserve fund, account no. fund 2038, organiza-
17 tion 0201, and to supplement the governor's office, civil
18 contingent fund, "WVFIMS" account no. fund 0105, fiscal
19 year 1996, organization 0100, in the budget act for fiscal
20 year ending the thirtieth day of June, one thousand nine
21 hundred ninety-six, by adding seven million five hundred
22 thousand dollars to the existing appropriation to be ex-
23 pended for infrastructure projects and assistance to areas
24 of the state adversely affected by excessive snowfall and
25 flooding.

CHAPTER 32

(H. B. 4187—By Delegates Burke, Compton, Gallagher, Pettit,
Clements, Evans and Wallace)

[Passed February 20, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, 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, one thousand nine hundred ninety-six, to the department of agriculture, soil conservation committee, "WVFIMS" account no. fund 0132, fiscal year 1996, organization 1400.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore,

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of two million five hundred thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to "WVFIMS" account no. fund 0132, fiscal year 1996, organization 1400, be supplemented and amended by increasing the total appropriation by two million five hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	<i>14—Department of Agriculture</i>		
3	<i>Soil Conservation Committee</i>		
4	(WV Code Chapter 19)		
5	Account No.		
6	Fund <u>0132</u> FY <u>1996</u> Org <u>1400</u>		
7		Act-	General
8		ivity	Revenue
9			Fund
10	6 Soil Conservation Projects (R) . .	120	\$ 2,500,000

11 The purpose of this bill is to expire the sum of two
 12 million five hundred thousand dollars from the West Vir-
 13 ginia infrastructure general obligation debt service fund,
 14 fund no. 3384, and supplement the department of agricul-
 15 ture, soil conservation committee, "WVFIMS" account no.
 16 fund 0132, fiscal year 1996, organization 1400, in the
 17 budget act for the fiscal year ending the thirtieth day of
 18 June, one thousand nine hundred ninety-six, by adding
 19 two million five hundred thousand dollars for soil conser-
 20 vation projects.

CHAPTER 33

(H. B. 4603—By Delegates Kiss, Farris, Pettit, Warner,
Border, Wallace and Walters)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of eight million two hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and the sum of one million four hundred thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, 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, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, and creating a new line item therefor, entitled the civil contingent fund—infrastructure projects and economic development projects.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds that which is necessary for the purposes for which that fund was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund number 3384, be decreased

by expiring the amount of eight million two hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of one million four hundred thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by twelve million two hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**

3 *8—Governor's Office*

4 *Civil Contingent Fund*

5 (WV Code Chapter 5)

6 Fund 0105 FY 1996 Org 0100

7	8	9	Act-	General
10	11	12	ivity	Revenue
13	14	15	Fund	Fund
10 A 1	Civil Contingent Fund - Infrastructure			
11 A 2	and Economic Development			
12	Projects	246	\$2,600,000	
13 A 3	Civil Contingent Fund-Infrastructure-			
14 A 4	and Economic Development			
15 A 5	Projects-surplus	247	\$9,650,000	

16 The purpose of this bill is to expire the sum of one
 17 million four hundred thousand dollars from the
 18 department of tax and revenue, racing commission,
 19 general administration fund, account no. fund 7305, and
 20 to expire the sum of eight million two hundred fifty
 21 thousand dollars from the West Virginia infrastructure
 22 general obligation debt service, fund no. 3384, and to
 23 supplement the governor's office, civil contingent fund,
 24 account no. fund 0105, fiscal year 1996, organization
 25 0100, by adding thereto the sum of twelve million two
 26 hundred fifty thousand dollars to be used only for
 27 infrastructure projects and economic development
 28 projects.

CHAPTER 34

(S. B. 383—By Senators Craig, Manchin, Biatnik, Boley, Dugan, Helmick, Jackson, Kimble, Love, Macnaughtan, Minear, Plymale, Sharpe, Walker and Whitlow)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of seven hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, 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, one thousand nine hundred ninety-six, to the governor's office—civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred

ninety-six, to "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the appropriation by seven hundred fifty thousand dollars to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	8— <i>Governor's Office</i>		
3	<i>Civil Contingent Fund</i>		
4	(WV Code Chapter 5)		
5	Account No.		
6	Fund 0105 FY 1996 Org 0100		
7			
8		Act-	General
9		ivity	Revenue
10			Fund
11	1a Flood Recovery Assistance		
12	for Agriculture	239	\$ 750,000

13 Any unexpended balance remaining in the
 14 appropriation for flood recovery assistance (fund 0105,
 15 activity 239) at the close of the fiscal year 1995-96 is
 16 hereby reappropriated for expenditure during the fiscal
 17 year 1996-97.

18 The purpose of this bill is to expire the sum of seven
 19 hundred fifty thousand dollars from the West Virginia
 20 infrastructure general obligation debt service fund, fund
 21 no. 3384, and to supplement the governor's office civil
 22 contingent fund, "WVFIMS" account no. fund 0105, fiscal
 23 year 1996, organization 0100, by adding seven hundred
 24 fifty thousand dollars for flood recovery assistance in the
 25 budget act for the fiscal year ending the thirtieth day of
 26 June, one thousand nine hundred ninety-six.

CHAPTER 35

(H. B. 4741—By Delegates Browning, Mezzatesta, Warner,
Evans, Facemyer, Leggett and Miller)

[Passed March 14, 1996; in effect from passage. Became law without the signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the lottery net profits fund, to the department of education, state department of education, account no. fund 3951, fiscal year 1996, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the tenth day of January, one thousand nine hundred ninety-six, which included a statement of the lottery net profits fund, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-five, and further included the estimate of revenues for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, less net appropriation balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 3951, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by eight million eight hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 4. Appropriations from lottery net profits.**3 *189—State Department of Education*

4 (WV Code Chapters 18 and 18A)

5 Fund 3951 FY 1996 Org 0402

6		Act-	Lottery
7		ivity	Funds

8 1 Computer Basic Skills—

9 2 Total (R) 567 \$8,800,000

10 Any unexpended balance remaining in the appro-
 11 priation (fund 3951, activity 567) at the close of the fiscal
 12 year 1995-96 is hereby reappropriated for expenditure
 13 during the fiscal year 1996-97.

14 The purpose of this bill is to supplement this account
 15 in the budget act for the fiscal year ending the thirtieth
 16 day of June, one thousand nine hundred ninety-six, by
 17 adding eight million eight hundred thousand dollars to the
 18 existing appropriation for computer technology in middle
 19 schools and high schools.

CHAPTER 36

(H. B. 4740—By Delegates Browning, Doyle, Kelley,
 Evans, Leggett, Miller and Walters)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the lottery net profits fund, to the department of education and the arts, board of education and the arts, board of trustees of the university system of West Virginia and board of directors of the state college system central office, account no. fund

4055, fiscal year 1996, organization 0452, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the tenth day of January, one thousand nine hundred ninety-six, which included a statement of the lottery net profits fund, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-five, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, less net appropriation balances forwarded and regular appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to title two, section four thereof, as follows:

1 TITLE II—APPROPRIATIONS.
 2 **Sec. 4. Appropriations from lottery net profits.**
 3 *191a—Board of Trustees of the University System*
 4 *Of West Virginia and Board of Directors of the*
 5 *State College System*
 6 *Central Office*
 7 (WV Code Chapter 18B)
 8 "WVFIMS" Account no.
 9 Fund 4055 FY 1996 Org 0452

		Act- ivity	Lottery Funds
10			
11			
12	1 Higher Education Grant		
13	Program (R)	164	\$ 3,000,000
14	Any unexpended balance remaining in the		
15	appropriation (fund 4055, activity 164) at the close of the		
16	fiscal year ending the thirtieth day of June, one thousand		
17	nine hundred ninety-six, is hereby reappropriated for		
18	expenditure during the fiscal year ending the thirtieth day		
19	of June, one thousand nine hundred ninety-seven.		

20 The purpose of this bill is to supplement the budget
 21 act for the fiscal year ending the thirtieth day of June, one
 22 thousand nine hundred ninety-six, by providing for a new
 23 item of appropriation to be established therein to
 24 appropriate lottery net profit funds available in the fiscal
 25 year ending the thirtieth day of June, one thousand nine
 26 hundred ninety-six, to provide funding in the amount of
 27 three million dollars for the higher education grant
 28 program.

CHAPTER 37

(H. B. 4863—By Delegates Kiss, Farris, Gallagher,
 Petersen, Pettit, Warner and Border)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources, division of health, hospital services revenue account (special fund) (capital improvement, renovation and operations), account no. fund 5156, fiscal year 1996, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

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 (special fund), (capital improvement, renovation and operations), account no. fund 5156, fiscal year 1996, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, account no. fund 5156, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by nine million four hundred sixty-eight thousand one hundred forty-one dollars in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	115—Division of Health—		
6	Hospital Services Revenue Account		
7	(Special Fund)		
8	(Capital Improvement, Renovation and Operations)		
9	(WV Code Chapter 16)		
10	Account No.		
11	Fund <u>5156</u> FY <u>1996</u> Org <u>0506</u>		
12		Act-	Other
13		ivity	Funds
14	a Foster Care-Transfer	256	\$4,965,939
15	b WV Works Pilot Project-Transfer . . .	260	3,810,064
16	c Child Support Enforcement-		
17	Transfer	262	692,138
18	From the above appropriations for foster care-transfer,		
19	WV works pilot project-transfer, and child support		
20	enforcement-transfer, funds may be transferred to appro-		
21	priate special revenue accounts within the department of		
22	health and human resources to provide services to recipi-		
23	ents as required.		

23 The purpose of this supplementary appropriation bill
24 is to supplement this account in the budget act for the
25 fiscal year ending the thirtieth day of June, one thousand
26 nine hundred ninety-six, by adding nine million four
27 hundred sixty-eight thousand one hundred forty-one
28 dollars to the existing appropriation for foster care, WV
29 works pilot project and child support enforcement.

CHAPTER 38

(S. B. 603—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble,
Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources, division of health—laboratory services, account no. fund 5163, fiscal year 1996, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of health—laboratory services, account no. fund 5163, fiscal year 1996, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 5163, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred sixty thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.
 2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH AND
 4 HUMAN RESOURCES

5 *116—Division of Health—*
 6 *Laboratory Services*

7 (WV Code Chapter 16)

8 Account No.

9 Fund 5163 FY 1996 Org 0506

10		Act-	
11		ivity	Other Funds
12	1 Personal Services	001	\$ 10,000
13	4 Unclassified	099	150,000

14 The purpose of this supplementary appropriation bill
 15 is to supplement this amount in the budget act for the
 16 fiscal year ending the thirtieth day of June, one thousand
 17 nine hundred ninety-six, by adding one hundred sixty
 18 thousand dollars to the existing appropriation for back
 19 wage payments and increased testing levels.

CHAPTER 39

(H. B. 4665—By Delegates Doyle, Leach, Warner,
 Border, Facemyer, Miller and Walters)

[Passed March 6, 1996: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of seven million eight hundred eighty-six thousand one hundred seventy-five dollars in the medical services trust fund, account no. 5185, fiscal year 1996, organization 0511, all supplementing and amending

the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, There remains an unappropriated balance in the division of human services, medical services trust fund, account no. fund 5185, fiscal year 1996, organization 0511, which may be used for medicaid disproportionate share matching payment; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to the division of human services, medical services trust fund, account no. fund 5185, fiscal year 1996, organization 0511, be supplemented and amended by increasing the total appropriation in the amount of seven million eight hundred eighty-six thousand one hundred seventy-five dollars in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	13—Division of Human Services—		
4	Medical Services Trust Fund		
5	(WV Code Chapter 9)		
6	Account No.		
7	Fund <u>5185</u> FY <u>1996</u> Org <u>0511</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	2a	Payment to Nonstate Hospitals	
12	2b	DSH Match	287 \$7,886,175
13	The purpose of this bill is to supplement the division		
14	of human services, medical services trust fund, account no.		
15	fund 5185, fiscal year 1996, organization 0511, in the		
16	budget act for the fiscal year ending the thirtieth day of		
17	June, one thousand nine hundred ninety-six, by adding		
18	seven million eight hundred eighty-six thousand one hun-		
19	dred seventy-five dollars to a new line item entitled "Pay-		
20	ments to nonstate hospitals DSH Match" to make dispro-		
21	portionate share payments to nonstate hospitals.		

CHAPTER 40

(H. B. 4869—By Delegates Leach, Seacrist, Tomblin, Border,
Clements, Leggett and Miller)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three million five hundred thousand dollars from the department of health and human resources, health care cost review authority, account no. fund 5375, 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, one thousand nine hundred ninety-six, to the board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1996, organization 0461.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, account no. fund 5375, exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, be decreased by expiring the amount of three million five hundred thousand dollars to the state fund, general revenue, and

that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1996, organization 0461, be supplemented and amended by increasing the total appropriation by three million five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 *44—Board of Trustees of the*

5 *University System of West Virginia*

6 *Control Account*

7 (WV Code Chapter 18B)

8 Account No.

9 Fund 0327 FY 1996 Org 0461

10			General
11		Act-	Revenue
12		ity	Fund
13	10a Colin Anderson		
14	Childrens Center	435	\$3,500,000

15 The purpose of this bill is to expire the sum of three
 16 million five hundred thousand dollars from the
 17 department of health and human resources, health care
 18 cost review authority, account no. fund 5375, and to
 19 supplement the department of education and the arts,
 20 board of trustees of the university system of West Virginia,
 21 account no. fund 0327, fiscal year 1996, organization
 22 0461, by adding three million five hundred thousand
 23 dollars to be used to convert Colin Anderson Center to a
 24 juvenile facility.

CHAPTER 41

(H. B. 4841—By Delegates Kiss, Doyle, Leach,
Warner, Facemyer, Miller and Wallace)

[Passed March 15, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two hundred thousand dollars from the department of health and human resources, health care cost review authority, account fund no. 5375, 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, one thousand nine hundred ninety-six, to the department of education and the arts, board of directors of the state college system control, account no. fund 0330, fiscal year 1996, organization 0481.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, account no. fund 5375, exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, be decreased by expiring the amount of two hundred thousand dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education and the arts, board of directors of the state college system control account, account no. fund 0330, fiscal year 1996, organization 0481, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**3 *46—Board of Directors of the*4 *State College System*

5 (WV Code Chapter 18B)

6 Account No.

7 Fund 0330 FY 1996 Org 0481

8		General
9	Act-	Revenue
10	ivity	Fund
11	1 Unclassified	099 \$200,000

12 The purpose of this bill is to expire the sum of two
 13 hundred thousand dollars from the department of health
 14 and human resources, health care cost review authority,
 15 account no. fund 5375, and to supplement the department
 16 of education and the arts, board of directors of the state
 17 college system control account, account no. fund 0330,
 18 fiscal year 1996, organization 0481, by adding two
 19 hundred thousand dollars to be used for science
 20 equipment at Shepherd College.

CHAPTER 42

(S. B. 605—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble,
 Love, Minear, Sharpe and Whitlow)

[Passed March 14, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of one hundred fifty thousand dollars from the department of health and human resources, health care cost review authority, account no. fund 5375,

fiscal year 1996, organization 0507, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance to the department of health and human resources, commission on aging, account no. fund 0420, fiscal year 1996, organization 0508.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be decreased by expiring the amount of one hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, commission on aging, account no. fund 0420, fiscal year 1996, organization 0508, be supplemented and amended by increasing the total appropriation by one hundred fifty thousand dollars as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF HEALTH AND HUMAN**
- 4 **RESOURCES**
- 5 *51—Commission on Aging*
- 6 **(WV Code Chapter 29)**
- 7 **Account No.**
- 8 **Fund 0420 FY 1996 Org 0508**

		Act- ivity	General Revenue Fund
9			
10			
11			
12	6a Berkeley County Commission		
13	on Aging	460	\$ 150,000
14	The purpose of this bill is to expire the amount of one		
15	hundred fifty thousand dollars from the health care cost		
16	review authority, account no. fund 5375, fiscal year 1996,		
17	organization 0507, and to supplement the department of		
18	health and human resources, commission on aging,		
19	account no. fund 0420, fiscal year 1996, organization		
20	0508, by adding the amount of one hundred fifty		
21	thousand dollars for the Berkeley County commission on		
22	aging.		

CHAPTER 43

(H. B. 4870—By Delegates Kiss, Browning, Burke, Doyle, Mezzatesta,
Petersen and Wallace)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, available for

expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be supplemented and amended by increasing the total appropriation by one million eight hundred thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 *119—Health Care Cost Review Authority*

6 (WV Code Chapter 16)

7 Account No.

8 Fund 5375 FY 1996 Org 0507

		Act-	Other
		ivity	Funds
11	1 Personal Services	001	\$ 216,200
12	4 Unclassified	099	1,572,000

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for the
15 fiscal year ending the thirtieth day of June, one thousand
16 nine hundred ninety-six, by adding one million seven
17 hundred eighty-eight thousand two hundred dollars to the
18 existing appropriation for personal services and unclassi-
19 fied for assisting in the transition of rural health systems.

CHAPTER 44

(S. B. 571—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources—board of barbers and cosmetologists, account no. fund 5425, fiscal year 1996, organization 0505, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources—board of barbers and cosmetologists, account no. fund 5425, fiscal year 1996, organization 0505, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 5425, fiscal year 1996, organization 0505, be supplemented and amended by increasing the total appropriation by fifteen thousand dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF HEALTH AND
- 4 HUMAN RESOURCES
- 5 *113—Board of Barbers and Cosmetologists*
- 6 (WV Code Chapters 16 and 30)
- 7 Account No.
- 8 Fund 5425 FY 1996 Org 0505

9		Act-	Other
10		ivity	Funds
11	1 Personal Services	001 \$	15,000

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-six, by adding fifteen thousand
 16 dollars to the existing appropriation for the payment of
 17 per diem for board members.

CHAPTER 45

(H. B. 4545—By Delegates Kiss, Browning, Doyle,
 Farris, Warner, Miller and Wallace)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of four hundred fifty thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, 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, one thousand nine hundred ninety-six, to the state department of education, aid for exceptional children, account no. fund 0314, fiscal year 1996, organization 0402.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of four hundred fifty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the state department of education, aid for exceptional children, account no. fund 0314, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	<i>35—State Department of Education</i>		
4	<i>Aid for Exceptional Children</i>		
5	(WV Code Chapters 18 and 18A)		
6	Account No.		
7	Fund <u>0314</u> FY <u>1996</u> Org <u>0402</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	3	Education of Institutionalized	
12	4	Juveniles	161 \$450,000
13	The purpose of this bill is to expire the sum of four		
14	hundred fifty thousand dollars from the department of tax		
15	and revenue, racing commission, general administration		
16	fund, account no. fund 7305, and to supplement the state		
17	department of education, aid for exceptional children,		
18	account no. fund 0314, fiscal year 1996, organization		
19	0402, by adding thereto the four hundred fifty thousand		
20	dollars to be used to educate youths in state custody at		
21	Davis-Stuart, a residential child care facility in Lewisburg		
22	and to develop a model alternative education program for		
23	chronically disruptive students.		

CHAPTER 46

(H. B. 4546—By Delegates Kiss, Border, Doyle,
Pettit, Warner, Miller and Wallace)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of six hundred eighty-five thousand seven hundred ninety-eight dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, 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, one thousand nine hundred ninety-six, to the auditor's office, general administration, account no. fund 0116, fiscal year 1996, organization 1200.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of six hundred eighty-five thousand seven hundred ninety-eight dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the auditor's office, general administration, account no. fund 0116, fiscal year 1996, organization 1200, be supplemented and amended by increasing the total appropriation by six hundred eighty-five thousand seven hundred ninety-eight dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**3 *10—Auditor's Office*4 *General Administration*

5 (WV Code Chapter 12)

6 Account No.

7 Fund 0116 FY 1996 Org 1200

8		Act-	General
9		ivity	Revenue
10			Fund

11 6a Image Processing and

12 Printer Replacement 240 \$685,798

13 The purpose of this bill is to expire the sum of six
 14 hundred eighty-five thousand seven hundred ninety-eight
 15 dollars from the department of tax and revenue, racing
 16 commission, general administration fund, account no.
 17 fund 7305, and to supplement the auditor's office, general
 18 administration, account no. fund 0116, fiscal year 1996,
 19 organization 1200, by adding thereto six hundred
 20 eighty-five thousand seven hundred ninety-eight dollars to
 21 be used by the auditor's office for printer replacement and
 22 image processing.

CHAPTER 47

(H. B. 4547—By Delegates Kiss, Compton, Doyle, Browning,
 Gallagher, Leach and Wallace)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of four hundred fifty thousand dollars from the department of tax and revenue, racing

commission, the general administration fund, account no. fund 7305, 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, one thousand nine hundred ninety-six, to miscellaneous boards and commissions, board of investments, account no. fund 0513, fiscal year 1996, organization 0920.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of four hundred fifty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to miscellaneous boards and commissions, board of investments, account no. fund 0513, fiscal year 1996, organization 0920, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 **MISCELLANEOUS BOARDS AND COMMISSIONS**
- 4 *85—Board of Investments*
- 5 (WV Code Chapter 12)
- 6 Account No.
- 7 Fund 0513 FY 1996 Org 0920

8		Act-	General
9		ivity	Revenue
10			Fund
11	4a Contractual Investments		
12	Advisors	241	\$ 450,000
13	The purpose of this bill is to expire the sum of four		
14	hundred fifty thousand dollars from the department of tax		
15	and revenue, racing commission, general administration		
16	fund, account no. fund 7305, and to supplement		
17	miscellaneous boards and commissions, board of		
18	investments, account no. fund 0513, fiscal year 1996,		
19	organization 0920, by adding thereto the sum of four		
20	hundred fifty thousand dollars to be used by the board of		
21	investments to pay for contract investment advisors hired		
22	to oversee the state's investment portfolio.		

CHAPTER 48

(H. B. 4548—By Delegates Kiss, Browning, Farris,
Mezzatesta, Miller, Wallace and Walters)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of eighty thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, 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, one thousand nine hundred ninety-six, to the secretary of state, account no. fund 0155, fiscal year 1996, organization 1600.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of eighty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the secretary of state, account no. fund 0155, fiscal year 1996, organization 1600, be supplemented and amended by increasing the total appropriation by eighty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**

3 *18—Secretary of State*

4 (WV Code Chapters 3, 5 and 59)

5 Account No.

6 Fund 0155 FY 1996 Org 1600

7		Act-	General
8		ivity	Revenue
9			Fund

10 4a Imaging and Computerization

11	Upgrade	244	\$80,000
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12 The purpose of this bill is to expire the sum of eighty
 13 thousand dollars from the department of tax and revenue,
 14 racing commission, general administration fund, account
 15 no. fund 7305, and to supplement the secretary of state,
 16 account no. fund 0155, fiscal year 1996, organization
 17 1600, by adding thereto eighty thousand dollars to be
 18 used by the secretary of state for imaging processing and
 19 computerization upgrades.

CHAPTER 49

(S. B. 572—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission—general administration, account no. fund 7305, fiscal year 1996, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue, racing commission—general administration, account no. fund 7305, fiscal year 1996, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 7305, fiscal year 1996, organization 0707, be supplemented and amended by increasing the total appropriation by fifty-three thousand fifteen dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF TAX AND REVENUE
- 4 *141—Racing Commission—*
- 5 *General Administration*
- 6 (WV Code Chapter 19)
- 7 Account No.

8	Fund <u>7305</u> FY <u>1996</u> Org <u>0707</u>		
9		Act-	Other
10		ivity	Funds
11	4	Unclassified	099 \$ 53,015
12	The purpose of this supplementary appropriation bill		
13	is to supplement this account in the budget act for the		
14	fiscal year ending the thirtieth day of June, one thousand		
15	nine hundred ninety-six, by adding fifty-three thousand		
16	fifteen dollars to the existing appropriation for the		
17	payment of additional current expenses.		

CHAPTER 50

(H. B. 4223—By Delegates Kiss, Browning, Burke, Doyle,
Miller, Wallace and Walters)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three hundred ten thousand five hundred ninety dollars from the department of tax and revenue, racing commission, general administration fund, fund no. 7305, and in the amount of one hundred fourteen thousand four hundred ten dollars from the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance to the department of transportation, office of the secretary, account no. fund 0500, fiscal year 1996, organization 0801.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of three hundred ten thousand five hundred ninety dollars and that the balance of funds available in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be decreased by expiring the amount of one hundred fourteen thousand four hundred ten 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, one thousand nine hundred ninety-six, to the department of transportation, office of the secretary, account no. fund 0500, fiscal year 1996, organization 0801, be supplemented and amended by increasing the total appropriation by four hundred twenty-five thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF TRANSPORTATION		
4	<i>70—Office of the Secretary</i>		
5	(WV Code Chapter 5F)		
6	Account No.		
7	Fund <u>0500</u> FY <u>1996</u> Org <u>0801</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	5a Aeronautics commission	450	\$425,000

12 The purpose of this bill is to expire the amount of
13 three hundred ten thousand five hundred ninety dollars
14 from the department of tax and revenue, racing
15 commission, general administration fund, fund no. 7305,
16 and the amount of one hundred fourteen thousand four
17 hundred ten dollars from the department of health and
18 human services, health care cost review authority, account
19 no. fund 5375, fiscal year 1996, organization 0507, and to
20 supplement the department of transportation, office of the
21 secretary, account no. fund 0500, fiscal year 1996,
22 organization 0801, by adding the amount of four hundred
23 twenty-five thousand dollars in a new line for the
24 aeronautics commission.

CHAPTER 51

(S. B. 579—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of transportation, division of motor vehicles—driver rehabilitation, account no. fund 8214, fiscal year 1996, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation, division of motor vehicles—driver rehabilitation, account no. fund 8214, fiscal year 1996, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8214, fiscal year 1996, organization 0802, be supplemented and amended by increasing the total appropriation by fifty-two thousand dollars in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF TRANSPORTATION		
4	146—Division of Motor Vehicles—		
5	Driver Rehabilitation		
6	(WV Code Chapter 17C)		
7	Account No.		
8	Fund 8214	FY 1996	Org 0802
9		Act-	Other
10		ivity	Funds
11	1 Personal Services	001	\$ 40,000
12	3 Employee Benefits	010	12,000
13	The purpose of this supplementary appropriation bill		
14	is to supplement this account in the budget act for the		
15	fiscal year ending the thirtieth day of June, one thousand		
16	nine hundred ninety-six by adding fifty-two thousand		
17	dollars to the existing appropriation for a program coordi-		
18	nator and temporary help.		

CHAPTER 52

(H. B. 4842—By Delegates Kiss, Burke, Farris,
Petersen, Pettit, Clements and Wallace)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of one million dollars from the board of investments, investment legal loss account, account no. fund 8563, and in the amount of one million dollars from the board of investments, securities lending, account no. fund 8565, 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, one thousand nine hundred ninety-six, to the bureau of commerce, West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss account, and board of investments, securities lending, exceed the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, investment legal loss account, account no. fund 8563, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, securities lending, account no. fund 8565, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 75—*West Virginia Development Office—*
- 4 (WV Code Chapter 5B)
- 5 "WVFIMS" Account No.
- 6 Fund 0256 FY 1996 Org 0307

7			General
8			Revenue
9		Act- ivity	Fund
10	10	Guaranteed Work	
11	11	Force Grant (R)	242 \$2,000,000
12		Any unexpended balance remaining in the	
13		appropriation for guaranteed work force grant (fund	
14		0256, activity 242) at the close of the fiscal year ending	
15		the thirtieth day of June, one thousand nine hundred	
16		ninety-six, is hereby reappropriated for expenditure	
17		during the fiscal year ending the thirtieth day of June, one	
18		thousand nine hundred ninety-seven.	
19		The purpose of this bill is to expire the sum of one	
20		million dollars from the board of investments, investment	
21		legal loss, account no. fund 8563, and to expire the sum	
22		of one million dollars from the board of investments,	
23		securities lending, account no. fund 8565, and to	
24		supplement the bureau of commerce, West Virginia	
25		development office, account no. fund 0256, fiscal year	
26		1996, organization 0307, by adding thereto the two	
27		million dollars to fund the guaranteed work force grant.	

CHAPTER 53

(H. B. 4846—By Delegates Kiss, Compton, Frederick,
Kelley, Leggett, Wallace and Walters)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two hundred fifty thousand dollars from the board of investments, investment legal loss account, account no. fund 8563, and the sum of two hundred fifty thousand dollars from the board of investments, securities lending, account no. fund 8565, and making a supplementary appropriation in the amount of one million

two hundred fifty thousand dollars of public moneys out of the treasury from the unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, and from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss account, and board of investments, securities lending, exceed the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the board of investments, investment legal loss account, account no. fund 8563, be decreased by expiring the amount of two hundred fifty thousand dollars to the state fund, general revenue, and that the board of investments, securities lending, account no. fund 8565, be decreased by expiring the amount of two hundred fifty thousand dollars to the state fund, general revenue; that a supplementary appropriation in the amount of one million two hundred fifty thousand dollars from the unappropriated balance in the state fund, general revenue, be made to the account as provided herein; and that the civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by one million seven hundred fifty thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 8—Governor's Office—

4

(WV Code Chapter 5)

5

Account No.

6

Fund 0105 FY 1996 Org 0100

7

General

8

Act-**Revenue**

9

ivity**Fund**

10 1 Civil Contingent Fund—Total . . 114 \$1,250,000

11 1a Civil Contingent Fund—Surplus . 263 \$ 500,000

12 The purpose of this bill is to expire the sum of two
 13 hundred fifty thousand dollars from the board of
 14 investments, investment legal loss account, account no.
 15 fund 8563, and to expire the sum of two hundred fifty
 16 thousand dollars from the board of investments, securities
 17 lending, account no. fund 8565, and to make a
 18 supplementary appropriation of public moneys in the
 19 amount of one million two hundred fifty thousand dollars
 20 out of the treasury from the balance of moneys remaining
 21 as an unappropriated balance in the state fund, general
 22 revenue, and to supplement the governor's office, civil
 23 contingent fund, account no. fund 0105, fiscal year 1996,
 24 organization 0100, by adding thereto the one million
 25 seven hundred fifty thousand dollars.

CHAPTER 54

(H. B. 4868—By Delegates Kiss, Compton, Seacrist,
 Warner, Kelley, Leggett and Walters)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of one million dollars from the board of investments, federal cash management/interest fund,

account no. fund 8569, 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, one thousand nine hundred ninety-six, to the department of administration, division of general services, account no. fund 0230, fiscal year 1996, organization 0211.

WHEREAS, The Legislature finds that the account balance in the board of investments, federal cash management/interest fund, exceeds the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, federal cash management/interest fund, account no. fund 8569, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of administration, division of general services, account no. fund 0230, fiscal year 1996, organization 0211, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	23—Division of General Services—		
4	(WV Code Chapter 5A)		
5	Account No.		
6	Fund <u>0230</u> FY <u>1996</u> Org <u>0211</u>		
7			General
8		Act-	Revenue
9		ivity	Fund

10 7 Capital Improvements-
 11 8 Capitol Complex 593 \$1,000,000

12 The purpose of this bill is to expire the sum of one
 13 million dollars from the board of investments, federal cash
 14 management/interest fund, account fund no. 8569, and to
 15 supplement the department of finance and administration,
 16 division of general services, account no. fund 0230, fiscal
 17 year 1996, organization 0211, by adding thereto the one
 18 million dollars to fund capital improvements to the capitol
 19 complex.

CHAPTER 55

(S. B. 574—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the public service commission, account no. fund 8623, fiscal year 1996, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the public service commission, account no. fund 8623, fiscal year 1996, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8623, fiscal year 1996, organization 0926, be supplemented and amended by increasing the total appropriation by two hundred eighty thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 *180—Public Service Commission*

5 (WV Code Chapter 24)

6 Account No.

7 Fund 8623 FY 1996 Org 0926

8		Act-	Other
9		ivity	Funds
10	4	Unclassified 099	\$ 280,000

11 The purpose of this supplementary appropriation bill
 12 is to supplement this account in the budget act for the
 13 fiscal year ending the thirtieth day of June, one thousand
 14 nine hundred ninety-six, by adding two hundred eighty
 15 thousand dollars to the existing appropriation to replace
 16 existing heating and cooling control boxes throughout the
 17 building and replace a chiller in the HVAC system.

CHAPTER 56

(S. B. 575—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the bureau of commerce, division of labor, account no. fund 8706, fiscal year 1996, organization 0308, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8706, fiscal year 1996, organization 0308, be supplemented and amended by increasing the total appropriation by sixty-eight thousand four hundred sixty-eight dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	BUREAU OF COMMERCE		
4	<i>226—Division of Labor</i>		
5	(WV Code Chapters 21 and 47)		
6	Account No.		
7	Fund 8706 FY 1996 Org 0308		
8		Act-	Federal
9		ivity	Funds
10	1	Unclassified—Total 096	\$ 68,468

11 The purpose of this supplementary appropriation bill
 12 is to supplement this account in the budget act for the
 13 fiscal year ending the thirtieth day of June, one thousand
 14 nine hundred ninety-six, by adding sixty-eight thousand
 15 four hundred sixty-eight dollars to the existing appropria-
 16 tion for safety and statistical survey grant. These moneys
 17 shall be available for expenditure upon passage of this
 18 bill.

CHAPTER 57

(S. B. 576—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, division of miners' health, safety and training, account no. fund 8709, fiscal year 1996, organization 0314, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8709, fiscal year 1996, organization 0314, be supplemented and amended by increasing the total appropriation by two hundred six thousand eight hundred ninety-three dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 BUREAU OF COMMERCE
- 4 228—*Division of Miners' Health, Safety and Training*
- 5 (WV Code Chapter 22)
- 6 Account No.
- 7 Fund 8709 FY 1996 Org 0314

		Act-	Federal
		ivity	Funds
8			
9			
10	1	096	\$ 206,893

11 The purpose of this supplementary appropriation bill
 12 is to supplement this account in the budget act for the
 13 fiscal year ending the thirtieth day of June, one thousand
 14 nine hundred ninety-six, by adding two hundred six
 15 thousand eight hundred ninety-three dollars to the
 16 existing appropriation for support of the state safety and
 17 training program.

CHAPTER 58

(S. B. 604—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson,
 Kimble, Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, consolidated medical service fund, account no. fund 8723, fiscal year 1996, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8723, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by six hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations of federal funds.**3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES5 *116—Consolidated Medical Service Fund—*

6 (WV Code Chapter 16)

7 Account No.

8 Fund 8723 FY 1996 Org 0506

9		Act-	Other
10		ivity	Funds
11	1	Unclassified—Total.	096 \$ 600,000

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for the
14 fiscal year ending the thirtieth day of June, one thousand
15 nine hundred ninety-six, by adding six hundred thousand
16 dollars to the existing appropriation for current obliga-
17 tions of the consolidated medical service fund.

CHAPTER 59

(S. B. 592—Originating in the Committee on Finance)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of agriculture, account no. fund 8736, fiscal year 1996, organization 1400, supplementing and

amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, account no. fund 8736, fiscal year 1996, organization 1400, be supplemented and amended by increasing the appropriation by forty-five thousand two hundred fifty dollars to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations from federal funds.		
3	<i>199—Department of Agriculture</i>		
4	(WV Code Chapter 19)		
5	Account No.		
6	Fund 8736 FY 1996 Org 1400		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified—Total 096	\$ 45,250

10 The purpose of this supplementary appropriation bill
 11 is to supplement this account in the budget act for fiscal
 12 year ending the thirtieth day of June, one thousand nine
 13 hundred ninety-six, by adding forty-five thousand two
 14 hundred fifty dollars to the existing appropriation for a
 15 pesticide recordkeeping project and pesticide laboratory
 16 equipment. These moneys shall be available for expendi-
 17 ture upon passage of this bill.

CHAPTER 60

(H. B. 4636 —By Delegates Kiss, Seacrist, Compton,
Evans, Clements, Leggett and Wallace)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the Legislature, Crime Victims Compensation Fund, account no. fund 8738, fiscal year 1996, organization 2300, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the crime victims compensation fund, account no. fund 8738, fiscal year 1996, organization 2300, be supplemented and amended by increasing the appropriation by six hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	<i>200—Crime Victims Compensation Fund</i>		
4	(WV Code Chapter 14)		
5	Fund <u>8738</u> FY <u>1996</u> Org <u>2300</u>		
6		Act-	Federal
7		ivity	Funds
8	1 Unclassified	096	\$600,000

9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget act for the
11 fiscal year ending the thirtieth day of June, one thousand
12 nine hundred ninety-six, by adding six hundred thousand
13 dollars to the existing appropriation to authorize the
14 agency to spend additional federal moneys received.
15 These moneys shall be available for expenditure upon
16 passage of this bill.

CHAPTER 61

(S. B. 582—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of transportation, division of motor vehicles, account no. fund 8787, fiscal year 1996, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 5. Appropriations of federal funds.**

3 DEPARTMENT OF TRANSPORTATION

4 222a—Division of Motor Vehicles

5 (WV Code Chapters 17, 17A, 17B,

6 17C, 17D, 20 and 24A)

7 Account No.

8 Fund 8787 FY 1996 Org 0802

9		Act-	Federal
10		ivity	Funds

11	1	Unclassified—Total	096	\$	80,186
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12 The purpose of this bill is to supplement the budget
 13 act for the fiscal year 1995-96 by providing for a new
 14 item of appropriation to be established therein to appro-
 15 priate federal funds available in the fiscal year ending the
 16 thirtieth day of June, one thousand nine hundred
 17 ninety-six, to provide funding in the amount of eighty
 18 thousand one hundred eighty-six dollars for the imple-
 19 mentation of the international fuel tax agreement.

CHAPTER 62

(S. B. 578—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

ANACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor’s office—governor’s cabinet on children and families, account no. fund 8792, fiscal year 1996, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8792, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by thirty-five thousand five hundred fifty dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	EXECUTIVE		
4	<i>196—Governor's Office—</i>		
5	<i>Governor's Cabinet on Children and Families</i>		
6	(WV Code Chapter 5)		
7	Account No.		
8	Fund 8792	FY 1996	Org 0100
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total	096 \$ 35,550

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-six, by adding thirty-five thousand
 16 five hundred fifty dollars to the existing appropriation for
 17 a teletechnology community awareness project.

CHAPTER 63

(S. B. 606—Originating in the Committee on Finance)

[Passed March 14, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office—governor's cabinet on children and families, account no. fund 8792, fiscal year 1996, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8792, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by twenty thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 EXECUTIVE
- 4 *196—Governor's Office—*
- 5 *Governor's Cabinet on Children and Families*
- 6 (WV Code Chapter 5)
- 7 Account No.
- 8 Fund 8792 FY 1996 Org 0100

9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total	096 \$ 20,000
12		The purpose of this supplementary appropriation bill	
13		is to supplement this account in the budget act for the	
14		fiscal year ending the thirtieth day of June, one thousand	
15		nine hundred ninety-six, by adding twenty thousand	
16		dollars to the existing appropriation for a head start-col-	
17		laboration grant.	

CHAPTER 64

(S. B. 573—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety—fire commission, account no. fund 8804, fiscal year 1996, organization 0619, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
4 SAFETY

5 218a—Fire Commission

6 (WV Code Chapter 29)

7 Account No.

8 Fund 8804 FY 1996 Org 0619

9	Act-	Federal
10	ivity	Funds
11	1 Unclassified—Total	\$ 5,850

12 The purpose of this bill is to supplement the budget
 13 act for the fiscal year 1995-96 by providing for a new
 14 item of appropriation to be established therein to
 15 appropriate federal funds available in the fiscal year
 16 ending the thirtieth day of June, one thousand nine
 17 hundred ninety-six, to provide funding in the amount of
 18 five thousand eight hundred fifty dollars for computer
 19 system equipment.

CHAPTER 65

(S. B. 302—Originating in the Committee on Finance.)

[Passed February 19, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to a new item of appropriation designated auditor's office, "WVFIMS" account no. fund 8807, fiscal year 1996, organization 1200, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to a new item of appropriation designated auditor's office, "WVFIMS" account no. fund 8807, fiscal year 1996, organization 1200, be supplemented and amended by increasing the appropriation by six hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 EXECUTIVE

4 200a—Auditor's Office

5 (WV Code Chapter 12)

6 "WVFIMS" Account No.

7 Fund 8807 FY 1996 Org 1200

8		Act-	Federal
9		ivity	Funds

10	1	Unclassified	096	\$ 600,000
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11 The purpose of this bill is to supplement the budget
12 act for the fiscal year ending the thirtieth day of June, one
13 thousand nine hundred ninety-six, by providing for a new
14 item of appropriation to be established therein to
15 appropriate federal funds available in the fiscal year
16 ending the thirtieth day of June, one thousand nine
17 hundred ninety-six, to provide funding in the amount of
18 six hundred thousand dollars for the national white collar
19 crime center. These moneys shall be available for
20 expenditure upon passage of this bill.

CHAPTER 66

(H. B. 4845—By Delegates Kiss, Farris, Frederick,
Gallagher, Leach, Mezzatesta and Pettit)

[Passed March 14, 1996; in effect from passage. Became law without signature of 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, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, central office, account no. fund 8812, fiscal year 1996, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 5. Appropriations of federal funds.
- 3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC
- 4 SAFETY
- 5 215a—*Division of Corrections—*
- 6 *Central Office*
- 7 (WV Code Chapters 25, 28, 49 and 62)
- 8 Account No.

9	Fund <u>8812</u> FY <u>1996</u> Org <u>0608</u>		
10			General
11		Act-	Revenue
12		ivity	Funds
13	1	Unclassified—Total	096 \$ 5,546
14	The purpose of this bill is to supplement the budget act		
15	for the fiscal year ending the thirtieth day of June, one		
16	thousand nine hundred ninety-six, by providing for a new		
17	item of appropriation to be established therein to appro-		
18	priate federal funds available in the fiscal year ending the		
19	thirtieth day of June, one thousand nine hundred		
20	ninety-six, to provide funding in the amount of five thou-		
21	sand five hundred forty-six dollars for the criminal alien		
22	assistance program.		

CHAPTER 67

(S. B. 581—Originating in the Committee on Finance)

[Passed March 7, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1996, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1996, organization 0803, be amended and reduced in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from state road fund.**
- 3 DEPARTMENT OF TRANSPORTATION

4	<i>89—Division of Highways</i>		
5	(WV Code Chapters 17 and 17C)		
6	Account No.		
7	Fund 9017 FY 1996 Org 0803		
8			State
9		Act-	Road
10		ivity	Fund
11	16 Other Federal Aid Programs . . .	279	\$25,000,000
12	17 Appalachian Programs	280	13,000,000

13 And, that the items of the total appropriations from the
 14 state road fund to account no. fund 9017, fiscal year
 15 1996, organization 0803, be amended and increased in the
 16 line items as follows:

17 **TITLE II—APPROPRIATIONS.**

18 **Sec. 2. Appropriations from state road fund.**

19 **DEPARTMENT OF TRANSPORTATION**

20	<i>89—Division of Highways</i>		
21	(WV Code Chapters 17 and 17C)		
22	Account No.		
23	Fund 9017 FY 1996 Org 0803		
24			State
25		Act-	Road
26		ivity	Fund
27	3 Maintenance, Expressway,		
28	4 Trunkline and Feeder	270	\$ 11,400,000
29	5 Maintenance, State		
30	6 Local Services	271	11,600,000
31	7 Maintenance, Contract Paving		
32	8 and Secondary Road		
33	9 Maintenance	272	2,000,000

34	10	Bridge Repair and		
35	11	Replacement	273	6,000,000
36	15	Interstate Construction	278	6,000,000
37	18	Nonfederal Aid Construction . . .	281	2,000,000

38 The purpose of this supplementary appropriation bill
 39 is to supplement, amend, reduce and transfer between
 40 existing items in the aforesaid account for the designated
 41 spending unit. The item for other federal aid programs is
 42 reduced by twenty-five million dollars. The item for ap-
 43 palachian programs is reduced by thirteen million dollars.
 44 The item for maintenance, expressway trunkline and feed-
 45 er is increased by eleven million four hundred thousand
 46 dollars. The item for maintenance, state local services is
 47 increased by eleven million six hundred thousand dollars.
 48 The item for maintenance, contract paving and secondary
 49 road maintenance is increased by two million dollars. The
 50 item for bridge repair and replacement is increased by six
 51 million dollars. The item for interstate construction is
 52 increased by six million dollars. The item for nonfederal
 53 aid construction is increased by two million dollars. The
 54 amounts as itemized for expenditure in fiscal year ending
 55 the thirtieth day of June, one thousand nine hundred
 56 ninety-six, shall be available for expenditure immediately
 57 upon the effective date of this bill.

CHAPTER 68

(Com. Sub. for S. B. 320—By Senators Whitlow, Helmick,
 Ross, Miller and Anderson)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensure of auctioneers; fees; required bond; creation of special revenue fund for administration and enforcement and continuing education; licensure renewals; service of process; and depos-

iting auctioneer application fees to the department of agriculture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. AUCTIONEERS.

§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.

1 Any person who wishes to conduct an auction as an
2 auctioneer may apply for a license on forms prescribed by
3 the commissioner and containing such information as the
4 commissioner may require by a legislative rule promulgat-
5 ed in accordance with article three, chapter twenty-nine-a
6 of this code. A nonreturnable application fee of fifty
7 dollars shall accompany each application as well as a li-
8 cense fee of fifty dollars. All fees collected under this
9 article shall be paid into a special revenue fund in the state
10 treasury to be used by the department of agriculture for
11 the expressed purpose of administering and enforcing this
12 article and for providing continuing education for auc-
13 tioneers: *Provided*, That for the fiscal year ending the
14 thirtieth day of June, one thousand nine hundred
15 ninety-seven, fees collected under this article shall be paid
16 into the state fund, general revenue.

17 In addition to the payment of fees, an applicant shall
18 file with his or her application a bond as required in sec-
19 tion four of this article.

20 The commissioner shall, within thirty days after the
21 receipt of an application, notify the applicant of his or her
22 eligibility to be examined at the next regularly scheduled
23 examination, as well as the date of the examination.

24 In the event the license is denied, the commissioner
25 shall refund the license fee submitted with the application
26 to the applicant.

27 Licenses issued expire on the thirty-first day of De-
28 cember of each year but are renewable upon the payment

29 of the annual license fee within sixty days of the
30 expiration date. Renewals received more than sixty days
31 after the expiration date are subject to a late renewal fee of
32 twenty-five dollars in addition to the annual renewal fee.
33 The commissioner shall not renew licenses which have
34 been expired for more than two years and the auctioneer
35 or apprentice auctioneer shall take the written and oral
36 examination and pay the examination fee in order to
37 renew his or her license. The commissioner shall not
38 renew a license unless the applicant complies with the
39 other requirements of this article.

40 Where an auctioneer or apprentice auctioneer requires
41 a duplicate or replacement license or a license reflecting a
42 change in information, the auctioneer or apprentice
43 auctioneer shall submit a fee of five dollars with the
44 request. .

45 The state department of agriculture is the agent for the
46 purpose of service of process on any licensed auctioneer
47 for any action occasioned by the performance of the
48 duties of the auctioneer. Every licensed auctioneer, by
49 virtue of his or her application for a license, shall be
50 considered to have consented to the statutory agency.

CHAPTER 69

(S. B. 306—By Senators Ross, Anderson, Buckalew, Sharpe, Bowman,
Helmick, Blatnik, Dugan, Yoder and Schoonover)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing amounts for authorized exemptions of property in bankruptcy proceedings.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES
IN BANKRUPTCY.**

§38-10-4. Exemptions of property in bankruptcy proceedings.

1 Pursuant to the provisions of 11 U.S.C. 522(b)(1), this
2 state specifically does not authorize debtors who are
3 domiciled in this state to exempt the property specified
4 under the provisions of 11 U.S.C. 522(d).

5 Any person who files a petition under the federal
6 bankruptcy law may exempt from property of the estate in
7 a bankruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed fifteen
9 thousand dollars in value, in real property or personal
10 property that the debtor or a dependent of the debtor uses
11 as a residence, in a cooperative that owns property that the
12 debtor or a dependent of the debtor uses as a residence or
13 in a burial plot for the debtor or a dependent of the
14 debtor.

15 (b) The debtor's interest, not to exceed two thousand
16 four hundred dollars in value, in one motor vehicle.

17 (c) The debtor's interest, not to exceed four hundred
18 dollars in value in any particular item, in household
19 furnishings, household goods, wearing apparel, appliances,
20 books, animals, crops or musical instruments, that are held
21 primarily for the personal, family or household use of the
22 debtor or a dependent of the debtor: *Provided*, That the
23 total amount of personal property exempted under this
24 subsection shall not exceed eight thousand dollars.

25 (d) The debtor's interest, not to exceed one thousand
26 dollars in value, in jewelry held primarily for the personal,
27 family or household use of the debtor or a dependent of
28 the debtor.

29 (e) The debtor's interest, not to exceed in value eight
30 hundred dollars plus any unused amount of the
31 exemption provided under subsection (a) of this section in
32 any property.

33 (f) The debtor's interest, not to exceed one thousand
34 five hundred dollars in value, in any implements,
35 professional books or tools of the trade of the debtor or
36 the trade of a dependent of the debtor.

37 (g) Any unmaturred life insurance contract owned by
38 the debtor, other than a credit life insurance contract.

39 (h) The debtor's interest, not to exceed in value eight
40 thousand dollars less any amount of property of the estate
41 transferred in the manner specified in 11 U.S.C. 542(d), in
42 any accrued dividend or interest under, or loan value of,
43 any unmaturred life insurance contract owned by the
44 debtor under which the insured is the debtor or an
45 individual of whom the debtor is a dependent.

46 (i) Professionally prescribed health aids for the debtor
47 or a dependent of the debtor.

48 (j) The debtor's right to receive:

49 (1) A social security benefit, unemployment
50 compensation or a local public assistance benefit;

51 (2) A veterans' benefit;

52 (3) A disability, illness or unemployment benefit;

53 (4) Alimony, support or separate maintenance, to the
54 extent reasonably necessary for the support of the debtor
55 and any dependent of the debtor;

56 (5) A payment under a stock bonus, pension, profit
57 sharing, annuity or similar plan or contract on account of
58 illness, disability, death, age or length of service, to the
59 extent reasonably necessary for the support of the debtor
60 and any dependent of the debtor, unless:

61 (A) Such plan or contract was established by or under
62 the auspices of an insider that employed the debtor at the
63 time the debtor's rights under such plan or contract arose;

64 (B) Such payment is on account of age or length of
65 service; and

66 (C) Such plan or contract does not qualify under
67 section 401(a), 403(a), 403(b), 408 or 409 of the Internal
68 Revenue Code of 1954.

69 (k) The debtor's right to receive, or property that is
70 traceable to:

71 (1) An award under a crime victim's reparation law;

72 (2) A payment on account of the wrongful death of an
73 individual of whom the debtor was a dependent, to the
74 extent reasonably necessary for the support of the debtor
75 and any dependent of the debtor;

76 (3) A payment under a life insurance contract that
77 insured the life of an individual of whom the debtor was a
78 dependent on the date of such individual's death, to the
79 extent reasonably necessary for the support of the debtor
80 and any dependent of the debtor;

81 (4) A payment, not to exceed fifteen thousand dollars
82 on account of personal bodily injury, not including pain
83 and suffering or compensation for actual pecuniary loss,
84 of the debtor or an individual of whom the debtor is a
85 dependent; or

86 (5) A payment in compensation of loss of future
87 earnings of the debtor or an individual of whom the
88 debtor is or was a dependent, to the extent reasonably
89 necessary for the support of the debtor and any dependent
90 of the debtor.

91 This section shall not be construed to affect the
92 applicability of any provision of the federal bankruptcy
93 law other than 11 U.S.C. 552(d).

CHAPTER 70

S. B. 326—By Senators Manchin, Helmick, Craigo, Dittmar, Sharpe, Wagner, Kimble, Scott, Blatnik, Chafin, Wiedebusch and Yoder)

Clerk's Note: It has been determined that S. B. 326, originally styled as Chapter 70, occupying pages 279 through 304, was not properly enacted and that the purported act as presented to the Governor was not passed by both houses in identical form. Therefore, the text of the document has been omitted to avoid confusion on the part of the user of these Acts.

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CHAPTER 71

(H. B. 4624—By Delegates Farris, Beane, Hunt, Hutchins,
Azinger, Hall and Walters)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, thirteen and fourteen, article two of said chapter; to amend and reenact section two, article three of said chapter; to amend and reenact sections two, four, six, eight, twenty and twenty-six, article four of said chapter; to amend and reenact sections twelve, twelve-b, fifteen and sixteen, article eight of said chapter; to further amend said article by adding thereto a new section, designated section eight-a; and to amend and reenact section one hundred ten, article three, chapter forty-six-a of said code, all relating to banks and banking; defining terms; protection of financial institution condition records from disclosure; entry of voluntary assurances of compliance; the imposition of injunctions and civil penalties; use of the term "bank" or "banc"; issuance of bank stock prior to conducting business; access to audit workpapers and electronic data procedure review materials; the ability of banks to invest in certain securities and derivatives; criteria for establishing a nonsurviving interim bank or resulting branches in a bank merger or acquisition transaction; citizenship of a majority of the bank's directors; renewal of oaths by bank directors upon their re-election; permissible use of telecommunication and computer technology for home and office banking services; nonbanking point-of-sale terminals; the increase in fines for criminal violations; the element of willfulness in criminal violations; and clarification of the limitation on prepayment penalties in loans or credits secured by land.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections four, thirteen and fourteen, article two of said chapter be amended and reenacted; that section two, article three of said chapter be amended and reenacted; that sections two, four, six, eight, twenty and twenty-six, article four of said chapter be amended and reenacted; that sections twelve, twelve-b, fifteen and sixteen, article eight of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-a; and that section one hundred ten, article three, chapter forty-six-a of said code be amended and reenacted, all to read as follows:

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31A. BANKS AND BANKING.

Article.

1. **General Provisions and Definitions.**
2. **Division of Banking.**
3. **Board of Banking and Financial Institutions.**
4. **Banking Institutions and Services Generally.**
8. **Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

***§31A-1-2. Definitions.**

- 1 As used in this chapter, unless the context in which
- 2 used plainly requires a different meaning:
- 3 (a) The word "action," in the sense of a judicial pro-
- 4 ceeding, means any proceeding in a court of competent
- 5 jurisdiction in which rights are adjudicated and deter-
- 6 mined and shall embrace and include recoupment, coun-
- 7 terclaim, setoff and other related, similar and summary
- 8 proceedings;
- 9 (b) The words "bank" and "banking institution" mean
- 10 a corporation heretofore or hereafter chartered to conduct

*Clerk's Note: This section was also amended by S. B. 280 (Chapter 72), which passed subsequent to this act.

11 a banking business under the laws of West Virginia or an
12 association heretofore or hereafter authorized to conduct a
13 banking business in West Virginia under the laws of the
14 United States and having its principal office in this state
15 and shall embrace and include a savings bank, savings and
16 loan association, trust company or an institution combin-
17 ing banking and trust company facilities, functions and
18 services so chartered or authorized to conduct such busi-
19 ness in this state;

20 (c) The words "bankers' bank" mean a banking institu-
21 tion, insured by the Federal Deposit Insurance Corpora-
22 tion, the stock of which is owned exclusively by banks and
23 other depository institutions, and such banking institution
24 and all subsidiaries thereof are engaged exclusively in
25 providing services for banks and other depository institu-
26 tions and their officers, directors and employees;

27 (d) The term "banking business" means the functions,
28 services and activities contained, detailed and embraced in
29 sections thirteen and fourteen, article four of this chapter,
30 and as elsewhere defined by law;

31 (e) The word "board" means the West Virginia board
32 of banking and financial institutions;

33 (f) The words "branch bank" mean an office or other
34 place at which a bank performs any or all banking busi-
35 ness. For purposes of this chapter, a branch bank does not
36 include:

37 (1) A bank's principal place of business;

38 (2) Any customer bank communication terminals
39 installed and operated pursuant to section twelve-b, article
40 eight of this chapter; and

41 (3) Any loan origination office authorized by section
42 twelve-c, article eight of this chapter;

43 (g) The words "commissioner" or "commissioner of
44 banking" mean the commissioner of banking of West
45 Virginia;

46 (h) The word "community" means a city, town or other
47 incorporated area, or, where not so incorporated, a trading
48 area;

49 (i) The word "department" means the department of
50 banking of West Virginia;

51 (j) The words "deputy commissioner" or "deputy com-
52 missioner of banking" mean the deputy commissioner of
53 banking of West Virginia;

54 (k) The word "fiduciary" means any trustee, agent,
55 executor, administrator, curator, committee, guardian or
56 conservator, special commissioner, receiver, trustee in
57 bankruptcy, assignee for creditors, or any holder of a
58 similar position of trust or responsibility;

59 (l) The words "financial institutions" mean banks,
60 building and loan associations, industrial banks, industrial
61 loan companies, supervised lenders, credit unions and all
62 other similar institutions, whether persons, firms or corpo-
63 rations, which are by law under the jurisdiction and super-
64 vision of the commissioner of banking;

65 (m) The word "officer" when referring to any financial
66 institution, means any person designated as such in the
67 bylaws and includes, whether or not so designated, any
68 executive officer, the chairman of the board of directors,
69 the chairman of the executive committee, and any trust
70 officer, assistant vice president, assistant treasurer, assistant
71 secretary, assistant trust officer, assistant cashier, assistant
72 comptroller, or any other person who performs the duties
73 appropriate to those offices, and the terms "executive offi-
74 cer" as herein used, when referring to banking institutions,
75 mean an officer of a bank whose duties involve regular,
76 active and substantial participation in the daily operations
77 of such institution and who, by virtue of his position, has
78 both a voice in the formulation of the policy of the bank
79 and responsibility for implementation of the policy, such
80 responsibility of and functions performed by the individu-
81 al, and not his title or office, being determinative of wheth-
82 er he is an "executive officer";

83 (n) The words "person" or "persons" mean any indi-
84 vidual, partnership, society, association, firm, institution,
85 company, public or private corporation, state, government-
86 tal agency, bureau, department, division or instrumentality,
87 political subdivision, county commission, municipality,

88 trust, syndicate, estate or any other legal entity whatsoever,
89 formed, created or existing under the laws of this state or
90 any other jurisdiction;

91 (o) The words "safe-deposit box" mean a safe-deposit
92 box, vault or other safe-deposit receptacle maintained by a
93 lessor bank, and the rules relating thereto apply to proper-
94 ty or documents kept therein in the bank's vault under the
95 joint control of lessor and lessee;

96 (p) The words "state bank" or "state banking institu-
97 tion" mean a bank chartered under the laws of West Vir-
98 ginia, as distinguished from a national banking associa-
99 tion; and

100 (q) The words "trust business" mean the functions,
101 services and activities contained, detailed and embraced in
102 section fourteen, article four of this chapter, and as else-
103 where defined by law and as may be included within the
104 meaning of the term "banking business."

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department trans-
ferred to commissioner; powers and duties of commissioner.

§31A-2-13. Enforcement of orders of the commissioner against financial
institutions.

§31A-2-14. Banking interests of and acceptance of gratuities by officers and
employees of department.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; pow- ers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have supervi-
3 sion and jurisdiction over state banks, industrial loan com-
4 panies, building and loan associations, supervised lenders,
5 credit unions, and all other persons now or hereafter made
6 subject to his supervision or jurisdiction. All powers, du-
7 ties, rights and privileges vested in the department are
8 hereby vested in the commissioner. He shall be the chief
9 executive officer of the department of banking and shall
10 be responsible for the department's organization, services
11 and personnel, and for the orderly and efficient adminis-
12 tration, enforcement and execution of the provisions of

13 this chapter and all laws vesting authority or powers in or
14 prescribing duties or functions for the department or the
15 commissioner.

16 (b) The commissioner shall:

17 (1) Maintain the office for the department at the state
18 capitol, and there keep a complete record of all the depart-
19 ment's transactions, of the financial conditions of all finan-
20 cial institutions and such records of the activities of other
21 persons as the commissioner may deem important. Not-
22 withstanding any other provision of the code of West Vir-
23 ginia, heretofore or hereafter enacted, the records relating
24 to the financial condition of any financial institution and
25 any information contained therein shall be confidential
26 for the use of the commissioner and authorized personnel
27 of the department of banking. No person shall divulge
28 any information contained in any such records except as
29 hereafter authorized in response to a valid subpoena or
30 subpoena duces tecum issued pursuant to law in a criminal
31 proceeding or in a civil enforcement action brought by
32 the state or federal regulatory authorities. Subpoenas shall
33 first be directed to the commissioner, who shall authorize
34 disclosure of relevant records and information therefrom
35 for good cause, upon imposing terms and conditions as
36 are deemed necessary to protect the confidential nature of
37 the records, the financial integrity of the financial institu-
38 tion or the person to which the records relate, and the
39 legitimate privacy interests of any individual named in
40 such records. Conformity with federal procedures shall be
41 sought where the institution maintains federal deposit
42 insurance. The commissioner shall have and may exercise
43 reasonable discretion as to the time, manner and extent the
44 other records in his office and the information contained
45 therein shall be available for public examination;

46 (2) Require all financial institutions to comply with all
47 the provisions of this chapter and other applicable laws, or
48 any rule and regulation promulgated or order issued
49 thereunder; and

50 (3) Investigate all alleged violations of this chapter and
51 all other laws which he is required to enforce and of any

52 rule and regulation promulgated or order issued thereun-
53 der.

54 (c) In addition to all other authority and powers vested
55 in the commissioner by provisions of this chapter and
56 other applicable laws, the commissioner is authorized and
57 empowered:

58 (1) To provide for the organization of the department
59 and the procedures and practices thereof and implement
60 the same by the promulgation of rules and regulations and
61 forms as appropriate, which rules and regulations shall be
62 promulgated in accordance with article three, chapter
63 twenty-nine-a of this code;

64 (2) Employ, direct, discipline, discharge and establish
65 qualifications and duties for all personnel for the depart-
66 ment, including, but not limited to, examiners, assistant
67 examiners, conservators and receivers, to establish the
68 amount and condition of bonds for such thereof as he
69 deems appropriate and to pay the premiums thereon, and
70 if he so elects, to have all such personnel subject to and
71 under the classified service of the state personnel depart-
72 ment;

73 (3) To cooperate with organizations, agencies, commit-
74 tees and other representatives of financial institutions of
75 the state in connection with schools, seminars, conferences
76 and other meetings to improve the responsibilities, services
77 and stability of the financial institutions;

78 (4) In addition to the examinations required by section
79 six of this article, to inspect, examine and audit the books,
80 records, accounts and papers of all financial institutions at
81 such times as circumstances in his opinion may warrant;

82 (5) To call for and require all such data, reports and
83 information from financial institutions under his jurisdic-
84 tion, at such times and in such form, content and detail,
85 deemed necessary by him in the faithful discharge of his
86 duties and responsibilities in the supervision of the finan-
87 cial institutions;

88 (6) Subject to the powers vested in the board by article
89 three of this chapter, to supervise the location, organiza-

90 tion, practices and procedures of financial institutions and,
91 without limitation on the general powers of supervision
92 thereof, to require financial institutions to:

93 (A) Maintain their accounts consistent with such regula-
94 tions as he may prescribe and in accordance with general-
95 ly accepted accounting practices;

96 (B) Observe methods and standards which he may pre-
97 scribe for determining the value of various types of assets;

98 (C) Charge off the whole or any part of an asset which
99 at the time of his action could not lawfully be acquired;

100 (D) Write down an asset to its market value;

101 (E) Record or file writings creating or evidencing liens
102 or other interests in property;

103 (F) Obtain financial statements from prospective and
104 existing borrowers;

105 (G) Obtain insurance against damage and loss to real
106 estate and personal property taken as security;

107 (H) Maintain adequate insurance against such other
108 risks as he may deem and determine to be necessary and
109 appropriate for the protection of depositors and the pub-
110 lic;

111 (I) Maintain an adequate fidelity bond or bonds on its
112 officers and employees;

113 (J) Take such other action as may in his judgment be
114 required of the institution in order to maintain its stability,
115 integrity and security as required by law and all rules and
116 regulations promulgated by him; and

117 (K) Verify any or all asset or liability accounts;

118 (7) Subject to the powers vested in the board by article
119 three of this chapter, to receive from any person or per-
120 sons and to consider any request, petition or application
121 relating to the organization, location, conduct, services,
122 policies and procedures of any financial institution and to
123 act thereupon in accordance with any provisions of law
124 applicable thereto;

125 (8) In connection with the investigations required by
126 subdivision (3), subsection (b) of this section, to issue
127 subpoenas and subpoenas duces tecum, administer oaths,
128 examine persons under oath, and hold and conduct hear-
129 ings, any such subpoenas or subpoenas duces tecum to be
130 issued, served and enforced in the manner provided in
131 section one, article five, chapter twenty-nine-a of this code.
132 Any person appearing and testifying at such a hearing
133 may be accompanied by an attorney employed by him;

134 (9) To issue declaratory rulings in accordance with the
135 provisions of section one, article four, chapter
136 twenty-nine-a of this code;

137 (10) To study and survey the location, size and services
138 of financial institutions, the geographic, industrial, eco-
139 nomic and population factors affecting the agricultural,
140 commercial and social life of the state, and the needs for
141 reducing, expanding or otherwise modifying the services
142 and facilities of financial institutions in the various parts of
143 the state, and to compile and keep current data thereon to
144 aid and guide him in the administration of the duties of
145 his office;

146 (11) To implement all of the provisions of this chapter
147 (except the provisions of article three) and all other laws
148 which he is empowered to administer and enforce by the
149 promulgation of rules and regulations in accordance with
150 the provisions of article three, chapter twenty-nine-a of
151 this code;

152 (12) To implement the provisions of chapter
153 forty-six-a of this code applicable to consumer loans and
154 consumer credit sales by the promulgation of rules and
155 regulations in accordance with the provisions of article
156 three, chapter twenty-nine-a of this code so long as said
157 rules and regulations do not conflict with any rules and
158 regulations promulgated by the state's attorney general;

159 (13) To foster and encourage a working relationship
160 between the department of banking and financial institu-
161 tions, credit, consumer, mercantile and other commercial
162 and finance groups and interests in the state in order to

163 make current appraisals of the quality, stability and avail-
164 ability of the services and facilities of financial institutions;

165 (14) To provide to financial institutions and the public
166 copies of the West Virginia statutes relating to financial
167 institutions, suggested drafts of bylaws commonly used by
168 financial institutions, and such other forms and printed
169 materials as may be found by him to be helpful to finan-
170 cial institutions, their shareholders, depositors and patrons,
171 and to make reasonable charges therefor;

172 (15) To delegate the powers and duties of his office,
173 other than the powers and duties in this subsection hereinafter
174 excepted, to qualified department personnel, who
175 shall act under the direction and supervision of the commissioner
176 and for whose acts he shall be responsible, but the commissioner
177 may delegate to the deputy commissioner of banking and to no other
178 department personnel the following powers, duties and responsibilities,
179 all of which are hereby granted to and vested in the commissioner
180 and for all of which the commissioner shall likewise
181 be responsible:
182

183 (A) To order any person to cease violating any provision
184 or provisions of this chapter or other applicable law or any rule
185 and regulation promulgated or order issued thereunder;
186

187 (B) To order any person to cease engaging in any un-
188 sound practice or procedure which may detrimentally
189 affect any financial institution or depositor thereof;

190 (C) To revoke the certificate of authority, permit or
191 license of any financial institution except a banking institution
192 in accordance with the provisions of section thirteen
193 of this article; and

194 (D) To accept an assurance in writing that the person
195 will not in the future engage in the conduct alleged by the
196 commissioner to be unlawful, which conduct could be
197 subject to an order under the provisions of this chapter.
198 Such assurance of voluntary compliance shall not be considered
199 an admission of violation for any purpose, except that if a person
200 giving such assurance fails to comply with its terms, the assurance
201 is prima facie evidence that prior to

201 such assurance the person engaged in conduct described
202 in such assurance;

203 (16) To seek and obtain from courts, civil penalties
204 against any person who violates this chapter, the rules
205 issued pursuant thereto, or any orders lawfully entered by
206 the commissioner or board of banking and financial insti-
207 tutions in an amount not less than fifty dollars nor more
208 than five thousand dollars for each violation;

209 (17) To receive from state banking institutions applica-
210 tions to change the locations of their principal offices and
211 to approve or disapprove such applications; and

212 (18) To take such other action as he may deem neces-
213 sary to enforce and administer the provisions of this chap-
214 ter (except the provisions of article three) and all other
215 laws which he is empowered to administer and enforce,
216 and to apply to any court of competent jurisdiction for
217 appropriate orders, writs, processes and remedies.

**§31A-2-13. Enforcement of orders of the commissioner against
financial institutions.**

1 (a) If any financial institution shall fail or refuse to
2 comply with any order of the commissioner, entered pur-
3 suant to the provisions of paragraphs (A) or (B), subdivi-
4 sion (15), subsection (c), section four of this article, the
5 commissioner may apply to any court having jurisdiction
6 for a prohibitory or mandatory injunction or other appro-
7 priate remedy to compel obedience to such order; or may
8 apply to the board of banking and financial institutions
9 for appropriate relief.

10 (b) In addition, if any financial institution other than a
11 state bank shall fail or refuse to comply with any order of
12 the commissioner, entered pursuant to the provisions of
13 paragraphs (A) or (B), subdivision (15), subsection (c),
14 section four of this article, the commissioner may make
15 and enter an order revoking the certificate of authority,
16 permit or license of such institution to engage in the busi-
17 ness of a financial institution in this state.

**§31A-2-14. Banking interests of and acceptance of gratuities
by officers and employees of department.**

1 No officer or employee of the department of banking
2 shall be an officer, director, trustee, attorney, owner, share-
3 holder, or partner in or of any financial institution. Nor
4 shall any officer or employee of the department receive,
5 directly or indirectly, any payment or gratuity from any
6 financial institution, or be engaged in any manner in the
7 negotiation of loans for others therewith. Nothing herein
8 shall prohibit said persons from having shares as a result
9 of membership in a credit union, mutual savings associa-
10 tion, or similar depository institution by virtue of being a
11 customer; nor shall it prohibit the receipt of interest or
12 other payments on accounts made in the regular course of
13 business.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITU- TIONS.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this chap-
2 ter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any
5 provision of this article, such rules to be promulgated in
6 accordance with the provisions of article three, chapter
7 twenty-nine-a of this code;

8 (3) Advise the commissioner in all matters within his
9 jurisdiction;

10 (4) Study the organization, programs and services of
11 financial institutions and the laws relating thereto in this
12 state and in other jurisdictions, and to report and recom-
13 mend to the governor and the Legislature all such changes
14 and amendments in laws, policies and procedures relating
15 thereto as may be by it deemed proper;

16 (5) Grant permission and authority to a financial insti-
17 tution:

18 (A) To participate in a public agency hereafter created
19 under the laws of this state or of the United States, the
20 purpose of which is to afford advantages or safeguards to
21 financial institutions or to depositors therein, and to com-

22 ply with all lawful requirements and conditions imposed
23 upon such participants;

24 (B) To engage in any financial institution activity,
25 services, procedures and practices in which financial insti-
26 tutions of the same type subject to the jurisdiction of the
27 federal government may hereafter be authorized by feder-
28 al laws, rules or regulations to engage, notwithstanding any
29 contrary provision of this code; and

30 (C) To pay interest on demand deposits of the United
31 States or any agency thereof, if the payment of such inter-
32 est shall be permitted under any applicable federal law,
33 rule or regulation.

34 Any permission and authority granted by the board
35 pursuant to this subdivision shall cease and terminate upon
36 the adjournment of the next regular session of the Legisla-
37 ture, unless the Legislature shall at such session enact leg-
38 islation authorizing the financial institution participation,
39 activity, services and procedures or payment of interest
40 with respect to which such permission and authority were
41 granted, in which event such permission and authority
42 shall continue in effect until the effective date of such
43 legislation; and

44 (6) Seek judicial enforcement to compel compliance
45 with any of its orders and to seek and obtain civil penalties
46 as set forth under this chapter.

47 (b) The board shall further have the power, by enter-
48 ing appropriate orders, to:

49 (1) Restrict the withdrawal of deposits from any finan-
50 cial institution when, in the judgment of the board, ex-
51 traordinary circumstances make such restrictions neces-
52 sary for the protection of creditors of and depositors in
53 the affected institution;

54 (2) Compel the holder of shares in any corporate
55 financial institution to refrain from voting said shares on
56 any matter when, in the judgment of the board, such order
57 is necessary to protect the institution against reckless, in-
58 competent or careless management, to safeguard funds of
59 depositors in the institution or to prevent willful violation

60 of any applicable law or of any rule and regulation or
61 order issued thereunder. In such a case the shares of such
62 a holder shall not be counted in determining the existence
63 of a quorum or a percentage of the outstanding shares
64 necessary to take any corporate action;

65 (3) Approve or disapprove applications to incorporate
66 and organize state banking institutions in accordance with
67 the provisions of sections six and seven, article four of this
68 chapter;

69 (4) Approve or disapprove applications to incorporate
70 and organize state-chartered bankers' banks in accordance
71 with the provisions of sections six and seven, article four
72 of this chapter;

73 (5) Exempt a bankers' bank from any provision of this
74 chapter if the board finds that such provision is inconsis-
75 tent with the purpose for which a bankers' bank is incor-
76 porated and organized and that the welfare of the public
77 or any banking institution or other financial institution
78 would not be jeopardized thereby;

79 (6) Revoke the certificate of authority, permit, certifi-
80 cate or license of any state banking institution to engage
81 in business in this state if such institution shall fail or re-
82 fuse to comply with any order of the commissioner en-
83 tered pursuant to the provisions of paragraph (A) or (B),
84 subdivision (15), subsection (c), section four, article two
85 of this chapter, or at the board's election to direct the com-
86 missioner to apply to any court having jurisdiction for a
87 prohibitory or mandatory injunction or other appropriate
88 remedy to compel obedience to such order;

89 (7) Suspend or remove a director, officer or employee
90 of any financial institution who is or becomes ineligible to
91 hold such position under any provision of law or rule and
92 regulation or order, or who willfully disregards or fails to
93 comply with any order of the board or commissioner
94 made and entered in accordance with the provisions of this
95 chapter or who is dishonest or grossly incompetent in the
96 conduct of financial institution business;

97 (8) To receive from state banking institutions applica-
98 tions to establish branch banks by the purchase of the

99 business and assets and assumption of the liabilities of, or
100 merger or consolidation with, another banking institution,
101 or by the construction, lease or acquisition of branch bank
102 facilities in an unbanked area; examine and investigate
103 such applications, to hold hearings thereon, and to ap-
104 prove or disapprove such applications, all in accordance
105 with section twelve, article eight of this chapter;

106 (9) Approve or disapprove the application of any state
107 bank to purchase the business and assets and assume the
108 liabilities of, or merge or consolidate with, another state
109 banking institution in accordance with the provisions of
110 section seven, article seven of this chapter;

111 (10) Approve or disapprove the application of any
112 state bank to purchase the business and assets and assume
113 the liabilities of a national banking association, or merge
114 or consolidate with a national banking association to form
115 a resulting state bank in accordance with the provisions of
116 section seven, article seven of this chapter; and

117 (11) In addition to any authority granted pursuant to
118 section twelve, article eight of this chapter, incident to the
119 approval of an application pursuant to subdivisions (7) or
120 (8) of this subsection, permit the bank the application of
121 which is so approved to operate its banking business under
122 its name from the premises of the bank the business and
123 assets of which have been purchased and the liabilities of
124 which have been assumed by such applicant bank or with
125 which such applicant bank has merged or consolidated:
126 *Provided*, That such permission may be granted only if
127 the board has made the findings required by subsection
128 (f), section three of this article and such applicant bank
129 has no common directors or officers nor common owner-
130 ship of stock exceeding ten percent of total outstanding
131 voting stock with the bank whose business and assets are
132 being purchased and liabilities assumed, or with whom
133 such applicant bank is being merged.

134 (c) No provision of this section shall be construed to
135 alter, reduce or modify the rights of shareholders, or obli-
136 gations of a banking institution in regard to its sharehold-
137 ers, as set forth in section one hundred seventeen, article
138 one, chapter thirty-one of this code and section seven,

139 article seven of this chapter, and other applicable provi-
140 sions of this code.

141 (d) Any order entered by the West Virginia board of
142 banking and financial institutions pursuant to this section
143 is a matter of public record.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER- ALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penal-
ties; enforcement.

§31A-4-4. Majority of stock to be paid in full before engaging in business;
sale of additional stock; organizational expense fund; affidavit
of incorporators; penalties; stockholder preemptive rights.

§31A-4-6. Examination and investigation of proposed bank by board.

§31A-4-8. Directors, their qualifications and oaths.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment,
duties and report of examining committee; employment of
accountants; examiners may require presence of executive or
examining committee.

§31A-4-26. Limitation on loans and extensions of credit; limitation on
investments; loans to executive officers and directors of banks
and employees of the banking department; exceptions; valua-
tion of securities.

§31A-4-2. Use of terms; unlawfully engaging in banking busi- ness; penalties; enforcement.

1 (a) No person doing business in this state, except a
2 banking institution or a person authorized by the commis-
3 sioner under the terms of this section, shall use or advertise
4 in connection with such business, or as a designation or
5 title thereof, the term "bank," "banker," "banking," "bank-
6 ing company," "industrial bank," "savings bank," or "trust
7 company," or engage in the banking or trust business in
8 this state.

9 (b) It shall be unlawful for any such person other than
10 banking institutions as herein excepted, to advertise or
11 hold himself, itself, or themselves, as the case may be, out
12 to the public in any manner indicating, directly, indirectly
13 or by implication, that any of them is engaged in the
14 banking or trust business or is authorized and approved to
15 engage therein in this state.

16 (c) The commissioner may authorize a person to uti-
17 lize the term "bank" or "banc" in connection with
18 non-profit organizations or medical businesses where the
19 term would have a common meaning separate and apart
20 from a financial institution and would not result in confu-
21 sion to the public (e.g., food bank; medical databank);
22 and in connection with bank holding companies or their
23 non-banking affiliates where the term denotes the entities'
24 common affiliation and would not result in confusion to
25 the public.

26 (d) Any violation of the provisions of this section shall
27 constitute a misdemeanor offense, punishable as provided
28 in section fifteen, article eight of this chapter.

29 (e) The commissioner of banking or any one or more
30 banking institutions, acting individually or jointly, may
31 petition the circuit court of the county in which any viola-
32 tion of the provisions of this section occur or are threat-
33 ened to occur for injunction or other appropriate judicial
34 remedies for enforcement of the provisions hereof and the
35 prevention of further or continued violations thereof.

**§31A-4-4. Majority of stock to be paid in full before engag-
ing in business; sale of additional stock; organi-
zational expense fund; affidavit of incorpora-
tors; penalties; stockholder preemptive rights.**

1 (a) The majority of the capital stock of every banking
2 institution, chartered under the laws of this state, shall be
3 paid in full in cash and issued to the ultimate subscribers,
4 not an agent or broker acting on behalf of the organizers,
5 before it shall be authorized to engage in business, except
6 such business as is incidental and necessary preliminary to
7 its organization. Authorized but unissued stock may be
8 issued from time to time to employees of the bank pursu-
9 ant to a stock option or stock purchase plan approved by
10 the commissioner or may be issued for such other purpos-
11 es and consideration as may be approved by the board of
12 directors of said bank. The commissioner shall establish
13 the minimum amount of authorized capital stock which
14 shall be paid in full in cash and issued prior to opening
15 the bank for business.

16 (b) Each subscriber at the time he or she subscribes to
17 the stock of a proposed banking institution shall pay in
18 cash a sum at least equal to five percent of the par value of
19 such stock into a fund to be used to defray the expenses
20 of organization of said institution. No organizational
21 expenses shall be paid out of any other funds of the bank.
22 The amount of any organizational expenses which are
23 accumulated and recorded on the newly organized bank's
24 accounting records as an asset to be amortized over a
25 period of time according to generally accepted accounting
26 principles shall be added to the capital requirement for
27 incorporation of the bank as determined by the West Vir-
28 ginia board of banking and financial institutions pursuant
29 to subsection (a), section three, article four of this chapter.
30 Upon the grant of a charter to the institution any unex-
31 pended balance in the organizational expense fund shall
32 be transferred to undivided profits of the institution. If
33 the charter application is finally denied, any unexpended
34 balance in said fund shall be distributed among the contri-
35 butors in proportion to their respective payments.

36 (c) A majority of the incorporators shall file with the
37 West Virginia board of banking and financial institutions
38 at the time of filing of the charter application an affidavit:
39 (1) Setting forth all expenses incurred or to be incurred in
40 connection with the organization of the institution, sub-
41 scriptions for its shares and sale of its shares, and (2) stat-
42 ing that no fee, compensation or commission prohibited
43 by this section has been or will be paid or incurred. The
44 board may disapprove the charter application on account
45 of any violation of this section and order the incorporators
46 to restore any sum expended for other than proper orga-
47 nizational expense. In addition, violations hereof shall
48 constitute a misdemeanor offense punishable as prescribed
49 in section fifteen, article eight of this chapter.

50 (d) Unless otherwise provided in the charter, whenever
51 additional stock is offered for sale, stockholders of record
52 on the date of the offer shall have the right to subscribe to
53 such proportion of the shares as the stock held by them
54 bears to the total of the outstanding stock. This right shall
55 be transferable but shall terminate if not exercised within
56 sixty days of the offer. If the right be not exercised, the

57 stock shall not be offered for sale to others at a lower price
58 without the stockholders again being accorded a preemp-
59 tive right to subscribe. No banking institution shall sell its
60 shares of stock at less than par, but may sell its shares at
61 such price above par as may be set by the board of direc-
62 tors. The preemptive rights of the stockholders, as provid-
63 ed in this paragraph, shall not apply to any stock issued by
64 a banking institution, to another bank or financial institu-
65 tion or the stockholders thereof, pursuant to a merger or
66 consolidation with such other bank or financial institution,
67 or to authorized but unissued stock authorized by the
68 charter of the banking institution.

**§31A-4-6. Examination and investigation of proposed bank
by board.**

1 (a) When an agreement of incorporation, fully com-
2 plying with the requirements of this article, has been filed
3 with the board, it shall promptly make or cause to be made
4 a careful examination and investigation relative to the
5 following:

6 (1) The character, reputation, financial standing and
7 motives of the organizers, incorporators and subscribers in
8 organizing the proposed bank;

9 (2) The need for the facilities and services which the
10 proposed bank will offer in the community where it is to
11 be located, giving particular consideration to the adequacy
12 of existing banking and trust facilities and services;

13 (3) The present and future ability of the community to
14 support the proposed bank and all other existing banking
15 and trust facilities and services in the community;

16 (4) The character, financial responsibility, banking
17 experience and business qualifications of the proposed
18 officers; and

19 (5) The character, financial responsibility, business
20 experience and standing of the proposed stockholders and
21 directors.

22 (b) The board shall approve or disapprove the applica-
23 tion, in the exercise of its reasonable discretion, but shall
24 not approve such application unless it finds:

25 (1) Public convenience and advantage will be promot-
26 ed by the establishment of the proposed bank;

27 (2) Local conditions assure reasonable promise of
28 successful operation for the proposed bank and those
29 banks already established in the community;

30 (3) The proposed capital structure is adequate;

31 (4) The proposed officers and directors have sufficient
32 banking experience and trust experience, if the bank pro-
33 poses to engage in the trust business, ability, character and
34 standing to assure reasonable promise of successful opera-
35 tion;

36 (5) The name of the proposed bank or trust company
37 is not so similar as to cause confusion with the name of an
38 existing bank; and

39 (6) Provision has been made for suitable banking
40 house quarters in the community specified in the applica-
41 tion.

42 (c) In the course of its examination and investigation,
43 the board may call upon the attorney, agent or other re-
44 sponsible person representing the incorporators and upon
45 the incorporators for additional information and disclo-
46 sures it deems necessary in taking appropriate action on
47 and making proper disposition of the application.

48 (d) Where the agreement of incorporation is for an
49 interim bank organized solely for the purpose of facilitat-
50 ing the acquisition of another bank, which interim bank
51 will not survive the acquisition and merger, the board may
52 dispense with further investigation and find the criteria set
53 forth in subsections (a) and (b) of this section have been
54 met on the basis of its examination of the performance or
55 attributes of the surviving bank.

§31A-4-8. Directors, their qualifications and oaths.

1 For every state-chartered banking institution there
2 shall be a board of not less than five nor more than
3 twenty-five directors, who shall meet at least once each
4 month and who shall have power to do, or cause to be
5 done, all things that are proper to be done by the banking

6 institution; and a majority of whom shall at all times be
7 United States citizens and residents of this state. Every
8 such director shall own capital stock in the banking insti-
9 tution of which he is a director. Said director must own
10 shares in the aggregate par value of not less than five hun-
11 dred dollars, an exception being that if a bank holding
12 company has control of that banking institution, shares
13 owned by a director of the subsidiary bank in the control-
14 ling bank holding company will satisfy the requirements
15 of this section: *Provided*, That the director owns, in his
16 own right, common or preferred stock of the controlling
17 bank holding company in an amount equal to or greater
18 than any one of the following: (i) Aggregate par value of
19 five hundred dollars; (ii) aggregate shareholders' equity of
20 five hundred dollars; or (iii) aggregate fair market value
21 of five hundred dollars. Determination of the fair market
22 value of the controlling bank holding company's stock
23 shall be based upon the value of that stock on the date it
24 was purchased or on the date the person became a direc-
25 tor, whichever is greater. If a bank holding company con-
26 trols more than one bank subsidiary, a director owning at
27 least five hundred dollars of the shares of a bank holding
28 company is qualified, if otherwise permitted by applicable
29 law, to serve as a director of every bank subsidiary con-
30 trolled by that bank holding company. Before entering on
31 the discharge of his duties as such director, he shall take
32 an oath that he will, so far as the duty devolves upon him,
33 diligently and honestly administer the affairs of the bank-
34 ing institution, and that he will not knowingly or willingly
35 permit to be violated any of the provisions of the laws of
36 this state relative to banking and banking institutions, and
37 that the stock standing in his name upon the books of the
38 banking institution is not hypothecated or pledged in any
39 way as security for loans obtained from or debts owing to
40 the banking institution of which he is a director, and that
41 the number of shares necessary to qualify a stockholder to
42 be a director are not now, and shall not at any time while
43 he serves as a director be pledged or hypothecated in any
44 manner for any debt or obligation of the director, or any
45 other person; which oath subscribed by him and certified
46 by the officer before whom it was taken shall be filed and
47 preserved in the office of the commissioner of banking.

48 Should a director fail to subscribe to or renew the oath
49 herein provided within sixty days after notice of his elec-
50 tion or re-election, or at any time after qualifying as such,
51 sell or dispose of, or in any manner hypothecate or pledge
52 as security for a debt or obligation, such qualifying shares,
53 or any number thereof, necessary for his qualification,
54 thereupon the remaining directors shall elect another di-
55 rector in his stead. No person shall serve as a director of
56 any banking institution who has evidenced personal dis-
57 honesty and unfitness to serve as such director by his
58 conduct or practice with another financial institution
59 which resulted in a substantial financial loss or damage
60 thereto or who has been convicted of any crime involving
61 personal dishonesty.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of examining committee; employment of accountants; examiners may require presence of executive or examining committee.

1 (a) The stockholders of each state banking institution
2 shall meet annually and at such annual meeting it shall be
3 the duty of the cashier or other executive officer of such
4 banking institution to prepare and submit to the stock-
5 holders a clear and concise statement of the financial con-
6 dition of the corporation as of the close of business on the
7 last day of the month next preceding.

8 (b) At such meeting, the stockholders present in per-
9 son or by proxy shall elect an examining committee com-
10 posed of not less than three nor more than five persons,
11 each of whom shall be a stockholder either in such bank-
12 ing institution, or, if such banking institution is controlled
13 by a bank holding company, in that bank holding compa-
14 ny.

15 (c) At such time or times as it may be directed to do
16 so by the written request of the board of directors or the
17 commissioner of banking, such committee shall immedi-
18 ately proceed to examine the condition of the bank and,
19 upon completion of such examination, shall file its report
20 in writing with the board of directors. Such report shall
21 set forth in detail all items included in the assets of the

22 bank which the committee has reason to believe are not of
23 the value at which they appear on the books and records
24 of the bank, and shall give the value of each of such items
25 according to its judgment. The board of directors shall
26 cause such report to be retained as a part of the records of
27 the bank and shall transmit a duly authenticated copy
28 thereof to the commissioner of banking.

29 (d) With the consent and approval of the stockholders,
30 such committee may employ registered or certified public
31 accountants to make such examination or make the same
32 in conjunction with any official examination made by any
33 supervisory authority.

34 (e) The workpapers of any audit, including any mate-
35 rials associated with an audit of the bank's electronic data
36 procedures, shall be made available to the commissioner
37 or to the examiners of the department of banking upon
38 request, and will be accorded confidentiality in conformity
39 with section four, article two of this chapter.

40 (f) Any official examiner of the department of bank-
41 ing may require the presence of the examining committee
42 or the executive committee during his examination.

**§31A-4-26. Limitation on loans and extensions of credit;
limitation on investments; loans to executive
officers and directors of banks and employees
of the banking department; exceptions; valua-
tion of securities.**

1 (a) (1) The total loans and extensions of credit made
2 by a state-chartered banking institution to any one person
3 or common enterprise and not fully secured, as deter-
4 mined in a manner consistent with subdivision (2) of this
5 subsection, shall not exceed fifteen percent of the unim-
6 paired capital and unimpaired surplus of that
7 state-chartered banking institution initially determined for
8 the period such loan or extension of credit is made.

9 (2) Where the total loans and extensions of credit by a
10 state-chartered banking institution to any one person or
11 common enterprise are fully secured by readily market-
12 able collateral having a market value, as determined by
13 reliable and continuously available price quotations, at

14 least equal to the outstanding amount of such loans and
15 extensions, then the bank may provide such loans or ex-
16 tensions of up to ten percent of the unimpaired capital and
17 unimpaired surplus of that state-chartered banking institu-
18 tion initially determined for the period such loan or exten-
19 sion is made. This limitation shall be separate from and in
20 addition to the limitation contained in subdivision (1) of
21 this subsection.

22 (3) For the purposes of this subsection:

23 (A) The term "loans and extensions of credit" shall
24 include all direct or indirect advances of funds to a person
25 made on the basis of any obligation of that person to
26 repay the funds or repayable from specific property
27 pledged by or on behalf of the person and to the extent
28 specified by the commissioner of banking, such terms
29 shall also include any liability of a state-chartered banking
30 institution to advance funds to or on behalf of a person
31 pursuant to a contractual commitment;

32 (B) The term "person" shall include an individual,
33 partnership, sole proprietorship, society, association, firm,
34 institution, company, public or private corporation,
35 not-for-profit corporation, state, governmental agency,
36 bureau, department, division or instrumentality, political
37 subdivision, county commission, municipality, trust, syndi-
38 cate, estate or any other legal entity whatsoever, formed,
39 created or existing under the laws of this state or any other
40 jurisdiction;

41 (C) The term "unimpaired capital and unimpaired
42 surplus" means the amount of total equity capital out-
43 standing as indicated in the bank's most recent quarterly
44 report of condition and income as filed with the commis-
45 sioner of banking pursuant to section nineteen of this
46 article, plus the amount of the allowance for loan losses,
47 minus the amount of goodwill or other nonmarketable
48 intangible assets included in such quarterly report pursu-
49 ant to generally accepted accounting principles. Unreal-
50 ized gains and losses on the bank's securities and loan
51 portfolios shall be included in the calculation of total
52 equity capital to the extent required by generally accepted

53 accounting principles and applicable federal or state law,
54 rule or regulation; and

55 (D) The term "common enterprise" includes, but is not
56 limited to, persons and entities who are so related by busi-
57 ness or otherwise that the expected source of repayment
58 on the loan or extension of credit is substantially the same
59 for each person or entity.

60 (4) The limitations contained in this subsection shall
61 be subject to the following exceptions:

62 (A) Loans or extensions of credit arising from the
63 discount of commercial or business paper evidencing an
64 obligation to the person negotiating it with recourse shall
65 not be subject to any limitation based on capital and sur-
66 plus;

67 (B) The purchase of bankers' acceptances of the kind
68 described in section thirteen of the Federal Reserve Act
69 and issued by other banks shall not be subject to any limi-
70 tation based on capital and surplus;

71 (C) Loans and extensions of credit having a term of
72 ten months or less and secured by bills of lading, ware-
73 house receipts, or similar documents transferring or secur-
74 ing title to readily marketable staples shall be subject to a
75 limitation of twenty percent of unimpaired capital and
76 unimpaired surplus in addition to the general limitations
77 set forth in subdivision (1) of this subsection, provided the
78 market value of the staples securing each additional loan
79 or extension of credit at all times equals or exceeds one
80 hundred fifteen percent of the outstanding amount of
81 such loan or extension of credit. The staples shall be fully
82 covered by insurance whenever it is customary to insure
83 such staples. If collateral values of the staples fall below
84 the levels required herein, to the extent that the loan is no
85 longer in conformance with its collateral requirements and
86 exceeds the general fifteen percent limitation, the loan
87 must be brought into conformance within five business
88 days, except where judicial proceedings, regulatory actions
89 or other extraordinary occurrences prevent the bank from
90 taking action;

91 (D) Loans or extensions of credit secured by bonds,
92 notes, certificates of indebtedness or treasury bills of the
93 United States or by other such obligations fully guaran-
94 teed as to principal and interest by the United States or by
95 bonds, notes, certificates of indebtedness which are general
96 obligations of the state of West Virginia or by other such
97 obligations fully guaranteed as to principal and interest by
98 the state of West Virginia shall not be subject to any limi-
99 tation based on capital and surplus;

100 (E) Loans or extensions of credit to or secured by
101 unconditional takeout commitments or guarantees of any
102 department, agency, bureau, board, commission or estab-
103 lishment of the United States or of the state of West Vir-
104 ginia or any corporation wholly owned directly or indi-
105 rectly by the United States shall not be subject to any
106 limitation based on capital and surplus;

107 (F) Loans or extensions of credit secured by a segre-
108 gated deposit account in the lending bank shall not be
109 subject to any limitation based on capital and surplus;

110 (G) Loans or extensions of credit to any banking
111 institution or to any receiver, conservator or other agent in
112 charge of the business and property of such banking insti-
113 tution or other federally insured depository institution,
114 when such loans or extensions of credit are approved by
115 the commissioner of banking, shall not be subject to any
116 limitation based on capital and surplus;

117 (H) (i) Loans and extensions of credit arising from the
118 discount of negotiable or nonnegotiable installment con-
119 sumer paper which carries a full recourse endorsement or
120 unconditional guarantee by the person or common enter-
121 prise transferring the paper shall be subject under this
122 section to a maximum limitation equal to twenty-five per-
123 cent of such unimpaired capital and unimpaired surplus,
124 notwithstanding the collateral requirements set forth in
125 subdivision (2) of this subsection;

126 (ii) If the bank's files or the knowledge of its officers
127 of the financial condition of each maker of such consum-
128 er paper is reasonably adequate, and an officer of the
129 bank designated for that purpose by the board of directors

130 of the bank certifies in writing that the bank is relying
131 primarily upon the responsibility of each maker for pay-
132 ment of such loans or extensions of credit and not upon
133 any full or partial recourse endorsement or guarantee by
134 the transferor, the limitations of this section as to the loans
135 or extensions of credit of each such maker shall be the
136 sole applicable loan limitations;

137 (I) (i) Loans and extensions of credit secured by ship-
138 ping documents or instruments transferring or securing
139 title covering livestock or giving a lien on livestock when
140 the market value of the livestock securing the obligation is
141 not at any time less than one hundred fifteen percent of
142 the face amount of the note covered, shall be subject un-
143 der this section, to a maximum limitation equal to
144 twenty-five percent of such unimpaired capital and unim-
145 paired surplus, notwithstanding the collateral requirements
146 set forth in subdivision (2) of this subsection;

147 (ii) Loans and extensions of credit which arise from
148 the discount by dealers in livestock of paper given in pay-
149 ment for livestock, which paper carries a full recourse
150 endorsement or unconditional guarantee of the seller and
151 which are secured by the livestock being sold, shall be
152 subject under this section, to a limitation of twenty-five
153 percent of such unimpaired capital and unimpaired sur-
154 plus, notwithstanding the collateral requirements set forth
155 in subdivision (2) of this subsection;

156 (iii) If collateral values of the livestock documents,
157 instruments or discount paper fall below the levels re-
158 quired herein, to the extent that the loan is no longer in
159 conformance with its collateral requirements and exceeds
160 the general fifteen percent limitation, the loan must be
161 brought into conformance within thirty business days,
162 except where judicial proceedings, regulatory actions or
163 other extraordinary occurrences prevent the bank from
164 taking action;

165 (J) Loans or extensions of credit to the student loan
166 marketing association shall not be subject to any limitation
167 based on capital and surplus; and

168 (K) Loans or extensions of credit to a corporation
169 owning the property in which that state-chartered banking
170 institution is located, when that state-chartered banking
171 institution has an unimpaired capital and surplus of not
172 less than one million dollars or when approved in writing
173 by the commissioner of banking, shall not be subject to
174 any limitation based on capital and surplus.

175 (5) (A) The commissioner of banking may prescribe
176 rules to administer and carry out the purposes of this sub-
177 section including rules to define or further define terms
178 used in this subsection and to establish limits or require-
179 ments other than those specified in this subsection for
180 particular classes or categories of loans or extensions of
181 credit;

182 (B) The commissioner of banking may also prescribe
183 rules to deal with loans or extensions of credit, which were
184 not in violation of this section prior to the effective date of
185 this article, but which will be in violation of this section
186 upon the effective date of this article; and

187 (C) The commissioner of banking also shall have
188 authority to determine when a loan putatively made to a
189 person shall for purposes of this subsection be attributed
190 to another person.

191 (b) (1) Except as hereinafter provided or otherwise
192 permitted by law, nothing herein contained shall autho-
193 rize the purchase by a state-chartered banking institution
194 for its own account of any shares of stock of any cor-
195 poration: *Provided*, That a state-chartered banking institu-
196 tion may purchase and sell securities and stock without
197 recourse, solely upon the order and for the account of
198 customers.

199 (2) In no event shall the total amount of investment
200 securities of any one obligor or maker held by a
201 state-chartered banking institution for its own account,
202 exceed fifteen percent of the unimpaired capital and un-
203 impaired surplus of that state-chartered banking institu-
204 tion.

205 (3) For purposes of this subsection:

206 (A) The term "investment securities" means a market-
207 able obligation in the form of a stock, bond, note, or de-
208 benture, commonly regarded as an investment security
209 and that is salable under ordinary circumstances with rea-
210 sonable promptness at a fair value. "Derivative security"
211 means a type of investment security involving a financial
212 contract whose value depends on the values of one or
213 more underlying assets or indexes of asset values. The
214 term derivative refers inter alia to financial contracts such
215 as collateralized mortgage obligations ("CMOs"), forwards,
216 futures, forward rate agreements, swaps, options, and caps
217 /floors/collars, whose primary purpose is to transfer price
218 risks associated with fluctuations in asset values;

219 (B) The term "person" shall include any individual,
220 partnership, sole proprietorship, society, association, firm,
221 institution, company, public or private corporation,
222 not-for-profit corporation, state, governmental agency,
223 bureau, department, division or instrumentality, political
224 subdivision, county commission, municipality, trust, syndi-
225 cate, estate or any other legal entity whatsoever, formed,
226 created or existing under the laws of this state or any other
227 jurisdiction; and

228 (C) The term "unimpaired capital and unimpaired
229 surplus" shall have the same meaning as set forth in sub-
230 section (a) of this section.

231 (4) The limitations contained in this subsection shall
232 be subject to the following exceptions:

233 (A) Obligations of the United States or its agencies;

234 (B) General obligations of any state or of any political
235 subdivision thereof;

236 (C) Obligations issued under authority of the federal
237 Farm Loan Act, as amended, or issued by the thirteen
238 banks for cooperatives or any of them or the federal home
239 loan banks;

240 (D) Obligations which are insured by the secretary of
241 housing and urban development under Title XI of the
242 National Housing Act, 12 U.S.C. §1749aaa, et seq.;

243 (E) Obligations which are insured by the secretary of
244 housing and urban development hereafter in this sentence
245 referred to as the "secretary" pursuant to Section 207 of
246 the National Housing Act, 12 U.S.C. §1713, if the deben-
247 tures to be issued in payment of such insured obligations
248 are guaranteed as to principal and interest by the United
249 States;

250 (F) Obligations, participations or other instruments of
251 or issued by the federal national mortgage association or
252 the government national mortgage association, or mort-
253 gages, obligations or other securities which are or ever
254 have been sold by the federal home loan mortgage corpo-
255 ration pursuant to Section 305 or 306 of the federal
256 Home Loan Mortgage Corporation Act, 12 U.S.C. §1454
257 or §1455;

258 (G) Obligations of the federal financing bank;

259 (H) Obligations or other instruments or securities of
260 the student loan marketing association;

261 (I) Obligations of the environmental financing author-
262 ity;

263 (J) Such obligations of any local public agency, as
264 defined in Section 110(h) of the Housing Act of 1949, 42
265 U.S.C. §1460 (h) as are secured by an agreement between
266 the local public agency and the secretary of housing and
267 urban development in which the local public agency
268 agrees to borrow from said secretary and said secretary
269 agrees to lend to said local public agency, moneys in an
270 aggregate amount which together with any other moneys
271 irrevocably committed to the payment of interest on such
272 obligations, will suffice to pay, when due, the interest on
273 and all installments, including the final installment of the
274 principal of such obligations, which moneys under the
275 terms of said agreement are required to be used for such
276 payments;

277 (K) Obligations of a public housing agency as that
278 term is defined in the United States Housing Act of 1937,
279 as amended, 42 U.S.C. §1437a as are secured:

280 (i) By an agreement between the public housing agen-
281 cy and the secretary in which the public housing agency
282 agrees to borrow from the secretary, and the secretary
283 agrees to lend to the public housing agency, prior to the
284 maturity of such obligations, moneys in an amount which,
285 together with any other moneys irrevocably committed to
286 the payment of interest on such obligations, will suffice to
287 pay the principal of such obligations with interest to matu-
288 rity thereon, which moneys under the terms of said agree-
289 ment are required to be used for the purpose of paying
290 the principal of and the interest on such obligations at
291 their maturity;

292 (ii) By a pledge of annual contributions under an
293 annual contributions contract between such public hous-
294 ing agency and the secretary if such contract shall contain
295 the covenant by the secretary which is authorized by Sec-
296 tion 11, 42 U.S.C. §1437i (a)(1)(B) of the United States
297 Housing Act of 1937, as amended, and if the maximum
298 sum and the maximum period specified in such contract
299 pursuant to said section, shall not be less than the annual
300 amount and the period for payment which are requisite to
301 provide for the payment when due of all installments of
302 principal and interest on such obligations; or

303 (iii) By a pledge of both annual contributions under
304 an annual contributions contract containing the covenant
305 by the secretary which is authorized by Section 11 of the
306 United States Housing Act of 1937, 42 U.S.C. §1437i(a)
307 (1)(B), and a loan under an agreement between the local
308 public housing agency and the secretary in which the
309 public housing agency agrees to borrow from the secre-
310 tary, and the secretary agrees to lend to the public housing
311 agency, prior to the maturity of the obligations involved,
312 moneys in an amount which, together with any other mon-
313 eys irrevocably committed under the annual contributions
314 contract to the payment of principal and interest on such
315 obligations will suffice to provide for the payment when
316 due of all installments of principal and interest on such
317 obligations, which moneys under the terms of the agree-
318 ment are required to be used for the purpose of paying
319 the principal and interest on such obligations at their ma-
320 turity; and

321 (L) Obligations of a corporation owning the property
322 in which that state-chartered banking institution is located
323 when that state-chartered banking institution has an unim-
324 paired capital and unimpaired surplus of not less than one
325 million dollars or when approved in writing by the com-
326 missioner of banking.

327 (5) Notwithstanding any other provision in this sub-
328 section, a state-chartered banking institution may purchase
329 for its own account shares of stock issued by a corporation
330 authorized to be created pursuant to Title IX of the Hous-
331 ing and Urban Development Act of 1968, 42 U.S.C.
332 §3931 et seq., and may make investments in a partnership,
333 limited partnership, or joint venture formed pursuant to
334 Section 907 (a) or 907 (c) of that act, 42 U.S.C. §3937 (a)
335 or (c), and may purchase shares of stock issued by any
336 West Virginia housing corporation and may make invest-
337 ments in loans and commitments for loans to any such
338 corporation: *Provided*, That in no event shall the total
339 amount of such stock held for its own account and such
340 investments in loans and commitments made by the
341 state-chartered banking institution exceed at any time five
342 percent of the unimpaired capital and unimpaired sur-
343 plus of that state-chartered banking institution.

344 (6) Notwithstanding any other provision in this sub-
345 section, a state-chartered banking institution may pur-
346 chase, for its own account, shares of stock of small busi-
347 ness investment companies chartered under the laws of this
348 state, which are licensed under the act of Congress known
349 as the "Small Business Investment Act of 1958", as amend-
350 ed, and of business development corporations created and
351 organized under the act of the Legislature known as the
352 "West Virginia Business Development Corporation Act", as
353 amended: *Provided*, That in no event shall any such
354 state-chartered banking institution hold shares of stock in
355 small business investment companies and/or business de-
356 velopment corporations in any amount aggregating more
357 than fifteen percent of the unimpaired capital and unim-
358 paired surplus of that state-chartered banking institution.

359 (7) Notwithstanding any other provision of this sub-
360 section, a state-chartered banking institution may purchase

361 for its own account shares of stock of a bankers' bank or a
362 bank holding company which owns or controls such
363 bankers' bank, but in no event shall the total amount of
364 such stock held by such state-chartered banking institution
365 exceed at any time fifteen percent of the unimpaired capi-
366 tal and unimpaired surplus of that state-chartered banking
367 institution and in no event shall the purchase of such stock
368 result in that state-chartered banking institution acquiring
369 more than twenty percent of any class of voting securities
370 of such bankers' bank or of the bank holding company
371 which owns or controls such bankers' bank.

372 (8) Notwithstanding any other provision of this sub-
373 section, a state-chartered banking institution may invest its
374 funds in any investment authorized for national banking
375 associations. Such investments by state-chartered banking
376 institutions shall be on the same terms and conditions
377 applicable to national banking associations: *Provided*,
378 That (i) the purchase of investment securities under this
379 subdivision shall be made only when in the bank's prudent
380 judgment, which judgment may be based in part on
381 estimates which it believes to be reliable, there is adequate
382 evidence that the obligor will be able to perform all it
383 undertakes to perform in connection with the securities,
384 including all debt service requirements, and that the secu-
385 rities may be sold with reasonable promptness at a price
386 that corresponds to their fair value; and (ii) the purchase
387 conforms to the requirement of subparagraph (9) of this
388 subdivision. The commissioner of banking may, from
389 time to time, provide notice to state-chartered banking
390 institutions of authorized investments under this para-
391 graph.

392 (9) The purchase of investment securities, including
393 derivative securities, in which the investment characteristics
394 are considered distinctly or predominantly speculative, or
395 the purchase of such securities that are in default, whether
396 as to principal or interest, is prohibited. The proper man-
397 agement of interest rate risk through the use of derivative
398 or other investment securities shall not be held a specula-
399 tive purpose.

400 (10) The commissioner of banking may prescribe
401 rules to administer and carry out the purposes of this sub-
402 section, including rules to define or further define terms
403 used in this subsection and to establish limits or require-
404 ments other than those specified in this subsection for
405 particular classes or categories of investment securities.

406 (c) In the event of a material decline of unimpaired
407 capital and unimpaired surplus of a state-chartered bank
408 during any quarterly reporting period of more than twenty
409 percent from that amount reported in the bank's most
410 recent report of income and condition, or where there is a
411 decrease of more than thirty percent in any twelve-month
412 period, the bank shall review its outstanding loans, exten-
413 sions of credit and investments and report to the commis-
414 sioner of banking those loans, extensions and investments
415 that exceed the limitations of this section using the bank's
416 current re-evaluated unimpaired capital and unimpaired
417 surplus. The report shall detail the bank's position in each
418 such loan, extension of credit, and investment. The commis-
419 sioner may, within his or her discretion, require that
420 such loans, extensions of credit and investments be
421 brought into conformity with the bank's current
422 re-evaluated legal lending and investment limitation.

423 (d) Notwithstanding any other provision of this sec-
424 tion, in order to ensure a bank's safety and soundness, the
425 commissioner of banking retains the authority to direct
426 any state-chartered bank to recalculate its lending and
427 investment limits at more frequent intervals than otherwise
428 provided herein and to require all outstanding loans, ex-
429 tensions of credit and investments be brought into confor-
430 mance with the re-evaluated limitations. In such cases, the
431 commissioner will provide the bank a written notice ex-
432 plaining briefly the specific reasons why the determination
433 was made to require the more frequent calculations.

434 (e) Loans to directors or executive officers are subject
435 to the following limitations:

436 (1) A director or executive officer of any banking
437 institution may not borrow, directly or indirectly, from a
438 banking institution with which he is connected, any sum of
439 money without the prior approval of a majority of the

440 board of directors or discount committee of the banking
441 institution, or of any duly constituted committee whose
442 duties include those usually performed by a discount
443 committee. Such approval shall be by resolution adopted
444 by a majority vote of such board or committee, exclusive
445 of the director or executive officer to whom the loan is
446 made.

447 (2) If any director or executive officer of any bank
448 owns or controls a majority of the stock of any corpora-
449 tion, or is a partner in any partnership, a loan to such cor-
450 poration or partnership shall constitute a loan to such
451 director or officer.

452 (3) For purposes of this subsection, an "executive
453 officer" means:

454 (A) A person who participates or has authority to
455 participate, other than in the capacity of a director, in
456 major policy-making functions of the company or bank,
457 regardless of any official title, salary or other compensa-
458 tion. The chairman of the board, the president, every vice
459 president, the cashier, the secretary and the treasurer of a
460 company or bank are considered executive officers unless
461 the officer is excluded, by resolution of the board of di-
462 rectors or by the bylaws of the bank or company from
463 participation, other than in the capacity of director, in
464 major policy-making functions of the bank or company,
465 and the officer does not actually participate therein.

466 (B) An executive officer of a company of which the
467 bank is a subsidiary, and any other subsidiary of that com-
468 pany, unless the executive officer of the subsidiary is ex-
469 cluded, by name or by title, from participation in major
470 policy-making functions of the bank by resolutions of the
471 boards of directors of both the subsidiary and the bank
472 and does not actually participate in such major
473 policy-making functions.

474 (f) The commissioner of banking and any employee
475 of the department of banking may not borrow, directly or
476 indirectly, any sum of money from a state-chartered bank-
477 ing institution which is subject to examination by the com-
478 missioner or the department.

479 (g) Securities purchased by a state-chartered banking
480 institution shall be entered upon the books of the bank at
481 actual cost. For the purpose of calculating the undivided
482 profits applicable to the payment of dividends, securities
483 shall not be valued at a valuation exceeding their present
484 cost as determined by amortization of premiums and ac-
485 cretion of discounts pursuant to generally accepted ac-
486 counting principles, that is, by charging to profit and loss
487 a sum sufficient to bring them to par at maturity: *Provid-*
488 *ed*, That securities held for trade or permissible market-
489 able equity securities and any other types of debt securi-
490 ties which pursuant to generally accepted accounting prin-
491 ciples are to be carried on the bank's books at fair market
492 value shall have the unrealized market appreciation and
493 depreciation included in the income and capital as permit-
494 ted by such generally accepted accounting principles.

495 (h) The market value of securities purchased and loans
496 extended by a state-chartered banking institution shall be
497 reported in all public reports and quarterly reports to the
498 commissioner pursuant to section nineteen of this article
499 in accordance with generally accepted accounting princi-
500 ples and any applicable state or federal law, rule or regula-
501 tion.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PEN-
ALTIES.**

§31A-8-8a. Unauthorized disclosure of information from a financial institu-
tion examination report.

§31A-8-12. Procedure for authorizing of branch banks; penalties for viola-
tion of section.

§31A-8-12b. Installation and operation of customer bank communication
terminals permitted.

§31A-8-15. General penalties.

§31A-8-16. Misdemeanors and felonies.

**§31A-8-8a. Unauthorized disclosure of information from a
financial institution examination report.**

1 Any person having a duty to the financial institution
2 or to a state agency to maintain the confidentiality of
3 examination reports by the department of banking, who
4 willfully and knowingly makes an unauthorized public

5 disclosure of confidential information or records from a
6 state-chartered depository financial institution examina-
7 tion report shall be subject to suit by the commissioner or
8 attorney general for civil penalties of up to one thousand
9 dollars: *Provided*, That no such suit shall lie where the
10 person was ordered to make the disclosure by a court of
11 competent jurisdiction, or lawfully compelled to make the
12 disclosure as part of a legislative or executive agency in-
13 vestigation. Officials of the financial institution or the
14 commissioner may refer matters of possible wrongdoing
15 discovered by the examination which impact on the insti-
16 tution's soundness or financial integrity, or which concern
17 possible criminal conduct to law enforcement officials, or
18 other appropriate governmental regulatory agencies, in-
19 cluding appropriate state bar or ethics officials and such
20 referral shall not constitute public disclosure.

***§31A-8-12. Procedure for authorizing of branch banks;
penalties for violation of section.**

1 (a) No banking institution shall engage in business at
2 any place other than at its principal office in this state, at a
3 branch bank in this state permitted by this section as a
4 customer bank communication terminal permitted by
5 section twelve-b of this article or at any loan organization
6 office permitted by section twelve-c of this article.

7 (1) Acceptance of a deposit or allowing a withdrawal
8 at the banking offices of any subsidiary, as defined in
9 section two, article eight-a of this chapter, for credit or
10 debit to the customer's account at any other subsidiary of
11 the same bank holding company is permissible and does
12 not constitute branch banking. In addition, the conduct of
13 activity at bank offices as an agent for any bank subsid-
14 iary of the same bank holding company shall be permitted
15 to the same extent allowed by federal law for national
16 banks pursuant to 12 U.S.C. 1828, and does not constitute
17 branch banking; nor shall such activity constitute a viola-
18 tion of section forty-two, article four of this chapter: *Pro-*
19 *vided*, That no banking institution may utilize that agency
20 relationship to evade state consumer protection laws, in-
21 cluding usury laws, or any other applicable laws of this

***Clerk's Note:** This section was also amended by S. B. 280 (Chapter 72), which passed subsequent to this act.

22 state, or to conduct any activity that is not financially-
23 related, as that term is defined by section two, article
24 eight-c of this chapter.

25 (2) A banking institution located in a county where
26 there is also a higher educational institution as defined in
27 section two, article one, chapter eighteen-b of this code,
28 may establish a temporary business office on the campus
29 of any such educational institution located in such county
30 for the limited purposes of opening accounts and accept-
31 ing deposits for a period not in excess of four business
32 days per semester, trimester or quarter: *Provided*, That
33 prior to opening any temporary office, a banking institu-
34 tion must first obtain written permission from the institu-
35 tion of higher education. The term "business days," for
36 the purpose of this subsection, means days exclusive of
37 Saturdays, Sundays and legal holidays as defined in sec-
38 tion one, article two, chapter two of this code.

39 (3) Any banking institution which on January one,
40 one thousand nine hundred eighty-four, was authorized to
41 operate an off-premises walk-in or drive-in facility, pursu-
42 ant to the law then in effect, may, as of the seventh day of
43 June, one thousand nine hundred eighty-four, operate
44 such facility as a branch bank and it shall not be neces-
45 sary, for the continued operation of such branch bank, to
46 obtain additional approvals, notwithstanding the provisions
47 of subsection (d) of this section and subdivision (6), sub-
48 section (b), section two, article three of this chapter.

49 (b) Except for a bank holding company, it shall be
50 unlawful for any individual, partnership, society, associa-
51 tion, firm, institution, trust, syndicate, public or private
52 corporation, or any other legal entity, or combination of
53 entities acting in concert, to directly or indirectly own,
54 control or hold with power to vote, twenty-five percent or
55 more of the voting shares of each of two or more banks,
56 or to control in any manner the election of a majority of
57 the directors of two or more banks.

58 (c) A banking institution may establish branch banks
59 either by:

60 (1) The construction, lease or acquisition of branch
61 bank facilities as follows:

62 (A) After the seventh of June, one thousand nine hun-
63 dred eighty-four, within the county in which that banking
64 institution's principal office is located or within the county
65 in which that banking institution had prior to January first,
66 one thousand nine hundred eighty-four, established a
67 branch bank, pursuant to subdivision (2) of this subsec-
68 tion; and

69 (B) After the thirty-first of December, one thousand
70 nine hundred eighty-six, within any county in this state; or

71 (2) The purchase of the business and assets and as-
72 sumption of the liabilities of, or merger or consolidation
73 with, another banking institution.

74 (d) Notwithstanding any other provision of this chap-
75 ter to the contrary, subject to and in furtherance of the
76 board's authority under the provisions of subdivision (6),
77 subsection (b), section two, article three of this chapter,
78 and subsection (g) of this section, the board may approve
79 or disapprove the application of any state banking institu-
80 tion to establish a branch bank.

81 (e) The principal office of a banking institution as of
82 the seventh day of June, one thousand nine hundred
83 eighty-four, shall continue to be the principal office of
84 such banking institution for purposes of establishing
85 branch banks under this section, notwithstanding any
86 subsequent change in the location of such banking institu-
87 tion's principal office.

88 (f) Any banking institution which is authorized to
89 establish branch banks pursuant to this section may pro-
90 vide the same banking services and exercise the same
91 powers at each such branch bank as may be provided and
92 exercised at its principal banking house.

93 (g) The board shall, upon receipt of any application to
94 establish a branch bank, provide notice of such application
95 to all banking institutions. A banking institution may,
96 within ten days after receipt of such notice, file a petition
97 to intervene and shall, if it so files such petition, thereupon
98 become a party to any hearing relating thereto before the
99 board.

100 (h) The commissioner shall prescribe the form of the
101 application for a branch bank and shall collect an exami-
102 nation and investigation fee of one thousand dollars for
103 each filed application for a branch bank that is to be es-
104 tablished by the construction, lease or acquisition of a
105 branch bank facility, and two thousand five hundred dol-
106 lars for a branch bank that is to be established by the pur-
107 chase of the business and assets and assumption of the
108 liabilities of, or merger or consolidation with another
109 banking institution. Notwithstanding the above, if the
110 merger or consolidation is between an existing banking
111 institution and a bank newly incorporated solely for the
112 purpose of facilitating the acquisition of the existing
113 banking institution, the commissioner shall collect an
114 examination and investigation fee of five hundred dollars.
115 The board shall complete the examination and investiga-
116 tion within ninety days from the date on which such appli-
117 cation and fee are received, unless the board request in
118 writing additional information and disclosures concerning
119 the proposed branch bank from the applicant banking
120 institution, in which event such ninety-day period shall be
121 extended for an additional period of thirty days plus the
122 number of days between the date of such request and the
123 date such additional information and disclosures are re-
124 ceived.

125 (i) Upon completion of the examination and investiga-
126 tion with respect to such application, the board shall, if a
127 hearing be required pursuant to subsection (j) of this sec-
128 tion, forthwith give notice and hold a hearing pursuant to
129 the following provisions:

130 (1) Notice of such hearing shall be given to the bank-
131 ing institution with respect to which the hearing is to be
132 conducted in accordance with the provisions of section
133 two, article seven, chapter twenty-nine-a of this code, and
134 such hearing and the administrative procedures in connec-
135 tion therewith shall be governed by all of the provisions of
136 article five, chapter twenty-nine-a of this code, and shall be
137 held at a time and place set by the board but shall not be
138 less than ten nor more than thirty days after such notice is
139 given.

140 (2) At any such hearing a party may represent himself
141 or be represented by an attorney at law admitted to prac-
142 tice before any circuit court of this state.

143 (3) After such hearing and consideration of all the
144 testimony and evidence, the board shall make and enter an
145 order approving or disapproving the application, which
146 order shall be accompanied by findings of fact and con-
147 clusions of law as specified in section three, article five,
148 chapter twenty-nine-a of this code, and a copy of such
149 order and accompanying findings and conclusions shall
150 be served upon all parties to such hearing, and their attor-
151 neys of record, if any.

152 (j) No state banking institution may establish a branch
153 bank until the board, following an examination, investiga-
154 tion, notice and hearing, enters an order approving an
155 application for that branch bank: *Provided*, That no such
156 hearing shall be required with respect to any application to
157 establish a branch bank which is approved by the board
158 unless a banking institution has timely filed a petition to
159 intervene pursuant to subsection (g) of this section. The
160 order shall be accompanied by findings of fact that:

161 (1) Public convenience and advantage will be promot-
162 ed by the establishment of the proposed branch bank;

163 (2) Local conditions assure reasonable promise of
164 successful operation of the proposed branch bank and of
165 those banks and branches thereof already established in
166 the community;

167 (3) Suitable physical facilities will be provided for the
168 branch bank;

169 (4) The applicant state-chartered banking institution
170 satisfies such reasonable and appropriate requirements as
171 to sound financial condition as the commissioner or board
172 may from time to time establish by regulation;

173 (5) The establishment of the proposed branch bank
174 would not result in a monopoly, nor be in furtherance of
175 any combination or conspiracy to monopolize the busi-
176 ness of banking in any section of this state; and

177 (6) The establishment of the proposed branch bank
178 would not have the effect in any section of the state of
179 substantially lessening competition, nor tend to create a
180 monopoly or in any other manner be in restraint of trade,
181 unless the anticompetitive effects of the establishment of
182 that proposed branch bank are clearly outweighed in the
183 public interest by the probable effect of the establishment
184 of the proposed branch bank in meeting the convenience
185 and needs of the community to be served by that pro-
186 posed branch bank: *Provided*, That where the branch
187 results from the merger or acquisition of banking institu-
188 tions, the findings of fact required in subdivisions (1)
189 through (3) hereof may be based on the performance and
190 suitability of the previous banking offices.

191 (k) Any party who is adversely affected by the order
192 of the board shall be entitled to judicial review thereof in
193 the manner provided in section four, article five, chapter
194 twenty-nine-a of this code. Any such party adversely
195 affected by a final judgment of a circuit court following
196 judicial review as provided in the foregoing sentence may
197 seek review thereof by appeal to the supreme court of
198 appeals in the manner provided in article six, chapter
199 twenty-nine-a of this code.

200 (l) Pursuant to the resolution of its board of directors
201 and with the prior written approval of the commissioner, a
202 state banking institution may discontinue the operation of
203 a branch bank upon at least thirty days' prior public notice
204 given in such form and manner as the commissioner pre-
205 scribes.

206 (m) Any violation of any provision of this section
207 shall constitute a misdemeanor offense punishable by
208 applicable penalties as provided in section fifteen of this
209 article.

**§31A-8-12b. Installation and operation of customer bank
communication terminals permitted.**

1 (a) Any banking institution as defined in section two,
2 article one of this chapter, individually or jointly with one
3 or more other banking institutions or other federally in-
4 sured financial institutions having their principal offices in

5 this state, or any combination thereof, may upon thirty
6 days prior written notice filed with the commissioner,
7 install, operate and engage in banking business by means
8 of one or more customer bank communication terminals.
9 Any banking institution which installs and operates a cus-
10 tomer bank communication terminal:

11 (1) Shall make such customer bank communication
12 terminal available for use by other banking institutions;
13 and

14 (2) May make such customer bank communication
15 terminal available for use by other federally insured finan-
16 cial institutions, all in accordance with regulations promul-
17 gated by the commissioner. Such customer bank commu-
18 nication terminals shall not be considered to be branch
19 banks or branch offices, agencies or places of business or
20 off-premises walk-in or drive-in banking facilities; nor
21 shall the operation of such customer bank communication
22 terminals to communicate with and permit financial trans-
23 actions to be carried out through a nonexclusive access
24 interchange system be considered to make any banking
25 institution which is part of such a nonexclusive access
26 interchange system to have illegal branch banks or branch
27 offices, agencies or places of business or off-premises
28 walk-in or drive-in banking facilities.

29 (b) Notwithstanding the provisions of subdivision (1),
30 subsection (a) of this section, a customer bank communi-
31 cation terminal located on the premises of the principal
32 office or branch bank of a banking institution or on the
33 premises of an authorized off-premises facility need not
34 be made available for use by any other banking institution
35 or its customers.

36 (c) For purposes of this section, "customer bank com-
37 munication terminal" means any electronic device or ma-
38 chine owned, leased, or operated by a bank, together with
39 all associated equipment, structures and systems, including,
40 without limitation, point of sale terminals, through or by
41 means of which a customer and a banking institution may
42 engage in any banking transactions, whether transmitted to
43 the banking institution instantaneously or otherwise, in-
44 cluding, without limitation, the receipt of deposits of every

45 kind, the receipt and dispensing of cash, requests to with-
46 draw money from an account or pursuant to a previously
47 authorized line of credit, receiving payments payable at
48 the bank or otherwise transmitting instructions to receive,
49 transfer or pay funds for a customer's benefit. Personal
50 computers, telephones, and associated equipment which
51 enable a bank customer to conduct banking transactions at
52 their home or office through links to their bank's comput-
53 er or telephone network, do not constitute a "customer
54 bank communication terminal" under this section. All
55 transactions initiated through a customer bank communi-
56 cation terminal shall be subject to verification by the
57 banking institution.

58 (d) No person, other than (1) a banking institution
59 authorized to engage in the banking business in this state;
60 or (2) a credit union authorized to conduct business in this
61 state, may operate any automatic teller machine ("ATM")
62 or automatic loan machine ("ALM") located in this state.

63 (e) For the purposes of this section, "point of sale
64 terminal" means a customer bank communication terminal
65 used for the primary purpose of either transferring funds
66 to or from one or more deposit accounts in a banking
67 institution or segregating funds in one or more deposit
68 accounts in a banking institution for future transfer, or
69 both, in order to execute transactions between a person
70 and his customers incident to sales, including, without
71 limitation, devices and machines which may be used to
72 implement and facilitate check guaranty and check autho-
73 rization programs.

74 (f) Nothing in this section prevents point of sale termi-
75 nals and associated equipment from being owned, leased,
76 or operated by non-banking entities: *Provided, however,*
77 That such persons may not engage in the business of
78 banking by using point of sale devices. The use of a point
79 of sale terminal to enable a customer or other person to
80 withdraw and obtain cash of more than fifty dollars in
81 excess of the sales transaction purchase amount, will be
82 presumed to constitute engaging in the business of bank-
83 ing.

84 (g) Except for customer bank communication termi-
85 nals located on the premises of the principal office or a
86 branch bank of the banking institution or on the premises
87 of an authorized off-premises walk-in or drive-in banking
88 facility, a customer bank communication terminal shall be
89 unattended or attended by persons not employed by any
90 banking institution utilizing the terminal: *Provided*, That:

91 (1) Employees of the banking institution may be pres-
92 ent at such terminal not located on the premises of an
93 authorized off-premises facility solely for the purposes of
94 installing, maintaining, repairing and servicing same; and

95 (2) A banking institution may provide an employee to
96 instruct and assist customers in the operation thereof:
97 *Provided*, That such employee shall not engage in any
98 other banking activity.

99 (h) The commissioner shall prescribe by regulation the
100 procedures and standards regarding the installation and
101 operation of customer bank communication terminals,
102 including, without limitation, the procedure for the sharing
103 thereof.

§31A-8-15. General Penalties.

1 (a) Upon conviction for any misdemeanor offense
2 under the provisions of this chapter, an offending finan-
3 cial institution shall be fined not more than five thousand
4 dollars nor less than fifty dollars and may, in the discre-
5 tion of the court in consideration of the nature of the
6 offense, be required to forfeit its corporate charter and
7 franchise. Upon conviction of any individual, whether
8 officer, director, agent, employee or any other person
9 connected or not connected with a financial institution, of
10 any misdemeanor offense under the provisions of this
11 chapter, the offending individual shall be fined not more
12 than five thousand dollars nor less than fifty dollars and
13 may, in the discretion of the court, be confined in the
14 county jail for not more than twelve months.

15 (b) Any person or financial institution which violates
16 the provisions of this chapter, the rules adopted thereun-
17 der, or a lawful order of the commissioner or board, shall,
18 unless previously fined under the provisions of subsection

19 (a) of this section, be subject to civil penalties in an
20 amount not more than five thousand dollars nor less than
21 fifty dollars in civil actions brought by the commissioner
22 or the board.

§31A-8-16. Misdemeanors and felonies.

1 The willful failure to perform any duty required of
2 any financial institution or individual pursuant to provi-
3 sions of this chapter, or the willful doing of any act by any
4 financial institution or individual forbidden by the provi-
5 sions of this chapter, shall constitute a misdemeanor of-
6 fense, except any act which is made a felony offense by
7 specific language of this article.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.**

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-110. Right to prepay.

1 (1) Subject to the provisions on rebate upon prepay-
2 ment, the consumer may repay in full the unpaid balance
3 of a consumer credit sale or a consumer loan, refinancing
4 or consolidation at any time without penalty.

5 (2) Notwithstanding subsection one of this section, it is
6 permissible within the first three years of a credit exten-
7 sion or loan to charge a prepayment penalty of up to one
8 percent of the original principal amount in a consumer
9 credit sale subject to the provisions of section one hundred
10 two of this article or on a consumer loan secured by an
11 interest in land: *Provided*, That said prepayment penalty
12 may not be imposed as part of any industrial loan compa-
13 ny licensee or secondary mortgage lender licensee con-
14 tract, and that in no event can a prepayment penalty be
15 assessed on a refinancing within one year from the date of
16 the prior loan.

17 (3) Housing loans originated by the West Virginia
18 Housing Development Fund are exempt from the restric-
19 tions set forth in this section.

CHAPTER 72

(Com. Sub. for S. B. 280—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

‡ ACT to repeal section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eleven, article two of said chapter; to further amend said article by adding thereto a new section, designated section twelve-a; to amend and reenact sections fourteen, fourteen-a and forty-two, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to amend and reenact article eight-a of said chapter; to further amend said chapter by adding thereto three new articles, designated articles eight-d, eight-e and eight-f; to amend and reenact section three, article five, chapter forty-four of said code; to amend and reenact section seven, article ten of said chapter; and to amend and reenact section eleven, article one, chapter forty-four-a of said code, all relating generally to the definition of "bank" and "banking institution"; licensing of financial institutions; trust authority of interstate banks; the acquisition, by in-state and out-of-state bank holding companies, of banks and bank holding companies in West Virginia and the application process, standards for approval, effect on competition, acquisition deposit limitations in lieu of antitrust depository caps, provision of reports, examinations, issuance of rules, business of banking, enforcement and penalties relating thereto; interstate bank branching by merger, and the authority, effect on competition, acquisition deposit limitations, notice and filing requirements, powers and additional branches, examinations, reports, cooperative regulatory agreements and fees, enforcement and rules relating thereto; interstate branch banking by de novo entry; authority for West Virginia state banks to branch interstate de novo or by branch acquisition; authority for out-of-state state banks to branch into West Virginia de novo or by branch acquisition; notice and approval requirements, additional powers for out-of-state branches of West Virginia banks, examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relat-

ing to interstate branching; and the establishment and authority of agency and representative offices of foreign banks to conduct limited banking activities, and the examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relating thereto.

Be it enacted by the Legislature of West Virginia:

That section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article one, chapter thirty-one-a of said code be amended and reenacted; that sections five and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve-a; that sections fourteen, fourteen-a and forty-two, article four of said chapter be amended and reenacted; that section twelve, article eight of said chapter be amended and reenacted; that article eight-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles eight-d, eight-e and eight-f; that section three, article five, chapter forty-four of said code be amended and reenacted; that section seven, article ten of said chapter be amended and reenacted; and that section eleven, article one, chapter forty-four-a of said code be amended and reenacted, all to read as follows:

Chapter

31A. Banks and Banking.

44. Administration of Estates and Trusts.

44A. West Virginia Guardianship and Conservatorship Act.

CHAPTER 31A. BANKS AND BANKING.

Article

1. General Provisions and Definitions.

2. Division of Banking.

4. Banking Institutions and Services Generally.

8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

8A. Acquisitions of Banks By Bank Holding Companies.

8D. Interstate Branching By Bank Mergers.

8E. Interstate Branching By De Novo Entry and Acquisition of Branches.

8F. The West Virginia International Banking Act.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.***§31A-1-2. Definitions.**

1 As used in this chapter, unless the context in which
2 used plainly requires a different meaning:

3 (a) The word "action", in the sense of a judicial pro-
4 ceeding, means any proceeding in a court of competent
5 jurisdiction in which rights are adjudicated and deter-
6 mined and shall embrace and include recoupment, coun-
7 terclaim, setoff and other related, similar and summary
8 proceedings;

9 (b) The words "bank" and "banking institution" mean
10 a corporation or association heretofore or hereafter char-
11 tered to conduct a banking business under the laws of the
12 United States or any state, territory, district or possession
13 thereof, which is authorized in West Virginia to accept
14 deposits that the depositor has a legal right to withdraw on
15 demand and is authorized to engage in the business of
16 commercial lending, and meets the criteria set forth in
17 Section 2(c) of the Bank Holding Company Act, as
18 amended, 12 U.S.C. §1841(c), and shall embrace and
19 include a savings bank, savings and loan association, trust
20 company or an institution combining banking and trust
21 company facilities, functions and services so chartered or
22 authorized to conduct such business in this state;

23 (c) The words "bankers' bank" mean a banking insti-
24 tution, insured by the federal deposit insurance corpora-
25 tion, the stock of which is owned exclusively by banks and
26 other depository institutions, and such banking institution
27 and all subsidiaries thereof are engaged exclusively in
28 providing services for banks and other depository insti-
29 tutions and their officers, directors and employees;

30 (d) The term "banking business" means the functions,
31 services and activities contained, detailed and embraced in
32 sections thirteen and fourteen, article four of this chapter,
33 and as elsewhere defined by law;

34 (e) The word "board" means the West Virginia board
35 of banking and financial institutions;

*Clerk's Note: This section was also amended by H. B. 4624 (Chapter 71), which passed prior to this act.

36 (f) The words "branch bank" mean an office or other
37 place at which a bank performs any or all banking busi-
38 ness. For purposes of this chapter, a branch bank does not
39 include:

40 (1) A bank's principal place of business;

41 (2) Any customer bank communication terminals
42 installed and operated pursuant to section twelve-b, article
43 eight of this chapter; and

44 (3) Any loan origination office authorized by section
45 twelve-c, article eight of this chapter;

46 (g) The words "commissioner" or "commissioner of
47 banking" mean the commissioner of banking of West
48 Virginia;

49 (h) The word "community" means a city, town or
50 other incorporated area, or, where not so incorporated, a
51 trading area;

52 (i) The word "department" means the department of
53 banking of West Virginia;

54 (j) The words "deputy commissioner" or "deputy
55 commissioner of banking" mean the deputy commissioner
56 of banking of West Virginia;

57 (k) The word "fiduciary" means any trustee, agent,
58 executor, administrator, curator, committee, guardian or
59 conservator, special commissioner, receiver, trustee in
60 bankruptcy, assignee for creditors or any holder of a simi-
61 lar position of trust or responsibility;

62 (l) The words "financial institutions" mean banks,
63 building and loan associations, industrial banks, industrial
64 loan companies, supervised lenders, credit unions and all
65 other similar institutions, whether persons, firms or corpo-
66 rations, which are by law under the jurisdiction and super-
67 vision of the commissioner of banking;

68 (m) The word "officer" when referring to any finan-
69 cial institution, means any person designated as such in the
70 bylaws and includes, whether or not so designated, any
71 executive officer, the chairman of the board of directors,

72 the chairman of the executive committee, and any trust
73 officer, assistant vice president, assistant treasurer, assistant
74 secretary, assistant trust officer, assistant cashier, assistant
75 comptroller or any other person who performs the duties
76 appropriate to those offices, and the term "executive offi-
77 cer" as herein used, when referring to banking institutions,
78 means an officer of a bank whose duties involve regular,
79 active and substantial participation in the daily operations
80 of such institution and who, by virtue of his position, has
81 both a voice in the formulation of the policy of the bank
82 and responsibility for implementation of the policy, such
83 responsibility of and functions performed by the individu-
84 al, and not his title or office, being determinative of wheth-
85 er he is an "executive officer";

86 (n) The words "out-of-state bank" or "out-of-state
87 banking institution" mean a bank chartered under the laws
88 of a state or United States territory, possession or district,
89 other than West Virginia, or organized under federal law
90 and having its main office located in a state, United States
91 territory, possession or district, other than West Virginia;

92 (o) The words "person" or "persons" mean any indi-
93 vidual, partnership, society, association, firm, institution,
94 company, public or private corporation, state, government-
95 tal agency, bureau, department, division or instrumentality,
96 political subdivision, county commission, municipality,
97 trust, syndicate, estate or any other legal entity whatsoever,
98 formed, created or existing under the laws of this state or
99 any other jurisdiction;

100 (p) The words "safe-deposit box" mean a safe-deposit
101 box, vault or other safe-deposit receptacle maintained by a
102 lessor bank, and the rules relating thereto apply to proper-
103 ty or documents kept therein in the bank's vault under the
104 joint control of lessor and lessee;

105 (q) The words "state bank" or "state banking institu-
106 tion" mean, unless the context requires otherwise, a bank
107 chartered under the laws of West Virginia, as distinguished
108 from either an out-of-state bank or a national banking
109 association and is also referred to as a "West Virginia state
110 bank" or "West Virginia state banking institution"; and

111 (r) The words "trust business" mean the functions,
112 services and activities contained, detailed and embraced in
113 section fourteen, article four of this chapter, and as else-
114 where defined by law and as may be included within the
115 meaning of the term "banking business".

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amend-
ments to charter, bylaws and foreign statutes.

§31A-2-11. Annual deposit and loan reports by banking institutions.

§31A-2-12a. Establishment of deposit acquisition limitation.

***§31A-2-5. Certificate or license to engage in business; filing
of amendments to charter, bylaws and foreign
statutes.**

1 (a) No person shall engage or continue in the busi-
2 ness of a financial institution in this state without a license
3 or certificate to do so issued in accordance with this sec-
4 tion, or other applicable law, which license or certificate
5 remains unsuspended, unexpired and unrevoked except
6 that a corporation which proposes to apply for such li-
7 cense or certificate may secure its charter, adopt bylaws,
8 elect its directors and officers and perfect its organization.

9 (b) Application for such license or certificate shall be
10 upon such forms and contain such information as the
11 commissioner may prescribe. In connection with such
12 applications, every corporate financial institution shall file
13 a certified copy of its charter and bylaws, a statement as to
14 the amount of capital that has been subscribed and paid in
15 and a statement of its financial condition duly verified
16 under oath by its president or vice president and its cashier
17 or secretary as the case may be and every financial institu-
18 tion other than a corporation shall file a verified statement
19 of its financial condition.

20 (c) If the application be that of a West Virginia state
21 banking institution, the commissioner of banking shall
22 examine the information, documents and statements sub-
23 mitted and, if he finds that such banking institution has
24 adopted bylaws which provide practical, safe, just and

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 70)
and S. B. 366 (Chapter 73), which passed subsequent to this act.

25 equitable rules and methods for the management of its
26 business and it has complied in all respects with the provi-
27 sions of this chapter and other applicable laws, he shall
28 issue to it a certificate or license permitting it to engage in
29 business. If the application be that of a financial institu-
30 tion other than a banking institution, the commissioner of
31 banking shall examine the information, documents and
32 statements submitted, and, if he finds that such financial
33 institution has adequate resources for the proposed busi-
34 ness and has provided practical, safe, just and equitable
35 rules and methods for the management of its business, and
36 it has complied in all respects with the provisions of this
37 chapter and other applicable laws and that the public con-
38 venience and advantage will be promoted by the issuance
39 of a certificate or license thereto, he shall issue to it a cer-
40 tificate or license permitting it to engage in business:
41 *Provided*, That any supervised lender which is operating
42 in good standing in accordance with the provisions of
43 article four, chapter forty-six-a of this code shall be pre-
44 sumed to have established that the public convenience and
45 advantage will be promoted in regard to its application for
46 a certificate of authority to operate as an industrial loan
47 company as defined in article seven, chapter thirty-one of
48 this code in the same location for which it is licensed as a
49 supervised lender. Such certificate or license shall be
50 preserved and displayed in the place of business of such
51 banking or other financial institution.

52 (d) In addition to the requirements of subsection (b)
53 of this section, every foreign corporation applying for a
54 license or certificate to engage in the business of a finan-
55 cial institution in this state, other than an out-of-state
56 banking institution, shall file with the commissioner of
57 banking a copy of the laws of the jurisdiction under which
58 it is organized which pertain to its organization and pow-
59 ers and the conduct of its business. The commissioner
60 shall examine the information, documents and statements
61 submitted by such foreign corporation and if he finds that
62 they provide practical, safe, just and equitable rules and
63 methods for the management of the business of the corpo-
64 ration, that it has adequate resources for the proposed
65 business and it has complied in all respects with the provi-

66 sions of this chapter and other applicable laws and that the
67 public convenience and advantage will be promoted by
68 the issuance of a license or certificate thereto, he shall
69 issue to such corporation a certificate or license permitting
70 it to engage in business in this state, which certificate or
71 license shall authorize such corporation to engage in the
72 business of the type of financial institution specified there-
73 in, until the thirtieth day of the following June. Thereafter
74 a new certificate or license shall be secured annually by
75 any such foreign corporation. The fee for the original
76 and each additional license or certificate issued to a for-
77 eign corporation shall be one hundred dollars, unless
78 otherwise provided by statute. A verified statement of the
79 financial condition of every such foreign corporation shall
80 be filed with the commissioner before the issuance of each
81 annual certificate or license. Such certificate or license
82 shall be preserved and displayed in the place of business
83 of such corporation.

84 (e) No amendment of the charter or bylaws of any
85 domestic or foreign corporation, other than an out-of-state
86 banking institution, engaging in business in this state as a
87 financial institution shall become effective until the pro-
88 posed change shall have been submitted to and approved
89 by the commissioner of banking; but, if the commissioner
90 does not disapprove such proposed change within twenty
91 days after it is received by him, it shall be deemed to have
92 been approved.

93 (f) Nothing contained in this code shall authorize any
94 person to engage in the banking business in this state
95 except corporations chartered to conduct a banking busi-
96 ness under the laws of West Virginia and which hold a
97 license or certificate to do so issued under this section,
98 associations authorized to conduct a banking business in
99 West Virginia under the laws of the United States and
100 having their principal place of business in this state,
101 out-of-state banks authorized to conduct the business of
102 banking in this state pursuant to articles eight-a, eight-d
103 and eight-e of this chapter, or foreign banks authorized to
104 conduct limited banking activities through licensed agen-
105 cy and representative offices in this state pursuant to arti-
106 cle eight-f of this chapter or through licensed federal

107 branches or agencies permitted under section seven, article
108 eight-f of this chapter.

§31A-2-11. Annual deposit and loan reports by banking institutions.

1 In addition to other reports that may be required un-
2 der this chapter, every banking institution with a main
3 office or branch located in this state shall file with the
4 commissioner an annual report specifying for its main
5 office and each branch (excluding automated teller ma-
6 chines) in this state:

7 (1) The location of each such office, including county
8 and, where applicable, municipality;

9 (2) The amount of deposits held by each such office
10 as of the end of the preceding calendar year; and

11 (3) The amount of loans outstanding by each such
12 office at the end of the preceding calendar year.

13 The foregoing report shall be based upon the bank's
14 allocation of its deposit base and loan portfolio among its
15 offices. The report shall be filed with the commissioner
16 on or before the fifteenth day of February of each year on
17 forms prescribed by the commissioner. This requirement
18 may be met by the filing of such report by the bank's
19 bank holding company pursuant to subsection (a), section
20 seven, article eight-a of this chapter.

§31A-2-12a. Establishment of deposit acquisition limitation.

1 After a review of the structure of depository institu-
2 tions in the state of West Virginia, the Legislature hereby
3 determines that:

4 (a) It is in the best interest of this state and its citizens
5 to foster and encourage healthy competition among its
6 domestic depository institutions;

7 (b) Obtaining excessive concentration or control of
8 the deposit resources of this state by merger or acquisition
9 is antithetical to fostering a competitive environment; and

10 (c) Therefore, an acquisition or merger shall not be

11 permitted under this chapter or otherwise if upon consum-
 12 mation of the transaction, the resulting depository institu-
 13 tion or its holding company, including any depository
 14 institution(s) affiliated therewith, would assume sufficient
 15 additional deposits to cause it to control deposits in this
 16 state in excess of the following acquisition deposit limita-
 17 tion amount: Twenty percent of the total amount of all
 18 deposits held by insured depository institutions, which
 19 permissible amount shall increase to twenty-five percent of
 20 such total deposits on the thirty-first day of May, one
 21 thousand nine hundred ninety-seven.

22 (d) The term "depository institutions", as used in this
 23 section, shall include, but is not limited to, state-chartered
 24 banking institutions, national banking associations, federal
 25 savings and loan associations, bank holding companies,
 26 savings and loan holding companies, federal savings
 27 banks, state-chartered credit unions and federally-char-
 28 tered credit unions.

29 (e) Any merger or acquisition contrary to this provi-
 30 sion is unlawful: *Provided*, That the commissioner may
 31 by rule adopt a procedure whereby said acquisition depos-
 32 it limitation as set forth herein may be waived for good
 33 cause shown.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER- ALLY.

§31A-4-14. Trust powers of banking institutions.

§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated
 subsidiary banks of a bank holding company.

§31A-4-42. Unlawful for persons other than banking institutions to engage
 in the banking business; penalties.

§31A-4-14. Trust powers of banking institutions.

1 (a) Every state banking institution which files the re-
 2 ports required in the following section and which is not
 3 otherwise prohibited by the commissioner or federal bank
 4 regulators from doing so, shall have and exercise the fol-
 5 lowing powers:

6 (1) All the powers, rights and privileges of any state
 7 banking institution;

8 (2) To act as trustee, assignee, special commissioner,
9 general or special receiver, guardian, executor, administra-
10 tor, committee, agent, curator or in any other fiduciary
11 capacity, and to take, assume, accept and execute trusts of
12 every description not inconsistent with the constitution and
13 laws of the United States of America or of this state; and to
14 receive, hold, manage and apply any sinking fund on the
15 terms and for the purposes specified in the instrument
16 creating such fund;

17 (3) To act as registrar, transfer agent or dividend or
18 coupon paying agent for any corporation;

19 (4) To make, hold and dispose of investments and
20 establish common trust funds, and account therefor, pur-
21 suant to the provisions of chapter forty-four of this code;

22 (5) To purchase and sell and take charge of and re-
23 ceive the rents, issues and profits of any real estate for
24 other persons or corporations;

25 (6) To act as trustee or agent in any collateral trust and
26 in order to secure the payment of any obligations of any
27 person, firm, private corporation, public corporation, pub-
28 lic body or public agency to receive and hold in trust any
29 items of personal property (including, without limitation,
30 notes, bonds, debentures, obligations and certificates for
31 shares of stock) with the right in case of default to sell and
32 dispose of such personal property and to collect, settle and
33 adjust any obligations for the payment of money, and at
34 any sale of such personal property held by it, to purchase
35 the same for the benefit of all or any of the holders of the
36 obligations, to secure the payment of which such items of
37 personal property were pledged and delivered to the trust-
38 ee or agent. Any such sale may be made without any
39 proceedings in any court, and at such times and upon such
40 terms as may be specified in the instrument or instruments
41 creating the trust, or, in the absence of any specification of
42 terms, at such time and upon such terms as the trustee shall
43 deem reasonable; and

44 (7) To do and perform any act or thing requisite or
45 necessary in, or incidental to, the exercise of the general
46 powers herein set forth.

47 (b) All national banks having their main office in this
48 state which have been, or hereafter may be, authorized
49 under the laws of the United States to act as trustee and in
50 other fiduciary capacities in the state of West Virginia shall
51 have all the rights, powers, privileges and immunities con-
52 ferred hereunder, provided they comply with the require-
53 ments hereof.

54 (c) Banks having their main office in another state
55 which lawfully have a branch in this state pursuant to the
56 provisions of federal law or articles eight-d or eight-e of
57 this chapter which have been, or hereafter may be, autho-
58 rized under the laws of the United States or the laws of the
59 state in which such bank is chartered to act as trustee and
60 in other fiduciary capacities in the state in which their
61 main office is located shall have all the rights, powers,
62 privileges and immunities conferred hereunder, provided
63 they comply with the requirements hereof.

**§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company.**

1 (a) Notwithstanding any other provision of this code,
2 and unless the will, deed or other instrument creating a
3 trust or fiduciary account or relationship specifically pro-
4 vides otherwise, any affiliate subsidiary which is empow-
5 ered with and authorized to exercise trust powers, or other-
6 wise performs fiduciary services for a fee, may, without
7 any order or other action on the part of any court or oth-
8 erwise, transfer to any other affiliate subsidiary exercising
9 or authorized to exercise trust powers any or all rights,
10 franchises and interests in its fiduciary accounts or rela-
11 tionships including, but not limited to, any or all appoint-
12 ments, designations and nominations and any other rights,
13 franchises and interests, as trustee, executor, administrator,
14 guardian, committee, escrow agent, transfer and paying
15 agent of stocks and bonds and every other fiduciary ca-
16 pacity; and the transferee or receiving affiliate subsidiary
17 shall hold and enjoy all rights of property, franchises and
18 interests in the same manner and to the same extent as
19 such rights, franchises and interests were held or enjoyed
20 by the transferor affiliate subsidiary. As to transfers to an
21 affiliate subsidiary pursuant to this section, the receiving
22 affiliate subsidiary shall take, receive, accept, hold, admin-

23 ister and discharge any grants, gifts, bequests, devises,
24 conveyances, trusts, powers and appointments made by
25 deed, deed of trust, will, agreement, order of court or oth-
26 erwise to, in favor of, or in the name of, the transferor
27 affiliate subsidiary, whether made, executed or entered
28 before or after such transfer and whether to vest or be-
29 come effective before or after such transfer, as fully and to
30 the same effect as if the receiving affiliate subsidiary had
31 been named and in such deed, deed of trust, will, agree-
32 ment, order or other instrument instead of such transferor
33 affiliate subsidiary. All acts taken or performed in its own
34 name or in the name of or on behalf of the transferor
35 affiliate subsidiary by any receiving affiliate subsidiary as
36 trustee, agent, executor, administrator, guardian, deposito-
37 ry, registrar, transfer agent or other fiduciary with respect
38 to fiduciary accounts or relationships transferred pursuant
39 to this section are as good, valid and effective as if made
40 by the transferor affiliate subsidiary.

41 (b) For purposes of this section, the term "affiliate
42 subsidiary" means any two or more subsidiaries (as de-
43 fined in section two, article eight-a of this chapter) which
44 are "banks" or "banking institutions" (as those terms are
45 defined in section two, article one of this chapter) and
46 which have a common bank holding company as their
47 parent company. For purposes of this section, the term
48 "bank holding company" shall have the meaning set forth
49 in section one, article eight-a of this chapter.

50 (c) At least thirty days before any transfer authorized
51 by this section, the transferor affiliate subsidiary shall send
52 a statement of intent to transfer together with the name
53 and address of the transferee or receiving affiliated subsid-
54 iary by regular United States mail to the most recent
55 known address of all persons who appear in the records of
56 the transferor affiliate subsidiary as having a vested pres-
57 ent interest in the trust, fiduciary account or relationship to
58 be transferred.

59 (d) This section shall be applicable to both domestic
60 and foreign bank holding company affiliate subsidiaries.

**§31A-4-42. Unlawful for persons other than banking institu-
tions to engage in the banking business; penal-
ties.**

1 No person, except banking institutions chartered un-
2 der the laws of this state, or authorized to conduct a bank-
3 ing business in this state under the laws of the United
4 States of America or those chartered under the laws of
5 another state or the United States of America with branch
6 offices in this state under the provisions of articles eight-d
7 and eight-e of this chapter, shall engage in the business of
8 banking or the trust business in the state of West Virginia,
9 or shall receive or accept deposits of money, or borrow
10 money by receiving and giving credits for deposits, or by
11 issuing certificates of deposits or certificates of indebted-
12 ness, or by making and negotiating any writing purporting
13 to be a bond, contract or other obligation, the perfor-
14 mance of which requires the holder or other party to make
15 deposits of money with the issuer or receive or accept
16 deposits by means of any other plan, pretext, scheme, shift
17 or device.

18 Nothing contained in this section shall affect the
19 rights, privileges, objects or purposes delegated to other
20 corporations by the general corporation law or other laws
21 of this state.

22 Any corporation or individual who violates any of the
23 provisions of this section shall be guilty of a misdemeanor,
24 and, upon conviction, shall be fined not more than five
25 thousand dollars, and, in addition to such penalty, every
26 corporation so offending shall forfeit its corporate fran-
27 chise, and every individual so offending shall be subject to
28 a further penalty by confinement in jail for not more than
29 one year.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PEN-
ALTIES.**

***§31A-8-12. Procedure for authorization of branch banks;
temporary offices at colleges and universities;
limitations and restrictions; examinations and
hearings; standards of review; penalties for
violation of section.**

*Clerk's Note: This section was also amended by H. B. 4624 (Chapter 71), which passed prior to this act.

1 (a) Except as otherwise provided herein, no banking
2 institution shall engage in business at any place other than
3 at its principal office in this state, at a branch bank in this
4 state, at a customer bank communication terminal permit-
5 ted by section twelve-b of this article or at any loan origi-
6 nation office permitted by section twelve-c of this article.

7 (1) Acceptance of a deposit or allowing a withdrawal
8 at the banking offices of any subsidiary, as defined in
9 section two, article eight-a of this chapter, for credit or
10 debit to the customer's account at any other subsidiary of
11 the same bank holding company is permissible and does
12 not constitute branch banking. In addition, the conduct of
13 activity at branch offices as an agent for any bank subsidi-
14 ary of the same bank holding company shall be permitted
15 to the same extent allowed by federal law for national
16 banks pursuant to 12 U.S.C. §1828, and does not consti-
17 tute branch banking; nor shall such activity constitute a
18 violation of section forty-two, article four of this chapter:
19 *Provided*, That no banking institution may utilize that
20 agency relationship to evade state consumer protection
21 laws, including usury laws, or any other applicable laws of
22 this state, or to conduct any activity that is not
23 financially-related, as that term is defined by section two,
24 article eight-c of this chapter.

25 (2) A banking institution located in a county where
26 there is also a higher educational institution as defined in
27 section two, article one, chapter eighteen-b of this code,
28 may establish a temporary business office on the campus
29 of any such educational institution located in such county
30 for the limited purposes of opening accounts and accept-
31 ing deposits for a period not in excess of four business
32 days per semester, trimester or quarter: *Provided*, That
33 prior to opening any temporary office, a banking institu-
34 tion must first obtain written permission from the institu-
35 tion of higher education. The term "business days", for
36 the purpose of this subsection, means days exclusive of
37 Saturdays, Sundays and legal holidays as defined in sec-
38 tion one, article two, chapter two of this code.

39 (3) Any banking institution which on the first day of
40 January, one thousand nine hundred eighty-four, was

41 authorized to operate an off-premises walk-in or drive-in
42 facility, pursuant to the law then in effect, may, as of the
43 seventh day of June, one thousand nine hundred
44 eighty-four, operate such facility as a branch bank and it
45 shall not be necessary, for the continued operation of such
46 branch bank, to obtain additional approvals, notwithstand-
47 ing the provisions of subsection (d) of this section and
48 subdivision (6), subsection (b), section two, article three of
49 this chapter.

50 (b) Except for a bank holding company, it shall be
51 unlawful for any individual, partnership, society, associa-
52 tion, firm, institution, trust, syndicate, public or private
53 corporation, or any other legal entity, or combination of
54 entities acting in concert, to directly or indirectly own,
55 control or hold with power to vote, twenty-five percent or
56 more of the voting shares of each of two or more banks,
57 or to control in any manner the election of a majority of
58 the directors of two or more banks.

59 (c) A banking institution may establish branch banks
60 either by:

61 (1) The construction, lease or acquisition of branch
62 bank facilities within any county of this state; or

63 (2) The purchase of the business and assets and as-
64 sumption of the liabilities of, or merger or consolidation
65 with, another banking institution.

66 (d) Notwithstanding any other provision of this chap-
67 ter to the contrary, subject to and in furtherance of the
68 board's authority under the provisions of subdivision (6),
69 subsection (b), section two, article three of this chapter,
70 and subsection (g) of this section, the board may approve
71 or disapprove the application of any state banking institu-
72 tion to establish a branch bank.

73 (e) The main office or a branch of a West Virginia
74 state banking institution may not be relocated without the
75 approval by order of the commissioner.

76 (f) Any banking institution which is authorized to
77 establish branch banks pursuant to this section may pro-
78 vide the same banking services and exercise the same

79 powers at each such branch bank as may be provided and
80 exercised at its principal banking house.

81 (g) The board shall, upon receipt of any application to
82 establish a branch bank, provide notice of such application
83 to all banking institutions. A banking institution may,
84 within ten days after receipt of such notice, file a petition
85 to intervene and shall, if it so files such petition, thereupon
86 become a party to any hearing relating thereto before the
87 board.

88 (h) The commissioner shall prescribe the form of the
89 application for a branch bank and shall collect an exami-
90 nation and investigation fee of one thousand dollars for
91 each filed application for a branch bank that is to be es-
92 tablished by the construction, lease or acquisition of a
93 branch bank facility, and two thousand five hundred dol-
94 lars for a branch bank that is to be established by the pur-
95 chase of the business and assets and assumption of the
96 liabilities of, or merger or consolidation with another
97 banking institution. Notwithstanding the above, if the
98 merger or consolidation is between an existing banking
99 institution and a bank newly incorporated solely for the
100 purpose of facilitating the acquisition of the existing
101 banking institution, the commissioner shall collect an
102 examination and investigation fee of five hundred dollars.
103 The board shall complete the examination and investiga-
104 tion within ninety days from the date on which such appli-
105 cation and fee are received, unless the board requests in
106 writing additional information and disclosures concerning
107 the proposed branch bank from the applicant banking
108 institution, in which event such ninety-day period shall be
109 extended for an additional period of thirty days plus the
110 number of days between the date of such request and the
111 date such additional information and disclosures are re-
112 ceived.

113 (i) Upon completion of the examination and investiga-
114 tion with respect to such application, the board shall, if a
115 hearing be required pursuant to subsection (j) of this sec-
116 tion, forthwith give notice and hold a hearing pursuant to
117 the following provisions:

118 (1) Notice of such hearing shall be given to the bank-

119 ing institution with respect to which the hearing is to be
120 conducted in accordance with the provisions of section
121 two, article seven, chapter twenty-nine-a of this code, and
122 such hearing and the administrative procedures in connec-
123 tion therewith shall be governed by all of the provisions of
124 article five, chapter twenty-nine-a of this code, and shall be
125 held at a time and place set by the board but shall not be
126 less than ten nor more than thirty days after such notice is
127 given.

128 (2) At any such hearing a party may represent himself
129 or be represented by an attorney at law admitted to prac-
130 tice before any circuit court of this state.

131 (3) After such hearing and consideration of all the
132 testimony and evidence, the board shall make and enter an
133 order approving or disapproving the application, which
134 order shall be accompanied by findings of fact and con-
135 clusions of law as specified in section three, article five,
136 chapter twenty-nine-a of this code, and a copy of such
137 order and accompanying findings and conclusions shall
138 be served upon all parties to such hearing, and their attor-
139 neys of record, if any.

140 (j) No state banking institution may establish a branch
141 bank until the board, following an examination, investiga-
142 tion, notice and hearing, enters an order approving an
143 application for that branch bank: *Provided*, That no such
144 hearing shall be required with respect to any application to
145 establish a branch bank which is approved by the board
146 unless a banking institution has timely filed a petition to
147 intervene pursuant to subsection (g) of this section. The
148 order shall be accompanied by findings of fact that:

149 (1) Public convenience and advantage will be promot-
150 ed by the establishment of the proposed branch bank;

151 (2) Local conditions assure reasonable promise of
152 successful operation of the proposed branch bank and of
153 those banks and branches thereof already established in
154 the community;

155 (3) Suitable physical facilities will be provided for the
156 branch bank;

157 (4) The applicant state-chartered banking institution
158 satisfies such reasonable and appropriate requirements as
159 to sound financial condition as the commissioner or board
160 may from time to time establish by regulation;

161 (5) The establishment of the proposed branch bank
162 would not result in a monopoly, nor be in furtherance of
163 any combination or conspiracy to monopolize the busi-
164 ness of banking in any section of this state; and

165 (6) The establishment of the proposed branch bank
166 would not have the effect in any section of the state of
167 substantially lessening competition, nor tend to create a
168 monopoly or in any other manner be in restraint of trade,
169 unless the anticompetitive effects of the establishment of
170 that proposed branch bank are clearly outweighed in the
171 public interest by the probable effect of the establishment
172 of the proposed branch bank in meeting the convenience
173 and needs of the community to be served by that pro-
174 posed branch bank.

175 If the branch results from the merger or acquisition of
176 banking institutions, the findings of fact required in subdi-
177 visions (1) through (3) of this subsection may be based on
178 the performance and suitability of the previous banking
179 offices.

180 (k) Any party who is adversely affected by the order
181 of the board shall be entitled to judicial review thereof in
182 the manner provided in section four, article five, chapter
183 twenty-nine-a of this code. Any such party adversely
184 affected by a final judgment of a circuit court following
185 judicial review as provided in the foregoing sentence may
186 seek review thereof by appeal to the supreme court of
187 appeals in the manner provided in article six, chapter
188 twenty-nine-a of this code.

189 (l) Pursuant to the resolution of its board of directors
190 and with the prior written approval of the commissioner, a
191 state banking institution may discontinue the operation of
192 a branch bank upon at least thirty days' prior public notice
193 given in such form and manner as the commissioner pre-
194 scribes.

195 (m) Any violation of any provision of this section
196 shall constitute a misdemeanor offense punishable by
197 applicable penalties as provided in section fifteen of this
198 article.

**ARTICLE 8A. ACQUISITIONS OF BANKS BY BANK HOLDING
COMPANIES.**

§31A-8A-1. Definitions.

§31A-8A-2. Scope and statement of legislative intent.

§31A-8A-3. Permitted acquisitions.

§31A-8A-4. Required application.

§31A-8A-5. Standards for approval.

§31A-8A-6. Procedures relating to applications.

§31A-8A-7. Reports; examinations.

§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

§31A-8A-9. Authority to conduct banking business; credit card processing.

§31A-8A-10. Penalties.

§31A-8A-1. Definitions.

1 For purposes of this article:

2 (a) "Acquire" means:

3 (1) For a company to merge or consolidate with a
4 bank holding company;

5 (2) For a company to assume direct or indirect owner-
6 ship or control of:

7 (i) More than twenty-five percent of any class of vot-
8 ing shares of a bank holding company or a bank, if the
9 acquiring company was not a bank holding company
10 prior to such acquisition;

11 (ii) More than five percent of any class of voting
12 shares of a bank holding company or a bank, if the ac-
13 quiring company was a bank holding company prior to
14 such acquisition; or

15 (iii) All or substantially all of the assets of a bank
16 holding company or a bank; or

17 (3) For a company to take any other action that results
18 in the direct or indirect acquisition of control by such

19 company of a bank holding company or a bank.

20 (b) "Affiliate" means any company that controls, is
21 controlled by, or is under common control with a bank or
22 another company or otherwise meets the criteria set forth
23 in Section 2(k) of the Bank Holding Company Act, 12
24 U.S.C. §1841(k).

25 (c) "Bank" means a corporation or association hereto-
26 fore or hereafter chartered to conduct a banking business
27 under the laws of the United States or any state, territory,
28 district or possession thereof, which is authorized to accept
29 deposits that the depositor has a legal right to withdraw on
30 demand and is authorized to engage in the business of
31 commercial lending and meets the criteria set forth in
32 Section 2(c) of the Bank Holding Company Act, 12 U.
33 S.C. §1841(c).

34 (d) "Bank holding company" means any company
35 which has control over any bank or over any company
36 that is or becomes a bank holding company as that term is
37 set forth in Section 2(a) of the Bank Holding Company
38 Act, 12 U.S.C. §1841(a), and, unless the context requires
39 otherwise, includes a West Virginia bank holding compa-
40 ny, an out-of-state bank holding company and a foreign
41 bank holding company.

42 (e) "Bank Holding Company Act" means the federal
43 Bank Holding Company Act of 1956, as amended, 12
44 U.S.C. §§1841 et seq.

45 (f) "Bank supervisory agency" means any of the fol-
46 lowing:

47 (1) Any agency of another state with primary respon-
48 sibility for chartering and supervising banks; and

49 (2) The office of the comptroller of the currency, the
50 federal deposit insurance corporation, the board of gover-
51 nors of the federal reserve system and any successor to
52 these agencies.

53 (g) "Board of Banking and Financial Institutions"
54 means the board created pursuant to article three of this
55 chapter and is referred to herein as "board".

56 (h) "Branch" or "branch bank" has the meaning set
57 forth in subsection (f), section two, article one of this
58 chapter.

59 (i) "Commissioner" means the West Virginia commis-
60 sioner of banking then in office and, where appropriate,
61 all of his or her successors and predecessors in office.

62 (j) "Company" has the meaning set forth in Section
63 2(b) of the Bank Holding Company Act, 12 U.S.C.
64 §1841(b), and includes a bank holding company.

65 (k) "Control" shall be construed consistently with Sec-
66 tion 2(a) of the Bank Holding Company Act, 12 U.S.C.
67 §1841(a).

68 (l) "Deposit" has the meaning set forth in 12 U.S.C.
69 §1813(l) plus all deposits held by credit unions within this
70 state.

71 (m) "Depository institution" means any institution
72 included for any purpose within the definitions of "in-
73 sured depository institution" as set forth in 12 U.S.C.
74 §§1813(c)(2) and (3).

75 (n) "Foreign bank holding company" means a bank
76 holding company that is organized under the laws of a
77 country other than the United States (including any terri-
78 tory or possession thereof).

79 (o) "Home state regulator" means, with respect to an
80 out-of-state bank holding company, the bank supervisory
81 agency of the state in which such company maintains its
82 principal place of business.

83 (p) "Out-of-state bank holding company" means:

84 (1) A bank holding company that is not a West Vir-
85 ginia bank holding company; and

86 (2) Unless the context requires otherwise, includes a
87 foreign bank holding company.

88 (q) "Principal place of business" of a bank holding
89 company means the state in which the total deposits of its
90 bank subsidiaries were the greatest on the later of the first

91 day of July, one thousand nine hundred sixty-six, or the
92 date on which such company became a bank holding
93 company.

94 (r) "State" means any state, territory or other posses-
95 sion of the United States, including the District of Colum-
96 bia.

97 (s) "Subsidiary" has the meaning set forth in Section
98 2(d) of the Bank Holding Company Act, 12 U.S.C.
99 §1841(d).

100 (t) "West Virginia bank" means a bank that is:

101 (1) Organized under the laws of the state of West Vir-
102 ginia; or

103 (2) Organized under federal law and has its main of-
104 fice in this state.

105 (u) "West Virginia bank holding company" means a
106 bank holding company that:

107 (1) Had its principal place of business in this state on
108 the first day of July, one thousand nine hundred sixty-six,
109 or the date on which it became a bank holding company,
110 whichever is later; and

111 (2) Is not controlled by a bank holding company
112 other than a West Virginia bank holding company.

113 (v) "West Virginia state bank" means a bank organized
114 under the laws of the state of West Virginia.

§31A-8A-2. Scope and statement of legislative intent.

1 This article sets forth the conditions under which a
2 company may acquire a West Virginia state bank or may
3 form or acquire a West Virginia bank holding company.
4 This article is intended not to discriminate against
5 out-of-state bank holding companies or against foreign
6 bank holding companies in any manner that would violate
7 Section 3(d) of the Bank Holding Company Act, 12 U.
8 S.C. §1842(d), as amended, effective September 29, 1995,
9 by Section 101 of the Riegle-Neal Interstate Banking and
10 Branching Efficiency Act of 1994, Public Law No.
11 103-328.

§31A-8A-3. Permitted acquisitions.

1 (a) Except as otherwise expressly permitted by federal
2 law, no company may form a West Virginia bank holding
3 company or acquire a West Virginia state bank or a bank
4 holding company controlling a West Virginia state bank
5 without the prior application and approval upon order of
6 the board.

7 (b) The prohibition in subsection (a) of this section
8 shall not apply where the acquisition is made:

9 (1) Solely for the purpose of facilitating an acquisition
10 otherwise permitted under this article;

11 (2) In a transaction arranged by the commissioner
12 with the consent of the West Virginia board of banking
13 and financial institutions with another state or federal bank
14 supervisory agency to prevent the insolvency or closing of
15 the acquired bank; or

16 (3) In a transaction in which a national bank or
17 out-of-state state bank forms its own bank holding compa-
18 ny, if the ownership rights of the former bank sharehold-
19 ers are substantially similar to those of the shareholders of
20 the new bank holding company.

21 (c) In any transaction involving the acquisition or
22 change in control of a West Virginia bank, West Virginia
23 bank holding company, bank branch located in West Vir-
24 ginia by a bank holding company, the formation of a West
25 Virginia bank holding company or the acquisition of a
26 thrift institution in West Virginia by a bank holding com-
27 pany for which an application to the board for approval is
28 not initially required under subsection (a) or (b) of this
29 section, the party seeking the action shall give written
30 notice to the commissioner at the time the application or
31 notice is filed with the responsible federal bank superviso-
32 ry agency and at least forty-five days before the effective
33 date of the acquisition, unless a shorter period of notice is
34 required under applicable federal law. In addition, the
35 parties shall give the commissioner copies of all final fed-
36 eral and state applications filed in connection with the
37 transaction together with a two hundred fifty dollar filing

38 fee. Unless preempted by federal law, the commissioner
39 shall have thirty days from receipt of the written notice to
40 object to any proposed transaction, require an application
41 and request a hearing before the board on the basis that
42 the transaction is contrary to applicable West Virginia law.
43 The failure to object within thirty days shall be construed
44 as consent by the commissioner, or, in his or her discre-
45 tion, the commissioner may, at any time, consent in writ-
46 ing.

47 (d) To the extent that any acquisition under this sec-
48 tion involves the merger of a bank with and into a West
49 Virginia state bank, the merger transaction remains subject
50 to the jurisdiction and approval of the board pursuant to
51 section seven, article seven of this chapter.

52 (e) An acquisition shall not be permitted under this
53 article or otherwise if upon consummation of the transac-
54 tion, the resulting bank or bank holding company, includ-
55 ing any depository institution(s) affiliated with the appli-
56 cant, would assume sufficient additional deposits to cause
57 it to control deposits in this state in excess of that allowed
58 by section twelve-a, article two of this chapter: *Provided,*
59 That the commissioner may by rule adopt a procedure
60 whereby said acquisition deposit limitation as set forth in
61 this code may be waived for good cause shown. The com-
62 missioner shall calculate the acquisition deposit limitation
63 based upon the most recently available reports containing
64 such deposit information filed with state or federal author-
65 ities.

§31A-8A-4. Required application.

1 (a) A company that proposes to make an acquisition
2 under this article shall:

3 (1) File with the commissioner a copy of the applica-
4 tion that such company has filed with the responsible
5 federal bank supervisory agency, together with such addi-
6 tional information as the commissioner may prescribe;
7 and

8 (2) Pay to the commissioner a four thousand five
9 hundred dollar application fee.

10 (b) To the extent consistent with the effective dis-
11 charge of the commissioner's responsibilities, the forms
12 established under this article for application and reporting
13 shall conform to those established by the board of gover-
14 nors of the federal reserve system under the Bank Holding
15 Company Act.

16 (c) In connection with an application received under
17 this article, the commissioner shall:

18 (1) Require that prior notice of the application be
19 published once in a daily newspaper of general circulation
20 and provide an opportunity for public comment; and

21 (2) Make the application available for public inspec-
22 tion to the extent required or permitted under applicable
23 state law.

24 (d) If the applicant is an out-of-state bank holding
25 company that is not incorporated under the laws of this
26 state, it shall submit with the application proof that the
27 applicant has complied with applicable requirements of
28 West Virginia law requiring foreign corporations to quali-
29 fy to do business in the state of West Virginia.

§31A-8A-5. Standards for approval.

1 (a) In deciding whether to approve an application for
2 a proposed acquisition under this article, the board shall
3 consider whether the acquisition may:

4 (1) Be detrimental to the safety and soundness of the
5 West Virginia state bank or the West Virginia bank hold-
6 ing company to be acquired which controls a West Virgin-
7 ia state bank, or be contrary to the best interests of the
8 customers or shareholders of the bank whose shares are
9 affected by the action, taking into consideration the finan-
10 cial and managerial resources and further prospects of the
11 company or companies and the banks concerned;

12 (2) Result in a substantial reduction of competition in
13 any section of this state, or result in a monopoly, or would
14 be in furtherance of any combination or conspiracy to
15 monopolize or to attempt to monopolize the business of
16 banking in any section of this state;

17 (3) Have a significantly adverse effect on the conve-
18 nience and needs of the community or communities in
19 this state that are served by the West Virginia state bank or
20 the West Virginia bank holding company to be acquired;
21 or

22 (4) Violate the acquisition deposit limitation set forth
23 in section three of this article.

24 (b) The board shall not approve an application for,
25 nor shall the commissioner consent to, an acquisition un-
26 der this article unless the West Virginia bank to be ac-
27 quired, or all West Virginia bank subsidiaries of the bank
28 holding company to be acquired, have as of the proposed
29 date of acquisition been in existence and in continuous
30 operation for more than two years: *Provided*, That this
31 limitation shall not apply to acquisitions made on or after
32 the thirty-first day of May, one thousand nine hundred
33 ninety-seven.

34 (c) The board may approve an application which may
35 lessen competition if the anticompetitive effects of the
36 proposed action are clearly outweighed in the public inter-
37 est by the probable effect of the action in meeting the
38 convenience and needs of the community to be served.

39 (d) In deciding whether to approve an application for
40 an acquisition under this article, the board shall consider
41 the applicant's record of compliance with all applicable
42 state(s) and federal community reinvestment laws.

§31A-8A-6. Procedures relating to applications.

1 (a) The board shall decide whether to approve an
2 acquisition under this article within one hundred twenty
3 days after receipt of a completed application: *Provided*,
4 That if the board or commissioner requests additional
5 information from the applicant following receipt of a
6 completed application, the time limit for decision by the
7 board shall be the later of:

8 (i) The date set forth above in this subsection; or

9 (ii) Thirty days after the board's or commissioner's
10 receipt, whichever is applicable, of the requested additional
11 information.

12 (b) The board shall, in accordance with its rules, hold a
13 public hearing in connection with an application and de-
14 termine any significant issue of law or fact raised with
15 respect to the proposed acquisition relevant and necessary
16 for proper disposition of the application.

17 (c) If the board holds a full public hearing under the
18 provisions set forth in article five, chapter twenty-nine-a of
19 this code in connection with an application, the time limit
20 specified in subsection (a) of this section shall be extended
21 to the later of thirty days after the conclusion of the public
22 hearing or thirty days after submission of all documents
23 and materials necessary for proper adjudication of the
24 matter, including transcripts.

25 (d) An application shall be deemed approved if the
26 board takes no action on the application within the time
27 limits specified in this section.

§31A-8A-7. Reports; examinations.

1 (a) To the extent specified by the commissioner by
2 rule, order or written request, each bank holding company
3 that directly or indirectly controls a West Virginia bank,
4 bank branch in West Virginia or a West Virginia bank
5 holding company shall submit to the commissioner an
6 annual report specifying for each bank and branch (ex-
7 cluding automated teller machines) in this state controlled
8 by the bank holding company:

9 (i) The location of each such office, including county
10 and, where applicable, municipality;

11 (ii) The amount of deposits held by each such office
12 as of the end of the preceding calendar year; and

13 (iii) The amount of loans outstanding by each such
14 office at the end of the preceding calendar year.

15 The foregoing report shall be based upon each bank's
16 allocation of its deposit base and loan portfolio among its
17 main office and branches. The report shall be filed with

18 the commissioner on or before the fifteenth day of Febru-
19 ary of each year on forms prescribed by the commission-
20 er.

21 (b) A parent bank holding company controlling a
22 bank or bank holding company having, or through a
23 subsidiary having, a place of business in this state shall, on
24 or before the thirty-first day of March of each year, regis-
25 ter with the commissioner on forms provided or pre-
26 scribed by said office, which shall include such informa-
27 tion with respect to the financial condition, operation,
28 management and intercompany relationships of the parent
29 bank holding company and its subsidiaries and related
30 matters as the commissioner may deem necessary or ap-
31 propriate to carry out the purposes of this article. The
32 information required herein may be supplied by submis-
33 sion of copies of other similar federal or state regulatory
34 filings or forms containing the information, unless other-
35 wise required by order or rule.

36 (c) The commissioner may enter into cooperative
37 agreements with any other bank supervisory agencies to
38 facilitate the examination of any bank holding company
39 that: (i) Has acquired or has an application pending to
40 acquire a West Virginia bank or West Virginia bank hold-
41 ing company pursuant to this article; or (ii) operates a
42 subsidiary doing business in this state which is subject to
43 the jurisdiction or supervision of the commissioner. The
44 commissioner may accept reports of examinations and
45 other records from such other authorities in lieu of con-
46 ducting his or her own examination of such bank holding
47 companies or their subsidiaries. The commissioner may
48 take any action jointly with other regulatory agencies
49 having concurrent jurisdiction over such bank holding
50 companies or subsidiaries, or may take action independ-
51 ently in order to carry out his or her responsibilities
52 under this chapter.

53 (d) When the commissioner considers it necessary, he
54 or she may require any bank holding company that has
55 acquired a West Virginia bank, bank branch in West Vir-
56 ginia or West Virginia bank holding company to submit
57 such reports to the commissioner as he or she determines

58 to be necessary or appropriate for the purpose of carrying
59 out his or her responsibilities.

60 (e) When the commissioner of banking considers it
61 necessary or appropriate, he or she may examine any
62 bank holding company that has acquired or has an appli-
63 cation pending to acquire a West Virginia bank, bank
64 branch in West Virginia or West Virginia bank holding
65 company. The cost of an examination in connection with
66 an application, if in excess of the initial fee, shall be as-
67 sessed against and paid by the bank holding company
68 examined. The commissioner may request the bank hold-
69 ing company to be examined pursuant to this subsection
70 to advance the estimated cost of such examination. The
71 cost of an examination for a bank holding company con-
72 trolling a West Virginia bank or West Virginia bank hold-
73 ing company regarding compliance with the law of this
74 state or safe and sound banking practices shall be assessed
75 against and paid by the bank holding company examined.

**§31A-8A-8. Authority to issue rules; cooperative agreements;
fees.**

1 In order to carry out the purposes of this article, the
2 commissioner may:

3 (a) Adopt rules and issue orders;

4 (b) Enter into cooperative, coordinating or informa-
5 tion-sharing agreements with any other bank supervisory
6 agency or any organization affiliated with or representing
7 one or more bank supervisory agencies;

8 (c) Accept any report of examination or investigation
9 by another bank supervisory agency having concurrent
10 jurisdiction over a West Virginia state bank or a bank
11 holding company that controls a West Virginia state bank
12 in lieu of conducting the commissioner's own examination
13 or investigation of such bank holding company or bank;

14 (d) Enter into contracts with any bank supervisory
15 agency having concurrent jurisdiction over a West Virgin-
16 ia state bank or a bank holding company that controls a
17 West Virginia state bank to engage the services of such
18 agency's examiners at a reasonable rate of compensation,

19 or to provide the services of the commissioner's examiners
20 to such agency at a reasonable rate of compensation:
21 *Provided*, That any such contract shall be deemed exclud-
22 ed from the requirements of article three, chapter five-a of
23 this code;

24 (e) Enter into joint examinations or joint enforcement
25 actions with any other bank supervisory agency having
26 concurrent jurisdiction over any West Virginia state bank
27 or any bank holding company that controls a West Virgin-
28 ia state bank: *Provided*, That the commissioner may take
29 any such action independently if the commissioner deter-
30 mines that such action is necessary to carry out his or her
31 responsibilities under this article or to enforce compliance
32 with the laws of this state: *Provided, however*, That in the
33 case of an out-of-state bank holding company, the com-
34 missioner shall recognize the authority of the home state
35 regulator over corporate governance matters and the pri-
36 mary responsibility of the home state regulator with re-
37 spect to safety and soundness matters; and

38 (f) Assess supervisory and examination fees that shall
39 be payable by any bank holding company operating a
40 bank or bank branch in West Virginia in connection with
41 the commissioner's performance of his or her duties under
42 this article. The commissioner shall charge and collect
43 from each bank holding company and pay into a special
44 revenue account in the state treasury for the department of
45 banking an annual assessment payable on the fifteenth
46 day of February computed upon the total deposits in this
47 state of the bank holding company as of the last business
48 day in December of the previous year as is set out in sec-
49 tion eight, article two of this chapter. The payment of such
50 registration fee shall be accompanied by the report pre-
51 scribed by the commissioner under subsection (a), section
52 seven of this article. Examination fees may be shared with
53 other bank supervisory agencies or any organizations
54 affiliated with or representing one or more bank supervi-
55 sory agencies in accordance with agreements between
56 them and the commissioner.

§31A-8A-9. Authority to conduct banking business; credit card processing.

1 (a) Except as authorized in this article or articles
 2 eight-d, eight-e or eight-f of this chapter, no banking
 3 institution incorporated under the laws of any other state
 4 or having its principal place of business in any other state
 5 may receive deposits or transact any banking business of
 6 any kind in this state other than the lending of money.

7 (b) A bank holding company with its principal place
 8 of business in another state or foreign country may estab-
 9 lish electronic data processing facilities and credit card
 10 processing facilities in West Virginia. Such facilities are
 11 those established solely for the purpose of processing
 12 accounts and/or processing transactions relating to the
 13 issuance of credit cards.

§31A-8A-10. Penalties.

1 (a) The commissioner or board may enforce the pro-
 2 visions of this article by any appropriate action in the
 3 circuit court of Kanawha County or other court having
 4 proper jurisdiction, including an action for civil money
 5 penalties or injunctive relief: *Provided*, That the commis-
 6 sioner shall promptly give notice to the home state regula-
 7 tor of any enforcement action initiated against an
 8 out-of-state bank holding company and, to the extent
 9 practicable, shall consult and cooperate with the home
 10 state regulator in pursuing and resolving said enforcement
 11 action.

12 (b) Any violation of any provision of this article shall
 13 constitute a misdemeanor offense, which, upon conviction
 14 thereof, shall be punishable by applicable penalties as
 15 provided in section fifteen, article eight of this chapter.

ARTICLE 8D. INTERSTATE BRANCHING BY BANK MERGERS.

§31A-8D-1. Legislative purpose.

§31A-8D-2. Definitions.

§31A-8D-3. Authority of West Virginia state banks to establish interstate branches by merger.

§31A-8D-4. Interstate merger transactions and branching involving out-of-state banks permitted.

§31A-8D-5. Notice and filing requirements.

§31A-8D-6. Powers; additional branches.

- §31A-8D-7. Examinations; periodic reports; cooperative agreements; assessment of fees.
- §31A-8D-8. Enforcement.
- §31A-8D-9. Rules and orders.
- §31A-8D-10. Notice of subsequent merger.
- §31A-8D-11. Applicability to thrift institutions.

§31A-8D-1. Legislative purpose.

1 It is the express intent of this article to permit interstate
2 branching by merger under Section 102 of the
3 Riegle-Neal Interstate Banking and Branching Efficiency
4 Act of 1994, Public Law No. 103-328, in accordance with
5 the provisions set forth in this article.

§31A-8D-2. Definitions.

1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases
3 shall have the following meanings:

4 (a) "Bank" has the meaning set forth in 12 U.S.C.
5 §1813(h): *Provided*, That the term "bank" shall not in-
6 clude any "foreign bank" as defined in 12 U.S.C. §3101
7 (7), except that such term shall include any foreign bank
8 organized under the laws of a territory of the United
9 States, Puerto Rico, Guam, American Samoa or the Virgin
10 Islands, the deposits of which are insured by the federal
11 deposit insurance corporation.

12 (b) "Bank holding company" has the meaning set
13 forth in 12 U.S.C. §1841(a)(1).

14 (c) "Bank supervisory agency" means:

15 (1) Any agency of another state with primary respon-
16 sibility for chartering and supervising banks; and

17 (2) The office of the comptroller of the currency, the
18 federal deposit insurance corporation, the board of gover-
19 nors of the federal reserve system and any successor to
20 these agencies.

21 (d) "Board of Banking and Financial Institutions"
22 means the board created pursuant to the provisions of

23 article three of this chapter and referred to herein as "board".

24 (e) "Branch" or "branch bank" has the meaning set
25 forth in subsection (f), section two, article one of this
26 chapter.

27 (f) "Commissioner" means the West Virginia commis-
28 sioner of banking then in office and, where appropriate,
29 all of his or her successors and predecessors in office.

30 (g) "Control" shall be construed consistently with the
31 provisions of 12 U.S.C. §1841(a)(2).

32 (h) "Home state" means:

33 (1) With respect to a state bank, the state by which the
34 bank is chartered;

35 (2) With respect to a national bank, the state in which
36 the main office of the bank is located;

37 (3) With respect to a foreign bank, the state deter-
38 mined to be the home state of such foreign bank under 12
39 U.S.C. §3103(c).

40 (i) "Home state regulator" means, with respect to an
41 out-of-state state bank, the bank supervisory agency of the
42 state in which such bank is chartered.

43 (j) "Host state" means a state, other than the home state
44 of a bank, in which the bank maintains, or seeks to estab-
45 lish and maintain, a branch.

46 (k) "Insured depository institution" has the meaning
47 set forth in 12 U.S.C. §§1813(c)(2) and (3).

48 (l) "Interstate merger transaction" means:

49 (1) The merger or consolidation of banks with differ-
50 ent home states, and the conversion of branches of any
51 bank involved in the merger or consolidation into branch-
52 es of the resulting bank; or

53 (2) The purchase of all or substantially all of the assets
54 (including all or substantially all of the branches) of a
55 bank whose home state is different from the home state of
56 the acquiring bank.

57 (m) "Out-of-state bank" means a bank whose home
58 state is a state other than West Virginia.

59 (n) "Out-of-state state bank" means a bank chartered
60 under the laws of any state other than West Virginia.

61 (o) "Resulting bank" means a bank that has resulted
62 from an interstate merger transaction under this article.

63 (p) "State" means any state of the United States, the
64 District of Columbia, any territory of the United States,
65 Puerto Rico, Guam, the Virgin Islands and American Sa-
66 moa.

67 (q) "West Virginia bank" means a bank whose home
68 state is West Virginia.

69 (r) "West Virginia state bank" means a bank chartered
70 under the laws of West Virginia.

**§31A-8D-3. Authority of West Virginia state banks to estab-
lish interstate branches by merger.**

1 Beginning on the thirty-first day of May, one thou-
2 sand nine hundred ninety-seven, and with prior approval
3 upon order of the board, a West Virginia state bank may
4 establish, maintain and operate one or more branches in a
5 state other than West Virginia pursuant to an interstate
6 merger transaction in which the West Virginia state bank is
7 the resulting bank. Not later than the date on which the
8 required application for the interstate merger transaction is
9 filed with the responsible federal bank supervisory agency,
10 the applicant West Virginia state bank shall file an applica-
11 tion on a form prescribed by the commissioner together
12 with a three thousand dollar application fee. The appli-
13 cant shall also comply with the applicable provisions of
14 section twelve, article eight of this chapter. If the board
15 finds that: (i) The proposed transaction will not be detri-
16 mental to the safety and soundness of the applicant or the
17 resulting bank, including that local conditions assure rea-
18 sonable promise of successful operation of the proposed
19 bank branch; (ii) any new officers and directors of the
20 resulting bank are qualified by character, experience and
21 financial responsibility to direct and manage the resulting
22 bank; (iii) the acquired branch offices of which will pro-

23 vide suitable physical facilities for their intended business;
24 (iv) establishment of the proposed branch bank would not
25 result in a substantial reduction of competition in any
26 section of this state unless the anticompetitive effects of
27 the proposed action are clearly outweighed in the public
28 interest by the probable effect of the action in meeting the
29 convenience and needs of the community to be served, or
30 result in a monopoly, or be in furtherance of any combi-
31 nation or conspiracy to monopolize, or any attempt to
32 monopolize the business of banking in any section of this
33 state; (v) the proposed merger is consistent with the conve-
34 nience and needs of the communities to be served by the
35 resulting bank in this state and is otherwise in the public
36 interest; and (vi) the new branch is in conformity with, and
37 would be permitted under the laws of the state where the
38 branch is to be located, it shall approve the interstate
39 merger transaction and the operation of branches outside
40 of West Virginia by the West Virginia state bank. The
41 findings required herein shall supplant any other findings
42 of fact otherwise required by subdivisions (1) through (6),
43 subsection (j), section twelve, article eight of this chapter.
44 Such an interstate merger transaction may be consummat-
45 ed only after the applicant has received the board's written
46 approval by entry of an order granting the application.

**§31A-8D-4. Interstate merger transactions and branching
involving out-of-state banks permitted.**

1 (a) Beginning on the thirty-first day of May, one
2 thousand nine hundred ninety-seven, one or more West
3 Virginia banks may enter into an interstate merger trans-
4 action with one or more out-of-state banks under this
5 article, and an out-of-state bank resulting from such trans-
6 action may maintain and operate the branches and offices
7 in West Virginia of a West Virginia bank that participated
8 in such transaction: *Provided*, That the conditions and
9 filing requirements of this article are met.

10 (b) A merger transaction shall not be permitted under
11 this article if, upon consummation of such transaction, the
12 resulting bank (including all insured depository institution
13 affiliates of the resulting bank) would assume sufficient
14 additional deposits to cause it to control deposits in this

15 state in excess of that allowed by section twelve-a, article
16 two of this chapter: *Provided*, That the commissioner may
17 by rule adopt a procedure whereby said acquisition depos-
18 it limitation as set forth in this code may be waived for
19 good cause shown. The commissioner shall calculate the
20 acquisition deposit limitation based upon the most recent-
21 ly available reports containing such deposit information
22 filed with state or federal authorities.

23 (c) A merger transaction resulting in the acquisition
24 by an out-of-state bank of a West Virginia state bank, or
25 all or substantially all of the branches of a West Virginia
26 state bank, or resulting in the acquisition by an
27 out-of-state state bank of a West Virginia bank or the
28 change of control over a branch operating in West Virgin-
29 ia, shall not be permitted under this article unless: (i) The
30 out-of-state bank confirms in writing to the commissioner
31 that as long as it maintains a branch in West Virginia, it
32 will comply with all applicable laws of this state, including
33 consumer protection laws; (ii) deposits of the resulting
34 bank in this state are insured in conformity with the provi-
35 sions of section six, article one of this chapter; and (iii) the
36 resulting bank, if state chartered, meets the capital require-
37 ments set forth in section three, article four of this chapter.

§31A-8D-5. Notice and filing requirements.

1 (a) Any out-of-state state bank that will be the result-
2 ing bank pursuant to a merger transaction involving a
3 West Virginia bank, or will be the resulting bank pursuant
4 to a merger transaction affecting the change of control
5 over a branch operating in West Virginia shall notify the
6 commissioner of the proposed merger not later than the
7 date on which it files an application for the merger trans-
8 action with the responsible federal bank supervisory agency,
9 and shall submit a copy of that application to the com-
10 missioner and pay a filing fee of two hundred fifty dol-
11 lars.

12 (b) Any West Virginia state bank which is a party to an
13 interstate merger transaction shall comply with state law
14 governing shareholder rights and director and officer
15 duties with respect to affecting the merger and with other
16 applicable state and federal laws. In addition, the West

17 Virginia state bank shall give written notice to the commis-
18 sioner at least forty-five days before the effective date of a
19 merger where the resulting bank will be an out-of-state
20 bank, unless a shorter period of notice is required under
21 applicable federal law.

22 (c) Unless preempted by federal law, the commissioner
23 shall have thirty days from receipt of the written notice
24 under subsection (a) of this section to object to the pro-
25 posed transaction and request a hearing before the board
26 on the basis that the transaction is contrary to applicable
27 West Virginia law. The failure to object within thirty days
28 shall be construed as consent by the commissioner, or, in
29 his or her discretion, the commissioner may, at any time,
30 consent in writing. The commissioner may also request a
31 hearing on the basis that the bank supervisory agency of
32 the home state of the resulting out-of-state bank is without
33 authority or procedures under its state's law to review the
34 transaction, or is not under its state's law viewed as the
35 primary regulator of its chartered banks' out-of-state
36 branches, in which event the criteria, fees and procedures
37 set forth in section three of this article shall apply.

38 (d) Any out-of-state state bank which shall be the
39 resulting bank in such an interstate or other merger trans-
40 action shall provide satisfactory evidence to the commis-
41 sioner of compliance with applicable requirements of West
42 Virginia law requiring foreign corporations to qualify to
43 do business in West Virginia.

§31A-8D-6. Powers; additional branches.

1 (a) An out-of-state state bank which establishes and
2 maintains one or more branches in West Virginia under
3 this article may conduct any activities at such branch or
4 branches that are authorized under the laws of this state
5 for West Virginia state banks.

6 (b) A West Virginia state bank may conduct any activ-
7 ities at any branch outside West Virginia that are expressly
8 permissible for a bank chartered by the host state where
9 the branch is located. Prior to commencing any such
10 activities, the West Virginia state bank shall give the com-
11 missioner forty-five days advance notice of the intention

12 to exercise any such powers which are not permitted to
13 West Virginia state banks in their operations in this state
14 under state law. This notice shall be made together with a
15 filing providing a written summary with details of the
16 proposed action or program, along with legal analysis for
17 the authority to conduct the activities and how the exercise
18 of the authority will not impair the safety and soundness
19 of the bank and will be kept separate from its operations
20 within West Virginia. Unless, within thirty days after re-
21 ceipt of the notice and filing, the commissioner objects or
22 requests a hearing on the matter before the board, the
23 exercise of the powers shall be deemed authorized. In the
24 discretion of the commissioner or the board, authorization
25 of such powers may be given in writing at any time.

26 (c) An out-of-state bank that has established or ac-
27 quired a branch in West Virginia under this article may
28 establish or acquire additional branches in West Virginia
29 to the same extent that any West Virginia bank may estab-
30 lish or acquire a branch in West Virginia under applica-
31 ble federal and state law. To the extent that an out-of-state
32 bank has already established or acquired a branch in West
33 Virginia and proposes to create additional branches by
34 merger with a West Virginia bank, the provisions of this
35 article govern the transaction.

**§31A-8D-7. Examinations; periodic reports; cooperative
agreements; assessment of fees.**

1 (a) To the extent consistent with subsection (c) of this
2 section, the commissioner may make such examinations of
3 any branch established and maintained in this state pursu-
4 ant to this article by an out-of-state state bank as the com-
5 missioner may deem necessary to determine whether the
6 branch is being operated in compliance with the laws of
7 this state and in accordance with safe and sound banking
8 practices. The provisions of article two of this chapter
9 shall apply to such examinations.

10 (b) The commissioner may prescribe requirements for
11 periodic reports regarding any out-of-state bank that op-
12 erates a branch in West Virginia pursuant to this article.
13 The required reports shall be provided by such bank, or
14 upon request of the commissioner by the bank superviso-

15 ry agency having primary responsibility for such bank.
16 Any reporting requirements prescribed by the commis-
17 sioner under this subsection shall be: (i) Consistent with
18 the reporting requirements applicable to West Virginia
19 state banks; and (ii) appropriate for the purpose of en-
20 abling the commissioner to carry out his or her responsi-
21 bilities under this article. Unless the information is filed
22 by its bank holding company pursuant to subsection (a),
23 section seven, article eight-a of this chapter, an out-of-state
24 bank with a branch in West Virginia shall also file the
25 information required by said section within the time stated
26 in said section.

27 (c) The commissioner may enter into cooperative,
28 coordinating and information-sharing agreements with
29 any other bank supervisory agencies or any organization
30 affiliated with or representing one or more bank supervi-
31 sory agencies with respect to the periodic examination or
32 other supervision of any branch in West Virginia of an
33 out-of-state state bank, or any branch of a West Virginia
34 state bank in any host state, and the commissioner may
35 accept such parties' reports of examination and reports of
36 investigation in lieu of conducting his or her own exami-
37 nations or investigations.

38 (d) The commissioner may enter into contracts with
39 any bank supervisory agency that has concurrent jurisdic-
40 tion over a West Virginia state bank or an out-of-state state
41 bank operating a branch in this state pursuant to this arti-
42 cle to engage the services of such agency's examiners at a
43 reasonable rate of compensation, or to provide the services
44 of the commissioner's examiners to such agency at a rea-
45 sonable rate of compensation: *Provided*, That any such
46 contract shall be deemed excluded from the requirements
47 of article three, chapter five-a of this code.

48 (e) The commissioner may enter into joint examina-
49 tions or joint enforcement actions with other bank supervi-
50 sory agencies having concurrent jurisdiction over any
51 branch in West Virginia of an out-of-state state bank or
52 any branch of a West Virginia state bank in any host state:
53 *Provided*, That the commissioner may at any time take
54 such actions independently if the commissioner deems

55 such actions to be necessary or appropriate to carry out
56 his or her responsibilities under this article or to ensure
57 compliance with the laws of this state: *Provided, however,*
58 That, in the case of an out-of-state state bank, the commis-
59 sioner shall recognize the authority of the home state
60 regulator over corporate governance matters and the pri-
61 mary responsibility of the home state regulator with re-
62 spect to safety and soundness matters.

63 (f) Each out-of-state state bank that maintains one or
64 more branches in this state may be assessed and, if as-
65 sessed, shall pay supervisory and examination fees in ac-
66 cordance with the laws of this state and rules of the com-
67 missioner. Such fees may be shared with other bank su-
68 pervisory agencies or any organization affiliated with or
69 representing one or more bank supervisory agencies in
70 accordance with agreements between such parties and the
71 commissioner.

§31A-8D-8. Enforcement.

1 If the commissioner determines that a branch main-
2 tained by an out-of-state state bank in this state is being
3 operated in violation of any provision of the laws of this
4 state, or that such branch is being operated in an unsafe
5 and unsound manner, the commissioner shall have the
6 authority to take all such enforcement actions as he or she
7 would be empowered to take if the branch were a West
8 Virginia state bank: *Provided,* That the commissioner
9 shall promptly give notice to the home state regulator of
10 each enforcement action taken against an out-of-state state
11 bank and, to the extent practicable, shall consult and coop-
12 erate with the home state regulator in pursuing and resolv-
13 ing said enforcement action.

§31A-8D-9. Rules and orders.

1 The commissioner and board may promulgate such
2 rules and issue such orders as they determine to be neces-
3 sary or appropriate to implement the provisions of this
4 article.

§31A-8D-10. Notice of subsequent merger.

1 An out-of-state state bank that has established and
2 maintains a branch in this state pursuant to this article,
3 shall give at least forty-five days' prior written notice (or,
4 in the case of an emergency transaction, such shorter no-
5 tice as is consistent with applicable state or federal law) to
6 the commissioner of any merger, consolidation or other
7 transaction that would cause a change of control with
8 respect to such bank or any bank holding company that
9 controls such bank, with the result that an application
10 would be required to be filed pursuant to the federal
11 Change in Bank Control Act of 1978, as amended, 12
12 U.S.C. §1817(j), or the federal Bank Holding Company
13 Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or
14 any successor statutes thereto. Notice under this section
15 shall not obviate the need the acquiring entity may have to
16 file with the commissioner or board pursuant to section
17 five of this article, or section three, article eight-a of this
18 chapter.

§31A-8D-11. Applicability to thrift institutions.

1 This article shall apply to interstate mergers involving
2 banks with any savings bank, savings and loan association
3 or other thrift institution maintaining federal deposit in-
4 surance where the nonthrift bank survives the merger
5 transaction.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

- §31A-8E-1. Legislative purpose.
- §31A-8E-2. Definitions.
- §31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.
- §31A-8E-4. Interstate branching by out-of-state banks through de novo entry or acquisition of branches in West Virginia.
- §31A-8E-5. Requirement of notice.
- §31A-8E-6. Conditions for approval.
- §31A-8E-7. Powers; additional branches.
- §31A-8E-8. Examinations; periodic reports; cooperative agreements; assessment of fees.
- §31A-8E-9. Enforcement.
- §31A-8E-10. Rules and orders.

§31A-8E-11. Notice of subsequent merger.

§31A-8E-12. Applicability to thrift institutions.

§31A-8E-1. Legislative purpose.

1 It is the express intent of this article to permit interstate
2 branching under Sections 102 and 103 of the Riegle-Neal
3 Interstate Banking and Branching Efficiency Act of 1994,
4 Public Law No. 103-328, in accordance with the provi-
5 sions set forth in this article and thereby permit interstate
6 branch banking through de novo entry or by acquisition
7 of branches in transactions not involving a whole bank
8 merger or acquisition.

§31A-8E-2. Definitions.

1 As used in this article, unless a different meaning is
2 required by the context, the following words and phrases
3 shall have the following meanings:

4 (a) "Acquisition of a branch" means the acquisition of
5 a branch located in a host state, without either engaging in
6 an "interstate merger transaction" as defined in article
7 eight-d of this chapter or acquiring all or substantially all
8 of the assets of another bank by merger or purchase.

9 (b) "Bank" has the meaning set forth in 12 U.S.C.
10 §1813(h): *Provided*, That the term "bank" shall not in-
11 clude any "foreign bank" as defined in 12 U.S.C. §3101
12 (7), except that such term shall include any foreign bank
13 organized under the laws of a territory of the United
14 States, Puerto Rico, Guam, American Samoa or the Virgin
15 Islands, the deposits of which are insured by the federal
16 deposit insurance corporation.

17 (c) "Bank holding company" has the meaning set forth
18 in 12 U.S.C. §1841(a)(1).

19 (d) "Bank supervisory agency" means:

20 (1) Any agency of another state with primary respon-
21 sibility for chartering and supervising banks; and

22 (2) The office of the comptroller of the currency, the
23 federal deposit insurance corporation, the board of gover-

24 nors of the federal reserve system and any successor to
25 these agencies.

26 (e) "Board of banking and financial institutions"
27 means the board created pursuant to the provisions of
28 article three of this chapter and referred to herein as
29 "board".

30 (f) "Branch" has the meaning set forth in subsection
31 (f), section two, article one of this chapter.

32 (g) "Commissioner" means the West Virginia commis-
33 sioner of banking then in office and, where appropriate,
34 all of his or her successors and predecessors in office.

35 (h) "Control" shall be construed consistently with the
36 provisions of 12 U.S.C. §1841(a)(2).

37 (i) "De novo branch" means a branch of a bank locat-
38 ed in a host state which: (i) Is originally established by the
39 bank as a branch; and (ii) does not become a branch of
40 the bank as a result of: (A) The acquisition of another
41 bank or a branch of another bank; or (B) the merger,
42 consolidation or conversion involving any such bank or
43 branch.

44 (j) "Home state" means:

45 (1) With respect to a state bank, the state by which the
46 bank is chartered;

47 (2) With respect to a national bank, the state in which
48 the main office of the bank is located; or

49 (3) With respect to a foreign bank, the state deter-
50 mined to be the home state of such foreign bank under 12
51 U.S.C. §3103(c).

52 (k) "Home state regulator" means, with respect to an
53 out-of-state state bank, the bank supervisory agency of the
54 state in which such bank is chartered.

55 (l) "Host state" means a state, other than the home state
56 of a bank, in which the bank maintains, or seeks to estab-
57 lish and maintain, a branch.

58 (m) "Out-of-state bank" means a bank whose home
59 state is a state other than West Virginia.

60 (n) "Out-of-state state bank" means a bank chartered
61 under the laws of any state other than West Virginia.

62 (o) "State" means any state of the United States, the
63 District of Columbia, any territory of the United States,
64 Puerto Rico, Guam, the Virgin Islands and American Sa-
65 moa.

66 (p) "West Virginia state bank" means a bank chartered
67 under the laws of West Virginia.

**§31A-8E-3. Interstate branching by West Virginia state banks
through de novo establishment or acquisition of
branches in other states.**

1 (a) Beginning on the thirty-first day of May, one
2 thousand nine hundred ninety-seven, and with the prior
3 approval upon order of the board, any West Virginia state
4 bank may establish and maintain a de novo branch or
5 acquire a branch in a state other than West Virginia.

6 (b) A West Virginia state bank desiring to establish
7 and maintain a branch in another state under this section
8 shall file an application on a form prescribed by the com-
9 missioner and pay the branch application fee set forth in
10 subsection (h), section twelve, article eight of this chapter.
11 If the board finds that: (i) The applicant has the financial
12 and managerial resources sufficient to undertake the pro-
13 posed expansion without adversely affecting its safety or
14 soundness, including that local conditions assure reason-
15 able promise of successful operation of the proposed bank
16 branch; (ii) any new officers and directors resulting from
17 the creation of the branch bank are qualified by character,
18 experience and financial responsibility to direct and man-
19 age the expanded bank; (iii) the proposed branch offices
20 will provide suitable physical facilities for their intended
21 business; (iv) establishment of the proposed branch bank
22 would not result in a substantial reduction of competition
23 in any section of this state unless the anticompetitive ef-
24 fects of the proposed action are clearly outweighed in the
25 public interest by the probable effect of the action in

26 meeting the convenience and needs of the community to
27 be served, or result in a monopoly, or would be in further-
28 ance of any combination or conspiracy to monopolize or
29 to attempt to monopolize the business of banking in any
30 section of this state; (v) the establishment of the proposed
31 branch is consistent with the convenience and needs of the
32 communities to be served by the branch and is otherwise
33 in the public interest; and (vi) the new branch is in confor-
34 mity with, and would be permitted under the laws of the
35 state where the branch is to be located, it may approve the
36 application. In acting on the application, the board shall
37 consider the views of the appropriate bank supervisory
38 agencies. The applicant bank may establish the branch
39 when it has received the board's written approval by entry
40 of an order granting the application. The findings re-
41 quired herein shall supplant any other findings of fact
42 otherwise required by subdivisions (1) through (6), sub-
43 section (j), section twelve, article eight of this chapter.

**§31A-8E-4. Interstate branching by out-of-state banks
through de novo entry or acquisition of
branches in West Virginia.**

1 Beginning on the thirty-first day of May, one thou-
2 sand nine hundred ninety-seven, an out-of-state bank that
3 does not operate a branch in this state and that meets the
4 requirements of this article may establish and maintain a
5 de novo branch in this state, and may also establish and
6 maintain a branch in this state through the acquisition of a
7 branch: *Provided*, That branches may be so established in
8 West Virginia by out-of-state banks only if the laws of the
9 home state of the out-of-state bank permit West Virginia
10 state banks to establish and maintain de novo branches or
11 to acquire and maintain branches, as applicable, under
12 substantially the same terms and conditions as set forth in
13 this article. If the law of the other state restricts such entry
14 by a West Virginia state bank to that other state, then the
15 board may similarly limit the authority granted by this
16 article for banks having their main office located in that
17 state.

§31A-8E-5. Requirement of notice.

1 An out-of-state bank desiring to establish and main-
2 tain a de novo branch or to acquire a branch in this state
3 pursuant to this article shall provide written notice of the
4 proposed transaction to the commissioner not later than
5 the date on which the bank applies to the responsible fed-
6 eral or state bank supervisory agency for approval to es-
7 tablish the branch. The filing of such notice shall be ac-
8 companied by the filing fee of two hundred fifty dollars.

§31A-8E-6. Conditions for approval.

1 No branch of an out-of-state bank may be established
2 in this state under this article, unless:

3 (a) The out-of-state bank confirms in writing to the
4 commissioner that as long as it maintains a branch in West
5 Virginia, it will comply with all applicable laws of this
6 state, including consumer protection laws and any acquisi-
7 tion deposit limitations, as well as maintenance of deposit
8 insurance and capital requirements in the same manner as
9 required for West Virginia state banks.

10 (b) The applicant provides satisfactory evidence to the
11 commissioner of compliance with the applicable require-
12 ments of West Virginia law requiring foreign corporations
13 to qualify to do business in West Virginia.

14 (c) The commissioner, acting within thirty days after
15 receiving notice of an application under section five of
16 this article, or within seven days after a decision if a hear-
17 ing is held, certifies to the responsible federal bank super-
18 visory agency that the requirements of this article have
19 been met. Unless preempted by federal law, the commis-
20 sioner shall have thirty days from receipt of the written
21 notice by the out-of-state bank to object to the proposed
22 transaction and request a hearing before the board on the
23 basis that the transaction is contrary to applicable West
24 Virginia law. The failure to object within thirty days shall
25 be construed as consent by the commissioner, or, in his or
26 her discretion, the commissioner may, at any time, consent
27 in writing. The commissioner may also request a hearing
28 on the basis that the bank supervisory agency of the home
29 state of the out-of-state bank is without authority or proce-
30 dures under its state's law to review the transaction, or is

31 not under its state's law viewed as the primary regulator of
32 its chartered banks' out-of-state branches, in which event
33 the criteria, fees and procedures set forth in section three
34 of this article shall apply.

§31A-8E-7. Powers; additional branches.

1 (a) An out-of-state state bank which establishes and
2 maintains one or more branches in West Virginia under
3 this article may conduct any activities at such branch or
4 branches that are authorized under the laws of this state
5 for West Virginia state banks.

6 (b) A West Virginia state bank may conduct any activ-
7 ity at a branch outside West Virginia that is expressly per-
8 missible for a bank chartered by the host state where the
9 branch is located. Prior to commencing any such activity,
10 the West Virginia state bank shall give the commissioner
11 forty-five days advance notice of the intention to exercise
12 any such powers which are not permitted to West Virginia
13 state banks in their operations in this state under state law.
14 This notice shall be made together with a filing providing
15 a written summary with details of the proposed action or
16 program, along with legal analysis for the authority to
17 conduct the activities and how the exercise of the authority
18 will not impair the safety and soundness of the bank and
19 will be kept separate from its operations within West Vir-
20 ginia. Unless, within thirty days after receipt of the notice
21 and filing, the commissioner objects or requests a hearing
22 on the matter before the board, the exercise of the powers
23 shall be deemed authorized. In the discretion of the com-
24 missioner or the board, authorization of such powers may
25 be given in writing at any time.

26 (c) An out-of-state bank that has established or ac-
27 quired a branch in West Virginia under this article may
28 establish or acquire additional branches in West Virginia
29 to the same extent that any West Virginia bank may estab-
30 lish or acquire a branch in West Virginia under applicable
31 federal and state law. To the extent that an out-of-state
32 bank has already established or acquired a branch in West
33 Virginia and proposes to create additional branches by
34 establishing another de novo branch, or by acquisition of

35 another bank's branch in West Virginia, the provisions of
36 this article govern the transaction.

§31A-8E-8. Examinations; periodic reports; cooperative agreements; assessment of fees.

1 (a) To the extent consistent with subsection (c) of this
2 section, the commissioner may make such examinations of
3 any branch established and maintained in this state pursu-
4 ant to this article by an out-of-state state bank as the com-
5 missioner may deem necessary to determine whether the
6 branch is being operated in compliance with the laws of
7 this state and in accordance with safe and sound banking
8 practices. The provisions of article two of this chapter
9 shall apply to such examinations.

10 (b) The commissioner may require periodic reports
11 regarding any out-of-state bank that has established and
12 maintained a branch in this state pursuant to this article.
13 The required reports shall be provided by the bank, or
14 upon request of the commissioner by the bank superviso-
15 ry agency having primary responsibility for such bank.
16 Any reporting requirements prescribed by the commis-
17 sioner under this subsection shall be: (i) Consistent with
18 the reporting requirements applicable to West Virginia
19 state banks; and (ii) appropriate for the purpose of en-
20 abling the commissioner to carry out his or her responsi-
21 bilities under this article. Unless the information is filed
22 by its bank holding company pursuant to subsection (a),
23 section seven, article eight-a of this chapter, an out-of-state
24 bank with a branch in West Virginia shall also file the
25 information required by said section within the time stated
26 in said section.

27 (c) The commissioner may enter into cooperative,
28 coordinating and information-sharing agreements with
29 any other bank supervisory agencies or any organization
30 affiliated with or representing one or more bank supervi-
31 sory agencies with respect to the periodic examination or
32 other supervision of any branch in West Virginia of an
33 out-of-state state bank, or any branch of a West Virginia
34 state bank in any host state, and the commissioner may
35 accept such parties' reports of examination and reports of

36 investigation in lieu of conducting his or her own exami-
37 nations or investigations.

38 (d) The commissioner may enter into contracts with
39 any bank supervisory agency that has concurrent jurisdic-
40 tion over a West Virginia state bank or an out-of-state state
41 bank maintaining a branch in this state to engage the ser-
42 vices of such agency's examiners at a reasonable rate of
43 compensation, or to provide the services of the commis-
44 sioner's examiners to such agency at a reasonable rate of
45 compensation: *Provided*, That any such contract shall be
46 deemed excluded from the requirements of article three,
47 chapter five-a of this code.

48 (e) The commissioner may enter into joint examina-
49 tions or joint enforcement actions with other bank supervi-
50 sory agencies having concurrent jurisdiction over any
51 branch established and maintained in West Virginia by an
52 out-of-state state bank or any branch established and
53 maintained by a West Virginia state bank in any host state:
54 *Provided*, That the commissioner may at any time take
55 such actions independently if the commissioner deems
56 such actions to be necessary or appropriate to carry out
57 his or her responsibilities under this article or to ensure
58 compliance with the laws of this state: *Provided, however*,
59 That, in the case of an out-of-state state bank, the commis-
60 sioner shall recognize the authority of the home state
61 regulator over corporate governance matters and the pri-
62 mary responsibility of the home state regulator with re-
63 spect to safety and soundness matters.

64 (f) Each out-of-state state bank that maintains one or
65 more branches in this state may be assessed and, if as-
66 sessed, shall pay supervisory and examination fees in ac-
67 cordance with the laws of this state and rules of the com-
68 missioner. Such fees may be shared with other bank su-
69 pervisory agencies or any organization affiliated with or
70 representing one or more bank supervisory agencies in
71 accordance with agreements between such parties and the
72 commissioner.

§31A-8E-9. Enforcement.

1 If the commissioner determines that a branch main-
2 tained by an out-of-state state bank in this state is being
3 operated in violation of any provision of the laws of this
4 state, or that such branch is being operated in an unsafe
5 and unsound manner, the commissioner shall have the
6 authority to take all such enforcement actions as he or she
7 would be empowered to take if the branch were a West
8 Virginia state bank: *Provided*, That the commissioner
9 shall promptly give notice to the home state regulator of
10 each enforcement action taken against an out-of-state state
11 bank and, to the extent practicable, shall consult and coop-
12 erate with the home state regulator in pursuing and resolv-
13 ing said enforcement action.

§31A-8E-10. Rules and orders.

1 The commissioner and board may promulgate such
2 rules and issue such orders as they determine to be neces-
3 sary or appropriate in order to implement the provisions
4 of this article.

§31A-8E-11. Notice of subsequent merger.

1 An out-of-state state bank that has established and
2 maintains a branch in this state pursuant to this article,
3 shall give at least forty-five days' prior written notice (or,
4 in the case of an emergency transaction, such shorter no-
5 tice as is consistent with applicable state or federal law) to
6 the commissioner of any merger, consolidation or other
7 transaction that would cause a change of control with
8 respect to such out-of-state bank or any bank holding
9 company that controls such bank, with the result that an
10 application would be required to be filed pursuant to the
11 federal Change in Bank Control Act of 1978, as amended,
12 12 U.S.C. §1817(j), or the federal Bank Holding Compa-
13 ny Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or
14 any successor statutes thereto.

§31A-8E-12. Applicability to thrift institutions.

1 This article shall apply to interstate acquisition of
2 branches of any savings bank, savings and loan association
3 or other thrift institution maintaining federal deposit in-

- 4 surance by a bank where the nonthrift bank survives the
5 transaction and maintains the branches.

ARTICLE 8F. THE WEST VIRGINIA INTERNATIONAL BANKING ACT.

- §31A-8F-1. Legislative purpose.
 §31A-8F-2. Definitions.
 §31A-8F-3. General regulation authority; language; U. S. general accounting principles.
 §31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.
 §31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.
 §31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.
 §31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.
 §31A-8F-8. Application to establish and maintain an agency office; contents.
 §31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.
 §31A-8F-10. No concurrent maintenance of federal branches or agencies.
 §31A-8F-11. Powers of a foreign bank agency office.
 §31A-8F-12. Representative office of foreign banks; necessity of licensure.
 §31A-8F-13. Representative office; application.
 §31A-8F-14. Representative office; factors for approval of application.
 §31A-8F-15. Representative office; permissible activities.
 §31A-8F-16. Posting of license.
 §31A-8F-17. Licenses not transferable.
 §31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.
 §31A-8F-19. Change of control of foreign bank.
 §31A-8F-20. Relocation of office; written notice necessary.
 §31A-8F-21. Examination; payment of fees.
 §31A-8F-22. Supervision and enforcement.
 §31A-8F-23. Reports.
 §31A-8F-24. Confidentiality of examination reports.
 §31A-8F-25. Books, accounts and records.
 §31A-8F-26. Separate assets.
 §31A-8F-27. Disclosure of lack of federal deposit insurance.
 §31A-8F-28. Capital equivalency deposit.
 §31A-8F-29. Voluntary closure of agency or representative office; application.

§31A-8F-1. Legislative purpose.

1 (a) This article shall be known and may be cited as the
2 "West Virginia International Banking Act".

3 (b) This article is intended generally to provide for
4 state regulation of the participation by foreign banks in
5 certain financial markets of this state.

6 (c) This article is intended:

7 (1) To authorize banking activities and operations in
8 West Virginia by foreign banks having separately capital-
9 ized and domestically chartered banks in the United States
10 through branches of such domestic banks in this state;

11 (2) To authorize agency and representative offices in
12 this state of foreign banks; and

13 (3) To ensure that the banking laws and rules of this
14 state otherwise apply to foreign banks, and to West Virgin-
15 ia and out-of-state banks and bank holding companies
16 that are owned or controlled by foreign banks, in a man-
17 ner consistent with the laws and policies of the United
18 States governing the operations in this country of foreign
19 banks.

§31A-8F-2. Definitions.

1 For purposes of this article:

2 (a) The term "agency office" or "direct agency office"
3 means an office of a foreign bank that is exercising the
4 powers set forth and authorized by sections seven and
5 eleven of this article.

6 (b) The term "bank supervisory agency" means:

7 (1) The office of the comptroller of the currency, the
8 federal deposit insurance corporation, the board of gover-
9 nors of the federal reserve system and any successor to
10 these agencies;

11 (2) Any agency of another state with primary respon-
12 sibility for chartering and supervising banks; and

13 (3) Any agency of a country (including any colonies,
14 dependencies, possessions or political subdivisions there-

15 of) other than the United States with primary responsibili-
16 ty for supervising banks.

17 (c) The term "federal agency" means an agency of a
18 foreign bank that is licensed by the comptroller of the
19 currency pursuant to the provisions of Section 4 of the
20 federal International Banking Act, 12 U.S.C. §3102.

21 (d) The term "foreign bank" means any company
22 organized under the laws of a foreign country that engag-
23 es directly in the business of banking. The term includes
24 foreign commercial banks, foreign merchant banks and
25 other foreign institutions that engage in banking activities
26 usually in connection with the business of banking in the
27 countries where such foreign institutions are organized or
28 operating.

29 (e) The term "federal branch" means a branch of a
30 foreign bank that is licensed by the comptroller of the
31 currency pursuant to the provisions of Section 4 of the
32 federal International Banking Act, 12 U.S.C. §3102.

33 (f) The term "federal International Banking Act"
34 means the federal International Banking Act of 1978, as
35 amended, 12 U.S.C. §§3101 et seq.

36 (g) The term "foreign person" means a natural or
37 juridical person who is a citizen or national of one or
38 more countries (including any colonies, dependencies or
39 possessions of such countries) other than the United
40 States.

41 (h) The term "Interstate Banking and Branching Effi-
42 ciency Act" means the federal Riegle-Neal Interstate Bank-
43 ing and Branching Efficiency Act of 1994, Public Law
44 No. 103-328, 108 Stat. 2338-2381 (September 29, 1994)
45 (codified at various sections of Title 12, U. S. C.).

46 (i) The term "interstate branch" means a branch of a
47 bank or a branch of a foreign bank, as the context may
48 require, which is established after the twenty-ninth day of
49 September, one thousand nine hundred ninety-four, pur-
50 suant to the authority contained in the Interstate Banking
51 and Branching Efficiency Act, outside the home state of

52 the bank or foreign bank. In the case of a foreign bank,
53 the term shall not include a limited branch.

54 (j) The term "limited branch" means a branch of a
55 foreign bank that accepts only such deposits as would be
56 permissible for a corporation organized under Section 25a
57 of the federal Reserve Act in accordance with the provi-
58 sions of Section 5 (a)(7) of the federal International Bank-
59 ing Act, 12 U.S.C. §3103(a)(7).

60 (k) The term "out-of-state bank" means a bank orga-
61 nized under the laws of the United States having its main
62 office in a state other than West Virginia or organized
63 under the laws of a state other than West Virginia, which is
64 authorized to engage in the business of banking including
65 the taking of insured retail deposits. For purposes of this
66 definition "state" shall include the District of Columbia
67 and any territory of the United States, Puerto Rico, Guam,
68 the Virgin Islands and American Samoa.

69 (l) The term "representative office" shall have the same
70 meaning as is set forth in Section 1(b)(15) of the federal
71 International Banking Act, 12 U.S.C. §3101(15), and the
72 term "West Virginia representative office" shall mean any
73 such office that is located in this state.

**§31A-8F-3. General regulation authority; language; U.S.
general accounting principles.**

1 (a) The commissioner is authorized and empowered to
2 issue such rules and orders to perform his or her duties
3 and functions under this article and to administer and
4 carry out the provisions and purposes of this article and to
5 prevent evasions thereof.

6 (b) It shall be required that all banks, including for-
7 eign banks, operating offices in this state use or make
8 available on request the English language version of any
9 customer contract or agreement when the customer is a
10 United States corporation, citizen or resident. Upon de-
11 mand of the commissioner of banking any bank or finan-
12 cial affiliate in West Virginia under the jurisdiction of the
13 commissioner of banking shall provide at their own ex-
14 pense the translation of any document or record it holds

15 into the English language. Unless otherwise provided for
16 West Virginia licensed domestic banking institutions, all
17 foreign banking offices licensed under the provisions of
18 this article shall abide by U.S. general accounting princi-
19 ples in the maintenance of their financial records.

§31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.

1 (a) The laws and rules of this state governing the ac-
2 quisition or ownership of controlling or other interests in
3 West Virginia banks or in out-of-state banks seeking to
4 establish and maintain one or more interstate branches in
5 this state shall not generally prohibit ownership of such
6 institutions by, or otherwise discriminate against, foreign
7 banks or other foreign persons.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, the commissioner is authorized to apply any
10 standards or requirements of the laws and rules of this
11 state governing the ownership, control or operations of
12 West Virginia banks, including residency requirements for
13 directors of West Virginia state-chartered banks, even if
14 applicable specifically or exclusively to foreign banks or
15 other foreign persons, to the extent such standards or
16 requirements are determined by the commissioner to be
17 either:

18 (1) Substantially equivalent to, or consistent with, the
19 standards or requirements governing the ownership, con-
20 trol or operations of state or national banks in West Vir-
21 ginia by foreign banks or other foreign persons under
22 applicable United States federal laws or regulations; or

23 (2) Otherwise consistent with the laws and policies of
24 the United States, including its international agreements
25 governing financial services.

§31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.

1 An out-of-state bank which is a domestic subsidiary
2 of, or controlled by a foreign bank, may establish branch-
3 es in this state through merger, de novo entry or the acqui-

4 sition of branches on the same terms as any other bank
5 sharing that same home state pursuant to articles eight-d
6 and eight-e of this chapter.

§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.

1 (a) A West Virginia bank or branch of any out-of-state
2 bank owned or controlled by a foreign bank may at its
3 main or branch offices in West Virginia receive deposits,
4 renew time deposits, close loans, service loans and receive
5 payments on loans and other obligations as an agent for
6 any depository institution affiliate of such foreign bank,
7 including branch, agency and other offices of that same
8 foreign bank located in other states, generally in accor-
9 dance with the same terms, conditions, procedures and
10 requirements that are applicable under the laws and rules
11 of this state to such agency activities that may be conduct-
12 ed by West Virginia state banks.

13 (b) Notwithstanding any other provision of the laws or
14 rules of this state no foreign controlled bank, branch or
15 agency office shall be authorized by this article to accept
16 retail deposits on behalf of a foreign bank or branch
17 which is not authorized to take federally insured deposits,
18 nor to act as agent on behalf of any affiliated foreign
19 bank other than its controlling foreign bank or one which
20 has been licensed to transact business in this state pursuant
21 to this article.

22 (c) A bank or branch of any bank owned or con-
23 trolled by a foreign bank may not at its main or branch
24 offices in West Virginia:

25 (1) Conduct any activity as an agent under this section
26 which such office is prohibited from conducting as a prin-
27 cipal under any applicable federal or state law, including,
28 but not limited to, the acceptance of impermissible depos-
29 its; or

30 (2) As a principal, have an agent conduct any activity
31 under this section which such office is prohibited from
32 conducting under any applicable federal or state law, in-

33 cluding, but not limited to, the acceptance of impermissi-
34 ble deposits.

35 (d) Any agency relationship permitted under this
36 section involving a depository institution affiliate or other
37 affiliate of such foreign bank shall in any event be on
38 terms that are consistent with safe and sound banking
39 practices and all applicable rules and orders of the com-
40 missioner.

**§31A-8F-7. Direct agency offices of foreign banks; necessity of
licensure.**

1 (a) A foreign bank may directly transact certain bank-
2 ing business in this state as permitted under this article
3 upon obtaining a license to establish and maintain a West
4 Virginia state agency office.

5 (b) Subsection (a) of this section does not prohibit:

6 (1) Any foreign bank which establishes and maintains
7 a federal agency or federal branch in this state from trans-
8 acting at such federal agency or federal branch such
9 banking business as it may be authorized to transact under
10 applicable federal laws and rules; or

11 (2) Any foreign bank which does not maintain a
12 branch or agency office in West Virginia from making or
13 enforcing loans in this state including loans secured by
14 liens on real or personal property located in this state, as
15 long as such lending is not conducted from an office in
16 this state, and the loan, if a consumer loan, is governed by
17 West Virginia law.

**§31A-8F-8. Application to establish and maintain an agency
office; contents.**

1 A foreign bank seeking to establish and maintain a
2 West Virginia state agency office shall submit an applica-
3 tion to the West Virginia board of banking and financial
4 institutions. Such application shall contain:

5 (a) The same information as required by the board of
6 governors of the federal reserve system for an application
7 to establish an agency in the United States;

8 (b) An instrument irrevocably appointing the West
9 Virginia secretary of state or his or her successors in office
10 to be such foreign bank's agent, representative and attor-
11 ney to receive service of any lawful judicial and adminis-
12 trative process; and

13 (c) Such additional information as the board or com-
14 missioner may require.

**§31A-8F-9. Application to establish and maintain an agency
office; manner of filing and determination.**

1 (a) A foreign bank making an application under this
2 article for a license to establish and maintain a West Vir-
3 ginia state agency shall deliver to the West Virginia board
4 of banking and financial institutions:

5 (1) At least two duplicate originals of the foreign
6 bank's application on the form prescribed by the board;

7 (2) At least two copies of its charter or articles of in-
8 corporation and all amendments thereto, duly authenticat-
9 ed by the proper officer of the country of such foreign
10 bank's organization together with translation of such doc-
11 uments if they are in a language other than English, which
12 translation is attested to for accuracy before a notary pub-
13 lic or other verifying official;

14 (3) A letter or resolution from its governing body or
15 chief executive officer guaranteeing that the foreign
16 bank's entire capital and surplus is and shall be available
17 for all liabilities and obligations of its agency office doing
18 business in this state;

19 (4) An application fee of one thousand dollars pay-
20 able by check or money order to the West Virginia board
21 of banking and financial institutions;

22 (5) A document granting power of attorney in favor
23 of the person designated to be in charge of the business
24 and affairs of the proposed office; and

25 (6) Proof of fidelity bond coverage for active officers
26 and employees, and the oath of the managing officer of
27 the West Virginia office(s) to obey state banking laws as

28 would be required were the institution a bank incorporated
29 in this state.

30 (b) The board may approve issuance of a license to a
31 foreign bank to establish and maintain a West Virginia
32 state agency office if it finds:

33 (1) That the foreign bank is of sound financial stand-
34 ing;

35 (2) That the management of the foreign bank and the
36 proposed management of the West Virginia state agency
37 office are adequate and are of good reputation and char-
38 acter;

39 (3) That the convenience and needs of persons to be
40 served by the proposed West Virginia state agency office
41 will be promoted;

42 (4) That the foreign bank has committed to allocate
43 and assign to its agency office within this state a capital
44 equivalency deposit of not less than the greater of five
45 hundred thousand dollars or five percent of the total lia-
46 bilities of the agency, excluding accrued expenses, inter-
47 company liabilities and any amounts due the foreign
48 bank: *Provided*, That the board may in its discretion
49 require a higher deposit amount or rate to ensure the
50 agency office's financial safety or soundness;

51 (5) That the proposed office is not being formed for
52 other than legitimate motives and purposes;

53 (6) That the bank supervisory agency of the foreign
54 bank's country of organization does not object to the
55 application;

56 (7) That the applicant has submitted a legal opinion
57 indicating that the proposed agency office will be permis-
58 sible under both the laws of the foreign bank's country of
59 organization and the United States; and

60 (8) That the foreign bank has complied with this sec-
61 tion and satisfies such other standards as the board may
62 establish by rule.

63 (c) If the board after investigation, notice and hearing
64 determines to issue a license to a foreign bank to establish
65 and maintain a West Virginia state agency office, it shall
66 issue a written order granting the application and autho-
67 rize the commissioner of banking on its behalf upon pay-
68 ment of all fees required under this article to:

69 (1) Endorse on each document filed as part of the
70 application the word "Filed", and the date of the filing
71 thereof and return to the foreign bank a copy of each
72 document so endorsed;

73 (2) File in the office of the commissioner of banking
74 one of the duplicate originals of the application and cop-
75 ies of the charter or articles of incorporation and amend-
76 ments thereto; and

77 (3) Issue a license to establish and maintain a West
78 Virginia state agency office to such foreign bank.

79 (d) Each license issued to a foreign bank to establish
80 and maintain a West Virginia state agency shall state fully
81 the name of the foreign bank to which such license is
82 issued, the place of business for the licensee's office and
83 all such other information as the commissioner may re-
84 quire.

85 (e) The board may, by rule or order, prescribe abbrevi-
86 ated application procedures and standards applicable to
87 applications by foreign banks that have already estab-
88 lished an initial West Virginia state agency office, subse-
89 quently to establish additional intrastate West Virginia state
90 agency offices, as the case may be.

91 (f) Each licensee must register with the West Virginia
92 secretary of state as a foreign corporation qualified to do
93 business in this state and provide proof of such registra-
94 tion to the commissioner of banking prior to conducting
95 business under its license.

**§31A-8F-10. No concurrent maintenance of federal branches
or agencies.**

1 (a) No foreign bank which is licensed under this arti-
2 cle to establish and maintain a West Virginia state agency
3 shall concurrently maintain a federal branch or federal
4 agency office in this state.

5 (b) No foreign bank which maintains a federal branch
6 or federal agency office in this state shall concurrently be
7 licensed under this article to maintain a West Virginia state
8 agency office.

§31A-8F-11. Powers of a foreign bank agency office.

1 (a) A West Virginia state agency office of a foreign
2 bank established under this article may engage in the
3 business of making loans and guaranteeing obligations for
4 the financing of the international movement of goods and
5 services and for all operational needs including working
6 capital and short-term operating needs and for the acquisi-
7 tion of fixed assets. In addition, such agency may also:

8 (1) Borrow funds from banks and other financial
9 institutions;

10 (2) Buy and sell foreign exchange;

11 (3) Receive checks, bills, drafts, acceptances, notes,
12 bonds, coupons and other securities for collection abroad
13 and collect such instruments in the United States for cus-
14 tomers abroad;

15 (4) Hold securities for safekeeping for, or buy and sell
16 securities upon the order and for the risk of, customers
17 abroad;

18 (5) Act as paying agent for securities issued by for-
19 eign governments or other organizations organized under
20 foreign law and not qualified under the laws of the United
21 States, or any state or the District of Columbia to do busi-
22 ness in the United States;

23 (6) In order to prevent the loss on debts previously
24 contracted, an agency may acquire shares in a corpora-
25 tion: *Provided*, That the shares are disposed of as soon as
26 practicable, but in no event later than two years from the
27 date of acquisition;

- 28 (7) Issue letters of credit and create acceptances; and
- 29 (8) Conduct activities which are necessary and inci-
30 dental to the above-enumerated power: *Provided*, That
31 the commissioner maintains the authority to determine
32 whether the power or activity sought or undertaken is
33 necessary and incidental.
- 34 (b) No West Virginia state agency office may take
35 deposits on behalf of any affiliated bank or other deposi-
36 tory institution.
- 37 (c) Any loan limitation or restriction based on the
38 capital stock and surplus of a bank shall be deemed to
39 refer, as applied to a West Virginia state agency, to the
40 United States dollar equivalent of the capital and stock
41 surplus of the parent foreign bank, and not to the capital
42 equivalency deposit in section twenty-eight of this article.

§31A-8F-12. Representative office of foreign banks; necessity of licensure.

- 1 (a) No foreign bank shall establish or maintain a West
2 Virginia state representative office unless the foreign bank
3 is licensed by the commissioner to maintain a West Virgin-
4 ia representative office.
- 5 (b) Nothing in subsection (a) of this section shall be
6 deemed to prohibit a foreign bank which maintains a
7 federal agency or federal branch in this state from estab-
8 lishing or maintaining one or more West Virginia repre-
9 sentative offices.

§31A-8F-13. Representative office; application.

- 1 (a) The application for a license to establish and main-
2 tain a West Virginia representative office shall be in writ-
3 ing under oath and shall be in such form and contain such
4 information as the commissioner may require by regula-
5 tion or order. The application shall be accompanied by a
6 fee of two hundred fifty dollars.
- 7 (b) Each application to establish and maintain a West
8 Virginia representative office shall include an instrument
9 irrevocably appointing the West Virginia secretary of state
10 or his or her successors in office to be such foreign bank's

11 agent, representative and attorney to receive service of any
12 lawful judicial and administrative process.

§31A-8F-14. Representative office; factors for approval of application.

1 (a) A foreign bank making an application for a license
2 to establish and maintain a West Virginia representative
3 office shall deliver to the commissioner two (or more as
4 the commissioner may require in writing) duplicate origi-
5 nals of the foreign bank's application.

6 (b) The commissioner may issue a license to a foreign
7 bank to establish and maintain a West Virginia representa-
8 tive office if he or she finds:

9 (1) That the foreign bank is of sound financial stand-
10 ing;

11 (2) That the management of the foreign bank and the
12 proposed management of the West Virginia representative
13 office are adequate and are of good reputation and char-
14 acter;

15 (3) That the proposed office is not being formed for
16 other than legitimate motives and purposes; and

17 (4) That the convenience and needs of persons to be
18 served by the proposed West Virginia representative office
19 will be promoted.

20 (c) If the commissioner determines to issue a license to
21 a foreign bank to establish and maintain a West Virginia
22 representative office, he or she shall, when all fees have
23 been paid as required under this article:

24 (1) Endorse on each duplicate original of the applica-
25 tion the word "Filed", and the date of the filing thereof and
26 return to the foreign bank one such duplicate original so
27 endorsed;

28 (2) File in his or her office one of such duplicate orig-
29 inals of the application; and

30 (3) Issue a license to establish and maintain a West
31 Virginia representative office to such foreign bank.

32 (d) Each license issued to a foreign bank to establish
33 and maintain a West Virginia representative office shall
34 state fully the name of the foreign bank to which such
35 license is issued, the address or addresses at which the West
36 Virginia representative office is to be located and all other
37 information as the commissioner may require.

§31A-8F-15. Representative office; permissible activities.

1 (a) A foreign bank which is licensed to establish and
2 maintain a West Virginia representative office may, subject
3 to such rules as the commissioner may prescribe, engage
4 in the following activities:

5 (1) Solicitation for loans and in connection therewith
6 the assembling of credit information, making of property
7 inspections and appraisals, securing of title information,
8 preparing of applications for loans including making
9 recommendations with respect to action thereon,
10 soliciting of investors to purchase loans from the foreign
11 bank and searching for such investors to contract with the
12 foreign bank for servicing of such loans;

13 (2) The solicitation of new business;

14 (3) The conduct of research; and

15 (4) Back office administrative functions as may be
16 more specifically defined in rules issued by the commis-
17 sioner.

18 (b) Any other activity which the foreign bank seeks to
19 conduct at such office shall be subject to the prior written
20 approval of the commissioner upon finding that the char-
21 acter of such other business is such that the granting of the
22 authority would not facilitate evasions of this article or
23 chapter or the rules or orders lawfully made hereunder.

§31A-8F-16. Posting of license.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall post its license in a conspicuous
4 place at the office.

§31A-8F-17. Licenses not transferable.

1 No license issued by the commissioner in accordance
2 with this article shall be transferable or assignable.

§31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.

1 (a) A foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office must secure an amended license if it
4 changes its corporate name, changes corporate control,
5 changes the duration of its corporate existence or desires
6 to pursue in this state other or additional purposes than
7 those set forth in its prior application under this article for
8 a license, by making application therefor to the commis-
9 sioner.

10 (b) The requirements with respect to the form and
11 contents of an application under subsection (a) of this
12 section, the manner of its execution, the filing of duplicate
13 originals thereof with the commissioner, the issuance of an
14 amended license and the effect thereof shall be the same
15 as in the case of an initial application for a license to es-
16 tablish and maintain a West Virginia state agency or West
17 Virginia representative office, except as may be provided
18 by the commissioner in the case of a change of control
19 which results merely from a corporate reorganization.

§31A-8F-19. Change of control of foreign bank.

1 A foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall file with the commissioner a
4 written notice and request an amended license under sec-
5 tion eighteen of this article no later than fourteen calendar
6 days after the foreign bank becomes aware of any acquisi-
7 tion of control of the foreign bank or the bank merges
8 with another foreign or domestic bank.

§31A-8F-20. Relocation of office; written notice necessary.

1 No foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall relocate any office unless the
4 foreign bank provides prior written notice to the commis-

5 sioner and the commissioner has approved such relocation
6 in writing.

§31A-8F-21. Examination; payment of fees.

1 (a) A West Virginia state agency or West Virginia
2 representative office shall be subject to examination by the
3 commissioner at intervals and in a manner as he or she
4 shall establish by rule or order. Unless otherwise provided
5 by rule or order the examinations may be conducted an-
6 nually.

7 (b) In conducting an examination pursuant to this
8 section, the commissioner shall:

9 (1) Have full access to the offices, books, accounts and
10 records of each office located in this state as well as all of
11 the books, accounts and records maintained in this state of
12 any office not located in this state of such foreign bank;
13 and

14 (2) Have authority to require the attendance of and to
15 examine under oath all persons whose testimony may be
16 required relative to the activities of such office.

17 (c) A foreign bank which is licensed to establish and
18 maintain a West Virginia state agency or West Virginia
19 representative office shall be assessed a reasonable fee for
20 the expenses incurred by the commissioner in making an
21 examination of the office.

22 (d) A foreign bank which is licensed to establish and
23 maintain a West Virginia state agency or West Virginia
24 representative office shall be subject to all reasonable fees
25 and expenses in such amounts as the commissioner may
26 require by rule or order.

27 (e) The commissioner may require a West Virginia
28 state agency or West Virginia representative office to be
29 audited by an independent accountant licensed to practice
30 by the state of West Virginia. The accountant must have
31 knowledge and experience with respect to auditing books
32 of international corporations. The audit must be based on
33 generally accepted accounting standards without limitation

34 on its scope. The cost of the audits must be paid by the
35 foreign bank.

§31A-8F-22. Supervision and enforcement.

1 (a) The commissioner shall have all of the powers
2 granted to him or her by the laws of this state to the extent
3 appropriate to enable him or her to supervise each West
4 Virginia state agency or West Virginia representative of-
5 fice.

6 (b) If, after notice and a hearing, the commissioner
7 finds that any person has violated any provision of this
8 article or any regulation or order issued under this article,
9 he or she may, in addition to any other remedy or action
10 available to the commissioner under the laws of this state,
11 seek a civil penalty in an amount in accordance with this
12 chapter and rules thereunder.

13 (c) In order to carry out the purposes under this arti-
14 cle, the commissioner may:

15 (1) Enter into cooperative, coordinating or informa-
16 tion-sharing agreements with any other bank supervisory
17 agency or any organization affiliated or representing one
18 or more bank supervisory agencies;

19 (2) With respect to periodic examination or other
20 supervision of a foreign bank that maintains a West Vir-
21 ginia state agency or West Virginia representative office,
22 accept reports of examinations performed by, and reports
23 submitted to, other bank supervisory agencies in lieu of
24 conducting examinations, or of receiving reports, as might
25 otherwise be required under this article;

26 (3) Enter into joint examinations or joint enforcement
27 actions with any other bank supervisory agency having
28 concurrent jurisdiction over any foreign bank: *Provided,*
29 That the commissioner may at any time take any actions
30 independently if the commissioner determines that the
31 actions are necessary or appropriate to carry out his or her
32 responsibilities under this article and to ensure compliance
33 with the laws of this state;

34 (4) Enter into contracts with any bank supervisory
35 agency having concurrent regulatory or supervisory juris-
36 diction over a foreign bank maintaining a West Virginia
37 state agency or West Virginia representative office, to
38 engage the services of such agency's examiners at a rea-
39 sonable rate of compensation or provide the services of
40 the commissioner's examiners at a reasonable rate of com-
41 pensation: *Provided*, That any such contract shall be
42 deemed excluded from the requirements of article three,
43 chapter five-a of this code; and

44 (5) Assess supervisory and examination fees that shall
45 be payable by foreign banks maintaining a West Virginia
46 state agency or West Virginia representative office in con-
47 nection with the commissioner's performance of his or her
48 duties under this article and in accordance with rules
49 adopted by the commissioner.

50 (d) Supervisory or examination fees assessed by the
51 commissioner in accordance with the provisions of this
52 article may be shared with other bank supervisory agen-
53 cies or any organizations affiliated with or representing
54 one or more bank supervisory agencies in accordance with
55 agreements between the commissioner and such agencies
56 or organizations.

§31A-8F-23. Reports.

1 (a) Each foreign bank which is licensed to establish
2 and maintain a West Virginia state agency or West Virginia
3 representative office shall file with the commissioner such
4 reports as and when the commissioner may require.

5 (b) Each report filed with the commissioner under this
6 article or any rule or order issued under this article shall
7 be in such form and contain such information, shall be
8 signed in such manner, and shall be verified in such man-
9 ner, as the commissioner may reasonably require.

§31A-8F-24. Confidentiality of examination reports.

1 All reports of examinations and other records relating
2 to the financial condition of any foreign bank, branch,
3 agency office or representative office shall be confidential
4 and subject to subpoena in the same manner as those ex-

5 ainations and records of other financial institutions pur-
6 suant to section four, article two of this chapter.

§31A-8F-25. Books, accounts and records.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall maintain or make available at
4 any such office appropriate books, accounts and records
5 in the English language reflecting: (i) All transactions
6 effected by or on behalf of such office; and (ii) all actions
7 taken in this state by employees of the foreign banking
8 corporation located in this state to effect transactions on
9 behalf of any office of the foreign bank located outside
10 this state.

§31A-8F-26. Separate assets.

1 (a) Each foreign bank which is licensed to establish
2 and maintain a West Virginia state agency in this state shall
3 keep the assets of its business in this state separate and
4 apart from the assets of its business outside this state as
5 though the West Virginia office was conducted as a sepa-
6 rate and distinct entity.

7 (b) The creditors of a foreign bank arising out of
8 transactions with, and recorded on the books of, its West
9 Virginia state agency shall be entitled to absolute prefer-
10 ence and priority over the creditors of the foreign bank's
11 offices located outside this state with respect to the assets
12 of the foreign bank in this state.

§31A-8F-27. Disclosure of lack of federal deposit insurance.

1 Each foreign bank which is licensed to establish and
2 maintain a West Virginia state agency shall clearly and
3 conspicuously disclose that moneys held by or credit
4 balances in such office are not insured by the federal
5 deposit insurance corporation.

§31A-8F-28. Capital equivalency deposit.

1 (a) Each foreign bank which is licensed to establish
2 and maintain a West Virginia state agency office shall
3 keep on deposit with an unaffiliated West Virginia bank(s)
4 as the foreign bank may designate and the commissioner

5 may approve, the capital equivalency deposit required by
6 section nine of this article in the form of interest-bearing
7 stocks and bonds, notes, debentures or other obligations of
8 the United States or any agency or instrumentality thereof,
9 or guaranteed by the United States, or of this state, or of a
10 city, county, town, village, school district, or instrumentali-
11 ty of this state or guaranteed by this state, or dollar depos-
12 its or obligations of the international bank for reconstruc-
13 tion and development, or obligations issued by the
14 interAmerican development bank, or obligations of the
15 Asian development bank, or obligations issued by the
16 African development bank, or other assets as the commis-
17 sioner may by rule or order permit, based upon principal
18 amount or market value, whichever is lower, in the case of
19 the above-described securities, and subject to the limita-
20 tions as he or she shall prescribe.

21 (b) The West Virginia bank designated to hold the
22 assets in deposit shall issue a written receipt addressed and
23 delivered to the commissioner reciting that the deposit is
24 being held for the sole benefit of the United States domi-
25 ciled creditors of the foreign bank's West Virginia state
26 agency office and that the deposit is subject to the com-
27 missioner's order without offset for the payment of the
28 creditors. For the purpose of this subsection, the term
29 "creditor" shall not include any other offices, branches,
30 subsidiaries or affiliates of the foreign bank.

31 (c) So long as it shall continue business in the ordi-
32 nary course, such foreign bank shall be permitted to col-
33 lect interest on the securities deposited under this section
34 and from time to time exchange, examine and compare
35 such securities.

36 (d) The commissioner in his or her discretion may
37 require additional capital equivalency deposits if: (i) The
38 financial condition of either the office(s) or the foreign
39 bank warrants such additional protection; or (ii) other
40 circumstances exist which may impair the office(s) or
41 foreign bank's safety or soundness.

42 (e) West Virginia state agency offices must maintain a
43 capital equivalency ledger showing the amount of net
44 liabilities requiring capital equivalency coverage for each

45 business day. On the last day of business of each month
46 the average daily balance shall be computed, and based
47 upon this computation, an increase in the deposit, if neces-
48 sary to maintain the deposit at the level required by this
49 section, shall be made. Any such required increase must
50 be made within the first two business days of the following
51 month. For foreign banks having more than one agency
52 office in this state, the deposit required shall be deter-
53 mined on an aggregate basis for all such agency offices in
54 this state. If securities comprise all or part of the deposit,
55 and interest rate changes or a decline in credit quality of
56 the security results in the depreciation of its market value,
57 the security shall be replaced with an instrument that qual-
58 ifies under subsection (a) of this section or other appropri-
59 ate action shall be taken to ensure the capital equivalency
60 deposit is adequately maintained.

**§31A-8F-29. Voluntary closure of agency or representative
office; application.**

1 (a) No foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall close the office without filing an
4 application with, and obtaining the prior approval of, the
5 commissioner. The failure of an agency or representative
6 office to remain open to the public for business at least six
7 hours per day four days per week (excluding legal holi-
8 days) shall, unless previous approval for lesser hours has
9 been granted by the commissioner, constitute a closing,
10 and may result in a suspension or revocation of license.

11 (b) If the commissioner finds, with respect to an appli-
12 cation by a foreign bank under this section, that the clos-
13 ing of the office will not be substantially detrimental to the
14 public convenience and advantage, the commissioner shall
15 approve the application. If the commissioner finds other-
16 wise, he or she shall deny the application.

17 (c) Whenever an application by a foreign bank under
18 this section has been approved and all conditions prece-
19 dent to the closing have been fulfilled, such foreign bank
20 may close the office and shall promptly thereafter surren-
21 der to the commissioner the license which authorized the
22 foreign bank to maintain the office.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

Article

- 5. General Provisions as to Fiduciaries.
- 10. Guardians and Wards Generally.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state, nor any bank-
3 ing institution which does not maintain a main office or
4 branch office within this state nor any corporation having
5 its principal office or place of business outside this state,
6 may be appointed or act as executor, administrator, cura-
7 tor, testamentary guardian, guardian or conservator in this
8 state, except that:

9 (1) An individual who is a nonresident of this state
10 may be appointed ancillary administrator of a nonresident
11 decedent's assets situate in this state if such nonresident
12 individual is lawfully acting as executor in said decedent's
13 state of domicile and submits letters of probate authenti-
14 cated by the probate authorities of the decedent's state of
15 domicile to the clerk of the county commission of any
16 county of this state wherein ancillary administration is
17 sought;

18 (2) An individual who is a nonresident of this state
19 may be appointed ancillary administrator of a nonresident
20 decedent's assets situate in this state if such nonresident
21 individual is acting as administrator in said decedent's
22 state of domicile and submits letters of administration
23 authenticated by the probate authorities of the decedent's
24 state of domicile to the clerk of the county commission of
25 any county of this state wherein ancillary administration is
26 sought;

27 (3) An individual who is a nonresident of this state
28 may be appointed and act as testamentary guardian of a
29 nonresident infant and thereby exercise dominion and

30 control over such nonresident infant's assets situate in this
31 state upon submission of authenticated documentation that
32 such nonresident testamentary guardian was so appointed
33 at the place of domicile of the nonresident infant. Such
34 authenticated documentation shall be submitted to the
35 clerk of the county commission of any county of this state
36 wherein assets belonging to such nonresident infant are
37 situate;

38 (4) An individual who is a nonresident of this state and
39 who is named executor by a resident decedent may quali-
40 fy and act as executor in this state;

41 (5) An individual who is a nonresident of this state
42 may be appointed and act as administrator of a resident
43 decedent's assets in this state if appointed in accordance
44 with the provisions of section four, article one of this
45 chapter;

46 (6) An individual who is a nonresident of this state
47 may be appointed as the testamentary guardian of a resi-
48 dent infant if appointed in accordance with the provisions
49 of section one, article ten of this chapter; and

50 (7) An individual who is a nonresident of this state
51 may be appointed as guardian or conservator of a resident
52 incompetent: *Provided*, That such appointment is made in
53 accordance with the provisions of article two, chapter
54 forty-four-a of this code and if such nonresident individu-
55 al may otherwise qualify as guardian or conservator.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the
60 value of the personal assets and double the value of any
61 real property authorized to be sold or double the value of
62 any rents and profits from any real property which the
63 nonresident individual is authorized to receive, except that:

64 (1) Any nonresident individual enumerated in subsec-
65 tion (a) of this section who is the spouse, parent, sibling,
66 lineal descendent or sole beneficiary of a resident or non-
67 resident decedent shall give bond with corporate surety

68 thereon qualified to do business in this state, with such
69 penalty as may be fixed pursuant to the provisions of
70 section seven, article one of this chapter, as approved by
71 the clerk of the county commission;

72 (2) Where the terms of a decedent's will directs that a
73 nonresident individual enumerated in subdivisions (1), (3),
74 (4) and (6), subsection (a) of this section named in a dece-
75 dent's will shall not give bond or give bond at a specified
76 amount, it shall not be required or shall be required only
77 to the extent required under the terms of the will, unless at
78 the time the will is admitted to record or at any time subse-
79 quently, on the application of any person interested, or
80 from the knowledge of the commission or clerk admitting
81 the will to record, it is deemed proper that greater bond be
82 given.

83 (c) When a nonresident individual is appointed as
84 executor, administrator, testamentary guardian, guardian
85 or conservator pursuant to the provisions of subsection (a)
86 of this section, said individual thereby constitutes the clerk
87 of the county commission wherein such appointment was
88 made as his true and lawful attorney-in-fact upon whom
89 may be served all notices and process in any action or
90 proceeding against him as executor, administrator, testa-
91 mentary guardian, guardian or conservator or with respect
92 to such estate, and such qualification shall be a manifesta-
93 tion of said nonresident individual's agreement that any
94 notice or process, which is served in the manner hereinaf-
95 ter provided in this subsection, shall be of the same legal
96 force and validity as though such nonresident was person-
97 ally served with notice and process within this state. Ser-
98 vice shall be made by leaving the original and two copies
99 of any notice or process together with a fee of five dollars
100 with the clerk of such county commission. The fee of five
101 dollars shall be deposited with the county treasurer. Such
102 clerk shall thereupon endorse upon one copy thereof the
103 day and hour of service and shall file such copy in his
104 office and such service shall constitute personal service
105 upon such nonresident: *Provided*, That the other copy of
106 such notice or process shall be forthwith sent by registered
107 or certified mail, return receipt requested, deliver to ad-
108 dressee only, by said clerk or to such nonresident at the

109 address last furnished by him to said clerk and either: (1)
110 Such nonresident's return receipt signed by him; or (2)
111 the registered or certified mail bearing thereon the stamp
112 of the post office department showing that delivery there-
113 fore was refused by such nonresident is appended to the
114 original notice or process filed therewith in the office of
115 the clerk of the county commission from which such no-
116 tice or process was issued. No notice or process may be
117 served on such clerk of the county commission or accept-
118 ed by him less than thirty days before the return date
119 thereof. The clerk of such county commission shall keep
120 a record in his office of all such notices and processes and
121 the day and hour of service thereof. The provision for
122 service of notice or process herein provided is cumulative
123 and nothing herein contained shall be construed as bar to
124 service by publication where proper or the service of no-
125 tice or process in any other lawful mode or manner.

126 (d) The personal estate of a resident decedent, infant
127 or incompetent may not be removed from this state until
128 the inventory or appraisal of that resident decedent's,
129 infant's, or incompetent's assets have been filed and any
130 new or additional bond required to satisfy the penalty
131 specified in subsection (b) of this section has been fur-
132 nished. The liability of a nonresident executor, adminis-
133 trator, testamentary guardian, guardian or conservator and
134 of any such surety shall be joint and several and a civil
135 action on any such bond may be instituted and maintained
136 against the surety, notwithstanding any other provision of
137 this code to the contrary, even though no civil action has
138 been instituted against such nonresident.

139 (e) Any such nonresident who removes from this state
140 assets administered in and situate in this state without com-
141 plying with the provisions of this section, the provisions of
142 article eleven of this chapter or any other requirement
143 pertaining to fiduciaries generally, shall be guilty of a
144 misdemeanor and, upon conviction thereof, shall be fined
145 not more than one thousand dollars or confined in the
146 county jail for not more than one year, or, in the discre-
147 tion of the court, by both such fine and imprisonment.

148 (f) If a nonresident appointed pursuant to subsection
149 (a) of this section fails or refuses to file an accounting
150 required by this chapter, and the failure continues for two
151 months after the due date, he may, upon notice and hear-
152 ing, be removed or subjected to any other appropriate
153 order by the county commission, and if his failure or
154 refusal to account continues for six months, he shall be
155 removed by the county commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-7. Management of ward's estate; maintenance, education and custody; duration of guardianship; settlement.

1 Every guardian who is appointed as aforesaid, and
2 gives bond when it is required, shall have the possession,
3 care and management of his ward's estate, real and per-
4 sonal, and out of the proceeds of such estate shall provide
5 for his maintenance and education; and shall have also,
6 except as otherwise provided in this article, the custody of
7 his ward. Unless the guardian shall die, be removed or
8 resign his trust (and the court before which he qualified
9 may allow him to resign), he shall continue in office until
10 his ward shall attain the age of eighteen years notwith-
11 standing the ward may marry before that time, or, in the
12 case of a testamentary guardianship, until the termination
13 of the period limited therefor. At the expiration of his
14 trust, he shall deliver and pay all the estate and money in
15 his hands, or with which he is chargeable, to the person or
16 persons entitled thereto. But the father or mother of any
17 minor child or children shall be entitled to the custody of
18 the person of such child or children, and to the care of his
19 or their education. If living together, the father and moth-
20 er shall be the joint guardians of the person of their minor
21 child or children, with equal powers, rights and duties in
22 respect to the custody, control, services, earnings and care
23 of the education of such minor child or children; and
24 neither the father nor the mother shall have any right
25 paramount to that of the other in respect to such custody,
26 control, services or earnings and care of the education of
27 such minor child or children. If the father and mother be
28 living apart, the court to which application is made from
29 the appointment of a guardian, or before which any such
30 matter comes in question, shall appoint, as guardian of the

31 person of the minor child or children of such father and
32 mother, that parent who is, in the court's opinion, best
33 suited for the trust, considering the welfare and best inter-
34 ests of such minor child or children. No corporation or
35 trust company shall be guardian of any minor child or
36 children be entitled to the custody, control, services, earn-
37 ings and care of the education of such minor child or
38 children, and when any corporation or trust company is
39 guardian of the estate of any minor child or children and
40 neither of the parents of such child or children is living, or
41 is a suitable person to act as guardian of the person of
42 such child or children, then the court shall appoint a
43 guardian of the person of such child or children who shall
44 be entitled to the custody, control, services, earnings and
45 care of the education of such minor child or children.
46 Any corporation or trust company appointed as guardian
47 of the estate of any minor child or children shall, unless
48 for such minor child or children a nonresident of this state
49 may be appointed guardian, be a corporation organized
50 under the laws of this state and doing business in this state,
51 or an authorized banking institution, defined as one au-
52 thorized to exercise trust and fiduciary powers within this
53 state under section fourteen, article four, chapter
54 thirty-one-a of this code.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-11. Guardian or conservator who resides out of state to designate resident agent.

1 A guardian or conservator who is or who later be-
2 comes a nonresident of this state shall file with the clerk of
3 the circuit court in the county in which the proceeding is
4 pending or where he or she was appointed guardian/con-
5 servator a designation of an agent residing in this state to
6 accept service of process. Such filing shall be made
7 promptly following the change of residence. No bank
8 authorized to execute trust powers or engage in trust busi-
9 ness in this state shall be considered to be a nonresident of
10 this state for purposes of this section regardless of the
11 location of the main office of the bank.

CHAPTER 73

(Com. Sub. for S. B. 366—By Senators Manchin, Helmick, Blatnik, Chafin, Craig, Dittmar, Sharpe, Wagner, Wiedebusch, Wooton, Kimble, Scott and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

✓ ACT to repeal article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eight, article two of said chapter; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact section two, article seven of said chapter; to amend and reenact section twelve-a, article eight of said chapter; to amend and reenact sections one hundred two and one hundred three, article one, chapter forty-six-a of said code; to amend and reenact sections one hundred four and one hundred eleven, article three of said chapter; to amend and reenact sections one hundred one, one hundred two, one hundred three, one hundred four, one hundred five, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve and one hundred thirteen, article four of said chapter; to further amend said article by adding thereto a new section, designated section one hundred ten-a; to amend and reenact sections one hundred one and one hundred three, article five of said chapter; to amend and reenact sections one hundred three and one hundred fifteen, article seven of said chapter; to amend and reenact section one hundred one, article eight of said chapter; and to amend and reenact section five-d, article six, chapter forty-seven of said code, all relating to the supervision and regulation of banking institutions; eliminating separate licensing requirements for supervised lenders and industrial loan companies; creating a license requirement for regulated consumer lenders; defining and redefining terms; making certain technical revisions consistent with new terminology; removing obsolete and conflicting language; establishing the annual assessment for regulated consumer lenders; establishing limitations on finance charges; requiring the rebate of portion of unearned prepaid finance charges; requiring the registration and licensing of consumer lending offices other than mortgage loan companies operating in West

Virginia; setting forth licensure requirements for regulated consumer lenders and establishing a fee therefor; when license may be revoked, suspended or forfeited; licensee to maintain records and file annual report with commissioner; providing for the examination by the commissioner of loans, business and records of every licensee at least every eighteen months; limiting authorized finance charges for regulated consumer lenders; setting forth restrictions on security interests; permissible conduct other than making loans; prohibiting certain conduct; substantial benefit required when refinancing at higher rate; exceptions; providing for the continuation of and for the combination of certain licenses; setting forth civil and criminal liability; establishing civil and criminal penalties; providing for the division of administrative powers to enforce consumer credit and protection laws; notification to state tax commissioner; establishing operative date of legislative enactment; authorizing certain deductions upon rebate of unearned finance charges; and clarifying definition of "loan or credit investigation fees".

Be it enacted by the Legislature of West Virginia:

That article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five and six, article one, chapter thirty-one-a of said code be amended and reenacted; that sections five and eight, article two of said chapter be amended and reenacted; that section twenty-two, article four of said chapter be amended and reenacted; that section two, article seven of said chapter be amended and reenacted; that section twelve-a, article eight of said chapter be amended and reenacted; that sections one hundred two and one hundred three, article one, chapter forty-six-a of said code be amended and reenacted; that sections one hundred four and one hundred eleven, article three of said chapter be amended and reenacted; that sections one hundred one, one hundred two, one hundred three, one hundred four, one hundred five, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve and one hundred thirteen, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one hundred ten-a; that sections one hundred one and one hundred three, article five of said chapter be amended and reenacted; that sections one hundred three and one hundred fifteen, article seven of

said chapter be amended and reenacted; that section one hundred one, article eight of said chapter be amended and reenacted; and that section five-d, article six, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

47. Regulation of Trade.

CHAPTER 31A. BANKS AND BANKING.

Article

1. General Provisions and Definitions.

2. Division of Banking.

4. Banking Institutions and Services Generally.

7. Regulation of Failing Financial Institutions.

8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

§31A-1-6. Deposit insurance required for banking and other depository institutions.

§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

1 The state of West Virginia, counties, municipalities,
2 political subdivisions and agencies and instrumentalities of
3 any of them, fiduciaries, building and loan associations,
4 regulated consumer lenders, insurance companies, fraternal
5 benefit societies and other persons lawfully engaging
6 in the lending and investing business and services shall
7 have and are hereby authorized and empowered to exer-
8 cise the same lawful rights and privileges as are banking
9 institutions under provisions of sections twenty-seven,
10 twenty-eight and twenty-nine, article four of this chapter.

§31A-1-6. Deposit insurance required for banking and other depository institutions.

1 All credit unions established pursuant to article ten,
2 chapter thirty-one of this code and all banking institutions
3 governed by the provisions of this chapter shall qualify
4 for and obtain federal deposit insurance, or shall obtain
5 insurance as approved by the commissioner of banking in
6 an amount equal to that provided by the federal deposit
7 insurance corporation for eligible institutions.

8 Each such institution which fails to obtain deposit
9 insurance as required herein by the first day of July, one
10 thousand nine hundred seventy-eight, shall be prohibited
11 from conducting any business as a lending institution until
12 such insurance is obtained, except that the commissioner
13 may grant continuances for compliance with this section
14 for any institution showing good cause for such a continu-
15 ance.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amend-
ments to charter, bylaws and foreign statutes.

§31A-2-8. Commissioner's assessments and examination fund; assess-
ments, costs and expenses of examinations; collection.

***§31A-2-5. Certificate or license to engage in business; filing
of amendments to charter, bylaws and foreign
statutes.**

1 (a) No person shall engage or continue in the busi-
2 ness of a financial institution in this state without a license
3 or certificate to do so issued in accordance with this sec-
4 tion, or other applicable law, which license or certificate
5 remains unsuspended, unexpired and unrevoked except
6 that a corporation which proposes to apply for such li-
7 cense or certificate may secure its charter, adopt bylaws,
8 elect its directors and officers and perfect its organization.

9 (b) No person shall operate an office in West Virgin-
10 ia which regularly makes consumer loans in this state
11 other than first mortgage loans unless they are a financial
12 institution, licensed pawnbroker or a federally insured
13 depository institution authorized and qualified to do busi-
14 ness in this state. The purchase of consumer paper does
15 not constitute the making of consumer loans for the pur-

*Clerk's Note: This section was also amended by S. B. 280 (Chapter 72)
and S. B. 326 (Chapter 70), which passed prior to this act.

16 poses of this subsection, unless the purchase is made by a
17 business affiliated with the credit provider pursuant to a
18 standing arrangement.

19 (c) Application for such license or certificate shall be
20 upon such forms and contain such information as the
21 commissioner may prescribe. In connection with such
22 applications every corporate financial institution shall file
23 a certified copy of its charter and bylaws, a statement as to
24 the amount of capital that has been subscribed and paid in
25 and a statement of its financial condition duly verified
26 under oath by its president or vice president and its cashier
27 or secretary as the case may be and every financial institu-
28 tion other than a corporation shall file a verified statement
29 of its financial condition.

30 (d) If the application be that of a West Virginia state
31 banking institution, the commissioner of banking shall
32 examine the information, documents and statements sub-
33 mitted and, if he finds that such banking institution has
34 adopted bylaws which provide practical, safe, just and
35 equitable rules and methods for the management of its
36 business and it has complied in all respects with the provi-
37 sions of this chapter and other applicable laws, he shall
38 issue to it a certificate or license permitting it to engage in
39 business. If the application be that of a financial institu-
40 tion other than a banking institution, the commissioner of
41 banking shall examine the information, documents and
42 statements submitted, and, if he finds that such financial
43 institution has adequate resources for the proposed busi-
44 ness and has provided practical, safe, just and equitable
45 rules and methods for the management of its business, and
46 it has complied in all respects with the provisions of this
47 chapter and other applicable laws, and that the public
48 convenience and advantage will be promoted by the issu-
49 ance of a certificate or license thereto, he shall issue to it a
50 certificate or license permitting it to engage in business.
51 Such certificate or license shall be preserved and the origi-
52 nal or copy thereof displayed in all the places of business
53 of such banking or other financial institution located in
54 this state.

55 (e) In addition to the requirements of subsections (b)
56 and (c) of this section, every foreign corporation applying

57 for a license or certificate to engage in the business of a
58 financial institution in this state, other than an out-of-state
59 banking institution, shall file with the commissioner of
60 banking a copy of the bylaws under which it operates,
61 together with a cite to the statutes of the jurisdiction where
62 it is organized which pertain to its organization and pow-
63 ers and the conduct of its business. The commissioner
64 shall examine the information, documents and statements
65 submitted by such foreign corporation and if he finds that
66 they provide practical, safe, just and equitable rules and
67 methods for the management of the business of the corpo-
68 ration, that it has adequate resources for the proposed
69 business and it has complied in all respects with the provi-
70 sions of this chapter and other applicable laws, and that the
71 public convenience and advantage will be promoted by
72 the issuance of a license or certificate thereto, he shall
73 issue to such corporation a certificate or license permitting
74 it to engage in business in this state, which certificate or
75 license shall authorize such corporation to engage in the
76 business of the type of financial institution specified there-
77 in, until the thirtieth day of the following June. Thereafter
78 a new certificate or license shall be secured annually by
79 any such foreign corporation, except where annual renew-
80 al of the license or certificate is specifically not required
81 for the type of institution involved. The fee for the origi-
82 nal and each additional license or certificate issued to a
83 foreign corporation shall be one hundred dollars, unless
84 otherwise provided by statute. A verified statement of the
85 financial condition of every such foreign corporation shall
86 be filed with the commissioner before the issuance of each
87 annual certificate or license. Such certificate or license
88 shall be preserved and the original or copy thereof dis-
89 played in the West Virginia place of business of such cor-
90 poration.

91 (f) Unless the institution is a federally insured depos-
92 itory institution or it is otherwise provided for by statute, a
93 new certificate or license shall be secured annually by all
94 domestic state financial institutions, and the fee for the
95 original and each additional license or certificate shall be
96 one hundred dollars.

97 (g) No amendment of the charter or bylaws of any
98 domestic or foreign corporation, other than an out-of-state
99 banking institution, engaging in business in this state as a
100 financial institution shall become effective until the pro-
101 posed change shall have been submitted to and approved
102 by the commissioner of banking; but, if the commissioner
103 does not disapprove such proposed change within twenty
104 days after it is received by him, it shall be deemed to have
105 been approved.

106 (h) Unless specifically provided for by this chapter,
107 nothing contained in this code shall authorize any person
108 to engage in the banking business in this state except cor-
109 porations chartered to conduct a banking business under
110 the laws of West Virginia and which hold a license or cer-
111 tificate to do so issued under this section or associations
112 authorized to conduct a banking business in West Virginia
113 under the laws of the United States and having their prin-
114 cipal place of business in this state.

**§31A-2-8. Commissioner's assessments and examination fund;
assessments, costs and expenses of examinations;
collection.**

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or other
4 necessary expenses incurred by the commissioner in ad-
5 ministering such duties shall be paid to the commissioner
6 and paid by the commissioner to the treasurer of the state
7 to the credit of a special revenue account to be known as
8 the "Commissioner's Assessment and Examination Fund"
9 which is hereby established. The assessments and fees
10 paid into this account shall be appropriated by law and
11 used to pay the costs and expenses of the division of
12 banking and all incidental costs and expenses necessary
13 for its operations. At the end of each fiscal year, if the
14 fund contains a sum of money in excess of twenty percent
15 of the appropriated budget of the division of banking, the
16 amount of the excess shall be transferred to the general
17 revenue fund of the state. The Legislature may appropri-
18 ate money to start the special revenue account.

19 (b) The commissioner of banking shall charge and
 20 collect from each state banking institution or other finan-
 21 cial institution or bank holding company and pay into a
 22 special revenue account in the state treasury for the divi-
 23 sion of banking assessments as follows:

24 (1) For each state banking institution, a semiannual
 25 assessment payable on the first day of January and the
 26 first day of July, each year, computed upon the total assets
 27 of the banking institution shown on the report of condi-
 28 tion of the banking institution filed as of the preceding
 29 thirtieth day of June and the thirty-first day of December,
 30 respectively, as follows:

31	Total Assets				
32	But Not			Of Excess	
33	Over	Over	This	Plus	Over
34	Million	Million	Amount		Million
35	\$ 0	\$ 2	\$ 0	.001645020	0
36	2	20	3,290	.000205628	2
37	20	100	6,991	.000164502	20
38	100	200	20,151	.000106926	100
39	200	1,000	30,844	.000090476	200
40	1,000	2,000	103,225	.000074026	1,000
41	2,000	6,000	177,251	.000065801	2,000
42	6,000	20,000	440,454	.000055988	6,000
43	20,000	40,000	1,224,292	.000052670	20,000

44 (2) For each regulated consumer lender an annual
 45 assessment payable on the first day of July, each year,
 46 computed upon the total outstanding gross loan balances
 47 and installment sales contract balances net of unearned
 48 interest of the regulated consumer lender shown on the
 49 report of condition of the regulated consumer lender as of
 50 the preceding thirty-first day of December, respectively, as
 51 follows:

52	Total Outstanding Balances				
53	But Not			Of Excess	
54	Over	Over	This	Plus	Over
			Amount		

55	\$	0	\$ 1,000,000	800	-	-
56		1,000,000	5,000,000	800	.000400	1,000,000
57		5,000,000	10,000,000	2,400	.000200	5,000,000
58		10,000,000	-	4,200	.000100	10,000,000

59 If a regulated consumer lender's records or documents
 60 are maintained in more than one location in this state, then
 61 eight hundred dollars may be added to the assessment for
 62 each additional location.

63 (3) For each credit union, an annual assessment as
 64 provided for in section six, article ten, chapter thirty-one
 65 of this code as follows:

66	Total Assets				
67		But Not	This		Of Excess
68	Over	Over	Amount	Plus	Over
69	\$ 0	\$ 100,000	100	-	-
70	100,000	500,000	300	-	-
71	500,000	1,000,000	500	-	-
72	1,000,000	5,000,000	500	.000400	1,000,000
73	5,000,000	10,000,000	2,100	.000200	5,000,000
74	10,000,000	-	3,100	.000100	10,000,000

75 (4) For each bank holding company, an annual assess-
 76 ment as provided for in section five, article eight-a of this
 77 chapter. The annual assessment shall not exceed ten dol-
 78 lars per million dollars in deposits rounded off to the
 79 nearest million dollars.

80 (c) The commissioner shall each December and each
 81 June prepare and send to each state banking institution a
 82 statement of the amount of the assessment due. The com-
 83 missioner shall, further, each June, prepare and send to
 84 each regulated consumer lender and each state credit
 85 union a statement of the amount of the assessment due.
 86 The commissioner shall, annually, during the month of
 87 January, prepare and send to each bank holding company
 88 a statement of the amount of the assessment due.

89 Assessments shall be prescribed annually, not later
 90 than the fifteenth day of June, by written order of the

91 commissioner, but shall not exceed the maximums as set
92 forth in subsection (b) of this section. In setting the as-
93 sessments the primary consideration shall be the amount
94 appropriated by the Legislature for the division of bank-
95 ing for the corresponding annual period. Reasonable
96 notice of the assessments shall be made to all interested
97 parties. All orders of the commissioner for the purpose of
98 setting assessments are not subject to the provisions of the
99 West Virginia administrative procedures act, under chapter
100 twenty-nine-a of this code.

101 (d) For making an examination within the state of any
102 other financial institution for which assessments are not
103 provided by this code, the commissioner of banking shall
104 charge and collect from such other financial institution
105 and pay into the special revenue account for the division
106 of banking the actual and necessary costs and expenses
107 incurred in connection therewith, as fixed and determined
108 by the commissioner.

109 (e) If the records of an institution are located outside
110 this state, the institution at its option shall make them avail-
111 able to the commissioner at a convenient location within
112 the state, or pay the reasonable and necessary expenses for
113 the commissioner or his or her representatives to examine
114 them at the place where they are maintained. The com-
115 missioner may designate representatives, including compa-
116 rable officials of the state in which the records are located,
117 to inspect them on his or her behalf.

118 (f) The commissioner of banking may maintain an
119 action for the recovery of all assessments, costs and ex-
120 penses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER- ALLY.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

1 Each state banking institution shall at all times main-
2 tain on hand as a reserve in lawful money of the United
3 States of America an amount equal to at least seven per-
4 cent of the aggregate of all of its deposits which are sub-

5 ject to withdrawal on demand and three percent of its time
6 deposits. Whenever the commissioner of banking shall
7 determine that the maintenance of sound banking practic-
8 es or the prevention of injurious credit expansion or con-
9 traction makes such action advisable, he may by rule from
10 time to time change such requirements as to reserves
11 against demand or time deposits, or both, but the reserves
12 so prescribed shall in no event be less than those specified
13 in this section nor more than twice those specified. When-
14 ever such reserve shall fall below that required, the institu-
15 tion shall not thereafter make any new loan or investment
16 until the required reserve shall be restored. For the pur-
17 pose of computing such reserve, all deposits requiring
18 notice of thirty days or more for withdrawal and time
19 certificates of deposit and Christmas savings shall be
20 deemed time deposits, and all checking accounts, certified
21 checks, cashier's checks, demand certificates of deposit
22 and balances due other banks shall be deemed demand
23 deposits. But in lieu of lawful money on hand, four fifths
24 of such reserve may consist of balances payable on de-
25 mand from any national or state bank doing business in
26 this state or solvent banking institutions in other states.
27 The reserve balances required herein shall be computed
28 on the basis of average daily net deposit balances and
29 average daily currency and coin during biweekly periods.
30 The required reserve balance of each bank shall be com-
31 puted at the close of business each day based upon its net
32 deposit balances and currency and coin at the opening of
33 business on the same day. The biweekly period shall end
34 at the close of business on days to be fixed by the com-
35 missioner in his promulgated rules. When, however, the
36 reserve computation period ends with a nonbusiness day,
37 or two or more consecutive nonbusiness days, such non-
38 business day or days may, at the option of the banking
39 institution, and whether or not it had a deficiency in re-
40 serve balances in such computation period, be included in
41 the next biweekly computation period.

42 The commissioner shall, by rule and regulation, re-
43 quire regular reports from such banking institutions,
44 which reports shall be submitted at such times and contain
45 such information as will enable the commissioner to ade-

46 quately supervise the maintenance of reserves under this
47 section. Penalties for any deficiencies in the required re-
48 serves of any banking institution shall be assessed monthly
49 by the commissioner on the basis of average daily defi-
50 ciencies during each of the computation periods ending in
51 the preceding calendar month. Such penalties shall be
52 assessed at a rate of two percent per annum above the
53 lowest rate applicable to borrowings by member banks
54 from the federal reserve bank of the district in which such
55 deficient institution is located on the first day of the calen-
56 dar month in which the deficiencies occurred. Such pen-
57 alties shall be paid by the commissioner into the treasury
58 of the state of West Virginia and credited to the general
59 fund.

60 Compliance on the part of any banking institution
61 with the reserve requirements of the federal reserve act, as
62 amended prior to the thirty-first day of January, one thou-
63 sand nine hundred eighty-one, shall be considered full
64 compliance with the provisions of this section. No such
65 bank may be required to carry or maintain a reserve other
66 than such as required under terms of the federal reserve
67 act, as amended prior to the thirty-first day of January,
68 one thousand nine hundred eighty-one.

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITU- TIONS.

§31A-7-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of bank-
3 ing of West Virginia and any authorized deputy or em-
4 ployee thereof;

5 (b) "Federal law" means all the provisions of Title XII
6 of the United States Code and all rules and regulations
7 promulgated pursuant thereto;

8 (c) "Financial institution" means any bank, building
9 and loan association, industrial bank, regulated consumer
10 lender, credit union and any other person, firm or corpo-
11 ration doing business under the jurisdiction and supervi-
12 sion of the commissioner of banking of West Virginia;

13 (d) A financial institution is "about to be insolvent"
14 when it would be unable to meet the demands of its depos-
15 itors or to make adequate provision for the timely pay-
16 ment of its depositors if it were immediately closed for the
17 purpose of liquidation;

18 (e) A financial institution is "insolvent" when it is un-
19 able to pay its debts to its depositors and other creditors in
20 the ordinary and usual course of business or when it is in a
21 state of balance sheet insolvency; and

22 (f) "Balance sheet insolvency" exists when the assets of
23 a financial institution are less than its liabilities, exclusive
24 of capital. For the purposes of ascertaining balance sheet
25 insolvency, assets shall be valued at their book value, un-
26 less the commissioner of banking determines that the
27 assets are insufficient to meet liabilities within a reasonable
28 time making probable the liquidation of assets; and if any
29 such determination is made, the assets shall be valued at
30 fair market value.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS; PEN-
ALTIES.**

**§31A-8-12a. Banking from mobile units prohibited; prohibi-
tion not to include messenger services; limitation
of messenger services.**

1 It is illegal for any banking institution, building and
2 loan association, or regulated consumer lender to conduct
3 its business in a facility that is a mobile unit not perma-
4 nently attached to the real estate upon which it is located,
5 except that such mobile units may be used as temporary
6 banking quarters pending construction of a permanent
7 bank building on the same or adjacent property thereto if
8 a charter for said bank has previously been approved.
9 This section shall not be construed or interpreted to pro-
10 hibit a financial institution from providing messenger
11 services to its customers by which items are received by
12 mail, armored car service or other courier or delivery
13 service for subsequent deposit: *Provided*, That all such
14 messenger services are confined to the territorial bound-
15 aries of the county in which the principal office of such

16 financial institution is located or within twenty-five miles
17 of the principal office of such financial institution.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article

1. Short Title, Definitions and General Provisions.
3. Finance Charges and Related Provisions.
4. Regulated Consumer Lenders.
5. Civil Liability and Criminal Penalties.
7. Administration.
8. Operative Date and Provisions for Transition.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

§46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.

*§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent
2 articles, in this chapter:

3 (1) "Actuarial method" means the method, defined by
4 rules adopted by the commissioner, of allocating pay-
5 ments made on a debt between principal or amount fi-
6 nanced and loan finance charge or sales finance charge
7 pursuant to which a payment is applied first to the accu-
8 mulated loan finance charge or sales finance charge and
9 the balance is applied to the unpaid principal or unpaid
10 amount financed.

11 (2) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance. A "consumer credit
15 agreement" is an agreement where credit is granted.

16 (3) "Agricultural purpose" means a purpose related to
17 the production, harvest, exhibition, marketing, transporta-
18 tion, processing or manufacture of agricultural products

*Clerk's Note: This section was also amended by H. B. 4371 (Chapter 160), which passed prior to this act.

19 by a natural person who cultivates, plants, propagates or
20 nurtures the agricultural products. "Agricultural products"
21 includes agricultural, horticultural, viticultural and dairy
22 products, livestock, wildlife, poultry, bees, forest products,
23 fish and shellfish, and any products thereof, including
24 processed and manufactured products, and any and all
25 products raised or produced on farms and any processed
26 or manufactured products thereof.

27 (4) "Amount financed" means the total of the follow-
28 ing items to the extent that payment is deferred:

29 (a) The cash price of the goods, services or interest in
30 land, less the amount of any down payment whether made
31 in cash or in property traded in;

32 (b) The amount actually paid or to be paid by the
33 seller pursuant to an agreement with the buyer to dis-
34 charge a security interest in or a lien on property traded
35 in; and

36 (c) If not included in the cash price:

37 (i) Any applicable sales, use, privilege, excise or docu-
38 mentary stamp taxes;

39 (ii) Amounts actually paid or to be paid by the seller
40 for registration, certificate of title or license fees; and

41 (iii) Additional charges permitted by this chapter.

42 (5) "Average daily balance" in a billing cycle for
43 which a sales finance charge or loan finance charge is
44 made is the sum of the amount unpaid each day during
45 that cycle divided by the number of days in that cycle.
46 The amount unpaid on a day is determined by adding to
47 the balance, if any, unpaid as of the beginning of that day
48 all purchases and other debits and deducting all payments
49 and other credits made or received as of that day.

50 (6) The "cash price" of goods, services or an interest in
51 land means the price at which the goods, services or inter-
52 est in land are offered for sale by the seller to cash buyers
53 in the ordinary course of business, and may include: (a)
54 Applicable sales, use, privilege, and excise and documenta-
55 ry stamp taxes; (b) the cash price of accessories or related

56 services such as delivery, installation, servicing, repairs,
57 alterations and improvements; and (c) amounts actually
58 paid or to be paid by the seller for registration, certificate
59 of title or license fees.

60 (7) "Closing costs" with respect to a debt secured by an
61 interest in land include:

62 (a) Fees or premiums for title examination, title insur-
63 ance or similar purposes including surveys;

64 (b) Fees for preparation of a deed, deed of trust, mort-
65 gage, settlement statement or other documents;

66 (c) Escrows for future payments of taxes and insur-
67 ance;

68 (d) Official fees and fees for notarizing deeds and
69 other documents;

70 (e) Appraisal fees; and

71 (f) Credit reports.

72 (8) "Code" means the official code of West Virginia,
73 one thousand nine hundred thirty-one, as amended.

74 (9) "Commercial facsimile transmission" means the
75 electronic or telephonic transmission in the state to a fac-
76 simile device to encourage a person to purchase goods,
77 realty or services.

78 (10) "Commissioner" means the commissioner of
79 banking of West Virginia.

80 (11) "Conspicuous": A term or clause is conspicuous
81 when it is so written that a reasonable person against whom
82 it is to operate ought to have noticed it. Whether a term or
83 clause is conspicuous or not is for decision by the court.

84 (12) "Consumer" means a natural person who incurs
85 debt pursuant to a consumer credit sale or a consumer
86 loan, or debt or other obligations pursuant to a consumer
87 lease.

88 (13) (a) Except as provided in paragraph (b), "con-
89 sumer credit sale" is a sale of goods, services or an interest
90 in land in which:

91 (i) Credit is granted either by a seller who regularly
92 engages as a seller in credit transactions of the same kind
93 or pursuant to a seller credit card;

94 (ii) The buyer is a person other than an organization;

95 (iii) The goods, services or interest in land are pur-
96 chased primarily for a personal, family, household or
97 agricultural purpose;

98 (iv) Either the debt is payable in installments or a sales
99 finance charge is made; and

100 (v) With respect to a sale of goods or services, the
101 amount financed does not exceed forty-five thousand
102 dollars or the sale is of a factory-built home as defined in
103 section two, article fifteen, chapter thirty-seven of this
104 code.

105 (b) "Consumer credit sale" does not include a sale in
106 which the seller allows the buyer to purchase goods or
107 services pursuant to a lender credit card or similar ar-
108 rangement.

109 (14) (a) "Consumer lease" means a lease of goods:

110 (i) Which a lessor regularly engaged in the business of
111 leasing makes to a person, other than an organization, who
112 takes under the lease primarily for a personal, family,
113 household or agricultural purpose;

114 (ii) In which the total of payments under the lease,
115 excluding payments for options to renew or buy, do not
116 exceed forty-five thousand dollars or in which the lease is
117 of a factory-built home as defined in section two, article
118 fifteen, chapter thirty-seven of this code; and

119 (iii) Which is for a term exceeding four months.

120 (b) "Consumer lease" does not include a lease made
121 pursuant to a lender credit card or similar arrangement.

122 (15) "Consumer loan" is a loan made by a person
123 regularly engaged in the business of making loans in
124 which:

125 (a) The debtor is a person other than an organization;

126 (b) The debt is incurred primarily for a personal, fam-
127 ily, household or agricultural purpose;

128 (c) Either the debt is payable in installments or a loan
129 finance charge is made; and

130 (d) Either the principal does not exceed forty-five
131 thousand dollars or the debt is secured by an interest in
132 land or a factory-built home as defined in section two,
133 article fifteen, chapter thirty-seven of this code.

134 (16) "Cosigner" means a natural person who assumes
135 liability for the obligation on a consumer credit sale or
136 consumer loan without receiving goods, services or money
137 in return for the obligation or, in the case of a revolving
138 charge account or revolving loan account of a consumer,
139 without receiving the contractual right to obtain extensions
140 of credit under the account. The term cosigner includes
141 any person whose signature is requested as a condition to
142 granting credit to a consumer or as a condition for for-
143 bearance on collection of a consumer's obligation that is
144 in default. The term cosigner does not include a spouse
145 whose signature is required to perfect a security interest.
146 A person who meets the definition in this paragraph is a
147 "cosigner" whether or not the person is designated as such
148 on the credit obligation.

149 (17) "Credit" means the privilege granted by a creditor
150 to a debtor to defer payment of debt or to incur debt and
151 defer its payment.

152 (18) "Earnings" means compensation paid or payable
153 to an individual or for his account for personal services
154 rendered or to be rendered by him, whether denominated
155 as wages, salary, commission, bonus or otherwise, and
156 includes periodic payments pursuant to a pension, retire-
157 ment or disability program.

158 (19) "Facsimile device" means a machine that receives
159 and copies reproductions or facsimiles of documents or
160 photographs that have been transmitted electronically or
161 telephonically over telecommunications lines.

162 (20) "Federal Consumer Credit Protection Act" means
163 the "Consumer Credit Protection Act" (Public Law 90-321;
164 82 Stat. 146), as amended, and includes regulations issued
165 pursuant to that act.

166 (21) "Goods" includes goods not in existence at the
167 time the transaction is entered into and gift and merchan-
168 dise certificates, but excludes money, chattel paper, docu-
169 ments of title and instruments.

170 (22) "Home solicitation sale" means a consumer credit
171 sale in excess of twenty-five dollars in which the buyer
172 receives a solicitation of the sale at a place other than the
173 seller's business establishment at a fixed location and the
174 buyer's agreement or offer to purchase is there given to
175 the seller or a person acting for the seller. The term does
176 not include a sale made pursuant to a preexisting
177 open-end credit account with the seller in existence for at
178 least three months prior to the transaction, a sale made
179 pursuant to prior negotiations between the parties at the
180 seller's business establishment at a fixed location, a sale of
181 motor vehicles, mobile homes or farm equipment or a sale
182 which may be rescinded under the federal Truth in Lend-
183 ing Act (being Title I of the federal Consumer Credit
184 Protection Act). A sale which would be a home sollicita-
185 tion sale if credit were extended by the seller is a home
186 solicitation sale although the goods or services are paid
187 for, in whole or in part, by a consumer loan in which the
188 creditor is subject to claims and defenses arising from the
189 sale.

190 (23) Except as otherwise provided, "lender" includes
191 an assignee of the lender's right to payment but use of the
192 term does not in itself impose on an assignee any obliga-
193 tion of the lender.

194 (24) "Lender credit card or similar arrangement"
195 means an arrangement or loan agreement, other than a
196 seller credit card, pursuant to which a lender gives a debtor

197 the privilege of using a credit card, letter of credit or other
198 credit confirmation or identification in transactions out of
199 which debt arises:

200 (a) By the lender's honoring a draft or similar order
201 for the payment of money drawn or accepted by the con-
202 sumer;

203 (b) By the lender's payment or agreement to pay the
204 consumer's obligations; or

205 (c) By the lender's purchase from the obligee of the
206 consumer's obligations.

207 (25) "Loan" includes:

208 (a) The creation of debt by the lender's payment of or
209 agreement to pay money to the consumer or to a third
210 party for the account of the consumer other than debts
211 created pursuant to a seller credit card;

212 (b) The creation of debt by a credit to an account with
213 the lender upon which the consumer is entitled to draw
214 immediately;

215 (c) The creation of debt pursuant to a lender credit
216 card or similar arrangement; and

217 (d) The forbearance of debt arising from a loan.

218 (26) (a) "Loan finance charge" means the sum of: (i)
219 All charges payable directly or indirectly by the debtor
220 and imposed directly or indirectly by the lender as an
221 incident to the extension of credit, including any of the
222 following types of charges which are applicable: Interest
223 or any amount payable under a point, discount or other
224 system of charges, however denominated, premium or
225 other charge for any guarantee or insurance protecting the
226 lender against the consumer's default or other credit loss;
227 and (ii) charges incurred for investigating the collateral or
228 credit worthiness of the consumer or for commissions or
229 brokerage for obtaining the credit, irrespective of the
230 person to whom the charges are paid or payable, unless
231 the lender had no notice of the charges when the loan was
232 made. The term does not include charges as a result of

233 default, additional charges, delinquency charges or deferral
234 charges.

235 (b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant
236 to a lender credit card or similar arrangement, and the
237 purchase or satisfaction is made at less than the face
238 amount of the obligation, the discount is not part of the
239 loan finance charge.
240

241 (27) "Merchandise certificate" or "gift certificate"
242 means a writing issued by a seller or issuer of a seller credit
243 card, not redeemable in cash and usable in its face
244 amount in lieu of cash in exchange for goods or services.

245 (28) "Official fees" means:

246 (a) Fees and charges prescribed by law which actually
247 are or will be paid to public officials for determining the
248 existence of or for perfecting, releasing, terminating or
249 satisfying a security interest related to a consumer credit
250 sale or consumer loan; or

251 (b) Premiums payable for insurance or fees escrowed
252 in a special account for the purpose of funding
253 self-insurance or its equivalent in lieu of perfecting a security
254 interest otherwise required by the creditor in connection
255 with the sale, lease or loan, if such premium or fee
256 does not exceed the fees and charges described in paragraph (a) of this subdivision which would otherwise be
257 payable.
258

259 (29) "Organization" means a corporation, government
260 or governmental subdivision or agency, trust, estate, partnership, cooperative or association.
261

262 (30) "Payable in installments" means that payment is
263 required or permitted by agreement to be made in: (a)
264 Two or more periodic payments, excluding a down payment,
265 with respect to a debt arising from a consumer credit
266 sale pursuant to which a sales finance charge is made; (b)
267 four or more periodic payments, excluding a down payment,
268 with respect to a debt arising from a consumer credit
269 sale pursuant to which no sales finance charge is made; or
270 (c) two or more periodic payments with respect to a debt

271 arising from a consumer loan. If any periodic payment
272 other than the down payment under an agreement requir-
273 ing or permitting two or more periodic payments is more
274 than twice the amount of any other periodic payment,
275 excluding the down payment, the consumer credit sale or
276 consumer loan is "payable in installments".

277 (31) "Person" or "party" includes a natural person or
278 an individual, and an organization.

279 (32) "Person related to" with respect to an individual
280 means: (a) The spouse of the individual; (b) a brother,
281 brother-in-law, sister or sister-in-law of the individual; (c)
282 an ancestor or lineal descendant of the individual or his
283 spouse; and (d) any other relative, by blood or marriage,
284 of the individual or his spouse who shares the same home
285 with the individual. "Person related to" with respect to an
286 organization means: (a) A person directly or indirectly
287 controlling, controlled by or under common control with
288 the organization; (b) an officer or director of the organi-
289 zation or a person performing similar functions with re-
290 spect to the organization or to a person related to the or-
291 ganization; (c) the spouse of a person related to the orga-
292 nization; and (d) a relative by blood or marriage of a
293 person related to the organization who shares the same
294 home with him.

295 (33) "Precomputed loan". A loan, refinancing or
296 consolidation is "precomputed" if:

297 (A) The debt is expressed as a sum comprising the
298 principal and the amount of the loan finance charge com-
299 puted in advance; or

300 (B) The loan is expressed in terms of the principal
301 amount; the loan installment payments are a scheduled,
302 fixed amount including principal and interest and assume
303 payment on the installment due date; and interest pay-
304 ments will not vary or result in an adjustment during the
305 term of the loan or at its final payment as a result of the
306 actual installment payment dates.

307 (34) "Precomputed sale". A sale, refinancing or con-
308 solidation is "precomputed" if:

309 (A) The debt is expressed as a sum comprising the
310 amount financed and the amount of the sales finance
311 charge computed in advance; or

312 (B) The debt is expressed in terms of the principal
313 amount; the debt installment payments are a scheduled,
314 fixed amount including principal and interest and assume
315 payment on the installment due date; and interest pay-
316 ments will not vary or result in an adjustment during the
317 term of the debt or at its final payment as a result of the
318 actual installment payment dates.

319 (35) "Presumed" or "presumption" means that the trier
320 of fact must find the existence of the fact presumed unless
321 and until evidence is introduced which would support a
322 finding of its nonexistence.

323 (36) "Principal" of a loan means the total of:

324 (a) The net amount paid to, receivable by or paid or
325 payable for the account of the debtor;

326 (b) The amount of any discount excluded from the
327 loan finance charge; and

328 (c) To the extent that payment is deferred:

329 (i) Amounts actually paid or to be paid by the lender
330 for registration, certificate of title or license fees if not
331 included in paragraph (a) of this subdivision; and

332 (ii) Additional charges permitted by this chapter.

333 (37) "Regulated consumer lender" means a person
334 authorized to make or take assignments of regulated con-
335 sumer loans.

336 (38) "Regulated consumer loan" means a consumer
337 loan, including a loan made pursuant to a revolving loan
338 account, in which the rate of the loan finance charge ex-
339 ceeds eighteen percent per year as determined according
340 to the actuarial method, except where the loan qualifies for
341 federal law preemption from state interest rate limitations,
342 including federal law bank parity provisions, or where the
343 lender is specifically permitted by state law other than
344 article four of this chapter to make the loan at that rate

345 without a requirement the lender hold a regulated con-
346 sumer lender license.

347 (39) "Revolving charge account" means an agreement
348 between a seller and a buyer by which: (a) The buyer
349 may purchase goods or services on credit or a seller credit
350 card; (b) the balances of amounts financed and the sales
351 finance and other appropriate charges are debited to an
352 account; (c) a sales finance charge if made is not
353 precomputed but is computed periodically on the balances
354 of the account from time to time; and (d) there is the priv-
355 ilege of paying the balances in installments.

356 (40) "Revolving loan account" means an arrangement
357 between a lender and a consumer including, but not limit-
358 ed to, a lender credit card or similar arrangement, pursuant
359 to which: (a) The lender may permit the consumer to
360 obtain loans from time to time; (b) the unpaid balances of
361 principal and the loan finance and other appropriate
362 charges are debited to an account; (c) a loan finance
363 charge if made is not precomputed but is computed peri-
364 odically on the outstanding unpaid balances of the princi-
365 pal of the consumer's account from time to time; and (d)
366 there is the privilege of paying the balances in install-
367 ments.

368 (41) "Sale of goods" includes any agreement in the
369 form of a bailment or lease of goods if the bailee or lessee
370 agrees to pay as compensation for use a sum substantially
371 equivalent to or in excess of the aggregate value of the
372 goods involved and it is agreed that the bailee or lessee
373 will become, or for no other or a nominal consideration
374 has the option to become, the owner of the goods upon
375 full compliance with his obligations under the agreement.

376 (42) "Sale of an interest in land" includes a lease in
377 which the lessee has an option to purchase the interest and
378 all or a substantial part of the rental or other payments
379 previously made by him are applied to the purchase price.

380 (43) "Sale of services" means furnishing or agreeing to
381 furnish services and includes making arrangements to
382 have services furnished by another.

383 (44) "Sales finance charge" means the sum of: (a) All
384 charges payable directly or indirectly by the buyer and
385 imposed directly or indirectly by the seller or issuer of a
386 seller credit card as an incident to the extension of credit,
387 including any of the following types of charges which are
388 applicable: Time-price differential, however denominated,
389 including service, carrying or other charge, premium or
390 other charge for any guarantee or insurance protecting the
391 seller against the buyer's default or other credit loss; and
392 (b) charges incurred for investigating the collateral or
393 credit worthiness of the buyer or for commissions or bro-
394 kerage for obtaining the credit, irrespective of the person
395 to whom the charges are paid or payable; unless the seller
396 had no notice of the charges when the credit was granted.
397 The term does not include charges as a result of default,
398 additional charges, delinquency charges or deferral charg-
399 es. If the seller or issuer of a seller credit card purchases
400 or satisfies obligations of the consumer and the purchase
401 or satisfaction is made at less than the face amount of the
402 obligation, the discount is not part of the sales finance
403 charge.

404 (45) Except as otherwise provided, "seller" includes an
405 assignee of the seller's right to payment but use of the
406 term does not in itself impose on an assignee any obliga-
407 tion of the seller.

408 (46) "Seller credit card" means an arrangement pursu-
409 ant to which a person gives to a buyer or lessee the privi-
410 lege of using a credit card, letter of credit, or other credit
411 confirmation or identification primarily for the purpose of
412 purchasing or leasing goods or services from that person,
413 that person and any other person or persons, a person
414 related to that person, or others licensed or franchised or
415 permitted to do business under his business name or trade
416 name or designation or on his behalf.

417 (47) "Services" includes: (a) Work, labor and other
418 personal services; (b) privileges with respect to transporta-
419 tion, use of vehicles, hotel and restaurant accommodations,
420 education, entertainment, recreation, physical culture,
421 hospital accommodations, funerals, cemetery accommoda-
422 tions, and the like; and (c) insurance.

423 (48) "Supervised financial organization" means any
424 organization, corporation or person, other than an insur-
425 ance company or other organization primarily engaged in
426 an insurance business, which is required under state law to
427 register or obtain a license from the commissioner of
428 banking before conducting business in this state; or which
429 is authorized under federal law to make consumer loans
430 without a license from the state commissioner of banking,
431 provided such loans are subject to supervision and exami-
432 nation by an official or agency of the United States.

**§46A-1-103. Effect of chapter on powers of persons making
consumer credit sales and consumer loans, and
others; consumer protection generally.**

1 (1) This chapter prescribes maximum charges for all
2 creditors, except lessors and those excluded, making con-
3 sumer credit sales and consumer loans, and sales and loans
4 made subject to the provisions of this chapter by agree-
5 ment, and except as otherwise provided by this chapter
6 displaces any existing limitations and provisions regulat-
7 ing maximum interest and charges, minimum charges,
8 additional charges, delinquency charges, deferral charges,
9 allocation of charges and methods of computing rebates
10 upon prepayment, refinancing or consolidation with re-
11 spect to consumer credit sales and consumer loans, and the
12 debtors' remedies and penalties provided by this chapter
13 displace all existing provisions relating to remedies, penal-
14 ties and forfeitures for usury and usurious contracts as to
15 transactions covered by this chapter.

16 (2) Except as provided in subsection (1) of this section
17 or elsewhere in this chapter, this chapter does not displace
18 powers or limitation on powers which supervised financial
19 organizations are authorized to exercise under the laws of
20 the United States or other laws of this state in effect after
21 the operative date of this chapter.

22 (3) This chapter also prescribes in various articles
23 protective measures for consumers in transactions not
24 necessarily involving consumer credit.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

1 (1) With respect to a consumer loan, other than a con-
2 sumer loan made pursuant to a revolving loan account: (a)
3 A bank, as defined in section two, article one, chapter
4 thirty-one-a of this code, may contract for and receive a
5 loan finance charge not exceeding the charge or interest
6 permitted by the provisions of section thirty, article four,
7 chapter thirty-one-a or by the provisions of sections five,
8 five-a or five-b, article six, chapter forty-seven of this
9 code, or that allowed under section sixteen, article ten,
10 chapter thirty-one of this code; (b) a regulated consumer
11 lender may contract for and receive a loan finance charge
12 not exceeding the aggregate of the interest and charges
13 permitted by section one hundred seven, article four,
14 chapter forty-six-a of this code or by the provisions of
15 sections five, five-a or five-b, article six, chapter
16 forty-seven of this code; (c) a credit union, as defined in
17 section one, article ten, chapter thirty-one of this code,
18 may contract for and receive a loan finance charge not
19 exceeding the charge or interest permitted by the provi-
20 sions of section sixteen, article ten, chapter thirty-one of
21 this code, or by the provisions of section five, article six,
22 chapter forty-seven of this code; and (d) any other lender
23 may contract for and receive a loan finance charge not
24 exceeding the charge or interest permitted by the provi-
25 sions of sections five, five-a or five-b, article six, chapter
26 forty-seven of this code.

27 (2) This section does not limit or restrict the manner
28 of calculating the loan finance charge, whether by way of
29 add-on, discount or otherwise, so long as the rate of loan
30 finance charge does not exceed that permitted by this
31 section.

32 (3) If the loan is precomputed:

33 (a) The loan finance charge may be calculated on the
34 assumption that all scheduled payments will be made when
35 due; and

36 (b) The effect of prepayment, refinancing or consoli-
37 dation is governed by the provisions on rebate upon pre-
38 payment, refinancing or consolidation contained in sec-
39 tion one hundred eleven of this article.

40 (4) Notwithstanding subsection (1) of this section, the
41 lender may contract for and receive a minimum loan fi-
42 nance charge of not more than five dollars when the
43 amount loaned does not exceed seventy-five dollars, or
44 seven dollars and fifty cents when the amount loaned
45 exceeds seventy-five dollars.

46 (5) An assignee of a consumer credit sale contract
47 may collect, receive or enforce the sales finance charge
48 provided in said contract, and any such charge so collect-
49 ed, received or enforced by an assignee shall not be
50 deemed usurious or in violation of this chapter or any
51 other provision of this code if such sales finance charge
52 does not exceed the limits permitted to be charged by a
53 seller under the provisions of this chapter.

54 (6) Notwithstanding subsection (5) of this section, a
55 resident lender who is the assignee of a consumer credit
56 sales contract from a credit grantor in another state, and
57 said contract was executed in such other state to finance a
58 retail purchase made by the consumer when the consumer
59 was in that other state, may collect, receive or enforce the
60 sales finance charge and other charges including late fees
61 provided in said contract under the laws of the state where
62 executed. Such charge shall not be deemed to be usurious
63 or in violation of the provisions of this chapter or any
64 other provisions of this code.

**§46A-3-111. Application of payments on account; rebate
upon prepayment, refinancing or consolida-
tion; judgments and interest on judgments.**

1 (1) When a consumer credit sale or consumer loan is
2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except as

4 provided in subsection (3), section one hundred twelve of
5 this article. When the total amount is payable in substan-
6 tially equal consecutive monthly installments, the portion
7 of the sales finance charge or loan finance charge attribut-
8 able to any particular monthly installment period shall be
9 that proportion of the sales finance charge or loan finance
10 charge originally contracted for, as the balance scheduled
11 to be outstanding on the last day of the monthly install-
12 ment period before deducting the payment, if any, sched-
13 uled to be made on that day bears to the sum of all the
14 monthly installment balances under the original schedule
15 of payments. (This method of allocation is the sum of the
16 digits method, commonly referred to as the "Rule of 78").

17 (2) Upon prepayment in full of a precomputed con-
18 sumer credit sale or consumer loan by cash, a new loan,
19 refinancing, consolidation or otherwise, the creditor shall
20 rebate to the consumer that portion of the sales finance
21 charge or loan finance charge in the manner specified in
22 section five-d, article six, chapter forty-seven of this code:
23 *Provided*, That no rebate of less than one dollar need be
24 made.

25 (3) Upon prepayment in full of a precomputed or
26 nonprecomputed consumer credit sale or consumer loan
27 by cash, execution of a new loan, refinancing, consolida-
28 tion or otherwise, except where the loan is a purchase
29 money loan secured by a first lien mortgage on residential
30 property, or is made by a federally-insured depository
31 institution, the creditor shall rebate to the consumer that
32 portion of the unearned prepaid finance charges attribut-
33 able to loan or credit investigations fees, origination fees
34 or points in the manner specified in subsection (c), section
35 five-d, article six, chapter forty-seven of this code: *Pro-*
36 *vided*, That no rebate of less than one dollar need be
37 made: *Provided, however*, That if the loan was made in
38 furtherance of aiding or abetting a person to whom the
39 loan is assigned, evade this rebate, then the rebate required
40 herein shall apply.

41 (4) If the maturity of a precomputed consumer credit
42 sale or consumer loan is accelerated for any reason and
43 judgment is obtained, the debtor is entitled to the same

44 rebate as if the payment had been made on the date judg-
45 ment is entered and such judgment shall bear interest until
46 paid at the rate of ten percent per annum.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.

§46A-4-102. License to make regulated consumer loans.

§46A-4-103. Revocation, suspension or forfeiture of license.

§46A-4-104. Records; annual reports.

§46A-4-105. Examinations; assessments and investigations.

§46A-4-107. Loan finance charge for regulated consumer lenders.

§46A-4-108. Use of multiple loan agreements.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

§46A-4-110. Conduct of business other than making loans.

§46A-4-110a. Prohibited conduct.

§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.

§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.

§46A-4-113. Continuation of licensing.

§46A-4-101. Authority to make loans.

1 Unless a person has first obtained a license from the
2 commissioner authorizing him to make regulated consum-
3 er loans, he shall not engage in the business of:

4 (1) Making regulated consumer loans; or

5 (2) Taking assignments of and undertaking direct
6 collection of payments from or enforcement of rights
7 against consumers arising from regulated consumer loans.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all
2 applications for licenses to make regulated consumer
3 loans under this chapter. Applications shall be under oath,
4 be filed in the manner prescribed by the commissioner,
5 and contain the information the commissioner requires to
6 make an evaluation of the financial responsibility, experi-
7 ence, character and fitness of the applicant, and the find-

8 ings required of him before he may issue a license. At the
9 time of the filing of the application, the sum of seven
10 hundred fifty dollars shall be paid to the commissioner as
11 an investigation fee.

12 (2) No license shall be issued to a supervised financial
13 organization other than to one primarily engaged in the
14 business of making consumer loans through offices locat-
15 ed within this state, or to one licensed under the provisions
16 of the West Virginia secondary mortgage loan act as con-
17 tained in article seventeen, chapter thirty-one of this code,
18 or to any banking institution as defined by the provisions
19 of section two, article one, chapter thirty-one-a of this
20 code. No license will be granted to any office located
21 outside this state: *Provided*, That the limitation of licens-
22 ing contained in this subsection shall not prevent any
23 supervised financial organization from making regulated
24 consumer loans when the applicable state or federal stat-
25 ute, law, rule or regulation permits. No license shall be
26 issued to any person unless the commissioner, upon inves-
27 tigation, finds that the financial responsibility, experience,
28 character and fitness of the applicant, and of the members
29 thereof (if the applicant is a copartnership or association)
30 and of the officers and directors thereof (if the applicant is
31 a corporation), are such as to command the confidence of
32 the community and to warrant belief that the business will
33 be operated honestly, fairly and efficiently, within the
34 purposes of this chapter, and the applicant has available
35 for the operation of the business at least ten thousand
36 dollars in capital and has, for each specified location of
37 operation assets of at least two thousand dollars.

38 (3) Upon written request, the applicant is entitled to a
39 hearing on the question of his qualifications for a license
40 if: (a) The commissioner has notified the applicant in
41 writing that his application has been denied; or (b) the
42 commissioner has not issued a license within sixty days
43 after the application for the license was filed. A request
44 for a hearing may not be made more than fifteen days
45 after the commissioner has mailed a writing to the appli-
46 cant notifying him that the application has been denied
47 and stating in substance the commissioner's findings sup-
48 porting denial of the application.

49 (4) Not more than one place of business shall be
50 maintained under the same license, but the commissioner
51 may issue more than one license to the same licensee upon
52 compliance with all the provisions of this article governing
53 an original issuance of a license, for each such new li-
54 cense. Each license shall remain in full force and effect
55 until surrendered, forfeited, suspended or revoked.

56 (5) Upon giving the commissioner at least fifteen days'
57 prior written notice, a licensee may: (a) Change the loca-
58 tion of any place of business located within a municipality
59 to any other location within that same municipality; or (b)
60 change the location of any place of business located out-
61 side of a municipality to a location no more than five
62 miles from the originally licensed location, but in no case
63 may a licensee move any place of business located outside
64 a municipality to a location within a municipality. A li-
65 censee may not move the location of any place of business
66 located within a municipality to any other location outside
67 of that municipality.

68 (6) A licensee may conduct the business of making
69 regulated consumer loans only at or from a place of busi-
70 ness for which he holds a license and not under any other
71 name than that stated in the license.

72 (7) A license issued under the provisions of this sec-
73 tion shall not be transferable or assignable.

74 (8) A licensee must be incorporated under the laws of
75 this state. The licensee may, however, be a subsidiary of
76 an out-of-state company or financial institution.

§46A-4-103. Revocation, suspension or forfeiture of license.

1 (1) The commissioner may issue to a person licensed
2 to make regulated consumer loans an order to show cause
3 why his license should not be revoked or should not be
4 suspended for a period not in excess of six months. The
5 order shall state the place for a hearing and set a time for
6 the hearing that is no less than ten days from the date of
7 the order. After the hearing the commissioner shall re-
8 voke or suspend the license if he finds that:

9 (a) The licensee has repeatedly and willfully violated
10 this chapter or any rule or order lawfully made or issued
11 pursuant to this article;

12 (b) The licensee has failed to remit their required
13 annual assessment, or to maintain their status as a business
14 in good standing with the office of the secretary of state,
15 notwithstanding notification in writing by the commission-
16 er sent by certified mail to the licensee's last known ad-
17 dress providing for thirty days to rectify such failure;

18 (c) The licensee has forfeited their license by failing to
19 remain open for regulated consumer lending business in
20 conformity with the rules or order of the commissioner; or

21 (d) Facts or conditions exist which would clearly have
22 justified the commissioner in refusing to grant a license
23 had these facts or conditions been known to exist at the
24 time the application for the license was made.

25 (2) No revocation or suspension of a license under this
26 article is lawful unless prior to institution of proceedings
27 by the commissioner notice is given to the licensee of the
28 facts or conduct which warrant the intended action, and
29 the licensee is given an opportunity to show compliance
30 with all lawful requirements for retention of the license.

31 (3) If the commissioner finds that probable cause for
32 revocation of a license exists and that enforcement of this
33 article requires immediate suspension of the license pend-
34 ing investigation, he may, after a hearing upon five days'
35 written notice, enter an order suspending the license for
36 not more than thirty days.

37 (4) Nothing in this section limits the authority of the
38 commissioner to take action against a regulated consumer
39 lender pursuant to chapter thirty-one-a of this code.

40 (5) Whenever the commissioner revokes or suspends a
41 license, he shall enter an order to that effect and forthwith
42 notify the licensee of the revocation or suspension. Within
43 five days after the entry of the order he shall mail by reg-
44 istered or certified mail or deliver to the licensee a copy of
45 the order and the findings supporting the order.

46 (6) Any person holding a license to make regulated
47 consumer loans may relinquish the license by notifying
48 the commissioner in writing of its relinquishment, but this
49 relinquishment shall not affect his liability for acts previ-
50 ously committed.

51 (7) No revocation, suspension, forfeiture or relinquish-
52 ment of a license shall impair or affect the obligation of
53 any preexisting lawful contract between the licensee and
54 any consumer.

55 (8) The commissioner may reinstate a license, termi-
56 nate a suspension or grant a new license to a person whose
57 license has been revoked or suspended if no fact or condi-
58 tion then exists which clearly would have justified the
59 commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformi-
2 ty with generally accepted accounting principles and prac-
3 tices in a manner which will enable the commissioner to
4 determine whether the licensee is complying with the pro-
5 visions of this article. The record-keeping system of a
6 licensee shall be sufficient if he makes the required infor-
7 mation reasonably available. The records need not be
8 kept in the place of business where regulated consumer
9 loans are made, if the commissioner is given free access to
10 the records wherever located. The records pertaining to
11 any loan need not be preserved for more than two years
12 after making the final entry relating to the loan, but in the
13 case of a revolving loan account such two-year period is
14 measured from the date of each entry.

15 (2) On or before the fifteenth day of February each
16 year, every licensee shall file with the commissioner a
17 composite annual report in the form prescribed by the
18 commissioner relating to all regulated consumer loans
19 made by him. The commissioner shall consult with com-
20 parable officials in other states for the purpose of making
21 the kinds of information required in annual reports uni-
22 form among the states. Information contained in annual
23 reports shall be confidential and may be published only in
24 composite form.

§46A-4-105. Examinations; assessments and investigations.

1 (1) The commissioner shall examine at least every
2 eighteen months the loans, business and records of every
3 licensee. In addition, for the purpose of discovering viola-
4 tions of this article or securing information lawfully re-
5 quired, the attorney general or the commissioner may at
6 any time investigate the loans, business and records of any
7 regulated consumer lender. For these purposes he shall
8 have free and reasonable access to the offices, places of
9 business and records of the lender.

10 (2) If the lender's records are located outside this state,
11 the lender at his option shall make them available to the
12 commissioner at a convenient location within this state, or
13 pay the reasonable and necessary expenses for the com-
14 missioner or his representatives to examine them at the
15 place where they are maintained. The commissioner may
16 designate representatives, including comparable officials
17 of the state in which the records are located, to inspect
18 them on his behalf.

19 (3) For the purposes of this section, the commissioner
20 may administer oaths or affirmations, and upon his own
21 motion or upon request of any party, may subpoena wit-
22 nesses, compel their attendance, adduce evidence and
23 require the production of any matter which is relevant to
24 the investigation, including the existence, description,
25 nature, custody, condition and location of any books,
26 documents or other tangible things and the identity and
27 location of persons having knowledge of relevant facts, or
28 any other matter reasonably calculated to lead to the dis-
29 covery of admissible evidence.

30 (4) Upon failure without lawful excuse to obey a sub-
31 poena or to give testimony and upon reasonable notice to
32 all persons affected thereby, the commissioner may apply
33 to any circuit court of this state for an order compelling
34 compliance.

35 (5) The commissioner of banking shall charge and
36 collect from each regulated consumer lender and pay into
37 a special revenue account in the state treasury for the de-
38 partment of banking an annual assessment payable on the

39 first day of July, computed upon the total outstanding
40 gross loan balances and installment sales contract balances
41 net of unearned interest as is set out in section eight, article
42 two, chapter thirty-one-a of this code.

§46A-4-107. Loan finance charge for regulated consumer lenders.

1 (1) With respect to a regulated consumer loan, includ-
2 ing a revolving loan account, a regulated consumer lender
3 may contract for and receive a loan finance charge not
4 exceeding that permitted by this section.

5 (2) On a loan of two thousand dollars or less, which is
6 unsecured by real property, the loan finance charge, cal-
7 culated according to the actuarial method, may not exceed
8 thirty-one percent per year on the unpaid balance of the
9 principal amount.

10 (3) On a loan of greater than two thousand dollars or
11 which is secured by real property, the loan finance charge,
12 calculated according to the actuarial method, may not
13 exceed twenty-seven percent per year on the unpaid bal-
14 ance of the principal amount: *Provided*, That the loan
15 finance charge on any loan greater than ten thousand
16 dollars may not exceed eighteen percent per year on the
17 unpaid balance of the principal amount. Loans made by
18 regulated consumer lenders shall be subject to the restric-
19 tions and supervision set forth in this article irrespective of
20 their rate of finance charges.

21 (4) Where the loan is nonrevolving and is greater than
22 two thousand dollars, the permitted finance charge may
23 include a charge of not more than a total of two percent of
24 the amount financed for any origination fee, points, or
25 investigation fee: *Provided*, That where any loan, revol-
26 ving or nonrevolving, is secured by real estate, the permit-
27 ted finance charge may include a charge of not more than
28 a total of five percent of the amount financed for any
29 origination fee, points or investigation fee. In any loan
30 secured by real estate, such charges may not be imposed
31 again by the same or affiliated lender in any refinancing
32 of that loan made within twenty-four months thereof,
33 unless these earlier charges have been rebated by payment

34 or credit to the consumer under the actuarial method, or
35 the total of the earlier and proposed charges does not
36 exceed five percent of the amount financed. Charges
37 permitted under this subsection shall be included in the
38 calculation of the loan finance charge. The financing of
39 such charges shall be permissible and shall not constitute
40 charging interest on interest. In a revolving home equity
41 loan, the amount of the credit line extended shall for pur-
42 poses of this subsection constitute the amount financed.
43 Other than herein provided, no points, origination fee,
44 investigation fee or other similar prepaid finance charges
45 attributable to the lender or its affiliates may be levied.
46 Except as provided for by section one hundred nine, arti-
47 cle three of this chapter, no additional charges may be
48 made; nor may any charge permitted by this section be
49 assessed unless the loan is made. To the extent that this
50 section overrides the preemption on limiting points and
51 other such charges on first lien residential mortgages con-
52 tained in Section 501 of the United States Depository
53 Institutions Deregulation and Monetary Control Act of
54 1980, the state law limitations contained in this section
55 shall apply. If the loan is precomputed:

56 (a) The loan finance charge may be calculated on the
57 assumption that all scheduled payments will be made when
58 due; and

59 (b) The effect of prepayment, refinancing or consoli-
60 dation is governed by the provisions on rebate upon pre-
61 payment, refinancing or consolidation contained in sec-
62 tion one hundred eleven, article three of this chapter.

63 (5) For the purposes of this section, the term of a loan
64 commences on the date the loan is made. Differences in
65 the lengths of months are disregarded and a day may be
66 counted as one thirtieth of a month. Subject to classifica-
67 tions and differentiations the licensee may reasonably
68 establish, a part of a month in excess of fifteen days may
69 be treated as a full month if periods of fifteen days or less
70 are disregarded and if that procedure is not consistently
71 used to obtain a greater yield than would otherwise be
72 permitted.

73 (6) With respect to a revolving loan account:

74 (a) A charge may be made by a regulated consumer
75 lender in each monthly billing cycle which is one twelfth
76 of the maximum annual rates permitted by this section
77 computed on an amount not exceeding the greatest of:

78 (i) The average daily balance of the debt; or

79 (ii) The balance of the debt at the beginning of the
80 first day of the billing cycle, less all payments on and
81 credits to such debt during such billing cycle and exclud-
82 ing all additional borrowings during such billing cycle.
83 For the purpose of this subdivision a billing cycle is
84 monthly if the billing statement dates are on the same day
85 each month or do not vary by more than four days there-
86 from.

87 (b) If the billing cycle is not monthly, the maximum
88 loan finance charge which may be made by a regulated
89 consumer lender is that percentage which bears the same
90 relation to an applicable monthly percentage as the num-
91 ber of days in the billing cycle bears to thirty.

92 (c) Notwithstanding subdivisions (a) and (b) of this
93 subsection, if there is an unpaid balance on the date as of
94 which the loan finance charge is applied, the licensee may
95 contract for and receive a charge not exceeding fifty cents
96 if the billing cycle is monthly or longer, or the pro rata
97 part of fifty cents which bears the same relation to fifty
98 cents as the number of days in the billing cycle bears to
99 thirty if the billing cycle is shorter than monthly, but no
100 charge may be made pursuant to this subdivision if the
101 lender has made an annual charge for the same period as
102 permitted by the provisions on additional charges.

103 (7) As an alternative to the loan finance charges al-
104 lowed by subsections (2) and (4) of this section, a regulat-
105 ed consumer lender may on a loan of one thousand two
106 hundred dollars or less contract for and receive interest at
107 a rate of up to thirty-one percent per year on the unpaid
108 balance of the principal amount, together with a
109 nonrefundable loan processing fee of not more than two
110 percent of the amount financed: *Provided*, That no other
111 finance charges are imposed on the loan.

112 (8) Notwithstanding any contrary provision in this
113 section, a licensed regulated consumer lender who is the
114 assignee of a nonrevolving consumer loan unsecured by
115 real property located in this state, which loan contract was
116 applied for by the consumer when he or she was in another
117 state, and which was executed and had its proceeds
118 distributed in that other state, may collect, receive and
119 enforce the loan finance charge and other charges, including
120 late fees, provided in said contract under the laws of
121 the state where executed: *Provided*, That the consumer
122 was not induced by the assignee or its in-state affiliates to
123 apply and obtain the loan from an out-of-state source
124 affiliated with the assignee in an effort to evade the consumer
125 protections afforded by this chapter. Such charges
126 shall not be deemed to be usurious or in violation of the
127 provisions of this chapter or any other provisions of this
128 code.

§46A-4-108. Use of multiple loan agreements.

1 A regulated consumer lender may not use multiple
2 loan agreements with intent to obtain a higher loan finance
3 charge than would otherwise be permitted by the
4 provisions of this article. A regulated consumer lender
5 uses multiple loan agreements if, with intent to obtain a
6 higher loan finance charge than would otherwise be permitted,
7 he allows any person, or husband and wife, to become
8 obligated in any way under more than one loan
9 agreement with the regulated consumer lender for a regulated
10 consumer loan under this article.

11 The excess amount of the loan finance charge provided
12 for in agreements in violation of this section is an excess
13 charge for the purposes of the provisions on effect of
14 violations on rights of parties.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

1 (1) No consumer loan of two thousand dollars or less
2 may be secured by an interest in land, other than a pur-
3 chase money loan for that land, unless the lender is li-
4 censed in this state as a regulated consumer lender or as a
5 secondary mortgage lender, or is a federally insured de-
6 pository institution permitted to conduct lending in West
7 Virginia. A security interest taken in violation of this sub-
8 section is void.

9 (2) Notwithstanding the provisions of section one
10 hundred sixteen, article two of this chapter, no regulated
11 consumer lender shall take any assignment of or order for
12 payment of any earnings to secure any loan made by any
13 regulated consumer lender under this article. An assign-
14 ment or order taken in violation of this subsection is void.
15 This subsection does not prohibit a court from ordering a
16 garnishment to affect recovery of moneys owed by a bor-
17 rower to a lender as part of a judgment in favor of said
18 lender.

19 (3) Other than for a purchase money lien, no regulat-
20 ed consumer lender may take a security interest in house-
21 hold goods in the possession and use of the borrower.
22 Where federal law permits a security interest in certain
23 nonpurchase items deemed not to be household goods, the
24 security agreement creating such security interest must be
25 in writing, signed in person by the borrower, and if the
26 borrower is married, signed in person by both husband
27 and wife: *Provided*, That the signature of both husband
28 and wife shall not be required when they have been living
29 separate and apart for a period of at least five months
30 prior to the making of such security agreement. A securi-
31 ty interest taken in violation of this subsection is void.

32 (4) A regulated consumer lender may not renegotiate
33 the original loan, or any part thereof, or make a new con-
34 tract covering the original loan, or any part thereof, with
35 any borrower, who has received a discharge in bankruptcy
36 of the original loan or any balance due thereon at the time
37 of said discharge from any court of the United States of
38 America exercising jurisdiction in insolvency and bank-
39 ruptcy matters, unless said regulated consumer lender shall
40 pay to and deliver to the borrower the full amount of the

41 loan shown on said note, promise to pay, or security, less
42 any deductions for charges herein specifically authorized.

§46A-4-110. Conduct of business other than making loans.

1 (1) No licensee shall conduct the business of making
2 loans under the provisions of this article within any office,
3 room or place of business in which any other business is
4 solicited or engaged in, or in association or conjunction
5 therewith, except as may be authorized in writing by the
6 commissioner upon his finding that the character of such
7 other business is sufficiently related to that of a financial
8 institution and is such that the granting of such authority
9 would not facilitate evasions of this article or of the rules
10 lawfully made hereunder, except nothing herein shall
11 prohibit the licensee from purchasing installment sales
12 contracts or the sale or provision of insurance authorized
13 by section one hundred nine, article three of this chapter,
14 or from making loans authorized under the provisions of
15 the West Virginia secondary mortgage loan act as set forth
16 in article seventeen, chapter thirty-one of this code, or
17 from engaging in any business previously approved by
18 the commissioner prior to the first day of September, one
19 thousand nine hundred ninety-six.

20 (2) A licensee may purchase, hold and convey real
21 property as follows:

22 (a) As shall be necessary for the convenient transac-
23 tion of its business;

24 (b) As is mortgaged to it in good faith by way of secu-
25 rity for loans made by or money due to such regulated
26 consumer lender;

27 (c) As is conveyed to it in satisfaction of debts previ-
28 ously contracted in the course of its dealings;

29 (d) As is acquired by the sale on execution or judg-
30 ment or decree of any court in its favor.

31 (3) A licensee shall not purchase, hold or convey any
32 real property in any other case or for any other purpose
33 whatsoever. Real property shall be conveyed only by
34 authority of the board of directors of any such regulated

35 consumer lender. No real property acquired upon fore-
36 closure in the cases contemplated in subdivision (b), or
37 acquired under subdivisions (c) and (d) of this section
38 shall be held for a longer time than ten years, unless such
39 period shall be extended by the commissioner of banking.

§46A-4-110a. Prohibited conduct.

1 (1) A regulated consumer lender shall not:

2 (a) Accept or receive deposits or sell or offer for sale
3 its secured or unsecured evidences or certificates of in-
4 debtedness; or

5 (b) Pay any fees, bonuses, commissions, rewards or
6 other consideration to any person, firm or corporation for
7 the privilege of using any plan of operation, scheme or
8 device for the organization or carrying on of business
9 under this article, or the use of any name, trademark or
10 copyright to be so used: *Provided*, That nothing herein
11 prevents a regulated consumer lender from agreeing in
12 connection with a loan to pay a broker fee, finders fee or
13 dealer participation fee, or to split the origination fee or
14 points paid: *Provided, however*, That the fee or fee split is
15 disclosed to the borrower and where proper is included in
16 the finance charge.

17 (2) Unless preempted by federal law, no consumer
18 loan by a regulated consumer lender may contain any
19 scheduled balloon payment as set forth in this chapter.
20 Nor may any regulated consumer lender loan contain
21 terms of repayment which result in negative amortization:
22 *Provided*, That nothing herein prevents unequal payment
23 schedules resulting from a variable rate loan or a revolving
24 line of credit.

25 (3) A regulated consumer lender may not make re-
26 volving loans for the retail purchase of consumer goods
27 and services by use of a lender credit card.

§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.

1 (1) Any nonrevolving consumer loan or credit that is
2 refinanced and consolidated with a new loan under this

3 article after the first day of September, one thousand nine
4 hundred ninety-six, at a higher finance rate than allowed
5 merchants by section one hundred one, article three of this
6 chapter, must either provide the consumer with a substan-
7 tial benefit or provide the disclosures set forth in this sec-
8 tion. A substantial benefit accrues to the consumer if the
9 transaction:

10 (a) Provides the consumer at least five hundred dollars
11 in new funds for the consumer's own use, excluding any
12 charges connected with the loan; or

13 (b) Provides the consumer with new funds in an
14 amount equal to the original amount of the loan or credit.

15 (2) If no substantial benefit is provided, the lender
16 must comply with the following requirements, except
17 where such an agreement would violate section one hun-
18 dred eight of this article:

19 (a) The lender must in a fixed rate transaction give the
20 following disclosures in writing to the borrower prior to
21 the execution of the new agreement:

22 "If you do agree to consolidate your existing obliga-
23 tion, you will be paying an annual percentage rate of
24 _____% on the existing balance of \$_____, instead of the
25 rate of _____% which you are now paying.

26 I acknowledge receipt of this information
27 _____ (initials of borrower).";

28 (b) The lender must allow the borrower the choice of
29 repaying his or her existing loan/credit balance at the
30 originally agreed upon rate and obtaining any additional
31 extension of credit as a separate agreement, notwithstand-
32 ing any law other than section one hundred eight of this
33 article which may limit the borrower's ability to have mul-
34 tiple loan agreements with the same lender;

35 (c) The lender, where it holds the prior agreement,
36 must refund or credit to the borrower's account any un-
37 earned finance charge and any returned insurance premi-
38 ums upon cancellation of the insurance sold in connection
39 with the prior agreement;

40 (d) The lender shall, where applicable, provide the
41 borrower prior to the loan's execution, conspicuous writ-
42 ten notice of the provisions of subdivisions (a), (b) and (c)
43 of this subsection;

44 (e) The commissioner may provide and require a
45 modified disclosure form for similar transactions involv-
46 ing adjustable or variable rates, and where applicable, prior
47 to the loan's execution, the borrower must be given con-
48 spicuous written notice of the provisions of subdivisions
49 (b) and (c) of this subsection, together with the disclosure
50 form as may be required by this section; and

51 (f) Nothing in this section shall prohibit the receipt of
52 goods or services by the borrower at the time the consoli-
53 dated loan agreement is made, nor shall this section pro-
54 hibit or pertain to any loan where the refinancing results
55 in the consumer paying a lower finance charge rate.

§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.

1 All references in other chapters of this code to super-
2 vised loans, supervised lenders, industrial loans, industrial
3 loan companies and licensees thereof, as well as to article
4 seven, chapter thirty-one of this code, shall, after the oper-
5 ative date of this chapter, and despite the repeal of said
6 statute, be read, construed and understood to mean and to
7 have reference, respectively, to regulated consumer loans,
8 regulated consumer lenders, regulated consumer lender
9 licensees, and to this article.

10 All authority vested by this chapter in the commission-
11 er shall be deemed to be in addition to, and not in limita-
12 tion of, the authority vested in the commissioner of bank-
13 ing by provisions contained in other chapters of this code.

§46A-4-113. Continuation of licensing.

1 All persons licensed under the provisions of article
2 seven, chapter thirty-one of this code, or as supervised
3 lenders under the prior provisions of this article on the
4 operative date of this chapter, are licensed to make regu-
5 lated consumer loans under the provisions of this article

6 and all provisions of this article shall after the operative
7 date of this chapter apply to the persons so previously
8 licensed, including, without limitation, the provisions gov-
9 erning notification contained in article seven of this chap-
10 ter.

11 The commissioner may, but is not required to, deliver
12 evidence of licensing to the persons so previously li-
13 censed. Persons holding both supervised lender and in-
14 dustrial loan company licenses, or operating such a li-
15 censed business in the same office will be combined and
16 provided a single regulated lender license.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

§46A-5-103. Willful violations.

§46A-5-101. Effect of violations on rights of parties; limita- tion of actions.

1 (1) If a creditor has violated the provisions of this
2 chapter applying to collection of excess charges, security
3 in sales and leases, disclosure with respect to consumer
4 leases, receipts, statements of account and evidences of
5 payment, limitations on default charges, assignment of
6 earnings, authorizations to confess judgment, illegal,
7 fraudulent or unconscionable conduct, any prohibited
8 debt collection practice, or restrictions on interest in land
9 as security, assignment of earnings to regulated consumer
10 lender, security agreement on household goods for benefit
11 of regulated consumer lender, and renegotiation by regu-
12 lated consumer lender of loan discharged in bankruptcy,
13 the consumer has a cause of action to recover actual dam-
14 ages and in addition a right in an action to recover from
15 the person violating this chapter a penalty in an amount
16 determined by the court not less than one hundred dollars
17 nor more than one thousand dollars. With respect to vio-
18 lations arising from consumer credit sales or consumer
19 loans made pursuant to revolving charge accounts or re-
20 volving loan accounts, or from sales as defined in article
21 six of this chapter, no action pursuant to this subsection
22 may be brought more than four years after the violations
23 occurred. With respect to violations arising from other

24 consumer credit sales or consumer loans, no action pursu-
25 ant to this subsection may be brought more than one year
26 after the due date of the last scheduled payment of the
27 agreement.

28 (2) If a creditor has violated the provisions of this
29 chapter respecting authority to make regulated consumer
30 loans, the loan is void and the consumer is not obligated to
31 pay either the principal or the loan finance charge. If he
32 has paid any part of the principal or of the finance charge,
33 he has a right to recover in an action the payment from
34 the person violating this chapter or from an assignee of
35 that person's rights who undertakes direct collection of
36 payments or enforcement of rights arising from the debt.
37 With respect to violations arising from regulated consumer
38 loans made pursuant to revolving loan accounts, no action
39 pursuant to this subsection may be brought more than
40 four years after the violation occurred. With respect to
41 violations arising from other regulated consumer loans, no
42 action pursuant to this subsection may be brought more
43 than one year after the due date of the last scheduled pay-
44 ment of the agreement pursuant to which the charge was
45 paid.

46 (3) A consumer is not obligated to pay a charge in
47 excess of that allowed by this chapter, and if he has paid
48 an excess charge he has a right to a refund. A refund may
49 be made by reducing the consumer's obligation by the
50 amount of the excess charge. If the consumer has paid an
51 amount in excess of the lawful obligation under the agree-
52 ment, the consumer may recover in an action the excess
53 amount from the person who made the excess charge or
54 from an assignee of that person's rights who undertakes
55 direct collection of payments from or enforcement of
56 rights against the consumer arising from the debt.

57 (4) If a creditor has contracted for or received a
58 charge in excess of that allowed by this chapter, the con-
59 sumer may, in addition to recovering such excess charge,
60 also recover from the creditor or the person liable in an
61 action a penalty in an amount determined by the court not
62 less than one hundred dollars nor more than one thousand
63 dollars. With respect to excess charges arising from con-

64 sumer credit sales or consumer loans made pursuant to
65 revolving charge accounts or revolving loan accounts, no
66 action pursuant to this subsection may be brought more
67 than four years after the time the excess charge was made.
68 With respect to excess charges arising from other consum-
69 er credit sales or consumer loans no action pursuant to this
70 subsection may be brought more than one year after the
71 due date of the last scheduled payment of the agreement
72 pursuant to which the charge was made.

73 (5) Except as otherwise provided, a violation of this
74 chapter does not impair rights on a debt.

75 (6) If an employer discharges an employee in viola-
76 tion of the provisions prohibiting discharge, the employee
77 may within ninety days bring a civil action for recovery of
78 wages lost as a result of the violation and for an order
79 requiring the reinstatement of the employee. Damages
80 recoverable shall not exceed lost wages for six weeks.

81 (7) A creditor has no liability for a penalty under
82 subsection (1) or subsection (4) of this section if within
83 fifteen days after discovering an error, and prior to the
84 institution of an action under this section or the receipt of
85 written notice of the error, the creditor notifies the person
86 concerned of the error and corrects the error. If the viola-
87 tion consists of a prohibited agreement, giving the con-
88 sumer a corrected copy of the writing containing the error
89 is sufficient notification and correction. If the violation
90 consists of an excess charge, correction shall be made by
91 an adjustment or refund.

92 (8) If the creditor establishes by a preponderance of
93 evidence that a violation is unintentional or the result of a
94 bona fide error of fact notwithstanding the maintenance of
95 procedures reasonably adapted to avoid any such violation
96 or error, no liability is imposed under subsections (1), (2)
97 and (4) of this section, and the validity of the transaction is
98 not affected.

§46A-5-103. Willful violations.

1 (1) A regulated consumer lender who willfully makes
2 charges in excess of those permitted by the provisions of

3 article four of this chapter, pertaining to regulated con-
4 sumer lenders, shall be guilty of a misdemeanor and, upon
5 conviction, shall be fined not more than five thousand
6 dollars, or imprisoned not more than one year, or both
7 fined and imprisoned.

8 (2) A person who willfully engages in the business of
9 making regulated consumer loans without a license in
10 violation of the provisions of article four of this chapter,
11 applying to authority to make regulated consumer loans
12 shall be guilty of a misdemeanor and, upon conviction,
13 shall be fined not more than five thousand dollars, or
14 imprisoned not more than one year, or both fined and
15 imprisoned.

16 (3) A person who willfully engages in the business of
17 making consumer credit sales or consumer loans, or of
18 taking assignments of rights against consumers arising
19 therefrom and undertakes direct collection of payments or
20 enforcement of these rights, without complying with the
21 provisions of section one hundred fifteen, article seven of
22 this chapter, concerning notification, shall be guilty of a
23 misdemeanor and, upon conviction, shall be fined not
24 more than one hundred dollars.

25 (4) Any person who willfully violates any of the provi-
26 sions of sections one hundred twenty-three through one
27 hundred twenty-eight, inclusive, article two of this chapter,
28 by committing any of the specifically described and enu-
29 merated acts contained therein, shall be guilty of a misde-
30 meanor and, upon conviction thereof, shall be fined not
31 more than one thousand dollars, or imprisoned in the
32 county jail not more than one year, or both fined and
33 imprisoned.

ARTICLE 7. ADMINISTRATION.

§46A-7-103. Division of administrative powers; investigation and adminis-
tration.

§46A-7-115. Notification.

**§46A-7-103. Division of administrative powers; investigation
and administration.**

1 (1) With respect to regulated consumer lenders and
2 other supervised financial organizations, the powers of
3 examination and investigation and administrative enforce-
4 ment shall be exercised by the official or agency to whose
5 supervision the organization is subject. All other powers of
6 the attorney general under this chapter may be exercised
7 by him with respect to any financial organization whether
8 or not a supervised financial organization. Notwithstand-
9 ing the first sentence of this subsection and notwithstand-
10 ing subsection (3) of this section, the attorney general may
11 pursue any investigation, prosecute any suit and take any
12 other proper action relating to the enforcement of any
13 consumer protection provision in this chapter.

14 (2) If the attorney general receives a complaint or
15 other information concerning noncompliance with this
16 chapter by any supervised financial organization, he shall
17 inform the official or agency having supervisory authority
18 over the organization concerned. The attorney general
19 may request information about financial organizations
20 from the officials or agencies supervising them.

21 (3) The attorney general and any official or agency of
22 this state having supervisory authority over a financial
23 organization are authorized and directed to consult and
24 assist one another in maintaining compliance with this
25 chapter. They may jointly pursue investigations, prose-
26 cute actions and take other official actions, as they deem
27 appropriate, if either of them otherwise is empowered to
28 take the action.

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making con-
2 sumer credit sales or consumer loans, including any per-
3 son subject to the provisions of section five-a, article
4 twenty-three, chapter eleven of this code, as a result of
5 their consumer lending or any person who regularly pur-
6 chases retail installment contracts or other consumer paper
7 from a business with which it is affiliated, and every per-
8 son having an office or place of business in this state who
9 takes assignments of and undertakes direct collection of
10 payments from or enforcement of rights against debtors
11 arising from such sales or loans, shall file notification with

12 the state tax department within thirty days after commencing
13 business in this state, and, thereafter, on or before the
14 thirty-first day of January of each year. A notification
15 shall be deemed to be in compliance with this section if
16 the information hereinafter required is given in an appli-
17 cation for a business registration certificate provided for in
18 section four, article twelve, chapter eleven of this code.
19 The state tax commissioner shall make any information
20 required by this section available to the attorney general
21 or commissioner upon request. The notification shall state:

22 (a) Name of the person;

23 (b) Name in which business is transacted if different
24 from subdivision (a) of this subsection;

25 (c) Address of principal office, which may be outside
26 this state;

27 (d) Address of all of its offices, if any, in this state at
28 which consumer loans are made, or in the case of a lender
29 credit card, a description of its affiliation to any store
30 chain, or national or regional credit card acceptance sys-
31 tem, or in the case of a person taking assignments of obli-
32 gations, the offices or places of business within this state at
33 which business is transacted;

34 (e) If consumer credit sales or consumer loans, includ-
35 ing loans secured by real property, are made otherwise
36 than at its retail store or office in this state, a brief descrip-
37 tion of the manner in which they are made;

38 (f) Address of designated agent upon whom service of
39 process may be made in this state; and

40 (g) Whether regulated consumer loans are made.

41 (2) If information in a notification becomes inaccurate
42 after filing, accurate information must be filed within
43 thirty days.

44 (3) The provisions of this section are not applicable to
45 a seller whose credit sales consist entirely of sales made
46 pursuant to a seller's credit card so long as the issuer of the
47 card has fully complied with the provisions of this section,
48 nor are the provisions of this section applicable to a per-

49 son whose consumer lending in West Virginia is incidental
50 and confined to access through a nonproprietary automat-
51 ic teller machine or similar electronic communication
52 terminal.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions.

1 (1) Except as otherwise provided in this section, this
2 chapter shall become operative at 12:01 a.m. on the first
3 day of September, one thousand nine hundred
4 seventy-four.

5 (2) Notwithstanding the provisions of subsection (1)
6 of this section, in order to allow sufficient time to prepare
7 for the implementation and operation of this chapter and
8 to act on applications for licenses to make regulated con-
9 sumer loans under this chapter as amended, the provisions
10 of article four of this chapter, relating to regulated con-
11 sumer lenders, and the provisions of article seven of this
12 chapter, relating to their administration, shall, to the extent
13 necessary, become operative for such purposes at 12:01
14 a.m. on the first day of September, one thousand nine
15 hundred ninety-six.

16 (3) Transactions entered into before this chapter be-
17 comes operative and the rights, duties and interests flowing
18 from them thereafter may be terminated, completed, con-
19 summated or enforced as required or permitted by any
20 statute, rule of law or other law amended, repealed or
21 modified by this chapter as though the repeal, amendment
22 or modification had not occurred, but this chapter applies
23 to:

24 (a) Refinancings and consolidations made after this
25 chapter becomes operative of consumer credit sales, con-
26 sumer leases and consumer loans whenever made;

27 (b) Consumer credit sales or consumer loans made
28 after this chapter becomes operative pursuant to revolving
29 charge accounts or revolving loan accounts entered into,

30 arranged or contracted for before this chapter becomes
31 operative; and

32 (c) All consumer credit transactions made before this
33 chapter becomes operative insofar as this chapter limits the
34 remedies of creditors.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; liability and penalties for excess charges.

1 (a) Upon prepayment in full of a precomputed loan,
2 credit sale or transaction, forbearance or similar transac-
3 tion repayable according to its original terms over a peri-
4 od of thirty-six months or less, the creditor shall rebate
5 that portion of the finance charge attributable to the pre-
6 paid periodic installment periods. When the total is pay-
7 able in substantially equal consecutive monthly install-
8 ments, the portion of such finance charge attributable to
9 any particular monthly installment period shall be that
10 proportion of charge originally contracted for, as the
11 balance scheduled to be outstanding on the last day of the
12 monthly installment period before deducting the payment,
13 if any, scheduled to be made on that day bears to the sum
14 of all the monthly installment balances under the original
15 schedule of payments. (This method of allocation is the
16 sum of the digits method, commonly referred to as the
17 "Rule of 78"). For prepayment in full of a precomputed
18 loan, credit sale or transaction, forbearance or similar
19 transaction: (i) Repayable according to its original terms
20 over a period of thirty-six months or less; (ii) in which
21 unequal or irregular or other than substantially equal
22 consecutive monthly installments are payable, the commis-
23 sioner of banking shall prescribe by rule the method or
24 procedure for the allocation of charges and the calculation
25 or rebates consistent with the Rule of 78.

26 (b) Upon prepayment in full of a precomputed loan,
27 credit sale or transaction, forbearance or similar transac-
28 tion, repayable by its original terms over a period of great-

29 er than thirty-six months, an amount shall be rebated of
30 not less than the unearned portion of the finance charge
31 calculated by applying the rate of finance charge which
32 was required by applicable law to be disclosed in the trans-
33 action according to the actuarial method to the unpaid
34 balance for the time remaining as originally scheduled or
35 as extended by deferral or otherwise for the period follow-
36 ing prepayment. In instances where no rate of finance
37 charge was required by law or otherwise to be disclosed,
38 the unearned portion of the finance charge shall be calcu-
39 lated by applying the finance charge which was charged in
40 the transaction according to the actuarial method to the
41 unpaid balance for the time remaining as originally sched-
42 uled or as extended by deferral or otherwise for the period
43 following prepayment.

44 (c) Unearned prepaid finance charges upon prepay-
45 ment includes all prepaid finance charges for points, loan
46 or credit origination fees, or loan or credit investigation
47 fees retained by the lender or creditor or its affiliates:
48 *Provided, That:* (i) In calculating the rebate for a con-
49 sumer loan or credit sale unsecured by real property
50 where such prepaid finance charges have been imposed,
51 the lender or creditor may deduct such charges up to a
52 maximum of two percent of the amount financed; and (ii)
53 in calculating the rebate for a consumer loan or credit sale
54 secured by real property where such prepaid finance
55 charges have been imposed, the lender or creditor may
56 deduct such charges up to a maximum of five percent of
57 the amount financed: *Provided, however,* That no such
58 deduction totaling more than five percent of the amount
59 financed may be made by the same lender within a
60 twenty-four month period as a result of a refinancing.
61 Upon prepayment in full of a consumer loan or credit
62 sale, any unearned prepaid finance charges may be rebat-
63 ed by using the Rule of 78 where the original loan term is
64 thirty-six months or less. Where the original loan term is
65 greater than thirty-six months, any such charges shall be
66 rebated by using the actuarial method. To the extent that
67 this section overrides the preemption on limiting points
68 and other such charges on first lien residential mortgages
69 for nonpurchase money loans contained in Section 501 of

70 the United States Depository Institutions Deregulation and
71 Monetary Control Act of 1980, the state law limitations
72 contained in this section shall apply: *Provided further,*
73 That this subsection does not apply to loans made by
74 federally-insured depository institutions.

75 (d) For purposes of the rebate of unearned finance
76 charges as required by this section, a prepayment in full
77 shall include repayment by a new loan, extension of credit,
78 refinancing, consolidation, forbearance or otherwise. The
79 term "loan or credit investigation fees" does not include
80 the reasonable costs of credit reports paid to third parties
81 as part of the bona fide closing costs in real estate transac-
82 tions, where such costs are not included as part of the
83 finance charge.

84 (e) As an alternative to the Rule of 78 method of re-
85 bate of determining the unearned finance charge required
86 by this section, a creditor may rebate unearned finance
87 charges under any other method which gives a greater
88 rebate to the debtor than the rebate determined by the
89 Rule of 78.

90 (f) The provisions governing rebates as set forth in this
91 section shall apply to all transactions entered into on or
92 after the first day of September, one thousand nine hun-
93 dred ninety-six. For transactions entered into prior to the
94 first day of September, one thousand nine hundred
95 ninety-six, the provisions in effect prior to the effective
96 date of this section of the respective chapters of this code
97 shall be utilized to determine the rebate of unearned fi-
98 nance charges.

99 (g) For consumer credit sales or consumer loans sub-
100 ject to the provisions of chapter forty-six-a of this code,
101 the provisions of article five of said chapter, govern the
102 imposition of liability and penalties for charging interest
103 or a finance charge in excess of the maximum rate al-
104 lowed under the provisions of this section. In all other
105 instances, the provisions of this article govern the imposi-
106 tion of liability and penalties for charging interest or a
107 finance charge in excess of the maximum allowed under
108 this section.

CHAPTER 74

(H. B. 4657—By Delegates Thompson, Faircloth, Amores,
Hunt, Trump, Hutchins and Clements)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; assessing costs of record production; and record production generally.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

1 (a) Any bank may cause to be copied or reproduced,
2 by any photographic, photostatic, microphotographic or
3 by similar miniature photographic process or by
4 nonerasable optical image disks (commonly referred to as
5 compact disks) or by other records retention technology
6 approved by rule of the commissioner of banking, all or
7 any number of its checks, and all or any part of its docu-
8 ments, books, records, correspondence and all other in-
9 struments, papers and writings, in any manner relating to
10 the operation of its business, other than its notes, bonds,
11 mortgages and other securities and investments, and may
12 substitute such copies or reproductions either in positive
13 or negative form for the originals thereof. Thereafter,
14 such copy or reproduction in the form of a positive print
15 thereof, shall be deemed for all purposes to be an original
16 counterpart of and shall have the same force and effect as

17 the original thereof and shall be admissible in evidence in
18 all courts and administrative agencies in this state, to the
19 same extent, and for the same purposes as the original
20 thereof, and the banking institution may destroy or other-
21 wise dispose of the original, but every banking institution
22 shall retain either the originals or such copies or reproduc-
23 tions of its records of final entry, including, without limit-
24 ing the generality of the foregoing, cards used under the
25 card system and deposit tickets for deposits made, for a
26 period of at least six years from the date of the last entry
27 on such books or the date of making of such deposit tick-
28 ets and card records, or, in the case of a banking institu-
29 tion exercising trust or fiduciary powers, until the expira-
30 tion of six years from the date of termination of any trust
31 or fiduciary relationship by a final accounting, release,
32 court decree or other proper means of termination.

33 All circumstances surrounding the making or issuance
34 of such checks, documents, books, records, correspon-
35 dence and other instruments, papers or writings, or the
36 photographic, photostatic or microphotographic copies or
37 optical disks or other permissible reproductions thereof,
38 when the same are offered in evidence, may be shown to
39 affect the weight but not the admissibility thereof.

40 Any device used to copy or reproduce such docu-
41 ments and records shall be one which correctly and accu-
42 rately reproduces the original thereof in all details and any
43 disk or film used therein shall be of durable material.

44 (b) When a subpoena duces tecum is served upon a
45 custodian of records of any bank in an action or proceed-
46 ing in which the bank is neither a party nor the place
47 where any cause of action is alleged to have arisen and the
48 subpoena requires the production of all or any part of the
49 records of the bank relating to the conduct of its business
50 with its customers, the bank shall be entitled to a search fee
51 not to exceed ten dollars, together with reimbursement for
52 costs incurred in the copying or other reproduction of any
53 such record or records which have already been reduced
54 to written form, in an amount not to exceed seventy-five
55 cents per page. Any and all such costs shall be borne by
56 the party requesting the production of the record or re-
57 cords.

CHAPTER 75

(H. B. 4644—By Delegates Hunt, Tomblin, Tillis, Seacrist and Amores)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-five, relating to authorizing banking institutions to refuse to open checking accounts for potential customers convicted of violations involving worthless checks; authorizing specific criminal background investigation; civil immunity; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-45. Refusal of banking institutions to open checking accounts for certain individuals convicted of worthless check violations; authorizing criminal background investigation by banking institutions; civil immunity; and confidentiality.

1 (a) Any banking institution may refuse to open an
2 account with a potential customer based on its actual or
3 constructive knowledge, or when through background
4 investigation it has acquired information or knowledge,
5 that the customer has previously been convicted of two or
6 more violations of section thirty-nine or section
7 thirty-nine-a, article three, chapter sixty-one of this code,
8 involving obtaining property in return for a worthless
9 check or issuance of a worthless check within five years
10 prior to the request to open the account, or during that
11 period has been convicted of two violations of such activi-
12 ty under federal law or the laws of another state. This

13 provision shall not impair the bank's ability to refuse to
14 open an account for a potential customer for any other
15 lawful reason, including, but not limited to, past
16 experience with that customer involving overdrawn
17 accounts of checks returned for insufficient funds.

18 (b) Any banking institution acting pursuant to
19 subsection (a) of this section shall be immune from civil
20 liability for refusing to open an account based on the
21 potential customer's past conviction for obtaining property
22 in return for a worthless check or issuance of a worthless
23 check: *Provided*, That this immunity shall not apply to
24 any violations of subsection (c) of this section.

25 (c) Any and all nonpublic records or credit
26 information obtained by the bank, its employees or agents
27 in conducting a background investigation on a customer's
28 or potential customer's previous convictions for violation
29 of section thirty-nine or section thirty-nine-a, article three,
30 chapter sixty-one of this code, or convictions under
31 federal law or the laws of another state involving obtaining
32 property in return for a worthless check or issuance of a
33 worthless check, shall remain confidential and no agent or
34 employee of the banking institution shall publicly disclose
35 or publish any such information obtained.

CHAPTER 76

(Com. Sub. for S. B. 89—By Senators Oliverio, Minear, Chafin and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to creating a child bicycle safety act; setting forth a short title; establishing legislative findings and purpose; defining terms; requiring helmets to meet certain specifications; requiring use of a helmet by children under the age of fifteen riding on public roads; requiring labeling to certify conformance with safety standards on helmets sold;

failure to wear helmet not admissible in civil actions; providing for penalties including a fine and community service for a violation; waiver for first offense; financial affidavit to be filed as evidence of inability to pay for a helmet; permitting municipalities to enact ordinances; and bicycle safety program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. CHILD BICYCLE SAFETY ACT.

- §17C-11A-1. Short title.
- §17C-11A-2. Legislative findings and purpose.
- §17C-11A-3. Definitions.
- §17C-11A-4. Requirements for helmet use.
- §17C-11A-5. Sale of bicycle helmets.
- §17C-11A-6. Civil actions.
- §17C-11A-7. Penalties.
- §17C-11A-8. Ordinances.
- §17C-11A-9. Bicycle safety program.

§17C-11A-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Child Bicycle Safety Act".

§17C-11A-2. Legislative findings and purpose.

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Disability and death of children resulting from
- 3 injuries sustained in bicycling accidents are a serious
- 4 threat to the public health, welfare and safety of the people
- 5 of this state, and the prevention of such disability and
- 6 death is a goal of such people;
- 7 (2) Head injuries are the leading cause of disability
- 8 and death from bicycling accidents; and
- 9 (3) The risk of head injury from bicycling accidents is
- 10 significantly reduced for bicyclists who wear proper
- 11 protective bicycle helmets; yet helmets are worn by fewer
- 12 than five percent of child bicyclists nationwide.

13 (b) The purpose of this article is to reduce the
14 incidence of disability and death resulting from injuries
15 incurred in bicycling accidents by requiring that while
16 riding on a bicycle on public roads, public bicycle paths
17 and other public rights-of-way of this state, all bicycle
18 operators and passengers under fifteen years of age wear
19 approved protective bicycle helmets.

§17C-11A-3. Definitions.

1 As used in this article:

2 (a) "Bicycle" means a human-powered vehicle with
3 wheels designed to transport, by the action of pedaling,
4 one or more persons seated on one or more saddle seats
5 on its frame. Such term also includes a human-powered
6 vehicle, and any attachment to such vehicle designed to
7 transport by pedaling when the vehicle is used on a public
8 roadway, public bicycle path or other public right-of-way,
9 but does not include a tricycle.

10 (b) "Tricycle" means a three-wheeled human-powered
11 vehicle designed for use as a toy by a single child under
12 the age of six years, the seat of which is no more than two
13 feet from ground level.

14 (c) "Public roadway" means a right-of-way under the
15 jurisdiction and control of this state or a local political
16 subdivision thereof for use primarily by motor vehicles.

17 (d) "Public bicycle path" means a right-of-way under
18 the jurisdiction and control of this state or a local political
19 subdivision thereof for use primarily by bicycles and
20 pedestrians.

21 (e) "Other public right-of-way" means any
22 right-of-way other than a public roadway or public
23 bicycle path that is under the jurisdiction and control of
24 this state or a local political subdivision thereof and is
25 designed for use and used by vehicular or pedestrian
26 traffic.

27 (f) "Protective bicycle helmet" means a piece of
28 headgear which meets or exceeds the impact standards for
29 protective bicycle helmets set by the American national
30 standards institute (ANSI) or the snell memorial

31 foundation's standards for protective headgear or
32 American society for testing and materials (ASTM) for
33 use in bicycling.

34 (g) "Passenger" means any person who travels on a
35 bicycle in any manner except as an operator.

36 (h) "Operator" means a person who travels on a bicycle
37 seated on a saddle seat from which that person is intended
38 to and can pedal the bicycle.

§17C-11A-4. Requirements for helmet use.

1 (a) It is unlawful for any person under fifteen years of
2 age to operate or be a passenger on a bicycle or any
3 attachment to a bicycle used on a public roadway, public
4 bicycle path or other public right-of-way unless at all
5 times when the person is so engaged he or she wears a
6 protective bicycle helmet of good fit, fastened securely
7 upon the head with the straps of the helmet.

8 (b) It is unlawful for any parent or legal guardian of a
9 person under fifteen years of age to knowingly permit
10 such person to operate or be a passenger on a bicycle or
11 on any attachment to a bicycle used on a public roadway,
12 public bicycle path or other public right-of-way unless at
13 all times when the person is so engaged he or she wears a
14 protective bicycle helmet of good fit, fastened securely
15 upon the head with the straps of the helmet.

§17C-11A-5. Sale of bicycle helmets.

1 Any helmet sold or offered for sale for use by
2 operators and passengers of bicycles shall be
3 conspicuously labeled in accordance with the standard
4 described in subsection (f), section three of this article,
5 which shall constitute the manufacturer's certification that
6 the helmet conforms to the applicable safety standards.

§17C-11A-6. Civil actions.

1 A violation of section four of this article is not
2 admissible as evidence of negligence or contributory
3 negligence or comparative negligence in any civil action
4 or proceeding for damages, and shall not be admissible in
5 mitigation of damages.

§17C-11A-7. Penalties.

1 (a) Notwithstanding the provisions of section one,
2 article eighteen of this chapter, any parent or legal
3 guardian violating any requirement set forth in section
4 four of this article shall be fined ten dollars or be required
5 to perform two hours in community service related to a
6 child injury prevention program which includes injury
7 prevention education or both fined and required to
8 perform such community service. Notwithstanding the
9 provisions of section one, article eleven, chapter eight of
10 this code, no court costs may be assessed to any person
11 violating the requirements of section four of this article.

12 (b) In the case of a first violation of section four of
13 this article, the court may waive the fine upon receipt of
14 satisfactory proof that the person has a helmet or within a
15 reasonable time from the date of the violation, purchased
16 or otherwise obtained, a protective bicycle helmet.

17 (c) It is an absolute defense to a charge for a violation
18 of this article that a parent or legal guardian is unable to
19 pay for the protective bicycle helmet. Inability to pay
20 may be demonstrated by the filing of a financial affidavit
21 in accordance with the provisions of subsection (c), section
22 one, article two, chapter fifty-nine of this code. Any
23 person who demonstrates inability to pay shall be referred
24 to the governor's highway safety program for assistance in
25 obtaining the appropriate helmet or helmets.

§17C-11A-8. Ordinances.

1 Nothing in this article shall limit the right of any
2 municipality to enact an ordinance on the use of bicycle
3 helmets.

§17C-11A-9. Bicycle safety program.

1 (a) Commencing on the first day of July, one thousand
2 nine hundred ninety-six, the governor's highway safety
3 program shall initiate and conduct an educational and
4 public awareness program designed to encourage people
5 to comply with the requirements of this article.

6 (b) The governor's highway safety program shall make
7 application for grants or any other funding to subsidize
8 the costs of purchasing helmets for people who qualify
9 under the provisions of subsection (c), section seven of
10 this article.

CHAPTER 77

(Com. Sub. for H. B. 4479—By Delegates Kiss and Michael)

[Passed March 8, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, six-a, ten, eleven, twelve-a, thirteen, fifteen and twenty-four, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section five-a; and to amend and reenact sections four, eleven, twelve, fifteen and twenty-two, article twenty-one of said chapter, all relating to charitable bingo and raffles; establishing venue requirements for bingo and raffle occasions; same, exceptions; providing bingo and raffle license application procedures and time periods; increasing amount of prizes which may be awarded at a super bingo and regular bingo occasions; restricting eligibility for bingo and raffle license; exception for junior fire fighters to general rule that persons under eighteen years of age may not participate in conduct of bingo games; changing allowable compensation and number of employees; compensation for bingo concessionaire and concession workers only if net proceeds are donated for charitable or public service purposes; tax commissioner authorized to disapprove certain contracts and leases; disapproved contracts and leases void; same, attempt by licensee to complete grounds for revocation or suspension of license; limitations on super bingo occasions; clarifying reporting requirements; bingo and raffle licensee may file compilation or review instead of both; removing cap on raffle prizes allowed; amending compensation provisions for persons conducting raffles; and prohibiting commingling of funds in cases of joint bingo and raffle occasions conducted simultaneously.

Be it enacted by the Legislature of West Virginia:

That sections two, three, six-a, ten, eleven, twelve-a, thirteen, fifteen and twenty-four, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further

amended by adding thereto a new section, designated section five-a; and that sections four, eleven, twelve, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted to read as follows:

Article

20. Charitable Bingo.

21. Charitable Raffles.

ARTICLE 20. CHARITABLE BINGO.

§47-20-2. Definitions.

§47-20-3. Who may hold bingo games; application for license; licenses not transferable.

§47-20-5a. Venue.

§47-20-6a. Super bingo license.

§47-20-10. Limits on prizes awarded—General provisions.

§47-20-11. Operator of bingo games and related concessions.

§47-20-12a. Compensation of bingo operator, number of employees.

§47-20-13. Concessions exception.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

§47-20-24. Filing of reports.

§47-20-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) "Bingo" means the game wherein participants pay
3 consideration for the use of one or more cards bearing
4 several rows of numbers in which no two cards played in
5 any one game contain the same sequence or pattern. When
6 the game commences, numbers are selected by chance,
7 one by one, and announced. The players cover or mark
8 those numbers announced as they appear on the card or
9 cards which they are using. The player who first an-
10 nounces that he or she has covered a predetermined se-
11 quence or pattern which had been preannounced for that
12 game is, upon verification that he or she has covered the
13 predetermined sequence or pattern, declared the winner of
14 that game.

15 (b) "Bingo occasion" or "occasion" means a single
16 gathering or session at which a series of one or more suc-
17 cessive bingo games is conducted by a single licensee.

18 (c) "Charitable or public service activity or endeavor"
19 means any bona fide activity or endeavor which directly
20 benefits a number of people by:

21 (1) Assisting them to establish themselves in life as
22 contributing members of society through education or
23 religion;

24 (2) Relieving them from disease, distress, suffering,
25 constraint, or the effects of poverty;

26 (3) Increasing their comprehension of and devotion to
27 the principles upon which this nation was founded and to
28 the principles of good citizenship;

29 (4) Making them aware of or educating them about
30 issues of public concern so long as the activity or endea-
31 vor is not aimed at influencing legislation or supporting or
32 participating in the campaign of any candidate for public
33 office;

34 (5) By lessening the burdens borne by government or
35 voluntarily supporting, augmenting or supplementing
36 services which government would normally render to the
37 people;

38 (6) Providing or supporting nonprofit community
39 activities for youth, senior citizens or the disabled; or

40 (7) Providing or supporting nonprofit cultural or
41 artistic activities.

42 (d) "Charitable or public service organization" means a
43 bona fide, not for profit, tax-exempt, benevolent, educa-
44 tional, philanthropic, humane, patriotic, civic, religious,
45 fraternal, or eleemosynary incorporated or unincorporated
46 association or organization; or a volunteer fire department,
47 rescue unit or other similar volunteer community service
48 organization or association; but does not include any
49 nonprofit association or organization, whether incorporat-
50 ed or not, which is organized primarily for the purposes of
51 influencing legislation or supporting or promoting the
52 campaign of any candidate for public office.

53 An organization or association is tax-exempt if it is,
54 and has received from the Internal Revenue Service a

55 determination letter that is currently in effect stating that
56 the organization is, exempt from federal income taxation
57 under subsection 501(a) and described in subsection
58 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or
59 501(d) of the Internal Revenue Code.

60 (e) "Commissioner" means the state tax commissioner.

61 (f) "Concession" means any stand, booth, cart, counter
62 or other facility, whether stationary or movable, where
63 beverages, both alcoholic and nonalcoholic, food, snacks,
64 cigarettes or other tobacco products, newspapers, souvenirs
65 or any other items are sold to patrons by an individual
66 operating the facility. Notwithstanding anything con-
67 tained in subdivision (2), subsection (a), section twelve,
68 article seven, chapter sixty of this code to the contrary,
69 "concession" includes beverages which are regulated by
70 and are subject to the provisions of chapter sixty of this
71 code: *Provided*, That in no case may the sale or the con-
72 sumption of alcoholic beverages or nonintoxicating beer
73 be permitted in any area where bingo is conducted.

74 (g) "Conduct" means to direct the actual playing of a
75 bingo game by activities including, but not limited to,
76 handing out bingo cards, collecting fees, drawing the
77 numbers, announcing the numbers, posting the numbers,
78 verifying winners and awarding prizes.

79 (h) "Expend net proceeds for charitable or public
80 service purposes" means to devote the net proceeds of a
81 bingo occasion or occasions to a qualified recipient orga-
82 nization or as otherwise provided by this article and ap-
83 proved by the commissioner pursuant to section fifteen of
84 this article.

85 (i) "Gross proceeds" means all moneys collected or
86 received from the conduct of bingo at all bingo occasions
87 held by a licensee during a license period; this term shall
88 not be considered to include any moneys collected or
89 received from the sale of concessions at bingo occasions.

90 (j) "Joint bingo occasion" means a single gathering or
91 session at which a series of one or more successive bingo
92 games is conducted by two or more licensees.

93 (k) "Licensee" means any organization or association
94 granted an annual, limited occasion or state fair bingo
95 license pursuant to the provisions of this article.

96 (l) "Net proceeds" means all moneys collected or re-
97 ceived from all the conduct of bingo at bingo occasions
98 held by a licensee during a license period after payment
99 of expenses authorized by sections ten, thirteen, fifteen
100 and twenty-two of this article; this term shall not be con-
101 sidered to include moneys collected or received from the
102 sale of concessions at bingo occasions.

103 (m) "Person" means any individual, association, soci-
104 ety, incorporated or unincorporated organization, firm,
105 partnership or other nongovernmental entity or institution.

106 (n) "Patron" means any individual who attends a bingo
107 occasion other than an individual who is participating in
108 the conduct of the occasion or in the operation of any
109 concession, whether or not the individual is charged an
110 entrance fee or plays any bingo games.

111 (o) "Qualified recipient organization" means any bona
112 fide, not for profit, tax-exempt, as defined in subdivision
113 (d) of this section, incorporated or unincorporated associ-
114 ation or organization which is organized and functions
115 exclusively to directly benefit a number of people as pro-
116 vided in subparagraphs (1) through (7), subdivision (c) of
117 this section. "Qualified recipient organization" includes
118 without limitation any licensee which is organized and
119 functions exclusively as provided in this subdivision.

120 (p) "Venue" means the location in which bingo occa-
121 sions are held.

**§47-20-3. Who may hold bingo games; application for li-
cense; licenses not transferable.**

1 Any charitable or public service organization which
2 has been in existence in this state two years prior to filing
3 an application for a bingo license issued pursuant to sec-
4 tion four or five of this article may hold bingo occasions
5 in accordance with the provisions of this article during the
6 time it holds a valid license.

7 Application for a bingo license shall be made to the
8 tax commissioner and shall be on a form which shall be
9 supplied by him or her. The application shall contain the
10 information required by section seven of this article and
11 any other information which the commissioner considers
12 necessary. An application shall be filed not less than sixty
13 days before the date when the applicant intends to hold its
14 first bingo occasion.

15 No bingo occasion may be held until an application
16 filed in accordance with this article has been approved by
17 the tax commissioner, and the bingo license has been
18 received: *Provided*, That under no circumstances may a
19 licensee organization conduct a bingo occasion before the
20 sixty day filing period between the filing of the applica-
21 tion and date of the first bingo occasion has elapsed: *Pro-*
22 *vided, however*, That the date the application is received
23 by the tax commissioner shall begin the sixty day filing
24 period. The tax commissioner shall send the applicant its
25 license within five days after approval of the bingo appli-
26 cation. If the filing period has elapsed, and the application
27 has not been denied by the tax commissioner, and the appli-
28 cation has not been received by the applicant, the appli-
29 cant may consider the application approved and begin to
30 hold bingo occasions. The tax commissioner shall send a
31 bingo license to the applicant within five days after the
32 expiration of the filing period if the application has not
33 been otherwise denied.

34 No bingo license issued pursuant to this article may be
35 transferred.

§47-20-5a. Venue.

1 Any charitable or public service organization or any
2 of its auxiliaries or other organizations otherwise affiliated
3 with it possessing an annual or limited occasion bingo
4 license or a super bingo license shall conduct a bingo
5 occasion only in the county within which the organization
6 is principally located.

7 Any licensee which, in good faith, finds itself unable
8 to comply with this requirement shall apply to the tax
9 commissioner for permission to conduct a bingo occasion
10 in a location other than the county within which the orga-
11 nization is principally located: *Provided*, That the location

12 shall be in a contiguous county, or, if not in a contiguous
13 county, and not in the county where the licensee organiza-
14 tion has its principal location, the location of the proposed
15 bingo occasion may be no more than thirty air miles from
16 the county within which the organization is principally
17 located. The application shall be made on a form provid-
18 ed by the tax commissioner and shall include the particu-
19 lars of the requested change and the reasons for the
20 change. The application shall be filed no later than sixty
21 days before any scheduled bingo occasion.

22 For purposes of this section, the principal location of a
23 licensee is the address of the licensee shown on the licens-
24 ee's West Virginia business registration certificate.

§47-20-6a. Super bingo license.

1 Any charitable or public service organization may,
2 upon payment of a five thousand dollar license fee, apply
3 to the tax commissioner for issuance of an annual super
4 bingo license. All revenue from the license fee shall be
5 deposited in the special revenue account established under
6 the authority of section two-a, article nine, chapter eleven
7 of this code and used to support the investigatory activities
8 provided for in that section. The tax commissioner shall
9 promulgate legislative rules in accordance with article
10 three, chapter twenty-nine-a of this code specifying those
11 organizations which qualify as charitable or public service
12 organizations.

13 A holder of a super bingo license may conduct one
14 super bingo occasion each month during the period of the
15 license at which up to fifty thousand dollars in prizes may
16 be awarded, notwithstanding the ten thousand dollar limi-
17 tation on prizes specified in section ten of this article.

18 A charitable or public service organization that has a
19 regular or limited occasion bingo license may apply for a
20 super bingo license.

§47-20-10. Limits on prizes awarded — General provisions.

1 Except as otherwise provided in section twenty-two of
2 this article, during the period of a license the average total
3 prizes awarded by a licensee, or in the aggregate by two or

4 more limited occasion licensees holding a joint bingo
5 occasion, for any bingo occasion held pursuant to an
6 annual or limited occasion license, may not exceed ten
7 thousand dollars in value.

8 Prizes may be money or merchandise other than beer,
9 nonintoxicating beer, wine, spirits or alcoholic liquor as
10 defined in section five, article one, chapter sixty of this
11 code. If the prizes are merchandise, the value assigned to
12 them is their fair market value at the time of purchase.

§47-20-11. Operator of bingo games and related concessions.

1 Except as provided in sections thirteen and twenty-two
2 of this article, only persons, as defined in section two of
3 this article, who are residents of this state and who are
4 active members of the licensee organization or its autho-
5 rized auxiliary organization and who have been active
6 members in good standing of the licensee organization or
7 its authorized auxiliary for at least two years prior to the
8 date of filing of the application for a charitable bingo
9 license or the most recent filing of an application for re-
10 newal of the license may participate in any manner in the
11 conduct of any bingo game or operate any concession in
12 conjunction with a bingo occasion: *Provided*, That not-
13 withstanding anything contained in this article to the con-
14 trary, no individual under the age of eighteen years may
15 directly or indirectly participate in the conduct of a bingo
16 game except for junior firefighters, in accordance with the
17 provisions of this article.

§47-20-12a. Compensation of bingo operator; number of employees.

1 (a) Within the guidelines set forth in subsections (b),
2 (c) and (d) of this section, a licensee may pay a salary, the
3 minimum of which shall be established at the federal mini-
4 mum wage, and the maximum being six dollars and fifty
5 cents per hour, to operators of bingo games who are active
6 members of the licensee organization and who have been
7 active members in good standing for at least two years
8 prior to the date of filing of the application for a charita-
9 ble bingo license or the most recent filing of an applica-
10 tion for renewal of the license.

11 (b) If the licensee's gross receipts from bingo occa-
12 sions equal or exceed one hundred thousand dollars for
13 the licensee's most recently filed annual financial report, a
14 salary may be paid to not more than eight operators.

15 (c) If the licensee's gross receipts from bingo occa-
16 sions are less than one hundred thousand dollars, but
17 equal or exceed fifty thousand dollars for the licensee's
18 most recently filed annual financial report, a salary may
19 be paid to not more than five operators.

20 (d) If the licensee's gross receipts from bingo occa-
21 sions are less than fifty thousand dollars for the licensee's
22 most recently filed annual financial report, a salary may
23 be paid to not more than three operators.

24 (e) If the licensee also possesses a super bingo license,
25 it may pay a salary to not more than fifteen operators
26 during the super bingo occasion.

27 (f) In the case of a licensee lawfully holding a charita-
28 ble bingo occasion simultaneously with a charitable raffle
29 occasion, the number of paid charitable bingo operator
30 employees allowed under this limitation for bingo licens-
31 ees shall be in addition to the number of charitable raffle
32 operator employees allowed under section fifteen, article
33 twenty-one of this chapter. Licensees holding simulta-
34 neous occasions shall pay bingo operators from the pro-
35 ceeds of bingo operations and shall pay raffle operators
36 from the proceeds of raffle operations, and the charitable
37 bingo fund and the charitable raffle fund and payments
38 from the funds shall not be commingled.

39 (g) For purposes of the limitations set forth in this
40 section, the term "operator" or "bingo operator" or "raffle
41 operator" shall not include concession stand workers.
42 Wages paid to concession workers shall not exceed six
43 dollars and fifty cents per hour.

§47-20-13. Concessions exception.

1 A licensee may allow any individual, firm, partnership
2 or corporation to operate concessions in conjunction with
3 bingo occasions, and to be compensated for the operation,
4 only if the individual, firm, partnership or corporation

5 agrees to donate all net proceeds received from the sale of
6 the concessions and all compensation received from the
7 licensee organization to charitable or public service pur-
8 poses as specified under section two, subsection (c) of this
9 article.

**§47-20-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of bingo occa-
3 sions, not to exceed twenty-five percent of the gross pro-
4 ceeds collected during a license period, may be paid out
5 of the gross proceeds of the conduct of bingo, including,
6 but not limited to:

7 (1) Rent paid for the use of the premises: *Provided,*
8 That a copy of the rental agreement was filed with the
9 bingo license application and any changes to the rental
10 agreement were filed within ten days of being made:
11 *Provided, however,* That in no event may the rent paid for
12 the use of any premises exceed the fair market value of
13 rent for the premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equip-
16 ment and supplies used to conduct the bingo occasion;

17 (4) The cost to the licensee organization for advertis-
18 ing the bingo occasion;

19 (5) The cost of hiring security personnel, licensed
20 pursuant to the provisions of article eighteen, chapter
21 thirty of this code; and

22 (6) The cost of providing child care services to the
23 raffle patrons: *Provided,* That any proceeds received
24 from the provision of child care services shall be handled
25 the same as raffle proceeds.

26 (b) The actual cost to the licensee for prizes, not to
27 exceed the amounts as specified in section ten of this arti-
28 cle, may be paid out of the gross proceeds of the conduct
29 of bingo.

30 (c) The cost of any refreshments, souvenirs or any
31 other item sold or otherwise provided through any conces-
32 sion to the patrons may not be paid for out of the gross
33 proceeds from the bingo occasion. The licensee shall
34 expend all net bingo proceeds and any interest earned on
35 the proceeds for the charitable or public service purposes
36 stated in the application within one year after the expira-
37 tion of the license under which the bingo occasions were
38 conducted. A licensee which does not qualify as a quali-
39 fied recipient organization may apply to the commissioner
40 at the time it applies for a bingo license or as provided in
41 subsection (e) of this section for permission to apply any
42 or all of its net proceeds to directly support a charitable or
43 public service activity or endeavor which it sponsors.

44 (d) No gross proceeds from any bingo operation may
45 be devoted or in any manner used by any licensee or
46 qualified recipient organization for the construction or
47 acquisition of real or personal property except that which
48 is used exclusively for one or more charitable or public
49 service purposes or as provided in subdivision (3), subsec-
50 tion (a) of this section.

51 (e) The tax commissioner has the authority to disap-
52 prove any contract for sale of goods or services to any
53 charitable bingo licensee for use in or with relation to any
54 charitable bingo operation or occasion, or any lease of
55 real or tangible personal property to any charitable bingo
56 licensee for use in or with relation to any charitable bingo
57 operation or occasion, if the contract or lease is unreason-
58 able or not representative of fair market value. Contracts
59 or leases which are disapproved shall be considered to be
60 in contravention of this article, and are void. Any attempt
61 by any charitable bingo licensee to engage in transactions
62 under the terms of any lease or contract that has been
63 disapproved is grounds for revocation or suspension of
64 the charitable bingo license and for refusal by the tax
65 commissioner to renew the charitable bingo license.

66 (f) If a property owner or lessee, including his or her
67 agent, has entered into a rental contract to hold super
68 bingo occasions on his or her premises, the premises shall
69 be rented, for super bingo occasions, to not more than

70 four super bingo licensees during any period of four
71 consecutive calendar weeks: *Provided*, That each of the
72 charitable or public service organizations desiring to hold
73 a super bingo occasion must possess its own super bingo
74 license. Subject to this limitation, the premises may be
75 used for super bingo occasions during two consecutive
76 days during a conventional weekend. For purposes of this
77 subsection, the term "conventional weekend" means Satur-
78 day and Sunday: *Provided, however*, That the super bingo
79 occasions may occur at the same facility no more often
80 than alternating weekends during a calendar month.

81 (g) Any licensee which, in good faith, finds itself un-
82 able to comply with the requirements of this provision
83 shall apply to the commissioner for permission to expend
84 its net proceeds for one or more charitable or public ser-
85 vice purposes other than that stated in its license applica-
86 tion or for permission to expend its net proceeds later than
87 the one-year time period specified in this section. The
88 application shall be on a form furnished by the commis-
89 sioner and shall include the particulars of the requested
90 changes and the reasons for the changes. The application
91 shall be filed no later than sixty days before the end of the
92 one-year period specified in this section. In the case of an
93 application to extend the time in which the net proceeds
94 are to be expended for a charitable or public service pur-
95 pose, the licensee shall file such periodic reports with the
96 commissioner as the commissioner directs until the pro-
97 ceeds are expended.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with
2 the tax commissioner a quarterly and an annual financial
3 report summarizing its bingo operations for the time peri-
4 od covered by the report. Each quarterly report shall be
5 filed within twenty days after the end of the quarter which
6 it covers. The annual report shall be filed within thirty
7 days after the expiration of the license under which the
8 operations covered by the report were held. The time
9 period covered by the annual report is the full license year
10 or, at the election of a licensee receiving state or federal

11 funding, the most recently ended state or federal fiscal
12 year.

13 Each licensee holding a limited occasion license or
14 state fair license shall file with the tax commissioner a
15 financial report summarizing its bingo operations for the
16 license period within thirty days after the expiration of the
17 license under which the operations covered by the report
18 are held. The report shall contain the name, address and
19 social security number of any individual who receives,
20 during the course of a bingo occasion, prizes, the aggre-
21 gate value of which exceeds one hundred dollars, and
22 other information required by the commissioner: *Provid-*
23 *ed*, That any licensee failing to file the report when due is
24 liable for a penalty of twenty-five dollars for each month
25 or fraction of a month during which the failure continues,
26 the penalty not to exceed one hundred dollars: *Provided,*
27 *however*, That annual financial reports must contain either
28 a compilation or review of the financial report by a certi-
29 fied or licensed public accountant, or may be audited by a
30 certified or licensed public accountant, if a licensee's gross
31 receipts exceed fifty thousand dollars.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-4. Who may hold raffles; application for license; licenses not transferable.

§47-21-11. Limits on prizes awarded—General provisions.

§47-21-12. Compensation.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

§47-21-22. Filing of reports.

§47-21-4. Who may hold raffles; application for license; licenses not transferable.

1 (a) Except as provided in section three of this article,
2 only persons, as defined in section two of this article, who
3 are residents of this state and who are active members of
4 any charitable or public service organization which has
5 been in existence in this state for at least two years prior to
6 filing an application for a raffle license issued pursuant to
7 section five or six of this article may hold raffle occasions

8 in accordance with the provisions of this article during the
9 time it holds a valid license.

10 (b) Application for a raffle license shall be made to
11 the tax commissioner and shall be on a form supplied by
12 him or her. The application shall contain the information
13 required by section eight of this article and any other
14 information which the commissioner considers necessary.
15 No raffle may be held and no tickets may be sold pursu-
16 ant to this article until the raffle application has been ap-
17 proved by the tax commissioner and the license has been
18 received by the applicant: *Provided*, That no raffle occa-
19 sion may be held and no raffle tickets may be sold until a
20 sixty day filing period, which is that time period between
21 the receipt of that application by the tax commissioner
22 and the first raffle occasion, has expired: *Provided, how-*
23 *ever*, That the tax commissioner shall send the applicant its
24 license within five days after the application is approved.
25 If the sixty day filing period has expired and the applica-
26 tion has not been denied and the raffle license has not
27 been received by the applicant, the applicant may consider
28 the application approved and begin to sell tickets for the
29 raffle or hold the raffle occasion. The tax commissioner
30 shall send the applicant its license within five days after the
31 expiration of the filing period if the application has not
32 been otherwise denied.

33 (c) For purposes of this article, any application for an
34 annual license or a limited occasion license received prior
35 to the effective date of this article is considered filed on
36 the effective date.

37 (d) No raffle license issued pursuant to this article may
38 be transferred.

§47-21-11. Limits on prizes awarded — General provisions.

1 Prizes may be money, real or personal property or
2 merchandise other than beer, wine, spirits or alcoholic
3 liquor as defined in section five, article one, chapter sixty
4 of this code. If the prizes are real or personal property or
5 merchandise, the value assigned to them is their fair mar-
6 ket value at the time of acquisition for the raffle or at the
7 time of purchase.

§47-21-12. Compensation.

1 (a) A licensee may pay a salary, the minimum of
2 which shall be established at the federal minimum wage,
3 and the maximum which shall be six dollars and fifty
4 cents per hour, to operators of charitable raffle games who
5 are active members of the licensee organization and who
6 have been active members in good standing for at least
7 two years prior to the date of filing of the application for a
8 charitable raffle license or the most recent filing of an
9 application for renewal of the license.

10 (b) If the licensee's gross receipts from raffle occa-
11 sions equal or exceed one hundred thousand dollars for
12 the licensee's most recently filed annual financial report, a
13 salary may be paid to not more than eight operators.

14 (c) If the licensee's gross receipts from charitable raf-
15 fle occasions are less than one hundred thousand dollars,
16 but equal or exceed fifty thousand dollars for the licens-
17 ee's most recently filed annual financial report, a salary
18 may be paid to not more than five operators.

19 (d) If the licensee's gross receipts from charitable
20 raffle occasions are less than fifty thousand dollars for the
21 licensee's most recently filed annual financial report, a
22 salary may be paid to no more than three operators.

23 (e) In the case of a licensee lawfully holding a charita-
24 ble bingo occasion simultaneously with a charitable raffle
25 occasion, the number of paid charitable raffle operator
26 employees allowed under this limitation for charitable
27 raffle licensees is in addition to the number of charitable
28 bingo operator employees allowed under section twelve-a,
29 article twenty of this chapter. Licensees holding simulta-
30 neous occasions shall pay bingo operators from the pro-
31 ceeds of bingo operations and shall pay raffle operators
32 from the proceeds of raffle operations, and the charitable
33 bingo fund and the charitable raffle fund and payments
34 from the funds shall not be commingled.

35 (f) For purposes of the limitations set forth in this
36 section, the term "operator" or "bingo operator" or "raffle

37 operator" shall not include concession stand workers.
38 Wages paid to concession workers shall not exceed six
39 dollars and fifty cents per hour.

**§47-21-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of raffle occa-
3 sions, not to exceed twenty-five percent of the gross pro-
4 ceeds collected during a license period, may be paid out
5 of the gross proceeds of the conduct of raffle, including,
6 but not limited to:

7 (1) Rent paid for the use of the premises: *Provided,*
8 That a copy of the rental agreement was filed with the
9 raffle license application with any modifications to the
10 rental agreement to be filed within ten days of being
11 made: *Provided, however,* That in no event may the rent
12 paid for the use of any premises exceed the fair market
13 value of rent for the premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equip-
16 ment and supplies used to conduct the raffle occasion;

17 (4) The cost to the licensee organization for advertis-
18 ing the raffle occasion;

19 (5) The cost of hiring security personnel, licensed
20 pursuant to the provisions of article eighteen, chapter
21 thirty of this code; and

22 (6) The cost of providing child care services to the
23 raffle patrons: *Provided,* That any proceeds received
24 from the provision of child care services shall be handled
25 the same as raffle proceeds.

26 (b) The actual cost to the licensee for prizes, not to
27 exceed the amounts as specified in section eleven of this
28 article, may be paid out of the gross proceeds of the con-
29 duct of raffle.

30 (c) The cost of any refreshments, souvenirs or any
31 other item sold or otherwise provided through any conces-
32 sion to the patrons may not be paid for out of the gross
33 proceeds from the raffle occasion. The licensee shall ex-
34 pend all net raffle proceeds and any interest earned on the
35 net raffle proceeds for the charitable or public service
36 purposes stated in the application within one year after the
37 expiration of the license under which the raffle occasions
38 were conducted. A licensee which does not qualify as a
39 qualified recipient organization may apply to the commis-
40 sioner at the time it applies for a raffle license or as pro-
41 vided in subsection (e) of this section for permission to
42 apply any or all of its net proceeds to directly support a
43 charitable or public service activity or endeavor which it
44 sponsors.

45 (d) No gross proceeds from any raffle operation may
46 be devoted or in any manner used by any licensee or
47 qualified recipient organization for the construction, ac-
48 quisition, or improvement, of real or personal property
49 except that which is used exclusively for one or more
50 charitable or public service purposes or as provided in
51 subdivision (3), subsection (a) of this section.

52 (e) The tax commissioner has the authority to disap-
53 prove any contract for sale of goods or services to any
54 charitable raffle licensee for use in or with relation to any
55 charitable raffle operation or occasion, or any lease of real
56 or tangible personal property to any charitable raffle li-
57 censee for use in or with relation to any charitable raffle
58 operation or occasion, if the contract or lease is unreason-
59 able or not representative of fair market value. Disap-
60 proved contracts or leases shall be considered to be in
61 contravention of this article, and are void. Any attempt by
62 any charitable raffle licensee to engage in transactions
63 under the terms of any disapproved lease or contract is
64 grounds for revocation or suspension of the charitable
65 raffle license and for refusal by the tax commissioner to
66 renew the charitable raffle license.

67 (f) Any licensee which, in good faith, finds itself un-
68 able to comply with the requirements of the subsections

69 (a) through (e) of this section shall apply to the commis-
70 sioner for permission to expend its net proceeds for one
71 or more charitable or public service purposes other than
72 that stated in its license application or for permission to
73 expend its net proceeds later than the one-year time peri-
74 od specified in this section. The application shall be on a
75 form furnished by the commissioner and shall include the
76 particulars of the requested changes and the reasons for
77 the changes. The application shall be filed no later than
78 sixty days before the end of the one-year period specified
79 in this section. In the case of an application to extend the
80 time in which the net proceeds are to be expended for a
81 charitable or public service purpose, the licensee shall file
82 such periodic reports with the commissioner as the com-
83 missioner directs until the proceeds are expended.

§47-21-22. Filing of reports.

1 Each licensee holding an annual, limited or state fair
2 license shall file with the commissioner a financial report
3 summarizing its raffle operations within thirty days after
4 the expiration date of the license. The time period covered
5 by an annual report is the full license year or, at the elec-
6 tion of a licensee receiving state or federal funding, the
7 most recently ended state or federal fiscal year.

8 The reports required by this section shall contain the
9 name, address and social security number of any individu-
10 al who received during the course of a raffle occasion
11 prizes the aggregate value of which exceeded one hundred
12 dollars, and other information required by the commis-
13 sioner: *Provided*, That any licensee failing to file the re-
14 port when due is liable for a penalty of twenty-five dollars
15 for each month or fraction of a month during which the
16 failure continues, the penalty not to exceed one hundred
17 dollars: *Provided, however*, That annual financial reports
18 must contain either a compilation or review of such finan-
19 cial report by a certified or licensed public accountant, or
20 may be audited by a certified or licensed public accoun-
21 tant, if a licensee's gross receipts exceed fifty thousand
22 dollars.

CHAPTER 78

(Com. Sub for S. B. 449—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, eight and ten, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section eleven-a; to amend article six, chapter twelve of said code by adding thereto a new section, designated section nineteen; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code; all relating to authorizing the state building commission to borrow funds; clarifying the deposit and disbursement of funds by the commission; authorizing the issuance of revenue bonds; setting forth the terms and conditions of the issuance of bonds; authorizing the acquisition of specified property; clarifying the trust provisions for existing bondholders; requiring the expenditure of bond proceeds for capital expenditures at state institutions of higher education; establishing a committee to certify arts and sciences projects by a date certain; requiring notice and public hearings to be conducted by the committee; authorizing the committee to certify whether a portion of bond proceeds will be expended for constructing and equipping an arts and sciences center in West Virginia; setting forth the conditions upon which proceeds may be used for an arts and sciences center; requiring the committee to determine whether projects will be funded by a date certain; authorizing the balance of bond proceeds to be expended for capital projects at the state parks, the capitol complex or other tourism sites in this state; establishing a committee to certify capital improvement projects by a date certain; requiring notice and public hearings to be conducted by the committee; creating a special account in the state treasury for debt service; authorizing the state board of investments to loan money to the state building commission for acquisition of specified property, to refinance projects and for construction and improvements of regional jails and correctional facilities; setting forth an interest rate for the loans; establishing method of repayment of loans; authoriz-

ing board of investments to fix annual amount of loan; setting forth priorities for loans; encouraging liquidity in the consolidated fund; dedicating lottery proceeds for the repayment of bonds issued by the building commission; establishing maximum amount of lottery proceeds to be dedicated for bond repayment; and making this dedication a second-in-priority lien on the proceeds of the state lottery fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 12. Public Moneys and Securities.**
- 29. Miscellaneous Boards and Officers.**

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

ARTICLE 6. STATE BUILDING COMMISSION.

- §5-6-4. Powers of commission.
- §5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.
- §5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.
- §5-6-10. Trust existing in favor of existing bondholders.
- §5-6-11a. Special power of commission to transfer or expend bond proceeds for capital improvements at institutions of higher education,

state parks and the capitol complex and to construct and lease a center for arts and sciences of West Virginia; limitations; state building commission authorized to issue revenue bonds; fund created; use of funds to pay for development of education, arts, sciences and tourism projects.

§5-6-4. Powers of commission.

- 1 The commission has the power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name
- 5 of the commission or of the state, by purchase, lease,
- 6 lease-purchase or otherwise, real property or rights or
- 7 easements necessary or convenient for its corporate pur-
- 8 poses and to exercise the power of eminent domain to
- 9 accomplish those purposes;
- 10 (4) To acquire, hold and dispose of personal property
- 11 for its corporate purposes;
- 12 (5) To make bylaws for the management and regula-
- 13 tion of its affairs;
- 14 (6) With the consent of the attorney general of the
- 15 state of West Virginia, to use the facilities of his or her
- 16 office, assistants and employees in all legal matters relating
- 17 to or pertaining to the commission;
- 18 (7) To appoint officers, agents and employees, and fix
- 19 their compensation;
- 20 (8) To make contracts, and to execute all instruments
- 21 necessary or convenient to effectuate the intent of, and to
- 22 exercise the powers granted to it by this article;
- 23 (9) To renegotiate all contracts entered into by it
- 24 whenever, due to a change in situation, it appears to the
- 25 commission that its interests will be best served;
- 26 (10) To construct a building or buildings on real
- 27 property, which it may acquire, or which may be owned
- 28 by the state of West Virginia, in the city of Charleston, as
- 29 convenient as may be to the capitol building, together with
- 30 incidental approaches, structures and facilities, subject to

31 the consent and approval of the city of Charleston in any
32 case as may be necessary; and, in addition, to acquire or
33 construct a warehouse, including office space in the ware-
34 house, in Kanawha County for the West Virginia alcohol
35 beverage control commissioner, and equip and furnish the
36 office space; and to acquire or construct, through lease,
37 purchase, lease-purchase or bond financing, hospitals or
38 other facilities, buildings, or additions or renovations to
39 buildings as may be necessary for the safety and care of
40 patients, inmates and guests at facilities under the jurisdic-
41 tion of and supervision of the division of health and at
42 institutions under the jurisdiction of the division of correc-
43 tions or the regional jail and correctional facilities authori-
44 ty; and to formulate and program plans for the orderly
45 and timely capital improvement of all of the hospitals and
46 institutions and the state capitol buildings; and to construct
47 a building or buildings in Kanawha County to be used as a
48 general headquarters by the division of public safety to
49 accommodate that division's executive staff, clerical offic-
50 es, technical services, supply facilities and dormitory ac-
51 commodations; and to develop, improve and expand state
52 parks and recreational facilities to be operated by the
53 division of natural resources; and to establish one or more
54 systems or complexes of buildings and projects under
55 control of the commission; and, subject to prior agree-
56 ments with holders of bonds previously issued, to change
57 the systems, complexes of buildings and projects from
58 time to time, in order to facilitate the issuance and sale of
59 bonds of different series on a parity with each other or
60 having such priorities between series as the commission
61 may determine; and to acquire by purchase, eminent do-
62 main or otherwise all real property or interests in the real
63 property necessary or convenient to accomplish the pur-
64 poses of this subdivision. The rights and powers set forth
65 in this subdivision shall not be construed as in derogation
66 of any rights and powers now vested in the West Virginia
67 alcohol beverage control commissioner, the department of
68 health and human resources, the division of corrections or
69 the division of natural resources;

70 (11) To maintain, construct and operate a project
71 authorized under this article;

72 (12) To charge rentals for the use of all or any part of
73 a project or buildings at any time financed, constructed,
74 acquired or improved in whole or in part with the pro-
75 ceeds of sale of bonds issued pursuant to this article, sub-
76 ject to and in accordance with such agreements with bond-
77 holders as may be made as provided in this article: *Pro-*
78 *vided*, That on and after the effective date of the amend-
79 ments to this section, to charge rentals for the use of all or
80 any part of a project or buildings at any time financed,
81 constructed, acquired, maintained or improved in whole or
82 in part with the proceeds of sale of bonds issued pursuant
83 to this article, subject to and in accordance with such
84 agreements with bondholders as may be made as in this
85 section provided, or with any funds available to the state
86 building commission, including, but not limited to, all
87 buildings and property owned by the state of West Virgin-
88 ia or by the state building commission, but no rentals shall
89 be charged to the governor, attorney general, secretary of
90 state, state auditor, state treasurer, the Legislature and the
91 members of the Legislature, the supreme court of appeals,
92 nor for their offices, agencies, official functions and du-
93 ties;

94 (13) To issue negotiable bonds and to provide for the
95 rights of the holders of the negotiable bonds;

96 (14) To accept and expend any gift, grant or contribu-
97 tion of money to, or for the benefit of, the commission,
98 from the state of West Virginia or any other source for
99 any or all of the purposes specified in this article or for
100 any one or more of such purposes as may be specified in
101 connection with the gift, grant or contribution;

102 (15) To enter on any lands and premises for the pur-
103 pose of making surveys, soundings and examinations;

104 (16) To invest in United States government obliga-
105 tions, on a short-term basis, any surplus funds which the
106 commission may have on hand pending the completion of
107 any project or projects;

108 (17) To issue revenue bonds in accordance with the
109 applicable provisions of this article for the purposes set
110 forth in section eleven-a of this article; and

111 (18) To do all things necessary or convenient to carry
112 out the powers given in this article.

**§5-6-5. Deposit and disbursement of funds of commission;
security for deposits; audits.**

1 Except as provided in sections five-a and eleven-a of
2 this article, all moneys of the commission from whatever
3 source derived shall be paid to the treasurer of the state of
4 West Virginia who shall not commingle the moneys, but
5 shall deposit them to a special revenue fund to be known
6 as the "state building commission fund". The moneys in
7 the account shall be impressed with and subject to the lien
8 or liens on the moneys in favor of the bondholders pro-
9 vided in the proceedings for issuance of bonds pursuant to
10 this article. The moneys in the account shall be paid out
11 on check of the treasurer on requisition of the chairman
12 of the commission, or of such other person as the commis-
13 sion may authorize to make the requisition. All deposits
14 of the moneys shall, if required by the treasurer or the
15 commission, be secured by obligations of the United
16 States, of the state of West Virginia, or of the commission,
17 of a market value equal at all times to the amount of the
18 deposit, and all banking institutions are authorized to give
19 such security for the deposits. The legislative auditor and
20 his or her legally authorized representatives are hereby
21 authorized and empowered from time to time to examine
22 the accounts and books of the commission, including its
23 receipts, disbursements, contracts, leases, sinking funds,
24 investments and any other matters relating to its financial
25 standing.

**§5-6-8. Commission empowered to issue state building revenue
bonds after legislative authorization; form and
requirements for bonds; procedure for issuance;
temporary bonds; funds, grants and gifts.**

1 (a) The commission is hereby empowered to raise the
2 cost of a project, as defined in this article, by the issuance
3 of state building revenue bonds of the state, the principal
4 of and interest on which shall be payable solely from the
5 special revenue fund provided in section five of this article
6 for the payment. Subject to the proceedings pursuant to
7 which any bonds outstanding were authorized and issued

8 pursuant to this article, the commission shall pledge the
9 moneys in the special revenue fund, except that part of the
10 proceeds of sale of any bonds to be used to pay the cost
11 of a project and for the payment of the principal of and
12 interest on bonds issued pursuant to this article. The
13 pledge shall apply equally and ratably to separate series of
14 bonds or upon the priorities as the commission shall deter-
15 mine. The bonds shall be authorized by resolution of the
16 commission. The resolution shall recite an estimate by the
17 commission of the cost, and shall provide for the issuance
18 of bonds in an amount sufficient, when sold as provided in
19 this section, to produce the cost, less the amount of any
20 funds, grant or grants, gift or gifts, contribution or contri-
21 butions received, or in the opinion of the commission
22 expected to be received, from the United States of Ameri-
23 ca or from any other source. The acceptance by the com-
24 mission of any and all funds, grants, gifts and contribu-
25 tions, whether in money or in land, labor or materials, is
26 hereby expressly authorized. All bonds shall have and are
27 hereby declared to have all the qualities of negotiable
28 instruments. The bonds shall bear interest at not more
29 than twelve percent per annum, payable semiannually, and
30 shall mature in not more than forty years from their date
31 or dates, and may be made redeemable at the option of the
32 state, to be exercised by the commission, at the price and
33 under the terms and conditions, all as the commission may
34 fix prior to the issuance of the bonds. The commission
35 shall determine the form of the bonds, including coupons,
36 if any, to be attached to the bonds to evidence the right of
37 interest payments. The bonds shall be signed by the
38 chairman and secretary of the commission, under the great
39 seal of the state, attested by the secretary of state, and the
40 coupons, if any, attached to the bonds shall bear the fac-
41 simile signature of the chairman of the commission. In
42 case any of the officers whose signatures appear on the
43 bonds or coupons issued as authorized by this section
44 shall cease to be officers before the delivery of the bonds,
45 the signatures are nevertheless valid and sufficient for all
46 purposes the same as if they had remained in office until
47 the delivery. The commission shall fix the denominations
48 of the bonds, the principal and interest of which shall be
49 payable at the office of the treasurer of the state of West

50 Virginia, at the capitol of the state, or, at the option of the
51 holder, at some bank or trust company within or without
52 the state of West Virginia to be named in the bonds, in
53 such medium as may be determined by the commission.
54 The bonds and interest on the bonds are exempt from
55 taxation by the state of West Virginia, or any county or
56 municipality in the state. The commission may provide
57 for the registration of the bonds in the name of the owners
58 as to principal alone, and as to both principal and interest
59 under the terms and conditions as the commission may
60 determine, and shall sell the bonds in the manner as it may
61 determine to be for the best interest of the state, taking
62 into consideration the financial responsibility of the pur-
63 chaser, and the terms and conditions of the purchase, and
64 especially the availability of the proceeds of the bonds
65 when required for payment of the cost of the project. The
66 sale shall be made at a price not lower than a price which,
67 computed upon standard tables of bond values, will show a
68 net return of not more than thirteen percent per annum to
69 the purchaser upon the amount paid for the bonds. The
70 proceeds of the bonds shall be used solely for the pay-
71 ment of the cost of the project for which bonds were is-
72 sued, and shall be deposited and checked out as provided
73 by section five of this article, and under further restric-
74 tions, if any, as the commission may provide. If the pro-
75 ceeds of bonds issued for a project or a specific group of
76 projects exceeds the cost of the project or projects, the
77 surplus shall be paid into the fund provided for in section
78 five of this article for payment of the principal and interest
79 of the bonds. The fund may be used for the purchase of
80 any of the outstanding bonds payable from the fund at the
81 market price, but at not exceeding the price, if any, at
82 which the bonds are in the same year redeemable, and all
83 bonds redeemed or purchased shall be canceled immedi-
84 ately, and shall not again be issued. Prior to the prepara-
85 tion of definitive bonds, the commission may, under like
86 restrictions, issue temporary bonds with or without cou-
87 pons, exchangeable for definitive bonds upon the issuance
88 of the latter. Notwithstanding the provisions of sections
89 nine and ten, article six, chapter twelve of this code, reve-
90 nue bonds issued under the authority granted in this sec-
91 tion are eligible as investments for the workers' compensa-

92 tion fund, teachers retirement fund, division of public
93 safety, death, disability and retirement fund, West Virginia
94 public employees retirement system and as security for the
95 deposit of all public funds. The revenue bonds may be
96 issued without any other proceedings or the happening of
97 any other conditions or things other than those proceed-
98 ings, conditions and things which are specified and re-
99 quired by this article, or by the constitution of the state.
100 For all projects authorized under the provisions of this
101 article, other than projects to be leased by the commission
102 to the regional jail and correctional facilities authority or
103 projects authorized pursuant to section eleven-a of this
104 article, the aggregate amount of all issues of bonds out-
105 standing at one time shall not exceed sixty-two million
106 five hundred thousand dollars, including the renegotiation,
107 reissuance or refinancing of any bonds, and no project in
108 connection with which bonds are to be issued shall be
109 initiated by the commission unless and until the Legisla-
110 ture, through enactment of general law, approves the pur-
111 pose, the amount of bonds to be issued and the total cost
112 for the project, construction or acquisition.

113 For projects which are to be leased by the commission
114 to the regional jail and correctional facilities authority,
115 legislative approval pursuant to the provisions of this sec-
116 tion shall not be required if the projects have otherwise
117 been approved by the Legislature in accordance with the
118 provisions of subsection (m), section five, article twenty,
119 chapter thirty-one of this code, and the limitations on the
120 amount of revenue bonds which may be issued by the
121 commission and the project costs shall be governed by the
122 terms of any concurrent resolution adopted pursuant to
123 that subsection.

124 (b) Notwithstanding anything in this article to the
125 contrary, the commission is authorized to issue bonds, or
126 otherwise finance or refinance the following projects,
127 including the costs of issuance and sale of the bonds or
128 financing, all necessary financial and legal expenses and
129 creation of debt service reserve funds, in an amount not to
130 exceed twenty-one million dollars:

131 (1) Any or all of the state office buildings and adjoin-
132 ing real property being lease-purchased in Beckley,
133 Charleston, Clarksburg, Fairmont, Huntington and
134 Parkersburg;

135 (2) A facility to be obtained or constructed by the
136 commission and leased to the division of motor vehicles;
137 and

138 (3) Property and buildings needed for state spending
139 units in an amount not to exceed three million dollars.

140 (c) Notwithstanding any other provision of this sec-
141 tion, the commission is authorized to issue bonds for the
142 purposes set forth in section eleven-a of this article in the
143 aggregate amount of one hundred million dollars, includ-
144 ing the renegotiation, reissuance or refinancing of any
145 bonds issued for that purpose. If the proceeds of bonds
146 issued under this subsection exceeds the cost of the project
147 or projects, the surplus shall be paid into the education,
148 arts, sciences and tourism fund established in section
149 eleven-a of this article.

150 (d) The commission shall acquire the property being
151 lease-purchased in the city of Charleston, located at 601
152 Morris Street, through a loan from the consolidated fund.
153 The loan shall be under the terms and conditions set forth
154 in section nineteen, article six, chapter twelve of this code.

§5-6-10. Trust existing in favor of existing bondholders.

1 The properties and interests in properties, real, person-
2 al and mixed, tangible and intangible, standing or held in
3 the name of or for and in behalf of, or for the benefit of,
4 the commission, or the state of West Virginia to the extent
5 that the properties and interests in properties were ac-
6 quired or improved by the expenditure of the proceeds of
7 bonds previously issued by the commission, and the mon-
8 eys, deposits, securities and choses in action and other
9 rights held in the name of or for and in behalf of, or for
10 the benefit of, the commission, other than moneys, depos-
11 its, securities, choses in action and other rights, or which
12 are investments of: (1) Proceeds of bonds previously
13 issued by the commission held for expenditure for com-

14 pletion of now existing projects of the commission; or (2)
15 revenues of the commission from existing projects of the
16 commission which, after provision for operation and
17 maintenance expenses and coverage requirements not
18 otherwise provided for, are in excess of sums required to
19 pay the principal of and interest on the bonds of the com-
20 mission previously issued, as and when due and payable;
21 or (3) proceeds of bonds of the commission issued after
22 the effective date of this section; or (4) revenues pledged
23 for the repayment of bonds issued pursuant to section
24 eleven-a of this article; or (5) revenues of the commission
25 from projects acquired after the effective date of this sec-
26 tion or constructed by the commission, are declared to be
27 subject to and shall be held by the commission in trust for
28 the satisfaction of the obligations evidenced by the bonds
29 previously issued by the commission and the interest cou-
30 pons on the bonds: *Provided*, That nothing in this article
31 shall be taken to validate or to attempt to validate rights
32 under any existing lease or other agreement entered into
33 under the former provisions of this article between the
34 commission and the state of West Virginia or any officer,
35 department or agency of this state to the extent that the
36 lease or agreement provides for payments from general
37 tax revenues of the state. Until the satisfaction in full of
38 the obligations evidenced by bonds previously issued by
39 the commission, the commission shall hold, manage and
40 operate the trust properties and interests in properties,
41 moneys, deposits, securities and choses in action and other
42 rights, separate from all other properties and interests in
43 properties, moneys, deposits, securities and choses in ac-
44 tion and other rights that may after the effective date of
45 this section be held and owned by the commission. Upon
46 the satisfaction of all of the obligations of the commission,
47 all of the trust properties and interests in properties, mon-
48 eys, deposits, securities and choses in action and other
49 rights shall become and be free and clear of the trust.

§5-6-11a. Special power of commission to transfer or expend bond proceeds for capital improvements at institutions of higher education, state parks and the capitol complex and to construct and lease a center for arts and sciences of West Virginia;

limitations; state building commission authorized to issue revenue bonds; fund created; use of funds to pay for development of education, arts, sciences and tourism projects.

1 (a) The Legislature finds and declares that in order to
2 attract new business and industry to this state, to retain
3 existing business and industry providing the citizens of
4 this state with economic security and to advance the busi-
5 ness prosperity and economic welfare of this state it is
6 necessary to promote adequate higher education, arts,
7 sciences and tourism facilities, including infrastructure,
8 for: (1) State-of-the-art educational opportunities for all
9 citizens of this state; (2) tourism enhancements at state
10 parks, the capitol complex or other tourism sites through-
11 out the state; (3) hands-on arts and sciences training for
12 the youth of West Virginia; and (4) programs using the
13 performing arts as an educational tool. Therefore, in
14 order to promote education, arts, sciences and tourism, the
15 Legislature finds that public financial support should be
16 provided for constructing, equipping, improving and
17 maintaining capital improvement projects which promote
18 education, arts, sciences and tourism in this state.

19 (b) The state building commission shall, by resolution,
20 in accordance with the provisions of this article, issue reve-
21 nue bonds of the commission from time to time, to pay
22 for a portion of the cost of constructing, equipping, im-
23 proving or maintaining capital improvement projects un-
24 der this section or to refund the bonds, at the discretion of
25 the authority. The principal amount of the bonds issued
26 under this section shall not exceed, in the aggregate, one
27 hundred million dollars. Any revenue bonds issued on or
28 after the first day of January, one thousand nine hundred
29 ninety-six, which are secured by lottery proceeds shall
30 mature at a time or times not exceeding twenty-five years
31 from their respective dates. The principal of, and the
32 interest and redemption premium, if any, on the bonds
33 shall be payable solely from the special fund provided in
34 this section for the payment.

35 (c) There is hereby created in the state treasury a spe-
36 cial revenue fund named the "education, arts, sciences and

37 tourism debt service fund" into which shall be deposited
38 on and after the first day of July, one thousand nine hun-
39 dred ninety-six, the amounts specified in section eighteen,
40 article twenty-two, chapter twenty-nine of this code. All
41 amounts deposited in the fund shall be pledged to the
42 repayment of the principal, interest and redemption pre-
43 mium, if any, on any revenue bonds or refunding revenue
44 bonds authorized by this section. The commission may
45 further provide in the resolution and in the trust agree-
46 ment for priorities on the revenues paid into the education,
47 arts, sciences and tourism debt service fund as may be
48 necessary for the protection of the prior rights of the
49 holders of bonds issued at different times under the provi-
50 sions of this section. The bonds issued pursuant to this
51 section shall be separate from all other bonds which may
52 be or have been issued from time to time under the provi-
53 sions of this article. The education, arts, sciences and
54 tourism debt service fund shall be pledged solely for the
55 repayment of bonds issued pursuant to this section. On or
56 prior to the first day of May of each year, commencing
57 the first day of May, one thousand nine hundred
58 ninety-six, the commission shall certify to the state lottery
59 director the principal and interest and coverage ratio re-
60 quirements for the following fiscal year on any revenue
61 bonds or refunding revenue bonds issued pursuant to this
62 section, and for which moneys deposited in the education,
63 arts, sciences and tourism debt service fund have been
64 pledged, or will be pledged, for repayment pursuant to this
65 section.

66 After the commission has issued bonds authorized by
67 this section, and after the requirements of all funds have
68 been satisfied, including coverage and reserve funds estab-
69 lished in connection with the bonds issued pursuant to this
70 section, any balance remaining in the education, arts, sci-
71 ences and tourism debt service fund may be used for the
72 redemption of any of the outstanding bonds issued under
73 this section which, by their terms, are then redeemable or
74 for the purchase of the outstanding bonds at the market
75 price, but not to exceed the price, if any, at which redeem-
76 able, and all bonds redeemed or purchased shall be imme-
77 diately canceled and shall not again be issued.

78 (d) The commission shall expend twenty-five million
79 dollars of the bond proceeds for certified capital improve-
80 ment projects at state institutions of higher education. For
81 the purposes of certifying the projects which will receive
82 funds from the bond proceeds, a committee shall be estab-
83 lished and comprised of the governor, or his or her
84 designee, the secretary of the department of administra-
85 tion, the secretary of the department of education and the
86 arts, the chancellor of the university of West Virginia
87 board of trustees and the chancellor of the board of direc-
88 tors of the state college system. The committee shall meet
89 as often as necessary and take recommendations from any
90 source whatever regarding the capital improvement pro-
91 jects at state institutions of higher education. The commit-
92 tee shall meet within forty-five days of the effective date
93 of this section. Prior to making its recommendations, the
94 committee shall conduct at least two public hearings, one
95 of which must be held outside of Kanawha County. No-
96 tice of the time, place, date and purpose of the hearing
97 shall be published in at least one newspaper in each of the
98 three congressional districts at least fourteen days prior to
99 the date of the public hearing. On or before the fifteenth
100 day of September, one thousand nine hundred ninety-six,
101 the committee shall certify to the commission a list of
102 those capital improvement projects at state institutions of
103 higher education which will receive funds from the pro-
104 ceeds of bonds issued pursuant to this section. Once certi-
105 fied, the list may not thereafter be altered or amended
106 other than by legislative enactment.

107 (e) The commission shall expend up to twenty-six
108 million dollars from the proceeds of the bonds authorized
109 by this section to pay a portion of the costs of projects
110 certified under this subsection for development, mainte-
111 nance or promotion of arts and sciences or constructing
112 and equipping a center for arts and sciences of West Vir-
113 ginia located on a site acquired for that purpose. Any
114 proceeds expended to pay a portion of project costs to
115 construct and equip a center for arts and sciences of West
116 Virginia shall not exceed forty percent of the total cost of
117 the project and permanent endowments for operation and
118 maintenance, and bond proceeds shall not be expended

119 until sixty percent of the total cost has been committed
120 from sources other than bond proceeds. For the purposes
121 of certifying the projects which will receive funds from the
122 bond proceeds under this subsection, a committee shall be
123 established and comprised of the governor, or his or her
124 designee, the secretary of the department of administra-
125 tion, the director of the division of natural resources, the
126 director of the West Virginia development office and a
127 representative of the capitol building commission, other
128 than the secretary of the department of administration,
129 who shall be selected by the capitol building commission.
130 The capitol building commission shall select its represen-
131 tative within thirty days of the effective date of this sec-
132 tion. The committee shall meet as often as necessary and
133 take recommendations from any source whatever regard-
134 ing which projects should be certified. The committee
135 shall meet within forty-five days of the effective date of
136 this section. Prior to making its determination, the com-
137 mittee shall conduct one public hearing on the projects to
138 be certified under this subsection. Notice of the time,
139 place, date and purpose of the hearing shall be published
140 in at least one newspaper in each of the three congressio-
141 nal districts at least fourteen days prior to the date of the
142 public hearing. The committee shall make its determina-
143 tion as to whether bond proceeds will be expended for the
144 purposes set forth in this subsection and the amount to be
145 expended for each project, on or before the fifteenth day
146 of June, one thousand nine hundred ninety-six. Thereaf-
147 ter, the decision may not be altered or amended other than
148 by legislative enactment. The commission is authorized to
149 acquire by purchase or lease real property to be used as
150 the site for a center for arts and sciences of West Virginia;
151 and notwithstanding the provisions of section seven of this
152 article, enter into a long-term lease agreement with a non-
153 profit corporation organized under the laws of this state
154 for operation and maintenance of the center. The non-
155 profit corporation shall, as consideration for any long-
156 term lease agreement, complete the construction and
157 equipping of the center and demonstrate to the satisfaction
158 of the commission its financial ability to operate and
159 maintain the center during the term of the lease agree-
160 ment. The nonprofit corporation shall have at least nine

161 members on its board of directors which are appointed by
162 the governor with the advice and consent of the Senate.
163 Of the nine appointed members, three shall be selected
164 from each congressional district: *Provided*, That none of
165 the appointed members shall be a resident of Kanawha
166 County. The members appointed by the governor with
167 the advice and consent of the Senate shall serve on the
168 board for three-year staggered terms. Of the members
169 first appointed by the governor, one from each congress-
170 sional district will serve a three-year term, one from each
171 congressional district will serve a two-year term and one
172 from each congressional district shall serve a one-year
173 term.

174 (f) The commission shall expend the balance of the
175 bond proceeds for certified projects at state parks, the
176 capitol complex or other tourism sites. The committee
177 established in subsection (e) of this section shall certify to
178 the commission on or before the fifteenth day of Septem-
179 ber, one thousand nine hundred ninety-six, a list of those
180 capital improvement projects at state parks, the capitol
181 complex or other tourism sites which will receive funds
182 from the proceeds of bonds issued pursuant to this sec-
183 tion. The committee shall meet as often as necessary and
184 take recommendations from any source whatever regard-
185 ing the capital improvement projects at state parks, the
186 capitol complex or other tourism sites in this state. The
187 committee shall meet within forty-five days of the effec-
188 tive date of this section. Prior to making its recommenda-
189 tions, the committee shall conduct at least two public hear-
190 ings on the projects to be certified under this subsection,
191 one of which must be held outside of Kanawha County.
192 Notice of the time, place, date and purpose of the hearing
193 shall be published in at least one newspaper in each of the
194 three congressional districts at least fourteen days prior to
195 the date of the public hearing. Once certified, the list may
196 not thereafter be altered or amended other than by legisla-
197 tive enactment.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVEST- MENTS.

§12-6-19. Authorization for loans by the state board of investments.

1 (a) The state board of investments, upon request of the
2 state building commission, shall transfer moneys as a loan
3 to the state building commission in an amount not to ex-
4 ceed in the aggregate twenty-one million dollars for the
5 purposes of financing or refinancing the projects specified
6 in subsections (b) and (d), section eight, article six, chapter
7 five of this code. The money borrowed shall bear interest
8 during the term of the loan at a fixed rate not to exceed
9 the interest rate on treasury notes, bills or bonds of the
10 same term as the term of the loan the week of closing on
11 the loan as reported by the treasury of the United States.
12 Loans made under this subsection shall be repaid in regu-
13 lar monthly or semiannual payments and shall be paid in
14 full not later than twenty-five years from the date the loans
15 are made with terms and conditions mutually agreed upon
16 by the state building commission and the state board of
17 investments.

18 (b) The state board of investments shall upon request
19 of the state building commission transfer moneys as a loan
20 to the state building commission in an amount not to ex-
21 ceed in the aggregate eighty million dollars for the pur-
22 poses of financing construction of regional jails, correc-
23 tional facilities, or building extensions or improvements to
24 regional jails and correctional facilities. Prior to the ex-
25 penditure of any loan proceeds, the regional jail and cor-
26 rectional facility authority shall certify a list of projects to
27 the state building commission and the joint committee on
28 government and finance that are to be funded from loan
29 proceeds. This certified list cannot thereafter be altered or
30 amended other than by legislative enactment. Upon re-
31 ceipt of the certified list of projects, the state building
32 commission shall transfer the loan proceeds to the region-
33 al jail and correctional facility authority. The money
34 borrowed shall bear interest during the term of the loan at
35 a fixed rate not to exceed the interest rate on treasury
36 notes, bills or bonds of the same term as the term of the
37 loan the week of closing on the loan as reported by the
38 treasury of the United States.

39 (c) Loans made under this section for the projects
40 specified in subsection (b) of this section and in subsec-
41 tion (d), section eight, article six, chapter five of this code,
42 shall be repaid in annual payments of not less than twelve
43 million dollars per year by appropriation of the Legisla-
44 ture to the board of investments. The amount transferred
45 for loans under subsection (a) or (b) of this section shall
46 not exceed that amount which the board of investments
47 determines is reasonable given the cash flow needs of the
48 consolidated fund. The board shall make transfers for
49 loans first for the project specified in subsection (d), sec-
50 tion eight, article six, chapter five of this code, second for
51 the projects specified in subsection (b) of this section and
52 third for projects specified in subsection (b), section eight,
53 article six, chapter five of this code, which are in imminent
54 danger of default in payment. The board shall take the
55 steps necessary to increase the liquidity of the consolidat-
56 ed fund over a period of the next five years to allow for
57 the loans provided in this section without increasing the
58 risk of loss in the consolidated fund.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby continued a special revenue fund
2 in the state treasury which shall be designated and known
3 as the "state lottery fund". The fund shall consist of all
4 appropriations to the fund and all interest earned from
5 investment of the fund and any gifts, grants or contribu-
6 tions received by the fund. All revenues received from the
7 sale of lottery tickets, materials and games shall be depos-
8 ited with the state treasurer and placed into the "state lot-
9 tery fund". The revenue shall be disbursed in the manner

10 provided in this section for the purposes stated in this
11 section and shall not be treated by the auditor and treasurer
12 as part of the general revenue of the state.

13 (b) No appropriation, loan or other transfer of state
14 funds may be made to the commission or lottery fund
15 after the initial appropriation.

16 (c) A minimum annual average of forty-five percent
17 of the gross amount received from each lottery shall be
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery shall be allocated to and may
21 be disbursed as necessary for fund operation and administration
22 expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall be
26 allocated as net profit. In the event that the percentage
27 allotted for operations and administration generates a
28 surplus, the surplus shall be allowed to accumulate to an
29 amount not to exceed two hundred fifty thousand dollars.
30 On a monthly basis, the director shall report to the joint
31 committee on government and finance of the Legislature
32 any surplus in excess of two hundred fifty thousand dollars
33 and remit to the state treasurer the entire amount of
34 those surplus funds in excess of two hundred fifty thousand
35 dollars which shall be allocated as net profit.

36 (f) After first satisfying the requirements for funds
37 dedicated to the school building debt service fund in subsection
38 (h) of this section to retire the ten-year bonds
39 authorized to be issued pursuant to section eight, article
40 nine-d, chapter eighteen of this code, and then satisfying
41 the requirements for funds dedicated to the education, arts,
42 sciences and tourism debt service fund in subsection (i) of
43 this section to retire the bonds authorized to be issued
44 pursuant to section eleven-a, article six, chapter five of this
45 code, the Legislature shall annually appropriate all of the
46 remaining amounts allocated as net profits in subsection
47 (e) of this section, in such proportions as it considers beneficial
48 to the citizens of this state, to: (1) The lottery edu-

49 cation fund created in subsection (g) of this section; (2)
50 the school construction fund created in section six, article
51 nine-d, chapter eighteen of this code; (3) the lottery senior
52 citizens fund created in subsection (j) of this section; and
53 (4) the division of natural resources created in section
54 four, article five, chapter twenty of this code and the West
55 Virginia development office as created in section one,
56 article two, chapter five-b of this code, in accordance with
57 subsection (k) of this section. No transfer to any account
58 other than the school building debt service account and
59 the education, arts, sciences and tourism debt service fund
60 may be made in any period of time in which a default
61 exists in respect to debt service on bonds issued by the
62 school building authority and the state building commis-
63 sion which are secured by lottery proceeds. No additional
64 transfer shall be made to any account other than the
65 school building debt service account and the education,
66 arts, sciences and tourism debt service fund when net prof-
67 its for the preceding twelve months are not at least equal to
68 one hundred fifty percent of debt service on bonds issued
69 by the school building authority and the state building
70 commission which are secured by net profits.

71 (g) There is hereby continued a special revenue fund
72 in the state treasury which shall be designated and known
73 as the "lottery education fund". The fund shall consist of
74 the amounts allocated pursuant to subsection (f) of this
75 section, which shall be deposited into the lottery education
76 fund by the state treasurer. The lottery education fund
77 shall also consist of all interest earned from investment of
78 the lottery education fund and any other appropriations,
79 gifts, grants, contributions or moneys received by the
80 lottery education fund from any source. The revenues
81 received or earned by the lottery education fund shall be
82 disbursed in the manner provided below and shall not be
83 treated by the auditor and treasurer as part of the general
84 revenue of the state. Annually, the Legislature shall ap-
85 propriate the revenues received or earned by the lottery
86 education fund to the state system of public and higher
87 education for such educational programs as it considers
88 beneficial to the citizens of this state.

89 (h) On or before the twenty-eighth day of each month
90 through the twentieth day of June, two thousand five, the
91 lottery director shall allocate to the school building debt
92 service fund created pursuant to the provisions of section
93 six, article nine-d, chapter eighteen of this code, as a first
94 priority from the net profits of the lottery for the preced-
95 ing month, an amount equal to one tenth of the projected
96 annual principal, interest and coverage ratio requirements
97 on any and all revenue bonds and refunding bonds issued,
98 or to be issued, on or after the first day of April, one thou-
99 sand nine hundred ninety-four, as certified to the lottery
100 director in accordance with the provisions of section six,
101 article nine-d, chapter eighteen of this code. In no event
102 shall the monthly amount allocated exceed one million
103 eight hundred thousand dollars, nor shall the total alloca-
104 tion of the net profits to be paid into the school building
105 debt service fund, as provided in this section, in any fiscal
106 year exceed the lesser of the principal and interest require-
107 ments certified to the lottery director or eighteen million
108 dollars. In the event there are insufficient funds available
109 in any month to transfer the amount required to be trans-
110 ferred pursuant to this subsection to the school debt ser-
111 vice fund, the deficiency shall be added to the amount
112 transferred in the next succeeding month in which reve-
113 nues are available to transfer the deficiency. A lien on the
114 proceeds of the state lottery fund up to a maximum
115 amount equal to the projected annual principal, interest
116 and coverage ratio requirements, not to exceed
117 twenty-seven million dollars annually, may be granted by
118 the school building authority in favor of the bonds it is-
119 sues which are secured by the net lottery profits.

120 (i) Beginning on or before the twenty-eighth day of
121 July, one thousand nine hundred ninety-six, and continu-
122 ing on or before the twenty-eighth day of each succeeding
123 month thereafter through the twenty-eighth day of June,
124 two thousand twenty-one, the lottery director shall allocate
125 to the education, arts, sciences and tourism debt service
126 fund created pursuant to the provisions of section
127 eleven-a, article six, chapter five of this code, as a second
128 priority from the net profits of the lottery for the preced-
129 ing month, an amount equal to one tenth of the projected

130 annual principal, interest and coverage ratio requirements
131 on any and all revenue bonds and refunding bonds issued,
132 or to be issued, on or after the first day of April, one thou-
133 sand nine hundred ninety-six, as certified to the lottery
134 director in accordance with the provisions of that section.
135 In no event shall the monthly amount allocated exceed
136 one million dollars nor shall the total allocation paid into
137 the education, arts, sciences and tourism debt service fund,
138 as provided in this section, in any fiscal year exceed the
139 lesser of the principal and interest requirements certified
140 to the lottery director or ten million dollars. In the event
141 there are insufficient funds available in any month to
142 transfer the amount required pursuant to this subsection to
143 the education, arts, sciences and tourism debt service fund,
144 the deficiency shall be added to the amount transferred in
145 the next succeeding month in which revenues are available
146 to transfer the deficiency. A second-in-priority lien on
147 the proceeds of the state lottery fund up to a maximum
148 amount equal to the projected annual principal, interest
149 and coverage ratio requirements, not to exceed fifteen
150 million dollars annually, may be granted by the state
151 building commission in favor of the bonds it issues which
152 are secured by the net lottery profits.

153 (j) There is hereby continued a special revenue fund
154 in the state treasury which shall be designated and known
155 as the "lottery senior citizens fund". The fund shall consist
156 of the amounts allocated pursuant to subsection (f) of this
157 section, which shall be deposited into the lottery senior
158 citizens fund by the state treasurer. The lottery senior
159 citizens fund shall also consist of all interest earned from
160 investment of the lottery senior citizens fund and any
161 other appropriations, gifts, grants, contributions or moneys
162 received by the lottery senior citizens fund from any
163 source. The revenues received or earned by the lottery
164 senior citizens fund shall be disbursed in the manner pro-
165 vided below and shall not be treated by the auditor or
166 treasurer as part of the general revenue of the state. An-
167 nually, the Legislature shall appropriate the revenues re-
168 ceived or earned by the lottery senior citizens fund to such
169 senior citizens medical care and other programs as it con-
170 siders beneficial to the citizens of this state.

171 (k) The division of natural resources and the West
172 Virginia development office, as appropriated by the
173 Legislature, may use the amounts allocated to it pursuant
174 to subsection (f) of this section for one or more of the
175 following purposes: (1) The payment of any or all of the
176 costs incurred in the development, construction,
177 reconstruction, maintenance or repair of any project or
178 recreational facility, as these terms are defined in section
179 four, article five, chapter twenty of this code, pursuant to
180 the authority granted to it under article five, chapter
181 twenty of this code; (2) the payment, funding or
182 refunding of the principal of, interest on or redemption
183 premiums on any bonds, security interests or notes issued
184 by the parks and recreation section of the division of
185 natural resources under article five, chapter twenty of this
186 code; or (3) the payment of any advertising and
187 marketing expenses for the promotion and development
188 of tourism or any tourist facility or attraction in this state.

CHAPTER 79

(Com. Sub. for H. B. 2353—By Delegates Hunt, Seacrist, Amores, Farris,
Greear, Trump and Tillis)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to prohibiting courts from ordering a name change for certain felons; prohibiting certain felons from applying for a name change; and providing for penalties including fines or incarceration for violations of the provision.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further

amended by adding thereto a new section, designated section seven, all to read as follows:

ARTICLE 5. CHANGE OF NAME.

§48-5-3. When court may order change of name.

§48-5-7. Unlawful change of name by certain felons.

§48-5-3. When court may order change of name.

1 Upon the filing of such petition, and upon proof of
2 the publication of such notice and of the matters set forth
3 in the petition, and being satisfied that no injury will be
4 done to any person by reason of such change, that
5 reasonable and proper cause exists for changing the name
6 of petitioner, and that such change is not desired because
7 of any fraudulent or evil intent on the part of the
8 petitioner, the court or judge thereof in vacation may
9 order a change of name as applied for except as provided
10 by the provisions of this section. The court may not grant
11 any change of name for any person convicted of any
12 felony during the time that the person is incarcerated.
13 The court may not grant any change of name for any
14 person required to register with the state police pursuant to
15 the provisions of article eight-f, chapter sixty-one of this
16 code during the period that such person is required to
17 register. The court may not grant a change of name for
18 persons convicted of first degree murder in violation of
19 section one, article two, chapter sixty-one of this code for
20 a period of ten years after the person is discharged from
21 imprisonment or is discharged from parole, whichever
22 occurs later. The court may not grant a change of name
23 of any person convicted of violating any provision of
24 section fourteen-a, article two, chapter sixty-one of this
25 code for a period of ten years after the person is
26 discharged from imprisonment or is discharged from
27 parole, whichever occurs later.

§48-5-7. Unlawful change of name by certain felons.

1 (a) It is unlawful for any person convicted of first
2 degree murder in violation of section one, article two,
3 chapter sixty-one of this code, and for any person
4 convicted of violating any provision of section fourteen-a,
5 article two, chapter sixty-one of this code, for which a
6 sentence of life imprisonment is imposed, to apply for a

7 change of name for a period of ten years after the person
8 is discharged from imprisonment or is discharged from
9 parole, whichever occurs later.

10 (b) It is unlawful for any person required to register
11 with the state police pursuant to the provisions of article
12 eight-f, chapter sixty-one of this code to apply for a
13 change of name during the period that the person is
14 required to register.

15 (c) It is unlawful for any person convicted of a felony
16 to apply for a change of name during the period that such
17 person is incarcerated.

18 (d) A person who violates the provisions of
19 subsections (a), (b) or (c) of this section is guilty of a
20 misdemeanor and, upon conviction thereof, shall be fined
21 not less than two hundred fifty dollars nor more than ten
22 thousand dollars or imprisoned in the county or regional
23 jail for not more than one year, or both fined and
24 incarcerated.

CHAPTER 80

(Com. Sub. for H. B. 4170—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one through eleven, inclusive, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen of said article, all relating to duties of the department of human services for the welfare of children; definitions; creating a three-tiered regulatory structure for child care; creating a new classification for family day care facilities serving seven through twelve children and providing for less stringent certification requirements to be established by rule; and changing penalties.

Be it enacted by the Legislature of West Virginia:

That sections one through eleven, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen of said article be amended and reenacted, all to read as follows:

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

- §49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
- §49-2B-2. Definitions.
- §49-2B-3. Licensure, certification, approval and registration requirements.
- §49-2B-4. Rules.
- §49-2B-5. Penalties; injunctions.
- §49-2B-6. Conditions of licensure, certification approval and registration.
- §49-2B-7. Waivers and variances to rules.
- §49-2B-8. Application for license, certification or approval.
- §49-2B-9. Supervision and consultation required.
- §49-2B-10. Investigative authority.
- §49-2B-11. Revocation; provisional licensure, certification and approval.
- §49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

1 (a) It is the policy of the state to assist a child and the
2 child's family as the basic unit of society through efforts
3 to strengthen and preserve the family unit. In the event of
4 a temporary or permanent absence of parents or the
5 separation of a child from the family unit for care or
6 treatment purposes, it is the policy of the state to assure
7 that a child receives care and nurturing as close as possible
8 to society's expectations of a family's care and nurturing
9 of its child. The state has a duty to assure that proper and
10 appropriate care is given and maintained.

11 (b) It is also the policy of this state to ensure that those
12 persons and entities offering quality child care services are
13 not over-encumbered by licensure, certification and
14 registration requirements and that the extent of regulation
15 of child care facilities be moderately proportionate to the
16 size of the facility.

17 (c) Through licensure, approval, certification and
18 registration of child care facilities and child welfare

19 agencies, the state exercises its benevolent police power to
20 protect the user of a service from risks against which he or
21 she would have little or no competence for self protection.
22 Licensure, approval, certification and registration
23 processes shall therefore continually balance the child's
24 rights and need for protection with the interests, rights and
25 responsibility of the service providers.

26 (d) In order to carry out the above policy, the
27 Legislature enacts this article to protect and prevent harm
28 to children separated from their families and to enhance
29 their continued growth and well-being while in care.

30 (e) The purposes of this article are:

31 (1) To protect the health, safety and well-being of
32 children in substitute care by preventing improper and
33 harmful care;

34 (2) To establish statewide rules for regulating
35 programs as defined in this article;

36 (3) To encourage and assist in the improvement of
37 child care programs;

38 (4) To ensure that persons and entities offering child
39 care services are not unduly burdened by licensure,
40 certification and regulation requirements; and

41 (5) To ensure that all child care programs be safe,
42 reliable and geared to the ages and needs of the children
43 they serve, meet basic health and safety standards, and
44 employ people who have the training and experience
45 needed to work with children.

46 (f) In order to carry out these purposes, the powers of
47 the child welfare licensing board created by chapter
48 nineteen, acts of the Legislature, one thousand nine
49 hundred forty-five, are hereby transferred to the
50 commissioner of human services, along with the other
51 powers granted by this article.

§49-2B-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (a) "Approval" means a finding by the commissioner
4 that a facility operated by the state has met the
5 requirements set forth in the rules promulgated pursuant
6 to this article.

7 (b) "Certificate of approval" means a statement of the
8 commissioner that a facility operated by the state has met
9 the requirements set forth in the rules promulgated
10 pursuant to this article.

11 (c) "Certificate of license" means a statement issued by
12 the commissioner authorizing an individual, corporation,
13 partnership, voluntary association, municipality or county,
14 or any agency thereof, to provide specified services for a
15 limited period of time in accordance with the terms of the
16 certificate.

17 (d) "Certificate of registration" means a statement
18 issued by the commissioner to a family day care home
19 upon receipt of a self-certification statement of
20 compliance with the rules promulgated pursuant to the
21 provisions of this article.

22 (e) "Certification" means a statement issued by the
23 commissioner to a family day care facility upon
24 satisfactory inspection, approval and certification that the
25 facility has complied with the applicable rules
26 promulgated by the commissioner.

27 (f) "Child" means any person under eighteen years of
28 age.

29 (g) "Child care" means responsibilities assumed and
30 services performed in relation to a child's physical,
31 emotional, psychological, social and personal needs and
32 the consideration of the child's rights and entitlements.

33 (h) "Child placing agency" means a child welfare
34 agency organized for the purpose of placing children in
35 private family homes for foster care or for adoption. The
36 function of a child placing agency may include the
37 investigation and certification of foster family homes and
38 foster family group homes as provided in this chapter.
39 The function of a child placing agency may also include

40 the supervision of children who are sixteen or seventeen
41 years old and living in unlicensed residences.

42 (i) "Child welfare agency" means any agency or
43 facility maintained by the state or any county or
44 municipality thereof, or any agency or facility maintained
45 by an individual, firm, corporation, association or
46 organization, public or private, to receive children for care
47 and maintenance or for placement in residential care
48 facilities, including without limitation, private homes, or
49 any facility that provides care for unmarried mothers and
50 their children;

51 (j) "Commissioner" means the commissioner of human
52 services.

53 (k) "Day care center" means a facility operated by a
54 child welfare agency for the care of thirteen or more
55 children on a nonresidential basis.

56 (l) "Department" means the state department of human
57 services.

58 (m) "Facility" means a place or residence, including
59 personnel, structures, grounds and equipment used for the
60 care of a child or children on a residential or other basis
61 for any number of hours a day in any shelter or structure
62 maintained for that purpose.

63 (n) "Family day care home" means a facility which is
64 used to provide nonresidential child care for
65 compensation in other than the child's own home. The
66 provider may care for four to six children, including
67 children who are living in the household, who are under
68 six years of age. No more than two of the total number of
69 children may be under twenty-four months of age.

70 (o) "Family day care facility" means any facility which
71 is used to provide nonresidential child care for
72 compensation for seven to twelve children, including
73 children who are living in the household, who are under
74 six years of age. No more than four of the total number
75 of children may be under twenty-four months of age.

76 (p) "Foster family group home" means a private
77 residence which is used for the care on a residential basis

78 of six, seven or eight children who are unrelated by blood,
79 marriage, or adoption to any adult member of the
80 household.

81 (q) "Foster family home" means a private residence
82 which is used for the care on a residential basis of no more
83 than five children who are unrelated by blood, marriage,
84 or adoption to any adult member of the household.

85 (r) "Group home" means any facility, public or private,
86 which is used to provide residential care for ten or fewer
87 children.

88 (s) "Group home facility" means any facility, public or
89 private, which is used to provide residential care for eleven
90 or more children.

91 (t) "License" means the grant of official permission to
92 a facility to engage in an activity which would otherwise
93 be prohibited.

94 (u) "Registration" means the process by which a family
95 day care home self-certifies compliance with the rules
96 promulgated pursuant to this article.

97 (v) "Residential child care" or "child care on a
98 residential basis" means child care which includes the
99 provision of nighttime shelter and the personal discipline
100 and supervision of a child by guardians, custodians or
101 other persons or entities on a continuing or temporary
102 basis.

103 (w) "Rule" means a statement issued by the
104 commissioner of the standard to be applied in the various
105 areas of child care.

106 (x) "Variance" means a declaration that a rule may be
107 accomplished in a manner different from the manner set
108 forth in the rule.

109 (y) "Waiver" means a declaration that a certain rule is
110 inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.

1 (a) Any person, corporation, or child welfare agency
2 other than a state agency, which operates a residential
3 child care facility, a child placing agency or a day care
4 center shall obtain a license from the department.

5 (b) Any residential child care facility, day care center
6 or any child placing agency operated by the state shall
7 obtain approval of its operations from the commissioner.
8 Such facilities and placing agencies shall maintain the
9 same standards of care applicable to licensed facilities,
10 centers or placing agencies of the same category.

11 (c) Any family day care facility which operates in this
12 state, including family day care facilities approved by the
13 department for receipt of funding, shall obtain a statement
14 of certification from the department.

15 (d) Every family day care home which operates in this
16 state, including family day care homes approved by the
17 department for receipt of funding, shall obtain a certificate
18 of registration from the department.

19 (e) This section does not apply to:

20 (1) A kindergarten, preschool or school education
21 program which is operated by a public school or which is
22 accredited by the state department of education, or any
23 other kindergarten, preschool or school programs which
24 operate with sessions not exceeding four hours per day for
25 any child;

26 (2) An individual or facility which offers occasional
27 care of children for brief periods while parents are
28 shopping, engaging in recreational activities, attending
29 religious services or engaging in other business or
30 personal affairs;

31 (3) Summer recreation camps operated for children
32 attending sessions for periods not exceeding thirty days;

33 (4) Hospitals or other medical facilities which are
34 primarily used for temporary residential care of children
35 for treatment, convalescence or testing; or

36 (5) Persons providing family day care solely for
37 children related to them.

§49-2B-4. Rules.

1 (a) The commissioner shall promulgate rules in
2 accordance with the provisions of chapter twenty-nine-a of
3 this code regarding the licensure, approval, certification
4 and registration of child care facilities and the
5 implementation of the provisions of this article.

6 (b) The commissioner shall review the rules
7 promulgated pursuant to the provisions of this article at
8 least once every five years, making revisions when
9 necessary or convenient.

§49-2B-5. Penalties; injunctions.

1 (a) Any individual or corporation which operates a
2 child welfare agency, residential child care facility or day
3 care center without a license when a license is required is
4 guilty of a misdemeanor, and, upon conviction thereof,
5 shall be punished by imprisonment in jail not exceeding
6 one year, or a fine of not more than five hundred dollars,
7 or both fined and imprisoned.

8 (b) Any family day care facility which operates
9 without certification when certification is required is guilty
10 of a misdemeanor, and, upon conviction thereof, shall be
11 punished by a fine of not more than five hundred dollars.

12 (c) Where a violation of this article or a rule
13 promulgated by the commissioner may result in serious
14 harm to children under care, the commissioner may seek
15 injunctive relief against any person, corporation, child
16 welfare agency, child placing agency, day care center,
17 family day care facility, family day care home or
18 governmental official through proceedings instituted by
19 the attorney general, or the appropriate county
20 prosecuting attorney, in the circuit court of Kanawha
21 County or in the circuit court of any county where the
22 children are residing or may be found.

§49-2B-6. Conditions of licensure, certification approval and registration.

1 (a) A license or approval is effective for a period of
2 two years from the date of issuance, unless revoked or
3 modified to provisional status based on evidence of a
4 failure to comply with the provisions of this article or any
5 rules promulgated pursuant to this article. The license or

6 approval shall be reinstated upon application to the
7 commissioner and a determination of compliance.

8 (b) A statement of certification is effective for a period
9 of two years from the date of issuance, unless revoked or
10 modified to provisional status based on evidence of a
11 failure to comply with the provisions of this article or any
12 rules promulgated pursuant to this article. The statement
13 of certification shall be reinstated upon application to the
14 commissioner and a determination of compliance.

15 (c) A certificate of registration is effective for a period
16 of two years from the date of issuance, unless revoked
17 based on evidence of a failure to comply with the
18 provisions of this article or any rules promulgated
19 pursuant to this article. The certificate of registration shall
20 be reinstated upon application to the commissioner,
21 including a statement of assurance of continued
22 compliance with the rules promulgated pursuant to this
23 article.

24 (d) The license, approval, certification or registration
25 issued under this article is not transferable and applies
26 only to the facility and its location stated in the
27 application. The license, approval or certification shall be
28 publicly displayed: *Provided*, That family day care homes,
29 foster family homes, foster family group homes and
30 group homes shall be required to display licenses,
31 statements of certification or registration certificates upon
32 request rather than by posting.

33 (e) A provisional license, certification or approval may
34 be issued as:

35 (1) An initial license, certification or approval to a new
36 facility which has been unable to demonstrate full
37 compliance because the facility is not fully operational; or

38 (2) A temporary license, certification or approval to an
39 established licensed or certified facility which is
40 temporarily unable to conform to the provisions of this
41 article or the rules promulgated hereunder.

42 (f) A provisional license, certification or approval shall
43 expire six months from the date of issuance and may be

44 reinstated no more than two times. The issuance of a
45 provisional license, certification or approval shall be
46 contingent upon the submission to the commissioner of an
47 acceptable plan to overcome identified deficiencies within
48 the period of the provisional license or approval.

49 (g) Provisional certificates of registration shall be
50 issued to family day care homes.

51 (h) The commissioner, as a condition of issuing a
52 license, certification, registration or approval, may:

53 (1) Limit the age, sex or type of problems of children
54 allowed admission to a particular facility;

55 (2) Prohibit intake of any children; or

56 (3) Reduce the number of children which the agency,
57 facility or home operated by the agency is licensed,
58 approved, certified or registered to receive.

§49-2B-7. Waivers and variances to rules.

1 Waivers or variances of rules may be granted by the
2 commissioner if the health, safety or well-being of a child
3 would not be endangered thereby. The commissioner shall
4 promulgate by rule criteria and procedures for the
5 granting of waivers or variances so that uniform practices
6 may be maintained throughout the state.

§49-2B-8. Application for license, certification or approval.

1 (a) Any person or corporation, or any governmental
2 agency intending to act as a child welfare agency shall
3 apply for a license, statement of certification, approval or
4 registration certificate to operate child care facilities
5 regulated by this article. Applications for licensure,
6 certification, approval or registration shall be made
7 separately for each child care facility to be licensed,
8 approved, certified or registered.

9 (b) The commissioner may prescribe forms and
10 reasonable application procedures.

11 (c) Before issuing a license, certification or approval,
12 the commissioner shall investigate the facility, program
13 and persons responsible for the care of children. The

14 investigation shall include, but not be limited to, review of
15 resource need, reputation, character and purposes of
16 applicants, a check of personnel criminal records, if any,
17 and personnel medical records, the financial records of
18 applicants, and consideration of the proposed plan for
19 child care from intake to discharge.

20 (d) Before a family day care home registration is
21 granted, the commissioner shall make inquiry as to the
22 facility, program and persons responsible for the care of
23 children. The inquiry shall include self-certification by
24 the prospective family day care home of compliance with
25 standards including, but not limited to:

26 (1) Physical and mental health of persons present in
27 the home while children are in care;

28 (2) Criminal and child abuse or neglect history of
29 persons present in the home while children are in care;

30 (3) Discipline;

31 (4) Fire and environmental safety;

32 (5) Equipment and program for the children in care;

33 (6) Health, sanitation and nutrition.

34 (e) Further inquiry and investigation may be made as
35 the commissioner may direct.

36 (f) The commissioner shall make a decision on each
37 application within sixty days of its receipt and shall
38 provide to unsuccessful applicants written reasons for the
39 decision.

§49-2B-9. Supervision and consultation required.

1 (a) The commissioner shall provide supervision to
2 ascertain compliance with the rules promulgated pursuant
3 to this article through regular monitoring, visits to
4 facilities, documentation, evaluation and reporting. The
5 commissioner shall be responsible for training and
6 education, within fiscal limitations, specifically for the
7 improvement of care in family day care homes and
8 facilities. The commissioner shall consult with applicants,
9 the personnel of child welfare agencies, and children

10 under care to assure the highest quality child care
11 possible.

12 (b) The director of the department of health and the
13 state fire marshal shall cooperate with the commissioner in
14 the administration of the provisions of this article by
15 providing such reports and assistance as may be requested
16 by the commissioner.

§49-2B-10. Investigative authority.

1 (a) The commissioner shall enforce the provisions of
2 this article.

3 (b) An on-site evaluation of every facility regulated
4 pursuant to this article, except certified family day care
5 facilities and registered family day care homes, shall be
6 conducted no less than once per year by announced or
7 unannounced visits.

8 (c) Every certified family day care facility shall be
9 satisfactorily inspected by the department prior to issuance
10 of certification. Future inspections shall occur at not
11 longer than two year intervals or upon receipt by the
12 department of a complaint about the facility.

13 (d) A random sample of not less than five percent of
14 registered family day care homes shall be monitored
15 annually through on-site evaluations.

16 (e) The commissioner shall have access to the
17 premises, personnel, children in care and records of each
18 facility subject to inspection, including, but not limited to,
19 case records, corporate and financial records and board
20 minutes. Applicants for licenses, approvals, certifications
21 and certificates of registration shall consent to reasonable
22 on-site administrative inspections, made with or without
23 prior notice, as a condition of licensing, approval,
24 certification or registration.

25 (f) When a complaint is received by the commissioner
26 alleging violations of licensure, approval, certification or
27 registration requirements, the commissioner shall
28 investigate the allegations. The commissioner may notify
29 the facility's director before or after a complaint is

30 investigated and shall cause a written report of the results
31 of the investigation to be made.

32 (g) The commissioner may enter any unlicensed,
33 uncertified, unregistered or unapproved child care facility
34 or personal residence for which there is probable cause to
35 believe that the facility or residence is operating in
36 violation of this article. Such entries shall be made with a
37 law-enforcement officer present. The commissioner may
38 enter upon the premises of any unregistered residence
39 only after two attempts by the commissioner to bring this
40 facility into compliance.

**§49-2B-11. Revocation; provisional licensure, certification
and approval.**

1 (a) The commissioner may revoke or make
2 provisional the licensure or certification of any facility or
3 child welfare agency regulated pursuant to this article if a
4 facility materially violates any provision of this article, or
5 any terms or conditions of the license, certification or
6 approval issued, or fails to maintain established
7 requirements of child care: *Provided*, That the provisions
8 of this section shall not apply to family day care homes.

9 (b) The commissioner may revoke the certificate of
10 registration of any family day care home if a facility
11 materially violates any provision of this article, or any
12 terms or conditions of the registration certificate issued, or
13 fails to maintain established requirements of child care.

**§49-2B-14. Annual reports; directory; licensing reports and
recommendations.**

1 (a) The commissioner shall submit on or before the
2 first day of January of each year a report to the governor,
3 and upon request to members of the Legislature,
4 concerning the regulation of child welfare agencies, child
5 placing agencies, day care centers, family day care
6 facilities, family day care homes and child care facilities
7 during the year. The report shall include, but not be
8 limited to, data on the number of children and staff at
9 each facility (except family day care homes), applications
10 received, types of licenses, certifications, approvals and
11 registrations granted, denied, made provisional or revoked
12 and any injunctions obtained or facility closures ordered.

13 (b) The commissioner also shall compile annually a
14 directory of licensed, certified and approved child care
15 providers including a brief description of their program
16 and facilities, the program's capacity and a general profile
17 of children served. A listing of family day care homes
18 shall also be compiled annually.

19 (c) Licensing reports and recommendations for
20 licensure and certification which are a part of the yearly
21 review of each licensed facility shall be sent to the facility
22 director. Copies shall be available to the public upon
23 written request to the commissioner.

CHAPTER 81

(S. B. 562—By Senators Walker, Anderson, Bailey, Ross, Wooton, Jackson,
Plymale, Blatnik, Sharpe, Dittmar, Bowman, Oliverio, Minear, Kimble, Yoder,
Whitlow, Helmick and Tomblin, Mr. President)

[Passed March 2, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and six, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to children with special health care needs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

§49-4-1. Purpose.

§49-4-2. Children to whom article applies.

§49-4-3. Powers of state bureau.

§49-4-4. Report of birth of special health care needs child.

§49-4-5. Assistance by other agencies.

§49-4-6. Cost of treatment.

§49-4-1. Purpose.

1 The purpose of this article is to provide for the
2 continuation and development of services for children
3 with special health care needs. The state bureau of public
4 health within the department of health and human
5 resources shall formulate and apply administrative policies
6 concerning the care and treatment of children with special
7 health care needs and shall cooperate with other agencies
8 responsible for such care and treatment.

9 In the development of administrative policies, the state
10 bureau shall cooperate with the United States department
11 of health and human services and shall comply with the
12 regulations that agency prescribes under the authority of
13 the "Social Security Act", and is hereby authorized to
14 receive and expend federal funds for these services.

§49-4-2. Children to whom article applies.

1 It is the intention of this article that services for
2 children with special health care needs shall be extended
3 only to those children for whom adequate care, treatment
4 and rehabilitation are not available from other than public
5 sources.

§49-4-3. Powers of state bureau.

1 In the care and treatment of children with special
2 health care needs the state bureau of public health shall, so
3 far as funds are available for the purpose:

4 (1) Locate children with special health care needs
5 requiring medical, surgical or other corrective treatment
6 and provide competent diagnosis to determine the
7 treatment required.

8 (2) Supply to children with special health care needs
9 treatment, including hospitalization and aftercare leading
10 to correction and rehabilitation.

11 (3) Guide and supervise children with special health
12 care needs to assure adequate care and treatment.

§49-4-4. Report of birth of special health care needs child.

1 Within thirty days after the birth of a child with a
2 congenital deformity, the physician, midwife or other
3 person attending the birth shall report to the state bureau
4 of public health, on forms prescribed by them, the birth of
5 such child.

6 The report shall be solely for the use of the state
7 department of health and human resources and shall not
8 be open for public inspection.

§49-4-5. Assistance by other agencies.

1 So far as practicable, the services and facilities of the
2 state departments of health and human services, education,
3 vocational rehabilitation and corrections or their
4 successors shall be available to the state bureau of public
5 health for the purposes of this article.

§49-4-6. Cost of treatment.

1 All payments from any corporation, association,
2 program or fund providing insurance coverage or other
3 payment for medicine, medical, surgical and hospital
4 treatment, crutches, artificial limbs and such other and
5 additional approved mechanical appliances and devices as
6 may be reasonably required for a child with special health
7 care needs, shall be applied toward the total cost of
8 treatment.

CHAPTER 82

(Com. Sub. for H. B. 2500—By Delegates Thompson, Ryan, J. Martin,
Stalnaker, Tillis, Amores and Pulliam)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one-a and one-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, ten, seventeen and eighteen of said article; and to further amend said article by adding thereto two new sections, designated sections nineteen and twenty, all relating

to juvenile proceedings; definitions which are used in this article; jurisdiction of courts in juvenile proceedings; constitutional guarantees for juveniles; hearings, evidence and transcripts of juvenile proceedings; waiver and transfer of juvenile proceedings from the juvenile jurisdiction to the criminal jurisdiction of the courts; confidentiality of juvenile records; expungement of juvenile records; prohibiting discrimination against persons who have been involved in juvenile proceedings whose records have been expunged; juvenile after-care plans; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one-a and one-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, ten, seventeen and eighteen of said article be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections nineteen and twenty, all to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Definitions.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

§49-5-10. Waiver and transfer of jurisdiction.

§49-5-17. Confidentiality of juvenile records.

§49-5-18. Expungement of juvenile records.

§49-5-19. Discrimination prohibited.

§49-5-20. After-care plans.

§49-5-1. Definitions.

1 (a) As used in this article, the term "adult" means a
2 person who is at least eighteen years of age.

3 (b) As used in this article, the term "child" means a
4 person who has not attained the age of eighteen years, or a
5 person who is otherwise subject to the juvenile jurisdiction
6 of a court pursuant to this article.

7 (c) As used in this article, the term "extrajudicial
8 statement" means any utterance, written or oral, which was
9 made outside of court.

10 (d) As used in this article, the term "juvenile" shall
11 have the same meaning as the term "child."

12 (e) As used in this article, the term "res gestae" means
13 a spontaneous declaration made by a person immediately
14 after an event and before the person has had an
15 opportunity to conjure a falsehood.

16 (f) As used in this article, the term "violation of a
17 traffic law of West Virginia" means a violation of any
18 provision of chapters seventeen-a, seventeen-b, seventeen-c
19 or seventeen-d of this code except a violation of chapter
20 seventeen-c, article four, sections one and two (hit and
21 run) or of chapter seventeen-c, article five, sections one
22 (negligent homicide), two (driving under the influence of
23 alcohol, controlled substances or drugs) or three (reckless
24 driving).

**§49-5-2. Juvenile jurisdiction of circuit courts, magistrate
courts and municipal courts; constitutional
guarantees; hearings; evidence and transcripts.**

1 (a) The circuit court shall have original jurisdiction of
2 proceedings brought under this article.

3 (b) If during a criminal proceeding in any court, it is
4 ascertained or appears that the defendant is under the age
5 of nineteen years and was under the age of eighteen years
6 at the time of the alleged offense, the matter shall be
7 immediately certified to the juvenile jurisdiction of the
8 circuit court. The circuit court shall assume jurisdiction of
9 the case in the same manner as cases which are originally
10 instituted in the circuit court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts shall have concurrent juvenile
13 jurisdiction with the circuit court for a violation of a traffic
14 law of West Virginia or for any violation of chapter twenty
15 of this code. Juveniles shall be liable for punishment for
16 violations of such laws in the same manner as adults
17 except that magistrate courts shall have no jurisdiction to
18 impose a sentence of incarceration for the violation of
19 such laws.

20 (d) Notwithstanding any other provision of this
21 article, municipal courts shall have concurrent juvenile
22 jurisdiction with the circuit court for a violation of any
23 municipal ordinance regulating traffic or for any
24 municipal curfew ordinance which is enforceable.
25 Municipal courts may impose the same punishment for
26 such violations as a circuit court exercising its juvenile
27 jurisdiction could properly impose, except that municipal
28 courts shall have no jurisdiction to impose a sentence of
29 incarceration for the violation of such laws.

30 (e) A juvenile may be brought before the circuit court
31 for proceedings under this article only by the following
32 means:

33 (1) By a juvenile petition requesting that the juvenile
34 be adjudged neglected or delinquent;

35 (2) By certification or transfer to the juvenile
36 jurisdiction of the circuit court from the criminal
37 jurisdiction of the circuit court, from any foreign court, or
38 from any magistrate court or municipal court in West
39 Virginia; or

40 (3) By a warrant, capias or attachment which charges a
41 juvenile with an act of delinquency, is issued by a judge,
42 referee or magistrate, and is returnable to the circuit court.

43 (f) If a juvenile commits an act which would be a
44 crime if committed by an adult, and the juvenile is
45 adjudged a delinquent for such act, the jurisdiction of the
46 court which adjudged the juvenile a delinquent shall
47 continue until the juvenile becomes twenty-one years of
48 age. The court shall have the same power over the person
49 that it had before he or she became an adult, and shall
50 have the further power to sentence the person to a term of
51 incarceration which cannot exceed six months. This
52 authority shall not preclude the court from exercising
53 criminal jurisdiction over the person if he or she violates
54 the law after becoming an adult or if the proceedings have
55 been transferred to the court's criminal jurisdiction
56 pursuant to section ten of this article.

57 (g) A juvenile shall be entitled to be admitted to bail
58 or recognizance in the same manner as an adult and shall

59 have the protection guaranteed by Article III of the West
60 Virginia Constitution.

61 (h) A juvenile shall have the right to be effectively
62 represented by counsel at all stages of proceedings under
63 the provisions of this article. If the juvenile or the
64 juvenile's parents or custodian executes an affidavit
65 showing that the juvenile cannot afford an attorney the
66 court shall appoint an attorney, who will be paid in
67 accordance with article twenty-one, chapter twenty-nine of
68 this code.

69 (i) In all proceedings under this article, the juvenile
70 shall have a meaningful opportunity to be heard. This
71 includes the opportunity to testify and to present and
72 cross-examine witnesses. The general public shall be
73 excluded from all such proceedings except persons whose
74 presence is requested by the parties and other persons
75 whom the circuit court determines have a legitimate
76 interest in the proceedings.

77 (j) At all adjudicatory hearings held under this article,
78 all procedural rights afforded to adults in criminal
79 proceedings shall be applicable unless specifically pro-
80 vided otherwise in this chapter.

81 (k) At all adjudicatory hearings held under this article,
82 the rules of evidence applicable in criminal cases shall
83 apply, including the rule against written reports based
84 upon hearsay.

85 (l) Extrajudicial statements, other than *res gestae*,
86 which were made by a juvenile under fourteen years of
87 age to law-enforcement officials or while in custody shall
88 not be admissible unless such statements were made in the
89 presence of the juvenile's counsel. Extrajudicial statements,
90 other than *res gestae*, which were made by a juvenile who
91 is at least fourteen years of age to law-enforcement
92 officials or while in custody shall not be admissible unless
93 such statements were made in the presence of the juvenile's
94 counsel or in the presence of, and with the consent of, the
95 juvenile's parent or custodian who has been fully informed
96 regarding the juvenile's right to a prompt detention
97 hearing, the juvenile's right to counsel, including

98 appointed counsel if the juvenile cannot afford counsel,
99 and the juvenile's privilege against self-incrimination.

100 (m) A transcript or recording shall be made of all
101 transfer, adjudicatory and dispositional hearings. At the
102 conclusion of any hearing, the circuit court shall make
103 findings of fact and conclusions of law, both of which
104 shall appear on the record. The court reporter shall
105 furnish a transcript of the proceedings at no charge to any
106 indigent juvenile who seeks review of any proceeding
107 under this article if an affidavit is filed stating that neither
108 the juvenile nor the juvenile's parents or custodian have
109 the ability to pay for the transcript.

§49-5-10. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney
2 filed at least eight days prior to the adjudicatory hearing
3 and with reasonable notice to the child, the parents,
4 guardians or custodians of the child and the child's
5 counsel, the court shall conduct a hearing to determine if
6 juvenile jurisdiction should or must be waived and the
7 proceeding transferred to the criminal jurisdiction of the
8 court. Any motion filed in accordance with this section
9 shall state, with particularity, the grounds for the requested
10 transfer, including the grounds relied upon set forth in
11 subsections (d), (e), (f) and (g) of this section and the
12 burden shall be upon the state to establish such grounds
13 by clear and convincing proof. Any hearing held under
14 the provisions of this section shall be held within seven
15 days of the filing of the motion for transfer unless it is
16 continued for good cause.

17 (b) No inquiry relative to admission or denial of the
18 allegations of the charge or the demand for jury trial shall
19 be made by or before the court until a decision shall have
20 been made relative to whether the proceeding is to be
21 transferred to criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to
23 criminal jurisdiction if a child who has attained the age of
24 fourteen years shall make a demand on the record to be
25 transferred to the criminal jurisdiction of the court. Such

26 cases may then be referred to a magistrate for trial, if
27 otherwise cognizable by a magistrate.

28 (d) The court shall transfer a juvenile proceeding to
29 criminal jurisdiction if there is probable cause to believe
30 that:

31 (1) The child is at least fourteen years of age and has
32 committed the crime of treason under section one, article
33 one, chapter sixty-one of this code; the crime of murder
34 under sections one, two and three, article two of said
35 chapter; the crime of robbery involving the use or
36 presenting of firearms or other deadly weapons under
37 section twelve of said article; the crime of kidnapping
38 under section fourteen-a of said article; the crime of first
39 degree arson under section one, article three of said
40 chapter; or the crime of sexual assault in the first degree
41 under section three, article eight-b of said chapter; or

42 (2) The child is at least fourteen years of age and has
43 committed an offense of violence to the person which
44 would be a felony if the child were an adult: *Provided,*
45 That the child has been previously adjudged delinquent
46 for the commission of an offense of violence to the person
47 which would be a felony if the child were an adult; or

48 (3) The child is at least fourteen years of age and has
49 committed an offense which would be a felony if the child
50 were an adult: *Provided,* That the child has been twice
51 previously adjudged delinquent for the commission of an
52 offense which would be a felony if the child were an adult.

53 (e) The court may transfer a juvenile proceeding to
54 criminal jurisdiction if there is probable cause to believe
55 that the child would otherwise satisfy the provisions of
56 subdivision (1), subsection (d) of this section, but who is
57 younger than fourteen years of age.

58 (f) The court may, upon consideration of the child's
59 mental and physical condition, maturity, emotional
60 attitude, home or family environment, school experience
61 and similar personal factors, transfer a juvenile proceeding
62 to criminal jurisdiction if there is probable cause to believe
63 that the child would otherwise satisfy the provisions of

64 subdivision (2) or (3), subsection (d) of this section, but
65 who is younger than fourteen years of age.

66 (g) The court may, upon consideration of the child's
67 mental and physical condition, maturity, emotional
68 attitude, home or family environment, school experience
69 and similar personal factors, transfer a juvenile proceeding
70 to criminal jurisdiction if there is probable cause to believe
71 that:

72 (1) The child, who is at least fourteen years of age, has
73 committed an offense of violence to the person which
74 would be a felony if the child were an adult; or

75 (2) The child, who is at least fourteen years of age, has
76 committed an offense which would be a felony if the child
77 were an adult: *Provided*, That the child has been
78 previously adjudged delinquent for the commission of a
79 crime which would be a felony if the child were an adult;
80 or

81 (3) The child, who is at least fourteen years of age,
82 used or presented a firearm or other deadly weapon
83 during the commission of a felony; or

84 (4) The child has committed a violation of the
85 provisions of section four hundred one, article four,
86 chapter sixty-a of this code which would be a felony if the
87 child were an adult involving the manufacture, delivery or
88 possession with the intent to deliver a narcotic drug. For
89 purposes of this subdivision, the term "narcotic drug" shall
90 have the same definition as that set forth in section one
91 hundred one, article one of said chapter.

92 (h) For purposes of this section, the term "offense of
93 violence" means an offense which involves the use or
94 threatened use of physical force against a person.

95 (i) If, after a hearing, the court directs the transfer of
96 any juvenile proceeding to criminal jurisdiction, it shall
97 state on the record the findings of fact and conclusions of
98 law upon which its decision is based or shall incorporate
99 such findings of fact and conclusions of law in its order
100 directing transfer.

101 (j) The child shall have the right to directly appeal an
102 order of transfer to the supreme court of appeals of the
103 state of West Virginia: *Provided*, That notice of intent to
104 appeal and a request for transcript be filed within ten days
105 from the date of the entry of any such order and the
106 petition for appeal shall be presented to the supreme court
107 of appeals within forty-five days from the entry of such
108 order, and that, in default thereof, the right of appeal and
109 the right to object to such order of transfer shall be waived
110 and may not thereafter be asserted. The provisions of
111 article five, chapter fifty-eight of this code pertaining to
112 the appeals of judgments in civil actions shall apply to
113 appeals under this chapter except as herein modified.
114 The court may, within forty-five days of the entry of the
115 order of transfer, by appropriate order, extend and
116 re-extend the period in which to file the petition for
117 appeal for such additional time, not to exceed a total
118 extension of sixty days, as in the court's opinion may be
119 necessary for preparation of the transcript: *Provided*,
120 *however*, That the request for such transcript was made by
121 the party seeking appeal within ten days of entry of such
122 order of transfer. In the event any such notice of intent to
123 appeal and request for transcript be timely filed,
124 proceedings in criminal court shall be stayed upon motion
125 of the defendant pending final action of the supreme
126 court of appeals thereon.

§ 49-5-17. Confidentiality of juvenile records.

1 (a) Records of a juvenile proceeding conducted under
2 this chapter are not public records, and therefore they
3 shall not be disclosed to anyone unless disclosure is
4 otherwise authorized by this section.

5 (b) Notwithstanding the provisions of subsection (a)
6 of this section, a copy of a juvenile's records shall
7 automatically be disclosed to certain school officials,
8 subject to the following terms and conditions:

9 (1) Only certain types of juvenile records shall be
10 disclosed. These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense
12 which would be a crime if it was committed by an adult;
13 and

14 (i) The offense involves violence against another
15 person;

16 (ii) The offense involves possession of a dangerous or
17 deadly weapon; or

18 (iii) The offense involves possession or delivery of a
19 controlled substance as that term is defined in chapter
20 60A-1-101(d) of this code; and

21 (B) The juvenile case has proceeded to a point where
22 one or more of the following has occurred:

23 (i) A judge, magistrate or referee has determined that
24 there is probable cause to believe that the juvenile
25 committed the offense as charged;

26 (ii) A judge, magistrate or referee has placed the
27 juvenile on probation for the offense;

28 (iii) A judge, magistrate or referee has placed the
29 juvenile into an improvement period in accordance with
30 section nine, article five, chapter forty-nine of this code; or

31 (iv) Some other type of disposition has been made of
32 the case other than dismissal.

33 (2) The circuit court for each judicial circuit in West
34 Virginia shall designate one person to supervise the
35 disclosure of juvenile records to certain school officials.

36 (3) If the juvenile attends a West Virginia public
37 school, the person designated by the circuit court shall
38 automatically disclose all records of a juvenile case to the
39 county superintendent of schools in the county in which
40 the juvenile attends school. The person designated by the
41 circuit court shall also automatically disclose all records of
42 a juvenile case to the principal of the school which the
43 juvenile attends.

44 (4) If the juvenile attends a private school in West
45 Virginia, the person designated by the circuit court shall
46 determine the identity of the highest ranking person at

47 that school, and shall automatically disclose all records of
48 a juvenile's case to that person.

49 (5) If the juvenile does not attend school at the time
50 the juvenile's case is pending, the person designated by the
51 circuit court shall not transmit the juvenile's records to any
52 school. However, the person designated by the circuit
53 court shall transmit the juvenile's records to any school in
54 West Virginia which the juvenile subsequently attends.

55 (6) The person designated by the circuit court shall
56 not automatically transmit juvenile records to a school
57 which is not located in West Virginia. Instead, the person
58 designated by the circuit court shall contact the
59 out-of-state school, inform it that juvenile records exist,
60 and make an inquiry regarding whether the laws of that
61 state permit the disclosure of juvenile records. If so, the
62 person designated by the circuit court shall consult with
63 the circuit judge who presided over the case to determine
64 whether the juvenile records should be disclosed to the
65 out-of-state school. The circuit judge shall have discretion
66 in determining whether to disclose the juvenile records,
67 and shall consider whether the other state's law regarding
68 disclosure provides for sufficient confidentiality of
69 juvenile records, using this section as a guide. If the
70 circuit judge orders the juvenile records to be disclosed,
71 they shall be disclosed in accordance with the provisions
72 of subdivision (7) of this subsection.

73 (7) The person designated by the circuit court shall
74 transmit the juvenile's records to the appropriate school
75 official under cover of a letter emphasizing the
76 confidentiality of such records and directing the official to
77 consult this section of the code. A copy of this section of
78 the code shall be transmitted with the juvenile's records
79 and cover letter.

80 (8) Juvenile records must be treated as absolutely
81 confidential by the school official to whom they are
82 transmitted, and nothing contained within the juvenile's
83 records shall be noted on the juvenile's permanent
84 educational record. The juvenile records are to be
85 maintained in a secure location and are not to be copied
86 under any circumstances. However, the principal of a

87 school to whom the records are transmitted shall have the
88 duty to disclose the contents of those records to any
89 teacher who teaches a class in which the subject juvenile is
90 enrolled and to the regular driver of a school bus in which
91 the subject juvenile is regularly transported to or from
92 school. Furthermore, any school official to whom the
93 juvenile's records are transmitted may disclose the contents
94 of such records to any adult within the school system who,
95 in the discretion of the school official, has the need to be
96 aware of the contents of those records.

97 (9) If for any reason a juvenile ceases to attend a
98 school which possesses that juvenile's records, the
99 appropriate official at that school shall seal the records
100 and return them to the circuit court which sent them to
101 that school. If the juvenile has changed schools for any
102 reason, the former school shall inform the circuit court of
103 the name and location of the new school which the
104 juvenile attends or will be attending. If the new school is
105 located within West Virginia, the person designated by the
106 circuit court shall forward the juvenile's records to the
107 juvenile's new school in the same manner as provided in
108 subdivision (7) of this subsection. If the new school is not
109 located within West Virginia, the person designated by the
110 circuit court shall handle the juvenile records in
111 accordance with subdivision (6) of this subsection.

112 If the juvenile has been found to be not guilty of an
113 offense for which records were previously forwarded to
114 the juvenile's school on the basis of a finding of probable
115 cause, the circuit court shall not forward those records to
116 the juvenile's new school. However, this shall not affect
117 records related to other prior or future offenses. If the
118 juvenile has graduated or quit school, or will otherwise not
119 be attending another school, the circuit court shall retain
120 the juvenile's records and handle them as otherwise
121 provided in this article.

122 (10) Under no circumstances shall one school transmit
123 a juvenile's records to another school.

124 (11) Under no circumstances shall juvenile records be
125 automatically transmitted to a college, university or other
126 post-secondary school.

127 (12) No one shall suffer any penalty, civil or criminal,
128 for accidentally or negligently attributing certain juvenile
129 records to the wrong person. However, such person shall
130 have the affirmative duty to promptly correct any mistake
131 that he or she has made in disclosing juvenile records
132 when the mistake is brought to his or her attention. A
133 person who intentionally attributes false information to a
134 certain person shall be subjected to both criminal and civil
135 penalties, in accordance with subsection (d) of this section.

136 (13) If a judge, magistrate or referee has determined
137 that there is probable cause to believe that a juvenile has
138 committed an offense but there has been no final
139 adjudication of the charge, the records which are
140 transmitted by the circuit court shall be accompanied by a
141 notice which clearly states in bold print that there has been
142 no determination of delinquency and that our legal system
143 requires a presumption of innocence.

144 (c) Notwithstanding the provisions of subsection (a) of
145 this section, juvenile records may be disclosed, subject to
146 the following terms and conditions:

147 (1) If a juvenile case is transferred to the criminal
148 jurisdiction of the circuit court, the juvenile records of that
149 particular case may be disclosed if the juvenile who is
150 transferred fails to timely file an appeal of the transfer
151 order; files a timely appeal of the transfer order but the
152 Supreme Court of Appeals of West Virginia refuses to
153 hear the appeal; or files a timely appeal of the transfer
154 order which is affirmed by the Supreme Court of Appeals
155 of West Virginia. All records of the case shall be open to
156 public inspection following any of these occurrences.
157 These records shall be handled pursuant to all of the same
158 strictures, guidelines and requirements of law which exist
159 regarding disclosure of records for adults.

160 (2) Upon a written petition and pursuant to a written
161 order, the circuit court may permit disclosure of juvenile
162 records to:

163 (A) A court which has juvenile jurisdiction and has the
164 juvenile before it in a juvenile proceeding;

165 (B) A court exercising criminal jurisdiction over the
166 juvenile which requests such records for the purpose of a
167 presentence report or disposition proceeding;

168 (C) The juvenile, the juvenile's parents or legal
169 guardian, or the juvenile's counsel;

170 (D) The officials of a public institution to which the
171 juvenile is committed if they require such records for
172 transfer, parole or discharge; or

173 (E) A person who is conducting research. However,
174 juvenile records shall be disclosed for research purposes
175 only upon the condition that information which would
176 identify the subject juvenile or the juvenile's family shall
177 not be disclosed.

178 (d) Any person who willfully violates this section shall
179 be guilty of a misdemeanor, and upon conviction thereof
180 shall be fined not more than one thousand dollars,
181 incarcerated not more than six months, or be both fined
182 and incarcerated. Furthermore, a violator of this section
183 shall be liable for damages in the amount of three
184 hundred dollars or the actual amount of damages,
185 whichever is greater.

§49-5-18. Expungement of juvenile records.

1 (a) One year after the juvenile's eighteenth birthday, or
2 one year after personal or juvenile jurisdiction has
3 terminated, whichever is later, the records of a juvenile
4 proceeding conducted under this chapter, including, but
5 not limited to, law-enforcement files and records, shall be
6 expunged by operation of law.

7 (b) To expunge juvenile records they shall be returned
8 to the circuit court in which the case was pending and be
9 kept in a separate confidential file. The records shall be
10 physically marked to show that they have been expunged
11 and shall be securely sealed and filed in such a manner
12 that no one can determine the identity of the juvenile.

13 (c) Expunged records cannot be opened except upon
14 order of the circuit court.

15 (d) Expungement of juvenile records has the legal
16 effect of extinguishing the offense as if it never occurred.

17 (e) The records of a juvenile convicted under the
18 criminal jurisdiction of the circuit court pursuant to
19 subdivision (1), subsection (d), section ten of this article
20 shall not be expunged.

21 (f) Any person who willfully violates this section shall
22 be guilty of a misdemeanor and, upon conviction thereof,
23 shall be fined not more than one thousand dollars,
24 incarcerated not more than six months, or be both fined
25 and incarcerated. Furthermore, a violator of this section
26 shall be liable for damages in the amount of three
27 hundred dollars or the actual amount of damages,
28 whichever is greater.

§49-5-19. Discrimination prohibited.

1 (a) No individual, firm, corporation or other entity
2 shall discriminate against any person in any manner due
3 to that person's prior involvement in a proceeding under
4 this article if that person's records have been expunged
5 pursuant to the provisions of this article. This includes, but
6 is not limited to, discrimination relating to employment,
7 housing, education, obtaining credit, and contractual
8 rights.

9 (b) Any person who willfully violates this section shall
10 be guilty of a misdemeanor and, upon conviction thereof,
11 shall be fined not more than one thousand dollars,
12 incarcerated not more than six months, or be both fined
13 and incarcerated. Furthermore, a violator of this section
14 shall be liable to the person who has been discriminated
15 against for damages in the amount of three hundred
16 dollars or the actual amount of damages, whichever is
17 greater.

§49-5-20. After-care plans.

1 (a) At least forty-five days prior to the discharge of a
2 juvenile from any institution or facility to which the
3 juvenile was committed pursuant to subdivision (5), (6) or
4 (7) of subsection (b), section thirteen of this article, the
5 director of the institution or facility shall forward a copy

6 of the juvenile's proposed after-care plan to the circuit
7 court which committed the juvenile. A copy of the plan
8 shall also be sent to: (1) The juvenile's parents or legal
9 guardian; (2) the juvenile's lawyer; (3) the juvenile's
10 probation officer or community mental health center
11 professional; (4) the prosecuting attorney of the county in
12 which the original commitment proceedings were held;
13 and (5) the principal of the school which the juvenile will
14 attend. The plan shall have a list of the names and
15 addresses of these persons attached to it.

16 (b) The after-care plan shall contain a detailed
17 description of the education, counseling and treatment
18 which the juvenile received while at the institution or
19 facility and it shall also propose a plan for education,
20 counseling and treatment for the juvenile upon the
21 juvenile's discharge. The plan shall also contain a
22 description of any problems the juvenile has, including the
23 source of those problems and it shall propose a manner
24 for addressing those problems upon discharge.

25 (c) Within twenty-one days of receiving the plan, the
26 juvenile's probation officer or community mental health
27 center professional shall submit written comments upon
28 the plan to the circuit court which committed the juvenile.
29 Any other person who received a copy of the plan
30 pursuant to subsection (a) of this section may submit
31 written comments upon the plan to the circuit court which
32 committed the juvenile. Any person who submits com-
33 ments upon the plan shall send a copy of those comments
34 to every other person who received a copy of the plan.

35 (d) Within twenty-one days of receiving the plan, the
36 juvenile's probation officer or community mental health
37 center professional shall contact all persons, organizations
38 and agencies which are to be involved in executing the
39 plan to determine whether they are capable of executing
40 their responsibilities under the plan and to further
41 determine whether they are willing to execute their
42 responsibilities under the plan.

43 (e) If adverse comments or objections regarding the
44 plan are submitted to the circuit court, it shall, within
45 forty-five days of receiving the plan, hold a hearing to

46 consider the plan and the adverse comments or objections.
47 Any person, organization or agency which has responsi-
48 bilities in executing the plan, or their representatives, may
49 be required to appear at the hearing unless they are ex-
50 cused by the circuit court. Within five days of the hearing,
51 the circuit court shall issue an order which adopts the plan
52 as submitted or as modified in response to any comments
53 or objections.

54 (f) If no adverse comments or objections are submit-
55 ted, a hearing need not be held. In that case, the circuit
56 court shall consider the plan as submitted and shall within
57 forty-five days of receiving the plan, issue an order which
58 adopts the plan as submitted.

59 (g) Notwithstanding the provisions of subsections (e)
60 and (f) of this section, the plan which is adopted by the
61 circuit court shall be in the best interests of the juvenile
62 and shall also be in conformity with West Virginia's inter-
63 est in youth as embodied in subsection (b), section thirteen
64 of this article .

65 (h) The circuit court which committed the juvenile
66 shall appoint the juvenile's probation officer or a com-
67 munity mental health center professional to act as super-
68 visor of the plan. The supervisor shall report the juvenile's
69 progress under the plan to the circuit court every sixty
70 days, or until the circuit court determines that no report or
71 no further care is necessary.

CHAPTER 83

(Com. Sub. for H. B. 4138—By Delegates Douglas and Givens)

[Passed March 9, 1996; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one and three, article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five and eleven, article six of said chapter; to further amend said article by adding thereto

a new section, designated section twelve; to amend and reenact section three, article six-d of said chapter; to amend and reenact section eleven-a, article eight-b, chapter sixty-one of said code; and to amend and reenact section nine, article eight-d of said chapter, all relating to abuse and neglect of children; restricting requirement of meetings for certain cases; requiring that prior to temporary custody person found to be fit to receive custody; requiring that hearing be held within sixty days of expiration of improvement period; changing provisions relating to length and terms of improvement period; requiring respondent to move for improvement period and restricting the ability of the court to grant an improvement period prior to finding that child is abused or neglected; limiting length of improvement period; requiring release of information; termination of improvement period; extension of improvement period; family case plans; and convictions for offenses against children to require adjudication of status as abusing parent.

Be it enacted by the Legislature of West Virginia:

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

Chapter

49. Child Welfare.

61. Crimes and Their Punishment.

CHAPTER 49. CHILD WELFARE.

Article

5D. Multidisciplinary Teams.

6. Procedure in Cases of Child Neglect or Abuse.

6D. West Virginia Child Protective Services Act.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-1. Purpose; additional cases and teams.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-1. Purpose; additional cases and teams.

1 (a) The purpose of this article is to provide a system
2 for evaluation of and coordinated service delivery for
3 children who may be victims of abuse or neglect and chil-
4 dren undergoing delinquency proceedings. It is the fur-
5 ther purpose of this article to establish, as a complement to
6 other programs of the department of health and human
7 resources, a multidisciplinary screening, advisory and
8 planning system to assist courts in facilitating permanency
9 planning, following the initiation of judicial proceedings,
10 to recommend alternatives and to coordinate evaluations
11 and in-community services. It is the further purpose of
12 this article to ensure that children are safe from abuse and
13 neglect and to coordinate investigation of alleged child
14 abuse offenses and competent criminal prosecution of
15 offenders to ensure that safety, as determined appropriate
16 by the prosecuting attorney.

17 (b) Nothing in this article precludes any multidiscip-
18 linary team from considering any case upon the consent
19 of the members of the team.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a) On or before the first day of January, one thou-
2 sand nine hundred ninety-five, a multidisciplinary treat-
3 ment planning process shall be established within each
4 county of the state, either separately or in conjunction with
5 a contiguous county by the secretary of the department
6 with advice and assistance from the prosecutor's advisory
7 council as set forth in section four, article four, chapter
8 seven of this code.

9 Treatment teams shall assess, plan and implement a
10 comprehensive, individualized service plan for children
11 who are victims of abuse or neglect and their families
12 when a judicial proceeding has been initiated involving the
13 child or children and for children and their families in-
14 volved in delinquency proceedings.

15 (b) Each treatment team shall be convened and direct-
16 ed by the child's or family's case manager. The treatment
17 team shall consist of the child's custodial parent(s) or
18 guardian(s), other immediate family members, the attor-
19 ney(s) representing the parent(s) of the child, if assigned
20 by a judge of the circuit court, the child, if the child is
21 over the age of twelve, and if the child's participation is
22 otherwise appropriate, the child, if under the age of twelve
23 when the team determines that the child's participation is
24 appropriate, the guardian ad litem, the prosecuting attor-
25 ney or his or her designee, and any other agency, person
26 or professional who may contribute to the team's efforts to
27 assist the child and family.

28 (c) The treatment team shall coordinate their activities
29 and membership with local family resource networks, and
30 coordinate with other local and regional child and family
31 service planning committees to assure the efficient plan-
32 ning and delivery of child and family services on a local
33 and regional level.

34 (d) State, county and local agencies shall provide the
35 multidisciplinary treatment teams with any information
36 requested in writing by the team as allowable by law or
37 upon receipt of a certified copy of the circuit court's order
38 directing said agencies to release information in its posses-
39 sion relating to the child. The team shall assure that all
40 information received and developed in connection with
41 the provisions of this article remain confidential. For pur-
42 poses of this section, the term "confidential" shall be con-
43 strued in accordance with the provisions of section one,
44 article seven of this chapter.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

- §49-6-2. Petition to court when child believed neglected or abused—Right to counsel; improvement period; hearing; priority of proceeding; transcript.
- §49-6-3. Petition to court when child believed neglected or abused—Temporary custody.
- §49-6-5. Disposition of neglected or abused children.
- §49-6-11. Conviction for offenses against children.
- §49-6-12. Improvement period in cases of child neglect or abuse.

§49-6-2. Petition to court when child believed neglected or abused--Right to counsel; improvement period; hearing; priority of proceeding; transcript.

1 (a) In any proceeding under the provisions of this
2 article, the child, his or her parents, and his or her legally
3 established custodian or other persons standing in loco
4 parentis to him, such persons other than the child being
5 hereinafter referred to as other party or parties, shall have
6 the right to be represented by counsel at every stage of the
7 proceedings and shall be informed by the court of their
8 right to be so represented and that if they cannot pay for
9 the services of counsel, that counsel will be appointed. If
10 the other parties have not retained counsel and the other
11 parties cannot pay for the services of counsel, the court
12 shall, by order entered of record, at least ten days prior to
13 the date set for hearing, appoint an attorney or attorneys
14 to represent the other party or parties and so inform the
15 parties. Under no circumstances may the same attorney
16 represent both the child and the other party or parties, nor
17 shall the same attorney represent both parents or custodi-
18 ans. However, one attorney may represent both parents or
19 custodians where both parents or guardians consent to this
20 representation after the attorney fully discloses to the
21 client the possible conflict, and where the attorney assures
22 the court that she or he is able to represent each client
23 without impairing her or his professional judgment; how-
24 ever, if more than one child from a family is involved in
25 the proceeding, one attorney may represent all the chil-
26 dren. The court may allow to each attorney so appointed a
27 fee in the same amount which appointed counsel can re-
28 ceive in felony cases. Any attorney appointed pursuant to
29 this section shall by the first day of July, one thousand
30 nine hundred ninety-three, and three hours per year each
31 year thereafter, receive a minimum of three hours of con-
32 tinuing legal education training on representation of chil-
33 dren, child abuse and neglect: *Provided*, That where no
34 attorney who has completed this training is available for
35 such appointment, the court shall appoint a competent
36 attorney with demonstrated knowledge of child welfare
37 law to represent the child. Any attorney appointed pursu-
38 ant to this section shall perform all duties required as an

39 attorney licensed to practice law in the state of West Vir-
40 ginia.

41 (b) In any proceeding brought pursuant to the provi-
42 sions of this article, the court may grant any respondent an
43 improvement period in accord with the provisions of this
44 article. During such period, the court may require tempo-
45 rary custody with a responsible person which has been
46 found to be a fit and proper person for the temporary
47 custody of the child or children, or the state department or
48 other agency during the improvement period. An order
49 granting such improvement period shall require the de-
50 partment to prepare and submit to the court a family case
51 plan in accordance with the provisions of section three,
52 article six-d of this chapter.

53 (c) In any proceeding pursuant to the provisions of
54 this article, the party or parties having custodial or other
55 parental rights or responsibilities to the child shall be af-
56 farded a meaningful opportunity to be heard, including
57 the opportunity to testify and to present and
58 cross-examine witnesses. The petition shall not be taken as
59 confessed. A transcript or recording shall be made of all
60 proceedings unless waived by all parties to the proceeding.
61 The rules of evidence shall apply. Where relevant, the
62 court shall consider the efforts of the state department to
63 remedy the alleged circumstances. At the conclusion of
64 the hearing the court shall make a determination based
65 upon the evidence and shall make findings of fact and
66 conclusions of law as to whether such child is abused or
67 neglected, which shall be incorporated into the order of
68 the court. The findings must be based upon conditions
69 existing at the time of the filing of the petition and proven
70 by clear and convincing proof.

71 (d) Any petition filed and any proceeding held under
72 the provisions of this article shall, to the extent practicable,
73 be given priority over any other civil action before the
74 court, except proceedings under article two-a, chapter
75 forty-eight of this code and actions in which trial is in
76 progress. Any petition filed under the provisions of this
77 article shall be docketed immediately upon filing. Any
78 hearing to be held at the end of an improvement period

79 and any other hearing to be held during any proceedings
80 under the provisions of this article shall be held as nearly
81 as practicable on successive days and, with respect to said
82 hearing to be held at the end of an improvement period,
83 shall be held as close in time as possible after the end of
84 said improvement period and shall be held within sixty
85 days of the termination of such improvement period.

86 (e) Following the court's determination, it shall be
87 inquired of the parents or custodians whether or not ap-
88 peal is desired and the response transcribed. A negative
89 response shall not be construed as a waiver. The evidence
90 shall be transcribed and made available to the parties or
91 their counsel as soon as practicable, if the same is required
92 for purposes of further proceedings. If an indigent person
93 intends to pursue further proceedings, the court reporter
94 shall furnish a transcript of the hearing without cost to the
95 indigent person if an affidavit is filed stating that he can-
96 not pay therefor.

**§49-6-3. Petition to court when child believed neglected or
abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order
2 that the child alleged to be an abused or neglected child
3 be delivered for not more than ten days into the custody
4 of the state department or a responsible person found by
5 the court to be a fit and proper person for the temporary
6 care of the child pending a preliminary hearing, if it finds
7 that: (1) There exists imminent danger to the physical
8 well-being of the child; and (2) there are no reasonably
9 available alternatives to removal of the child, including,
10 but not limited to, the provision of medical, psychiatric,
11 psychological or homemaking services in the child's pres-
12 ent custody: *Provided*, That where the alleged abusing
13 person, if known, is a member of a household, the court
14 shall not allow placement pursuant to this section of the
15 child or children in said home unless the alleged abusing
16 person is or has been precluded from visiting or residing
17 in said home by judicial order. In a case where there is
18 more than one child in the home, or in the temporary care,
19 custody or control of the alleged offending parent, the
20 petition shall so state, and notwithstanding the fact that the

21 allegations of abuse or neglect may pertain to less than all
22 of such children, each child in the home for whom relief is
23 sought shall be made a party to the proceeding. Even
24 though the acts of abuse or neglect alleged in the petition
25 were not directed against a specific child who is named in
26 the petition, the court shall order the removal of such
27 child, pending final disposition, if it finds that there exists
28 imminent danger to the physical well-being of the child
29 and a lack of reasonable available alternatives to removal.
30 The initial order directing such custody shall contain an
31 order appointing counsel and scheduling the preliminary
32 hearing, and upon its service shall require the immediate
33 transfer of custody of such child or children to the state
34 department or a responsible relative which may include
35 any parent, guardian, or other custodian. The court order
36 shall state: (1) That continuation in the home is contrary
37 to the best interests of the child and why; and (2) whether
38 or not the state department made a reasonable effort to
39 prevent the placement or that the emergency situation
40 made such efforts unreasonable or impossible. The order
41 may also direct any party or the department to initiate or
42 become involved in services to facilitate reunification of
43 the family.

44 (b) Whether or not the court orders immediate transfer
45 of custody as provided in subsection (a) of this section, if
46 the facts alleged in the petition demonstrate to the court
47 that there exists imminent danger to the child, the court
48 may schedule a preliminary hearing giving the respon-
49 dents at least five days' actual notice. If the court finds at
50 the preliminary hearing that there are no alternatives less
51 drastic than removal of the child and that a hearing on the
52 petition cannot be scheduled in the interim period, the
53 court may order that the child be delivered into the tem-
54 porary custody of the state department or a responsible
55 person or agency found by the court to be a fit and prop-
56 er person for the temporary care of the child for a period
57 not exceeding sixty days: *Provided*, That the court order
58 shall state: (1) That continuation in the home is contrary
59 to the best interests of the child and state the reasons there-
60 for; (2) whether or not the department made reasonable
61 efforts to prevent the child's removal from his or her

62 home; (3) whether or not the state department made a
63 reasonable effort to prevent the placement or that the
64 emergency situation made such efforts unreasonable or
65 impossible; and (4) what efforts should be made by the
66 department to facilitate the child's return home: *Provided,*
67 *however,* That if the court grants an improvement period
68 as provided in section twelve of this article, the sixty-day
69 limit upon temporary custody is waived.

70 (c) If a child or children shall, in the presence of a
71 child protective service worker, be in an emergency situa-
72 tion which constitutes an imminent danger to the physical
73 well-being of the child or children, as that phrase is de-
74 fined in section three, article one of this chapter, and if
75 such worker has probable cause to believe that the child or
76 children will suffer additional child abuse or neglect or
77 will be removed from the county before a petition can be
78 filed and temporary custody can be ordered, the worker
79 may, prior to the filing of a petition, take the child or
80 children into his or her custody without a court order:
81 *Provided,* That after taking custody of such child or chil-
82 dren prior to the filing of a petition, the worker shall
83 forthwith appear before a circuit judge or a juvenile refer-
84 ee of the county wherein custody was taken, or if no such
85 judge or referee be available, before a circuit judge or a
86 juvenile referee of an adjoining county, and shall immedi-
87 ately apply for an order ratifying the emergency custody
88 of the child pending the filing of a petition. The circuit
89 court of every county in the state shall appoint at least one
90 of the magistrates of the county to act as a juvenile referee,
91 who shall serve at the will and pleasure of the appointing
92 court, and who shall perform the functions prescribed for
93 such position by the provisions of this subsection. The
94 parents, guardians or custodians of the child or children
95 may be present at the time and place of application for an
96 order ratifying custody, and if at the time the child or
97 children are taken into custody by the worker, the worker
98 knows which judge or referee is to receive the application,
99 the worker shall so inform the parents, guardians or custo-
100 dians. The application for emergency custody may be on
101 forms prescribed by the supreme court of appeals or pre-
102 pared by the prosecuting attorney or the applicant, and

103 shall set forth facts from which it may be determined that
104 the probable cause described above in this subsection
105 exists. Upon such sworn testimony or other evidence as
106 the judge or referee deems sufficient, the judge or referee
107 may order the emergency taking by the worker to be
108 ratified. If appropriate under the circumstances, the order
109 may include authorization for an examination as provided
110 for in subsection (b), section four of this article. If a refer-
111 ee issues such an order, the referee shall by telephonic
112 communication have such order orally confirmed by a
113 circuit judge of the circuit or an adjoining circuit who
114 shall on the next judicial day enter an order of confirma-
115 tion. If the emergency taking is ratified by the judge or
116 referee, emergency custody of the child or children shall
117 be vested in the state department until the expiration of the
118 next two judicial days, at which time any such child taken
119 into emergency custody shall be returned to the custody
120 of his or her parent or guardian or custodian unless a
121 petition has been filed and custody of the child has been
122 transferred under the provisions of section three of this
123 article.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be abused
3 or neglected, the department shall file with the court a
4 copy of the child's case plan, including the permanency
5 plan for the child. The term case plan means a written
6 document that includes, where applicable, the require-
7 ments of the family case plan as provided for in section
8 three, article six-d of this chapter and that also includes at
9 least the following: A description of the type of home or
10 institution in which the child is to be placed, including a
11 discussion of the appropriateness of the placement and
12 how the agency which is responsible for the child plans to
13 assure that the child receives proper care and that services
14 are provided to the parents, child and foster parents in
15 order to improve the conditions in the parent(s) home,
16 facilitate return of the child to his or her own home or the
17 permanent placement of the child, and address the needs
18 of the child while in foster care, including a discussion of
19 the appropriateness of the services that have been provided

20 to the child. The term permanency plan refers to that part
21 of the case plan which is designed to achieve a permanent
22 home for the child in the least restrictive setting available.
23 The plan must document efforts to ensure that the child is
24 returned home within approximate time lines for reunifi-
25 cation as set out in the plan. If reunification is not the
26 permanency plan for the child, the plan must state why
27 reunification is not appropriate and detail the alternative
28 placement for the child to include approximate time lines
29 for when such placement is expected to become a perma-
30 nent placement. This case plan shall serve as the family
31 case plan for parents of abused or neglected children.
32 Copies of the child's case plan shall be sent to the child's
33 attorney and parent, guardian or custodian or their coun-
34 sel at least five days prior to the dispositional hearing. The
35 court shall forthwith proceed to disposition giving both
36 the petitioner and respondents an opportunity to be heard.
37 The court shall give precedence to dispositions in the
38 following sequence:

39 (1) Dismiss the petition;

40 (2) Refer the child, the abusing parent, or other family
41 members to a community agency for needed assistance
42 and dismiss the petition;

43 (3) Return the child to his or her own home under
44 supervision of the state department;

45 (4) Order terms of supervision calculated to assist the
46 child and any abusing parent or parents or custodian
47 which prescribe the manner of supervision and care of the
48 child and which are within the ability of any parent or
49 parents or custodian to perform;

50 (5) Upon a finding that the abusing parent or parents
51 are presently unwilling or unable to provide adequately
52 for the child's needs, commit the child temporarily to the
53 custody of the state department, a licensed private child
54 welfare agency or a suitable person who may be appointed
55 guardian by the court. The court order shall state: (1) That
56 continuation in the home is contrary to the best interests
57 of the child and why; (2) whether or not the state depart-
58 ment made a reasonable effort to prevent the placement to

59 include a statement of what efforts were made or that the
60 emergency situation made such efforts unreasonable or
61 impossible; and (3) the specific circumstances of the situa-
62 tion which makes such efforts unreasonable if services
63 were not offered by the department. The court order shall
64 also determine under what circumstances the child's com-
65 mitment to the department shall continue. Considerations
66 pertinent to the determination include whether the child
67 should: (1) Be continued in foster care for a specified
68 period; (2) should be considered for adoption; (3) be-
69 cause of a child's special needs or circumstances, be con-
70 tinued in foster care on a permanent or long-term basis; or
71 (4) be continued in foster care until reunification is
72 achieved. The court may order services to meet the spe-
73 cial needs of the child. Whenever the court transfers cus-
74 tody of a youth to the department, an appropriate order of
75 financial support by the parents or guardians shall be
76 entered in accordance with section five, article seven of
77 this chapter; or

78 (6) Upon a finding that there is no reasonable likeli-
79 hood that the conditions of neglect or abuse can be sub-
80 stantially corrected in the near future, and when necessary
81 for the welfare of the child, terminate the parental, custodi-
82 al or guardianship rights and/or responsibilities of the
83 abusing parent and commit the child to the permanent
84 sole custody of the nonabusing parent, if there be one, or,
85 if not, to either the permanent guardianship of the state
86 department or a licensed child welfare agency. If the court
87 shall so find, then in fixing its dispositional order, the
88 court shall consider the following factors: (1) The child's
89 need for continuity of care and caretakers; (2) the amount
90 of time required for the child to be integrated into a stable
91 and permanent home environment; and (3) other factors
92 as the court considers necessary and proper. Notwithstand-
93 ing any other provision of this article, the permanent pa-
94 rental rights shall not be terminated if a child fourteen
95 years of age or older or otherwise of an age of discretion
96 as determined by the court, objects to such termination.
97 No adoption of a child shall take place until all proceed-
98 ings for termination of parental rights under this article
99 and appeals thereof are final. In determining whether or

100 not parental rights should be terminated, the court shall
101 consider the efforts made by the department to provide
102 remedial and reunification services to the parent. The
103 court order shall state: (1) That continuation in the home
104 is not in the best interest of the child and why; (2) why
105 reunification is not in the best interests of the child; (3)
106 whether or not the state department made a reasonable
107 effort to prevent the placement or that the emergency
108 situation made such efforts unreasonable or impossible;
109 and (4) whether or not the state department made a rea-
110 sonable effort to reunify the family including a descrip-
111 tion of what efforts were made or that such efforts were
112 unreasonable due to specific circumstances.

113 (b) As used in this section, "no reasonable likelihood
114 that conditions of neglect or abuse can be substantially
115 corrected" shall mean that, based upon the evidence before
116 the court, the abusing adult or adults have demonstrated
117 an inadequate capacity to solve the problems of abuse or
118 neglect, on their own or with help. Such conditions shall
119 be deemed to exist in the following circumstances, which
120 shall not be exclusive:

121 (1) The abusing parent or parents have habitually
122 abused or are addicted to alcohol, controlled substances or
123 drugs, to the extent that proper parenting skills have been
124 seriously impaired and such person or persons have not
125 responded to or followed through the recommended and
126 appropriate treatment which could have improved the
127 capacity for adequate parental functioning;

128 (2) The abusing parent or parents have willfully re-
129 fused or are presently unwilling to cooperate in the devel-
130 opment of a reasonable family case plan designed to lead
131 to the child's return to their care, custody and control;

132 (3) The abusing parent or parents have not responded
133 to or followed through with a reasonable family case plan
134 or other rehabilitative efforts of social, medical, mental
135 health or other rehabilitative agencies designed to reduce
136 or prevent the abuse or neglect of the child, as evidenced
137 by the continuation or insubstantial diminution of condi-
138 tions which threatened the health, welfare or life of the
139 child;

140 (4) The abusing parent or parents have abandoned the
141 child;

142 (5) The abusing parent or parents have repeatedly or
143 seriously injured the child physically or emotionally, or
144 have sexually abused or sexually exploited the child, and
145 the degree of family stress and the potential for further
146 abuse and neglect are so great as to preclude the use of
147 resources to mitigate or resolve family problems or assist
148 the abusing parent or parents in fulfilling their responsi-
149 bilities to the child; or

150 (6) The abusing parent or parents have incurred emo-
151 tional illness, mental illness or mental deficiency of such
152 duration or nature as to render such parent or parents
153 incapable of exercising proper parenting skills or suffi-
154 ciently improving the adequacy of such skills.

155 (c) The court may as an alternative disposition allow to
156 the parents or custodians an improvement period not to
157 exceed six months. During this period the parental rights
158 shall not be permanently terminated and the court shall
159 require the parent to rectify the conditions upon which the
160 determination was based. The court may order the child to
161 be placed with the parents, or any person found to be a fit
162 and proper person for the temporary care of the child
163 during the period. At the end of the period the court shall
164 hold a hearing to determine whether the conditions have
165 been adequately improved, and at the conclusion of such
166 hearing, shall make a further dispositional order in accor-
167 dance with this section.

§49-6-11. Conviction for offenses against children.

1 In any case where a person is convicted of an offense
2 described in section twelve, article eight, chapter sixty-one
3 of this code or articles eight-b or eight-d of said chapter
4 against a child and the person has custodial, visitation or
5 other parental rights to the child who is the victim of the
6 offense or to any child who resides in the same household
7 as the victim, the court shall, at the time of sentencing, find
8 that the person is an abusing parent within the meaning of
9 this chapter as to the child victim, and may find that the
10 person is an abusing parent as to any child who resides in

11 the same household as the victim, and the court shall take
12 such further steps as are required by this article.

§49-6-12. Improvement period in cases of child neglect or abuse.

1 (a) A court may grant a respondent an improvement
2 period of a period not to exceed three months prior to
3 making a finding that a child is abused or neglected pur-
4 suant to section two of this article only when:

5 (1) The respondent files a written motion requesting
6 the improvement period;

7 (2) The respondent demonstrates, by clear and con-
8 vincing evidence, that the respondent is likely to fully
9 participate in the improvement period and the court fur-
10 ther makes a finding, on the record, of the terms of the
11 improvement period;

12 (3) In the order granting the improvement period, the
13 court (A) orders that a hearing be held to review the mat-
14 ter within sixty days of the granting of the improvement
15 period, or (B) orders that a hearing be held to review the
16 matter within ninety days of the granting of the improve-
17 ment period and that the department submit a report as to
18 the respondent's progress in the improvement period with-
19 in sixty days of the order granting the improvement peri-
20 od; and

21 (4) The order granting the improvement period re-
22 quires the department to prepare and submit to the court
23 an individualized family case plan in accordance with the
24 provisions of section three, article six-d of this chapter;

25 (b) After finding that a child is an abused or neglected
26 child pursuant to section two of this article, a court may
27 grant a respondent an improvement period of a period not
28 to exceed six months when:

29 (1) The respondent files a written motion requesting
30 the improvement period;

31 (2) The respondent demonstrates, by clear and con-
32 vincing evidence, that the respondent is likely to fully
33 participate in the improvement period and the court fur-

34 ther makes a finding, on the record, of the terms of the
35 improvement period;

36 (3) In the order granting the improvement period, the
37 court (A) orders that a hearing be held to review the mat-
38 ter within sixty days of the granting of the improvement
39 period, or (B) orders that a hearing be held to review the
40 matter within ninety days of the granting of the improve-
41 ment period and that the department submit a report as to
42 the respondent's progress in the improvement period with-
43 in sixty days of the order granting the improvement peri-
44 od;

45 (4) Since the initiation of the proceeding, the respon-
46 dent has not previously been granted any improvement
47 period or the respondent demonstrates that since the initial
48 improvement period, the respondent has experienced a
49 substantial change in circumstances. Further, the respon-
50 dent shall demonstrate that due to that change in circum-
51 stances the respondent is likely to fully participate in a
52 further improvement period; and

53 (5) The order granting the improvement period re-
54 quires the department to prepare and submit to the court
55 an individualized family case plan in accordance with the
56 provisions of section three, article six-d of this chapter.

57 (c) The court may grant an improvement period not to
58 exceed six months as a disposition pursuant to section five
59 of this article when:

60 (1) The respondent moves in writing for the improve-
61 ment period;

62 (2) The respondent demonstrates, by clear and con-
63 vincing evidence, that the respondent is likely to fully
64 participate in the improvement period and the court fur-
65 ther makes a finding, on the record, of the terms of the
66 improvement period;

67 (3) In the order granting the improvement period, the
68 court (A) orders that a hearing be held to review the mat-
69 ter within sixty days of the granting of the improvement
70 period, or (B) orders that a hearing be held to review the
71 matter within ninety days of the granting of the improve-

72 ment period and that the department submit a report as to
73 the respondent's progress in the improvement period with-
74 in sixty days of the order granting the improvement peri-
75 od;

76 (4) Since the initiation of the proceeding, the respon-
77 dent has not previously been granted any improvement
78 period or the respondent demonstrates that since the initial
79 improvement period, the respondent has experienced a
80 substantial change in circumstances. Further, the respon-
81 dent shall demonstrate that due to that change in circum-
82 stances, the respondent is likely to fully participate in the
83 improvement period; and

84 (5) The order granting the improvement period shall
85 require the department to prepare and submit to the court
86 an individualized family case plan in accordance with the
87 provisions of section three, article six-d of this chapter.

88 (d) When any improvement period is granted to a
89 respondent pursuant to the provisions of this section, the
90 respondent shall be responsible for the initiation and com-
91 pletion of all terms of the improvement period. The court
92 may order the state department to pay expenses associated
93 with the services provided during the improvement period
94 when the respondent has demonstrated that he or she is
95 unable to bear such expenses.

96 (e) When any improvement period is granted to a
97 respondent pursuant to the provisions of this section, the
98 respondent shall execute a release of all medical informa-
99 tion regarding that respondent, including, but not limited
100 to, information provided by mental health and substance
101 abuse professionals and facilities. Such release shall be
102 accepted by any such professional or facility regardless of
103 whether the release conforms to any standard required by
104 that facility.

105 (f) When any respondent is granted an improvement
106 period pursuant to the provisions of this article, the depart-
107 ment shall monitor the progress of such person in the
108 improvement period. When the respondent fails to partici-
109 pate in any service mandated by the improvement period,
110 the state department shall initiate action to inform the

111 court of that failure. When the department demonstrates
112 that the respondent has failed to participate in any provi-
113 sion of the improvement period, the court shall forthwith
114 terminate the improvement period.

115 (g) A court may extend any improvement period
116 granted pursuant to subsections (b) or (c) of this section
117 for a period not to exceed three months when the court
118 finds that the respondent has substantially complied with
119 the terms of the improvement period; that the continuation
120 of the improvement period will not substantially impair
121 the ability of the department to permanently place the
122 child; and that such extension is otherwise consistent with
123 the best interest of the child.

124 (h) Upon the motion by any party, the court shall
125 terminate any improvement period granted pursuant to
126 this section when the court finds that respondent has failed
127 to fully participate in the terms of the improvement peri-
128 od.

129 (i) This section may not be construed to prohibit a
130 court from ordering a respondent to participate in services
131 designed to reunify a family or to relieve the department
132 of any duty to make reasonable efforts to reunify a family
133 required by state or federal law.

134 (j) Any hearing scheduled pursuant to the provisions
135 of this section may be continued only for good cause
136 upon a written motion properly served on all parties.
137 When a court grants such continuance, the court shall
138 enter an order granting the continuance which shall speci-
139 fy a future date when the hearing will be held.

140 (k) Any hearing to be held at the end of an improve-
141 ment period shall be held as nearly as practicable on suc-
142 cessive days and shall be held as close in time as possible
143 after the end of said improvement period and shall be held
144 no later than sixty days of the termination of such im-
145 provement period.

**ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES
ACT.**

**§49-6D-3. Family case plans for parents of abused or neglect-
ed children.**

1 (a) The department shall develop a family case plan
2 for every family wherein a person has been referred to the
3 department after being allowed an improvement period
4 under the provisions of section twelve, article six of this
5 chapter. The department may also prepare a family case
6 plan for any person who voluntarily seeks child abuse and
7 neglect services from the department, or who is referred to
8 the department by another public agency or private orga-
9 nization. The family case plan is to clearly set forth an
10 organized, realistic method of identifying family problems
11 and the logical steps to be used in resolving or lessening
12 those problems. Every family case plan prepared by the
13 department shall contain the following:

14 (1) A listing of specific, measurable, realistic goals to
15 be achieved;

16 (2) An arrangement of goals into an order of priority;

17 (3) A listing of the problems that will be addressed by
18 each goal;

19 (4) A specific description of how the assigned case-
20 worker or caseworkers and the abusing parent, guardian or
21 custodian will achieve each goal;

22 (5) A description of the departmental and community
23 resources to be used in implementing the proposed actions
24 and services;

25 (6) A list of the services which will be provided;

26 (7) Time targets for the achievement of goals or por-
27 tions of goals;

28 (8) An assignment of tasks to the abusing or neglect-
29 ing parent, guardian or custodian, to the caseworker or
30 caseworkers and to other participants in the planning pro-
31 cess; and

32 (9) A designation of when and how often tasks will be
33 performed.

34 (b) In cases where the family has been referred to the
35 department by a court under the provisions of this chapter,
36 and further action before the court is pending, the family
37 case plan described in subsection (a) of this section shall

38 be furnished to the court within thirty days after the entry
39 of the order referring the case to the department, and shall
40 be available to counsel for the parent, guardian or custodi-
41 an and counsel for the child or children. The department
42 shall encourage participation in the development of the
43 family case plan by the parent, guardian or custodian, and,
44 if the child is above the age of twelve years and the child's
45 participation is otherwise appropriate, by the child. It shall
46 be the duty of counsel for the participants to participate in
47 the development of the family case plan. The family case
48 plan may be modified from time to time by the depart-
49 ment to allow for flexibility in goal development, and in
50 each such case the modifications shall be submitted to the
51 court in writing. The court shall examine the proposed
52 family case plan or any modification thereof, and upon a
53 finding by the court that the plan or modified plan can be
54 easily communicated, explained and discussed so as to
55 make the participants accountable and able to understand
56 the reasons for any success or failure under the plan, the
57 court shall inform the participants of the probable action
58 of the court if goals are met or not met.

59 (c) (1) In addition to the family case plan provided for
60 under the provisions of subsection (b) of this section, the
61 department shall prepare, as an appendix to the family
62 case plan, an expanded "worker's case plan". As utilized by
63 the department under the provisions of this section, the
64 worker's case plan shall consist of the following:

65 (A) All of the information contained in the family
66 case plan described in subsection (c) of this section;

67 (B) A prognosis for each of the goals projected in the
68 family case plan, assessing the capacity of the parent,
69 guardian or custodian to achieve the goal and whether
70 available treatment services are likely to have the desired
71 outcome;

72 (C) A listing of the criteria to be used to assess the
73 degree to which each goal is attained;

74 (D) A description of when and how the department
75 will decide when and how well each goal has been at-
76 tained;

77 (E) If possible, a listing of alternative methods and
78 specific services which the caseworker or caseworkers may
79 consider using if the original plan does not work; and

80 (F) A listing of criteria to be used in determining when
81 the family case plan should be terminated.

82 (2) Because the nature of the information contained in
83 the worker's case plan described in subdivision (1) of this
84 subsection may, in some cases, be construed to be negative
85 with respect to the probability of change, or may be
86 viewed as a caseworker's attempt to impose personal values
87 into the situation, or may raise barriers of hostility and
88 resistance between the caseworker and the family mem-
89 bers, the worker's case plan shall not be made available to
90 the court or to persons outside of the department, but shall
91 be used by the department for the purpose of confirming
92 the effectiveness of the family case plan or for determin-
93 ing that changes in the family case plan need to be made.

94 (d) In furtherance of the provisions of this article, the
95 department shall, within the limits of available funds, es-
96 tablish programs and services for the following purposes:

97 (1) For the development and establishment of training
98 programs for professional and paraprofessional personnel
99 in the fields of medicine, law, education, social work and
100 other relevant fields who are engaged in, or intend to work
101 in, the field of the prevention, identification and treatment
102 of child abuse and neglect; and training programs for
103 children, and for persons responsible for the welfare of
104 children, in methods of protecting children from child
105 abuse and neglect;

106 (2) For the establishment and maintenance of centers,
107 serving defined geographic areas, staffed by multidis-
108 ciplinary teams and community teams of personnel
109 trained in the prevention, identification, and treatment of
110 child abuse and neglect cases, to provide a broad range of
111 services related to child abuse and neglect, including direct
112 support and supervision of satellite centers and attention
113 homes, as well as providing advice and consultation to
114 individuals, agencies and organizations which request such
115 services;

116 (3) For furnishing services of multidisciplinary teams
117 and community teams, trained in the prevention, identifi-
118 cation and treatment of child abuse and neglect cases, on a
119 consulting basis to small communities where such services
120 are not available;

121 (4) For other innovative programs and projects that
122 show promise of successfully identifying, preventing or
123 remedying the causes of child abuse and neglect, includ-
124 ing, but not limited to, programs and services designed to
125 improve and maintain parenting skills, programs and pro-
126 jects for parent self-help, and for prevention and treatment
127 of drug-related child abuse and neglect; and

128 (5) Assisting public agencies or nonprofit private
129 organizations or combinations thereof in making applica-
130 tions for grants from, or in entering into contracts with, the
131 secretary of the federal department of health and human
132 services for demonstration programs and projects de-
133 signed to identify, prevent and treat child abuse and ne-
134 glect.

135 (e) Agencies, organizations and programs funded to
136 carry out the purposes of this section shall be structured so
137 as to comply with any applicable federal law, any regula-
138 tion of the federal department of health and human servic-
139 es or the secretary thereof, and any final comprehensive
140 plan of the federal advisory board on child abuse and
141 neglect. In funding organizations, the department shall, to
142 the extent feasible, ensure that parental organizations com-
143 bating child abuse and neglect receive preferential treat-
144 ment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

8B. Sexual Offenses.

8D. Child Abuse.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and the person has
3 custodial, visitation or other parental rights to the child

4 who is the victim of the offense or any child who resides
 5 in the same household as the victim, the court shall, at the
 6 time of sentencing, find that the person is an abusing
 7 parent within the meaning of article six, chapter forty-nine
 8 of this code as to the child victim, and may find that the
 9 person is an abusing parent as to any child who resides in
 10 the same household as the victim, and shall take such
 11 further action in accord with the provisions of said article.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
 2 described in this article against a child and the person has
 3 custodial, visitation or other parental rights to the child
 4 who is the victim of the offense or any child who resides
 5 in the same household as the victim, the court shall, at the
 6 time of sentencing, find that the person is an abusing
 7 parent within the meaning of article six, chapter forty-nine
 8 of this code as to the child victim, and may find that the
 9 person is an abusing parent as to any child who resides in
 10 the same household as the victim, and shall take such
 11 further action in accord with the provisions of said article.

CHAPTER 84

(H. B. 4474—By Delegates Douglas, Trump, Jenkins and Manuel)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections five, six and seven, all relating to the establishment of the state child fatality review team; rule-making authority; requirement to submit annual reports to the governor and Legislature; contents of reports; investigation of deaths; review team reports; cooperation of governmental agencies; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-5. Child fatality review team.

§49-5D-6. Other agencies of government required to cooperate.

§49-5D-7. Law enforcement; prosecution; interference with performance of duties.

§49-5D-5. Child fatality review team.

1 (a) The state child fatality review team is hereby estab-
2 lished under the office of medical examinations which
3 shall be a multidisciplinary team created to review the
4 deaths of children under the age of eighteen years as pro-
5 vided for in this section. It shall include among its mem-
6 bership the following, appointed by the governor, to serve
7 three-year terms:

8 (1) The state medical examiner, who shall serve as the
9 chairperson of the state child fatality review team;

10 (2) One prosecuting attorney or his or her designee;

11 (3) The state superintendent of the West Virginia state
12 police or his or her designee;

13 (4) One law-enforcement official other than a member
14 of the West Virginia state police;

15 (5) One child protective services worker currently
16 employed in investigating reports of child abuse or ne-
17 glect;

18 (6) One health care provider, specializing in the prac-
19 tice of pediatric medicine or family medicine; and

20 (7) One social worker who may be employed in the
21 area of public health.

22 Members of the state child fatality review team shall,
23 unless sooner removed, continue to serve until their re-

24 spective terms expire and until their successors have been
25 appointed and have qualified. Each appointment of a
26 prosecuting attorney, whether for a full term or to fill a
27 vacancy, shall be made by the governor from among three
28 nominees therefor selected by the West Virginia prosecut-
29 ing attorneys institute. Each appointment of a law-en-
30 forcement officer, whether for a full term or to fill a va-
31 cancy, shall be made by the governor from among three
32 nominees therefor selected by the state fraternal order of
33 police. Each appointment of a child protective services
34 worker and a social worker, whether for a full term or to
35 fill a vacancy, shall be made by the governor from among
36 three nominees therefor selected by the West Virginia
37 social work licensing board. Each appointment of a phy-
38 sician, whether for a full term or to fill a vacancy, shall be
39 made by the governor from among three nominees there-
40 for selected by the West Virginia state medical association.
41 When an appointment for a full term, the nomination shall
42 be submitted to the governor not later than eight months
43 prior to the date on which the appointment shall become
44 effective. In the case of an appointment to fill a vacancy,
45 such nominations shall be submitted to the governor with-
46 in thirty days after the request for the nomination has
47 been made by the governor to the chairperson or presi-
48 dent of the organization. When an association fails to
49 submit to the governor nominations for the appointment
50 in accordance with the requirements of this section, the
51 governor may make the appointment without nomina-
52 tions.

53 Each member of the state child fatality review team
54 shall serve without additional compensation and may not
55 be reimbursed for any expenses incurred in the discharge
56 of the duties under the provisions of this article.

57 (b) The state child fatality review team shall, pursuant
58 to the provisions of chapter twenty-nine-a, promulgate
59 rules applicable to the following:

60 (1) The standard procedures for the establishment,
61 formation and conduct of the state child fatality review
62 team;

63 (2) Guidelines for hospitals, physicians and other
64 health-care providers to utilize in order to report the
65 deaths of children to the state child fatality review team;
66 and

67 (3) Recommend protocols for the review of child
68 fatalities where other than natural causes are suspected.

69 (c) The state child fatality review team shall submit an
70 annual report to the governor and to the Legislature con-
71 cerning its activities and the incidents of child fatalities
72 within the state. The first such report shall be due on the
73 first day of July, one thousand nine hundred ninety-seven.
74 Thereafter, a report shall be due annually on the first day
75 of July. The report shall include statistics setting forth the
76 number of child fatalities. Such statistical analysis may
77 include information regarding the causes of child fatalities
78 in the state. The report shall also include the number of
79 children whose deaths have been determined to have been
80 unexpected or unexplained and whether court proceed-
81 ings regarding criminal prosecution have commenced.

82 (d) The local multidisciplinary team created pursuant
83 to the provisions of section two of this article shall review
84 all cases referred to the team pursuant to the provisions of
85 that section: *Provided*, That a local team may refer any or
86 all cases for review of deaths to the state multidisciplinary
87 team. Further, the local multidisciplinary team shall pro-
88 vide all information to the state child fatality review team
89 necessary for the state child fatality review team to create
90 and submit any report required by this section.

91 (e) All information and records acquired by the state
92 team or by a local team in the exercise of its purpose and
93 duties pursuant to this article shall be confidential. For
94 purposes of this section, the term confidential shall be
95 defined consistent with the definition set forth in section
96 one, article seven, chapter forty-nine of this code.

**§49-5D-6. Other agencies of government required to cooper-
ate.**

1 State, county and local agencies shall provide the
 2 multi-disciplinary teams with any information requested in
 3 writing by the team as allowable by law or upon receipt of
 4 a certified copy of the circuit court's order directing said
 5 agencies to release information in its possession relating to
 6 the child. The team shall assure that all information
 7 received and developed in connection with the provisions
 8 of this article remain confidential. For purposes of this
 9 section, the term "confidential" shall be construed in
 10 accordance with the provisions of section one, article seven
 11 of this chapter.

§49-5D-7. Law enforcement; prosecution; interference with performance of duties.

1 No multidisciplinary team may take any action which,
 2 in the determination of the prosecuting attorney or his or
 3 her assistant, impairs the ability of the prosecuting
 4 attorney, his or her assistant, or any law-enforcement
 5 officer to perform his or her statutory duties.

CHAPTER 85

(H. B. 4661—By Delegates Seacrist, Burke, Compton,
 Clements and Evans)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of agriculture; department of education; division of corrections; division of culture and history; division of health; division of human services; division

of labor; division of motor vehicles; and education and state employees grievance board to be moral obligations of the state and directing payments thereof. The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Agriculture:

(TO BE PAID FROM GENERAL REVENUE FUND)

1 (1) Geraldine Eberbaugh \$ 396.00

(b) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

1 (1) Gail Balcourt \$ 222.75

2 (2) Bonnie Kaye Coleman \$ 756.00

3 (3) Rosalee Dorsey \$ 360.00

4.	(4) Lynne Dunmire	\$ 408.00
5	(5) Susan E. Garnett	\$ 245.00
6	(6) Deborah Halsey	\$ 470.00
7	(7) Kevin B. Hedinger	\$ 1,260.00
8	(8) Karen Karr	\$ 300.00
9	(9) Rebecca Kittle	\$ 714.00
10	(10) Gilmer Marcum	\$ 308.50
11	(11) Debra Diane Mills	\$ 714.00
12	(12) Mary Beth Blosser Moore	\$ 357.00
13	(13) James N. Oliveto	\$ 378.00
14	(14) Barbara Perez	\$ 235.00
15	(15) Regina Marie Perfin	\$ 245.00
16	(16) Jennifer L. Reed	\$ 624.00
17	(17) Jacqueline Rife	\$ 310.00
18	(18) Jamie L. Riffe	\$ 490.00
19	(19) Cheryll R. Roberts	\$ 411.00
20	(20) Margaret J. Roush	\$ 450.50
21	(21) Elizabeth Saunders	\$ 711.00
22	(22) Wilma Jean Sexton	\$ 756.00
23	(23) Donald L. Smith	\$ 291.00
24	(24) Elizabeth M. Thompson	\$ 655.00
25	(25) Margaret Vance	\$ 360.00
26	(26) John M. Vidovich	\$ 75.00

(c) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

1	(1) Anthony Creek Rescue Squad	\$ 1,208.00
2	(2) Marshall County Sheriff's Department	\$ 1,572.52
3	(3) Medical Services, Inc.	\$ 508.60
4	(4) Robert B. Miller, M.D.	\$ 325.00

5	(5) Professional Imaging, Inc.	\$ 177.00
6	(6) Rizzo & Bonasso, M.D.'s Inc.	\$ 2,100.00
7	(7) Roentgen Diagnostics, Inc.	\$ 19.00
8	(8) United Hospital Center, Inc.	\$ 569.15
9	(9) WVSOM Clinic, Inc.	\$ 2,848.00
10	(10) West Virginia University Hospitals, Inc.	\$ 50,682.43
11	(11) Wheeling Hospital	\$ 4,950.60
	<i>(d) Claims against the Division of Culture and History:</i>	
	(TO BE PAID FROM GENERAL REVENUE FUND)	
1	(1) Division of Highways	\$ 1,444.40
2	(2) Gateway 2000	\$ 9,145.00
3	(3) Xerox Corporation	\$ 1,403.16
	<i>(e) Claim against the Division of Health:</i>	
	(TO BE PAID FROM GENERAL REVENUE FUND)	
1	(1) Olympic Center-Preston	\$ 6,840.00
	<i>(f) Claim against the Division of Human Services:</i>	
	(TO BE PAID FROM GENERAL REVENUE FUND)	
1	(1) Wood County Commission	\$ 27,425.50
	<i>(g) Claim against the Division of Labor:</i>	
	(TO BE PAID FROM GENERAL REVENUE FUND)	
1	(1) AT & T GBCS	\$ 1,241.74
	<i>(h) Claim against the Division of Motor Vehicles:</i>	
	(TO BE PAID FROM STATE ROAD FUND)	
1	(1) Allied Capital Lease Administration	\$ 1,689.68
	<i>(i) Claim against the Education and State Employees Grievance Board:</i>	
	(TO BE PAID FROM GENERAL REVENUE FUND)	
1	(1) Pitney Bowes, Inc.	\$ 59.25

CHAPTER 86

(S. B. 567—By Senators Whitlow, Helmick, Blatnik, Manchin, Chafin, Dugan, Kimble, Love, Minear, Plymale and Sharpe)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control administration; attorney general's office; bureau of commerce; department of administration; department of agriculture; department of education; department of tax and revenue; division of corrections; division of culture and history; division of environmental protection; division of health; division of highways; division of human services; division of labor; division of motor vehicles; division of natural resources; division of personnel; division of rehabilitation services; division of tourism; insurance commission; municipal bond commission; office of miners' health, safety and training; office of the governor; public service commission; real estate commission; regional jail and correctional facility authority; state of West Virginia; West Virginia state police; the West Virginia supreme court of appeals; and the board of barbers and cosmetologists; to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
 2 and recommendations reported to it by the court of claims
 3 concerning various claims against the state and agencies
 4 thereof, and in respect to each of the following claims the
 5 Legislature adopts those findings of fact as its own, and in
 6 respect of certain claims herein, the Legislature has inde-

7 pendently made findings of fact and determinations of
 8 award and hereby declares it to be the moral obligation of
 9 the state to pay each such claim in the amount specified
 10 below, and directs the auditor to issue warrants for the
 11 payment thereof out of any fund appropriated and avail-
 12 able for the purpose.

13 (a) *Claim against the Alcohol Beverage Control Ad-*
 14 *ministration:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16 (1) Kelli D. Talbott \$ 160.00

17 (b) *Claim against the Attorney General:*

18 (TO BE PAID FROM GENERAL REVENUE FUND)

19 (1) System Design Associates \$ 924.00

20 (c) *Claim against the Bureau of Commerce:*

21 (TO BE PAID FROM SPECIAL REVENUE FUND)

22 (1) AT & T \$ 4,626.09

23 (d) *Claims against the Department of Administra-*
 24 *tion:*

25 (TO BE PAID FROM SPECIAL REVENUE FUND)

26 (1) E & M Products, Inc. \$ 25.00

27 (2) Government Data Publications, Inc. . . . \$ 84.95

28 (3) Manpower Temporary Services \$ 314.80

29 (4) James L. Steele \$ 1,473.97

30 (e) *Claim against the Department of Agriculture:*

31 (TO BE PAID FROM SPECIAL REVENUE FUND)

32 From Account No. 1403

33 (1) Phyllis N. Voorhees \$ 972.00

34 (f) *Claims against the Department of Education:*

35 (TO BE PAID FROM GENERAL REVENUE FUND)

36 (1) Donald Bucher \$ 369.00

37	(2)	Division of Rehabilitation Services . . .	\$	575.00
38	(3)	Shirley L. Dodson	\$	320.00
39	(4)	Desirae M. Smith	\$	690.00
40		(g) <i>Claim against the Department of Tax and Reve-</i>		
41		<i>nue:</i>		
42		(TO BE PAID FROM GENERAL REVENUE FUND)		
43	(1)	Tommy Diamond	\$	597.02
44		(h) <i>Claims against the Division of Corrections:</i>		
45		(TO BE PAID FROM GENERAL REVENUE FUND)		
46	(1)	Barbour County Commission	\$	4,475.00
47	(2)	Cabell County Commission	\$	1,666.56
48	(3)	Camden-Clark Memorial Hospital	\$	304.50
49	(4)	Davis Memorial Hospital	\$	18,482.77
50	(5)	Grafton City Hospital	\$	127.30
51	(6)	Mammen Kovoov, M.D.	\$	25.00
52	(7)	Mountain State Temporary		
53		Services, dba Manpower		
54		Temporary Services	\$	580.08
55	(8)	Radiology, Inc.	\$	220.00
56	(9)	Regional Jail and Correctional		
57		Facility Authority	\$	149,380.00
58	(10)	Bret Rosenblum, M.D.	\$	215.00
59	(11)	Romeo B. Tan, M.D.	\$	440.00
60	(12)	University Health Associates	\$	35,930.00
61	(13)	West Virginia University		
62		Hospitals, Inc.	\$	84,958.62
63	(14)	Workers' Compensation Fund	\$	233,993.24
64		(i) <i>Claim against the Division of Culture and History:</i>		
65		(TO BE PAID FROM GENERAL REVENUE FUND)		
66	(1)	Xerox Corporation	\$	607.00
67		(j) <i>Claims against Division of Environmental Protec-</i>		
68		<i>tion:</i>		
69		(TO BE PAID FROM SPECIAL REVENUE FUND)		

70	(1) Division of Highways	\$ 12,269.92
71	(2) Janet T. Surface	\$ 502.25
72	(k) <i>Claim against the Division of Health:</i>	
73	(TO BE PAID FROM SPECIAL REVENUE FUND)	
74	(1) National-Interstate Council	
75	of State Boards of	
76	Cosmetology, Inc.	\$ 500.00
77	(l) <i>Claims against the Division of Highways:</i>	
78	(TO BE PAID FROM STATE ROAD FUND)	
79	(1) Keith L. Adkins	\$ 765.94
80	(2) Margaret Bailey	\$ 89.54
81	(3) Bruce A. Balcar,	
82	dba B.K. Mining and	
83	Construction	\$126,339.58
84	(4) Wendell D. and Debra Y. Brown	\$ 300.00
85	(5) C. W. Stickley, Inc.	\$ 1,428.37
86	(6) Sabrina S. Collins	\$ 1,124.03
87	(7) Ginger B. Compton	\$ 500.00
88	(8) Doris Evans	\$ 3,500.00
89	(9) Albert Earl Everly, III	\$ 500.00
90	(10) James L. Fields	\$ 3,000.00
91	(11) Hillard W. Hicks	\$ 500.00
92	(12) Bobby P. Huffman	\$ 432.00
93	(13) Marcia and Jackie Hundley	\$ 250.00
94	(14) Bobby Jarrell	\$ 500.00
95	(15) Dorothy Kehrer	\$ 250.00
96	(16) Shawn and Elizabeth Kniceley	\$ 314.80
97	(17) Michelle Lee Levero	\$ 224.13
98	(18) Joel A. Maddy	\$ 109.12
99	(19) Thomas W. Marcum	\$ 500.00
100	(20) Gary L. McNeely	\$ 1,432.08
101	(21) Robert F. McVay	\$ 750.00
102	(22) Brian Scott Miller	\$ 1,000.00
103	(23) Thomas L. Mugnano	\$ 1,290.00
104	(24) Betty Murphy	\$ 1,939.04
105	(25) Eddie E. Napier	\$ 2,671.65

106	(26) Julie Parsley	\$	251.70
107	(27) Patricia Parsons-Mills	\$	1,200.00
108	(28) Anita Geraldine Priest	\$	363.55
109	(29) Gregory and Linda Sellards	\$	196.19
110	(30) Edna Marie Sheppard	\$	1,497.12
111	(31) Sally Spoor Stevens	\$	213.82
112	(32) Steve L. Stover	\$	3,024.05
113	(33) Robert H. and Lori A. Trail	\$	1,952.42
114	(34) Marilyn D. Wickline	\$	119.09
115	(35) Doris Woody	\$	250.00
116	(m) <i>Claims against the Division of Human Services:</i>		
117	(TO BE PAID FROM GENERAL REVENUE FUND)		
118	(1) Tennant Funeral Home	\$	1,200.00
119	(2) WV Assoc. of Rehab. Facilities, Inc. ..	\$	3,248.59
120	(n) <i>Claim against Division of Labor:</i>		
121	(TO BE PAID FROM GENERAL REVENUE FUND)		
122	(1) Bell Atlantic-West Virginia, Inc.	\$	627.86
123	(o) <i>Claims against the Division of Motor Vehicles:</i>		
124	(TO BE PAID FROM STATE ROAD FUND)		
125	(1) Polaroid Corporation	\$	62,447.64
126	(2) South Berkeley Auto Sales	\$	875.00
127	(p) <i>Claims against the Division of Natural Resources:</i>		
128	<i>es:</i>		
129	(TO BE PAID FROM SPECIAL REVENUE FUND)		
130	(1) Contemporary Galleries	\$	1,774.55
131	(2) Division of Highways	\$	19,389.28
132	(q) <i>Claim against the Division of Personnel:</i>		
133	(TO BE PAID FROM SPECIAL REVENUE FUND)		
134	(1) Tele. Communications Innov.		
135	dba The Telemanagement Group ..	\$	789.32

136	(r) <i>Claim against the Division of Rehabilitation Ser-</i>	
137	<i>vices:</i>	
138	(TO BE PAID FROM SPECIAL REVENUE FUND)	
139	(1) Division of Highways	\$ 3,756.36
140	(s) <i>Claim against the Division of Tourism:</i>	
141	(TO BE PAID FROM SPECIAL REVENUE FUND)	
142	(1) Division of Highways	\$ 253.21
143	(t) <i>Claim against the Insurance Commission:</i>	
144	(TO BE PAID FROM SPECIAL REVENUE FUND)	
145	(1) Lanier Worldwide, Inc.	\$ 312.84
146	(u) <i>Claim against the Municipal Bond Commission:</i>	
147	(TO BE PAID FROM SPECIAL REVENUE FUND)	
148	(1) System Design Associates	\$ 1,173.00
149	(v) <i>Claim against the Office of Miners' Health, Safety</i>	
150	<i>and Training:</i>	
151	(TO BE PAID FROM GENERAL REVENUE FUND)	
152	(1) Workers' Compensation Fund	\$121,736.11
153	(w) <i>Claim against the Office of the Governor:</i>	
154	(TO BE PAID FROM GENERAL REVENUE FUND)	
155	(1) Central Service	\$ 320.20
156	(x) <i>Claim against the Public Service Commission:</i>	
157	(TO BE PAID FROM SPECIAL REVENUE FUND)	
158	(1) Gary M. Hellems	\$ 1,442.37
159	(y) <i>Claim against the Real Estate Commission:</i>	
160	(TO BE PAID FROM SPECIAL REVENUE FUND)	
161	(1) WV Assoc. of Rehabilitation	
162	Facilities, Inc.	\$ 562.02

163 (z) *Claim against the Regional Jail and Correctional*
164 *Facility Authority:*

165 (TO BE PAID FROM GENERAL REVENUE FUND)

166 (1) City Hospital, Inc. \$ 71,732.47

167 (aa) *Claims against the State of West Virginia:*

168 (TO BE PAID FROM GENERAL REVENUE FUND)

169 (1) Bell Atlantic-West Virginia, Inc. \$ 4,989.25

170 (2) David Hill \$ 5,415.00

171 (bb) *Claims against the West Virginia State Police:*

172 (TO BE PAID FROM GENERAL REVENUE FUND)

173 (1) AT & T \$ 41,457.85

174 (2) Trans. Int. Pool, Inc.

175 dba GE Cap. Modular Space \$ 1,300.00

176 (cc) *Claims against the West Virginia Supreme Court*
177 *of Appeals:*

178 (TO BE PAID FROM GENERAL REVENUE FUND)

179 (1) Mercer County Commission \$ 1,950.00

180 (2) Pennsylvania Council of

181 Children's Services \$ 2,000.00

182 (dd) *Claim against the Board of Barbers and Cos-*
183 *metologists:*

184 (TO BE PAID FROM SPECIAL REVENUE FUND)

185 (1) Terri W. Wood \$ 106.50

186 The Legislature finds that the above moral obliga-
187 tions and the appropriations made in satisfaction thereof
188 shall be the full compensation for all claimants, and that
189 prior to the payments to any claimant provided for in this
190 bill, the court of claims shall receive a release from said
191 claimant releasing any and all claims for moral obligations
192 arising from the matters considered by the Legislature in
193 the finding of the moral obligations and the making of the
194 appropriations for said claimant. The court of claims shall
195 deliver all releases obtained from claimants to the depart-
196 ment against which the claim was allowed.

CHAPTER 87

(H. B. 4660—By Delegates Seacrist, Burke, Compton, Clements and Evans)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by the
3 court of claims in respect to the following named claim-
4 ants who were innocent victims of crime within this state
5 and entitled to compensation; and in respect to each of
6 such named claimants the Legislature adopts those find-
7 ings of fact as its own, hereby declares it to be the moral
8 obligation of the state to pay each such claimant in the
9 amount specified below, and directs the auditor to issue
10 warrants for the payment thereof out of any fund appro-
11 priated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Annette K. Clark	\$15,000.00
15	(2) Jeffrey L. Nichols	\$ 5,000.00
16	(3) Wilma J. Peak	\$ 7,500.00
17	(4) Sherri C. Rakes	\$ 5,000.00
18	(5) Anthony Ramey	\$ 9,000.00
19	(6) Rebecca L. Ray, as guardian of	
20	James Adams	\$ 5,000.00

21	(7) Rebecca L. Ray, as guardian of	
22	Kristine Adams	\$ 5,000.00
23	(8) Robert L. Rohrer	\$10,000.00
24	(9) Cathy Lynn Spencer	\$ 5,000.00
25	(10) Stanley Gerald Spencer, II	\$ 5,000.00
26	(11) Frank L. Spiker, III, & Tamela Leigh	
27	Spiker, as guardians of	
28	Matthew A. Spiker	<u>\$15,000.00</u>
29	TOTAL	\$86,500.00
30	The Legislature finds that the above moral obligations	
31	and the appropriations made in satisfaction thereof shall	
32	be the full compensation for all claimants herein.	

CHAPTER 88

(H. B. 4844—By Delegates Kiss, Browning, Farris, Wallace and Walters)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring that the judgments entered by the Circuit Court of Kanawha County in the case of *Gribben v. Kirk*, Civil Action No. 94-MISC.-160; in the case of *Cordle v. Kirk*, Civil Action No. 83-P. MISC.-662; and in the case of *Adams v. Mooney*, Civil Action No. MISC.-77-342, are moral obligations of the state and directing the manner in which the auditor may issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

That the Legislature finds and declares that certain judgments against the state by the Circuit Court of Kanawha County in the cases of *Gribben v. Kirk*, Civil Action No. 94-MISC.-160; the case of *Cordle v. Kirk*, Civil Action No. 83-P. MISC.-662; and the case of *Adams v. Mooney*, Civil Action No. MISC.-77-342, are moral obligations of the state and directs that payment be made in accordance with the provisions set forth herein. The Legislature further finds and declares that it is not abrogating the state's sovereign immunity from suit by declaring

this judgment a moral obligation of the state. The Legislature further finds that the separation of powers provision found in *West Virginia Constitution*, Section one, Article V, prohibits payments from being made from the state treasury absent a lawful appropriation by the Legislature. Therefore, in order that other constitutional officers are not required to abrogate their constitutional duties, the Legislature directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of the specific line item appropriations made therefor in the budget act for each fiscal year. The Legislature finds that the following amounts will be considered a payment in full of the moral obligation of this state for the payments of the judgments:

- 1 (1) *Gribben v. Kirk* — total \$1,508,848
- 2 (2) *Cordle v. Kirk* — total \$3,148,491
- 3 (3) *Adams v. Mooney* — total \$312,995

4 It is the intent of the Legislature that payments on the
 5 above-stated amounts will be made in accordance with a
 6 line item appropriation in the budget for the fiscal year
 7 ending the thirtieth day of June, one thousand nine
 8 hundred ninety-seven, in an amount of at least two million
 9 dollars. The Legislature finds that an appropriate
 10 schedule for payment of the moral obligation declared
 11 herein would be an appropriation of two million dollars
 12 per fiscal year until the moral obligation has been
 13 satisfied.

14 The Legislature finds that the above amounts do not
 15 include payments for interest accrued after the twentieth
 16 day of January, one thousand nine hundred ninety-six.
 17 The Legislature finds that it is under no obligation to pay
 18 amounts for interest which may have heretofore or may
 19 hereafter accrue. The Legislature declares that it may toll
 20 the running on interest or choose to pay no interest on the
 21 judgment in its discretion. The provisions of this act are
 22 deemed to be severable and the rules for construction of
 23 statutes provided for in subsection (cc), section ten, article
 24 two, chapter two of the code of West Virginia, one
 25 thousand nine hundred thirty-one, as amended, shall be
 26 applicable as if that subsection were included herein in
 27 extenso.

CHAPTER 89

(H. B. 4391—By Delegates Gallagher and Fleischauer)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article four, chapter twenty-nine of said code; and to repeal section fifteen, article six, chapter sixty-one of said code, all relating to obsolete provisions of the code of West Virginia; horse trading near fairs or religious meetings; notaries in office on the first day of January, one thousand nine hundred thirty-one; power of notaries regarding negotiable instruments; common drinking cups; and penalties.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article four, chapter twenty-nine of said code be repealed; and that section fifteen, article six, chapter sixty-one be repealed, all to read as follows:

CHAPTER 16.

ARTICLE 9. OFFENSES GENERALLY.

§1. Repeal of section relating to common drinking cup prohibited.

1 Section one, article nine, chapter sixteen of the code
 2 of West Virginia, one thousand nine hundred thirty-one, as
 3 amended, is hereby repealed.

CHAPTER 29.

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§1. Repeal of section relating to notaries in office on January 1, 1931.

- 1 Section one, article four, chapter twenty-nine of the
- 2 code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

CHAPTER 61.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§1. Repeal of section relating to horse trading near fairs or religious meetings.

- 1 Section fifteen, article six, chapter sixty-one of the
- 2 code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

CHAPTER 90

(H. B. 4395 —By Delegates Gallagher and Kerns)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six and seven, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to new motor vehicles to be equipped with reflectors; stop lamps required on new motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§1. Repeal of sections relating to requiring new vehicles to have stop lamps and reflectors.

- 1 Sections six and seven, article fifteen, chapter
- 2 seventeen-c of the code of West Virginia, one thousand
- 3 nine hundred thirty-one, as amended, are hereby repealed.

CHAPTER 91

(H. B. 4602—By Delegates Trump, Kiss, Evans,
Manuel, Linch and Thomas)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against the peace and employment of nonresidents as police.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§1. Repeal of section relating to the prohibition of employment of nonresidents as police.

1 Section eleven, article six, chapter sixty-one of the
2 code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 92

(Com. Sub. for H. B. 4605—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 7, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twenty-two of said code by adding thereto a new article, designated article twenty-two; and to amend and reenact section four, article fifteen, chapter thirty-one of said code, all relating generally to remediation of contaminated property; adding the remediation of contaminated property as projects eligible for tax increment financing; legislative findings and purpose; defining terms; authorizing the director to

promulgate legislative rules; establishing the voluntary remediation program; establishing eligibility requirements and the application process for the remediation of contaminated property; authorizing the director to establish application fees and other costs; making information available to the public; providing for confidentiality of trade secrets; creating criminal penalties for violating confidentiality of trade secrets; establishing requirements for site assessments; establishing the criteria under which the director may reject an application; providing for notice and partial return of application fee if the application is denied; establishing brownfield remediation program, application process and fee; providing for application for remediation loans for brownfield sites; allowing access to information in possession of the director; creating voluntary remediation administrative fund; providing for disbursements from the fund; establishing brownfield revolving fund; providing for disbursements from the fund; authorizing employment of specialized persons to administer and manage the fund; providing for voluntary remediation agreements; requiring the use of licensed remediation specialist; establishing the requirements of voluntary remediation agreements; creating applicants right to appeal to the environmental quality board upon failure to reach a voluntary remediation agreement; providing that no enforcement action will be undertaken when property is in compliance with a voluntary remediation agreement unless there is imminent threat to the public; requiring that voluntary remediation work plans and reports must be submitted to the director for review; allowing the remediator to terminate the remediation agreement; allowing the director to recover the remediation costs incurred prior to termination; providing for suit in circuit court of Kanawha County or the circuit court where the site is situated for recovery of clean-up costs; authorizing the director to take samples at brownfield and voluntary remediation sites, and share the samples with the remediator; authorizing the director to inspect and make reports; providing the director access to all records relating to brownfield and voluntary remediation sites; requiring license issued by the director in order to work as a remediation specialist; specifying licensure requirements; specifying licensed remediation specialist duties, responsibilities and limitations; providing for licenses renewal,

revocation or suspension; providing for civil and criminal penalties, license revocation and enforcement orders for licensing remediation specialists; providing for issuance of certificate of completion; providing for land-use covenants to be issued by the director; providing that the land-use covenant be recorded in the deed; establishing criminal penalty for violating land-use covenants; providing for reopening a remediation agreement for a brownfield site for future action; requiring the assessors of each county and allowing citizens to notify the director when use of property changes; providing for notification of the public when a remediation site is being considered; providing for environmental liability protection; establishing and limiting the responsibilities of remediation contractors; establishing affirmative defenses; providing that nothing in this article effects the rights, duties, immunities, other defenses or causes of action; and adding site assessment and site remediation cost to the definition of "costs of establishing an industrial development project".

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 7. County Commissions and Officers.
- 22. Environmental Resources.
- 31. Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

- 1 As used in this article, the term or phrase:
- 2 (a) "Agency" means a county or municipal develop-
- 3 ment agency established by section one, article twelve,
- 4 chapter seven of this code.

5 (b) "Base assessed value" means the taxable assessed
6 value of real and tangible personal property of a project
7 developer within a development project area as shown
8 upon the landbook and personal property records of the
9 assessor on the first day of July of the year preceding the
10 effective date of the order authorizing the tax increment
11 financing plan.

12 (c) "Current assessed value" means the annual taxable
13 assessed value of real and tangible personal property of a
14 project developer within a development project area as
15 shown upon the landbook and personal property records
16 of the assessor.

17 (d) "Development project" means a project undertaken
18 by a county commission in a development project area in
19 accordance with a tax increment financing plan.

20 (e) "Development project area" means an area to be
21 designated by one or more agencies as a development
22 project area, which may include one or more counties,
23 municipalities or combination thereof.

24 (f) "Private project" means any project which is subject
25 to ad valorem property taxes in the state undertaken by a
26 project developer in accordance with a tax increment fi-
27 nancing plan in a development project area.

28 (g) "Project" means any facility requiring an invest-
29 ment of capital, including extensions, additions or im-
30 provements to existing facilities including water or waste
31 water facilities, and the remediation of contaminated prop-
32 erty as provided for in article twenty-two, chapter
33 twenty-two of this code, but does not include performance
34 of any governmental service by a county or municipal
35 government or any housing facility to be rented or used as
36 a permanent residence.

37 (h) "Project developer" means any person or corpora-
38 tion which engages in the development of projects in the
39 state.

40 (i) "Tax increment" means the amount of tax attribut-
41 able to the amount by which the current assessed value of
42 a private project in a development project area exceeds the

43 base assessed value, if any, of such private project, less the
44 portion of tax allocated to the state.

45 (j) "Tax increment obligation" means any bond or
46 note issued by a county commission in accordance with
47 section six of this article:

48 (k) "Tax increment financing plan" means a plan
49 proposed by either an agency or a project developer re-
50 questing that a specific development project be developed
51 in conjunction with a private project of such project devel-
52 oper, which plan is approved by the county commission
53 for the county in which the development project area is
54 located in accordance with the procedures set forth in
55 section four of this article.

56 (l) "Taxing unit" means a municipal corporation, a
57 county commission or a county board of education.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.

- §22-22-1. Legislative findings; legislative statement of purpose.
- §22-22-2. Definitions.
- §22-22-3. Rule-making authority of the director.
- §22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assessment; rejection or return of application; appeal of rejection.
- §22-22-5. Brownfield application; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director.
- §22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.
- §22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the environmental quality board; no enforcement action when subject of agreement.
- §22-22-8. Voluntary remediation work plans and reports.
- §22-22-9. Termination of agreement; cost of recovery; legal actions.
- §22-22-10. Inspections; right of entry; sampling; reports and analyses.

- §22-22-11. Licensed remediation specialist, licensure procedures.
- §22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.
- §22-22-13. Certificate of completion.
- §22-22-14. Land-use covenant; criminal penalties.
- §22-22-15. Reopeners.
- §22-22-16. Duty of assessor and citizens to notify director when change of property use occurs.
- §22-22-17. Public notification for brownfields.
- §22-22-18. Environmental liability protection.
- §22-22-19. Establishing and limiting the responsibilities of remediation contractors.
- §22-22-20. Affirmative defenses.
- §22-22-21. Savings clause.

§22-22-1. Legislative findings; legislative statement of purpose.

1 (a) The Legislature finds there is property in West
2 Virginia that is not being put to its highest productive use
3 because it is contaminated or it is perceived to be contam-
4 inated as a result of past activity on the property.

5 (b) The Legislature further finds that abandonment or
6 under use of contaminated or potentially contaminated
7 industrial sites results in inefficient use of public facilities
8 and services and increases the pressure for development of
9 uncontaminated pristine land. Since existing industrial
10 areas frequently have transportation networks, utilities and
11 an existing infrastructure, it can be less costly to society to
12 redevelop existing industrial areas than to relocate ameni-
13 ties for industrial areas at pristine sites.

14 (c) The Legislature further finds that the existing legal
15 structure creates uncertainty regarding the legal effect of
16 remediation upon liability. Legal uncertainty serves as a
17 further disincentive to productive redevelopment of
18 brownfields. Therefore, incentives should be put in place
19 to encourage voluntary redevelopment of contaminated or
20 potentially contaminated sites.

21 (d) The Legislature further finds that an administra-
22 tive program should be established to encourage persons
23 to voluntarily develop and implement remedial plans with-
24 out the need for enforcement action by the division of
25 environmental protection. Therefore, it is the purpose of
26 this article to:

27 (1) Establish an administrative program to facilitate
28 voluntary remediation activities and brownfield revitaliza-
29 tion;

30 (2) Provide financial incentives to entice investment at
31 brownfield sites; and

32 (3) Establish limitations on liability under environ-
33 mental laws and rules for those persons who remediate
34 sites in accordance with applicable standards established
35 under this article.

§22-22-2. Definitions.

1 As used in this article, unless otherwise provided or
2 indicated by the context:

3 (a) "Applicable standards", mean the remediation
4 levels established in or pursuant to section three of this
5 article;

6 (b) "Brownfield" means any industrial or commercial
7 property which is abandoned or not being actively used
8 by the owner as of the effective date of this article, but
9 shall not include any site subject to a unilateral enforce-
10 ment order under §104 through §106 of the "Comprehen-
11 sive Environmental Response, Compensation and Liability
12 Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or
13 which has been listed or proposed to be listed by the Unit-
14 ed States environmental protection agency on the priori-
15 ties list of Title I of said act, or subject to a unilateral en-
16 forcement order under §3008 and §7003 of the "Resource
17 Conservation Recovery Act" or any unilateral enforcement
18 order for corrective action under this chapter;

19 (c) "Certified laboratory" means any laboratory ap-
20 proved by the director under laboratory certification rules
21 adopted pursuant to section fifteen, article one of this
22 chapter;

23 (d) "Contaminant" or "contamination" means any
24 man made or man induced alteration of the chemical,
25 physical or biological integrity of soils, sediments, air and
26 surface water or groundwater resulting from activities
27 regulated under this article, in excess of applicable stan-

28 dards in this chapter, including any hazardous substance,
29 petroleum, or natural gas;

30 (e) "Controls" means to apply engineering measures,
31 such as capping or treatment, or institutional measures,
32 such as deed restrictions, to contaminated sites;

33 (f) "Development authority" means any authority as
34 defined in article twelve, chapter seven of this code or the
35 state development office as defined in article two, chapter
36 five-b of this code.

37 (g) "Director" means the director of the division of
38 environmental protection or such other person to whom
39 the director has delegated authority or duties pursuant to
40 this article;

41 (h) "Division" means the division of environmental
42 protection of the state of West Virginia;

43 (i) "Engineering controls" means remedial actions
44 directed exclusively toward containing or controlling the
45 migration of contaminants through the environment.
46 These include, but are not limited to, slurry walls, liner
47 systems, caps, leachate collection systems and groundwater
48 recovery trenches;

49 (j) "Hazardous substance" means any substance identi-
50 fied as a hazardous substance pursuant to the "Compre-
51 hensive Environmental Response, Compensation and Lia-
52 bility Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended;

53 (k) "Institutional controls" means legal or contractual
54 restrictions on property use that remain effective after the
55 remediation action is completed and are used to meet
56 applicable standards. The term may include, but is not
57 limited to, deed and water use restrictions;

58 (l) "Industrial activity" means commercial, manufac-
59 turing, public utility, mining or any other activity done to
60 further either the development, manufacturing or distribu-
61 tion of goods and services, intermediate and final products
62 and solid waste created during such activities, including,
63 but not limited to, administration of business activities,
64 research and development, warehousing, shipping, trans-
65 port, remanufacturing, stockpiling of raw materials, stor-

66 age, repair and maintenance of commercial machinery or
67 equipment and solid waste management;

68 (m) "Land-use covenant" means a document or deed
69 restriction issued by the director on remediated sites which
70 have attained and demonstrate continuing compliance with
71 site-specific standards for any contaminants at the site.
72 The covenant shall be recorded by deed in the office of
73 the county clerk of the county wherein the site is situated.
74 The document or covenant shall be included by any
75 grantor or lessor in any deed or other instrument of con-
76 veyance or any lease or other instrument whereby real
77 property is let for a period of one year or more, as more
78 fully set forth in sections thirteen and fourteen of this
79 article;

80 (n) "Licensed remediation specialist" means a person
81 certified by the director pursuant to rules adopted under
82 section three of this article as qualified to perform profes-
83 sional services and to supervise the remediation of con-
84 taminated sites;

85 (o) "Mitigation measure" means any remediation
86 action performed by a person prior to or during imple-
87 mentation of a remediation plan to protect human health
88 and the environment;

89 (p) "Natural gas" means natural gas, natural gas liq-
90 uids, liquefied natural gas, coalbed methane, synthetic gas
91 usable for fuel or mixtures of natural gas and synthetic
92 gas;

93 (q) "Nonresidential property" means any real property
94 on which commercial, industrial, manufacturing or any
95 other activity is done to further the development, manu-
96 facturing or distribution of goods and services, intermedi-
97 ate and final business activities, research and development,
98 warehousing, shipping, transport, remanufacturing, stock-
99 piling of raw materials, storage, repair and maintenance of
100 commercial machinery and equipment, and solid waste
101 management. This term shall not include schools, day
102 care centers, nursing homes, or other residential-style
103 facilities or recreational areas;

104 (r) "Owner" means any person owning or holding
105 legal or equitable title or possessory interest in property
106 or, where title or control of property was conveyed due to
107 bankruptcy, foreclosure, tax delinquency, abandonment,
108 or similar means to this state or a political subdivision of
109 this state, or any person who owned the property before
110 the conveyance;

111 (s) "Operator" means the person responsible for the
112 overall operation of a facility site;

113 (t) "Person" means any public or private corporation,
114 institution, association, firm or company organized or
115 existing under the laws of this or any other state or coun-
116 try; state of West Virginia; governmental agency, includ-
117 ing federal facilities; political subdivision; county com-
118 mission; municipal corporation; partnership; trust; estate;
119 person or individuals acting individually or as a group; or
120 any legal entity whatever;

121 (u) "Petroleum" means oil or petroleum of any kind
122 and in any form, including, without limitation, crude oil or
123 any fraction thereof, oil sludge, oil refuse, used oil, sub-
124 stances or additives in the refining or blending of crude
125 petroleum or petroleum stock;

126 (v) "Practical quantitation level" means the lowest
127 analytical level that can be reliably achieved within speci-
128 fied limits of precision and accuracy under routine labora-
129 tory conditions for a specified matrix. It is based on
130 quantitation, precision and accuracy under normal opera-
131 tion of a laboratory and the practical need in a
132 compliance-monitoring program to have a sufficient num-
133 ber of laboratories available to conduct the analyses;

134 (w) "Property" means any parcel of real property, and
135 any improvements thereof;

136 (x) "Related" means the persons who are related to the
137 third degree of consanguinity or marriage;

138 (y) "Release" means any spilling, leaking, pumping,
139 pouring, emitting, emptying, discharging, injecting, escap-
140 ing, leaching, migrating, dumping or disposing of any
141 contaminant or regulated substance into the environment,

142 including, without limitation, the abandonment or improp-
143 er discarding of barrels, containers or any other closed
144 receptacle containing any contaminant;

145 (z) "Remediation" means to cleanup, mitigate, correct,
146 abate, minimize, eliminate, control and contain or prevent
147 a release of a contaminant into the environment in order
148 to protect the present or future public health, safety, wel-
149 fare, or the environment, including preliminary actions to
150 study or assess the release;

151 (aa) "Remediation contractor" means any person who
152 enters into and is carrying out a contract to cleanup,
153 remediate, respond to or remove a release or threatened
154 release of a contaminant and includes any person who the
155 contractor retained or hired to provide services under a
156 remediation contract;

157 (bb) "Residential" means any real property or portion
158 thereof which is designed for the housing of human be-
159 ings and does not meet the definition of "nonresidential"
160 property set forth above;

161 (cc) "Risk" means the probability that a contaminant,
162 when released into the environment, will cause an adverse
163 effect in exposed humans or other living organisms;

164 (dd) "Site" means any property or portion thereof
165 which contains or may contain contaminants and is eligi-
166 ble for remediation as provided under this article;

167 (ee) "Unilateral enforcement order" means a written
168 final order issued by a federal or state agency charged
169 with enforcing environmental law, which compels the
170 fulfillment of an obligation imposed by law, rule against a
171 person without their voluntary consent; and

172 (ff) "Voluntary remediation" means a series of mea-
173 sures that may be self-initiated by a person to identify
174 and address potential sources of contamination of proper-
175 ty and to establish that the property complies with applica-
176 ble remediation standards.

§22-22-3. Rule-making authority of the director.

1 Within one year after the effective date of this section,
2 the director, in accordance with chapter twenty-nine-a of

3 this code, shall propose, and subsequently may amend,
4 suspend or rescind, rules that do the following:

5 (a) Establish an administrative program for both
6 brownfield revitalization and voluntary remediation, in-
7 cluding application procedures;

8 (b) Establish procedures for the licensure of
9 remediation specialists, including, but not limited to estab-
10 lishing licensing fees, testing procedures, disciplinary
11 procedures and methods for revocation of licenses;

12 (c) Establish procedures for community notification
13 and involvement;

14 (d) Establish risk-based standards for remediation;

15 (e) Establish standards for the remediation of proper-
16 ty;

17 (f) Establish a risk protocol for conducting risk as-
18 sessments and establishing risk-based standards. The risk
19 protocol shall:

20 (1) Require consideration of existing and reasonably
21 anticipated future human exposures based on current and
22 reasonably anticipated future land and water uses and
23 significant adverse effects to ecological receptor health
24 and viability;

25 (2) Include, at a minimum, both central tendency and
26 reasonable upper bound estimates of exposure;

27 (3) Require risk assessments to consider, to the extent
28 practicable, the range of probabilities of risks actually
29 occurring, the range or size of populations likely to be
30 exposed to risk, and quantitative and qualitative descrip-
31 tions of uncertainties;

32 (4) Establish criteria for what constitutes appropriate
33 sources of toxicity information;

34 (5) Address the use of probabilistic modeling;

35 (6) Establish criteria for what constitutes appropriate
36 criteria for the selection and application of fate and trans-
37 port models;

38 (7) Address the use of population risk estimates in
39 addition to individual risk estimates;

40 (8) To the extent deemed appropriate and feasible by
41 the director considering available scientific information,
42 define appropriate approaches for addressing cumulative
43 risks posed by multiple contaminants or multiple exposure
44 pathways;

45 (9) Establish appropriate sampling approaches and
46 data quality requirements; and

47 (10) This protocol shall include public notification
48 and involvement provisions so that the public can under-
49 stand how remediation standards are applied to a site and
50 provide for clear communication of site risk issues, includ-
51 ing key risk assessment assumptions, uncertainties, popula-
52 tions considered, the context of site risks to other risks and
53 how the remedy will address site risks;

54 (g) Establish chemical and site specific information,
55 where appropriate for purpose of risk assessment. Risk
56 assessments should use chemical and site specific data and
57 analysis, such as toxicity, exposure and fate and transport
58 evaluations in preference to default assumptions. Where
59 chemical and site specific data are not available, a range
60 and distribution of realistic and plausible assumptions
61 should be employed;

62 (h) Establish criteria to evaluate and approve methods
63 for the measurement of contaminants using the practical
64 quantitation level and related laboratory standards and
65 practices to be used by certified laboratories;

66 (i) Establish standards and procedures for the utiliza-
67 tion of certificates of completion, land use covenants and
68 other legal documents necessary to effectuate the purposes
69 of this article; and

70 (j) Establish any other rules necessary to carry out the
71 requirements and the legislative intent of this act.

**§22-22-4. Voluntary remediation program; eligibility applica-
tion and fee; information available to public;
confidentiality of trade secrets; information;
criminal penalties; requirements of site assess-**

ment; rejection or return of application; appeal of rejection.

1 (a) Any site is eligible for participation in the volun-
2 tary remediation program, except those sites subject to a
3 federal environmental protection agency unilateral en-
4 forcement order, under §104 through §106 of the "Com-
5 prehensive Environmental Response, Compensation and
6 Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amend-
7 ed, or have been listed or proposed to be listed by the
8 United States environmental protection agency on the
9 priorities list of Title I of said act, or subject to a unilateral
10 enforcement order under §3008 and §7003 of the "Re-
11 source Conservation Recovery Act" or any unilateral en-
12 forcement order for corrective action under this chapter:
13 *Provided*, That the release which is subject to remediation
14 was not created through gross negligence or willful mis-
15 conduct. In order to participate in the voluntary
16 remediation program, a person must submit an application
17 to the director and enter into a voluntary remediation
18 agreement as set forth in section seven of this article.

19 (b) Any person who desires to participate in the vol-
20 untary remediation program must submit to the division
21 an application and an application fee established by the
22 director. The application shall be on a form provided by
23 the director and contain the following information: The
24 applicant's name, address, financial and technical capabili-
25 ty to perform the voluntary remediation, a general de-
26 scription of the site, a site assessment of the actual or
27 potential contaminants made by a licensed remediation
28 specialist and all other information required by the direc-
29 tor.

30 (c) The director shall promulgate a legislative rule
31 establishing a reasonable application fee. Fees collected
32 under this section shall be deposited to the credit of the
33 voluntary remediation fund in the state treasury as estab-
34 lished in section six of this article.

35 (d) Information obtained by the division under this
36 article shall be available to the public, unless the director
37 certifies such information to be confidential. The director
38 may make such certification where any person shows, to

39 the satisfaction of the director, that the information or
40 parts thereof, if made public, would divulge methods,
41 processes or activities entitled to protection as trade se-
42 crets. In submitting data under this article, any person
43 required to provide such confidential data may designate
44 the data which that person believes is entitled to protection
45 under this section and submit such designated data sepa-
46 rately from other data submitted under this article. This
47 designation request shall be made in writing. Any person
48 who divulges or discloses any information entitled to pro-
49 tection under this section is guilty of a misdemeanor and,
50 upon conviction thereof, shall be fined not more than five
51 thousand dollars or imprisoned in a county jail for not
52 more than one year, or both fined and imprisoned.

53 (e) The site assessment must include a legal descrip-
54 tion of the site; a description of the physical characteristics
55 of the site and the general operational history of the site to
56 the extent that the history is known by the applicant, and
57 information of which the applicant is aware concerning
58 the nature and extent of any known contamination at the
59 site and immediately contiguous to the site, or wherever
60 the contamination came to be located.

61 (f) The director may reject or return an application if:

62 (1) A federal requirement precludes the eligibility of
63 the site;

64 (2) The application is not complete and accurate; or

65 (3) The site is ineligible under the provisions of this
66 article.

67 (g) The director shall act upon all applications within
68 forty-five days of receipt, unless an extension of time is
69 mutually agreed to and confirmed in writing. If an appli-
70 cation is returned by the director because it is not com-
71 plete or accurate, the director shall provide the applicant a
72 list of all information that is needed to make the applica-
73 tion complete or accurate. The applicant may resubmit an
74 application without submitting an additional application
75 fee.

76 (h) If the director rejects the application, then he or
77 she shall notify the applicant that the application has been
78 rejected and provide an explanation of the reasons for the
79 rejection. The applicant may, within twenty-five days of
80 rejection, indicate his desire to resubmit the application.
81 Upon final determination by the director, if the applica-
82 tion is rejected, the director shall return one half of the
83 application fee. The applicant may appeal the director's
84 rejection of the application to the environmental quality
85 board established under article three, chapter twenty-two-b
86 of this code.

87 (i) Upon withdrawal of an application, the applicant is
88 entitled to the refund of one half of the application fee.

**§22-22-5. Brownfield application; remediation process;
brownfield remediation; eligibility; application;
remediation loan; and obtaining information
from director.**

1 (a) For brownfield property, any environmental
2 remediation undertaken pursuant to this article, by a de-
3 velopment authority or any person who did not cause or
4 contribute to the contamination on the property shall
5 comply with the appropriate standards established by the
6 director pursuant to this article and rules promulgated
7 hereunder. After conferring with the director, the person
8 may apply to the director for a site assessment loan under
9 section six of this article. A site assessment must be con-
10 ducted to establish existing contamination of the site. An
11 application for brownfield remediation must be submitted
12 along with the application fee. The procedures established
13 for voluntary remediation set forth in section four must be
14 followed. The director shall establish a reasonable appli-
15 cation fee.

16 (b) Brownfield sites being remediated by persons who
17 did not cause or contribute to the contamination of the site
18 are eligible for consideration for remediation loans estab-
19 lished under article fifteen, chapter thirty-one of this code.

20 (c) Persons undertaking brownfield remediation, who
21 did not cause or contribute to the contamination of the
22 brownfield site, may obtain all information relating to

23 contamination at the site in the possession of the director
24 prior to engaging in a site assessment.

§22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.

1 (a) There is hereby created in the state treasury a
2 special revenue fund known as the "Voluntary
3 Remediation Administrative Fund". The fund shall
4 operate as a special fund whereby all deposits and
5 payments thereto do not expire to the general revenue
6 fund, but shall remain in the fund and be available for
7 expenditure in succeeding fiscal years. This fund shall
8 consist of fees collected by the director in accordance with
9 the provisions of this article as well as interest earned on
10 investments made from moneys deposited in the fund.
11 Moneys from this fund shall be expended by the director
12 for the administration, licensing, enforcement, inspection,
13 monitoring, planning, research and other activities
14 required by this article.

15 The director shall promulgate legislative rules in
16 accordance with the provisions of chapter twenty-nine-a of
17 this code establishing a schedule of voluntary remediation
18 fees applicable to persons who conduct activities subject to
19 the provisions of this article. The fees may include an
20 appropriate assessment of other program costs not
21 otherwise attributable to any specific site but necessary for
22 the administrative activities required to carry out the
23 provisions of this article.

24 (b) There is hereby created in the state treasury a
25 special revenue fund known as the "Brownfields Revolving
26 Fund". The fund shall be comprised of moneys allocated
27 to the state by the federal government expressly for the
28 purposes of establishing and maintaining a state
29 brownfields redevelopment revolving fund, all receipts
30 from loans made from the fund, any moneys appropriated
31 by the Legislature, all income from the investment of
32 moneys held in the fund, and all other sums designated
33 for deposit to the fund from any source, public or private.

34 The fund shall operate as a special fund whereby all
35 deposits and payments thereto do not expire to the general
36 revenue fund, but shall remain in the account and be
37 available for expenditure in succeeding fiscal years.
38 Moneys in the fund, to the extent that moneys are
39 available, shall be used solely to make loans to persons to
40 finance site assessments of eligible brownfield sites and
41 such other activities as authorized by any federal grant
42 received or any legislative appropriation: *Provided*, That
43 moneys in the fund may be utilized to defray those costs
44 incurred by the division in administering the provisions of
45 this subsection. The director shall promulgate rules in
46 accordance with the provisions of chapter twenty-nine-a of
47 this code, to govern the disbursement of moneys from the
48 fund, and establish a state brownfields redevelopment
49 assistance program to direct the distribution of loans from
50 the fund, and establish the interest rates and repayment
51 terms of such loans: *Provided, however*, That amounts in
52 the fund, other than those appropriated by the federal
53 government, and which are found from time to time to
54 exceed the amount needed for the purposes set forth in
55 this article, may be transferred to other accounts or funds
56 and redesignated for other purposes through
57 appropriations of the Legislature.

58 In order to carry out the administration and
59 management of the fund, the division is authorized to
60 employ officers, agents, advisors and consultants including
61 attorneys, financial advisors, engineers, other technical
62 advisors and public accountants and, notwithstanding any
63 provisions of this code to the contrary, to determine their
64 duties and compensation without the approval of any
65 other agency or instrumentality.

§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the environmental quality board; no enforcement action when subject of agreement.

1 Upon acceptance of an application, the director shall
2 enter into an agreement with the applicant for the
3 remediation of the site which sets forth the following:

4 (a) A person desiring to participate in the voluntary
5 remediation program must enter into a voluntary
6 remediation agreement that sets forth the terms and
7 conditions of the evaluation of the reports and the
8 implementation of work plans;

9 (b) Any voluntary remediation agreement approved
10 by the director shall provide for the services of a licensed
11 remediation specialist for supervision of all activities
12 described in the agreement;

13 (c) A voluntary remediation agreement must provide
14 for cost recovery of all reasonable costs incurred by the
15 division in review and oversight of the person's work plan
16 and reports as a result of field activities or attributable to
17 the voluntary remediation agreement, which are in excess
18 of the fees submitted by the applicant along with a
19 schedule of payments; appropriate tasks, deliverables and
20 schedules for performance of the remediation; a listing of
21 all statutes and rules for which compliance is mandated; a
22 description of any work plan or report to be submitted for
23 review by the director, including a final report that
24 provides all information necessary to verify that all work
25 contemplated by the agreement has been completed; the
26 licensed remediation specialist's supervision of
27 remediation contractors; and a listing of the technical
28 standards to be applied in evaluating the work plans and
29 reports, with reference to the proposed future land use to
30 be achieved. The voluntary remediation agreement may
31 also provide for alternate dispute resolutions between the
32 parties to the agreement, including, but not limited to,
33 arbitration or mediation of any disputes under this
34 agreement;

35 (d) No voluntary remediation agreement may be
36 modified or amended, unless the amendment or
37 modification is reduced to writing and mutually agreed
38 upon by the parties to the agreement: *Provided, That*
39 when the director determines that there is an imminent

40 threat to the public, he or she may unilaterally modify or
41 amend the agreement;

42 (e) Upon acceptance of an application, the director
43 and the applicant shall develop a remediation agreement.
44 If an agreement is not reached between the applicant and
45 the director on or before the thirty-first day after the
46 application has been accepted, either party may withdraw
47 from negotiations. Should this occur, the agency retains
48 the application fee. The applicant may appeal the failure
49 to reach agreement to the environmental quality board as
50 established under article three, chapter twenty-two-b of
51 this code. By mutual agreement, when it becomes
52 impractical to reach an agreement within thirty-one days,
53 the time limit may be extended in writing; and

54 (f) The division may not initiate an enforcement
55 action against a person who is in compliance with this
56 section for the contamination that is the subject of the
57 voluntary remediation agreement or for the activity that
58 resulted in the contamination, unless there is an imminent
59 threat to the public.

§22-22-8. Voluntary remediation work plans and reports.

1 After signing a voluntary remediation agreement, the
2 person undertaking remediation shall prepare and submit
3 the appropriate work plans and reports to the director. The
4 director shall review and evaluate the work plans and
5 reports for accuracy, quality and completeness. The
6 director may approve a voluntary remediation work plan
7 or report or disapprove and notify the person of
8 additional information needed to obtain approval.

§22-22-9. Termination of agreement; cost of recovery; legal actions.

1 The person undertaking remediation may, in their
2 sole discretion, terminate the agreement as provided by the
3 terms of the agreement and by giving fifteen days advance
4 written notice of termination. Only those costs incurred or
5 obligated by the director before notice of termination of
6 the agreement are recoverable, if the agreement is
7 terminated. The termination of the agreement does not
8 affect any right the director may have under any other law

9 to recover costs. The person undertaking the remediation
10 must pay the division's costs associated with the voluntary
11 remediation within thirty-one days after receiving notice
12 that the costs are due and owing. The director may bring
13 an action in Kanawha County circuit court or in the circuit
14 court in the county wherein the property is situated to
15 recover the amount owed to the division and reasonable
16 legal expenses.

§22-22-10. Inspections; right of entry; sampling; reports and analyses.

1 (a) The director, upon presentation of proper
2 credentials may enter any building, property, premises,
3 place or facility where brownfield or voluntary
4 remediation activities are being or have been performed
5 for the purpose of making an inspection to ascertain the
6 compliance by any person with the provisions of this
7 article or the rules promulgated by the director.

8 (b) The director shall make periodic inspections at
9 sites subject to this article. After an inspection is made, a
10 report shall be filed with the director and a copy shall be
11 provided to the person who is responsible pursuant to the
12 voluntary agreement for remediation activities. The
13 reports shall not disclose any confidential information
14 protected under the provisions of subsection (d), section
15 four of this article. The inspection reports shall be
16 available to the public in accordance with the provisions of
17 article one, chapter twenty-nine-b of this code.

18 (c) The director may, upon presentation of proper
19 credentials, enter any building, motor vehicle, property,
20 premises or site where brownfield or voluntary
21 remediation activities are being or have been performed
22 and take samples of wastes, soils, air, surface water and
23 groundwater. In taking such samples, the director may
24 utilize such sampling methods as are necessary in
25 exercising good scientific technique. Following the taking
26 of any sample, the director shall give the person
27 responsible in the voluntary agreement for remediation
28 activities a receipt describing the sample obtained and if
29 requested, a portion of each sample equal in volume or
30 weight to the portion retained. The director shall

31 promptly provide a copy of any analysis made to the
32 responsible person named in the voluntary agreement.

33 (d) Upon presentation of proper credentials, the
34 director shall be given access to all records relating to a
35 brownfield or voluntary remediation.

§22-22-11. Licensed remediation specialist, licensure procedures.

1 (a) No person may practice as a licensed remediation
2 specialist without a license issued by the director. Any
3 violation of this provision shall be subject to the
4 enforcement orders as set forth in section twelve of this
5 article.

6 (b) To obtain a license, a person must apply to the
7 director in writing on forms approved and supplied by the
8 director. Each application for examination for license
9 shall contain:

10 (1) The full name of the person applying for the
11 license;

12 (2) The principal business address of the applicant;

13 (3) All formal academic education and experience of
14 the applicant to demonstrate professional expertise of the
15 applicant;

16 (4) If waiver of the examination is being requested,
17 any license or certification that the person desires to be
18 considered as part of the waiver request;

19 (5) The examination fee; and

20 (6) Any other necessary information prescribed by
21 the director.

22 (c) The director shall establish the date, time and
23 location of licensed remediation specialist examinations.

24 (d) The applicant must demonstrate that he or she
25 possesses a practical knowledge of the remediation
26 activities; procedures necessary to remediate a site; and the
27 management of contaminants at a site, including, but not
28 limited to, site investigation, health and safety protocol,
29 quality assurance, feasibility studies and remedial design.

30 (e) If the director does not certify the remediation
31 specialist applicant, the director shall inform the applicant
32 in writing of the reasons therefor. The director may not
33 deny a license without cause.

34 (f) It is the licensed remediation specialist's duty to
35 protect the safety, health and welfare of the public as set
36 forth in this article, in the performance of his or her
37 professional duties. The licensed remediation specialist is
38 responsible for any release of contaminants during
39 remediation activities undertaken pursuant to the approved
40 remediation agreement, work plans or reports. If a
41 licensed remediation specialist faces a situation where he
42 or she is unable to meet this duty, the licensed remediation
43 specialist may either sever the relationship with the client
44 or employer or refuse professional responsibility for work
45 plan, report or design. The specialist shall notify the
46 division, if there is a threat to the environment or the
47 health, safety or welfare of the public.

48 (g) A licensed remediation specialist shall only
49 perform assignments for which the specialist is qualified
50 by training and experience in those specific technical
51 fields; be objective in work plans, reports and opinions;
52 and avoid any conflict of interest with employer, clients
53 and suppliers. A licensed remediation specialist shall not
54 solicit or accept gratuities, directly or indirectly from
55 contractors, agents or other parties dealing directly with
56 the employer or client in regard to professional services
57 being performed at the work site; accept any type of
58 bribe; falsify or permit misrepresentation of professional
59 qualifications; intentionally provide false information to
60 the director; or knowingly associate with one who is
61 engaging in business or professional practices of a
62 fraudulent or dishonest nature.

63 (h) A licensed remediation specialist shall not charge
64 any special fees above usual and customary professional
65 rates for being licensed.

66 (i) The license issued by the director may be renewed
67 every two years for any licensed remediation specialist in
68 good standing. The director, by rule, shall establish license
69 fees.

70 (j) The director is authorized to revoke a license;
71 suspend a license for not more than five years or impose
72 lesser sanctions as may be appropriate for acts or
73 omissions in violation of this article.

**§22-22-12. Enforcement orders for licensed remediation
specialists; cease and desist order; criminal
penalties.**

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns that a
3 licensed remediation specialist has violated the provisions
4 of this article or any rules promulgated hereunder, the
5 director may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, orders
10 suspending or revoking licenses, orders requiring a person
11 to take remedial action or cease and desist orders; or

12 (2) Request the prosecuting attorney of the county in
13 which the alleged violation occurred bring a criminal
14 action as provided for herein.

15 (b) Any person issued an order may file a request for
16 reconsideration with the director within seven days of the
17 receipt of the order. The director shall conduct a hearing
18 on the merits of the order within ten days of the filing of
19 the request for reconsideration. The filing of a notice of
20 request for reconsideration does not stay or suspend the
21 execution or enforcement of the order.

22 (c) Any licensed remediation specialist who
23 fraudulently misrepresents that work has been completed
24 and such action results in an unjustified and inexcusable
25 disregard for the safety of others, thereby placing another
26 in imminent danger or contributing to ongoing harm to
27 the environment, he or she shall be guilty of a felony and,
28 upon conviction thereof, shall be fined not more than fifty
29 thousand dollars or imprisoned not less than one nor more
30 than two years, or both such fine and imprisonment.

31 (d) If any person associated with remediation of a
32 brownfield or voluntary remediation site engages in

33 fraudulent acts or representations to the division, he or she
34 shall be guilty of a felony and, upon conviction thereof,
35 shall be fined not more than fifty thousand dollars or
36 imprisoned not less than one nor more than two years, or
37 both.

§22-22-13. Certificate of completion.

1 (a) The licensed remediation specialist shall issue a
2 final report to the person undertaking the voluntary
3 remediation when the property meets the applicable
4 standards and all work has been completed as
5 contemplated in the voluntary remediation agreement or
6 the site assessment shows that all applicable standards are
7 being met. Upon receipt of the final report, the person
8 may seek a certificate of completion from the director.

9 (b) The director may delegate the responsibility for
10 issuance of a certificate of completion to a licensed
11 remediation specialist in limited circumstances, as
12 specified by rule pursuant to this article.

13 (c) The certificate of completion shall contain a
14 provision relieving a person who undertook the
15 remediation and subsequent successors and assigns from
16 all liability to the state as provided under this article which
17 shall remain effective as long as the property complies
18 with the applicable standards in effect at the time the
19 certificate of completion was issued. This certificate is
20 subject to reopener provisions of section fifteen of this
21 article and may, if applicable, result in a land-use covenant
22 as provided in section fourteen of this article.

§22-22-14. Land-use covenant; criminal penalties.

1 (a) The director shall establish by rule, criteria for
2 deed recordation of land-use covenants and containing all
3 necessary deed restrictions. The director shall cause all
4 land-use covenants to appear in the chain of title by deed
5 to be properly recorded in the office of the county clerk
6 where the remediation site is located. If institutional and
7 engineering controls are used, in whole or in part, to
8 achieve a remediation standard, the director shall direct
9 that a land-use covenant be applied. The covenant shall
10 include whether residential or nonresidential exposure

11 factors were used to comply with the site-specific standard.
12 The covenant shall contain a provision relieving the
13 person who undertook the remediation and subsequent
14 successors and assigns from all civil liability to the state as
15 provided under this article and shall remain effective as
16 long as the property complies with the applicable
17 standards in effect at the time the covenant was issued.

18 (b) Whoever knowingly violates a land-use covenant
19 by converting nonresidential property to residential
20 property is guilty of a felony and, upon conviction
21 thereof, shall be fined not more than twenty-five thousand
22 dollars, imprisoned for not more than five years, or both.

§22-22-15. Reopeners.

1 Any person who completes remediation in
2 compliance with this article shall not be required to
3 undertake additional remediation actions for contaminants
4 subject to the remediation, unless the director demon-
5 strates that:

6 (a) Fraud was committed in demonstrating attainment
7 of a standard at the site that resulted in avoiding the need
8 for further remediation of the site;

9 (b) New information confirms the existence of an area
10 of a previously unknown contamination which contains
11 contaminants that have been shown to exceed the
12 standards applied to the previous remediation at the site;

13 (c) The level of risk is increased significantly beyond
14 the established level of protection at the site due to
15 substantial changes in exposure conditions, such as, a
16 change in land use, or new information is obtained about
17 a contaminant associated with the site which revises
18 exposure assumptions beyond the acceptable range. Any
19 person who changes the use of the property causing the
20 level of risk to increase beyond established protection
21 levels shall be required by the division to undertake
22 additional remediation measures under the provisions of
23 this article;

24 (d) The release occurred after the effective date of this
25 article on a site not used for industrial activity prior to the

26 effective date of this article; the remedy relied, in whole or
27 in part, upon institutional or engineering controls instead
28 of treatment or removal of contamination; and treatment,
29 removal or destruction has become technically and
30 economically practicable; or

31 (e) The remediation method failed to meet the
32 remediation standard or combination of standards.

33 In the event that any of the foregoing circumstances
34 occur, the remediation agreement will be reopened and
35 revised to the extent necessary to return the site to its
36 previously agreed to state of remediation or other
37 appropriate standard.

**§22-22-16. Duty of assessor and citizens to notify director when
change of property use occurs.**

1 If an assessor in any county becomes aware of a
2 change of remediated property use from nonresidential
3 property to residential, the assessor shall check the land
4 record of the county to ascertain if a land-use covenant
5 appears to have been violated. Should it appear that a
6 violation has occurred, the assessor shall notify the
7 director in writing of the suspected violation. If any citizen
8 becomes aware of a change of property use from
9 nonresidential to residential, the citizen may check the
10 land record of the county to ascertain if a land use
11 covenant appears to have been violated and may notify the
12 director in writing. The director shall then investigate and
13 proceed with any necessary enforcement action.

§22-22-17. Public notification for brownfields.

1 Persons undertaking the remediation and
2 revitalization of brownfield sites shall comply with the
3 following public notice and review requirements:

4 (a) A notice of intent to remediate a site shall be
5 submitted to the division which provides, to the extent
6 known, a brief description of the location of the site, a
7 listing of the contaminants involved and the proposed
8 remediation measures. The division shall publish an
9 acknowledgment noting the receipt of the notice of intent
10 in a division publication of general circulation. At the

11 time a notice of intent to remediate a site is submitted to
12 the division, a copy of such notice shall be provided to the
13 municipality and the county in which the site is located
14 and a summary of the notice of intent shall be published
15 in a newspaper of general circulation serving the area in
16 which the site is located.

17 (b) The notice required by this subsection shall
18 include a thirty-day public, county and municipal
19 comment period during which the public, county and
20 municipality can request to be involved in the
21 development of the remediation and reuse plans for the
22 site. If requested by the public, county, municipality or
23 the director, the person undertaking the remediation shall
24 develop and implement a public involvement program
25 plan which meets the requirements set forth by the
26 director.

§22-22-18. Environmental liability protection.

1 (a) Any person demonstrating compliance with the
2 applicable standards established in section three of this
3 article, whether by remediation or where the site
4 assessment shows that the contamination at the site meets
5 applicable standards, shall be relieved of further liability
6 for the remediation of the site under this chapter.
7 Contamination identified in the remediation agreement
8 submitted to and approved by the division shall not be
9 subject to citizen suits or contribution actions. The
10 protection from further remediation liability provided by
11 this article applies to the following persons:

12 (1) The current or future owner or operator of the
13 site, including development authorities and fiduciaries who
14 participated in the remediation of the site;

15 (2) A person who develops or otherwise occupies the
16 site;

17 (3) A successor or assign of any person to whom the
18 liability protection applies;

19 (4) A public utility, as defined in section two, article
20 one, chapter twenty-four of this code, and for the purpose
21 of this article, a utility engaged in the storage and
22 transportation of natural gas, to the extent the public
23 utility performs activities on the site;

24 (5) A remediation contractor;

25 (6) A licensed remediation specialist; and

26 (7) A lender or developer who engages in the routine
27 practices of commercial lending, including, but not limited
28 to, providing financial services, holding of security
29 interests, workout practices, foreclosure or the recovery of
30 funds from the sale of a site.

31 (b) A person shall not be considered a person
32 responsible for a release or a threatened release of
33 contaminants simply by virtue of conducting or having a
34 site assessment conducted. Nothing in this section relieves
35 a person of any liability for failure to exercise due
36 diligence in performing a site assessment.

**§22-22-19. Establishing and limiting the responsibilities of
remediation contractors.**

1 (a) A person who is engaged in the business of
2 remediation contractor under this article is not responsible
3 for a release or threatened release of contaminants at the
4 site described in the voluntary remediation agreement for
5 work properly performed pursuant to the agreement.

6 (b) A person who is engaged in the business of
7 remediation contractor under this article is not liable for
8 any harm, damage or injury caused by a release of a
9 contaminant which occurred prior to the contractor
10 undertaking work at the site.

11 (c) Limitation of liability, pursuant to subsections (a)
12 and (b) of this section does not apply to a release or
13 threatened release of contaminants at the site described in
14 the voluntary remediation agreement that is directly
15 caused by an act or omission which constitutes gross

16 negligence or by the willful misconduct of the
17 remediation contractor.

18 (d) A remediation contractor is not required to obtain
19 a permit for remediation activities, if a permit is required
20 under article five, eleven, fifteen or eighteen of this
21 chapter. However, an owner or operator of the site to be
22 remediated is not relieved of the permit requirements, if
23 any, for remediation activities undertaken at the site. A
24 remediation contractor must comply with all applicable
25 state and federal laws in the transportation, treatment,
26 storage and disposal of contaminants generated as a
27 consequence of the remediation activities.

28 (e) A remediation contractor is not a "generator" for
29 the purposes of the generator assessments imposed
30 pursuant to article twenty of this chapter.

§22-22-20. Affirmative defenses.

1 Any person who is alleged to have violated an
2 environmental law or the common law equivalent, which
3 occurred while acting pursuant to this article, may
4 affirmatively plead the following in response to an alleged
5 violation:

6 (a) An act of God;

7 (b) An intervening act of a public agency;

8 (c) Migration from property owned by a third party;

9 (d) Actions taken or omitted in the course of
10 rendering care, assistance or advice in accordance with the
11 environmental laws or at the direction of the division;

12 (e) An act of a third party who was not an agent or
13 employee of the lender, fiduciary, developer, remediation
14 contractor or development authority; or

15 (f) If the alleged liability for a lender, fiduciary,
16 developer or development authority arises after
17 foreclosure, and the lender, fiduciary, developer or
18 development authority exercised due care with respect to
19 the lender's, fiduciary's, developer's or development

20 authority's knowledge about the contaminants, and took
21 reasonable precautions based upon such knowledge
22 against foreseeable actions of third parties and the
23 consequences arising therefrom. A lender, fiduciary,
24 developer, remediation contractor or development
25 authority may avoid liability by proving any other defense
26 which may be available to it.

§22-22-21. Savings clause.

1 Nothing in this article shall affect the rights, duties,
2 defenses, immunities or causes of action under other
3 statutes or the common law of this state which may be
4 applicable to persons conducting remediation of a site.

CHAPTER 31. CORPORATIONS.

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AU-
THORITY.**

§31-15-4. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Authority" means the West Virginia economic
4 development authority;

5 (b) "Board" means the governing body of the
6 authority;

7 (c) "Board of investments" means the board of
8 investments established by article six, chapter twelve of this
9 code;

10 (d) "Bonds" means bonds or other debt instruments of
11 the authority issued under this article, whether the interest
12 thereon is taxable or tax-exempt for federal income tax
13 purposes;

14 (e) "Business plan" means a document detailing the
15 sales, production and distribution plans of an enterprise,
16 together with the expenditures necessary to carry out those
17 plans (including budget and cash flow projections) on an
18 annual basis, and an employment plan setting forth steps
19 to be taken by the enterprise to retain jobs or reduce
20 unemployment in this state;

21 (f) "Costs of establishing an industrial development
22 project" means the cost of acquiring existing facilities, cost
23 of machinery, cost of equipment and fixtures, the cost of
24 construction, including with out limitation, cost of
25 improvements, repairs, and renovations, costs of all lands,
26 water areas, property rights and easements, financing
27 charges, interest prior to and during construction, cost of
28 architectural, engineering, legal and financial or other
29 consulting services, plans, site assessments, site remediation
30 costs, specifications and surveys, estimates of costs and any
31 other expenses necessary or incident to determining the
32 feasibility or practicability of any project, together with
33 such other costs and expenses as may be necessary or
34 incidental to the financing and the construction or
35 acquisition of the project and the placing of the same in
36 operation;

37 (g) "County" means any county of this state;

38 (h) "Enterprise" means an entity which is or proposes
39 to be engaged in this state in any business activity for
40 profit. The entity may be owned, operated, controlled or
41 under the management of a person, partnership,
42 corporation, trust, community-based development
43 organization or council, local commerce group, employee
44 stock ownership plan, pension or profit-sharing plan, a
45 group of participating employees who desire to own an
46 entity which does not presently exist, or any similar entity
47 or organization;

48 (i) "Federal agency" means the United States of
49 America and any department, corporation, agency or
50 instrumentality created, designated or established by the
51 United States of America;

52 (j) "Financing plan" means a plan designed to meet
53 the financing needs of an enterprise as reflected in the
54 business plan;

55 (k) "Fund" means the economic development fund
56 provided for in section twenty-three of this article;

57 (l) "Government" means state and federal government,
58 and any political subdivision, agency or instrumentality
59 thereof, corporate or otherwise;

60 (m) "Industrial development agency" means any
61 incorporated organization, foundation, association or
62 agency to whose members or shareholders no profit
63 inures, which has as its primary function the promotion,
64 encouragement and development of industrial,
65 commercial, manufacturing and tourist enterprises or
66 projects in this state;

67 (n) "Insurance fund" means the insurance fund
68 created in this article;

69 (o) "Loan" means an extension of financing by the
70 authority to an industrial development agency or an
71 enterprise, including, but not limited to, a loan, a lease or
72 an installment sale;

73 (p) "Municipality" means any city or town in this
74 state;

75 (q) "Notes" means any notes, including commercial
76 paper, of the authority issued under this article whether the
77 interest thereon is taxable or tax-exempt for federal
78 income tax purposes;

79 (r) "Project" means a commercial or industrial
80 undertaking and all of the assets reasonably and
81 necessarily required therefor, all as determined by the
82 authority, which determination shall be conclusive, and
83 shall include, without limiting the generality of the
84 foregoing, industrial projects and commercial projects as
85 presently defined in section three, article two-c, chapter
86 thirteen;

87 (s) "Revenues" means all fees, premiums, charges,
88 moneys, profits, payment or principal of or interest on,
89 loans and other investments, gifts, grants, appropriations,
90 contributions and all other income derived or to be
91 derived by the authority under this article; and

92 (t) "Security interest" means an interest in the loan
93 portfolio of the authority which interest is secured by an
94 underlying loan or loans and is evidenced by a note issued
95 by the authority.

CHAPTER 93

(S. B. 452—By Senator Buckalew)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven hundred four, seven hundred six and seven hundred seven, article seven, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing seized or forfeited assets to be deposited into interest-bearing depositories insured by an agency of the federal government.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-704. Procedures for seizure of forfeitable property.

§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

§60A-7-704. Procedures for seizure of forfeitable property.

1 (a) Seizure of property made subject to forfeiture by
2 the provisions of this article may be made upon process
3 issued by any court of record having jurisdiction over the
4 property.

5 (b) Notwithstanding the provisions of subsection (a)
6 of this section, seizure of property subject to forfeiture by
7 the provisions of this article may be made without process
8 if:

9 (1) The seizure is incident to a lawful arrest or pursu-
10 ant to a search under a search warrant or an inspection
11 warrant;

12 (2) The property subject to seizure has been the sub-
13 ject of a prior judgment in favor of the state in a forfeiture
14 proceeding based upon this article;

15 (3) The appropriate person has probable cause to
16 believe that the property is directly or indirectly danger-
17 ous to health or safety; or

18 (4) The appropriate person has probable cause to
19 believe that the property was used or intended for use in
20 violation of this chapter.

21 (c) In the event of seizure pursuant to subsection (b)
22 of this section, forfeiture proceedings shall be instituted
23 within ninety days of the seizure thereof.

24 (d) Property taken or detained under this section shall
25 not be subject to replevin, but is deemed to be in the cus-
26 tody of the appropriate person, subject only to the orders
27 and decrees of the court having jurisdiction over the for-
28 feiture proceedings. When property is seized under this
29 article, the appropriate person may:

30 (1) Place the property under seal;

31 (2) Remove the property to a place designated by
32 him;

33 (3) Require the appropriate law-enforcement agency
34 to take custody of the property and remove it to an appro-
35 priate location for disposition in accordance with law; or

36 (4) In the case of seized moneys, securities or other
37 negotiable instruments, place the assets in any
38 interest-bearing depository insured by an agency of the
39 federal government.

40 The requirements of this subsection pertaining to the
41 removal of seized property are not mandatory in the case
42 of real property and appurtenances thereto.

**§60A-7-706. Disposition of forfeited moneys, securities or
other negotiable instruments; distribution of
proceeds.**

1 (a) Whenever moneys, securities or other negotiable
2 instruments are forfeited under the provisions of this arti-
3 cle, such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to
5 the office of the prosecuting attorney which initiated the
6 forfeiture proceeding;

7 (2) The balance shall be deposited in a special
8 law-enforcement investigation fund. The fund may be
9 placed in any interest-bearing depository insured by an
10 agency of the federal government. The fund shall be
11 administered by the chief of the law-enforcement agency
12 that seized the forfeited property.

13 (b) No funds shall be expended from the special
14 law-enforcement investigation fund except as follows:

15 (1) In the case of the funds belonging to the depart-
16 ment of public safety, the funds shall only be expended at
17 the direction of the superintendent of the department and
18 in accordance with the provisions of section fifteen, article
19 two, chapter five-a of this code and the provisions of sub-
20 section (j), section two, article two, chapter twelve of this
21 code;

22 (2) In the case of funds belonging to the office of
23 either the sheriff or prosecuting attorney of any county in
24 which the special fund has been created, the funds therein
25 may only be expended in the manner provided in sections
26 four and five, article five, chapter seven of this code; and

27 (3) In the case of funds belonging to the police de-
28 partment of any municipality in which the special fund
29 has been created, the funds therein may only be expended
30 in the manner provided in section twenty-two, article thir-
31 teen, chapter eight of this code.

**§60A-7-707. Disposition of other forfeited property; distribu-
tion of proceeds.**

1 (a) When property other than that referred to in sec-
2 tion seven hundred six of this article is forfeited under this
3 article, the circuit court ordering the forfeiture, upon
4 application by the prosecuting attorney or the chief of the

5 law-enforcement agency that seized said forfeited proper-
6 ty, may direct that:

7 (1) Title to the forfeited property be vested in the
8 law-enforcement agency so petitioning; or

9 (2) The law-enforcement agency responsible for the
10 seizure retain the property for official use; or

11 (3) The forfeited property shall be offered at public
12 auction to the highest bidder for cash. Notice of such
13 public auction shall be published as a Class III legal adver-
14 tisement in accordance with article three, chapter fifty-nine
15 of this code. The publication area shall be the county
16 where the public auction will be held.

17 (b) When a law-enforcement agency receives property
18 pursuant to this section, the court may, upon request of the
19 prosecuting attorney initiating the forfeiture proceeding,
20 require the law-enforcement agency to pay unto the office
21 of said prosecuting attorney a sum not to exceed ten per-
22 cent of the value of the property received to compensate
23 said office for actual costs and expenses incurred.

24 (c) The proceeds of every public sale conducted pur-
25 suant to this section shall be paid and applied as follows:
26 First, to the balance due on any security interest preserved
27 by the court; second, to the costs incurred in the storage,
28 maintenance and security of the property; third, to the
29 costs incurred in selling the property.

30 (d) Any proceeds of a public sale remaining after
31 distribution pursuant to subsection (c) of this section shall
32 be distributed as follows:

33 (1) Ten percent of such proceeds shall be tendered to
34 the office of the prosecuting attorney who initiated the
35 forfeiture proceeding.

36 (2) The balance shall be deposited in a special
37 law-enforcement investigation fund. Such fund shall be
38 administered by the chief of the law-enforcement agency
39 that seized the forfeited property sold and shall take the
40 form of an interest-bearing account with any interest
41 earned to be compounded to the fund. Any funds depos-
42 ited in the special law-enforcement investigative fund

43 pursuant to this article shall be expended only to defray
44 the costs of protracted or complex investigations, to pro-
45 vide additional technical equipment or expertise, to pro-
46 vide matching funds to obtain federal grants or for such
47 other law-enforcement purposes as the chief of the
48 law-enforcement agency may deem appropriate; however,
49 these funds may not be utilized for regular operating
50 needs.

51 (e) If more than one law-enforcement agency was
52 substantially involved in effecting the seizure and forfei-
53 ture of property, the court wherein the petition for forfei-
54 ture was filed shall equitably distribute the forfeited prop-
55 erty among the law-enforcement agencies. In the event of
56 a public sale of such property pursuant to subsection (a)
57 of this section, the court shall equitably distribute any
58 proceeds remaining after distribution pursuant to subsec-
59 tion (c) and subdivision (1), subsection (d) of this section
60 among such law-enforcement agencies for deposit into
61 their individual special law-enforcement investigative
62 fund. Equitable distribution shall be based upon the over-
63 all contribution of the individual law-enforcement agency
64 to the investigation which led to the seizure.

65 (f) Upon the sale of any forfeited property for which
66 title or registration is required by law, the state shall issue a
67 title or registration certificate to any bona fide purchaser
68 at a public sale of the property conducted pursuant to
69 subsection (a) of this section. Upon the request of the
70 law-enforcement agency receiving, pursuant to the order
71 of the court, or electing to retain, pursuant to subsection
72 (a) of this section, any forfeited property for which title or
73 registration is required by law, the state shall issue a title or
74 registration certificate to the appropriate governmental
75 body.

76 (g) Any funds expended pursuant to the provisions of
77 this section, shall only be expended in the manner provid-
78 ed in subsection (b), section seven hundred five of this
79 article.

80 (h) Every prosecuting attorney or law-enforcement
81 agency receiving forfeited property or proceeds from the
82 sale of forfeited property pursuant to this article shall

83 submit an annual report to the body which has budgetary
84 authority over such agency. Such report shall specify the
85 type and approximate value of all forfeited property and
86 the amount of proceeds from the sale of forfeited proper-
87 ty received in the preceding year. No county or municipi-
88 pality may use anticipated receipts of forfeited property in
89 their budgetary process.

90 (i) In lieu of the sale of any forfeited property subject
91 to a bona fide security interest preserved by an order of
92 the court, the law-enforcement agency receiving the for-
93 feited property may pay the balance due on any security
94 interest preserved by the court from funds budgeted to the
95 office or department or from the special fund and retain
96 possession of the forfeited property for official use pursu-
97 ant to subsection (a) of this section.

98 (j) In every case where property is forfeited, disposi-
99 tion of the forfeited property, in accordance with this
100 article, shall be made within six months of the date upon
101 which the court of jurisdiction orders forfeiture. Should
102 the office or agency receiving the property fail either to
103 place the property in official use or dispose of the proper-
104 ty in accordance with law, the court of jurisdiction shall
105 cause disposition of the property to be made with any
106 proceeds therefrom to be awarded to the state.

107 (k) No disposition shall occur until all applicable
108 periods for filing a notice of intent to appeal has expired
109 and no party in interest shall have filed such notice. The
110 filing of the notice of intent to appeal shall stay any such
111 disposition until the appeal has been finally adjudicated or
112 until the appeal period of one hundred eighty days has
113 expired without an appeal having actually been taken or
114 filed, unless a valid extension of the appeal has been
115 granted by the circuit court under the provisions of sec-
116 tion seven, article four, chapter fifty-eight of this code.

117 (l) The special law-enforcement investigative funds of
118 each law-enforcement agency may be placed in an
119 interest-bearing depository insured by the federal govern-
120 ment.

CHAPTER 94

(Com. Sub. for H. B. 4735—By Delegates Trump and Staton)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five, chapter forty-nine of said code, by adding thereto a new section, designated section thirteen-d, all relating to juvenile offenders; escape; permitting or aiding the escape of an inmate of a center for housing youthful offenders; creating pilot project for certain status offenders as an alternative to disposition; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article five, chapter forty-nine of said code be amended by adding thereto a new section, designated section thirteen-d, all to read as follows:

Chapter

25. Division of Corrections.

49. Child Welfare.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-11. Escape; aiding escape.

- 1 (a) Any inmate of a center who shall escape from said
- 2 center or the custody of an officer or employee of such
- 3 center shall be guilty of a felony and, upon conviction
- 4 thereof, be committed to the custody of the commissioner

5 of corrections for not more than five years. A term of
6 incarceration imposed pursuant to the provisions of this
7 section shall be imposed as a consecutive sentence and not
8 served concurrently with any sentence or period of con-
9 finement previously imposed.

10 (b) Any person who willfully permits or aids any in-
11 mate of such center to escape therefrom or conceals him
12 with the intent of enabling him to elude pursuit is guilty of
13 a felony and, upon conviction thereof, shall be committed
14 to the custody of the commissioner of corrections for not
15 more than five years.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

1 (a) Any child who has committed an act of delin-
2 quency which would not be a criminal offense if commit-
3 ted by an adult, and who is otherwise subject to the provi-
4 sions of this article shall be given the option of choosing
5 disposition in a teen court program as an alternative to a
6 disposition provided by section thirteen of this article.
7 The decision to enter the teen court program as an alterna-
8 tive disposition shall be made jointly by the circuit court,
9 juvenile probation officer, and parent, guardian or custo-
10 dian of the child. The circuit court shall find, prior to
11 admission into the program, that the offender is a suitable
12 candidate for the program. Any child who does not suc-
13 cessfully cooperate in and complete the teen court pro-
14 gram and any disposition imposed therein shall be re-
15 turned to the circuit court for disposition provided by
16 section thirteen of this article.

17 (b) The teen court program shall be administered by
18 the governor's committee on crime and delinquency.

19 (c) The following provisions shall apply to all teen
20 court programs:

21 (1) The judge for each teen court proceeding shall be
22 an acting or retired circuit court judge or an active mem-
23 ber of the West Virginia state bar, who shall serve on a
24 voluntary basis. Bar members shall be offered continuing
25 legal education credit for such service.

26 (2) Any child who selects the teen court program as an
27 alternative disposition shall agree to serve thereafter on at
28 least two occasions as a teen court juror.

29 (3) Volunteer students from grades ten through twelve
30 of high schools within the county shall be selected to serve
31 as defense attorney, prosecuting attorney, court clerk and
32 bailiff for each proceeding.

33 (4) Disposition in a teen court proceeding shall consist
34 of requiring the child to perform sixteen to forty hours of
35 community service, the duration and type of which shall
36 be determined by the teen court jury, from a standard list
37 of available community service programs provided by the
38 county juvenile probation system. The performance of the
39 child shall be monitored by the county juvenile probation
40 system. The child shall also perform two sessions of teen
41 court jury service, and, if deemed appropriate by the
42 judge, the child shall participate in an education program.

43 (d) The rules for administration, procedure and admis-
44 sion of evidence shall be determined by the chief circuit
45 judge. A copy of such rules shall be provided to every
46 teen court participant.

47 (e) Teen court programs are pilot projects to be uti-
48 lized from the effective date of this section until the first
49 day of July, one thousand nine hundred ninety-eight, in
50 the circuit courts in three of the counties of this state. The
51 supreme court of appeals is to determine the counties in
52 which the pilot projects will be utilized based upon its
53 determination of those counties which have recently expe-
54 rienced the most significant increases in the commission
55 of criminal and status offenses by children.

CHAPTER 95

(H. B. 4160—By Mr. Speaker, Mr. Chambers, and Delegates
Johnson, Fragale and Manuel)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article twelve, chapter eight of said code; to amend and reenact section sixteen, article three, chapter twenty-nine of said code; to amend and reenact section nine-a, article seventeen, chapter thirty-three of said code; and to further amend said article by adding thereto a new section, designated section nine-b, all relating to the authority of county commissions and municipalities to require clearance of refuse and debris or to repair, vacate, close, remove, improve, demolish or otherwise alter buildings on private lands; removing the obligation of county commissions to require clearance of refuse or debris; providing for the filing of a judgment lien in an amount not to exceed the assessed value of the property; providing for notification to the landowner; authorizing county commissions and municipalities to adopt ordinances requiring landowners to pay costs, providing for the filing of liens and creating a cause of action for the reimbursement of costs; authorizing the state fire marshal to notify county or municipal officials respecting fire hazards; providing for notification and disbursement of certain insurance proceeds; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixteen, article twelve, chapter eight of said code be amended and reenacted; that section sixteen, article three, chapter twenty-nine of said code be amended and reenacted; that section nine-a, article seventeen, chapter thirty-three of said code be amended and reenacted; and

that said article be further amended by adding thereto a new section, designated section nine-b, all to read as follows:

Chapter

- 7. **County Commissions and Officers.**
- 8. **Municipal Corporations.**
- 29. **Miscellaneous Boards and Officers.**
- 33. **Insurance.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Clearance of refuse and debris from private lands; demolition of buildings and recovery of costs incurred; notice of demand thereof; procedure to contest demand.

1 (a) County commissions, as set forth in this article,
2 county health officers, as set forth in section two, article
3 two, chapter sixteen of this code, and state fire marshals as
4 set forth in section twelve, article three, chapter
5 twenty-nine of this code, are hereby authorized to require
6 clearance of any refuse or debris consisting of remnants
7 or remains of any unused or unoccupied dwelling, cement
8 foundation, piping, basements, intact chimneys, nonfarm
9 building, structure or manmade appurtenance on all pri-
10 vate lands within their respective scopes of authority by
11 the owners thereof that has accumulated as the result of
12 any natural or manmade fire, force or effect which pres-
13 ents a safety or health hazard including the removal of
14 toxic or contaminant spillage and seepage: *Provided*, That
15 upon request from a landowner and a written determina-
16 tion and approval from the state fire marshal, where ap-
17 propriate, a landowner may fill the remains of a basement
18 to ground level with inert fill material in lieu of complete
19 removal of such cement foundation, piping and basement.

20 (b) Upon determination by the state fire marshal that
21 substantial accumulations of refuse, debris or destroyed
22 structures or appurtenances, as described above, exist on
23 the property as a result of a natural or manmade fire, no-
24 tice shall be given by the fire marshal and forwarded to
25 the owner immediately informing the landowner of the

26 requirements of this article to effect repair, removal, clo-
27 sure or demolition of the fire damaged property within
28 ninety days of the receipt of such notice.

29 (c) Upon a determination by a county commission or
30 county health officer that substantial accumulations of
31 refuse or the presence of debris, as described above exist
32 on any such private lands, notice shall be forwarded to the
33 landowner advising him or her:

34 (1) Of the commission's or health officer's demand to
35 remove all refuse and debris within ninety days of the
36 receipt of notice unless an extension be granted by the
37 county commission or health officer for good cause
38 shown;

39 (2) Of the landowner's right to contest such demand
40 and of the proper procedure in which to do so;

41 (3) That if the landowner fails to both properly con-
42 test and comply with the commission's or health officer's
43 demand, that removal will be achieved otherwise and that
44 the reasonable costs incurred thereto will become a civil
45 debt owed by the landowner to the county; and

46 (4) That if the county incurs costs of removal and the
47 landowner fails to pay such costs within ninety days of
48 the removal, then the county may file a judgment lien on
49 the subject property, for an amount not to exceed the
50 assessed value of the property as recorded in the office of
51 the county assessor, in the office of the clerk of the county
52 commission of the county in which the property is lo-
53 cated.

54 (d) The commission or health officer shall send notice
55 as described in subsection (c) of this section by certified
56 mail, return receipt requested, to the most recent address
57 of the landowner on file in the office of the county asses-
58 sor of the county in which the subject property is located.
59 If, for any reason, the certified mail is returned without
60 evidence of proper receipt thereof, then in such event, a
61 Class III-0 legal advertisement shall be published in a
62 newspaper of general circulation in the county wherein the
63 subject land is situated in order to render proper notice in

64 accordance with this section. In addition, the commission
65 or health officer shall post the notice on the front door or
66 other conspicuous location on the subject property: *Pro-*
67 *vided*, That if the commission or health officer determines,
68 after notice and inquiry as provided herein, that the refuse
69 or debris was created by someone other than the present
70 landowner, without the landowner's expressed or implied
71 permission, the commission or health officer shall remove
72 any such refuse or debris and shall apply to and be eligi-
73 ble to receive from the solid waste reclamation and envi-
74 ronmental response fund created under section eleven,
75 article fifteen, chapter twenty-two of this code for reim-
76 bursement for all reasonable costs incurred for removal.

77 (e) The county commission of every county shall have
78 plenary power and authority to adopt an ordinance requir-
79 ing the owner or owners of any nonfarm dwelling or
80 building, under order of the county commission or county
81 health officer or determination by the state fire marshal as
82 provided for in subsection (a) of this section, to pay for
83 the costs of clearing any refuse or debris or of repairing,
84 vacating, closing, removing, demolishing or otherwise
85 altering any dwelling or nonfarm building. The county
86 commission shall also have the power and authority to
87 seek reimbursement for such costs by filing a lien against
88 the real property in question for an amount not to exceed
89 the assessed value of the property as recorded in the office
90 of the county assessor, or to institute a civil action in a
91 court of competent jurisdiction against the landowner or
92 other responsible party for all costs incurred by the coun-
93 ty with respect to the property and for reasonable attorney
94 fees and court costs incurred in the prosecution of the
95 action.

96 (f) Not less than ten days prior to instituting a civil
97 action as provided for in this section, the county commis-
98 sion shall send notice to the landowner by certified mail,
99 return receipt requested, advising the landowner of the
100 county commission's intention to institute such action. The
101 notice shall be sent to the most recent address of the land-
102 owner of record in the office of the assessor of the county
103 where the subject property is located. If, for any reason,
104 such certified mail is returned without evidence of proper

105 receipt thereof, then in such event, the county commission
106 shall cause a Class III-0 legal advertisement to be pub-
107 lished in a newspaper of general circulation in the county
108 wherein the subject property is located and post notice on
109 the front door or other conspicuous location on the sub-
110 ject property.

111 (g) In the event any landowner desires to contest any
112 demand brought forth pursuant to this section, the land-
113 owner shall do so in accordance with article three, chapter
114 fifty-eight of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

1 (a) Plenary power and authority are hereby conferred
2 upon every municipality to adopt ordinances regulating
3 the repair, alteration or improvement, or the vacating and
4 closing or removal or demolition, or any combination
5 thereof, of any dwellings or other buildings unfit for hu-
6 man habitation due to dilapidation, defects increasing the
7 hazard of fire, accidents or other calamities, lack of venti-
8 lation, light or sanitary facilities or any other conditions
9 prevailing in any dwelling or building, whether used for
10 human habitation or not, which would cause such dwell-
11 ings or other buildings to be unsafe, unsanitary, dangerous
12 or detrimental to the public safety or welfare.

13 (b) The governing body in formally adopting such
14 ordinances shall designate the enforcement agency, which
15 shall consist of the mayor, the municipal engineer or
16 building inspector and one member at large, to be selected
17 by and to serve at the will and pleasure of the mayor. The
18 ranking health officer and fire chief shall serve as ex offi-
19 cio members of such enforcement agency.

20 (c) Any ordinance adopted pursuant to the provisions
21 of this section shall provide fair and equitable rules of
22 procedure and any other standards deemed necessary to
23 guide the enforcement agency, or its agents, in the investi-
24 gation of dwelling or building conditions, and in conduct-
25 ing hearings: *Provided*, That any entrance upon premises
26 for the purpose of making examinations shall be made in
27 such manner as to cause the least possible inconvenience
28 to the persons in possession.

29 (d) The governing body of every municipality shall
30 have plenary power and authority to adopt an ordinance
31 requiring the owner or owners of any dwelling or building
32 under determination of the state fire marshal, as provided
33 in section twelve, article three, chapter twenty-nine of this
34 code, or under order of the enforcement agency of the
35 municipality, to pay for the costs of repairing, altering, or
36 improving, or of vacating and closing, removing or de-
37 molishing any dwelling or building. Every municipality
38 shall also have the right to file a lien against the real prop-
39 erty in question for an amount not to exceed the assessed
40 value of the property as recorded in the office of the
41 county assessor, or to institute a civil action in a court of
42 competent jurisdiction against the landowner or other
43 responsible party for all costs incurred by the municipality
44 with respect to the property and for reasonable attorney
45 fees and court costs incurred in the prosecution of the
46 action.

47 Not less than ten days prior to instituting a civil action
48 as provided for in this section, the governing body of the
49 municipality shall send notice to the landowner by certi-
50 fied mail, return receipt requested, advising the landowner
51 of the governing body's intention to institute such action.
52 The notice shall be sent to the most recent address of the
53 landowner of record in the office of the assessor of the
54 county where the subject property is located. If, for any
55 reason, such certified mail is returned without evidence of
56 proper receipt thereof, then in such event, the governing
57 body shall cause a Class III-0 legal advertisement to be
58 published in a newspaper of general circulation in the
59 county wherein the subject property is located and post

60 notice on the front door or other conspicuous location on
61 the subject property.

62 In the event any landowner desires to contest any
63 demand brought forth pursuant to this section, the land-
64 owner may seek relief in a court of competent jurisdiction.

65 All orders issued by the enforcement agency shall be
66 served in accordance with the law of this state concerning
67 the service of process in civil actions, and shall, in addition
68 thereto, be posted in a conspicuous place on the premises
69 affected by the complaint or order: *Provided*, That no
70 ordinance shall be adopted without providing therein for
71 the right to apply to the circuit court for a temporary
72 injunction restraining the enforcement agency pending
73 final disposition of the cause. In the event such application
74 is made, a hearing thereon shall be had within twenty days,
75 or as soon thereafter as possible, and the court shall enter
76 such final order or decree as the law and justice may re-
77 quire.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 In the event any owner of any building or premises
2 served with a copy of an order as provided in sections
3 fourteen and fifteen of this article shall fail substantially to
4 comply with such order within thirty days from the date of
5 issuance thereof, or within thirty days after any appeal
6 from such order has been affirmed by the state fire com-
7 mission or by the court, the state fire marshal may enter
8 into and upon the premises affected by such order and
9 cause the building, structure or premises to be repaired,
10 torn down, materials removed and all dangerous condi-
11 tions to be remedied, as the case may be, at the expense of
12 the owner and with any administrative charges as estab-
13 lished by the commission also being borne by the owner,
14 and if such person shall fail or neglect to repay the state
15 fire marshal the expense and administrative charge there-

16 by incurred by him, within thirty days after written de-
17 mand shall have been delivered or mailed to the said own-
18 er as provided in section fifteen of this article, the state fire
19 marshal is hereby authorized to bring an action in the
20 name of the state to recover such expenses, with interest,
21 and any administrative charge as established by the com-
22 mission, in any court of competent jurisdiction.

23 Upon a determination by the state fire marshal that the
24 provisions of sections fourteen and fifteen of this article
25 have not been met, and that such property constitutes a
26 hazard to health or public safety, in lieu of initiating an
27 order as therein provided, the state fire marshal may notify
28 the county commission or the county health officer in
29 order that they may perform their duties pursuant to sec-
30 tion three-ff, article one, chapter seven of this code. The
31 fire marshal may also, in lieu thereof, notify the munic-
32 ipality where the property is located so that the municipali-
33 ty may perform its duties pursuant to section fourteen,
34 article twelve, chapter eight of this code.

CHAPTER 33. INSURANCE.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9a. Notice of insurance proceeds.

§33-17-9b. Disbursement of insurance proceeds.

§33-17-9a. Notice of insurance proceeds.

1 Upon notice of a claim of an insured total loss to a
2 structure located in this state, insurance companies must
3 notify the insured, and the municipality or county in
4 which the structure is located, of any coverage in the in-
5 surance policy providing cleanup, removal of any refuse,
6 debris, remnants or remains of the dwelling and appurte-
7 nances and securing the structure. The notification shall
8 be by letter to the insured, mailed within ten days of the
9 notification of the claim, and shall include, but not be
10 limited to:

11 (a) The terms and limits of coverage designated by the
12 insurance policy for securing, cleanup and removal; and

13 (b) Any time limitations imposed on the insured for
14 securing, cleanup and removal.

§33-17-9b. Disbursement of insurance proceeds.

1 No proceeds shall be paid by an insurance company
2 which has issued a policy which provides coverage for
3 debris removal for cleanup, removal of refuse, debris,
4 remnants, or remains of a dwelling or structure upon a
5 claim of total loss unless and until the insurance company
6 receives certification that the refuse, debris, remnants, or
7 remains of the dwelling or structure have been cleaned up,
8 removed or otherwise disposed of. In the event the
9 insurance company receives, within six months of the date
10 of loss, certification that such cleanup, removal or disposal
11 costs have been incurred by a municipality, county or
12 other governmental entity, rather than the policyholder,
13 such debris removal and cleanup proceeds shall be paid to
14 the municipality, county or other government entity which
15 has incurred such costs.

16 No insurance company subject to this section which
17 complies with this section may be held liable for any claim
18 that may arise out of the cleanup, removal or disposal of
19 debris pursuant to this section.

20 An insurance company subject to this section which
21 complies with this section shall be deemed to have fully
22 satisfied all contractual obligations to the policyholder
23 regarding debris removal.

24 In no event shall an insurance company be required to
25 pay moneys in excess of policy limits for debris removal.

CHAPTER 96

(Com. Sub. for S. B. 382—By Senators Tomblin, Mr. President, and Wooton,
Jackson, Wagner, Manchin, Anderson, Bailey, Schoonover,
Plymale, Dittmar and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

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

reenact section seventeen, article one, chapter eleven-a of said code, all relating to the classification of counties and the compensation of elected county officials and county commissioners as related to the classification system.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

11A. Collection and Enforcement of Property Taxes.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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

§7-7-1. Legislative findings and purpose.

§7-7-3. Classification of counties for purpose of determining compensation of elected county officials.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

§7-7-6b. Additional compensation of assessors according to county classification.

§7-7-1. Legislative findings and purpose.

1 The Legislature finds and declares that the county
2 officials' association, the county commissioners' associa-
3 tion, the prosecuting attorneys' association, the county
4 clerks' association, the assessors' association, the sheriffs
5 association and the circuit clerks association approached
6 the Legislature requesting that the state's fifty-five counties
7 be reclassified and requested that all county officials be
8 given increases in compensation. Inasmuch as these vari-
9 ous county associations have better insight into the needs

10 at the county level, the Legislature finds that there is a
11 need to reclassify the fifty-five counties into groups which
12 more accurately reflect the assessed valuations of property
13 of all classes in the counties and to provide increases in
14 compensation to the various county officials to reflect the
15 class of county by which they are employed.

16 The Legislature hereby further finds that it has consis-
17 tently and annually imposed upon the county commis-
18 sioners, sheriffs, county and circuit clerks, assessors and
19 prosecuting attorneys in each county broad, new and addi-
20 tional duties by the enactment of new provisions and
21 amendments to this code. The new and additional duties
22 imposed upon the aforesaid county officials by these
23 enactments are such that they would justify the increases
24 in compensation as provided in section four of this article,
25 without violating the provisions of section 38, article VI of
26 the Constitution of West Virginia.

27 The Legislature hereby further finds that there are,
28 from time to time, additional duties imposed upon all
29 county officials through the acts of the Congress of the
30 United States, and that such acts constitute new and addi-
31 tional duties for county officials and, as such, justify the
32 increases in compensation as provided by section four of
33 this article, without violating the provisions of section 38,
34 article VI of the Constitution of West Virginia.

35 The Legislature hereby further finds that there is a
36 direct correlation between the total assessed property valu-
37 ations of a county on which the salary levels of the county
38 commissioners, sheriffs, county and circuit clerks, asses-
39 sors and prosecuting attorneys are based, and the new and
40 additional duties that each of these officials is required to
41 perform as they serve the best interests of their respective
42 counties. Inasmuch as the reappraisal of the property
43 valuations in each county has now been accomplished, the
44 Legislature finds that a change in classification of counties
45 by virtue of increased property valuations will occur on an
46 infrequent basis. However, it is the further finding of the
47 Legislature that when such change in classification of
48 counties does occur, that new and additional programs,
49 economic developments, requirements of public safety

50 and the need for new services provided by county officials
 51 all increase, that the same constitute new and additional
 52 duties for county officials as their respective counties
 53 reach greater heights of economic development, as exem-
 54 plified by the substantial increases in property valuations
 55 and, as such, justify the increases in compensation provid-
 56 ed in section four of this article, without violating the pro-
 57 visions of section 38, article VI of the Constitution of West
 58 Virginia.

59 The Legislature hereby further finds and declares that
 60 the amendments made by this act to this article are intend-
 61 ed to modify the provisions of this article so as to cause
 62 the same to be in full compliance with the provisions of
 63 the Constitution of West Virginia, and to be in full compli-
 64 ance with the decisions of the supreme court of appeals of
 65 West Virginia.

§7-7-3. Classification of counties for purpose of determining compensation of elected county officials.

1 (a) For the purpose of determining the compensation
 2 of elected county officials, the counties of the state of West
 3 Virginia are hereby grouped into seven classes based on
 4 their assessed valuation of property, all classes. These
 5 seven classes and the minimum and maximum valuation
 6 of property, all classes, established to determine the classi-
 7 fication of each county are as follows:

8		Minimum Assessed	Maximum Assessed
9		Valuation of Property	Valuation of Property
10	Class	All Classes	All Classes
11	Class I	\$600,000,000	No Limit
12	Class II	\$450,000,000	\$599,999,999
13	Class III	\$200,000,000	\$449,999,999
14	Class IV	\$100,000,000	\$199,999,999
15	Class V	\$ 50,000,000	\$ 99,999,999
16	Class VI	\$ 15,000,000	\$ 49,999,999
17	Class VII	\$ 0	\$ 14,999,999

18 The assessed valuation of property, all classes, that
19 shall be used as the base to determine the class of a county
20 shall be the assessed valuation of property, all classes, of
21 the county as certified by the county assessor, state auditor
22 and county clerk prior to the twenty-ninth day of March,
23 one thousand nine hundred seventy-two.

24 Prior to the twenty-ninth day of March, one thousand
25 nine hundred seventy-four, and each second year thereaf-
26 ter, the county court [county commission] of each county,
27 shall determine if the assessed valuation of property, all
28 classes, of the county, as certified by the county assessor,
29 state auditor and county clerk, is within the minimum and
30 maximum limits of a class above or below the class in
31 which the county then is. If the county court so deter-
32 mines, it shall record the new classification of the county
33 with the state auditor and state tax commissioner and re-
34 cord its action on its county court [county commission]
35 record.

36 The classification of each county shall be subject to
37 review by the state tax commissioner. He shall determine if
38 the classification of each county is correct based on the
39 final assessed valuation of property, all classes, certified to
40 him by the county assessor, state auditor and county clerk.
41 If he finds that a county is incorrectly classified, he shall
42 notify the county court [county commission] of that
43 county promptly of his finding and in any case shall noti-
44 fy the county court prior to the thirtieth day of June of
45 that current fiscal year. Any county court [county com-
46 mission] so notified shall correct its classification immedi-
47 ately and make any necessary corrections in the salaries of
48 its elected county officials for the next fiscal year. Noth-
49 ing in this section shall be construed as authorizing an
50 increase in compensation except at such time as the affect-
51 ed county officer begins a new term of office.

52 (b) Effective the first day of July, one thousand nine
53 hundred ninety-six, and thereafter, for the purpose of
54 determining the compensation of elected county officials,
55 the counties of the state of West Virginia will be grouped
56 into ten classes based on their assessed valuation of prop-
57 erty, all classes. These ten classes and the minimum and

58 maximum valuation of property, all classes, established to
59 determine the classification of each county are as follows:

60		Minimum Assessed	Maximum Assessed
61		Valuation of Property	Valuation of Property
62	Class	All Classes	All Classes
63	Class I	\$ 2,000,000,000	No Limit
64	Class II	\$ 1,500,000,000	\$ 1,999,999,999
65	Class III	\$ 1,000,000,000	\$ 1,499,999,999
66	Class IV	\$ 700,000,000	\$ 999,999,999
67	Class V	\$ 600,000,000	\$ 699,999,999
68	Class VI	\$ 500,000,000	\$ 599,999,999
69	Class VII	\$ 400,000,000	\$ 499,999,999
70	Class VIII	\$ 300,000,000	\$ 399,999,999
71	Class IX	\$ 200,000,000	\$ 299,999,999
72	Class X	\$ -0-	\$ 199,999,999

73 The assessed valuation of property, all classes, that
74 shall be used as the base to determine the class of a county
75 shall be the assessed valuation of property, all classes, of
76 the county as certified by the county assessor, state auditor
77 and county clerk prior to the twenty-ninth day of March,
78 one thousand nine hundred ninety-six.

79 Prior to the twenty-ninth day of March, one thousand
80 nine hundred ninety-eight, and each second year thereaf-
81 ter, the county commission of each county shall determine
82 if the assessed valuation of property, all classes, of the
83 county, as certified by the county assessor, state auditor
84 and county clerk is within the minimum and maximum
85 limits of a class above or below the class in which the
86 county then is. If the county commission so determines, it
87 shall record the new classification of the county with the
88 state auditor and state tax commissioner and record its
89 action on its county commission record.

90 The classification of each county shall be subject to
 91 review by the state tax commissioner. He shall determine if
 92 the classification of each county is correct based on the
 93 final assessed valuation of property, all classes, certified to
 94 him by the county assessor, state auditor and county clerk.
 95 If he finds that a county is incorrectly classified, he shall
 96 notify the county commission of that county promptly of
 97 his finding and in any case shall notify the county prior to
 98 the thirtieth day of June of that current fiscal year. Any
 99 county commission so notified shall correct its classifica-
 100 tion immediately and make any necessary corrections in
 101 the salaries of its elected county officials for the next fiscal
 102 year.

103 Notwithstanding the provisions of this article, whenever
 104 any other provision of this code refers to classifications
 105 of counties for purposes of imposing any right, duty or
 106 responsibility, the classification system set forth in subsec-
 107 tion (a) of this section shall be utilized for determining the
 108 classification of a particular county.

**§7-7-4. Compensation of elected county officials and county
 commissioners for each class of county; effective
 date.**

1 (a) (1) All county commissioners shall be paid com-
 2 pensation out of the county treasury in amounts and ac-
 3 cording to the schedule hereafter set forth for each class
 4 of county as determined by the provisions of section three
 5 of this article: *Provided*, That as to any county having a
 6 tribunal in lieu of a county commission, the county com-
 7 missioners of the county may be paid less than the mini-
 8 mum compensation limits of the county commission for
 9 the particular class of such county.

10	Class I	\$20,000
11	Class II	\$15,500
12	Class III	\$14,000
13	Class IV	\$10,000
14	Class V	\$ 7,000
15	Class VI	\$ 4,000

16 The compensation hereinabove provided shall be paid
 17 on and after the first day of January, one thousand nine
 18 hundred eighty-five, to each county commissioner. With-
 19 in each county, every county commissioner whose term of
 20 office commenced prior to the first day of January, one
 21 thousand nine hundred eighty-five, shall receive the same
 22 annual compensation as commissioners commencing a
 23 term of office on or after that date by virtue of the new
 24 duties imposed upon county commissioners pursuant to
 25 the provisions of chapter fifteen, acts of the Legislature,
 26 first extraordinary session, one thousand nine hundred
 27 eighty-three.

28 (2) For the purpose of determining the compensation
 29 to be paid to the elected county officials of each county,
 30 the following compensations for each county office by
 31 class are hereby established and shall be used by each
 32 county commission in determining the compensation of
 33 each of their county officials other than compensation of
 34 members of the county commission:

		County	Circuit	Prosecuting		
	Sheriff	Clerk	Clerk	Assessor	Attorney	
37	Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
38	Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
39	Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
40	Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
41	Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
42	Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

43 Any county clerk, circuit clerk, joint clerk of the
 44 county commission and circuit court, if any, county asses-
 45 sor, sheriff and prosecuting attorney of a Class I county,
 46 any assessor of a Class II and Class III county, any sheriff
 47 of a Class II and Class III county and any prosecuting
 48 attorney of a Class II county shall devote full time to his
 49 or her public duties to the exclusion of any other employ-
 50 ment: *Provided*, That any public official, whose term of
 51 office begins when his or her county's classification im-

52 poses no restriction on his or her outside activities, shall
53 not be restricted on his or her outside activities during the
54 remainder of the term for which he or she is elected. The
55 compensation hereinabove provided shall be paid on and
56 after the first day of January, one thousand nine hundred
57 eighty-five, to each elected county official.

58 In the case of a county that has a joint clerk of the
59 county commission and circuit court, the compensation of
60 the joint clerk shall be fixed in an amount twenty-five
61 percent higher than the compensation would be fixed for
62 the county clerk if it had separate offices of county clerk
63 and circuit clerk.

64 The Legislature finds as a fact that the duties imposed
65 upon county clerks by the provisions of chapter
66 sixty-four, acts of the Legislature, regular session, one
67 thousand nine hundred eighty-two, and by chapter fifteen,
68 acts of the Legislature, first extraordinary session, one
69 thousand nine hundred eighty-three, constitute new and
70 additional duties for county clerks and as such justify the
71 additional compensation provided in this section without
72 violating the provisions of section 38, article VI of the
73 Constitution of West Virginia.

74 The Legislature further finds as a fact that the duties
75 imposed upon circuit clerks by the provisions of chapters
76 sixty-one and one hundred eighty-two, acts of the Legisla-
77 ture, regular session, one thousand nine hundred
78 eighty-one, and by chapter sixty, acts of the Legislature,
79 regular session, one thousand nine hundred eighty-three,
80 constitute new and additional duties for circuit clerks and
81 as such justify the additional compensation provided by
82 this section without violating the provisions of section 38,
83 article VI of the Constitution of West Virginia.

84 (b) Prior to the primary election in the year one thou-
85 sand nine hundred ninety-two, and for the fiscal year
86 beginning on the first day of July, one thousand nine
87 hundred ninety-two, or for any subsequent fiscal year if
88 the approval set out herein is not granted for any fiscal
89 year, and at least thirty days prior to the meeting to ap-
90 prove the county budget, the commission shall provide
91 notice to the public of the date and time of the meeting

92 and that the purpose of the meeting of the county com-
 93 mission is to decide upon their budget certification to the
 94 tax department. Upon submission by the county commis-
 95 sion to the chief inspector division of the department of
 96 tax and revenue of a proposed annual budget which con-
 97 tains anticipated receipts into the county's general revenue
 98 fund, less anticipated moneys from the unencumbered
 99 fund balance, equal to anticipated receipts into the coun-
 100 ty's general revenue fund, less anticipated moneys from
 101 the unencumbered fund balance and any federal or state
 102 special grants, for the immediately preceding fiscal year,
 103 plus such additional amount as is necessary for payment
 104 of the increases in the salaries set out herein and related
 105 employment taxes over that paid for the immediately
 106 preceding fiscal year, and upon approval thereof by the
 107 chief inspector, which approval shall not be granted for
 108 any proposed annual budget containing anticipated re-
 109 ceipts which are unreasonably greater or lesser than that of
 110 the immediately preceding fiscal year, for the purpose of
 111 determining the compensation to be paid to the elected
 112 county officials of each county office by class are hereby
 113 established and shall be used by each county commission
 114 in determining the compensation of each of their county
 115 officials: *Provided*, That as to any county having a tribu-
 116 nal in lieu of a county commission, the county commis-
 117 sioners of the county may be paid less than the minimum
 118 compensation limits of the county commission for the
 119 particular class of the county.

120	COUNTY COMMISSIONERS	
121	Class I	\$24,000
122	Class II	\$18,600
123	Class III	\$16,800
124	Class IV	\$12,000
125	Class V	\$ 8,400

126 If the approval set out hereinabove is granted, the
 127 compensation hereinabove provided shall be paid on and
 128 after the first day of January, one thousand nine hundred
 129 ninety-three, to each county commissioner. Within each

130 county, every county commissioner shall receive the same
 131 annual compensation by virtue of the new duties imposed
 132 upon county commissioners pursuant to the provisions of
 133 chapter one hundred seventy-two, acts of the Legislature,
 134 second regular session, one thousand nine hundred ninety,
 135 and chapter five, acts of the Legislature, third extraordi-
 136 nary session, one thousand nine hundred ninety.

137

OTHER ELECTED OFFICIALS

138		County	Circuit	Prosecuting		
139		Sheriff	Clerk	Clerk	Assessor	Attorney
140	Class I	\$29,040	\$37,560	\$37,560	\$29,040	\$59,500
141	Class II	\$29,040	\$33,600	\$33,600	\$29,040	\$59,500
142	Class III	\$29,040	\$33,600	\$33,600	\$29,040	\$36,000
143	Class IV	\$26,760	\$28,800	\$28,800	\$26,760	\$31,800
144	Class V	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200
145	Class VI	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200

146 Any county clerk, circuit clerk, joint clerk of the
 147 county commission and circuit court, if any, county asses-
 148 sor, sheriff and prosecuting attorney of a Class I county,
 149 any assessor of a Class II and Class III county, any sheriff
 150 of a Class II and Class III county and any prosecuting
 151 attorney of a Class II county shall devote full time to his
 152 or her public duties to the exclusion of any other employ-
 153 ment: *Provided*, That any public official, whose term of
 154 office begins when his or her county's classification im-
 155 poses no restriction on his or her outside activities, shall
 156 not be restricted on his or her outside activities during the
 157 remainder of the term for which he or she is elected. If
 158 the approval set out hereinabove is granted, the compensa-
 159 tion hereinabove provided shall be paid on and after the
 160 first day of January, one thousand nine hundred
 161 ninety-three, to each elected county official.

162 In the case of a county that has a joint clerk of the
 163 county commission and circuit court, the compensation of
 164 the joint clerk shall be fixed in an amount twenty-five
 165 percent higher than the compensation would be fixed for

166 the county clerk if it had separate offices of county clerk
167 and circuit clerk.

168 Prior to the primary election in the year one thousand
169 nine hundred ninety-two, in the case of a Class III, Class
170 IV or Class V county which has a part-time prosecuting
171 attorney, the county commission may find that such facts
172 and circumstances exist that require the prosecuting attor-
173 ney to devote full time to his or her public duties for the
174 four-year term, beginning the first day of January, one
175 thousand nine hundred ninety-three. If the county com-
176 mission makes such a finding, it may by proper order
177 adopted and entered, require the prosecuting attorney who
178 takes office on the first day of January, one thousand nine
179 hundred ninety-three, to devote full time to his or her
180 public duties and the county commission shall then com-
181 pensate said prosecuting attorney at the same rate of com-
182 pensation as that of a prosecuting attorney in a Class II
183 county.

184 For any county: (1) Which on and after the first day
185 of July, one thousand nine hundred ninety-four, is classi-
186 fied as a Class II county; and (2) which prior to such date
187 was classified as a Class III, Class IV or Class V county and
188 maintained a part-time prosecuting attorney, the county
189 commission may elect to maintain the prosecuting attor-
190 ney as a part-time prosecuting attorney: *Provided*, That
191 prior to the first day of January, one thousand nine hun-
192 dred ninety-six, the county commission shall make a find-
193 ing, by proper order and entered, whether to maintain a
194 full-time or part-time prosecuting attorney. The part-time
195 prosecuting attorney shall be compensated at the same rate
196 of compensation as that of a prosecuting attorney in the
197 class for the county prior to being classified as a Class II
198 county.

199 (c) Prior to the primary election in the year one thou-
200 sand nine hundred ninety-six, and for the fiscal year be-
201 ginning on the first day of July, one thousand nine hun-
202 dred ninety-six, or for any subsequent fiscal year if the
203 approval set out herein is not granted for any fiscal year,
204 and at least thirty days prior to the meeting to approve the
205 county budget, the commission shall provide notice to the

206 public of the date and time of the meeting and that the
 207 purpose of the meeting of the county commission is to
 208 decide upon their budget certification to the tax depart-
 209 ment. Upon submission by the county commission to the
 210 chief inspector division of the department of tax and reve-
 211 nue of a proposed annual budget which contains anticipat-
 212 ed receipts into the county's general revenue fund, less
 213 anticipated moneys from the unencumbered fund balance,
 214 equal to anticipated receipts into the county's general
 215 revenue fund, less anticipated moneys from the unencum-
 216 bered fund balance and any federal or state special grants,
 217 for the fiscal year beginning the first day of July, one
 218 thousand nine hundred ninety-six, plus such additional
 219 amount as is necessary for payment of the increases in the
 220 salaries set out herein and related employment taxes over
 221 that paid for the immediately preceding fiscal year, and
 222 upon approval thereof by the chief inspector, which ap-
 223 proval shall not be granted for any proposed annual bud-
 224 get containing anticipated receipts which are unreasonably
 225 greater or lesser than that of the immediately preceding
 226 fiscal year for the purpose of determining the compensa-
 227 tion to be paid to the elected county officials of each
 228 county office by class are hereby established and shall be
 229 used by each county commission in determining whether
 230 county revenues are sufficient to pay the compensation
 231 mandated herein for their county officials: *Provided*, That
 232 as to any county having a tribunal in lieu of a county
 233 commission, the county commissioners of the county may
 234 be paid less than the minimum compensation limits of the
 235 county commission for the particular class of the county:
 236 *Provided, however*, That should there be an insufficient
 237 projected increase in revenues to pay the compensation
 238 and related employment taxes mandated herein, then the
 239 compensation of that county's elected officials shall re-
 240 main at the level in effect at the time certification was
 241 sought.

242

COUNTY COMMISSIONERS

243	Class I	\$ 28,000
244	Class II	\$ 27,500
245	Class III	\$ 27,000

246	Class IV	\$ 26,500
247	Class V	\$ 26,000
248	Class VI	\$ 21,500
249	Class VII	\$ 21,000
250	Class VIII	\$ 19,000
251	Class IX	\$ 18,500
252	Class X	\$ 15,000

253 The compensation hereinabove provided shall be paid
 254 on and after the first day of January, one thousand nine
 255 hundred ninety-seven, to each county commissioner.
 256 Within each county, every county commissioner whose
 257 term of office commenced prior to or on or after the first
 258 day of January, one thousand nine hundred ninety- seven,
 259 shall receive the same annual compensation by virtue of
 260 legislative findings of extra duties as set forth in section
 261 one of this article.

262 For the purpose of determining the compensation to be
 263 paid to the elected county officials of each county, the
 264 following compensations for each county office by class
 265 are hereby established and shall be used by each county
 266 commission in determining the compensation of each of
 267 their county officials other than compensation of mem-
 268 bers of the county commission:

269 OTHER ELECTED OFFICIALS

270		County	Circuit	Prosecuting		
271		Sheriff	Clerk	Clerk	Assessor	Attorney
272	Class I	\$34,000	\$42,000	\$42,000	\$34,000	\$76,000
273	Class II	\$33,500	\$41,500	\$41,500	\$33,500	\$74,000
274	Class III	\$33,250	\$40,500	\$40,500	\$33,250	\$72,000
275	Class IV	\$33,000	\$40,250	\$40,250	\$33,000	\$70,000
276	Class V	\$32,750	\$40,000	\$40,000	\$32,750	\$68,000
277	Class VI	\$32,500	\$37,500	\$37,500	\$32,500	\$45,000

278	Class VII	\$32,250	\$37,000	\$37,000	\$32,250	\$43,000
279	Class VIII	\$32,000	\$36,500	\$36,500	\$32,000	\$41,000
280	Class IX	\$31,750	\$36,000	\$36,000	\$31,750	\$38,000
281	Class X	\$29,000	\$32,000	\$32,000	\$29,000	\$35,000

282 The compensation hereinabove provided shall be paid
 283 on and after the first day of January, one thousand nine
 284 hundred ninety-seven, to each elected county official. Any
 285 county clerk, circuit clerk, joint clerk of the county com-
 286 mission and circuit court, if any, county assessor or sheriff
 287 of a Class I through Class V county, inclusive, any assessor
 288 or any sheriff of a Class VI through Class IX county, in-
 289 clusive, shall devote full time to his or her public duties to
 290 the exclusion of any other employment: *Provided*, That
 291 any public official, whose term of office begins when his
 292 or her county's classification imposes no restriction on his
 293 or her outside activities, shall not be restricted on his or
 294 her outside activities during the remainder of the term for
 295 which he or she is elected.

296 In the case of a county that has a joint clerk of the
 297 county commission and circuit court, the compensation of
 298 the joint clerk shall be fixed in an amount twenty-five
 299 percent higher than the compensation would be fixed for
 300 the county clerk if it had separate offices of county clerk
 301 and circuit clerk.

302 Any prosecuting attorney of a Class I through Class V
 303 county, inclusive, shall devote full time to his or her public
 304 duties to the exclusion of any other employment: *Provid-*
 305 *ed*, That any county which under the prior provisions of
 306 this section was classified as a Class II county and elected
 307 to maintain a part-time prosecutor may continue to main-
 308 tain a part-time prosecutor, until such time as the county
 309 commission, on request of the part-time prosecutor, ap-
 310 proves and makes a finding, by proper order entered, that
 311 the prosecuting attorney shall devote full time to his or her
 312 public duties. The county commission shall then compen-
 313 sate said prosecuting attorney at the same rate of compen-
 314 sation as that of a prosecuting attorney in a Class V coun-
 315 ty: *Provided, however*, That any county which under the

316 prior provisions of this section was classified as a Class II
317 county and which did not elect to maintain a part-time
318 prosecutor shall maintain a full-time prosecuting attorney
319 and shall compensate said prosecuting attorney at the
320 same rate of compensation as that of a prosecuting attor-
321 ney in a Class V county: *Provided further*, That, until the
322 first day of January, two thousand one, when a vacancy
323 occurs in the office of prosecuting attorney prior to the
324 end of a term, the county commission of a Class IV or
325 Class V county may elect to allow the position to become
326 part time for the end of that term, and thereafter the posi-
327 tion of prosecuting attorney shall become full time.

§7-7-6b. Additional compensation of assessors according to county classification.

1 For the purpose of determining the additional com-
2 pensation to be paid to the county assessor of each county
3 for the additional duties provided by section six-a of this
4 article, the following compensations for each county asses-
5 sor by class, as provided in section three of this article, are
6 hereby established and shall be used by each county com-
7 mission in determining the compensation of each county
8 assessor; for assessors in Class I - V counties, inclusive,
9 fifteen thousand dollars; for assessors in Class VI and VII
10 counties, ten thousand dollars; for assessors in Class VIII
11 and IX counties, nine thousand dollars; for assessors in
12 Class X counties, six thousand five hundred dollars.

13 Notwithstanding this section or any other section of
14 the code to the contrary, in no event shall the additional
15 compensation paid to the county assessors for perfor-
16 mance of additional duties as provided in section six-a of
17 this article be less than the additional compensation such
18 county assessors received on the first day of January, one
19 thousand nine hundred seventy-six.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-17. Sheriff's commission for collection.

1 After the sheriff has collected eighty-five percent of
2 the combined total of all taxes assessed on real and per-
3 sonal property, he shall, in addition to the salary and com-
4 pensation now authorized by law, be allowed a commis-
5 sion as follows: Two and one-half percent on the remain-
6 der of the taxes actually collected up to ninety percent of
7 the combined total of all taxes assessed on real and per-
8 sonal property, three and one-half percent of the remain-
9 der collected above ninety percent and up to ninety-five
10 percent of the combined total of all taxes assessed on real
11 and personal property, and five percent on the remainder
12 of taxes collected above ninety-five percent of the com-
13 bined total of all taxes assessed on real and personal prop-
14 erty. In all cases the taxes collected on which any com-
15 mission shall be paid will be exclusive of interest and
16 charges thereon, if the collection be made before the de-
17 linquent list has been approved by the county commis-
18 sion: *Provided*, That the total amount of commissions
19 paid to any sheriff shall not exceed the sum of fifteen
20 thousand dollars in any one year. The commission so
21 allowed shall be determined by the county commission
22 and charged against the various funds for which the taxes
23 are collected.

CHAPTER 97

(S. B. 422—By Senators Bowman, Wiedebusch, Schoonover, Buckalew,
Miller, Dittmar, Bailey, Wagner and Blatnik)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article four-
teen, chapter seven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; to amend and
reenact section seventeen, article fourteen-b of said chapter;
to amend and reenact section twenty, article fourteen, chapter
eight of said code; and to amend and reenact section
twenty-five, article fifteen of said chapter, all relating to the
recovery of reasonable attorney fees by a deputy sheriff,
police officer, firefighter or correctional officer in a civil

service proceeding and a subsequent appeal therefrom where the applicable civil service commission or a court has determined that the deputy sheriff, police officer, firefighter or correctional officer has been unlawfully removed, discharged, suspended or reduced in rank or pay.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seventeen, article fourteen-b of said chapter be amended and reenacted; that section twenty, article fourteen, chapter eight of said code be amended and reenacted; and that section twenty-five, article fifteen of said chapter be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.

8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article

14. Civil Service for Deputy Sheriffs.

14B. Civil Service for Correctional Officers.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in force; mandatory retirement age.

1 (a) No deputy sheriff of any county subject to the
2 provisions of this article may be removed, discharged,
3 suspended or reduced in rank or pay except for just cause,
4 which may not be religious or political, except as provided
5 in section fifteen of this article; and no such deputy may
6 be removed, discharged, suspended or reduced in rank or
7 pay except as provided in this article and in no event until
8 the deputy has been furnished with a written statement of
9 the reasons for the action. In every case of such removal,
10 discharge, suspension or reduction, a copy of the state-
11 ment of reasons therefor and of the written answer thereto,
12 if the deputy desires to file such written answer, shall be

13 furnished to the civil service commission and entered
14 upon its records. If the deputy demands it, the civil ser-
15 vice commission shall grant a public hearing, which hear-
16 ing shall be held within a period of ten days from the
17 filing of the charges in writing or the written answer there-
18 to, whichever shall last occur. At the hearing, the burden
19 shall be upon the sheriff to justify his or her action, and in
20 the event the sheriff fails to justify the action before the
21 commission, then the deputy shall be reinstated with full
22 pay, forthwith and without any additional order, for the
23 entire period during which the deputy may have been
24 prevented from performing his or her usual employment,
25 and no charges may be officially recorded against the
26 deputy's record. The deputy, if reinstated or exonerated,
27 shall, if represented by legal counsel, be awarded reason-
28 able attorney fees to be determined by the commission
29 and paid by the sheriff from county funds. A written
30 record of all testimony taken at the hearing shall be kept
31 and preserved by the civil service commission, which re-
32 cord shall be sealed and not be open to public inspection
33 unless an appeal is taken from the action of the commis-
34 sion.

35 (b) In the event the civil service commission sustains
36 the action of the sheriff, the deputy has an immediate right
37 of appeal to the circuit court of the county. In the event
38 that the commission reinstates the deputy, the sheriff has
39 an immediate right of appeal to the circuit court. In the
40 event either the sheriff or the deputy objects to the amount
41 of the attorney fees awarded to the deputy, the objecting
42 party has an immediate right of appeal to the circuit court.
43 Any appeal must be taken within ninety days from the
44 date of entry by the civil service commission of its final
45 order. Upon an appeal being taken and docketed with the
46 clerk of the circuit court of the county, the circuit court
47 shall proceed to hear the appeal upon the original record
48 made before the commission and no additional proof may
49 be permitted to be introduced. The circuit court's decision
50 is final, but the deputy or sheriff, as the case may be,
51 against whom the decision of the circuit court is rendered
52 has the right to petition the supreme court of appeals for a
53 review of the circuit court's decision as in other civil cases.

54 The deputy or sheriff also has the right, where appropriate,
55 to seek, in lieu of an appeal, a writ of mandamus. The
56 deputy, if reinstated or exonerated by the circuit court or
57 by the supreme court of appeals, shall, if represented by
58 legal counsel, be awarded reasonable attorney fees as ap-
59 proved by the court and the fees shall be paid by the sher-
60 iff from county funds.

61 (c) The removing sheriff and the deputy shall at all
62 times, both before the civil service commission and upon
63 appeal, be given the right to employ counsel to represent
64 them.

65 (d) If for reasons of economy or other reasons it is
66 deemed necessary by any appointing sheriff to reduce the
67 number of his or her deputies, the sheriff shall follow the
68 procedure set forth in this subsection. The reduction in
69 the numbers of the deputy sheriffs of the county shall be
70 effected by suspending the last person or persons, includ-
71 ing probationers, who have been appointed as deputies.
72 The removal shall be accomplished by suspending the
73 number desired in the inverse order of their appointment:
74 *Provided*, That in the event the number of deputies is
75 increased in numbers to the strength existing prior to the
76 reduction of deputies, the deputies suspended under the
77 terms of this subsection shall be reinstated in the inverse
78 order of their suspension before any new appointments of
79 deputy sheriffs in the county are made.

80 (e) Notwithstanding any other provision of this arti-
81 cle to the contrary, no deputy sheriff in any county sub-
82 ject to the provisions of this article may serve as a deputy
83 sheriff in any county subject to the provisions of this arti-
84 cle after attaining the age of sixty-five years.

**ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFI-
CERS.**

**§7-14B-17. Removal, discharge, suspension or reduction in
rank or pay; appeal; reduction in force; man-
datory retirement age.**

1 (a) No correctional officer of any county subject to
2 the provisions of this article, may be removed, discharged,

3 suspended or reduced in rank or pay except for just cause,
4 which may not be religious or political, except as provided
5 in section fifteen of this article; and no such correctional
6 officer may be removed, discharged, suspended or re-
7 duced in rank or pay except as provided in this article and
8 in no event until the correctional officer has been fur-
9 nished with a written statement of the reasons for the ac-
10 tion. In every case of such removal, discharge, suspension
11 or reduction, a copy of the statement of reasons therefor
12 and of the written answer thereto, if the correctional offi-
13 cer desires to file such written answer, shall be furnished to
14 the civil service commission and entered upon its records.
15 If the correctional officer demands it, the civil service
16 commission shall grant him a public hearing, which hear-
17 ing shall be held within a period of ten days from the
18 filing of the charges in writing or the written answer there-
19 to, whichever shall last occur. At the hearing, the burden
20 shall be upon the sheriff to justify his or her action, and in
21 the event the sheriff fails to justify the action before the
22 commission, then the correctional officer shall be reinstat-
23 ed with full pay, forthwith and without any additional
24 order, for the entire period during which the officer may
25 have been prevented from performing his or her usual
26 employment, and no charges may be officially recorded
27 against the officer's record. The correctional officer, if
28 reinstated or exonerated, shall, if represented by legal
29 counsel, be awarded reasonable attorney fees to be deter-
30 mined by the commission and paid by the sheriff from
31 county funds. A written record of all testimony taken at
32 the hearing shall be kept and preserved by the civil service
33 commission, which record shall be sealed and not be open
34 to public inspection, unless an appeal is taken from the
35 action of the commission.

36 (b) In the event the civil service commission sustains
37 the action of the sheriff, the correctional officer has an
38 immediate right of appeal to the circuit court of the coun-
39 ty. In the event that the commission reinstates the correc-
40 tional officer, the sheriff has an immediate right of appeal
41 to the circuit court. In the event either the sheriff or the
42 correctional officer objects to the amount of the attorneys
43 fees awarded to the correctional officer, the objecting

44 party has an immediate right of appeal to the circuit court.
45 Any appeal must be taken within ninety days from the
46 date of entry by the civil service commission of its final
47 order. Upon an appeal being taken and docketed with the
48 clerk of the circuit court of the county, the circuit court
49 shall proceed to hear the appeal upon the original record
50 made before the commission and no additional proof may
51 be permitted to be introduced. The circuit court's decision
52 is final, but the correctional officer or sheriff, as the case
53 may be, against whom the decision of the circuit court is
54 rendered has the right to petition the supreme court of
55 appeals for a review of the circuit court's decision as in
56 other civil cases. The correctional officer or sheriff also
57 has the right, where appropriate, to seek in lieu of an ap-
58 peal, a writ of mandamus. The correctional officer, if rein-
59 stated or exonerated by the circuit court or the supreme
60 court of appeals, shall, if represented by legal counsel, be
61 awarded reasonable attorney fees as approved by the court
62 and the fees shall be paid by the sheriff from county
63 funds.

64 (c) The removing sheriff and the correctional officer
65 shall at all times, both before the civil service commission
66 and upon appeal, be given the right to employ counsel to
67 represent them.

68 (d) If for reasons of economy or other reasons it is
69 deemed necessary by any appointing sheriff to reduce the
70 number of his or her correctional officers, the sheriff shall
71 follow the procedure set forth in this subsection. The
72 reduction in the numbers of the correctional officers of
73 the county shall be effected by suspending the last person
74 or persons, including probationers, who have been ap-
75 pointed as correctional officers: *Provided*, That in the
76 event the number of correctional officers is increased in
77 numbers to the strength existing prior to the reduction of
78 correctional officers, the correctional officers suspended
79 under the terms of this subsection shall be reinstated in the
80 inverse order of their suspension before any new appoint-
81 ments of correctional officers in the county are made.

82 (e) Notwithstanding any other provision of this article
83 to the contrary, no correctional officer in any county

84 subject to the provisions of this article may serve as a cor-
85 rectional officer in any county subject to the provisions of
86 this article after attaining the age of sixty-five years.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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. Fire Fighting; 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.

§8-14-20. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members.

1 (a) No member of any paid police department subject
2 to the civil service provisions of this article may be re-
3 moved, discharged, suspended or reduced in rank or pay
4 except for just cause, which may not be religious or politi-
5 cal, except as provided in section nineteen of this article;
6 and no such member may be removed, discharged, sus-
7 pended or reduced in rank or pay except as provided by
8 the civil service provisions of this article, and in no event
9 until the member has been furnished with a written state-
10 ment of the reasons for the action. In every case of such
11 removal, discharge, suspension or reduction, a copy of the
12 statement of reasons therefor and of the written answer
13 thereto, if the member desires to file such written answer,
14 shall be furnished to the policemen's civil service commis-
15 sion and entered upon its records. If the member de-
16 mands it, the commission shall grant a public hearing,
17 which hearing shall be held within a period of ten days
18 from the filing of the charges in writing or the written

19 answer thereto, whichever shall last occur. At the hearing,
20 the burden shall be upon the removing, discharging, sus-
21 pending or reducing officer, hereinafter in this section
22 referred to as "removing officer", to show just cause for his
23 or her action, and in the event the removing officer fails to
24 show just cause for the action before the commission, then
25 the member shall be reinstated with full pay, forthwith and
26 without any additional order, for the entire period during
27 which the member may have been prevented from per-
28 forming his or her usual employment, and no charges
29 may be officially recorded against the member's record.
30 The member, if reinstated or exonerated, shall, if repre-
31 sented by legal counsel, be awarded reasonable attorney
32 fees to be determined by the commission and paid by the
33 governing body. A written record of all testimony taken
34 at the hearing shall be kept and preserved by the commis-
35 sion, which record shall be sealed and not be open to pub-
36 lic inspection unless an appeal is taken from the action of
37 the commission.

38 (b) In the event the commission sustains the action of
39 the removing officer, the member has an immediate right
40 of appeal to the circuit court of the county wherein the
41 city or the major portion of the territory thereof is located.
42 In the event that the commission reinstates the member,
43 the removing officer has an immediate right of appeal to
44 the circuit court. In the event either the removing officer
45 or the member objects to the amount of the attorney fees
46 awarded to the member, the objecting party has an imme-
47 diate right of appeal to the circuit court. Any appeal must
48 be taken within ninety days from the date of entry by the
49 commission of its final order. Upon an appeal being
50 taken and docketed with the clerk of the circuit court of
51 the county, the circuit court shall proceed to hear the ap-
52 peal upon the original record made before the commis-
53 sion and no additional proof may be permitted to be in-
54 troduced. The circuit court's decision is final, but the
55 member or removing officer, as the case may be, against
56 whom the decision of the circuit court is rendered has the
57 right to petition the supreme court of appeals for a review
58 of the circuit court's decision as in other civil cases. The
59 member or removing officer also has the right, where

60 appropriate, to seek, in lieu of an appeal, a writ of manda-
61 mus. The member, if reinstated or exonerated by the
62 circuit court or by the supreme court of appeals, shall, if
63 represented by legal counsel, be awarded reasonable attor-
64 ney fees as approved by the court and the fees shall be
65 paid by the governing body.

66 (c) The removing officer and the member shall at all
67 times, both before the commission and upon appeal, be
68 given the right to employ counsel to represent them.

69 (d) If for reasons of economy or other reasons it is
70 deemed necessary by any Class I or Class II city to reduce
71 the number of paid members of its paid police depart-
72 ment, the city shall follow the procedure set forth in this
73 subsection. The reduction in members of the paid police
74 department of the city shall be effected by suspending the
75 last person or persons, including probationers, who have
76 been appointed to the paid police department. The re-
77 moval shall be accomplished by suspending the number
78 desired in the inverse order of their appointment: *Provid-*
79 *ed,* That in the event the said paid police department is
80 increased in numbers to the strength existing prior to the
81 reduction of members, the members suspended under the
82 terms of this subsection shall be reinstated in the inverse
83 order of their suspension before any new appointments to
84 said paid police department are made.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DE-
PARTMENTS; CIVIL SERVICE FOR PAID
FIRE DEPARTMENTS.**

**§8-15-25. Removal, discharge, suspension or reduction in
rank or pay; hearing; attorney fees; appeal;
reduction in number of members.**

1 (a) No member of any paid fire department subject to
2 the civil service provisions of this article may be removed,
3 discharged, suspended or reduced in rank or pay except
4 for just cause, which may not be religious or political,
5 except as provided in section twenty-four of this article;
6 and no such member may be removed, discharged, sus-
7 pended or reduced in rank or pay except as provided by
8 the civil service provisions of this article, and in no event

9 until the member has been furnished with a written state-
10 ment of the reasons for the action. In every case of such
11 removal, discharge, suspension or reduction, a copy of the
12 statement of reasons therefor and of the written answer
13 thereto, if the member desires to file such written answer,
14 shall be furnished to the firemen's civil service commission
15 and entered upon its records. If the member demands it,
16 the commission shall grant a public hearing, which hear-
17 ing shall be held within a period of ten days from the
18 filing of the charges in writing or the written answer there-
19 to, whichever shall last occur. At the hearing, the burden
20 shall be upon the removing, discharging, suspending or
21 reducing officer, hereinafter in this section referred to as
22 "removing officer", to show just cause for his or her action,
23 and in the event the removing officer fails to show just
24 cause for the action before the commission, then the mem-
25 ber shall be reinstated with full pay, forthwith and without
26 any additional order, for the entire period during which
27 the member may have been prevented from performing
28 his or her usual employment, and no charges may be
29 officially recorded against the member's record. The
30 member, if reinstated or exonerated, shall, if represented
31 by legal counsel, be awarded reasonable attorney fees to
32 be determined by the commission and paid by the govern-
33 ing body. A written record of all testimony taken at the
34 hearing shall be kept and preserved by this commission,
35 which record shall be sealed and not be open to public
36 inspection unless an appeal is taken from the action of the
37 commission.

38 (b) In the event the commission sustains the action of
39 the removing officer, the member has an immediate right
40 of appeal to the circuit court of the county wherein the
41 municipality or the major portion of the territory thereof
42 is located. In the event that the commission reinstates the
43 member, the removing officer has an immediate right of
44 appeal to the circuit court. In the event either the remov-
45 ing officer or the member objects to the amount of the
46 attorney fees awarded to the member, the objecting party
47 has an immediate right of appeal to the circuit court. Any
48 appeal must be taken within ninety days from the date of

49 entry by the commission of its final order. Upon an ap-
50 peal being taken and docketed with the clerk of the circuit
51 court of the county, the circuit court shall proceed to hear
52 the appeal upon the original record made before the com-
53 mission and no additional proof may be permitted to be
54 introduced. The circuit court's decision is final, but the
55 member or removing officer, as the case may be, against
56 whom the decision of the circuit court is rendered has the
57 right to petition the supreme court of appeals for a review
58 of the circuit court's decision as in other civil cases. The
59 member or removing officer also has the right, where
60 appropriate, to seek, in lieu of an appeal, a writ of manda-
61 mus. The member, if reinstated or exonerated by the cir-
62 cuit court or by the supreme court of appeals, shall, if
63 represented by legal counsel, be awarded reasonable attor-
64 ney fees as approved by the court and the fees shall be
65 paid by the governing body.

66 (c) The removing officer and the member shall at all
67 times, both before the commission and upon appeal, be
68 given the right to employ counsel to represent them.

69 (d) If for reasons of economy or other reasons it is
70 deemed necessary by any such municipality to reduce the
71 number of paid members of its paid fire department, the
72 municipality shall follow the procedure set forth in this
73 subsection. The reduction in members of the paid fire
74 department of the municipality shall be effected by sus-
75 pending the last person or persons, including probationers,
76 who have been appointed to the paid fire department. The
77 removal shall be accomplished by suspending the number
78 desired in the inverse order of their appointment: *Provid-*
79 *ed,* That in the event the said paid fire department is in-
80 creased in numbers to the strength existing prior to the
81 reduction of members, the members suspended under the
82 terms of this subsection shall be reinstated in the inverse
83 order of their suspension before any new appointments to
84 said paid fire department are made.

CHAPTER 98

(H. B. 4527—By Delegates Farris, Seacrist, Cann, Douglas,
Fantasia, Faircloth and Greear)

[Passed March 8, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to repeal article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-c, all relating generally to providing for the organization, operation, and supervision of cooperative, nonprofit thrift and credit associations to be known as credit unions; and to define their powers.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-c, all to read as follows:

CHAPTER 31C. CREDIT UNIONS.

Article

1. **Supervision and Regulation.**
2. **Formation of Credit Union.**
3. **Powers of Credit Union.**
4. **Membership.**
5. **Direction of Credit Union Affairs.**
6. **Accounts.**
7. **Loans.**
8. **Other Member Services.**
9. **Investments and Reserve Allocations.**
10. **Change in Corporate Status.**
11. **Corporate Credit Union.**
12. **Penalties.**

ARTICLE 1. SUPERVISION AND REGULATION.

- §31C-1-1. Definitions.
- §31C-1-2. Authority of commissioner and board of banking and financial institutions.

§31C-1-3. Powers of commissioner.

§31C-1-4. Suspension; involuntary liquidation.

§31C-1-5. Examinations.

§31C-1-6. Records.

§31C-1-7. Reports.

§31C-1-8. Assessments.

§31C-1-1. Definitions.

1 In construing this chapter, the following definitions
2 shall apply unless such application would produce a result
3 clearly inconsistent with the context of the statutory provi-
4 sion.

5 (a) "Board of banking and financial institutions"
6 means the board created pursuant to section one, article
7 three, chapter thirty-one-a of this code and is referred to
8 herein as "board."

9 (b) "Commissioner" means the West Virginia com-
10 missioner of banking.

11 (c) "Corporate credit union" means a credit union
12 whose field of membership consists primarily of other
13 credit unions.

14 (d) "Credit union" means a cooperative, nonprofit
15 corporation, incorporated under this chapter, for the pur-
16 poses of encouraging thrift among its members, creating a
17 source of credit at fair and reasonable rates of interest, and
18 providing an opportunity for its members to use and con-
19 trol their own money on a democratic basis in order to
20 improve their economic and social condition.

21 (e) "Deposit account" means a balance held by a
22 credit union and established by a member, another credit
23 union or a governmental unit in accordance with standards
24 specified by the credit union including balances designat-
25 ed as deposits, deposit certificates, checking accounts or
26 other names. Ownership of a deposit account does not
27 confer membership or voting rights and does not repre-
28 sent an interest in the equity capital of the credit union
29 upon dissolution or conversion to another type of institu-
30 tion. A deposit account is a debt owed by the credit union
31 to the account holder.

32 (f) "Equity capital" means reserves, loan loss and
33 investment loss allowance accounts, and undivided earn-
34 ings.

35 (g) "Fixed asset" means a structure, land, computer
36 hardware and software, furniture, office equipment and
37 heating and cooling equipment that is affixed to premises.

38 (h) "Governmental unit" means any board, agency,
39 department, authority, instrumentality or other unit or
40 organizations of the federal, state, county, municipal or
41 other level of government.

42 (i) "Immediate family" means one's wife or husband,
43 and children, brothers, sisters or parents of the member or
44 their spouse. The term "children" also includes stepchil-
45 dren, foster children and adopted children.

46 (j) "Insolvent" means the condition that results when
47 the institution is unable to pay its debts to its depositors,
48 members and other creditors in the ordinary and usual
49 course of business or when it is in a state of balance sheet
50 insolvency such that its assets are less than its liabilities,
51 exclusive of equity capital. The term "about to be insol-
52 vent" means the institution would be unable to meet the
53 demands of its depositors or members, or to make ade-
54 quate provision for their timely payment if it were imme-
55 diately closed for the purpose of liquidation.

56 (k) "Insuring organization" means an organization
57 that provides aid and financial assistance to credit unions
58 that are in the process of liquidation or are incurring fi-
59 nancial difficulty in order that the share and deposit ac-
60 counts in the credit unions shall be protected or guaran-
61 teed against loss either without limit or up to a specified
62 level for each account.

63 (l) "Membership share" means a balance held by a
64 corporate credit union and established by a member in
65 accordance with standards specified by the corporate cred-
66 it union. Ownership of a membership share represents an
67 interest in the capital of the corporate credit union upon
68 dissolution or conversion to another type of institution.

69 (m) "Organization" means any corporation, associa-
70 tion, partnership, society, firm, syndicate, trust or other
71 legal entity.

72 (n) "Person" means any natural person, organization
73 or governmental unit.

74 (o) "Reserves" means allocations of retained income
75 and includes regular and special reserves, except for any
76 allowances for loan losses and investment losses.

77 (p) "Risk assets" means all assets other than cash on
78 hand, deposits and/or shares in federally or state-insured
79 banks, savings and loan associations, and credit unions that
80 have a remaining maturity of five years or less, or which
81 otherwise qualify as risk assets as set forth in 12 CFR
82 700.1(i) and shall include membership shares in corporate
83 credit unions.

84 (q) "Share account" or "shares" means a balance held
85 by a credit union and established by a member in accor-
86 dance with standards specified by the credit union includ-
87 ing balances designated as shares, share certificates, share
88 draft accounts or other names. However, it does not in-
89 clude membership shares issued by a corporate credit
90 union. Ownership of a share account confers membership
91 and voting rights and represents an interest in the equity
92 capital of the credit union upon dissolution or conversion
93 to another type of institution.

§31C-1-2. Authority of commissioner and board of banking and financial institutions.

1 The commissioner of the department of banking
2 shall be responsible for the supervision and regulation of
3 credit unions incorporated under this chapter or previous-
4 ly incorporated under this code. The commissioner is
5 specifically charged with administering the supervisory
6 and regulatory responsibilities set forth in this chapter, in
7 conjunction with the board of banking and financial insti-
8 tutions as set forth in section two, article three, chapter
9 thirty-one-a of this code.

§31C-1-3. Powers of commissioner.

1 (a) The commissioner may prescribe rules to imple-
2 ment any provision of this chapter and to define any term
3 not defined in the chapter. Such rules shall serve to foster
4 and maintain an effective level of credit union services and
5 the security of member accounts.

6 (b) The commissioner may restrict the withdrawal of
7 share or deposit accounts or both from any credit union
8 having determined circumstances make such restriction
9 necessary for the proper protection of shareholders or
10 depositors.

11 (c) The commissioner may issue cease and desist
12 orders pursuant to section four, article two, chapter
13 thirty-one-a of this code if a credit union is engaged or
14 has engaged, or when the commissioner has reasonable
15 cause to believe the credit union is about to engage, in an
16 unsafe or unsound practice, or is violating or has violated
17 or the commissioner has reasonable cause to believe is
18 about to violate a material provision of any law, rule or
19 any condition imposed in writing by the commissioner or
20 any written agreement made with the commissioner.

21 (d) The commissioner may suspend from office and
22 prohibit from further participation in any manner in the
23 conduct of the affairs of a credit union any director, offi-
24 cer or committee member who has committed any viola-
25 tion of a law, rule or of a cease and desist order or who has
26 engaged or participated in any unsafe or unsound practice
27 in connection with the credit union or who has committed
28 or engaged in any act, omission or practice which consti-
29 tutes a breach of that person's fiduciary duty as such di-
30 rector, officer or committee member, when the commis-
31 sioner has determined that such action or actions have
32 resulted or will result in substantial financial loss or other
33 damage that seriously prejudices the interests of the mem-
34 bers.

35 (e) The commissioner shall have the power to sub-
36 poena witnesses, compel their attendance, require the pro-
37 duction of evidence, administer oaths and examine any
38 person under oath in connection with any subject relating
39 to a duty imposed upon or a power vested in the commis-
40 sioner.

41 (f) The commissioner may enter into cooperative,
42 coordinating or information-sharing agreements with any
43 other state or federal credit union supervisory agency or
44 any organization affiliated with or representing one or
45 more credit union supervisory agencies.

46 (g) The commissioner shall also in connection with
47 the supervision of credit unions have all powers set forth
48 in article two, chapter thirty-one-a of this code relating to
49 the regulation of credit unions as financial institutions and
50 to any subsidiary or affiliate organization of such credit
51 union.

§31C-1-4. Suspension; involuntary liquidation.

1 (a) If it appears that any credit union is bankrupt,
2 insolvent, about to be insolvent or that it has willfully vio-
3 lated this chapter, or is operating in an unsafe or unsound
4 manner, the commissioner may, without prior hearing,
5 issue an order temporarily suspending the credit union's
6 operations. The credit union's board of directors shall be
7 given notice by registered mail of such suspension, which
8 notice shall include a list of the reasons for such suspen-
9 sion, and a list of the specific violations of this chapter, if
10 any. The commissioner shall also notify the insuring
11 organization and the board of banking and financial insti-
12 tutions of any suspension.

13 (b) Upon receipt of such suspension notice, the credit
14 union shall cease all operations, except those authorized
15 by the commissioner. The credit union's board of direc-
16 tors shall then file with the commissioner a reply to the
17 suspension notice within five business days of its receipt,
18 and must therein request a hearing to be held within sixty
19 days to present a plan of corrective actions proposed if
20 they desire to continue operations. Alternatively, the cred-
21 it union's board of directors may request that the credit
22 union be declared insolvent and a liquidating agent be
23 appointed.

24 (c) Upon receipt from the suspended credit union of
25 evidence that the conditions causing the order of suspen-
26 sion have been corrected, the commissioner may revoke
27 the suspension notice, permit the credit union to resume

28 normal operations, and notify the insuring organization
29 and the board of banking and financial institutions of
30 such action.

31 (d) If the commissioner, after issuing notice of sus-
32 pension and providing an opportunity for a hearing, re-
33 jects the credit union's plan to continue operations, or if
34 the commissioner after accepting or directing a plan for
35 continued operations finds that the credit union has failed
36 to comply with the plan's substantive corrective provisions,
37 then the commissioner may issue a notice of involuntary
38 liquidation and appoint a liquidating agent. The credit
39 union shall be given at least sixty days in which to take
40 corrective action upon acceptance or issuance of any cor-
41 rective plan by the commissioner. The credit union may
42 request the appropriate court to stay execution of an in-
43 voluntary liquidation sought under this subsection. How-
44 ever, nothing in this section prevents the commissioner
45 from appointing a conservator pursuant to section three,
46 article seven, chapter thirty-one-a of this code, including a
47 temporary appointment of a conservator pending the
48 correction of the conditions causing the suspension, or
49 appointing a receiver and seeking to liquidate the credit
50 union pursuant to section four, article seven, chapter
51 thirty-one-a of this code when necessary in order to pro-
52 tect the interest of the credit union's members and deposi-
53 tors.

54 (e) If, within the suspension period, the credit union
55 fails to answer the suspension notice or request a hearing,
56 the commissioner may then revoke the credit union's char-
57 ter, appoint a liquidating agent and liquidate the credit
58 union.

59 (f) In the event of liquidation, the assets of the credit
60 union or the proceeds from any disposition of the assets
61 shall be applied and distributed in the following sequence:

- 62 (1) Secured creditors up to the value of their collater-
63 al;
- 64 (2) Costs and expenses of liquidation;
- 65 (3) Wages due the employees of the credit union;

66 (4) Costs and expenses incurred by creditors in suc-
67 cessfully opposing the release of the credit union from
68 certain debts as allowed by the commissioner;

69 (5) Taxes owed to the United States or any other
70 governmental unit;

71 (6) Debts owed to the United States;

72 (7) General creditors, secured creditors to the extent
73 their claims exceed the value of their collateral and owners
74 of deposit accounts to the extent such accounts are unin-
75 sured;

76 (8) Members, to the extent of uninsured share ac-
77 counts and the organization that insured the accounts of
78 the credit union; and

79 (9) Members of a corporate credit union, to the ex-
80 tent of membership shares.

81 As soon as the appointed liquidating agent deter-
82 mines that all assets from which there is a reasonable ex-
83 pectancy of realization have been liquidated and distribut-
84 ed as set forth in this section, a certificate of dissolution
85 shall be executed on a form prescribed by the commis-
86 sioner and filed with the secretary of state, which shall
87 after filing and indexing same, be forwarded to the com-
88 missioner, whereupon the credit union shall be dissolved.
89 The liquidating agent shall return all pertinent books and
90 records of the liquidating credit union to the commission-
91 er.

§31C-1.5. Examinations.

1 (a) The commissioner shall annually examine or
2 cause to be examined each credit union. A credit union
3 and any of its officers and agents shall be required to give
4 the commissioner or the commissioner's representatives
5 full access to all books, papers, securities, records and
6 other sources of information under their control.

7 (b) A report of such examination shall be forwarded
8 to the credit union's board of directors within thirty days
9 after completion. Said report shall contain comments
10 relative to the management of the affairs of the credit

11 union and the general condition of its assets. Within thirty
12 days after the receipt of such report, the directors and
13 committee members shall meet to consider matters con-
14 tained in the report. Every official communication from
15 the commissioner to any such institution, or to any officer
16 thereof, relating to an examination or an investigation of
17 the affairs of such institution conducted by the commis-
18 sioner or containing suggestions or recommendations as
19 to the manner of conducting the business of the institu-
20 tion, shall be read to the board of directors at the next
21 meeting after the receipt thereof, and the president, or
22 other executive officer, of the institution shall within four-
23 teen days of such meeting notify the commissioner in
24 writing of the presentation and reading of the communica-
25 tion and of any action taken thereon by the institution.

26 (c) In lieu of making an examination of a credit
27 union, the commissioner may accept an examination or
28 audit report of the condition of the credit union made by
29 the national credit union administration.

§31C-1-6. Records.

1 (a) A credit union shall maintain all books, records,
2 accounting systems and procedures in accordance with
3 such rules as the commissioner from time to time pre-
4 scribes. In prescribing such rules, the commissioner shall
5 consider the relative size of a credit union and its reason-
6 able capability of compliance. Unless otherwise required
7 or permitted by a specific rule, credit unions shall follow
8 the record retention requirements set forth in section
9 thirty-five, article four, chapter thirty-one-a of this code.

10 (b) A credit union is not liable for destroying re-
11 cords after the expiration of the record retention time
12 prescribed by subsection (a) of this section, except for any
13 records involved in an official investigation or examina-
14 tion about which the credit union has received notice.

15 (c) Reproduction of any credit union records shall
16 be admissible as evidence of transactions with the credit
17 union as provided in section seven-b, article one, chapter
18 fifty-seven; and section thirty-five, article four, chapter
19 thirty-one-a of this code.

§31C-1-7. Reports.

1 (a) Credit unions shall report to the commissioner
2 semi-annually during January and July of each calendar
3 year on a date set by the commissioner for the business
4 periods ending the thirtieth day of June and the thirty-first
5 day of December respectively on forms supplied by the
6 commissioner for that purpose. Additional reports may
7 also be required.

8 (b) A charge of one hundred dollars shall be levied
9 for each day a credit union fails to provide a required
10 report, unless it is excused for cause by the commissioner
11 or courts.

12 (c) The fiscal year of each credit union incorporated
13 under this chapter shall end on the last day of December.

14 (d) In addition to other reports that may be required
15 under this chapter, every credit union with a main office
16 or branch located in this state shall file with the commis-
17 sioner an annual report specifying for its main office and
18 each branch (excluding automated teller machines) in this
19 state:

20 (i) The location of each such office, including coun-
21 ty and, where applicable, municipality;

22 (ii) The amount of deposits and shares held by each
23 such office as of the end of the preceding calendar year;
24 and

25 (iii) The amount of loans outstanding by each such
26 office at the end of the preceding calendar year.

27 The foregoing report shall be based upon the credit
28 union's allocation of its deposit and share base and loan
29 portfolio among its offices. The report shall be filed with
30 the commissioner on or before the fifteenth day of Febru-
31 ary of each year on forms prescribed by the commission-
32 er.

§31C-1-8. Assessments.

1 The commissioner of banking shall charge and
2 collect from each credit union and pay into a special reve-
3 nue account in the state treasury for the department of

4 banking an annual assessment payable on the first day of
5 July computed upon the total assets of the credit union
6 shown on the report of condition of the credit union as of
7 the last business day in December of the previous year as
8 is set out in section eight, article two, chapter thirty-one-a
9 of this code.

ARTICLE 2. FORMATION OF CREDIT UNION.

§31C-2-1. Organization procedure.

§31C-2-2. Certification of charter; and certificate of authority.

§31C-2-3. Articles and bylaws.

§31C-2-4. Use of name exclusive.

§31C-2-5. Branches and other service facilities.

§31C-2-6. Out-of-state credit unions.

§31C-2-7. Conducting business outside this state.

§31C-2-8. Tax exemption.

§31C-2-9. Credit unions heretofore organized need not obtain new charter;
actions validated.

§31C-2-1. Organization procedure.

1 (a) Any eight or more residents of this state, of legal
2 age, who share the common bond referred to in section
3 one, article four of this chapter, may organize a credit
4 union and become charter members thereof by comply-
5 ing with this section.

6 (b) The incorporators shall prepare, adopt and exe-
7 cute in duplicate articles of incorporation and agree to the
8 terms thereof. The articles shall state:

9 (1) The credit union's name and the address of the
10 proposed credit union's principal place of business;

11 (2) That the existence of the credit union shall be
12 perpetual;

13 (3) The names and addresses of the incorporators to
14 the articles of incorporation, and the number of shares
15 subscribed to by each, which for each incorporator shall
16 be not less than one share; and

17 (4) The par value of each share to be issued.

18 (c) The incorporators shall prepare, adopt and exe-
19 cute in duplicate bylaws consistent with this chapter for the

20 general government of the credit union. The bylaws shall
21 state:

22 (1) The conditions and qualifications of member-
23 ship;

24 (2) The conditions upon which shares may be issued,
25 transferred and withdrawn;

26 (3) The number of directors, their powers and duties;
27 and the compensation and duties of all officers;

28 (4) The date of the annual meeting and requirements
29 as to notice and manner of conducting such meeting;

30 (5) The term of service for directors, which terms
31 shall be staggered so that an approximately equal number
32 expire each year;

33 (6) The number and term of service for supervisory
34 committee members, together with their powers and duties;

35 (7) The number and the term of service for credit
36 committee members, unless the bylaws provide for the
37 board of directors to act as the credit committee, and their
38 respective powers and duties;

39 (8) The purposes and conditions upon which loans
40 may be made;

41 (9) The manner of a member's appeal for a loan
42 application disapproved by a loan officer, if the bylaws
43 provide for the appointment of loan officers; and

44 (10) The par value of shares, and where applicable in
45 corporate credit unions, any membership shares.

46 (d) The incorporators shall select at least five per-
47 sons who are eligible for membership and who agree to
48 become members and serve on the board of directors, and
49 at least three other persons who are eligible for member-
50 ship and who agree to become members and serve on the
51 supervisory committee. The persons selected to serve on
52 the board of directors and supervisory committee shall
53 execute an agreement to serve in these capacities until the
54 first annual meeting or until the election of their respective
55 successors, whichever is later.

56 (e) The incorporators shall provide to the commis-
57 sioner an affidavit of the expenses incurred or anticipated
58 in the organization of the credit union.

59 (f) In their application to obtain a certificate of char-
60 ter the incorporators shall forward to the commissioner the
61 duplicate articles of incorporation and bylaws and the
62 agreements to serve. The submission of these documents
63 shall be accompanied by an investigation fee of one hun-
64 dred dollars payable to the commissioner.

§31C-2-2. Certification of charter; and certificate of authority.

1 (a) The commissioner shall review the incorporation
2 agreement and bylaws together with other information
3 submitted as the commissioner may prescribe and com-
4 plete the examination and investigation on an application
5 to charter a credit union within ninety days, unless a writ-
6 ten request for additional information or disclosures are
7 made by the commissioner, in which event, the period of
8 ninety days shall be extended an additional thirty days.
9 Upon public hearing and obtaining written approval by
10 order of the commissioner, the agreement and bylaws,
11 both executed in duplicate, together with a certified copy
12 of the order and applicable corporation chartering fees
13 shall be forwarded to the secretary of state for processing
14 as in the case of any other corporate charter application.
15 A certificate of charter shall be approved by the commis-
16 sioner if the articles and bylaws are in conformity with this
17 chapter and the commissioner is satisfied that:

18 (1) The characteristics of the common bond set
19 forth in the proposed bylaws are favorable to the econom-
20 ic viability of the proposed credit union;

21 (2) The proposed capital structure is adequate;

22 (3) Provision has been made for suitable quarters
23 from which to conduct the business of a credit union; and

24 (4) The reputation, character and abilities of the
25 initial board of directors and supervisory committee pro-
26 vide assurance that the credit union's affairs will be prop-
27 erly administered.

28 (b) The secretary of state shall upon receipt of any
29 applicable fees, file and record the incorporation charter,

30 and return a copy of the bylaws and one of the duplicate
31 originals of the articles of incorporation to the incorpora-
32 tors or their representatives. The original articles and by-
33 laws shall be preserved in the permanent files of the credit
34 union.

35 (c) Any order to grant or deny a certificate of char-
36 ter shall be accompanied by findings of fact and conclu-
37 sions of law upon which the decision was based. If a cer-
38 tificate of charter is denied by the commissioner, he or she
39 shall notify the incorporators and provide a copy of the
40 order, which shall set forth reasons for the denial. The
41 commissioner's decision may be appealed to the board of
42 banking and financial institutions within thirty days, and if
43 no appeal is made of an order to deny the application, the
44 agreement of incorporation, the corporation chartering
45 fees, and any other papers filed therewith shall be prompt-
46 ly returned to the attorney, agent or other responsible
47 person representing the incorporators in the application.

48 (d) Upon receipt of a certificate of charter, the in-
49 corporators of the credit union shall promptly apply to the
50 commissioner for a certificate of authority to engage in
51 business and comply with the provisions of section five,
52 article two, chapter thirty-one-a of this code, in advance to
53 the issuance of the credit union's certificate of authority.
54 The incorporators shall likewise comply with other provi-
55 sions of this chapter relating to completion of its corporate
56 organization, and the corporation's readiness to com-
57 mence business as a credit union.

58 (e) Upon the credit union's application, and the
59 examination, approval and receipt of a certificate of au-
60 thority from the commissioner, a credit union may com-
61 mence to engage in business. The procedure and criteria
62 for the certificate of authority licensure shall be those set
63 forth in section five, article two, chapter thirty-one-a of
64 this code for nonbank financial institutions.

65 (f) The certificate of authority shall be preserved
66 and displayed in the place of business of the credit union.

67 (g) If a certificate of authority is denied by the
68 commissioner, he or she shall notify the applicant and set
69 forth reasons for the denial. The credit union may appeal

70 the commissioner's decision to the board of banking and
71 financial institutions within thirty days.

§31C-2-3. Articles and bylaws.

1 (a) In order to simplify the organization of credit
2 unions, the commissioner may cause to be prepared model
3 articles of incorporation and bylaws, consistent with this
4 chapter, which may be used by credit union incorporators
5 for their guidance. Such articles of incorporation and
6 bylaws shall be available to persons desiring to organize a
7 credit union.

8 (b) The articles of incorporation and the bylaws may
9 be amended as provided in the articles and bylaws, respec-
10 tively. Amendments to the articles of incorporation or
11 bylaws shall be submitted to the commissioner who shall
12 approve or disapprove the proposed amendments within
13 sixty days.

14 (c) Amendments shall become effective upon ap-
15 proval in writing by the commissioner. If the commis-
16 sioner disapproves any proposed amendment, the credit
17 union may appeal the decision to the board within thirty
18 days.

§31C-2-4. Use of name exclusive.

1 (a) The name of every credit union organized under
2 this chapter shall include the phrase "credit union." No
3 credit union may adopt a name either identical to the
4 name of any other credit union doing business in this state
5 or so similar to the name of any other credit union doing
6 business in this state as to be misleading or to cause confu-
7 sion.

8 (b) No person, other than a credit union incorporat-
9 ed under this chapter, the Federal Credit Union Act or a
10 credit union authorized to do business in this state under
11 section six, article two of this chapter, an association of
12 credit unions, or an organization, corporation or associa-
13 tion whose membership or ownership is primarily limited
14 to credit unions or credit union organizations, may use a
15 name or title containing the phrase "credit union" or any
16 derivation thereof, represent itself as a credit union, or
17 conduct business as a credit union.

18 (c) Violation of this section constitutes a misde-
19 meanor punishable by a fine of not more than one hun-
20 dred dollars for each day of illegal use of such name, by
21 imprisonment for not more than one year, or both.

22 (d) The commissioner may petition a court of com-
23 petent jurisdiction to enjoin a violation of this section.

§31C-2-5. Branches and other service facilities.

1 (a) A credit union may change its principal place of
2 business within this state upon notice to, and approval in
3 writing of, the commissioner.

4 (b) A credit union may maintain other service facili-
5 ties and branches, including automated teller machines
6 (ATMs), at locations other than its principal office upon
7 notice to and approval in writing of the commissioner.
8 The maintenance of such facilities must be reasonably
9 necessary to furnish service to its members. The creation
10 of such facilities must be approved by a majority vote of
11 the credit union's board of directors.

12 (c) A credit union may, upon notice and approval in
13 writing of the commissioner, join with one or more other
14 credit unions or other financial organizations in the opera-
15 tion of automated teller machines (ATMs) or other service
16 facilities. The joint operation of such facilities must be
17 approved by a majority of the credit union's board of
18 directors.

19 (d) To the extent that a credit union provides its
20 members access to their accounts through a remote service
21 unit, such as an ATM or point-of-sale (POS) device, the
22 credit union shall be governed by the same rules of the
23 commissioner pertaining to banks operating through cus-
24 tomer bank communication terminals (CBCTs).

§31C-2-6. Out-of-state credit unions.

1 (a) A credit union organized under the laws of an-
2 other state or territory of the United States may conduct
3 business as a credit union through a branch or service
4 facility in this state with the approval by written order of
5 the commissioner, provided credit unions incorporated
6 under this chapter are allowed to do business in the other

7 state under conditions similar to these provisions. Unless
8 the context clearly requires otherwise, the term "territory
9 of the United States" shall, as used in this chapter, include
10 the District of Columbia. Before granting the approval,
11 the commissioner must, upon public hearing, find that the
12 applicant out-of-state credit union:

13 (1) Is a credit union organized and operating under
14 standards recognized as appropriate pursuant to the provi-
15 sions of this chapter;

16 (2) Is financially solvent and has an adequate capital
17 structure;

18 (3) Has account insurance as required for credit
19 unions incorporated under this chapter;

20 (4) Has a board of directors and supervisory com-
21 mittee with the reputation, character and abilities to pro-
22 vide assurance that the credit union's affairs will be prop-
23 erly administered;

24 (5) Has in connection with any office of operations
25 in this state made provision for suitable quarters from
26 which to conduct the business of a credit union;

27 (6) Is examined and supervised by a regulatory
28 agency of the state or territory in which it is organized;
29 and

30 (7) Needs to conduct business in this state to ade-
31 quately serve its members in this state.

32 (b) No out-of-state credit union may conduct busi-
33 ness in this state unless it:

34 (1) Complies with the limits on finance charges
35 applicable to credit unions set forth in section two, article
36 seven of this chapter when making loans in this state;

37 (2) Complies with the consumer protection statutes
38 and rules applicable to credit unions incorporated under
39 this chapter;

40 (3) Agrees to furnish the commissioner a copy of
41 the report of examination of its regulatory agency, and if
42 deemed necessary by the commissioner, to submit to an

43 examination by the commissioner, the cost of which shall
44 be paid for by the credit union; and

45 (4) Designates and maintains an agent for the service
46 of process in this state.

47 (c) The commissioner may revoke the approval of a
48 credit union to conduct business in this state if the com-
49 missioner finds that:

50 (1) The credit union no longer meets the require-
51 ments of subsection (a) of this section;

52 (2) The credit union has violated the laws of this
53 state or lawful rules or orders issued by the commissioner;

54 (3) The credit union has engaged in a pattern of
55 unsafe or unsound credit union practices; or

56 (4) Continued operation by the credit union is likely
57 to have a substantially adverse impact on the financial,
58 economic or other interests of residents of this state.

§31C-2-7. Conducting business outside this state.

1 A credit union incorporated under this chapter may
2 conduct business outside of this state in other states or
3 territories where it is permitted to conduct business as a
4 credit union. The activities and records of such credit
5 union business conducted outside this state remain fully
6 under the jurisdiction and supervision of the commission-
7 er. Prior to the establishment of any branch or service
8 facility outside this state, a credit union shall provide no-
9 tice to, and obtain written approval of, the commissioner.
10 The creation of such facilities must be approved by a
11 majority vote of the credit union's board of directors.

§31C-2-8. Tax exemption.

1 (a) Any credit union organized under this or any
2 other credit union act and all shares and deposits therein
3 shall be exempt from all taxation now or hereafter im-
4 posed by this state or any taxing authority within this state.
5 No law which taxes corporations in any form, or the shares
6 or deposits thereof, or the accumulation thereon, shall
7 apply to any such credit union; except that any real prop-
8 erty and any tangible personal property owned by any

9 such credit union shall be subject to taxation to the same
10 extent as other similar property is taxed: *Provided*, That
11 this exception shall not permit the imposition of any sales
12 or use taxes on the credit union.

13 (b) The shares of any such credit union shall not be
14 subject to stock, transfer taxes, either when issued or when
15 transferred from one member to another.

16 (c) The participation by a credit union in any gov-
17 ernment program providing unemployment, social securi-
18 ty, old age pension or other benefits shall not be deemed a
19 waiver of the taxation exemption hereby granted.

**§31C-2-9. Credit unions heretofore organized need not obtain
new charter; actions validated.**

1 All credit unions which have been heretofore legally
2 organized under chapter thirty-six of the acts of the Legis-
3 lature of one thousand nine hundred twenty-five, and
4 which are in existence on the effective date of this section;
5 and all credit unions which have been heretofore legally
6 organized under article ten of chapter thirty-one of the
7 code of West Virginia, one thousand nine hundred
8 thirty-one, as amended, and which are in existence on the
9 effective date of this section, shall upon the effective date
10 of this section be considered to have been organized un-
11 der the provisions of this article, and shall not be required
12 to obtain a new charter or to reorganize hereunder. All
13 acts and things done by any such credit unions, insofar as
14 such acts and things shall not have constituted any viola-
15 tion of law as it shall heretofore have existed, shall be
16 deemed valid and effective.

ARTICLE 3. POWERS OF CREDIT UNION.

§31C-3-1. General powers.

§31C-3-2. Incidental powers.

§31C-3-3. Advantageous federal powers.

§31C-3-1. General powers.

1 In addition to the powers mentioned elsewhere in this
2 chapter, a credit union may:

- 3 (a) Enter into contracts necessary for the conduct of
4 its business as authorized under this statute;
- 5 (b) Sue and be sued;
- 6 (c) Adopt, use and display a corporate seal;
- 7 (d) Acquire, lease, hold, assign, sell, discount or oth-
8 erwise dispose of property or assets, either in whole or in
9 part, necessary or incidental to its operation;
- 10 (e) Borrow from any source: *Provided*, That a cred-
11 it union must obtain approval of the commissioner in
12 writing of its intention to borrow in excess of an aggregate
13 of twenty percent of its equity capital and shares, and in
14 no event shall its borrowing be in excess of an aggregate
15 of fifty percent of its equity capital and shares;
- 16 (f) Purchase the assets of another credit union;
- 17 (g) Offer related financial services, including, but not
18 limited to, electronic fund transfers, safe deposit boxes,
19 leasing and correspondent arrangements with other finan-
20 cial institutions;
- 21 (h) Hold membership in other credit unions orga-
22 nized under this or other acts, and in associations and
23 organizations controlled by or fostering the interests of
24 credit unions, including a central liquidity facility orga-
25 nized under state or federal law.
- 26 (i) Engage in activities and programs as requested by
27 any governmental unit;
- 28 (j) Act as fiscal agent for and receive payments on
29 share and deposit accounts from a governmental unit;
- 30 (k) Make contributions to any nonprofit civic, chari-
31 table or service organizations;
- 32 (l) Receive the savings of its members either as pay-
33 ment on shares, or as deposits (including the right to con-
34 duct Christmas clubs, vacation clubs and other thrift orga-
35 nizations within the membership);
- 36 (m) Make loans for provident, productive,
37 nonspeculative purposes to members, including a coopera-

38 tive society or other organization having membership in
39 the credit union.

§31C-3-2. Incidental powers.

1 A credit union may exercise all incidental powers
2 that are convenient, suitable or necessary to enable it to
3 carry out its purposes.

§31C-3-3. Advantageous federal powers.

1 Unless exercise of a power is specifically denied, the
2 commissioner may prescribe rules authorizing credit un-
3 ions to exercise any of the powers conferred upon federal
4 credit unions if the commissioner deems it appropriate for
5 the purposes of credit unions in this state and a benefit to
6 their members.

ARTICLE 4. MEMBERSHIP.

§31C-4-1. Membership defined.

§31C-4-2. Organizations.

§31C-4-3. Membership applications.

§31C-4-4. Members who cease to be eligible.

§31C-4-5. Liability and expulsion of members.

§31C-4-6. Meetings of members.

§31C-4-7. Calling of special meeting.

§31C-4-1. Membership defined.

1 (a) The membership of a credit union shall consist
2 of those persons who share a common bond set forth in
3 the bylaws, have been duly admitted members, have paid
4 any required one-time or periodic membership fee, or
5 both, have subscribed to one or more shares and have
6 complied with such other requirements as the articles of
7 incorporation and bylaws specify.

8 (b) Credit union membership shall be limited to,
9 persons within one or more groups having a common
10 bond or bonds of similar occupation, employer, associa-
11 tion or interest, and members of the immediate family of
12 such persons.

§31C-4-2. Organizations.

1 (a) Organizations comprised primarily of individuals
2 who are eligible for membership in the credit union, and
3 corporations whose total number of stockholders or whose
4 majority stockholders are comprised primarily of such
5 individuals, may be admitted to membership in the same
6 manner and under the same conditions as individuals.
7 Likewise, organizations one of whose principal functions
8 is to provide services to persons who are eligible for mem-
9 bership in the credit union may be admitted to member-
10 ship. Other organizations having a commonality of inter-
11 est with the credit union may be admitted to membership
12 with the approval of the commissioner.

13 (b) Any corporate credit union organized under this
14 chapter may accept as a member any other credit union
15 organized under this or any other act.

§31C-4-3. Membership applications.

1 The board of directors of the credit union shall act
2 upon applications for membership or appoint one or more
3 membership officers to approve applications for member-
4 ship under such conditions as the board prescribes. A
5 record of the actions taken by a membership officer shall
6 be made available in writing to the board of directors for
7 inspection. A person denied membership by a member-
8 ship officer may appeal the denial to the credit union's
9 board of directors.

§31C-4-4. Members who cease to be eligible.

1 Members who cease to be eligible for membership
2 may be permitted to retain their membership in the credit
3 union, under reasonable standards established by the cred-
4 it union's board of directors.

§31C-4-5. Liability and expulsion of members.

1 (a) The members of the credit union shall not be
2 personally or individually liable for the payment of its
3 debts solely by virtue of holding membership.

4 (b) Any member may be expelled by a two-thirds
5 vote of its members present at any regular meeting or a
6 special meeting called to consider the matter, but only

7 after an opportunity has been given the member to be
8 heard.

9 (c) The credit union's board of directors may expel
10 a member pursuant to a written policy adopted by it. All
11 members shall be given written notice of the terms of any
12 such policy upon becoming a member. Any person ex-
13 pelled by the credit union's board of directors shall have
14 the right to request a hearing before it to reconsider the
15 expulsion.

§31C-4-6. Meetings of members.

1 (a) The annual meeting and any special meetings of
2 the members of the credit union shall be held in accor-
3 dance with the bylaws.

4 (b) At all such meetings a member shall have but
5 one vote, irrespective of the member's shareholdings. No
6 member may vote by proxy, but a member may vote by
7 absentee ballot, mail or other method if the bylaws of the
8 credit union so provide.

9 (c) The credit union's board of directors may estab-
10 lish a minimum age, not greater than eighteen years of
11 age, as a qualification of eligibility to vote at meetings of
12 the members or to hold office, or both.

13 (d) An organization having membership in the cred-
14 it union, may be represented and have its vote cast by one
15 of its members or shareholders, provided such person has
16 been so authorized by the organization's governing body.

§31C-4-7. Calling of special meeting.

1 (a) The supervisory committee by a majority vote
2 may call a special meeting of the members to consider any
3 violation of this chapter, the credit union's articles of in-
4 corporation or bylaws, or any practice of the credit union
5 deemed by the supervisory committee to be unsafe or
6 unauthorized; and may call a special meeting to consider
7 the suspension or removal of any officer or director of the
8 credit union as provided for in this chapter.

9 (b) The bylaws may also prescribe the manner in
10 which a special meeting of the members may be called by

11 the members or by the credit union's board of directors or
12 both.

13 (c) The commissioner may also require the directors
14 of a credit union to call a special meeting of the members
15 pursuant to his or her authority under section nine, article
16 two, chapter thirty-one-a of this code.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

§31C-5-1. Authority and responsibility of directors.

§31C-5-2. Election of directors and selection of supervisory and credit committee members.

§31C-5-3. Record of officials; and filling vacancies.

§31C-5-4. Compensation of officials; and conflicts of interests.

§31C-5-5. Officers.

§31C-5-6. Executive committee.

§31C-5-7. Credit committee and loan officers.

§31C-5-8. Audits.

§31C-5-9. Fidelity bonds, required oaths and hazard insurance.

§31C-5-10. Suspension and removal of officials.

§31C-5-1. Authority and responsibility of directors.

1 The credit union's board of directors shall have the
2 authority and responsibility for directing the business
3 affairs, funds and records of the credit union. In addition
4 to the duties found elsewhere in this article, it shall be the
5 special duty of the credit union's board of directors to:

6 (a) Purchase adequate fidelity coverage for the chief
7 executive officer and for other active officers and employ-
8 ees handling or having custody of funds or property;

9 (b) Authorize the employment and compensation of
10 the chief executive officer who shall hire such other per-
11 sons necessary to carry on the business of the credit un-
12 ion;

13 (c) Approve an annual operating budget for the
14 credit union;

15 (d) Authorize the conveyance of property;

16 (e) Borrow or lend money to carry on the functions
17 of the credit union;

18 (f) Appoint any special committees deemed neces-
19 sary;

20 (g) Perform such other duties as the members from
21 time to time direct, and perform or authorize any action
22 not inconsistent with this chapter and not specifically re-
23 served by the bylaws for the members.

24 The credit union's board of directors shall meet each
25 month. The board may meet at other times as is neces-
26 sary. Board meetings may be conducted by means of
27 telephone as provided in the bylaws in a manner consistent
28 with state law.

**§31C-5-2. Election of directors and selection of supervisory
and credit committee members.**

1 (a) The credit union's board shall consist of an odd
2 number of directors, at least five in number, to be elected
3 by and from the members. Elections shall be held at the
4 annual meeting or in such other manner as the bylaws
5 provide. All members of the credit union's board shall
6 hold office for such terms as the bylaws provide, except
7 that terms shall be staggered so that an approximately
8 equal number expire each year.

9 (b) A supervisory committee of not less than three
10 persons shall either be elected by the membership at the
11 annual meeting or appointed by the credit union's board
12 of directors at the organization meeting held within thirty
13 days following each annual election for such terms as the
14 bylaws provide.

15 (c) At the same organization meeting, the credit
16 union's board of directors shall appoint a credit commit-
17 tee, unless the bylaws provide for the board of directors to
18 act as the credit committee. The committee shall consist
19 of an odd number, not less than three, whose terms shall
20 be as the bylaws provide.

§31C-5-3. Record of officials; and filling vacancies.

1 (a) Within twenty days after each organization meet-
2 ing, a record of the names and addresses of the members
3 of the board and such other committees and officials, as

4 required by the commissioner, shall be filed with the com-
5 missioner.

6 (b) The credit union's board of directors shall fill any
7 vacancies occurring in the board until successors elected at
8 the next annual election have qualified. The credit union's
9 board shall also fill vacancies in the credit committee and,
10 if appointed by them, the supervisory committee. If the
11 supervisory committee is elected by the members, then
12 any vacancies thereon shall be filled by selection by the
13 remaining supervisory committee members.

§31C-5-4. Compensation of officials; and conflicts of interests.

1 (a) No officer, director or committee member, other
2 than an employee, may be compensated for services, ex-
3 cept as provided in section one, article five of this chapter.
4 However, providing reasonable life, health, accident and
5 similar insurance protection shall not be considered com-
6 pensation. Directors, officers and committee members
7 may be reimbursed for necessary expenses incidental to
8 the performance of official business of the credit union.

9 (b) No director, committee member, officer, agent or
10 employee of the credit union shall in any manner, directly
11 or indirectly, participate in the deliberation upon or the
12 determination of any question affecting that person's pe-
13 cuniary interest or the pecuniary interest of any corpora-
14 tion, partnership or association (other than the credit un-
15 ion) in which that person is directly or indirectly interest-
16 ed.

§31C-5-5. Officers.

1 (a) At their organization meeting held within thirty
2 days following each annual election, the credit union's
3 board of directors shall elect from their own number a
4 chairman of the board, one or more vice chairmen, a trea-
5 surer and a secretary. The office of secretary and treasur-
6 er may, if the bylaws so provide, be held by one person.
7 They shall also elect any other officials that are specified
8 in the bylaws.

9 (b) The terms of the officers shall be one year, or
10 until their successors are chosen and have been duly quali-
11 fied.

12 (c) The duties of the officers shall be prescribed in
13 the bylaws.

14 (d) The credit union's board of directors shall ap-
15 point a president to act as the chief executive officer of the
16 credit union and be in active charge of its operations.

17 (e) Notwithstanding any other provision of this
18 chapter, a credit union may use any titles it chooses for the
19 officials holding the positions described in this chapter, as
20 long as such titles are not misleading.

§31C-5-6. Executive committee.

1 The credit union's board of directors may appoint
2 from its own number an executive committee, consisting
3 of not less than three directors, which may be authorized
4 to act for the board in all respects. These actions are sub-
5 ject to subsequent review by the full credit union's board
6 of directors and any other conditions or limitations pre-
7 scribed by the board of directors.

§31C-5-7. Credit committee and loan officers.

1 (a) The credit committee shall have the general su-
2 pervision of all loans to members. It may approve or
3 disapprove loans, subject to written policies established by
4 the board of directors.

5 (b) The credit committee shall meet as often as the
6 business of the credit union requires to consider applica-
7 tions for loans and/or review the work of the loan officers.
8 No loan shall be made by the credit committee unless it is
9 approved by a disinterested majority of the committee
10 who are present at the meeting at which the application is
11 considered.

12 (c) If the bylaws so provide, the board of directors
13 may act as the credit committee.

14 (d) The credit union's board of directors or credit
15 committee may appoint one or more loan officers and
16 delegate the power to approve or disapprove loans, subject

17 to such limitations or conditions as the credit committee or
18 credit union's board of directors prescribes.

19 (e) A member whose application was disapproved by
20 a loan officer may appeal such action to the credit com-
21 mittee or credit union's board of directors, as appropriate
22 under the bylaws.

§31C-5-8. Audits.

1 (a) The supervisory committee shall make or cause
2 to be made a comprehensive annual audit of the books
3 and affairs of the credit union. It shall submit a report of
4 each annual audit to the credit union's board of directors
5 and a summary of that report to the members at the next
6 annual meeting of the credit union. Such reports shall be
7 filed and preserved with the records of the corporation.

8 (b) The supervisory committee of not less than three
9 elected or appointed members shall make or cause to be
10 made such supplementary audits, examinations and verifi-
11 cations of members' accounts as it deems necessary or as
12 are required by the commissioner or by the credit union's
13 board of directors, and submit reports of these supplemen-
14 tary audits to the credit union's board of directors.

15 (c) The workpapers of any audit, including any
16 materials associated with an audit of the credit union's
17 electronic data procedures, shall be made available to the
18 commissioner or to the examiners of the department of
19 banking upon request, and will be accorded confidentiali-
20 ty in conformity with section four, article two, chapter
21 thirty-one-a of this code.

§31C-5-9. Fidelity bonds, required oaths and hazard insur- ance.

1 (a) As a condition precedent to qualification or entry
2 upon the discharge of their duties, all active officers, as
3 well as every person appointed or elected to any position
4 requiring the receipt, payment or custody of money or
5 other personal property owned by a credit union or in its
6 custody or control as collateral or otherwise, shall give a
7 bond in some responsible corporate surety company,
8 licensed to do business in this state, in such sufficient

9 amount as the credit union directors shall require and
10 approve. The bonds shall provide for indemnity to the
11 credit union on account of any losses sustained by it as the
12 result of any dishonest, fraudulent or criminal act or omis-
13 sion by such persons acting independently or in collusion
14 or combination with others. The bonds may be in individ-
15 ual, schedule or blanket form, and the premiums therefor
16 shall be paid by the credit union.

17 (b) No officer or employee who is required to give
18 bond shall be deemed qualified nor shall be permitted to
19 enter upon the discharge of their duties until their bond
20 shall have been approved by a majority of the credit un-
21 ion's board of directors.

22 (c) The credit union's board of directors shall also
23 direct and require suitable insurance protection to the
24 credit union against burglary, robbery, theft and other
25 insurable hazards to which the credit union may be ex-
26 posed in the operations of its business on the premises or
27 elsewhere.

28 (d) The credit union's board of directors shall be
29 responsible for prescribing at least once each year the
30 amount or penal sum of the bonds or policies and the
31 sureties or underwriters thereon, after giving due and care-
32 ful consideration to all known elements and factors consti-
33 tuting such risk or hazard. This action shall be recorded
34 in the minutes of the board of directors. At any time the
35 commissioner may require additional bond or security,
36 when, in his or her opinion, the bonds then executed and
37 approved are insufficient.

38 (e) Upon their election or appointment each direc-
39 tor, officer and member of a committee shall individually
40 make an oath that they will, as far as the duty devolves
41 upon them, diligently and honestly administer the affairs
42 of the credit union, and will not knowingly violate, or
43 willingly permit to be violated, any of the provisions of
44 law applicable to the credit union, and that they are each
45 the owner in good faith in their own right on the books of
46 the credit union of at least one share therein. This oath
47 shall be subscribed by the individual making it, and be
48 certified by the officer before whom it was taken, and shall

49 immediately be transmitted to the commissioner and filed
50 and preserved in his or her office.

§31C-5-10. Suspension and removal of officials.

1 (a) The supervisory committee by a two-thirds vote
2 of the entire committee may suspend any member of the
3 credit committee and shall report such action to the credit
4 union's board of directors. The credit union's board of
5 directors shall meet not less than seven nor more than
6 twenty-one days after such suspension to take appropriate
7 action.

8 (b) The supervisory committee by a two-thirds vote
9 of the entire committee may recommend suspension of
10 any officer or member of the credit union's board of di-
11 rectors. A meeting of a quorum of the remaining board
12 members shall convene in person and take action on the
13 recommendation, which meeting shall be held not less
14 than seven nor more than twenty-one days after such pro-
15 posed suspension. The suspension matter shall be acted
16 upon at the board meeting and the person shall either be
17 removed for cause or restored to office. If the supervisory
18 committee is not satisfied with the board's action, it
19 may call a special meeting of the members or elect to
20 bring the matter before the next member's regular meet-
21 ing, and the issue will be acted upon at the meeting by the
22 members and the person shall either be removed for cause
23 or reaffirmed to office. At any such member's meeting
24 the person at issue shall have the right to appear and be
25 heard.

26 (c) Any member of the supervisory committee or of
27 the credit committee may be suspended or removed for
28 cause by the board of directors by a two-thirds vote of
29 those present at a meeting for failure to perform duties in
30 accordance with this chapter, the articles of incorporation
31 or the bylaws. The committee member shall have the right
32 to appear and be heard at such meeting.

ARTICLE 6. ACCOUNTS.

§31C-6-1. Share accounts and membership shares.

§31C-6-2. Dividends.

§31C-6-3. Deposit accounts.

- §31C-6-4. Minor accounts.
- §31C-6-5. Joint accounts.
- §31C-6-6. Trust accounts.
- §31C-6-7. Payable-on-death accounts.
- §31C-6-8. Liens.
- §31C-6-9. Share and deposit insurance.
- §31C-6-10. Reduction in shares.

§31C-6-1. Share accounts and membership shares.

- 1 (a) Share accounts and membership shares (if any)
- 2 shall be subscribed to and paid for in such a manner as the
- 3 bylaws prescribe.

- 4 (b) A corporate credit union may require its mem-
- 5 bers to subscribe to and make payments on membership
- 6 shares.

- 7 (c) The par value of shares and any membership
- 8 shares shall be as prescribed in the bylaws. Par value of
- 9 shares shall not be less than one dollar nor more than ten
- 10 dollars per share.

- 11 (d) Membership shares may not be pledged as secu-
- 12 rity on any loan.

- 13 (e) A credit union may limit the number of shares
- 14 which may be owned by a member, but any such limit
- 15 shall apply alike to all members.

§31C-6-2. Dividends.

- 1 (a) The credit union's board of directors shall estab-
- 2 lish the dividend period. Rates of dividends and the terms
- 3 of payment may be established in advance by action of
- 4 the board of directors. Dividends may be paid at various
- 5 rates with due regard to the conditions that pertain to each
- 6 type of account such as minimum balance, notice and time
- 7 requirements.

- 8 (b) The commissioner may, if circumstances warrant,
- 9 establish the maximum dividend that a credit union or
- 10 corporate credit union may pay in each classification of its
- 11 savings.

§31C-6-3. Deposit accounts.

1 (a) A credit union may accept deposit accounts from
2 its members, other credit unions and governmental units
3 subject to the terms, rates and conditions established by
4 the board of directors.

5 (b) Interest may be paid on deposit accounts at vari-
6 ous rates with due regard to the conditions that pertain to
7 each type of account such as minimum balance, notice
8 and time requirements.

9 (c) Funds in share and deposit accounts may be
10 withdrawn for payment to the account holder or to third
11 parties, in such manner and in accordance with such pro-
12 cedures as are established by the board of directors, sub-
13 ject to any rules the commissioner prescribes.

14 (d) Share and deposit accounts shall be subject to
15 any withdrawal notice requirement which is imposed pur-
16 suant to the bylaws.

17 (e) A membership share may not be redeemed or
18 withdrawn except subject to the terms set forth by the
19 corporate credit union.

§31C-6-4. Minor accounts.

1 Payments on share and deposit accounts may be
2 received from a minor who may withdraw funds from
3 such accounts including the dividends and interest there-
4 on. Payments on share and deposit accounts by a minor
5 and withdrawals thereof by the minor shall be valid in all
6 respects. For such purposes a minor is deemed of full
7 majority age.

§31C-6-5. Joint accounts.

1 (a) A member may designate any person or persons
2 to own a share or deposit account with the member in joint
3 tenancy with the right of survivorship, as a tenant in com-
4 mon or under any other form of joint ownership permit-
5 ted by law, but no co-owner, unless a member in their own
6 right, shall be permitted to vote, obtain loans, or hold of-
7 fice or be required to pay a membership fee.

8 (b) Payment of part or all of such accounts to any of
9 the co-owners shall, to the extent of such payment, dis-

10 charge the liability to all unless: (1) The account agree-
11 ment contains a prohibition or limitation on such pay-
12 ment; or unless (2) the credit union had received notice in
13 writing signed by any one of such joint tenants not to pay
14 such deposit in accordance with the terms thereof, prior to
15 its payment. The commissioner may promulgate rules
16 regarding notice to joint account holders of their rights
17 and liabilities under this section.

§31C-6-6. Trust accounts.

1 (a) Share and deposit accounts may be owned by a
2 member in trust for a beneficiary, or owned by a non-
3 member in trust for a beneficiary who is a member.

4 (b) Beneficiaries may be minors, but no beneficiary
5 unless a member in that person's own right, shall be per-
6 mitted to vote, obtain loans, hold office or be required to
7 pay a membership fee.

8 (c) Payment of part or all of such a trust account to
9 the party in whose name the account is held shall, to the
10 extent of such payment, discharge the liability of the cred-
11 it union to that party and to the beneficiary, and the credit
12 union shall be under no obligation to see to the applica-
13 tion of such payment.

14 (d) In the event of the death of the party who owns a
15 trust account, if the credit union has been given no other
16 written notice of the existence or terms of any trust and
17 has not received a court order as to disposition of the
18 account, account funds and any dividends or interest
19 thereon shall be paid to the beneficiary.

20 (e) The operation of trust accounts as permitted in
21 this section does not constitute engaging in a trust business
22 as set forth in chapter thirty-one-a of this code.

§31C-6-7. Payable-on-death accounts.

1 Notwithstanding any other provision of law a credit
2 union may establish share and deposit accounts payable to
3 one or more persons during their lifetimes and on the
4 death of all of them to one or more payable-on-death
5 payees. An account established under this section must be
6 identified as a "payable-on-death" account or abbreviated

7 as a "p.o.d." account. Any transfer to a payable-on-death
8 payee is effective by reason of the account contract and
9 shall not be considered to be a testamentary transfer.

§31C-6-8. Liens.

1 The credit union shall have a general lien on the
2 share accounts, any membership shares, and accumulated
3 dividends of a member for any sum owed the credit union
4 by said member and for any loan endorsed by that mem-
5 ber. The credit union shall also have a right of immediate
6 set-off with respect to every deposit account. The credit
7 union may also refuse to allow withdrawals from any share
8 or deposit account. The credit union may waive its rights
9 to a lien, to immediate set-off, to restrict withdrawals, or to
10 any combination of such rights with respect to any share
11 or deposit account or groups of such accounts.

§31C-6-9. Share and deposit insurance.

1 (a) Before the incorporators of a credit union for-
2 ward the corporate documents to the commissioner under
3 subsection (d), section two, article two of this chapter they
4 shall apply for insurance on share and deposit accounts
5 from the national credit union administration under Title
6 II of the Federal Credit Union Act (12 U.S.C. §1781 et
7 seq.).

8 (b) A credit union which has lost its commitment for
9 such insurance shall within thirty days commence steps to
10 either liquidate, or merge with an insured credit union or
11 apply in writing to the commissioner for additional time to
12 obtain another insurance commitment. The commissioner
13 may grant one or more extensions of time to obtain the
14 insurance commitment upon satisfactory evidence that the
15 credit union has made or is making a substantial effort to
16 achieve the conditions precedent to issuance of the com-
17 mitment.

18 (c) No persons shall be granted a certificate of au-
19 thority to engage in business by the commissioner to op-
20 erate a credit union unless they have obtained a commit-
21 ment for insurance of its share and deposit accounts.

22 (d) The commissioner may make available reports
23 of condition and examination findings to the appropriate

24 insuring organization and may accept any report of exam-
25 ination made on behalf of such organization.

26 (e) A state-chartered corporate credit union must
27 only apply for and maintain share and deposit insurance
28 in the amounts and of the same kind as would be required
29 for a similarly situated federally chartered corporate credit
30 union.

§31C-6-10. Reduction in shares.

1 (a) Whenever the losses of any credit union, result-
2 ing from a depreciation in value of its loans or investments
3 or otherwise, exceed the aggregate of its undivided earn-
4 ings, reserves and membership shares if any, so that the
5 estimated value of its assets is less than the total amount of
6 share accounts, and the board of directors determines that
7 the credit union may be subject to involuntary liquidation,
8 the credit union board may propose a reduction in shares.
9 The credit union may by a three-fourths majority vote of
10 those voting on the proposition order a reduction in the
11 share accounts of each of its shareholders to divide the
12 loss in proportion to the shareholdings held by sharehold-
13 ers in their respective share accounts.

14 (b) If the credit union thereafter realizes from such
15 assets a greater amount than was fixed by the order of
16 reduction, such excess shall be proportionately restored to
17 the shareholders whose assets were reduced, but only to
18 the extent of such reduction.

ARTICLE 7. LOANS.

§31C-7-1. Purpose and conditions of loans.

§31C-7-2. Finance charge.

§31C-7-3. Additional charges.

§31C-7-4. Applications.

§31C-7-5. Loan limit; collateral requirements; and repayment.

§31C-7-6. Line of credit.

§31C-7-7. Participation loans.

§31C-7-8. Other loan programs.

§31C-7-9. Loans to officials.

§31C-7-1. Purpose and conditions of loans.

1 A credit union may loan to members for such pur-
2 poses and upon such conditions as the bylaws may pro-
3 vide. The board of directors shall establish written policies
4 with respect to the granting of loans and the extending of
5 lines of credit, including the terms, conditions and accept-
6 able forms of security.

§31C-7-2. Finance charge.

1 The finance charges imposed by the credit union on
2 loans shall be determined by the credit union's board of
3 directors, subject to the limitations established by this state.
4 Unless otherwise permitted or prescribed by this code, the
5 finance charge rate shall not exceed one and one-half
6 percent per month, computed on unpaid balances.

§31C-7-3. Additional charges.

1 (a) In addition to interest on loans, a credit union
2 may charge members reasonable expenses in connection
3 with the making, closing, disbursing, extending or renew-
4 ing of loans.

5 (b) A credit union may assess charges to members,
6 in accordance with the bylaws, for failure to meet their
7 obligations to the credit union in a timely manner. A
8 credit union may also assess charges for other benefits,
9 including insurance, as allowed for lenders under law.

10 (c) Any charges in connection with a consumer loan,
11 including late charges and deferral charges, permitted
12 under this section shall conform and be limited to those
13 allowed under article three, chapter forty-six-a of this
14 code.

§31C-7-4. Applications.

1 Except as provided for in section six, article seven of
2 this chapter, every application for a loan shall be made in
3 writing upon a form prescribed by the credit union and
4 shall state the purpose of the loan as well as the security or
5 collateral offered, if any. Each loan shall be evidenced by
6 a written document.

**§31C-7-5. Loan limit; collateral requirements; and repay-
ment.**

1 (a) The aggregate of loans to any one member shall
2 be limited to ten percent of the credit union's assets. This
3 limit shall not apply to loans which are fully secured by
4 assignments of shares or deposits in the credit union.

5 (b) Loans to members which in the aggregate ex-
6 ceed the amount shown in the schedule below shall be
7 'secured by such collateral having a value which is at least
8 equal to any amount exceeding the limits in the following
9 schedule, except that all loans exceeding five thousand
10 dollars not subject to collateral shall be supported by a
11 sworn financial statement:

12 (1) Five hundred dollars in credit unions with assets
13 of less than five thousand dollars;

14 (2) One thousand dollars in credit unions with assets
15 of five thousand dollars and less than twenty-five thousand
16 dollars;

17 (3) Two thousand dollars in credit unions with assets
18 of twenty-five thousand dollars and less than one hundred
19 thousand dollars;

20 (4) Five thousand dollars in credit unions with assets
21 of one hundred thousand dollars and less than five hun-
22 dred thousand dollars;

23 (5) Seven thousand dollars in credit unions with
24 assets of five hundred thousand dollars and less than one
25 million dollars; and

26 (6) Ten thousand dollars in credit unions with assets
27 of one million dollars or more: *Provided*, That the com-
28 missioner may, upon request and at his or her discretion,
29 approve in writing a higher unsecured loan limit amount
30 for credit unions having assets of one million dollars or
31 more.

32 (c) A borrower may pay the whole or part of the
33 borrower's loan on any day the credit union is open for
34 business.

§31C-7-6. Line of credit.

1 (a) Upon written application by a member, the credit
2 committee or loan officer may approve a line of credit,
3 and loan advances may be granted to the member within
4 the limit of such line of credit. Access to the line of credit
5 may be by use of a lender credit card. Where a line has
6 been approved, no additional credit application is required
7 as long as the aggregate indebtedness does not exceed the
8 approved limit.

9 (b) Lines of credit shall be subject to periodic re-
10 view by the credit union, in accordance with the written
11 policies of the credit union's board of directors, and ap-
12 proved or disapproved as to the granting of further loan
13 advances.

§31C-7-7. Participation loans.

1 A credit union may participate in loans to credit
2 union members jointly with other credit unions, credit
3 union organizations or other organizations pursuant to
4 written policies established by the credit union's board of
5 directors. A credit union which originates such a loan
6 shall retain an interest of at least ten percent of the face
7 amount of the loan.

§31C-7-8. Other loan programs.

1 (a) A credit union may participate in any guaranteed
2 loan program of the federal or state government under the
3 terms and conditions specified in the law under which
4 such a program is provided.

5 (b) A credit union may purchase the conditional
6 sales contracts, notes and similar instruments of its mem-
7 bers.

8 (c) A credit union may finance for any person the
9 sale of its personal property, including property obtained
10 as a result of defaults in obligations owed to it, under the
11 terms, conditions and rates provided by this chapter.

§31C-7-9. Loans to officials.

1 (a) A credit union may permit officers, directors,
2 and members of its supervisory and credit committees to
3 act as comakers, guarantors or endorsers of loans to other

4 members, subject to the requirements of subsection (b) of
5 this section.

6 (b) A credit union may make loans to its officers,
7 directors and members of its supervisory and credit com-
8 mittees: *Provided, That:*

9 (1) The loan complies with all requirements of this
10 chapter and is not on terms more favorable than those
11 extended to other borrowers; and

12 (2) The aggregate of loans to or guaranteed by all
13 such officials combined, excepting those secured by
14 shares or deposits, may not exceed twenty percent of the
15 credit union's assets, and shall be shown in aggregate as a
16 separate item in the reports rendered by the credit union
17 and filed with the commissioner pursuant to section seven,
18 article one of this chapter.

19 (c) No credit union officer, director, or member of
20 its supervisory or credit committee may participate in
21 making a credit approval of a loan in which they have a
22 self-interest. If any member of the credit committee
23 makes an application to borrow money from the credit
24 union or becomes surety for any other member whose
25 application for a loan is under consideration, the supervi-
26 sory committee shall appoint a substitute to act on the
27 credit committee in place of that member, during the con-
28 sideration of the application.

ARTICLE 8. OTHER MEMBER SERVICES.

§31C-8-1. Insurance for members.

§31C-8-2. Indemnification of officers.

§31C-8-3. Group purchasing.

§31C-8-4. Money-type instruments.

§31C-8-5. Retirement accounts and trust authority.

§31C-8-1. Insurance for members.

1 A credit union may purchase or make available cred-
2 it life or other credit insurance for its members either on
3 an individual or group basis.

§31C-8-2. Indemnification of officers.

1 A credit union may indemnify its officers, directors
2 or employees by purchase of insurance or otherwise, to
3 the extent that such indemnification is permitted to that
4 institution under federal law. Indemnification articles or
5 bylaws must conform to, or be more restrictive than, that
6 set forth in section nine, article one, chapter thirty-one of
7 this code. The commissioner reserves the right to prohibit
8 or limit, by regulation or order, any indemnification pay-
9 ment for reasons of safety and soundness or nonconfor-
10 mity to the credit union's articles of incorporation or by-
11 laws or to the restrictions placed on indemnification con-
12 tained in this section or other applicable state law.

§31C-8-3. Group purchasing.

1 A credit union may enter into marketing arrange-
2 ments and joint ventures with other credit unions, organi-
3 zations or financial institutions to facilitate its members'
4 voluntary purchase of goods, insurance and other services
5 from third parties, consistent with the purposes of the
6 credit union. A credit union may be compensated for
7 services so provided.

§31C-8-4. Money-type instruments.

1 A credit union may collect, receive and disburse
2 moneys in connection with the providing of negotiable
3 checks, money orders, travelers' checks and other
4 money-type instruments, and the providing of these ser-
5 vices through automated teller machines (ATMs) and for
6 such other purposes as may provide benefit or conven-
7 nience to its members. A credit union may charge fees
8 for such services.

§31C-8-5. Retirement accounts and trust authority.

1 A credit union may provide pension savings pro-
2 grams and deferred income accounts, including individual
3 retirement accounts. In order to carry out its authority
4 under this section, a credit union may:

5 (a) Contract for the provision of trust services to its
6 members with a trust company or other organization with
7 trust powers authorized to do business in this state. For
8 this purpose, the trust company or other organization with

9 trust powers may serve credit union members at credit
10 union facilities on a full-time or part-time basis; and

11 (b) Act as trustees of member funds permitted by
12 federal law to be deposited in a credit union in the form of
13 share deposits either as a deferred compensation or
14 tax-deferral device, provided the credit union obtains the
15 prior approval to conduct such activity from the board of
16 banking and financial institutions upon hearing and writ-
17 ten order.

ARTICLE 9. INVESTMENTS AND RESERVE ALLOCATIONS.

§31C-9-1. Investment and deposit of funds.

§31C-9-2. Authorized investments.

§31C-9-3. Reserve funds.

§31C-9-1. Investment and deposit of funds.

1 (a) The credit union's board of directors shall have
2 charge of the investment of funds, except that they may
3 designate an investment committee or investment officer
4 to make investments in its behalf, under written investment
5 policies established by the credit union's board.

6 (b) The credit union's board of directors shall desig-
7 nate a depository or depositories for the funds of the cred-
8 it union.

§31C-9-2. Authorized investments.

1 Funds not used in loans to members may be invested:

2 (a) In securities, obligations or other instruments of
3 or issued by or fully guaranteed as to principal and inter-
4 est by the United States of America or any agency or
5 instrumentality thereof or in any trust or trusts established
6 for investing directly or collectively in the same;

7 (b) In securities, obligations, or other instruments of
8 any state of the United States, the District of Columbia, the
9 Commonwealth of Puerto Rico, and the several territories
10 organized by Congress or any political subdivision there-
11 of;

12 (c) In deposits, obligations or other accounts of
13 banking institutions organized under state or federal law;

14 (d) In loans to or in shares or deposits of other credit
15 unions or corporate credit unions;

16 (e) In deposits in, loans to, or shares of any federal
17 reserve bank or of any central liquidity facility established
18 under state or federal law;

19 (f) In shares, stocks, deposits in, loans to or other
20 obligations of any organization, corporation or association
21 providing services associated with the general purposes of
22 the credit union or engaging in activities incidental to the
23 operations of a credit union. Such investments in the
24 aggregate may not exceed two percent of the credit un-
25 ion's equity capital and shares without written permission
26 of the commissioner;

27 (g) In any investment legal for banking institutions
28 or trust funds chartered in this state;

29 (h) In participation loans with other credit unions,
30 credit union organizations or other organizations;

31 (i) In fixed assets, not to exceed five percent of the
32 credit union's equity capital and shares, unless with the
33 prior written approval of the commissioner.

§31C-9-3. Reserve funds.

1 (a) At the end of each accounting period the credit
2 union shall determine its gross income and from this
3 amount shall set aside and transfer funds to a regular re-
4 serve. The credit union shall transfer to the reserve
5 amounts as required under a schedule set by the national
6 credit union administration (NCUA) or its successor. If
7 no such schedule is set, then the reserve shall be at a rate
8 of ten percent of gross income until such time as the re-
9 serve fund reaches five percent of risk assets; then the
10 formula is decreased to seven percent of gross income
11 until such time as the reserve fund reaches six percent of
12 risk assets; and then the formula is decreased to five per-
13 cent of gross income until the reserve fund attains a maxi-
14 mum of seven percent of risk assets, with subsequent trans-
15 fers required only to maintain the seven percent maxi-
16 mum. The reserves established under this section shall

17 belong to the credit union and shall be held to meet con-
18 tingencies or losses in its business.

19 (b) Special reserves to protect the interest of mem-
20 bers may be required by the commissioner by rule, or
21 when found by the credit union's board of directors or by
22 the commissioner, in any special case, to be necessary for
23 that purpose. These may include allowances for loan
24 losses and investment losses.

ARTICLE 10. CHANGE IN CORPORATE STATUS.

§31C-10-1. Voluntary liquidation.

§31C-10-2. Merger of credit unions.

§31C-10-3. Conversion.

§31C-10-1. Voluntary liquidation.

1 (a) A credit union may elect to dissolve voluntarily
2 and liquidate its affairs in the manner prescribed in this
3 section.

4 (b) If it decides to begin the procedure, the board of
5 directors shall adopt a resolution recommending the credit
6 union be dissolved voluntarily, and directing that the ques-
7 tion of liquidation be submitted to the members.

8 (c) Within ten days after the board of directors de-
9 cides to submit the question of liquidation to the members,
10 the president shall notify the commissioner and the insur-
11 ing organization in writing, setting forth the reasons for
12 the proposed liquidation. Within ten days after the mem-
13 bers act on the question of liquidation, the president shall
14 notify the commissioner and the insuring organization in
15 writing as to the action of the members on the proposal.

16 (d) As soon as the board of directors decides to
17 submit the question of liquidation to the members, pay-
18 ments on, withdrawal of, and making any transfer of share
19 and deposit accounts to loans and interest, making invest-
20 ments of any kind, and granting loans may be restricted or
21 suspended pending action by members on the proposal to
22 liquidate. On approval by the members of such proposal,
23 all such business transactions shall be permanently discon-
24 tinued. Necessary expenses of operation shall, however,

25 continue to be paid on authorization of the board of di-
26 rectors or liquidating agent during the period of liquida-
27 tion.

28 (e) For a credit union to enter voluntary liquidation,
29 approval by a majority of the members in writing or by a
30 two-thirds majority of the members present at a regular or
31 special meeting of the members is required. When autho-
32 rization for liquidation is to be obtained at a meeting of
33 the members, notice in writing shall be given to each
34 member, by first class mail, at least ten days prior to such
35 meeting.

36 (f) A liquidating credit union shall continue in exis-
37 tence for the purpose of discharging its debts, collecting
38 on loans and distributing its assets, and doing all acts re-
39 quired in order to wind up its business and may sue and
40 be sued for the purpose of enforcing such debts and obli-
41 gations until its affairs are fully concluded.

42 (g) The board of directors or the liquidating agent
43 shall distribute the assets of the credit union or the pro-
44 ceeds of any disposition of the assets in the sequence de-
45 scribed in subsection (f), section four, article one of this
46 chapter.

47 (h) As soon as the board of directors or the liquidat-
48 ing agent determines that all assets from which there is a
49 reasonable expectancy of realization have been liquidated
50 and distributed as set forth in this section, a certificate of
51 dissolution shall be executed on a form prescribed by the
52 commissioner and filed with the secretary of state, which
53 shall after filing and indexing same, be forwarded to the
54 commissioner, whereupon such credit union shall be dis-
55 solved. The liquidating agent shall return all pertinent
56 books and records of the liquidating credit union to the
57 commissioner.

§31C-10-2. Merger of credit unions.

1 (a) A credit union organized under this chapter may,
2 with the approval of the commissioner and regardless of
3 common bond, merge with one or more other credit un-
4 ions organized under this chapter, the laws of another state

5 or territory of the United States or the laws of the United
6 States.

7 (b) When two or more credit unions merge, they
8 shall either designate one of them as the continuing credit
9 union, or they shall structure a totally new credit union
10 and designate it as the new credit union. If the latter pro-
11 cedure is followed, the new credit union shall be orga-
12 nized under article two of this chapter. All participating
13 credit unions other than the continuing or new credit un-
14 ion shall be designated as merging credit unions.

15 (c) Any merger of credit unions shall be done ac-
16 cording to a plan of merger. After approval by the boards
17 of directors of all participating credit unions, the plan shall
18 be submitted to the commissioner for review and hearing
19 to grant preliminary approval. If the plan includes the
20 creation of a new credit union, all documents required by
21 section one, article two of this chapter shall be submitted
22 as part of the plan. In addition to any other documents or
23 information required by the commissioner, each partici-
24 pating credit union shall submit the following:

25 (1) The time and place of the meeting of the board
26 of directors at which the plan was agreed upon;

27 (2) The vote of the directors in favor of the adop-
28 tion of the plan; and

29 (3) A copy of the resolution or other action by
30 which the plan was agreed upon.

31 (d) The commissioner shall after review and hearing,
32 grant preliminary approval by written order, if: (i) The
33 plan has been approved properly by each board of direc-
34 tors; (ii) the documentation required to form a new credit
35 union, if any, complies with section one, article two of this
36 chapter; (iii) the action would not result or tend to create a
37 monopoly, or substantially lessen competition, or other-
38 wise further a restraint of trade, unless the anticompetitive
39 effects of the proposed action are clearly outweighed in
40 the public interest by the probable effect of the action in
41 meeting the convenience and needs of the members to be
42 served; and (iv) taking into consideration the financial and
43 managerial resources and further prospects of the credit

44 unions concerned, the action would not be contrary to the
45 best interests of the community whose shares are affected
46 by such action, nor detrimental to the safety and sound-
47 ness of the credit union to be acquired.

48 (e) After the commissioner grants preliminary ap-
49 proval, each merging credit union shall, unless waived by
50 the commissioner, conduct a membership vote on its par-
51 ticipation in the plan. The vote shall be conducted either
52 at a special membership meeting called for that purpose or
53 by mail ballot. If a majority of the members voting ap-
54 prove the plan, the credit union shall submit a record of
55 that fact to the commissioner indicating the vote by which
56 the members approved the plan and either the time and
57 place of the membership meeting or the mailing date and
58 closing date of the mail ballot.

59 (f) The commissioner may waive the membership
60 vote described in subsection (e) of this section for any
61 credit union upon determining that the credit union is
62 insolvent or about to be insolvent.

63 (g) The commissioner shall grant final approval of
64 the plan of merger after determining that the requirements
65 of subsection (e) of this section in the case of each merg-
66 ing credit union have been met. If the plan of merger
67 includes the creation of a new credit union, the commis-
68 sioner must approve the organization of the new credit
69 union under section two, article two of this chapter as part
70 of the approval of the plan of consolidation. The com-
71 missioner shall notify all participating credit unions of the
72 approval of the plan.

73 (h) Upon final approval of the plan by the commis-
74 sioner and the filing of the proper documents with the
75 office of the secretary of state, all property, property
76 rights, and members' interests in each merging credit un-
77 ion shall vest in the continuing or new credit union as
78 applicable without deed, endorsement, or other instrument
79 of transfer, and all debts, obligations and liabilities of each
80 merging credit union shall be deemed to have been as-
81 sumed by the continuing or new credit union. The rights
82 and privileges of the members of each participating credit
83 union shall remain intact; however, if a person is a mem-

84 ber of more than one of the participating credit unions,
85 that person shall be entitled to only a single set of mem-
86 bership rights in the continuing or new credit union.

87 (i) If the surviving or new credit union created by
88 the transaction is chartered by another state or territory of
89 the United States, it shall, in addition to the criteria set
90 forth in subsection (c) of this section, be subject to the
91 requirements of section six, article two of this chapter. No
92 merger resulting in an out-of-state credit union acquiring
93 a West Virginia credit union shall be permitted unless that
94 other state or territory permits a West Virginia credit union
95 to merge or acquire credit unions in their state or territory
96 on terms that are, on the whole, substantially no more
97 restrictive than those established under the terms of this
98 section: *Provided*, That no such merger shall be approved
99 where the West Virginia credit union to be acquired has
100 been in operation for less than two years.

101 (j) Notwithstanding any other provision of law, the
102 commissioner may, without prior hearing, authorize a
103 merger or consolidation of a credit union which is insol-
104 vent or is about to be insolvent with any other credit union
105 or may authorize a credit union to purchase any of the
106 assets of, or assume any of the liabilities of, any other
107 credit union which is insolvent or about to be insolvent if
108 the commissioner is satisfied that:

109 (1) An emergency requiring expeditious action
110 exists with respect to such other credit union;

111 (2) Other alternatives are not reasonably available;
112 and

113 (3) The public interest would best be served by
114 approval of such merger, consolidation, purchase or as-
115 sumption.

116 (k) Notwithstanding any other provision of law, the
117 commissioner may authorize an institution whose deposits
118 or accounts are insured by the Federal Deposit Insurance
119 Corporation to purchase any of the assets of, or assume
120 any of the liabilities of, a credit union which is insolvent or
121 about to be insolvent, except that prior to exercising this

122 authority the commissioner should consider attempting to
123 effect a merger or consolidation with, or purchase and
124 assumption by, another credit union as provided in sub-
125 section (j) of this section; and

126 (l) For purposes of the authority contained in subsec-
127 tion (k) of this section, insured share and deposit accounts
128 of the credit union may upon consummation of the pur-
129 chase and assumption be converted to insured deposits or
130 other comparable accounts in the acquiring institution,
131 and the commissioner and the insuring organization shall
132 be absolved of any liability to the credit union's members
133 with respect to those accounts.

§31C-10-3. Conversion.

1 (a) A credit union incorporated under the laws of
2 this state may be converted to a credit union organized
3 under the laws of any other state or under the laws of the
4 United States, by complying with the following require-
5 ments:

6 (1) The proposition for such conversion shall first
7 be approved, and a date set for a vote thereon by the
8 members, (either at a meeting to be held on such date or
9 by written ballot to be filed on or before such date), by a
10 majority of the directors of the said West Virginia state
11 credit union. Written notice of the proposition and of the
12 date set for the vote shall then be delivered in person to
13 each member, or mailed to each member at the address for
14 such member appearing on the records of the credit un-
15 ion, not more than thirty or less than seven days prior to
16 such date. Approval of the proposition for conversion
17 shall be by the affirmative vote of two thirds of the mem-
18 bers, in person or in writing;

19 (2) A statement of the results of the vote, verified by
20 the affidavits of the president or vice president and the
21 secretary, shall be filed with the commissioner of banking
22 within ten days after the vote is taken. However, no West
23 Virginia state chartered credit union may convert its char-
24 ter to that of another state, unless: (i) The conversion is
25 approved by the commissioner of banking in writing after
26 notice and hearing on the matter; (ii) the other state allows

27 conversions of its credit unions to a West Virginia state
28 charter on a reciprocal basis; and (iii) the majority, or in
29 the event the credit union operates offices in more than
30 two states, the plurality, of the credit union's members are
31 residents of that other state. To the extent that an
32 out-of-state credit union created by conversion seeks to
33 conduct business through a branch or service facility in
34 West Virginia, the provisions of section six, article two of
35 this chapter shall apply;

36 (3) Promptly after the vote approving the conversion
37 is taken, or after approval of the commissioner of banking,
38 where such approval is required, and in no event later than
39 ninety days thereafter, the credit union shall take such
40 action as may be necessary under the applicable federal or
41 state law to make it a federal credit union or credit union
42 of another state, and within ten days after receipt of the
43 federal credit union charter or out-of-state credit union
44 charter there shall be filed with the commissioner of bank-
45 ing a copy of the charter thus issued. Upon such filing, the
46 credit union shall cease to be a West Virginia state char-
47 tered credit union;

48 (4) The successor federal credit union or out-of-state
49 chartered credit union shall be vested with all the assets
50 and shall continue to be responsible for all of the obliga-
51 tions of the West Virginia state credit union to the same
52 extent as though the conversion had not taken place.

53 (b) A credit union organized under the laws of the
54 United States or of any other state may convert to a credit
55 union incorporated under the laws of this state. To effect
56 such a conversion, a credit union must comply with all the
57 requirements of the jurisdiction under which it was origi-
58 nally organized and the requirements of the laws and rules
59 of this state, and file proof of such compliance with the
60 commissioner. The commissioner shall generally treat the
61 conversion to a West Virginia state chartered credit union
62 as a formation of a new credit union pursuant to article
63 two of this chapter, and the procedures and requirements
64 therein shall be followed to the extent applicable.

ARTICLE 11. CORPORATE CREDIT UNION.

- §31C-11-1. Incorporation.
- §31C-11-2. Purposes.
- §31C-11-3. Membership.
- §31C-11-4. Organization.
- §31C-11-5. Powers and privileges.
- §31C-11-6. Participation in central system.
- §31C-11-7. Security interest.
- §31C-11-8. Meetings.
- §31C-11-9. Fees.
- §31C-11-10. Reserves.
- §31C-11-11. Annual audit.
- §31C-11-12. Securities exemption.

§31C-11-1. Incorporation.

- 1 A corporate credit union may be incorporated under
- 2 this article. All parts of this chapter not inconsistent with
- 3 this article shall apply to it.

§31C-11-2. Purposes.

- 1 The purposes of the corporate credit union are to:
- 2 (a) Accumulate and prudently manage the liquidity
- 3 of its member credit unions through interlending and
- 4 investment services;
- 5 (b) Act as an intermediary for credit union funds
- 6 between members and other corporate credit unions;
- 7 (c) Obtain liquid funds from other credit union orga-
- 8 nizations, financial intermediaries and other sources;
- 9 (d) Foster and promote in cooperation with other
- 10 state, regional and national corporate credit unions and
- 11 credit union organizations or associations the economic
- 12 security, growth and development of member credit un-
- 13 ions;
- 14 (e) Provide payment systems and correspondent
- 15 services to its members; and
- 16 (f) Perform such other services of benefit to its mem-
- 17 bers which are authorized by the commissioner.

§31C-11-3. Membership.

1 (a) Membership in the corporate credit union shall
2 consist of and be limited to the credit union subscribers to
3 the articles of incorporation, credit unions incorporated
4 under this chapter, the Federal Credit Union Act or any
5 other credit union act, organizations or associations of
6 credit unions, and such other organizations provided for
7 in the articles of incorporation or bylaws.

8 (b) A member of the corporate credit union shall
9 designate one person to be its authorized representative to
10 attend meetings of the corporate credit union and to vote
11 on behalf of the member. A credit union member of the
12 corporate credit union may only designate as its autho-
13 rized representative a member of its own credit union.

§31C-11-4. Organization.

1 (a) Application to form a corporate credit union
2 shall be made in writing to the commissioner. The appli-
3 cation shall contain the names of at least ten percent of the
4 credit unions in the proposed field of membership, but in
5 no case less than fifty credit unions that have agreed to
6 subscribe to shares in the corporate credit union at the
7 time the application is made.

8 (b) The application shall be accompanied by articles
9 of incorporation and bylaws.

10 (c) The bylaws shall provide for the selection of a
11 board of directors of at least five persons, all of whom
12 shall be authorized representatives of members. The by-
13 laws shall require those applying for membership to sub-
14 scribe to membership shares or other shares, or both, in a
15 minimum amount as specified in the bylaws.

§31C-11-5. Powers and privileges.

1 (a) The corporate credit union shall enjoy the pow-
2 ers and privileges of any other credit union incorporated
3 under this chapter in addition to those powers enumerated

4 in this article, notwithstanding any limitations or restric-
5 tions found elsewhere in this chapter.

6 (b) The corporate credit union may:

7 (1) Accept funds, either as shares or deposits, from
8 a member and from any credit union incorporated by this
9 state, by another state or territory of the United States or
10 by the United States, whether or not such credit union is a
11 member of the corporate credit union, or from a similar
12 institution incorporated under the laws of another country;

13 (2) Make loans to or invest in a member or in any
14 credit union incorporated by this state, by another state or
15 territory of the United States or by the United States,
16 whether or not such credit union is a member of the cor-
17 porate credit union;

18 (3) Make loans to or place deposits in a bank, sav-
19 ings bank, trust company or savings and loan association
20 incorporated by this state, by another state or territory of
21 the United States or by the United States;

22 (4) Provide payment systems and correspondent
23 services for the benefit of its members;

24 (5) Participate with any credit union incorporated
25 by this state, another state or territory of the United States
26 or the United States in making loans to its members or to
27 members of any other participating credit union, under
28 the terms and conditions to which the participating credit
29 unions agree;

30 (6) Purchase, sell, and hold investment securities
31 which are marketable obligations in the form of bonds,
32 notes or debentures which are salable under ordinary
33 circumstances with reasonable promptness at a fair value.
34 All investments and related contracts and agreements shall
35 be made in accordance with written investment policies
36 established by the board of directors, and shall conform to
37 those investments permitted under section two, article nine
38 of this chapter;

39 (7) Borrow from any source, at the discretion of its
40 board of directors;

41 (8) Authorize its board of directors to delegate the
42 authority to set interest rates on loans and deposits and to
43 determine dividends on shares;

44 (9) Contract for penalties for payment of loans prior
45 to their scheduled maturity;

46 (10) Sell all or a part of its assets to another deposi-
47 tory financial institution, purchase all or part of the assets
48 of another depository financial institution and assume the
49 liabilities of the selling depository financial institution and
50 those of its members or depositors. To the extent that the
51 action results in a merger, the commissioner shall direct
52 that the appropriate provisions of section two, article ten of
53 this chapter be followed;

54 (11) Act as intermediary for the funds of members,
55 credit unions and other corporate credit unions;

56 (12) Act as agent for members, other credit unions
57 and credit union organizations in paying, receiving, trans-
58 ferring the assets and liabilities received and invested as
59 permitted in this article;

60 (13) Receive and hold in safekeeping the securities
61 and other assets of its members and, in connection there-
62 with, make such disposition of such assets as may be
63 agreed to or directed by the member; and

64 (14) Exercise all incidental powers that are conve-
65 nient, suitable or necessary to enable it to carry out its
66 purposes.

67 (c) The corporate credit union may exercise the
68 powers or privileges granted a federal corporate credit
69 union, subject to the approval of the commissioner.

§31C-11-6. Participation in central system.

1 The corporate credit union may enter into agree-
2 ments and subscribe to any required shares for the pur-

3 pose of participation in the national credit union adminis-
4 tration central liquidity facility created by Public Law
5 95-630 or any other state or federal central liquidity facil-
6 ity or central financial system available to credit unions. It
7 may also enter into agreements with any third parties to
8 aid credit unions to obtain additional sources of liquidity.

§31C-11-7. Security interest.

1 The corporate credit union may require and accept
2 security for loans to a member in the form of a pledge,
3 assignment, hypothecation or mortgage of any assets of
4 the member or a guarantor.

§31C-11-8. Meetings.

1 The board of directors of the corporate credit union
2 shall meet each month. The board may meet at other
3 times as is necessary. Board meetings may be conducted
4 by means of telephone as provided in the bylaws in a
5 manner consistent with state law.

§31C-11-9. Fees.

1 Corporate credit unions shall pay the assessment and
2 fees set for credit unions under this code to defray the
3 costs to the commissioner and board for their supervision,
4 examination and administration. The assessments and
5 operating fees established by the commissioner or Legisla-
6 ture may make allowances for the special purposes and
7 operations of the corporate credit union.

§31C-11-10. Reserves.

1 (a) The corporate credit union shall be exempt from
2 the regular reserve requirements of subsection (a), section
3 three, article nine of this chapter but at the end of each
4 accounting period and prior to paying a dividend or inter-
5 est refund (or, at the option of the credit union, on a
6 monthly basis if dividends or interest refunds are paid
7 more frequently than monthly) sums shall be set aside in a
8 regular reserve in accordance with the following schedule:

9 (1) When the credit union's regular reserve and undi-
10 vided earnings are less than two percent of assets at the
11 end of the transfer period, the credit union shall set aside
12 an amount equal to .0015 times the credit union's average
13 daily assets for the transfer period, times the number of
14 days in the transfer period, divided by three hundred
15 sixty-five.

16 (2) When the regular reserve and undivided earnings
17 are equal to or greater than two percent of assets, but the
18 regular reserve is less than four percent of assets, the credit
19 union shall set aside an amount equal to .0010 times the
20 credit union's average daily assets for the transfer period,
21 times the number of days in the transfer period, divided
22 by three hundred sixty-five.

23 (b) Charges may be made to the regular reserve for
24 loan losses and for investment losses caused by factors
25 other than trading losses or market fluctuations. Other
26 charges to the regular reserve may only be made with the
27 prior approval of the commissioner.

28 (c) Additional reserves for corporate credit unions
29 may be required by the commissioner when in his or her
30 discretion, circumstances make such additional reserves
31 necessary and prudent for the protection of shareholders
32 and depositors.

§31C-11-11. Annual audit.

1 (a) The supervisory committee of the corporate
2 credit union shall cause an annual audit to be made by an
3 independent certified public accountant and shall submit
4 the annual audit report to the board of directors. A sum-
5 mary of the audit report shall be submitted to the mem-
6 bership at the next annual meeting.

7 (b) A copy of the audit report shall be submitted to
8 the commissioner within thirty days after receipt by the
9 board of directors.

§31C-11-12. Securities exemption.

1 The corporate credit union shall be exempt from the
2 securities laws of this state.

ARTICLE 12. PENALTIES.

§31C-12-1. Criminal liability.

§31C-12-2. Penalty for false reports.

§31C-12-3. Civil penalties.

§31C-12-1. Criminal liability.

1 Any credit union officer, director, employee or
2 agent, who willfully does any of the following, shall be
3 deemed guilty of a felony and may, upon conviction
4 thereof, be fined not more than ten thousand dollars or
5 imprisoned not less than one year nor more than five
6 years, or both:

7 (a) With intent to deceive, falsifies any books of ac-
8 count, report, statement, record or other document of a
9 credit union whether by alteration, false entry, omission or
10 otherwise;

11 (b) Signs, issues, publishes or transmits to a govern-
12 ment agency any book of account, report, statement, re-
13 cord or other document which that person knows to be
14 false;

15 (c) By means of deceit, obtains a signature to a writ-
16 ing which is the subject of forgery;

17 (d) With intent to deceive, destroys any credit union
18 book of account, report, statement, record or other docu-
19 ment.

§31C-12-2. Penalty for false reports.

1 Whoever maliciously and knowingly spreads false
2 reports about the management or finances of any credit
3 union shall be fined not less than twenty-five dollars, nor
4 more than two hundred dollars or be imprisoned for not
5 less than thirty days nor more than one year, or both.

§31C-12-3. Civil penalties.

1 Any person who violates this chapter, the rules issued
2 pursuant thereto, or any orders lawfully entered by the
3 commissioner or board of banking and financial institu-
4 tions may be subject to civil penalties in an action brought
5 by the commissioner or board in an amount not less than
6 fifty dollars nor more than five thousand dollars for each
7 violation.

CHAPTER 99

(Com. Sub. for H. B. 4133—By Delegates Douglas, Jenkins, Hutchins,
Kime, Trump and Smirl)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-a of said chapter, all relating to driving a vehicle while under the influence of alcohol, controlled substances or drugs and while having a child under the age of sixteen years in the vehicle at the time of the offense; penalties.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article five-a of said chapter be amended and reenacted, all to read as follows:

Article

5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while:
- 3 (A) He is under the influence of alcohol; or
- 4 (B) He is under the influence of any controlled sub-
- 5 stance; or
- 6 (C) He is under the influence of any other drug; or

7 (D) He is under the combined influence of alcohol and
8 any controlled substance or any other drug; or

9 (E) He has an alcohol concentration in his or her blood
10 of ten hundredths of one percent or more, by weight; and

11 (2) When so driving does any act forbidden by law or
12 fails to perform any duty imposed by law in the driving of
13 such vehicle, which act or failure proximately causes the
14 death of any person within one year next following such
15 act or failure; and

16 (3) Commits such act or failure in reckless disregard of
17 the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a
19 contributing cause to such death, shall be guilty of a
20 felony and, upon conviction thereof, shall be imprisoned
21 in the penitentiary for not less than one nor more than ten
22 years and shall be fined not less than one thousand dollars
23 nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while:

26 (A) He is under the influence of alcohol; or

27 (B) He is under the influence of any controlled sub-
28 stance; or

29 (C) He is under the influence of any other drug; or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug; or

32 (E) He has an alcohol concentration in his or her blood
33 of ten hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving of
36 such vehicle, which act or failure proximately causes the
37 death of any person within one year next following such
38 act or failure, is guilty of a misdemeanor and, upon
39 conviction thereof, shall be confined in jail for not less
40 than ninety days nor more than one year and shall be
41 fined not less than five hundred dollars nor more than one
42 thousand dollars.

43 (c) Any person who:

- 44 (1) Drives a vehicle in this state while:
- 45 (A) He is under the influence of alcohol; or
- 46 (B) He is under the influence of any controlled sub-
47 stance; or
- 48 (C) He is under the influence of any other drug; or
- 49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug; or
- 51 (E) He has an alcohol concentration in his or her blood
52 of ten hundredths of one percent or more, by weight; and
- 53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving of
55 such vehicle, which act or failure proximately causes
56 bodily injury to any person other than himself, is guilty of
57 a misdemeanor and, upon conviction thereof, shall be
58 confined in jail for not less than one day nor more than
59 one year, which jail term shall include actual confinement
60 of not less than twenty-four hours, and shall be fined not
61 less than two hundred dollars nor more than one thousand
62 dollars.
- 63 (d) Any person who:
- 64 (1) Drives a vehicle in this state while:
- 65 (A) He is under the influence of alcohol; or
- 66 (B) He is under the influence of any controlled sub-
67 stance; or
- 68 (C) He is under the influence of any other drug; or
- 69 (D) He is under the combined influence of alcohol and
70 any controlled substance or any other drug; or
- 71 (E) He has an alcohol concentration in his or her blood
72 of ten hundredths of one percent or more, by weight;
- 73 (2) Is guilty of a misdemeanor and, upon conviction
74 thereof, shall be confined in jail for not less than one day
75 nor more than six months, which jail term shall include
76 actual confinement of not less than twenty-four hours, and
77 shall be fined not less than one hundred dollars nor more
78 than five hundred dollars.

79 (e) Any person who, being an habitual user of narcotic
80 drugs or amphetamine or any derivative thereof, drives a
81 vehicle in this state, is guilty of a misdemeanor and, upon
82 conviction thereof, shall be confined in jail for not less
83 than one day nor more than six months, which jail term
84 shall include actual confinement of not less than
85 twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

88 (1) Knowingly permits his or her vehicle to be driven
89 in this state by any other person who is:

90 (A) Under the influence of alcohol; or

91 (B) Under the influence of any controlled substance;
92 or

93 (C) Under the influence of any other drug; or

94 (D) Under the combined influence of alcohol and any
95 controlled substance or any other drug; or

96 (E) Has an alcohol concentration in his or her blood of
97 ten hundredths of one percent or more, by weight;

98 (2) Is guilty of a misdemeanor and, upon conviction
99 thereof, shall be confined in jail for not more than six
100 months and shall be fined not less than one hundred
101 dollars nor more than five hundred dollars.

102 (g) Any person who:

103 Knowingly permits his or her vehicle to be driven in
104 this state by any other person who is an habitual user of
105 narcotic drugs or amphetamine or any derivative thereof,
106 is guilty of a misdemeanor and, upon conviction thereof,
107 shall be confined in jail for not more than six months and
108 shall be fined not less than one hundred dollars nor more
109 than five hundred dollars.

110 (h) Any person under the age of twenty-one years who
111 drives a vehicle in this state while he or she has an alcohol
112 concentration in his or her blood of two hundredths of
113 one percent or more, by weight, but less than ten
114 hundredths of one percent, by weight, shall, for a first
115 offense under this subsection, be guilty of a misdemeanor

116 and, upon conviction thereof, shall be fined not less than
117 twenty-five dollars nor more than one hundred dollars.
118 For a second or subsequent offense under this subsection,
119 such person is guilty of a misdemeanor and, upon
120 conviction thereof, shall be confined in jail for
121 twenty-four hours, and shall be fined not less than one
122 hundred dollars nor more than five hundred dollars. A
123 person who is charged with a first offense under the
124 provisions of this subsection may move for a continuance
125 of the proceedings from time to time to allow the person
126 to participate in the vehicle alcohol test and lock program
127 as provided for in section three-a, article five-a of this
128 chapter. Upon successful completion of the program, the
129 court shall dismiss the charge against the person and
130 expunge the person's record as it relates to the alleged
131 offense. In the event the person fails to successfully
132 complete the program, the court shall proceed to an
133 adjudication of the alleged offense. A motion for a
134 continuance under this subsection shall not be construed
135 as an admission or be used as evidence.

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or
138 (i) of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) Any person who:

142 (1) Drives a vehicle in this state while:

143 (A) He is under the influence of alcohol; or

144 (B) He is under the influence of any controlled sub-
145 stance; or

146 (C) He is under the influence of any other drug; or

147 (D) He is under the combined influence of alcohol and
148 any controlled substance or any other drug; or

149 (E) He has an alcohol concentration in his or her blood
150 of ten hundredths of one percent or more, by weight; and

151 (2) The person when so driving has on or within the
152 motor vehicle one or more other persons who are
153 unemancipated minors who have not reached their

154 sixteenth birthday, shall be guilty of a misdemeanor and,
155 upon conviction thereof, shall be confined in jail for not
156 less than two days nor more than twelve months, which jail
157 term shall include actual confinement of not less than
158 forty-eight hours, and shall be fined not less than two
159 hundred dollars nor more than one thousand dollars.

160 (j) A person violating any provision of subsection (b),
161 (c), (d), (e), (f), (g) or (i) of this section shall, for the
162 second offense under this section, be guilty of a
163 misdemeanor and, upon conviction thereof, shall be
164 confined in jail for a period of not less than six months
165 nor more than one year, and the court may, in its
166 discretion, impose a fine of not less than one thousand
167 dollars nor more than three thousand dollars.

168 (k) A person violating any provision of subsection (b),
169 (c), (d), (e), (f), (g) or (i) of this section shall, for the third
170 or any subsequent offense under this section, be guilty of
171 a felony and, upon conviction thereof, shall be imprisoned
172 in the penitentiary for not less than one nor more than
173 three years, and the court may, in its discretion, impose a
174 fine of not less than three thousand dollars nor more than
175 five thousand dollars.

176 (l) For purposes of subsections (j) and (k) of this
177 section relating to second, third and subsequent offenses,
178 the following types of convictions shall be regarded as
179 convictions under this section:

180 (1) Any conviction under the provisions of subsection
181 (a), (b), (c), (d), (e) or (f) of the prior enactment of this
182 section for an offense which occurred on or after the first
183 day of September, one thousand nine hundred eighty-one,
184 and prior to the effective date of this section;

185 (2) Any conviction under the provisions of subsection
186 (a) or (b) of the prior enactment of this section for an
187 offense which occurred within a period of five years
188 immediately preceding the first day of September, one
189 thousand nine hundred eighty-one; and

190 (3) Any conviction under a municipal ordinance of
191 this state or any other state or a statute of the United States
192 or of any other state of an offense which has the same

193 elements as an offense described in subsection (a), (b), (c),
194 (d), (e), (f) or (g) of this section, which offense occurred
195 after the tenth day of June, one thousand nine hundred
196 eighty-three.

197 (m) A person may be charged in a warrant or
198 indictment or information for a second or subsequent
199 offense under this section if the person has been
200 previously arrested for or charged with a violation of this
201 section which is alleged to have occurred within the
202 applicable time periods for prior offenses, notwithstanding
203 the fact that there has not been a final adjudication of the
204 charges for the alleged previous offense. In such case, the
205 warrant or indictment or information must set forth the
206 date, location and particulars of the previous offense or
207 offenses. No person may be convicted of a second or
208 subsequent offense under this section unless the
209 conviction for the previous offense has become final.

210 (n) The fact that any person charged with a violation of
211 subsection (a), (b), (c), (d) or (e) of this section, or any
212 person permitted to drive as described under subsection
213 (f) or (g) of this section, is or has been legally entitled to
214 use alcohol, a controlled substance or a drug shall not
215 constitute a defense against any charge of violating
216 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

217 (o) For purposes of this section, the term "controlled
218 substance" shall have the meaning ascribed to it in chapter
219 sixty-a of this code.

220 (p) The sentences provided herein upon conviction for
221 a violation of this article are mandatory and shall not be
222 subject to suspension or probation: *Provided*, That the
223 court may apply the provisions of article eleven-a, chapter
224 sixty-two of this code to a person sentenced or committed
225 to a term of one year or less. An order for home
226 detention by the court pursuant to the provisions of article
227 eleven-b, chapter sixty-two of this code may be used as an
228 alternative sentence to any period of incarceration
229 required by this section.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF
LICENSES FOR DRIVING UNDER THE**

INFLUENCE OF ALCOHOL, CON-
TROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked or
3 suspended under the provisions of section one of this
4 article or section seven, article five of this chapter, the
5 commissioner of motor vehicles shall stay the imposition
6 of the period of revocation or suspension and afford the
7 person an opportunity to be heard. The written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested, within
10 ten days after receipt of a copy of the order of revocation
11 or suspension. The hearing shall be before the com-
12 missioner or a hearing examiner retained by the
13 commissioner who shall rule on evidentiary issues and
14 submit proposed findings of fact and conclusions of law
15 for the consideration of said commissioner and all of the
16 pertinent provisions of article five, chapter twenty-nine-a
17 of this code shall apply: *Provided*, That in the case of a
18 resident of this state the hearing shall be held in the
19 county wherein the arrest was made in this state unless the
20 commissioner or the commissioner's authorized deputy or
21 agent and the person agree that the hearing may be held
22 in some other county.

23 (b) Any such hearing shall be held within twenty days
24 after the date upon which the commissioner received the
25 timely written request therefor, unless there is a
26 postponement or continuance. The commissioner may
27 postpone or continue any hearing on the commissioner's
28 own motion, or upon application for each person for good
29 cause shown. The commissioner shall adopt and
30 implement by a procedural rule written policies governing
31 the postponement or continuance of any such hearing on
32 the commissioner's own motion or for the benefit of any
33 law-enforcement officer or any person requesting the
34 hearing, and such policies shall be enforced and applied to
35 all parties equally. For the purpose of conducting the
36 hearing, the commissioner shall have the power and
37 authority to issue subpoenas and subpoenas duces tecum
38 in accordance with the provisions of section one, article

39 five, chapter twenty-nine-a of this code: *Provided*, That the
40 notice of hearing to the appropriate law-enforcement
41 officers by registered or certified mail, return receipt
42 requested, shall constitute a subpoena to appear at the
43 hearing without the necessity of payment of fees by the
44 division of motor vehicles. All subpoenas and subpoenas
45 duces tecum shall be issued and served within the time and
46 for the fees and shall be enforced, as specified in section
47 one, article five of said chapter twenty-nine-a, and all of
48 the said section one provisions dealing with subpoenas and
49 subpoenas duces tecum shall apply to subpoenas and
50 subpoenas duces tecum issued for the purpose of a
51 hearing hereunder.

52 (c) Law-enforcement officers shall be compensated
53 for the time expended in their travel and appearance
54 before the commissioner by the law-enforcement agency
55 by whom they are employed at their regular rate if they
56 are scheduled to be on duty during said time or at their
57 regular overtime rate if they are scheduled to be off duty
58 during said time.

59 (d) The principal question at the hearing shall be
60 whether the person did drive a motor vehicle while under
61 the influence of alcohol, controlled substances or drugs, or
62 did drive a motor vehicle while having an alcohol
63 concentration in the person's blood of ten hundredths of
64 one percent or more, by weight, or did refuse to submit to
65 the designated secondary chemical test, or did drive a
66 motor vehicle while under the age of twenty-one years
67 with an alcohol concentration in his blood of two
68 hundredths of one percent or more, by weight, but less
69 than ten hundredths of one percent, by weight.

70 The commissioner may propose a legislative rule in
71 compliance with the provisions of article three, chapter
72 twenty-nine-a of this code, which rule may provide that if
73 a person accused of driving a motor vehicle while under
74 the influence of alcohol, controlled substances or drugs, or
75 accused of driving a motor vehicle while having an
76 alcohol concentration in the person's blood of ten
77 hundredths of one percent or more, by weight, or accused
78 of driving a motor vehicle while under the age of
79 twenty-one years with an alcohol concentration in his

80 blood of two hundredths of one percent or more, by
81 weight, but less than ten hundredths of one percent, by
82 weight, intends to challenge the results of any secondary
83 chemical test of blood, breath or urine, or intends to
84 cross-examine the individual or individuals who
85 administered the test or performed the chemical analysis,
86 the person shall, within an appropriate period of time prior
87 to the hearing, notify the commissioner in writing of such
88 intention. The rule may provide that when there is a
89 failure to comply with the notice requirement, the results
90 of the secondary test, if any, shall be admissible as though
91 the person and the commissioner had stipulated the
92 admissibility of such evidence. Any such rule shall
93 provide that the rule shall not be invoked in the case of a
94 person who is not represented by counsel unless the
95 communication from the commissioner to the person
96 establishing a time and place for the hearing also
97 informed the person of the consequences of the person's
98 failure to timely notify the commissioner of the person's
99 intention to challenge the results of the secondary
100 chemical test or cross-examine the individual or
101 individuals who administered the test or performed the
102 chemical analysis.

103 (e) In the case of a hearing wherein a person is
104 accused of driving a motor vehicle while under the
105 influence of alcohol, controlled substances or drugs, or
106 accused of driving a motor vehicle while having an
107 alcoholic concentration in the person's blood of ten
108 hundredths of one percent or more, by weight, or accused
109 of driving a motor vehicle while under the age of
110 twenty-one years with an alcohol concentration in his or
111 her blood of two hundredths of one percent or more, by
112 weight, but less than ten hundredths of one percent, by
113 weight, the commissioner shall make specific findings as
114 to: (1) Whether the arresting law-enforcement officer had
115 reasonable grounds to believe the person to have been
116 driving while under the influence of alcohol, controlled
117 substances or drugs, or while having an alcoholic
118 concentration in the person's blood of ten hundredths of
119 one percent or more, by weight, or to have been driving a
120 motor vehicle while under the age of twenty-one years
121 with an alcohol concentration in his or her blood of two

122 hundredths of one percent or more, by weight, but less
123 than ten hundredths of one percent, by weight; (2)
124 whether the person was lawfully placed under arrest for an
125 offense involving driving under the influence of alcohol,
126 controlled substances or drugs, or was lawfully taken into
127 custody for the purpose of administering a secondary test;
128 and (3) whether the tests, if any, were administered in
129 accordance with the provisions of this article and article
130 five of this chapter.

131 (f) If, in addition to a finding that the person did drive
132 a motor vehicle while under the influence of alcohol,
133 controlled substances or drugs, or did drive a motor
134 vehicle while having an alcoholic concentration in the
135 person's blood of ten hundredths of one percent or more,
136 by weight, or did drive a motor vehicle while under the
137 age of twenty-one years with an alcohol concentration in
138 his blood of two hundredths of one percent or more, by
139 weight, but less than ten hundredths of one percent, by
140 weight, the commissioner also finds by a preponderance
141 of the evidence that the person when so driving did an act
142 forbidden by law or failed to perform a duty imposed by
143 law, which act or failure proximately caused the death of a
144 person and was committed in reckless disregard of the
145 safety of others, and if the commissioner further finds that
146 the influence of alcohol, controlled substances or drugs or
147 the alcoholic concentration in the blood was a
148 contributing cause to the death, the commissioner shall
149 revoke the person's license for a period of ten years:
150 *Provided*, That if the commissioner has previously
151 suspended or revoked the person's license under the
152 provisions of this section or section one of this article
153 within the ten years immediately preceding the date of
154 arrest, the period of revocation shall be for the life of the
155 person.

156 (g) If, in addition to a finding that the person did
157 drive a motor vehicle while under the influence of alcohol,
158 controlled substances or drugs, or did drive a motor
159 vehicle while having an alcoholic concentration in the
160 person's blood of ten hundredths of one percent or more,
161 by weight, the commissioner also finds by a
162 preponderance of the evidence that the person when so

163 driving did an act forbidden by law or failed to perform a
164 duty imposed by law, which act or failure proximately
165 caused the death of a person, the commissioner shall
166 revoke the person's license for a period of five years:
167 *Provided*, That if the commissioner has previously
168 suspended or revoked the person's license under the
169 provisions of this section or section one of this article
170 within the ten years immediately preceding the date of
171 arrest, the period of revocation shall be for the life of the
172 person.

173 (h) If, in addition to a finding that the person did
174 drive a motor vehicle while under the influence of alcohol,
175 controlled substances or drugs, or did drive a motor
176 vehicle while having an alcoholic concentration in the
177 person's blood of ten hundredths of one percent or more,
178 by weight, the commissioner also finds by a pre-
179 ponderance of the evidence that the person when so
180 driving did an act forbidden by law or failed to perform a
181 duty imposed by law, which act or failure proximately
182 caused bodily injury to a person other than himself or
183 herself, the commissioner shall revoke the person's license
184 for a period of two years: *Provided*, That if the com-
185 missioner has previously suspended or revoked the
186 person's license under the provisions of this section or
187 section one of this article within the ten years immediately
188 preceding the date of arrest, the period of revocation shall
189 be ten years: *Provided, however*, That if the commissioner
190 has previously suspended or revoked the person's license
191 more than once under the provisions of this section or
192 section one of this article within the ten years immediately
193 preceding the date of arrest, the period of revocation shall
194 be for the life of the person.

195 (i) If the commissioner finds by a preponderance of
196 the evidence that the person did drive a motor vehicle
197 while under the influence of alcohol, controlled substances
198 or drugs, or did drive a motor vehicle while having an
199 alcoholic concentration in the person's blood of ten
200 hundredths of one percent or more, by weight, or finds
201 that the person, being an habitual user of narcotic drugs or
202 amphetamine or any derivative thereof, did drive a motor
203 vehicle, or finds that the person knowingly permitted the

204 person's vehicle to be driven by another person who was
205 under the influence of alcohol, controlled substances or
206 drugs, or knowingly permitted the person's vehicle to be
207 driven by another person who had an alcoholic
208 concentration in his or her blood of ten hundredths of one
209 percent or more, by weight, the commissioner shall revoke
210 the person's license for a period of six months: *Provided,*
211 That if the commissioner has previously suspended or
212 revoked the person's license under the provisions of this
213 section or section one of this article within the ten years
214 immediately preceding the date of arrest, the period of
215 revocation shall be ten years: *Provided, however,* That if
216 the commissioner has previously suspended or revoked
217 the person's license more than once under the provisions
218 of this section or section one of this article within the ten
219 years immediately preceding the date of arrest, the period
220 of revocation shall be for the life of the person.

221 (j) If, in addition to a finding that the person did drive
222 a motor vehicle while under the age of twenty-one years
223 with an alcohol concentration in his blood of two
224 hundredths of one percent or more, by weight, but less
225 than ten hundredths of one percent, by weight, the
226 commissioner also finds by a preponderance of the
227 evidence that the person when so driving did an act
228 forbidden by law or failed to perform a duty imposed by
229 law, which act or failure proximately caused the death of a
230 person, and if the commissioner further finds that the
231 alcoholic concentration in the blood was a contributing
232 cause to the death, the commissioner shall revoke the
233 person's license for a period of five years: *Provided,* That
234 if the commissioner has previously suspended or revoked
235 the person's license under the provisions of this section or
236 section one of this article within the ten years immediately
237 preceding the date of arrest, the period of revocation shall
238 be for the life of the person.

239 (k) If, in addition to a finding that the person did
240 drive a motor vehicle while under the age of twenty-one
241 years with an alcohol concentration in his blood of two
242 hundredths of one percent or more, by weight, but less
243 than ten hundredths of one percent, by weight, the
244 commissioner also finds by a preponderance of the

245 evidence that the person when so driving did an act
246 forbidden by law or failed to perform a duty imposed by
247 law, which act or failure proximately caused bodily injury
248 to a person other than himself or herself, and if the
249 commissioner further finds that the alcoholic con-
250 centration in the blood was a contributing cause to the
251 bodily injury, the commissioner shall revoke the person's
252 license for a period of two years: *Provided*, That if the
253 commissioner has previously suspended or revoked the
254 person's license under the provisions of this section or
255 section one of this article within the ten years immediately
256 preceding the date of arrest, the period of revocation shall
257 be ten years: *Provided, however*, That if the commissioner
258 has previously suspended or revoked the person's license
259 more than once under the provisions of this section or
260 section one of this article within the ten years immediately
261 preceding the date of arrest, the period of revocation shall
262 be for the life of the person.

263 (l) If the commissioner finds by a preponderance of
264 the evidence that the person did drive a motor vehicle
265 while under the age of twenty-one years with an alcohol
266 concentration in his blood of two hundredths of one
267 percent or more, by weight, but less than ten hundredths
268 of one percent, by weight, the commissioner shall suspend
269 the person's license for a period of sixty days.

270 (m) If, in addition to a finding that the person did
271 drive a motor vehicle while under the influence of alcohol,
272 controlled substances or drugs, or did drive a motor
273 vehicle while having an alcoholic concentration in the
274 person's blood of ten hundredths of one percent or more,
275 by weight, the commissioner also finds by a
276 preponderance of the evidence that the person when so
277 driving did have on or within the motor vehicle another
278 person who has not reached his or her sixteenth birthday,
279 the commissioner shall revoke the person's license for a
280 period of one year: *Provided*, That if the commissioner
281 has previously suspended or revoked the person's license
282 under the provisions of this section or section one of this
283 article within the ten years immediately preceding the date
284 of arrest, the period of revocation shall be ten years:
285 *Provided, however*, That if the commissioner has

286 previously suspended or revoked the person's license more
287 than once under the provisions of this section or section
288 one of this article within the ten years immediately
289 preceding the date of arrest, the period of revocation shall
290 be for the life of the person.

291 (n) For purposes of this section, where reference is
292 made to previous suspensions or revocations under this
293 section, the following types of criminal convictions or
294 administrative suspensions or revocations shall also be
295 regarded as suspensions or revocations under this section
296 or section one of this article:

297 (1) Any administrative revocation under the
298 provisions of the prior enactment of this section for
299 conduct which occurred within the ten years immediately
300 preceding the date of arrest.

301 (2) Any suspension or revocation on the basis of a
302 conviction under a municipal ordinance of another state
303 or a statute of the United States or of any other state of an
304 offense which has the same elements as an offense
305 described in section two, article five of this chapter, for
306 conduct which occurred within the ten years immediately
307 preceding the date of arrest.

308 (3) Any revocation under the provisions of section
309 seven, article five of this chapter, for conduct which
310 occurred within the ten years immediately preceding the
311 date of arrest.

312 (o) In the case of a hearing wherein a person is
313 accused of refusing to submit to a designated secondary
314 test, the commissioner shall make specific findings as to:
315 (1) Whether the arresting law-enforcement officer had
316 reasonable grounds to believe the person had been driving
317 a motor vehicle in this state while under the influence of
318 alcohol, controlled substances or drugs; (2) whether the
319 person was lawfully placed under arrest for an offense
320 relating to driving a motor vehicle in this state while under
321 the influence of alcohol, controlled substances or drugs;
322 (3) whether the person refused to submit to the secondary
323 test finally designated in the manner provided in section
324 four, article five of this chapter; and (4) whether the
325 person had been given a written statement advising the

326 person that the person's license to operate a motor vehicle
327 in this state would be revoked for at least one year and up
328 to life if the person refused to submit to the test finally
329 designated in the manner provided in section four, article
330 five of this chapter.

331 (p) If the commissioner finds by a preponderance of
332 the evidence that: (1) The arresting law-enforcement
333 officer had reasonable grounds to believe the person had
334 been driving a motor vehicle in this state while under the
335 influence of alcohol, controlled substances or drugs; (2)
336 the person was lawfully placed under arrest for an offense
337 relating to driving a motor vehicle in this state while under
338 the influence of alcohol, controlled substances or drugs;
339 (3) the person refused to submit to the secondary
340 chemical test finally designated; and (4) the person had
341 been given a written statement advising the person that the
342 person's license to operate a motor vehicle in this state
343 would be revoked for a period of at least one year and up
344 to life if the person refused to submit to the test finally
345 designated, the commissioner shall revoke the person's
346 license to operate a motor vehicle in this state for the
347 periods specified in section seven, article five of this
348 chapter.

349 (q) If the commissioner finds to the contrary with
350 respect to the above issues, the commissioner shall rescind
351 his or her earlier order of revocation or shall reduce the
352 order of revocation to the appropriate period of
353 revocation under this section, or section seven, article five
354 of this chapter.

355 A copy of the commissioner's order made and entered
356 following the hearing shall be served upon the person by
357 registered or certified mail, return receipt requested.
358 During the pendency of any such hearing, the revocation
359 of the person's license to operate a motor vehicle in this
360 state shall be stayed.

361 If the commissioner shall after hearing make and
362 enter an order affirming the commissioner's earlier order
363 of revocation, the person shall be entitled to judicial review
364 as set forth in chapter twenty-nine-a of this code, except
365 that the commissioner shall not stay enforcement of the

366 order; and, pending the appeal, the court may grant a stay
367 or supersedeas of the order only upon motion and
368 hearing, and a finding by the court upon the evidence
369 presented, that there is a substantial probability that the
370 appellant shall prevail upon the merits, and the appellant
371 will suffer irreparable harm if the order is not stayed:
372 *Provided*, That in no event shall the stay or supersedeas of
373 the order exceed thirty days.

374 (r) In any revocation or suspension pursuant to this
375 section, if the driver whose license is revoked or suspended
376 had not reached the driver's eighteenth birthday at the
377 time of the conduct for which the license is revoked or
378 suspended, the driver's license shall be revoked or
379 suspended until the driver's eighteenth birthday, or the
380 applicable statutory period of revocation or suspension
381 prescribed by this section, whichever is longer.

382 (s) Funds for this section's hearing and appeal process
383 may be provided from the drunk driving prevention fund,
384 as created by section sixteen, article fifteen, chapter eleven
385 of this code, upon application for such funds to the
386 commission on drunk driving prevention.

CHAPTER 100

(Com. Sub. for S. B. 156—By Senators Whitlow and Bailey)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting persons from digging cultivated ginseng on lands of another without the owner's consent; land must be posted; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.**§61-3-35. Digging cultivated ginseng; penalty.**

1 It shall be unlawful for any person to dig cultivated
 2 ginseng or prospect for the same, on the lands of another
 3 without the consent of the owner or owners thereof first
 4 obtained. The property must be properly posted with "No
 5 Trespassing" signs, "Private Property" signs, or other signs
 6 that explain to a person to stay off the property. The
 7 signs must be of reasonable size to be read by an average
 8 person and must be posted at reasonable intervals of at
 9 least two hundred feet around the property.

10 Any person violating this section shall be guilty of a
 11 misdemeanor and, upon conviction thereof, shall be fined
 12 not less than one hundred dollars.

CHAPTER 101

(S. B. 384—By Senators Bowman, Plymale, Macnaughtan, Ross and Scott)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-two, relating to making it a felony to remove or injure timber valued at more than one thousand dollars; making it a misdemeanor to remove or injure timber valued at one thousand dollars or less; creating penalties; and creating exemptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

1 (a) Any person who willfully and maliciously and
2 with intent to do harm unlawfully enters upon the lands of
3 another, cuts down, injures, removes or destroys any tim-
4 ber valued at more than one thousand dollars, without the
5 permission of the owner or his or her representative is
6 guilty of a felony and, upon conviction thereof, shall be
7 fined not more than three times the value of timber in-
8 jured, removed or destroyed, or imprisoned in a regional
9 jail for thirty days, or both fined and imprisoned.

10 (b) Any person who willfully and maliciously and
11 with intent to do harm unlawfully enters upon the lands of
12 another, cuts down, injures, removes or destroys any tim-
13 ber valued at one thousand dollars or less, without the
14 permission of the owner or his or her representative is
15 guilty of a misdemeanor and, upon conviction thereof,
16 shall be fined not more than one thousand dollars or im-
17 prisoned in the county or regional jail for not more than
18 thirty days.

19 (c) The necessary trimming and removal of timber to
20 permit the construction, repair, maintenance, cleanup and
21 operations of pipelines and utility lines and appurtenances
22 of public utilities, public service corporations and to aid
23 registered land surveyors and professional engineers in the
24 performance of their professional services, and municipal-
25 ities, and pipeline companies, or lawful operators and
26 product purchasers of natural resources other than timber
27 shall not be deemed a willful and intentional cutting down,
28 injuring, removing or destroying of timber.

29 (d) The necessary trimming and removal of timber
30 for boundary line maintenance, for the construction,
31 maintenance and repair of streets, roads and highways or
32 for the control and regulation of traffic thereon by the
33 state and its political subdivisions or registered land sur-
34 veyors and professional engineers shall not be deemed a
35 willful and intentional cutting down, injuring, removing or
36 destroying of timber.

37 (e) No fine or imprisonment imposed pursuant to this
38 section shall be construed to limit any cause of action by a
39 landowner for recovery of damages otherwise allowed by
40 law.

CHAPTER 102

(S. B. 400—By Senators Bowman, Wooton, Anderson, Buckalew, Deem, Dittmar, Miller, Olliverio, Ross, Scott and Wiedebusch)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seven and eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-e, all relating to criminal offenses involving explosives; definitions; penalties cumulative; illegal possession of destructive devices, explosive materials or incendiary devices; criminal use of destructive devices, explosive materials or incendiary devices; causing death or injury, penalties; causing death or injury to an explosives detection animal; manufacture, purchase, sale, advertising for sale, transporting or possession or use of hoax bomb; possession or use of hoax bomb in commission of a felony; theft of explosive material from storage magazines or buildings; receipt, possession, storage, sale or transportation of stolen explosive material; wanton endangerment involving destructive devices, explosive materials or incendiary devices; exemptions; contraband, seizure and forfeiture; legislative findings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

- §61-3E-1. Definitions.
- §61-3E-2. Penalties cumulative.
- §61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.
- §61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty.
- §61-3E-5. Causing death or injury; penalties.
- §61-3E-6. Causing death or injury to an explosives detection animal; penalty.

- §61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.
- §61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.
- §61-3E-9. Receipt, possession, storage, sale or transportation of stolen explosive material; penalty.
- §61-3E-10. Wanton endangerment involving destructive devices, explosive materials or incendiary devices; penalty.
- §61-3E-11. Exemptions.
- §61-3E-12. Contraband, seizure, forfeiture.
- §61-3E-13. Legislative findings.

§61-3E-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (a) "Destructive device" means any bomb, grenade,
4 mine, rocket, missile, pipebomb or similar device contain-
5 ing an explosive, incendiary, explosive gas or expanding
6 gas which is designed or so constructed as to explode by
7 such filler and is capable of causing bodily harm or prop-
8 erty damage; any combination of parts, either designed or
9 intended for use in converting any device into a destruc-
10 tive device and from which a destructive device may be
11 readily assembled.

12 "Destructive device" does not include a firearm as such
13 is defined in section two, article seven of this chapter or
14 model rockets and their components as defined in section
15 twenty-three, article three, chapter twenty-nine of this
16 code.

17 (b) "Explosive material" means any chemical com-
18 pound, mechanical mixture or device that is commonly
19 used or can be used for the purpose of producing an ex-
20 plosion and which contains any oxidizing and combustive
21 units or other ingredients in such proportions, quantities
22 or packaging that an ignition by fire, by friction, by con-
23 cussion, by percussion, by detonator or by any part of the
24 compound or mixture may cause a sudden generation of
25 highly heated gases. These materials include, but are not
26 limited to, powders for blasting, high or low explosives,
27 blasting materials, blasting agents, blasting emulsions,
28 blasting fuses other than electric circuit breakers, detona-

29 tors, blasting caps and other detonating agents and black
30 or smokeless powders not manufactured or used for lawful
31 sporting purposes or fireworks defined in section
32 twenty-three, article three, chapter twenty-nine of this code
33 which are not used in violation of this article. Also includ-
34 ed are all explosive materials listed annually by the office
35 of the state fire marshal and published in the state register,
36 said publication being hereby mandated.

37 (c) "Hoax bomb" means any device or object that by
38 its design, construction, content or characteristics appears
39 to be, or is represented to be or to contain a destructive
40 device, explosive material or incendiary device as defined
41 in this section, but is, in fact, an inoperative facsimile or
42 imitation of such a destructive device, explosive material
43 or incendiary device.

44 (d) "Incendiary device" means a container containing
45 gasoline, kerosene, fuel oil, or derivative thereof, or other
46 flammable or combustible material, having a wick or other
47 substance or device which, if set or ignited, is capable of
48 igniting such gasoline, kerosene, fuel oil, or derivative
49 thereof, or other flammable or combustible material:
50 *Provided*, That no similar device commercially manufac-
51 tured and used solely for the purpose of illumination shall
52 be deemed to be an incendiary device.

53 (e) "Legal authority" means that right as expressly
54 stated by statute or law.

55 (f) "Person" shall mean an individual, corporation,
56 company, association, firm, partnership, society or joint
57 stock company.

58 (g) "Storage magazine" is defined to mean any build-
59 ing or structure, other than an explosives manufacturing
60 building, approved by the legal authority for the storage
61 of explosive materials.

§61-3E-2. Penalties cumulative.

1 It is the intention of the Legislature in enacting this
2 article that all criminal offenses and penalties defined in
3 this article shall be cumulative and shall be in addition to
4 any other offenses and penalties provided for by law. The
5 Legislature contemplates and authorizes separate and

6 consecutive sentences for the offenses defined in this arti-
7 cle and other offenses provided for or defined by law.
8 The Legislature declares as a matter of law that for the
9 offenses defined in this article that involve injuries or
10 death to persons those offenses are separate offenses as to
11 each person whose injury or death results from the con-
12 duct proscribed by this article.

§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.

1 Any person who possesses or manufactures any explo-
2 sive material without first obtaining a permit to use explo-
3 sives from the office of the state fire marshal or who pos-
4 sesses or manufactures any destructive device or incendi-
5 ary device shall be guilty of a felony and, upon conviction
6 thereof, shall be committed to the custody of the division
7 of corrections for not less than one nor more than ten
8 years or fined not more than five thousand dollars, or
9 both.

§61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty.

1 Any person who unlawfully and intentionally damages
2 the property of another or attempts to damage the proper-
3 ty of another by the use of a destructive device, explosive
4 material or incendiary device shall be guilty of a felony
5 and, upon conviction thereof, shall be committed to the
6 custody of the division of corrections for not less than two
7 nor more than ten years, or fined not more than ten thou-
8 sand dollars, or both.

§61-3E-5. Causing death or injury; penalties.

1 (a) Any person who violates the provisions of this
2 article which violation causes bodily injury to any person
3 shall be guilty of a felony and, upon conviction thereof,
4 shall be committed to the custody of the division of cor-
5 rections for not less than two nor more than ten years, or
6 fined not more than five thousand dollars, or both.

7 (b) Any person who violates the provisions of this
8 article which violation causes serious bodily injury to any
9 person shall be guilty of a felony and, upon conviction

10 thereof, shall be committed to the custody of the division
11 of corrections for not less than three nor more than fifteen
12 years, or fined not more than ten thousand dollars, or
13 both.

14 (c) Any person who violates the provisions of this
15 article which violation causes the death of any person shall
16 be guilty of a felony and, upon conviction thereof, shall
17 be committed to the custody of the division of corrections
18 for a definite term of years of not less than ten years nor
19 more than forty years. No person sentenced to a period
20 of imprisonment pursuant to the provisions of this subsection
21 shall be eligible for parole prior to having served a
22 minimum of ten years.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

1 Any person who violates the provisions of this article
2 which violation causes death, serious or debilitating bodily
3 injury to an explosives detection animal owned or used by
4 a law-enforcement agency, shall be guilty of a felony and,
5 upon conviction thereof, be committed to the custody of
6 the division of corrections for not less than one year nor
7 more than five years or fined not more than five thousand
8 dollars, or both.

§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.

1 (a) Any person who knowingly manufactures, purchases, sells, advertises for sale, transports or possesses a
2 hoax bomb with intent to violate any provision of this
3 code shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall be incarcerated in
4 a county or regional jail for not less than six months nor
5 more than one year, or fined five thousand dollars, or
6 both.
7
8

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section, any person who possesses or uses a hoax
11 bomb to commit or attempt to commit any felony shall be

12 guilty of a felony and, upon conviction thereof, shall be
13 committed to the custody of the division of corrections for
14 not less than one nor more than ten years, or fined not
15 more than ten thousand dollars, or both.

§61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.

1 Any person who breaks and enters or shall enter with-
2 out breaking any storage magazine, shop, office, store-
3 house, warehouse or any other building or out-house
4 adjoining thereto, any railcar, boat, vessel or motor vehicle
5 within the jurisdiction of any county within this state
6 where explosive material is stored, with the intent to com-
7 mit larceny shall be guilty of a felony and, upon convic-
8 tion thereof, shall be committed to the custody of the
9 division of corrections for not less than one nor more than
10 ten years or fined not more than ten thousand dollars, or
11 both.

§61-3E-9. Receipt, possession, storage, sale or transportation of stolen explosive material; penalty.

1 Any person who receives, conceals, transports, ships,
2 stores, barter, sells or disposes of any explosive material
3 knowing or have reason to know that such materials is
4 stolen is guilty of a felony and, upon conviction thereof,
5 shall be committed to the custody of the division of cor-
6 rections for not less than one nor more than ten years or
7 fined not more than ten thousand dollars, or both.

§61-3E-10. Wanton endangerment involving destructive devices, explosive materials or incendiary devices; penalty.

1 Any person who wantonly performs any act with a
2 destructive device, explosive material or incendiary device
3 which creates substantial risk of death or serious bodily
4 injury to another shall be guilty of a felony and, upon
5 conviction thereof, shall be committed to the custody of
6 the division of corrections for not less than two years nor
7 more than ten years or fined not more than ten thousand
8 dollars, or both.

§61-3E-11. Exemptions.

1 (a) Unless specifically prohibited by any provision of
2 this code or the laws of the United States, nothing in this
3 article shall prohibit the authorized manufacture, sale,
4 transportation, distribution, use or possession of any ex-
5 plosive material by any person holding a permit for such
6 issued by the office of the state fire marshal. Any person
7 performing a lawful activity pursuant to or regulated by
8 the terms of a permit issued by the division of environ-
9 mental protection, or any office thereof, shall be exempt
10 from the provisions of this article.

11 (b) Unless specifically prohibited by any other provi-
12 sion of this code or the laws of the United States, nothing
13 in this section shall prohibit the authorized manufacture,
14 transportation, distribution, use or possession of any ex-
15 plosive, destructive device or incendiary device by a mem-
16 ber of the armed forces or law-enforcement officers when-
17 ever such persons are acting lawfully and in the line of
18 duty; nor shall it prohibit the manufacture, transportation,
19 distribution, use or possession of any explosive material,
20 destructive device or incendiary device to be used solely
21 for lawful scientific research or lawful educational purpos-
22 es. Any person engaged in otherwise lawful blasting activ-
23 ities failing to obtain a permit or in possession of an ex-
24 pired permit issued by the office of the state fire marshal
25 shall not be construed to be in violation of the article.

§61-3E-12. Contraband, seizure, forfeiture.

1 Any destructive device, explosive material, incendiary
2 device or hoax bomb possessed, involved in, used or in-
3 tended to be used in a violation of this article or any viola-
4 tion of any criminal law or regulation of this state are
5 hereby declared to be contraband and any property inter-
6 est therein shall be vested in the state of West Virginia.
7 Said contraband may be seized by the office of the state
8 fire marshal or other law-enforcement agency conducting
9 said investigation and upon application to the circuit court
10 of the county in which said contraband is seized be for-
11 feited to the state of West Virginia for destruction or for
12 training purposes by the office of the state fire marshal or
13 other law-enforcement agency.

§61-3E-13. Legislative findings.

1 The Legislature hereby finds and declares that the
2 seizure and use of items under the provisions of this article
3 is not contemplated to be a forfeiture as the same is used
4 in section five, article XII of the Constitution of West
5 Virginia and to the extent that such seizure and use may
6 be found to be such a forfeiture, the Legislature hereby
7 finds and declares that the proceeds from a seizure and
8 use under this article is not part of net proceeds as the
9 same is contemplated by section five, article XII of the
10 Constitution of West Virginia.

CHAPTER 103

(Com. Sub. for H. B. 4110—By Delegates Ashley, Trump, Rowe and Staton)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the crime of perjury and creating the felony offenses of perjury and subordination of perjury for willfully testifying falsely before a grand jury which is considering a felony presentment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-1. Perjury and subornation of perjury defined.

1 (a) Any person who is under an oath or affirmation
2 which has been lawfully administered and who willfully
3 testifies falsely regarding a material matter in a trial of any
4 person, corporation or other legal entity for a felony, or
5 before any grand jury which is considering a felony
6 indictment, shall be guilty of the felony offense of
7 perjury.

8 (b) Any person who induces or procures another
9 person to testify falsely regarding a material matter in a
10 trial of any person, corporation or other legal entity for a
11 felony, or before any grand jury which is considering a
12 felony indictment, shall be guilty of the felony offense of
13 subornation of perjury.

CHAPTER 104

(Com. Sub. for H. B. 4077—By Delegates Linch, Staton, Manuel,
Amores, J. Martin, Riggs and Thomas)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five and six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licensing requirements for carrying concealed deadly weapons; shifting concealed deadly weapons licensing authority from circuit judges to sheriffs; changing license issuance requirements; preventing those persons either adjudicated mentally incompetent, with criminal charges pending, charged or serving sentences for domestic violence, or subject to a domestic violence petition from receiving concealed weapons licenses; modifying applicants background check verification requirements; requiring all concealed weapons applicants to receive training; modifying the appeal process for denied concealed weapons licenses; establishing authority of sheriffs to revoke concealed weapons licenses; directing that certain license fees paid to the sheriff be deposited in a special fund to be administered by the sheriff; providing a portion of the licensing fee be distributed to the state police; directing the state police to develop concealed weapons license cards and application forms; creating a criminal penalty for false swearing for falsifying a permit application; allowing military handgun training to be utilized in meeting training requirements for concealed handgun or revolver license; modifying training program requirements; creating criminal penalties for concealed weapons licensee for failure to have identification

and concealed weapon license in his or her possession when carrying a concealed weapon; allowing certain current licensees to renew their license without paying application fees; excluding retired state police officers from certain licensing requirements; and adding certain retired circuit judges to persons who can carry a concealed weapon without a license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

§61-7-5. Revocation of license.

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

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this
2 section, any person desiring to obtain a state license to
3 carry a concealed deadly weapon shall apply to the sheriff
4 of his or her county for such license, and shall pay to the
5 sheriff, at the time of application, a fee of sixty dollars.
6 Each applicant shall file with the sheriff, a complete
7 application, as prepared by the superintendent of the West
8 Virginia state police, in writing, duly verified, which sets
9 forth only the following licensing requirements:

10 (1) The applicant's full name, date of birth, social
11 security number and a description of the applicant's
12 physical features;

13 (2) That, on the date the application is made, the
14 applicant is a bona fide resident of this state and of the
15 county in which the application is made and has a valid
16 driver's license or other state issued photo identification
17 showing such residence;

18 (3) That the applicant is eighteen years of age or
19 older;

20 (4) That the applicant is not addicted to alcohol, a
21 controlled substance or a drug, and is not an unlawful user
22 thereof;

23 (5) That the applicant has not been convicted of a
24 felony or of an act of violence involving the misuse of a
25 deadly weapon;

26 (6) That the applicant has no criminal charges
27 pending and is not currently serving a sentence of
28 confinement, parole, probation or other court ordered
29 supervision, because of a charge of domestic violence as
30 provided for in section twenty-eight, article two of this
31 chapter, or is the subject of a restraining order as a result
32 of a domestic violence act as defined in that section, or
33 because of a verified petition of domestic violence as
34 provided for in article two-a, chapter forty-eight of this
35 code or is subject to a protective order as provided for in
36 that article;

37 (7) That the applicant is physically and mentally
38 competent to carry such weapon;

39 (8) That the applicant has not been adjudicated to be
40 mentally incompetent;

41 (9) That the applicant has qualified under the
42 minimum requirements set forth in subsection (d) of this
43 section for handling and firing such weapon: *Provided*,
44 That this requirement shall be waived in the case of a
45 renewal applicant who has previously qualified.

46 (10) That the applicant authorizes the sheriff of the
47 county, or his or her designee, to conduct an investigation
48 relative to the information contained in the application.

49 (b) The sheriff shall conduct an investigation which
50 shall verify that the information required in subdivisions
51 (1), (2), (3), (5), (6), (8) and (9) of subsection (a) are true
52 and correct.

53 (c) The sixty dollar application fee and any fees for
54 replacement of lost or stolen licenses received by the
55 sheriff shall be deposited by the sheriff into a concealed
56 weapons license administration fund. Such fund shall be
57 administered by the sheriff and shall take the form of an

58 interest bearing account with any interest earned to be
59 compounded to the fund. Any funds deposited in this
60 concealed weapon license administration fund are to be
61 expended by the sheriff to pay for the costs associated
62 with issuing concealed weapons licenses. Any surplus in
63 the fund on hand at the end of each fiscal year may be
64 expended for other law-enforcement purposes or
65 operating needs of the sheriffs office, as the sheriff may
66 deem appropriate.

67 (d) All persons applying for a license must complete a
68 training course in handling and firing a handgun. The
69 successful completion of any of the following courses
70 fulfills this training requirement:

71 (1) Any official national rifle association handgun
72 safety or training course;

73 (2) Any handgun safety or training course or class
74 available to the general public offered by an official
75 law-enforcement organization, community college, junior
76 college, college, or private or public institution or
77 organization or handgun training school utilizing
78 instructors duly certified by such institution;

79 (3) Any handgun training or safety course or class
80 conducted by a handgun instructor certified as such by
81 the state or by the national rifle association;

82 (4) Any handgun training or safety course or class
83 conducted by any branch of the United States military,
84 reserve or national guard.

85 A photocopy of a certificate of completion of any of
86 the courses or classes or an affidavit from the instructor,
87 school, club, organization, or group that conducted or
88 taught said course or class attesting to the successful
89 completion of the course or class by the applicant or a
90 copy of any document which shows successful completion
91 of the course or class, shall constitute evidence of
92 qualification under this section.

93 (e) All concealed weapons license applications must
94 be notarized by a notary public duly licensed under article
95 four, chapter twenty-nine of this code. Falsification of
96 any portion of the application constitutes false swearing

97 and is punishable under the provisions of section two,
98 article five, chapter sixty-one of this code.

99 (f) If the information in the application is found to be
100 true and correct, the sheriff shall issue a license. The
101 sheriff shall issue or deny the license within thirty days
102 after the application is filed if all required background
103 checks authorized by this section are completed, and no
104 later than forty-five days regardless of whether these
105 background checks have been completed.

106 (g) Before any approved license shall be issued or
107 become effective, the applicant shall pay to the sheriff a
108 fee in the amount of fifteen dollars which the sheriff shall
109 forward to the superintendent of the West Virginia state
110 police within thirty days of receipt. Any such license shall
111 be valid for five years throughout the state, unless sooner
112 revoked.

113 (h) All persons holding a current and valid concealed
114 weapons license as of the sixteenth day of December, one
115 thousand nine hundred ninety-five, shall continue to hold
116 a valid concealed weapons license until his or her license
117 expires or is revoked as provided for in this article:
118 *Provided*, That all reapplication fees shall be waived for
119 applications received by the first day of January, one
120 thousand nine hundred ninety-seven, for any person
121 holding a current and valid concealed weapons license as
122 of sixteenth day of December, one thousand nine hundred
123 ninety-five, which contains use restrictions placed upon
124 the license as a condition of issuance by the issuing circuit
125 court. Any licenses reissued pursuant to this subsection
126 will be issued for the time period of the original license.

127 (i) Each license shall contain the full name, social
128 security number and address of the licensee and a space
129 upon which the signature of the licensee shall be signed
130 with pen and ink. The issuing sheriff shall sign and attach
131 his or her seal to all license cards.

132 (j) The superintendent of the West Virginia state police
133 shall prepare uniform applications for licenses and license
134 cards showing that such license has been granted and shall
135 do any other act required to be done to protect the state
136 and see to the enforcement of this section.

137 (k) In the event an application is denied, the specific

136 reasons for the denial shall be stated by the sheriff
137 denying the application. Any person denied a license
138 may file, in the circuit court of the county in which the
139 application was made, a petition seeking review of the
140 denial. Such petition shall be filed within thirty days of
141 the denial. The court shall then determine whether the
142 applicant is entitled to the issuance of a license under the
143 criteria set forth in this section. The applicant may be
144 represented by counsel, but in no case shall the court be
145 required to appoint counsel for an applicant. The final
146 order of the court shall include the court's findings of fact
147 and conclusions of law. If the final order upholds the
148 denial, the applicant may file an appeal in accordance with
149 the rules of appellate procedure of the supreme court of
150 appeals.

151 (l) In the event a license is lost or destroyed, the person
152 to whom the license was issued may obtain a duplicate or
153 substitute license for a fee of five dollars by filing a
154 notarized statement with the sheriff indicating that the
155 license has been lost or destroyed.

156 (m) The sheriff shall, immediately after the license is
157 granted as aforesaid, furnish the superintendent of the
158 West Virginia state police a certified copy of the approved
159 application. It shall be the duty of the sheriff to furnish to
160 the superintendent of the West Virginia state police at any
161 time so requested, a certified list of all such licenses issued
162 in the county. The superintendent of the West Virginia
163 state police shall maintain a registry of all persons who
164 have been issued concealed weapons licenses.

165 (n) All licensees must carry with them a state issued
166 photo identification card with the concealed weapons
167 license whenever the licensee is carrying a concealed
168 weapon. Any licensee who fails to have in his or her
169 possession a state issued photo identification card and a
170 current concealed weapons license while carrying a
171 concealed weapon shall be guilty of a misdemeanor and,
172 upon conviction thereof, shall be fined not less than fifty
173 or more than two hundred dollars for each offense.

174 (o) The sheriff shall deny any application or revoke
175 any existing license upon determination that any of the

176 licensing application requirements established in this
177 section have been violated by the licensee.

178 (p) No person who is engaged in the receipt, review, or
179 in the issuance or revocation of a concealed weapon
180 license shall incur any civil liability as the result of the
181 lawful performance of his or her duties under this article.

182 (q) Notwithstanding the provisions of subsection (a) of
183 this section, with respect to application by a former
184 law-enforcement officer honorably retired from agencies
185 governed by article fourteen, chapter seven; article
186 fourteen, chapter eight; article two, chapter fifteen; and
187 article seven, chapter twenty of this code, an honorably
188 retired officer is exempt from payment of fees and costs
189 as otherwise required by this section, and the application
190 of the honorably retired officer shall be granted without
191 proof or inquiry by the sheriff as to those requirements set
192 forth in subdivision (9) of subsection (b) of this section, if
193 the officer meets the remainder of the requirements of this
194 section and has the approval of the appropriate chief
195 law-enforcement officer.

§61-7-5. Revocation of license.

1 A license to carry a deadly weapon shall be deemed
2 revoked at such time as the person licensed becomes
3 unable to meet the criteria for initial licensure set forth in
4 section four of this article. Any person licensed under the
5 provisions of this article shall immediately surrender his or
6 her license to the issuing sheriff upon becoming ineligible
7 for continued licensure.

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

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

3 (1) Any person carrying a deadly weapon upon his
4 own premises; nor shall anything herein prevent a person
5 from carrying any firearm, unloaded, from the place of
6 purchase to his or her home, residence or place of
7 business or to a place of repair and back to his or her
8 home, residence or place of business, nor shall anything

9 herein prohibit a person from possessing a firearm while
10 hunting in a lawful manner or while traveling from his or
11 her home, residence or place of business to a hunting site,
12 and returning to his or her home, residence or place of
13 business;

14 (2) Any person who is a member of a properly
15 organized target-shooting club authorized by law to
16 obtain firearms by purchase or requisition from this state,
17 or from the United States for the purpose of target
18 practice, from carrying any pistol, as defined in this article,
19 unloaded, from his home, residence or place of business to
20 a place of target practice, and from any such place of
21 target practice back to his home, residence or place of
22 business, for using any such weapon at such place of
23 target practice in training and improving his skill in the
24 use of such weapons;

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

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

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

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

40 (7) Any resident of another state, who has been issued
41 a license to carry a concealed weapon by that state or a
42 political subdivision thereof, shall be exempt from the
43 licensing requirements of section four of this article:
44 *Provided*, That such state or political subdivision thereof
45 shall likewise recognize and honor West Virginia licenses
46 issued pursuant to section four of this article.

CHAPTER 105

(Com. Sub. for S. B. 100—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections fifteen, sixteen, seventeen and eighteen, all relating to the definition of terms; creating a forensic medical examination fund; administration of the fund by the West Virginia prosecuting attorneys institute; reimbursement of institute for expenses; payment from the forensic medical examination fund of the costs of forensic medical exams given to victims of certain sexual offenses; directing a study regarding reimbursement from private insurance companies; development and maintenance of a database; disclosure; confidentiality; and development of rules, instructional manuals and forms by the institute.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8B. SEXUAL OFFENSES.

- §61-8B-1. Definition of terms.
- §61-8B-15. Creation of a forensic medical examination fund.
- §61-8B-16. Payment for costs of forensic medical examination.
- §61-8B-17. Study of reimbursement; recordkeeping; disclosure; confidentiality.
- §61-8B-18. Rule-making authority.

§61-8B-1. Definition of terms.

- 1 In this article, unless a different meaning plainly is
- 2 required:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resis-
5 tance as might reasonably be expected under the circum-
6 stances; or

7 (b) Threat or intimidation, expressed or implied, plac-
8 ing a person in fear of immediate death or bodily injury
9 to himself or herself or another person or in fear that he
10 or she or another person will be kidnapped; or

11 (c) Fear by a person under sixteen years of age caused
12 by intimidation, expressed or implied, by another person
13 who is at least four years older than the victim.

14 For the purposes of this definition "resistance" in-
15 cludes physical resistance or any clear communication of
16 the victim's lack of consent.

17 (2) "Married", for the purposes of this article in addi-
18 tion to its legal meaning, includes persons living together
19 as husband and wife regardless of the legal status of their
20 relationship.

21 (3) "Mentally defective" means that a person suffers
22 from a mental disease or defect which renders that person
23 incapable of appraising the nature of his or her conduct.

24 (4) "Mentally incapacitated" means that a person is
25 rendered temporarily incapable of appraising or control-
26 ling his or her conduct as a result of the influence of a
27 controlled or intoxicating substance administered to that
28 person without his or her consent or as a result of any
29 other act committed upon that person without his or her
30 consent.

31 (5) "Physically helpless" means that a person is uncon-
32 scious or for any reason is physically unable to communi-
33 cate unwillingness to an act.

34 (6) "Sexual contact" means any intentional touching,
35 either directly or through clothing, of the anus or any part
36 of the sex organs of another person, or the breasts of a
37 female or intentional touching of any part of another
38 person's body by the actor's sex organs, where the victim is
39 not married to the actor and the touching is done for the
40 purpose of gratifying the sexual desire of either party.

41 (7) "Sexual intercourse" means any act between per-
42 sons not married to each other involving penetration, how-

43 ever slight, of the female sex organ by the male sex organ
44 or involving contact between the sex organs of one person
45 and the mouth or anus of another person.

46 (8) "Sexual intrusion" means any act between persons
47 not married to each other involving penetration, however
48 slight, of the female sex organ or of the anus of any per-
49 son by an object for the purpose of degrading or humili-
50 ating the person so penetrated or for gratifying the sexual
51 desire of either party.

52 (9) "Bodily injury" means substantial physical pain,
53 illness or any impairment of physical condition.

54 (10) "Serious bodily injury" means bodily injury
55 which creates a substantial risk of death, which causes
56 serious or prolonged disfigurement, prolonged impair-
57 ment of health or prolonged loss or impairment of the
58 function of any bodily organ.

59 (11) "Deadly weapon" means any instrument, device
60 or thing capable of inflicting death or serious bodily inju-
61 ry, and designed or specially adapted for use as a weapon,
62 or possessed, carried or used as a weapon.

63 (12) "Forensic medical examination" means an ex-
64 amination provided to a possible victim of a violation of
65 the provisions of this article by medical personnel quali-
66 fied to gather evidence of the violation in a manner suit-
67 able for use in a court of law, to include: An examination
68 for physical trauma; a determination of penetration or
69 force; a patient interview; and the collection and evalua-
70 tion of other evidence that is potentially relevant to the
71 determination that a violation of the provisions of this
72 article occurred and to the determination of the identity of
73 the assailant.

§61-8B-15. Creation of a forensic medical examination fund.

1 There is hereby created "The Forensic Medical Ex-
2 amination Fund" created as a special fund in the state
3 treasury into which shall be deposited the appropriations
4 made to the fund by the Legislature. Expenditures from
5 the fund shall be made by the West Virginia prosecuting
6 attorneys institute, created by the provisions of section six,
7 article four, chapter seven of this code, for the payment of

8 the costs of forensic medical examinations as they are
9 defined in section sixteen of this article and for the reim-
10 bursement to the institute of its expenses in administering
11 the payment of the costs from the fund.

§61-8B-16. Payment for costs of forensic medical examination.

1 (a) When any person alleges that he or she has been
2 the victim of an offense proscribed by this article, the West
3 Virginia prosecuting attorneys institute shall pay to a li-
4 censed medical facility from the forensic medical exami-
5 nation fund the cost of the forensic medical examination
6 for this person on the following conditions and in the
7 following manner:

8 (1) The payment shall cover all reasonable, custom-
9 ary and usual costs of the forensic medical examination;

10 (2) The costs of additional nonforensic procedures
11 performed by the licensed medical facility, including, but
12 not limited to, prophylactic treatment, treatment of inju-
13 ries, testing for pregnancy and testing for sexually trans-
14 mitted diseases, may not be paid from the fund;

15 (3) The forensic medical examination must have
16 been conducted within seventy-two hours of the alleged
17 violation;

18 (4) The licensed medical facility must apply for pay-
19 ment of the costs of a forensic medical examination from
20 the fund within ninety days of the examination;

21 (5) The licensed medical facility shall submit a state-
22 ment of charges to the prosecuting attorney in the county
23 in which the alleged offense occurred and the prosecuting
24 attorney shall certify, if proper, that the forensic medical
25 examination was conducted as a part of a criminal investi-
26 gation; and

27 (6) The prosecuting attorney shall, within sixty days
28 of receipt of a statement of charges from the licensed
29 medical facility, forward the statement of charges and the
30 certification to the West Virginia prosecuting attorneys
31 institute for payment from the fund and for the reim-

32 bursement of the institute from the fund for the reason-
33 able costs of processing and recording the payment.

34 (b) No licensed medical facility may collect the costs
35 of a forensic medical examination from the victim of an
36 alleged violation of this article if the reasonable, custom-
37 ary and usual costs of the forensic medical examination
38 qualifies for payment from the forensic medical examina-
39 tion fund as set forth in subsection (a) of this section.

§61-8B-17. Study of reimbursement; recordkeeping; disclosure; confidentiality.

1 (a) The West Virginia prosecuting attorneys institute
2 is hereby directed to undertake a study of the viability of
3 the state seeking reimbursement from private insurance
4 companies for the cost of forensic medical examinations.
5 The study shall be completed prior to the first day of the
6 regular legislative session, one thousand nine hundred
7 ninety-seven, and provided to the president of the Senate
8 and the speaker of the House of Delegates.

9 (b) The West Virginia prosecuting attorneys institute
10 shall develop and maintain a database for use by
11 law-enforcement personnel, prosecuting attorneys and
12 persons engaged in lawful research of the information
13 collected pursuant to its administration of the forensic
14 medical examination fund. The database shall include the
15 number of examinations performed, the facilities perform-
16 ing the examination and where feasible, other information
17 considered to be of assistance to law enforcement and the
18 prosecution of sexual offenses. The database shall be
19 maintained in a manner which assures the confidentiality
20 of the information.

§61-8B-18. Rule-making authority.

1 The executive council of the West Virginia prosecut-
2 ing attorneys institute, created by the provisions of section
3 six, article four, chapter seven of this code, shall promul-
4 gate rules in accordance with article three, chapter
5 twenty-nine-a of this code, for the administration of the
6 forensic medical examination fund, establishing qualifica-

7 tions for medical personnel performing a forensic medical
8 examination and any other rules necessary to the
9 implementation of this program. The institute shall also
10 create and distribute to all licensed medical facilities,
11 law-enforcement agencies and prosecuting attorneys'
12 offices the instructional manuals and forms necessary to
13 perform forensic medical examinations and to receive
14 payment from the fund. From the effective date of this
15 section until the date of the promulgation of these rules,
16 the executive council of the West Virginia prosecuting
17 attorneys institute may file rules as emergency rules in
18 accordance with the applicable provisions of this code in
19 order to govern during this period of time the
20 administration of the fund.

CHAPTER 106

(H. B. 2458—By Delegates Kallai, Rowe, Michael,
Everson, Given and Hubbard)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crime; child abuse resulting in injury; child abuse creating risk of injury; child neglect resulting in injury; child neglect creating risk of injury; and changing the criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; child abuse or neglect creating risk of injury; criminal penalties.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

§61-8D-3. Child abuse resulting in injury; child abuse or neglect creating risk of injury; criminal penalties.

1 (a) If any parent, guardian or custodian shall abuse a
2 child and by such abuse cause such child bodily injury as
3 such term is defined in section one, article eight-b of this
4 chapter, then such parent, guardian or custodian shall be
5 guilty of a felony and, upon conviction thereof, shall be
6 fined not less than one hundred nor more than one
7 thousand dollars and committed to the custody of the
8 division of corrections for not less than one nor more than
9 five years, or in the discretion of the court, be confined in
10 the county or regional jail for not more than one year.

11 (b) If any parent, guardian or custodian shall abuse a
12 child and by such abuse cause said child serious bodily
13 injury as such term is defined in section one, article
14 eight-b of this chapter, then such parent, guardian or
15 custodian shall be guilty of a felony and, upon conviction
16 thereof, shall be fined not less than one thousand nor
17 more than five thousand dollars and committed to the
18 custody of the division of corrections not less than two nor
19 more than ten years.

20 (c) Any person who abuses a child and by the abuse
21 creates a substantial risk of serious bodily injury or of
22 death to the child is guilty of a felony and, upon
23 conviction thereof, shall be fined not more than three
24 thousand dollars and confined to the custody of the
25 division of corrections for not less than one nor more than
26 five years.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

1 (a) If any parent, guardian or custodian shall neglect a
2 child and by such neglect cause said child bodily injury,
3 as such term is defined in section one, article eight-b of
4 this chapter, then such parent, guardian or custodian shall
5 be guilty of a felony and, upon conviction thereof, shall

6 be fined not less than one hundred nor more than one
7 thousand dollars or committed to the custody of the
8 division of corrections for not less than one nor more than
9 three years, or in the discretion of the court, be confined
10 in the county jail for not more than one year, or both such
11 fine and confinement or imprisonment.

12 (b) If any parent, guardian or custodian shall neglect a
13 child and by such neglect cause said child serious bodily
14 injury, as such term is defined in section one, article
15 eight-b of this chapter, then such parent, guardian or
16 custodian shall be guilty of a felony and, upon conviction
17 thereof, shall be fined not less than three hundred nor
18 more than three thousand dollars or committed to the
19 custody of the division of corrections for not less than one
20 nor more than ten years, or both such fine and imprison-
21 ment.

22 (c) The provisions of this section shall not apply if the
23 neglect by the parent, guardian or custodian is due
24 primarily to a lack of financial means on the part of such
25 parent, guardian or custodian.

26 (d) The provisions of this section shall not apply to
27 any parent, guardian or custodian who fails or refuses, or
28 allows another person to fail or refuse, to supply a child
29 under the care, custody or control of such parent,
30 guardian or custodian with necessary medical care, when
31 such medical care conflicts with the tenets and practices of
32 a recognized religious denomination or order of which
33 such parent, guardian or custodian is an adherent or
34 member.

35 (e) Any person who grossly neglects a child and by
36 the gross neglect creates a substantial risk of serious
37 bodily injury or of death to the child is guilty of a felony
38 and, upon conviction thereof, shall be fined not more than
39 three thousand dollars and confined to the custody of the
40 division of corrections for not less than one nor more than
41 five years.

CHAPTER 107

(Com. Sub. for S. B. 130—By Senators Bowman, Ross, Buckalew, Anderson, Dittmar, Yoder, Whitlow, Helmick, Sharpe, Blatnik, Kimble, Schoonover, Love, Minear and Walker)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven and eight, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine; and to amend and reenact section eight, article eleven-a of said chapter, all relating to requiring sex offender registration and notification; expanding crimes for which persons are required to register; expanding information included in registration; designating state police as agency to register such persons; requiring state police to maintain central register; distributing information provided at registration; permitting state police to furnish information to other law-enforcement and governmental agencies; providing for limited immunity for distribution of information; removing requirement that offense be second offense; listing duties of officials to obtain written acknowledgment of duty to register; release of information when person moves out-of-state; failure to register; penalties for failure to register; registration of out-of-state offenders; and expansion of victim notification.

Be it enacted by the Legislature of West Virginia:

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

Article**8F. Sex Offender Registration Act.****11A. Victim Protection Act of 1984.****ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.**

§61-8F-2. Registration.

§61-8F-3. Change of address.

§61-8F-4. Duration.

§61-8F-5. Distribution of information.

§61-8F-6. Duties of institution officials.

§61-8F-7. Information shall be released when person moves out of state.

§61-8F-8. Failure to register; penalty.

§61-8F-9. Registration of out-of-state offenders.

§61-8F-2. Registration.

1 (a) Any person who has been convicted of a violation
2 of the provisions of article eight-b, eight-c or eight-d of
3 this chapter, or of section fourteen, article two, or of sec-
4 tion thirteen, article eight of this chapter, or of a similar
5 provision in another jurisdiction shall be required to be
6 registered as set forth in this article. Any person who has
7 been convicted of an attempt to commit any of the offens-
8 es set forth in this section shall also be required to register
9 as set forth in this article.

10 (b) On the date that any person convicted of the
11 crimes listed herein is released, is granted probation, is
12 granted a suspended sentence, is released on parole or
13 probation, or is ordered to be placed on home detention,
14 the commissioner of corrections, regional jail supervisor
15 or city or sheriff operating a jail which releases such per-
16 son and any parole or probation officer who releases such
17 person or supervises such person following the release
18 shall obtain all information required by this subsection
19 prior to the release of the person and shall send written
20 notice of the release of the person to the state police. The
21 notice shall include:

22 (1) The full name of the person;

23 (2) The address where the person shall reside;

24 (3) The person's social security number;

25 (4) A recent photograph of the person; and

26 (5) A brief description of the crime for which the
27 person was convicted.

28 (c) At the time the person is convicted of the crimes
29 set forth in subsection (a) of this section, the person shall
30 sign in open court, a statement acknowledging that he or
31 she understands the requirements imposed by this article.
32 The court shall inform the person so convicted of the
33 requirements to register imposed by this article and shall
34 further satisfy itself by interrogation of the defendant or
35 his or her counsel that the defendant has received notice
36 of the provisions of this article and that the defendant
37 understands such provisions. Such statement, when signed
38 and witnessed shall constitute prima facie evidence that the
39 person had knowledge of the requirements of this article.

40 (d) When a person required to register under this arti-
41 cle is released following incarceration, the commissioner
42 of corrections, the regional jail supervisor or the city or
43 sheriff or any other person supervising the operation of
44 the place of confinement shall inform the state police of
45 such release and provide such further information as is
46 required by this article.

47 (e) The state police shall maintain a central registry of
48 all persons who register under this article and shall release
49 information only as provided in this article.

§61-8F-3. Change of address.

1 When any person required to register under this article
2 changes his or her residence or address, he or she shall
3 inform the West Virginia state police of his or her new
4 address, in writing, within ten days.

§61-8F-4. Duration.

1 Any person required to register under this article shall
2 be required to do so for a period of ten years after convic-
3 tion for the offense defined herein if not imprisoned, and
4 if imprisoned, for a period of ten years after release from

5 prison by discharge or parole. A person is no longer
6 required to register at the expiration of ten years from the
7 date of initial registration, when that convicted person is
8 not otherwise required, during such period, to register. A
9 person whose conviction is overturned for the offense
10 which required them to register under this article shall be
11 permitted to petition the court for removal of their name
12 from the registry.

§61-8F-5. Distribution of information.

1 (a) Within five working days after receiving any notifi-
2 cation as described in this article, the state police shall
3 distribute a copy of the notification statement to:

4 (1) The supervisor of each county and municipal law-
5 enforcement office in the city and county where the per-
6 son will reside;

7 (2) The county superintendent of schools where the
8 person will reside;

9 (3) The child protective services office charged with
10 investigating allegations of child abuse or neglect in the
11 county where the person will reside; and

12 (4) All community organizations or religious organi-
13 zations which regularly provide services to youths in the
14 county where the person will reside.

15 (b) The information and documentation required in
16 connection with the registration may be provided to any
17 other person upon application to the circuit court in the
18 county where an applicant seeking the information resides,
19 when that court finds that the information is sufficiently
20 relevant to public safety to outweigh the importance of
21 maintaining confidentiality of this article. When the court
22 orders the release of that information, the court shall fur-
23 ther order to what extent the applicant may provide for the
24 release of the information to third parties.

25 (c) The state police may furnish information and doc-
26 umentation required in connection with the registration to

27 authorized law-enforcement and governmental agencies of
28 the United States and its territories, of foreign countries
29 duly authorized to receive the same, of other states within
30 the United States and of the state of West Virginia upon
31 proper request stating that the records will be used solely
32 for law-enforcement related purposes.

33 (d) An elected public official, public employee or
34 public agency is immune from civil liability for damages
35 arising out of any action relating to the provisions of this
36 section except when the official, employee or agency
37 acted with gross negligence or in bad faith.

§61-8F-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and
2 four of this article, any person required to register under
3 this article, before parole or release, shall be informed of
4 their duty to register by the official in charge of the place
5 of confinement. Further, the official shall obtain a state-
6 ment signed by the person acknowledging that the person
7 has been informed of their duty to register.

§61-8F-7. Information shall be released when person moves out of state.

1 When a person who is required to register pursuant to
2 the provisions of this article notifies any law-enforcement
3 official or corrections official, that he or she is moving to
4 another state, the official shall notify law-enforcement
5 officials where the person indicates he or she shall reside
6 of the information provided by the person under the pro-
7 visions of this article.

§61-8F-8. Failure to register; penalty.

1 Any person required to register under this article who
2 knowingly fails to register or knowingly fails to provide a
3 change of address as required by this section, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined
5 not less than two hundred fifty dollars nor more than ten
6 thousand dollars, or imprisoned in the county jail not
7 more than one year, or both fined and imprisoned: *Pro-*

8 *vided*, That each time such person changes residence and
9 fails to register, such failure shall constitute a separate
10 offense.

§61-8F-9. Registration of out-of-state offenders.

1 When any probation or parole officer accepts supervi-
2 sion of and has legal authority over any person required
3 to register under this article from another state under the
4 terms and conditions of the uniform act for out-of-state
5 parolee supervision established under article six, chapter
6 twenty-eight of this code, such officer shall give the per-
7 son written notice of the registration requirements of this
8 section and obtain a signed statement from the person
9 required to register acknowledging the receipt of the no-
10 tice.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-8. Victim notification of defendant's release.

1 (a) At the time a complaint is sworn out and again at
2 the time when any person is convicted for a charge of
3 murder, aggravated robbery, sexual assault in the first
4 degree, kidnapping, arson, sexual offenses against minors
5 or any violent crime against a spouse, former spouse, child
6 or stepchild, the prosecuting attorney shall provide written
7 notice to the victim or victim's family member that he or
8 she may be notified prior to and upon the release of the
9 defendant from confinement in any correctional facility,
10 work release, home confinement, probation, parole, or
11 upon the escape of the defendant from any correctional
12 facility. The notice shall include instructions on how to
13 request the notification.

14 (b) The commissioner of corrections, regional jail
15 supervisors, city or sheriff operating a jail which releases
16 any person shall, from which they have received a written
17 request for notification, provide written notice to the last
18 known address or addresses provided by the victim, or in
19 the case of a minor child, to the custodial parent of the
20 child, upon release of the defendant. Additionally, notice
21 provided in the case of escape shall be by telephone.

CHAPTER 108

(Com. Sub. for H. B. 4771—By Delegate Mezzatesta)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fourteen-a, all relating to establishing the West Virginia interpreter for the deaf act; defining terms; requiring appointment of interpreters for deaf persons in certain proceedings; providing for notification of need; requiring interpreters to make oaths of true interpretation; providing for fee schedule to be promulgated by legislative rule; and changing the name of the West Virginia commission for the hearing-impaired to the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

Article

14. West Virginia Commission For The Deaf And Hard-of-Hearing.

14A. West Virginia Interpreter For The Deaf Act.

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF
AND HARD-OF-HEARING.**

§5-14-3. Continuation of commission; membership.

1 There is hereby continued within the executive
2 department the "West Virginia Commission for the
3 Hearing-Impaired" which shall be known as the "West
4 Virginia Commission for the Deaf and Hard-of-Hearing",
5 consisting of fifteen persons, eight of whom shall serve ex
6 officio, to be appointed by the governor within sixty days

7 after the effective date of this article by and with the
8 advice and consent of the Senate. The commission shall
9 meet no less than four times annually. All meetings and
10 activities held by the commission shall be attended by at
11 least two qualified interpreters who shall be hired at the
12 commission's expense or provided free of charge by
13 agencies, organizations or individuals willing to volunteer
14 qualified interpreters. The members are:

15 (a) The commissioner, or his or her designee, of the
16 bureau of human resources; the commissioner, or his or
17 her designee, of the division of labor; the director, or his
18 or her designee, of the bureau of public health; the state
19 superintendent of schools, or his or her designee, of the
20 state board of education; the director, or his or her
21 designee, of the division of rehabilitation; the director, or
22 his or her designee, of the division of handicapped
23 children's services in the division of human services; the
24 chairman, or his or her designee, of the advisory council
25 for the education of exceptional children; and the
26 superintendent, or his or her designee, of the West Virginia
27 school for the deaf, all of whom shall serve ex officio;

28 (b) Seven persons appointed by the governor, at least
29 three of whom are deaf or hard-of-hearing, one of whom
30 is the parent of a deaf child, one of whom is a certified
31 teacher of the hearing-impaired, one audiologist and one
32 otolaryngologist. Of the three deaf people, at least two
33 shall be selected from a list of four people recommended
34 by the board of the West Virginia association of the deaf.

ARTICLE 14A. WEST VIRGINIA INTERPRETER FOR THE DEAF ACT.

§5-14A-1. Short title.

§5-14A-2. Definitions.

§5-14A-3. Appointment of interpreter in court action or grand jury proceeding.

§5-14A-4. Arrests — Appointment of an interpreter.

§5-14A-5. Administrative proceedings — Appointment of interpreter.

§5-14A-6. Notice of necessity of interpreter — Proof of deafness.

§5-14A-7. Processing request for interpreter — Duties and responsibilities.

§5-14A-8. Confirmation of accuracy of interpretation.

§5-14A-9. Interpreter fee; authority for legislative rules.

§5-14A-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Interpreter for the Deaf Act."

§5-14A-2. Definitions.

1 As used in this article:

2 (a) "Deaf person" means one whose sense of hearing is
3 nonfunctional for the ordinary purposes of life;

4 (b) "Qualified interpreter" means an interpreter
5 certified by the national association of the deaf (NAD) or
6 registry of interpreters for the deaf (RID), or, in the event
7 an interpreter so certified is not available, an interpreter
8 whose qualifications are otherwise determined;

9 (c) "Oral interpreter" means a person who interprets
10 language through facial and lip movements; and

11 (d) "Appointing authority" means any court,
12 department, board, commission, agency, licensing
13 authority, political subdivision or municipality of the state
14 required to provide an interpreter.

§5-14A-3. Appointment of interpreter in court action or grand jury proceeding.

1 (a) In any case before any court or the grand jury,
2 wherein any deaf person is a complainant, defendant or
3 witness, a qualified interpreter to interpret the proceedings
4 to the deaf person and interpret his or her testimony or
5 statements and to assist in preparation with counsel shall
6 be appointed as provided under the provisions of section
7 seven, article five, chapter fifty-seven of this code. The
8 court shall work closely with West Virginia commission
9 for the deaf and hard-of-hearing in finding the right
10 interpreter for any duty in court.

11 (b) Efforts to obtain the services of a qualified
12 interpreter certified with a legal skills certificate, or a
13 comprehensive oral interpreting certificate will be made
14 prior to accepting services of an interpreter with lesser
15 certification. No qualified interpreter shall be appointed
16 unless the appointing authority and the deaf person make

17 a preliminary determination that the interpreter is able to
18 communicate readily with the deaf person and is able to
19 interpret accurately the statement of the deaf person and
20 interpret the proceedings in which a deaf person may be
21 involved.

§5-14A-4. Arrests — Appointment of an interpreter.

1 (a) In the event a person who is deaf is arrested and
2 taken into custody for any alleged violation of a criminal
3 law of this state, the arresting officer or his or her
4 superiors shall procure a qualified interpreter in order to
5 interrogate properly such deaf person and to interpret
6 such person's statements. No statement taken from the
7 deaf person before an interpreter is present may be
8 admissible in court.

9 (b) An oral interpreter shall be provided upon the
10 request of a deaf person entitled to an interpreter under
11 this article, but who does not communicate in sign
12 language. The right of a deaf person to an interpreter
13 may not be waived except by a deaf person who does not
14 use sign language and who initiates the request for waiver
15 in writing. The waiver is subject to approval of legal
16 counsel for the deaf person, if any, and is subject to
17 approval of the appointing authority.

§5-14A-5. Administrative proceedings — Appointment of interpreter.

1 (a) In any proceeding before any department, board,
2 commission, agency or licensing authority of the state, in
3 any political subdivision or municipality, wherein any deaf
4 person is a defendant, the department, board, commission,
5 agency, licensing authority, political subdivision or
6 municipality shall appoint a qualified interpreter to
7 interpret the proceedings to the deaf person and to
8 interpret his or her testimony or statements if said deaf
9 person requests an interpreter.

10 (b) In a proceeding before any department, board,
11 commission, agency or licensing authority of the state, in
12 any political subdivision or municipality, wherein any deaf
13 person is an applicant, complainant or principal witness,

14 the department, board, commission, agency, licensing
15 authority, political subdivision or municipality may
16 appoint a qualified interpreter to interpret the proceedings
17 to the deaf person and to interpret his or her testimony or
18 statements if said deaf person requests an interpreter.

§5-14A-6. Notice of necessity of interpreter — Proof of deafness.

1 Every deaf person whose appearance in any
2 proceeding entitles him or her to an interpreter shall
3 notify the appointing authority of his or her desire for an
4 interpreter at least forty-eight hours prior to any
5 appearance and may request at the time the services of an
6 interpreter: *Provided*, That if a deaf person reasonably
7 expects the need for an interpreter for a period greater
8 than a single day, he or she shall notify the appointing
9 authority and the notification shall be sufficient for the
10 duration of his or her participation in the proceedings.

11 An appointing authority may require a person
12 requesting the appointment of an interpreter to furnish
13 reasonable proof of his or her deafness when the
14 appointing authority has reason to believe that the person
15 is not deaf.

§5-14A-7. Processing request for interpreter — Duties and responsibilities.

1 It shall be the responsibility of the appointing
2 authority to channel requests for qualified interpreters
3 through the West Virginia commission for the deaf and
4 hard-of-hearing except as provided under the provisions
5 of section seven, article five, chapter fifty-seven of this
6 code. This listing shall be made available to authorities in
7 possible need of interpreter service as provided in this
8 article.

§5-14A-8. Confirmation of accuracy of interpretation.

1 Before a qualified interpreter may participate in any
2 proceedings under the provisions of this article, the
3 interpreter shall make an oath or affirmation that he or she
4 will make a true interpretation in an understandable
5 manner to the deaf person for whom he or she is

6 appointed and that he or she will interpret the statements
7 of the deaf person desiring that statements be made, in the
8 English language to the best of his or her skill and judg-
9 ment. The appointing authority shall provide recess peri-
10 ods as necessary for the interpreter when the interpreter so
11 indicates. Any and all information that the interpreter
12 gathers from the deaf person pertaining to any proceeding
13 then pending shall at all times remain confidential and
14 privileged, or on an equal basis with the attorney-client
15 privilege, unless the deaf person desired that the informa-
16 tion be communicated to other persons.

§5-14A-9. Interpreter fee; authority for legislative rules.

1 Notwithstanding the provisions of section seven, arti-
2 cle five, chapter fifty-seven with respect to fees, an inter-
3 preter appointed under the provisions of this article shall
4 be entitled to a reasonable fee to be established by the
5 West Virginia commission for the deaf and hard-of-hear-
6 ing under a fee schedule promulgated by legislative rule
7 pursuant to the provisions of chapter twenty-nine-a of this
8 code. When the interpreter is appointed, the fee shall be
9 paid out of funds available to the appointing authority.

CHAPTER 109

(Com. Sub. for S. B. 154—By Senators Wiedebusch, Love, Kimble, Schoonover,
Miller, Oliverio and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-a, ten-b, ten-c and ten-d, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-b, all relating to prevention of domestic violence; divorce actions; providing for temporary relief by magistrates in cases where a temporary order has been entered in an action for divorce, annulment or separate maintenance; clarifying that it is a crime to abuse a party or children or be physically present at a location in knowing

and willful violation of the terms of a protective order whether it is issued by a magistrate, a family law master or a circuit judge; violations of protective order; criminal complaints; and arrest for violation of protective orders, repeat offenses, penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-3a. Divorce actions.

§48-2A-3b. Proceedings in magistrate court when temporary divorce, annulment or separation order is in effect.

§48-2A-10b. Violations of protective orders; criminal complaints.

§48-2A-10c. Arrest for violations of protective orders.

§48-2A-10d. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

§48-2A-3a. Divorce actions.

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this article,
3 until an order is entered in the divorce action pursuant to
4 section thirteen, article two of this chapter.

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action
7 for divorce, separate maintenance or annulment, such
8 person shall remain entitled to the relief provided under
9 this article including the right to file for and obtain any
10 further relief, so long as no temporary order has been
11 entered in the action for divorce, annulment and separate
12 maintenance, pursuant to section thirteen, article two of
13 this chapter.

14 (c) Except as provided in section three-b of this article
15 for a petition and a temporary emergency protective or-
16 der, no person who is a party to a pending action for di-
17 vorce, separate maintenance or annulment in which an
18 order has been entered pursuant to section thirteen, article
19 two of this chapter, shall be entitled to file for or obtain

20 relief against another party to that action under this article
21 until after the entry of a final order which grants or dis-
22 misses the action for divorce, annulment or separate main-
23 tenance.

24 (d) Notwithstanding the provisions set forth in subsec-
25 tion (b), section six of this article, any order issued pursu-
26 ant to this section where a subsequent action is filed seek-
27 ing a divorce, annulment or separate maintenance, shall
28 remain in full force and effect by operation of this statute
29 until a temporary or final order is issued pursuant to sec-
30 tion thirteen, article two of this chapter or a final order
31 granting or dismissing the action for divorce, annulment
32 or separate maintenance.

**§48-2A-3b. Proceedings in magistrate court when temporary
divorce, annulment or separation order is in
effect.**

1 (a) The provisions of this section apply where a tem-
2 porary order has been entered by a family law master or
3 judge in an action for divorce, annulment or separate
4 maintenance, notwithstanding the provisions of subsection
5 (c), section three-a of this article.

6 (b) A person who is a party in an action for divorce,
7 annulment or separate maintenance in which a temporary
8 order has been entered pursuant to section thirteen, article
9 two of this chapter may petition magistrate court for a
10 temporary emergency protective order pursuant to this
11 section for any violation of the provisions of this article
12 occurring after the date of entry of the temporary order.

13 (c) The only relief that a magistrate may award pursu-
14 ant to this section is a temporary emergency protective
15 order directing the respondent to refrain from abusing the
16 petitioner and/or minor children, to order the respondent
17 to refrain from entering the school, business or place of
18 employment of the petitioner or household members or
19 family members for the purpose of violating the protective
20 order and to order the respondent to refrain from contact-
21 ing, telephoning, communicating, harassing or verbally
22 abusing the petitioner in any public place. Such order
23 may modify an award of custody or visitation only upon a
24 showing, by clear and convincing evidence, of the respon-
25 dent's abuse of a child, as abuse is defined in section two

26 of this article. Any such modification shall be clearly
27 described in the order as to which party has custody and
28 why custody or visitation arrangements were changed.

29 (d) A copy of any temporary emergency protective
30 order issued by a magistrate pursuant to this section, to-
31 gether with a copy of the petition, shall be transmitted
32 forthwith by mail or by facsimile machine to the family
33 law master before whom the action is pending and to
34 law-enforcement agencies. Upon receipt of the petition
35 and order, the master shall examine its provisions. Within
36 ten days of the magistrate's issuance of the temporary
37 emergency protective order, the master shall issue an order
38 either to extend such emergency protection for a time
39 certain or to vacate the magistrate's order. The master shall
40 forthwith give notice to all parties and to the issuing mag-
41 istrate court. The magistrate court clerk shall forward a
42 copy of the master's order to law-enforcement agencies.

43 If no temporary order pursuant to section thirteen,
44 article two of this chapter has been entered, the master
45 shall forthwith return the order with such explanation to
46 the issuing magistrate. The magistrate who issued the or-
47 der shall vacate the order, noting thereon the reason for
48 termination. The magistrate court clerk shall transmit a
49 copy of the vacated order to the parties and
50 law-enforcement agencies.

**§48-2A-10b. Violations of protective orders; criminal com-
plaints.**

1 (a) When a respondent abuses the petitioner and/or
2 minor children or is physically present at any location in
3 knowing and willful violation of the terms of a temporary
4 or final protective order issued by a magistrate, a circuit
5 court judge or a family law master under the provisions of
6 this article or subdivision (12), subsection (a), section
7 thirteen, article two of this chapter granting the relief pur-
8 suant to the provisions of this article, any person autho-
9 rized to file a petition pursuant to the provisions of section
10 four of this article or the legal guardian or guardian ad
11 litem may file a petition for civil contempt as set forth in
12 section ten-a of this article.

13 (b) When any such violation of a valid order has oc-
14 curred, the petitioner may file a criminal complaint. If the

15 court finds probable cause upon the complaint, the court
16 shall issue a warrant for arrest of the person charged.

§48-2A-10c. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any
2 respondent abuse the petitioner and/or minor children or
3 the respondent's physical presence at any location in
4 knowing and willful violation of the terms of a temporary
5 or final protective order issued by a magistrate, a circuit
6 court judge or a family law master under the provisions of
7 this article or subdivision (12), subsection (a), section
8 thirteen, article two of this chapter granting the relief pur-
9 suant to the provisions of this article, he or she shall imme-
10 diately arrest the respondent.

11 (b) When a family or household member is alleged to
12 have committed a violation of the provisions of section
13 ten-d of this article, a law-enforcement officer may arrest
14 the perpetrator for said offense where:

15 (1) The law-enforcement officer has observed credible
16 corroborative evidence, as defined in subsection (b), sec-
17 tion fourteen of this article, that the offense has occurred;
18 and

19 (2) The law-enforcement officer has received, from
20 the victim or a witness, a verbal or written allegation of the
21 facts constituting a violation of section ten-d of this article;
22 or

23 (3) The law-enforcement officer has observed credible
24 evidence that the accused committed the offense.

25 (c) Any person who observes a violation of a protec-
26 tive order as described in this section, or the victim of such
27 abuse or unlawful presence, may call a local
28 law-enforcement agency, which shall verify the existence
29 of a current order, and shall direct a law-enforcement
30 officer to promptly investigate the alleged violation.

31 (d) Where there is an arrest, the officer shall take the
32 arrested person before a court or a magistrate and, upon a
33 finding of probable cause to believe a violation of an
34 order as set forth in this section has occurred, the court or
35 magistrate shall set a time and place for a hearing in ac-
36 cordance with the West Virginia rules of criminal proce-
37 dure.

§48-2A-10d. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

1 (a) A respondent who abuses the petitioner and/or
2 minor children or who is physically present at any loca-
3 tion in knowing and willful violation of the terms of a
4 temporary or final protective order issued by a magistrate,
5 a circuit court judge or a family law master under the
6 provisions of this article or subdivision (12), subsection
7 (a), section thirteen, article two of this chapter granting the
8 relief pursuant to the provisions of this article, is guilty of
9 a misdemeanor and, upon conviction thereof, shall be
10 confined in the county or regional jail for a period of not
11 less than one day nor more than one year, which jail term
12 shall include actual confinement of not less than
13 twenty-four hours, and shall be fined not less than two
14 hundred fifty dollars nor more than two thousand dollars.

15 (b) When a respondent previously convicted of the
16 offense described in subsection (a) of this section abuses
17 the petitioner and/or minor children or is physically pres-
18 ent at any location in knowing and willful violation of the
19 terms of a temporary or final protective order issued un-
20 der the provisions of this article, the respondent is guilty
21 of a misdemeanor and, upon conviction thereof, shall be
22 imprisoned in the county or regional jail for not less than
23 three months nor more than one year, which jail term shall
24 include actual confinement of not less than twenty-four
25 hours, and fined not less than five hundred dollars nor
26 more than three thousand dollars, or both.

CHAPTER 110

(S. B. 359—By Senators Wooton, Anderson, Buckalew, Deem, Dittmar, Miller,
Schoonover, Scott, Ross, White and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section six, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section three-a, article one,

chapter forty-eight-a of said code; to repeal section seventeen, article two of said chapter; to repeal section seven, article four of said chapter; to amend and reenact sections fifteen, fifteen-a and thirty-two, article two, chapter forty-eight of said code; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections one, four, twenty and twenty-three, article four of said chapter; to further amend said chapter by adding thereto two new articles, designated articles one-a and one-b; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, all relating to domestic relations and support obligations generally; reorganizing portions of the domestic relations law to provide a new methodology for calculating child support based on income shares; providing for relief upon ordering divorce, annulment or separate maintenance; providing for medical support; establishing a valuation date for contingent and other future earned fees that are marital property; defining certain terms that have application to support enforcement; establishing guidelines for child support awards; prescribing the method of calculating a child support order; setting forth a table of monthly basic child support obligations; providing for child health care as a part of support; providing for work-related child care costs as a part of support; computing child support order in a sole custody case; computing child support in shared physical custody case; computing child support in split physical custody case; adjustment for social security benefits sent directly to a child; application of guidelines; providing for modification of support orders; allocation of tax exemption; defining indebtedness; specifying when support guidelines may be disregarded; presenting information on income based on monthly amounts; creating an additional part-time family law master; providing for circuit court review of a law master's recommended order; prescribing fees to be charged by the clerk of the circuit court; disposition of fees; and defining criminal offense of failure to meet obligation to provide support, and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

48. Domestic Relations.

48A. Enforcement of Family Obligations.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-15a. Medical support enforcement.

§48-2-32. Marital property disposition.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

- 1 (a) Upon ordering a divorce or granting a decree of
- 2 separate maintenance, the court may require either party
- 3 to pay alimony in the form of periodic installments, or a
- 4 lump sum, or both, for the maintenance of the other party.
- 5 Payments of alimony are to be ordinarily made from a
- 6 party's income, but when the income is not sufficient to
- 7 adequately provide for those payments, the court may,

8 upon specific findings set forth in the order, order the
9 party required to make those payments to make them
10 from the corpus of his or her separate estate. An award of
11 alimony shall not be disproportionate to a party's ability to
12 pay as disclosed by the evidence before the court.

13 (b) Upon ordering the annulment of a marriage or a
14 divorce or granting of decree of separate maintenance, the
15 court may further order all or any part of the following
16 relief:

17 (1) The court may provide for the custody of minor
18 children of the parties, subject to such rights of visitation,
19 both in and out of the residence of the custodial parent or
20 other person or persons having custody, as may be appro-
21 priate under the circumstances. In every action where
22 visitation is awarded, the court shall specify a schedule for
23 visitation by the noncustodial parent: *Provided*, That with
24 respect to any existing order which provided for visitation
25 but which does not provide a specific schedule for visita-
26 tion by the noncustodial parent, upon motion of any par-
27 ty, notice of hearing and hearing, the court shall issue an
28 order which provides a specific schedule of visitation by
29 the noncustodial parent;

30 (2) When the action involves a minor child or children,
31 the court shall require either party to pay child support in
32 the form of periodic installments for the maintenance of
33 the minor children of the parties in accordance with sup-
34 port guidelines promulgated pursuant to section eight,
35 article two, chapter forty-eight-a of this code. Payments
36 of child support are to be ordinarily made from a party's
37 income, but in cases when the income is not sufficient to
38 adequately provide for those payments, the court may,
39 upon specific findings set forth in the order, order the
40 party required to make those payments to make them
41 from the corpus of his or her separate estate;

42 (3) When the action involves a minor child or children,
43 the court shall provide for medical support for any minor
44 children in accordance with section fifteen-a of this article;

45 (4) As an incident to requiring the payment of alimo-
46 ny or child support, the court may order either party to

47 continue in effect existing policies of insurance covering
48 the costs of health care and hospitalization of the other
49 party: *Provided*, That if the other party is no longer eligi-
50 ble to be covered by such insurance because of the grant-
51 ing of an annulment or divorce, the court may require a
52 party to substitute such insurance with a new policy to
53 cover the other party or may consider the prospective cost
54 of such insurance in awarding alimony to be paid in peri-
55 odic installments. Payments made to an insurer pursuant
56 to this subdivision, either directly or by a deduction from
57 wages, shall be deemed to be alimony or installment pay-
58 ments for the distribution of marital property, in such
59 proportion as the court shall direct: *Provided, however*,
60 That if the court does not set forth in the order that a por-
61 tion of such payments is to be deemed installment pay-
62 ments for the distribution of marital property, then all
63 such payments made pursuant to this subdivision shall be
64 deemed to be alimony: *Provided further*, That the desig-
65 nation of insurance coverage as alimony under the provi-
66 sions of this subdivision shall not, in and of itself, give rise
67 to a subsequent modification of the order to provide for
68 alimony other than insurance for covering the costs of
69 health care and hospitalization;

70 (5) The court may grant the exclusive use and occu-
71 pancy of the marital home to one of the parties, together
72 with all or a portion of the household goods, furniture and
73 furnishings reasonably necessary for such use and occu-
74 pancy. Such use and occupancy shall be for a definite
75 period, ending at a specific time set forth in the order,
76 subject to modification upon the petition of either party.
77 Except in extraordinary cases supported by specific find-
78 ings set forth in the order granting relief, a grant of the
79 exclusive use and occupancy of the marital home shall be
80 limited to those situations when such use and occupancy is
81 reasonably necessary to accommodate the rearing of mi-
82 nor children of the parties. The court may require pay-
83 ments to third parties in the form of home loan install-
84 ments, land contract payments, rent, property taxes and
85 insurance coverage if the amount of such coverage is
86 reduced to a fixed monetary amount set forth in the
87 court's order. When such third party payments are or-

88 dered, the court shall specify whether such payments or
89 portions of payments are alimony, child support, a partial
90 distribution of marital property or an allocation of marital
91 debt: *Provided*, That if the court does not set forth in the
92 order that a portion of such payments is to be deemed
93 child support or installment payments for the distribution
94 of marital property, then all such payments made pursuant
95 to this subdivision shall be deemed to be alimony. When
96 such third party payments are ordered, the court shall
97 specify whether such payments or portions of payments
98 are alimony, child support, a partial distribution of marital
99 property or an allocation of marital debt. If the payments
100 are not designated in an order and the parties have waived
101 any right to receive alimony, the court may designate the
102 payments upon motion by any party. Nothing contained
103 in this subdivision shall abrogate an existing contract be-
104 tween either of the parties and a third party or affect the
105 rights and liabilities of either party or a third party under
106 the terms of such contract;

107 (6) As an incident to requiring the payment of alimo-
108 ny, the court may grant the exclusive use and possession
109 of one or more motor vehicles to either of the parties.
110 The court may require payments to third parties in the
111 form of automobile loan installments or insurance cover-
112 age if available at reasonable rates, and any such payments
113 made pursuant to this subdivision for the benefit of the
114 other party shall be deemed to be alimony or installment
115 payments for the distribution of marital property, as the
116 court may direct. Nothing contained in this subdivision
117 shall abrogate an existing contract between either of the
118 parties and a third party or affect the rights and liabilities
119 of either party or a third party under the terms of such
120 contract;

121 (7) When the pleadings include a specific request for
122 specific property or raise issues concerning the equitable
123 division of marital property as defined in section one of
124 this article, the court shall order such relief as may be
125 required to effect a just and equitable distribution of the
126 property and to protect the equitable interests of the par-
127 ties therein;

128 (8) Unless a contrary disposition is ordered pursuant
129 to other provisions of this section, then upon the motion
130 of either party, the court may compel the other party to
131 deliver to the moving party any of his or her separate
132 estate which may be in the possession or control of the
133 respondent party and may make such further order as is
134 necessary to prevent either party from interfering with the
135 separate estate of the other;

136 (9) When allegations of abuse have been proven, the
137 court shall enjoin the offending party from molesting or
138 interfering with the other, or otherwise imposing any re-
139 straint on the personal liberty of the other or interfering
140 with the custodial or visitation rights of the other. Such
141 order may permanently enjoin the offending party from
142 entering the school, business or place of employment of
143 the other for the purpose of molesting or harassing the
144 other; or from contacting the other, in person or by tele-
145 phone, for the purpose of harassment or threats; or from
146 harassing or verbally abusing the other in a public place;

147 (10) The court may order either party to take neces-
148 sary steps to transfer utility accounts and other accounts
149 for recurring expenses from the name of one party into
150 the name of the other party or from the joint names of the
151 parties into the name of one party. Nothing contained in
152 this subdivision shall affect the liability of the parties for
153 indebtedness on any such account incurred before the
154 transfer of such account.

155 (c) When an annulment or divorce is denied, the court
156 shall retain jurisdiction of the case and may order all or
157 any portion of the relief provided for in subsections (a)
158 and (b) of this section which has been demanded or
159 prayed for in the pleadings.

160 (d) When a divorce or annulment is granted in this
161 state upon constructive service of process and personal
162 jurisdiction is thereafter obtained of the defendant in such
163 case, the court may order all or any portion of the relief
164 provided for in subsections (a) and (b) of this section
165 which has been demanded or prayed for in the pleadings.

166 (e) After the entry of an order pursuant to the provi-
167 sions of this section, the court may revise the order con-
168 cerning the maintenance of the parties and enter a new
169 order concerning the same, as the circumstances of the
170 parties may require.

171 The court may also from time to time afterward, upon
172 motion of either of the parties and upon proper service,
173 revise such order to grant relief pursuant to subdivision
174 (9), subsection (b) of this section, and enter a new order
175 concerning the same, as the circumstances of the parties
176 and the benefit of children may require. The court may
177 also from time to time afterward, upon the motion of ei-
178 ther of the parties or other proper person having actual or
179 legal custody of the minor child or children of the parties,
180 revise or alter the order concerning the custody and sup-
181 port of the children, and make a new order concerning the
182 same, issuing it forthwith, as the circumstances of the par-
183 ents or other proper person or persons and the benefit of
184 the children may require: *Provided*, That all orders modi-
185 fying child support shall be in conformance with the re-
186 quirements of support guidelines promulgated pursuant to
187 article one-b, chapter forty-eight-a of this code: *Provided*,
188 *however*, That an order providing for child support pay-
189 ments may be revised or altered for the reason, inter alia,
190 that the existing order provides for child support pay-
191 ments in an amount that is less than eighty-five percent or
192 more than one hundred fifteen percent of the amount that
193 would be required to be paid under the child support
194 guidelines promulgated pursuant to the provisions of said
195 section.

196 In granting relief under this subsection, the court may,
197 when other means are not conveniently available, alter any
198 prior order of the court with respect to the distribution of
199 marital property, if such property is still held by the par-
200 ties, and if necessary to give effect to a modification of
201 alimony, child support or child custody or necessary to
202 avoid an inequitable or unjust result which would be
203 caused by the manner in which the modification will affect
204 the prior distribution of marital property.

205 (f) When a separation agreement is the basis for an
206 award of alimony, the court, in approving the agreement,
207 shall examine the agreement to ascertain whether it clearly
208 provides for alimony to continue beyond the death of the
209 payor party or to cease in such event. When alimony is to
210 be paid pursuant to the terms of a separation agreement
211 which does not state whether the payment of alimony is to
212 continue beyond the death of the payor party or is to
213 cease, or when the parties have not entered into a separa-
214 tion agreement and alimony is to be awarded, the court
215 shall specifically state as a part of its order whether such
216 payments of alimony are to be continued beyond the
217 death of the payor party or cease.

218 (g) When a separation agreement is the basis for an
219 award of alimony, the court, in approving the agreement,
220 shall examine the agreement to ascertain whether it clearly
221 provides for alimony to continue beyond the remarriage
222 of the payee party or to cease in such event. When alimo-
223 ny is to be paid pursuant to the terms of a separation
224 agreement which does not state whether the payment of
225 alimony is to continue beyond the remarriage of the pay-
226 ee party or is to cease, or when the parties have not entered
227 into a separation agreement and alimony is to be awarded,
228 the court shall specifically state as a part of its order
229 whether such payments of alimony are to be continued
230 beyond the remarriage of the payee party or cease.

231 (h) In addition to the disclosure requirements set forth
232 in section thirty-three of this article, the court may order
233 accounts to be taken as to all or any part of marital prop-
234 erty or the separate estates of the parties and may direct
235 that the accounts be taken as of the date of the marriage,
236 the date upon which the parties separated or any other
237 time in assisting the court in the determination and equita-
238 ble division of property.

239 (i) In determining whether alimony is to be awarded,
240 or in determining the amount of alimony, if any, to be
241 awarded under the provisions of this section, the court
242 shall consider and compare the fault or misconduct of
243 either or both of the parties and the effect of such fault or
244 misconduct as a contributing factor to the deterioration of

245 the marital relationship. However, alimony shall not be
246 awarded when both parties prove grounds for divorce and
247 are denied a divorce, nor shall an award of alimony under
248 the provisions of this section be ordered which directs the
249 payment of alimony to a party determined to be at fault,
250 when, as a grounds granting the divorce, such party is
251 determined by the court:

252 (1) To have committed adultery; or

253 (2) To have been convicted for the commission of a
254 crime which is a felony, subsequent to the marriage if such
255 conviction has become final; or

256 (3) To have actually abandoned or deserted his or her
257 spouse for six months.

258 (j) Whenever under the terms of this section or section
259 thirteen of this article a court enters an order requiring the
260 payment of alimony or child support, if the court antici-
261 pates the payment of such alimony or child support or
262 any portion thereof to be paid out of "disposable retired
263 or retainer pay" as that term is defined in 10 U.S.C.
264 §1408, relating to members or former members of the
265 uniformed services of the United States, the court shall
266 specifically provide for the payment of an amount, ex-
267 pressed in dollars or as a percentage of disposable retired
268 or retainer pay, from the disposable retired or retainer pay
269 of the payor party to the payee party.

270 (k) Any order which provides for the custody or sup-
271 port of a minor child shall include:

272 (1) The name of the custodian;

273 (2) The amount of the support payments;

274 (3) The date the first payment is due;

275 (4) The frequency of the support payments;

276 (5) The event or events which trigger termination of
277 the support obligation;

278 (6) A provision regarding wage withholding;

279 (7) The address where payments shall be sent;

280 (8) A provision for medical support; and

281 (9) When child support guidelines are not followed, a
282 specific written finding pursuant to section eight, article
283 two, chapter forty-eight-a of this code.

284 (l) (1) Unless the best interests of the child require
285 otherwise, every final order and every modification order
286 which provides for the custody of a minor child of the
287 parties shall also provide for the following:

288 (A) The custodial parent shall be required to authorize
289 school authorities in the school in which the child is en-
290 rolled to release to the noncustodial parent copies of any
291 and all information concerning the child which would
292 otherwise be properly released to the custodial parent;

293 (B) The custodial parent shall be required, promptly
294 after receipt, to transmit to the noncustodial parent a copy
295 of the child's grades or report card and copies of any
296 other reports reflecting the status or progress of the child;

297 (C) The custodial parent shall be required, when prac-
298 ticable, to arrange appointments for parent-teacher confer-
299 ences at a time when the noncustodial parent can be pres-
300 ent;

301 (D) The custodial parent shall be required to authorize
302 medical providers to release to the noncustodial parent
303 copies of any and all information concerning medical care
304 provided to the child which would otherwise be properly
305 released to the custodial parent;

306 (E) The custodial parent shall be required to promptly
307 inform the noncustodial parent of any illness of the child
308 which requires medical attention; or, if the child is in the
309 actual physical custody of the noncustodial parent during
310 a period of visitation, the noncustodial parent shall be
311 required to promptly inform the custodial parent of any
312 illness of the child which requires medical attention;

313 (F) The custodial parent shall be required to consult
314 with the noncustodial parent prior to any elective surgery
315 being performed on the child; and in the event emergency
316 medical procedures are undertaken for the child which

317 require the parental consent of either parent, if time per-
318 mits, the other parent shall be consulted, or if time does
319 not permit such consultation, the other parent shall be
320 promptly informed of such emergency medical proce-
321 dures: *Provided*, That the same duty to inform the custo-
322 dial parent applies to the noncustodial parent in the event
323 that the emergency medical procedures are required while
324 the child is in the physical custody of the noncustodial
325 parent during a period of visitation: *Provided, however*,
326 That nothing contained herein shall be deemed to alter or
327 amend the law of this state as it otherwise pertains to phy-
328 sicians or health care facilities obtaining parental consent
329 prior to providing medical care or performing medical
330 procedures.

331 (2) In the event a custodial parent shall fail or refuse
332 to authorize the release of school or medical records as
333 provided for by subdivision (1) of this subsection, then
334 upon the ex parte application of the noncustodial parent,
335 the family law master shall prepare an order for entry by
336 the circuit court which appoints the family law master as a
337 special commissioner authorized to execute a consent for
338 the release of such records and direct it to the appropriate
339 school authorities or medical providers.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by
4 court order as custodian of child or children for whom
5 child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay for
8 insurance coverage and medical care, or some portion
9 thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psy-
12 chiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service for
17 children in need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer wel-
20 fare arrangement, hospital or medical services corporation,
21 trust, group health plan, as defined in 29 U.S.C. §1167,
22 Section 607(1) of the Employee Retirement Income Secu-
23 rity Act of 1974 or other entity which provides insurance
24 coverage or offers a service benefit plan.

25 (b) In every action to establish or modify an order
26 which requires the payment of child support, the court
27 shall ascertain the ability of each parent to provide medi-
28 cal care for the children of the parties. In any temporary
29 or final order establishing an award of child support or
30 any temporary or final order modifying a prior order
31 establishing an award of child support, the court shall
32 order one or more of the following:

33 (1) The court shall order either parent or both parents
34 to provide insurance coverage for a child, if such insur-
35 ance coverage is available to that parent on a group basis
36 through an employer or through an employee's union. If
37 similar insurance coverage is available to both parents, the
38 court shall order the child to be insured under the insur-
39 ance coverage which provides more comprehensive bene-
40 fits. If such insurance coverage is not available at the time
41 of the entry of the order, the order shall require that if
42 such coverage thereafter becomes available to either party,
43 that party shall promptly notify the other party of the
44 availability of insurance coverage for the child.

45 (2) If the court finds that insurance coverage is not
46 available to either parent on a group basis through an
47 employer, multi-employer trust or employees' union, or
48 that the group insurer is not accessible to the parties, the
49 court may order either parent or both parents to obtain
50 insurance coverage which is otherwise available at a rea-
51 sonable cost.

52 (3) Based upon the respective ability of the parents to
53 pay, the court may order either parent or both parents to

54 be liable for reasonable and necessary medical care for a
55 child. The court shall specify the proportion of the medi-
56 cal care for which each party shall be responsible.

57 (4) If insurance coverage is available, the court shall
58 also determine the amount of the annual deductible on
59 insurance coverage which is attributable to the children
60 and designate the proportion of the deductible which each
61 party shall pay.

62 (5) The order shall require the obligor to continue to
63 provide the child support enforcement division created by
64 article two, chapter forty-eight-a of this code with infor-
65 mation as to his or her employer's name and address and
66 information as to the availability of employer-related
67 insurance programs providing medical care coverage so
68 long as the child continues to be eligible to receive sup-
69 port.

70 (c) The cost of insurance coverage shall be considered
71 by the court in applying the child support guidelines pro-
72 vided for in article one-b, chapter forty-eight-a of this
73 code.

74 (d) Within thirty days after the entry of an order re-
75 quiring the obligated parent to provide insurance coverage
76 for the children, that parent shall submit to the custodian
77 for the child written proof that the insurance has been
78 obtained or that an application for insurance has been
79 made. Such proof of insurance coverage shall consist of,
80 at a minimum:

81 (1) The name of the insurer;

82 (2) The policy number;

83 (3) An insurance card;

84 (4) The address to which all claims should be mailed;

85 (5) A description of any restrictions on usage, such as
86 prior approval for hospital admission, and the manner in
87 which to obtain such approval;

88 (6) A description of all deductibles; and

89 (7) Five copies of claim forms.

90 (e) The custodian for the child shall send the insurer
91 or the obligated parent's employer the children's address
92 and notice that the custodian will be submitting claims on
93 behalf of the children. Upon receipt of such notice, or an
94 order for insurance coverage under this section, the obli-
95 gated parent's employer, multi-employer trust or union
96 shall, upon the request of the custodian for the child, re-
97 lease information on the coverage for the children, includ-
98 ing the name of the insurer.

99 (f) A copy of the court order for insurance coverage
100 shall not be provided to the obligated parent's employer or
101 union or the insurer unless ordered by the court, or unless:

102 (1) The obligated parent, within thirty days of receiv-
103 ing effective notice of the court order, fails to provide to
104 the custodian for the child written proof that the insurance
105 has been obtained or that an application for insurance has
106 been made;

107 (2) The custodian for the child serves written notice by
108 mail at the obligated parent's last known address of inten-
109 tion to enforce the order requiring insurance coverage for
110 the child; and

111 (3) The obligated parent fails within fifteen days after
112 the mailing of the notice to provide written proof to the
113 custodian for the child that the child has insurance cover-
114 age.

115 (g) (1) Upon service of the order requiring insurance
116 coverage for the children, the employer, multi-employer
117 trust or union shall enroll the child as a beneficiary in the
118 group insurance plan and withhold any required premium
119 from the obligated parent's income or wages.

120 (2) If more than one plan is offered by the employer,
121 multi-employer trust or union, the child shall be enrolled
122 in the same plan as the obligated parent at a reasonable
123 cost.

124 (3) Insurance coverage for the child which is ordered
125 pursuant to the provisions of this section shall not be ter-

126 minated except as provided in subsection (j) of this sec-
127 tion.

128 (h) Where a parent is required by a court or adminis-
129 trative order to provide health coverage, which is available
130 through an employer doing business in this state, the em-
131 ployer is required:

132 (1) To permit the parent to enroll under family cover-
133 age any child who is otherwise eligible for coverage with-
134 out regard to any enrollment season restrictions;

135 (2) If the parent is enrolled but fails to make applica-
136 tion to obtain coverage of the child, to enroll the child
137 under family coverage upon application by the child's
138 other parent, by the state agency administering the medic-
139 aid program or by the child support enforcement division;

140 (3) Not to disenroll or eliminate coverage of any such
141 child unless the employer is provided satisfactory written
142 evidence that:

143 (A) The court or administrative order is no longer in
144 effect;

145 (B) The child is or will be enrolled in comparable
146 coverage which will take effect no later than the effective
147 date of disenrollment; or

148 (C) The employer has eliminated family health cover-
149 age for all of its employees;

150 (4) To withhold from the employee's compensation
151 the employee's share, if any, of premiums for health cov-
152 erage and to pay this amount to the insurer: *Provided,*
153 That the amount so withheld may not exceed the maxi-
154 mum amount permitted to be withheld under 15 U.S.C.
155 §1673, Section 303(b) of the Consumer Credit Protection
156 Act.

157 (i) (1) The signature of the custodian for the child
158 shall constitute a valid authorization to the insurer for the
159 purposes of processing an insurance payment to the pro-
160 vider of medical care for the child.

161 (2) No insurer, employer or multi-employer trust in
162 this state may refuse to honor a claim for a covered service
163 when the custodian for the child or the obligated parent
164 submits proof of payment for medical bills for the child.

165 (3) The insurer shall reimburse the custodian for the
166 child or the obligated parent who submits copies of medi-
167 cal bills for the child with proof of payment.

168 (4) All insurers in this state shall comply with the pro-
169 visions of section sixteen, article fifteen, chapter
170 thirty-three of this code and section eleven, article sixteen
171 of said chapter and shall provide insurance coverage for
172 the child of a covered employee notwithstanding the
173 amount of support otherwise ordered by the court and
174 regardless of the fact that the child may not be living in
175 the home of the covered employee.

176 (j) When an order for insurance coverage for a child
177 pursuant to this section is in effect and the obligated par-
178 ent's employment is terminated, or the insurance coverage
179 for the child is denied, modified or terminated, the insurer
180 shall in addition to complying with the requirements of
181 article sixteen-a, chapter thirty-three of this code, within
182 ten days after the notice of change in coverage is sent to
183 the covered employee, notify the custodian for the child
184 and provide an explanation of any conversion privileges
185 available from the insurer.

186 (k) A child of an obligated parent shall remain eligible
187 for insurance coverage until the child is emancipated or
188 until the insurer under the terms of the applicable insur-
189 ance policy terminates said child from coverage, whichev-
190 er is later in time, or until further order of the court.

191 (l) If the obligated parent fails to comply with the
192 order to provide insurance coverage for the child, the
193 court shall:

194 (1) Hold the obligated parent in contempt for failing
195 or refusing to provide the insurance coverage or for fail-
196 ing or refusing to provide the information required in
197 subsection (d) of this section;

198 (2) Enter an order for a sum certain against the obli-
199 gated parent for the cost of medical care for the child and
200 any insurance premiums paid or provided for the child
201 during any period in which the obligated parent failed to
202 provide the required coverage;

203 (3) In the alternative, other enforcement remedies
204 available under sections two and three, article five, chapter
205 forty-eight-a of this code, or otherwise available under law,
206 may be used to recover from the obligated parent the cost
207 of medical care or insurance coverage for the child;

208 (4) In addition to other remedies available under law,
209 the child support enforcement division may garnish the
210 wages, salary or other employment income of, and with-
211 hold amounts from state tax refunds to any person who:

212 (A) Is required by court or administrative order to
213 provide coverage of the cost of health services to a child
214 eligible for medical assistance under medicaid; and

215 (B) Has received payment from a third party for the
216 costs of such services but has not used the payments to
217 reimburse either the other parent or guardian of the child
218 or the provider of the services, to the extent necessary to
219 reimburse the state medicaid agency for its costs: *Provid-*
220 *ed*, That claims for current and past due child support
221 shall take priority over these claims.

222 (m) Proof of failure to maintain court ordered insur-
223 ance coverage for the child constitutes a showing of sub-
224 stantial change in circumstances or increased need pursu-
225 ant to section fifteen of this article, and provides a basis
226 for modification of the child support order.

§48-2-32. Marital property disposition.

1 (a) Except as otherwise provided in this section, upon
2 every judgment of annulment, divorce or separation, the
3 court shall divide the marital property of the parties equal-
4 ly between the parties.

5 (b) In cases where the parties to an action commenced
6 under the provisions of this article have executed a separa-
7 tion agreement, then the court shall divide the marital

8 property in accordance with the terms of the agreement,
9 unless the court finds:

10 (1) That the agreement was obtained by fraud, duress
11 or other unconscionable conduct by one of the parties; or

12 (2) That the parties, in the separation agreement, have
13 not expressed themselves in terms which, if incorporated
14 into a judicial order, would be enforceable by a court in
15 future proceedings; or

16 (3) That the agreement, viewed in the context of the
17 actual contributions of the respective parties to the net
18 value of the marital property of the parties, is so inequita-
19 ble as to defeat the purposes of this section, and such
20 agreement was inequitable at the time the same was exe-
21 cuted.

22 (c) In the absence of a valid agreement, the court shall
23 presume that all marital property is to be divided equally
24 between the parties, but may alter this distribution, without
25 regard to any attribution of fault to either party which
26 may be alleged or proved in the course of the action, after
27 a consideration of the following:

28 (1) The extent to which each party has contributed to
29 the acquisition, preservation and maintenance, or increase
30 in value of marital property by monetary contributions,
31 including, but not limited to:

32 (A) Employment income and other earnings; and

33 (B) Funds which are separate property.

34 (2) The extent to which each party has contributed to
35 the acquisition, preservation and maintenance or increase
36 in value of marital property by nonmonetary contribu-
37 tions, including, but not limited to:

38 (A) Homemaker services;

39 (B) Child care services;

40 (C) Labor performed without compensation, or for
41 less than adequate compensation, in a family business or

42 other business entity in which one or both of the parties
43 has an interest;

44 (D) Labor performed in the actual maintenance or
45 improvement of tangible marital property; and

46 (E) Labor performed in the management or invest-
47 ment of assets which are marital property.

48 (3) The extent to which each party expended his or
49 her efforts during the marriage in a manner which limited
50 or decreased such party's income-earning ability or in-
51 creased the income-earning ability of the other party,
52 including, but not limited to:

53 (A) Direct or indirect contributions by either party to
54 the education or training of the other party which has
55 increased the income-earning ability of such other party;
56 and

57 (B) Foregoing by either party of employment or other
58 income-earning activity through an understanding of the
59 parties or at the insistence of the other party.

60 (4) The extent to which each party, during the mar-
61 riage, may have conducted himself or herself so as to
62 dissipate or depreciate the value of the marital property of
63 the parties: *Provided*, That except for a consideration of
64 the economic consequences of conduct as provided for in
65 this subdivision, fault or marital misconduct shall not be
66 considered by the court in determining the proper distri-
67 bution of marital property.

68 (d) After considering the factors set forth in subsec-
69 tion (c) of this section, the court shall:

70 (1) Determine the net value of all marital property of
71 the parties as of the date of the commencement of the
72 action or as of such later date determined by the court to
73 be more appropriate for attaining an equitable result:
74 *Provided*, That for contractual rights to contingent and
75 other future earned fees that are considered to be marital
76 property, the valuation date is the date the parties separat-
77 ed. Contractual agreements for contingent or other future
78 earned fees entered into during the marriage and before

79 the parties separated is marital property. The court shall
80 not delay a division of marital property by retaining con-
81 tinuing jurisdiction over the matter until the amount of the
82 contingent or other future earned fee has been ultimately
83 decided, but shall make a valuation of the contractual
84 agreement contemporaneously with the valuation of other
85 marital property;

86 (2) Designate the property which constitutes marital
87 property, and define the interest therein to which each
88 party is entitled and the value of their respective interest
89 therein. In the case of an action wherein there is no agree-
90 ment between the parties and the relief demanded requires
91 the court to consider such factors as are described in sub-
92 divisions (1), (2), (3) and (4), subsection (c) of this section,
93 if a consideration of factors only under said subdivisions
94 (1) and (2) would result in an unequal division of marital
95 property, and if an examination of the factors described in
96 said subdivisions (3) and (4) produce a finding that a
97 party: (A) Expended his or her efforts during the mar-
98 riage in a manner which limited or decreased such party's
99 income-earning ability or increased the income-earning
100 ability of the other party; or (B) conducted himself or
101 herself so as to dissipate or depreciate the value of the
102 marital property of the parties, then the court may, in the
103 absence of a fair and just alimony award under the provi-
104 sions of section fifteen of this article which adequately
105 takes into account the facts which underlie the factors
106 described in subdivisions (3) and (4), subsection (c) of this
107 section, equitably adjust the definition of the parties' inter-
108 est in marital property, increasing the interest in marital
109 property of a party adversely affected by the factors con-
110 sidered under said subdivisions who would otherwise be
111 awarded less than one half of the marital property, to an
112 interest not to exceed one half of the marital property;

113 (3) Designate the property which constitutes separate
114 property of the respective parties or the separate property
115 of their children;

116 (4) Determine the extent to which marital property is
117 susceptible to division in accordance with the findings of

118 the court as to the respective interests of the parties therein;

119 (5) In the case of any property which is not suscepti-
120 ble to division, ascertain the projected results of a sale of
121 such property;

122 (6) Ascertain the projected effect of a division or
123 transfer of ownership of income-producing property, in
124 terms of the possible pecuniary loss to the parties or other
125 persons which may result from an impairment of the
126 property's capacity to generate earnings; and

127 (7) Transfer title to such component parts of the mari-
128 tal property as may be necessary to achieve an equitable
129 distribution of the marital property. To make such equita-
130 ble distribution, the court may:

131 (A) Direct either party to transfer their interest in spe-
132 cific property to the other party;

133 (B) Permit either party to purchase from the other
134 party their interest in specific property;

135 (C) Direct either party to pay a sum of money to the
136 other party in lieu of transferring specific property or an
137 interest therein, if necessary to adjust the equities and
138 rights of the parties, which sum may be paid in install-
139 ments or otherwise, as the court may direct;

140 (D) Direct a party to transfer his or her property to the
141 other party in substitution for property of the other party
142 of equal value which the transferor is permitted to retain
143 and assume ownership of; or

144 (E) Order a sale of specific property and an appropri-
145 ate division of the net proceeds of such sale: *Provided*,
146 That such sale may be by private sale, or through an agent
147 or by judicial sale, whichever would facilitate a sale within
148 a reasonable time at a fair price.

149 (e) In order to achieve the equitable distribution of
150 marital property, the court shall, unless the parties other-
151 wise agree, order, when necessary, the transfer of legal title
152 to any property of the parties, giving preference to effect-
153 ing equitable distribution through periodic or lump sum
154 payments: *Provided*, That the court may order the trans-

155 fer of legal title to motor vehicles, household goods and
156 the former marital domicile without regard to such prefer-
157 ence where the court determines it to be necessary or con-
158 venient. In any case involving the equitable distribution
159 of: (1) Property acquired by bequest, devise, descent,
160 distribution or gift; or (2) ownership interests in a business
161 entity, the court shall, unless the parties otherwise agree,
162 give preference to the retention of the ownership interests
163 in such property. In the case of such business interests,
164 the court shall give preference to the party having the
165 closer involvement, larger ownership interest or greater
166 dependency upon the business entity for income or other
167 resources required to meet responsibilities imposed under
168 this article, and shall also consider the effects of transfer or
169 retention in terms of which alternative will best serve to
170 preserve the value of the business entity or protect the
171 business entity from undue hardship or from interference
172 caused by one of the parties or by the divorce, annulment
173 or decree of separate maintenance: *Provided, however,*
174 That the court may, unless the parties otherwise agree,
175 sever the business relationship of the parties and order the
176 transfer of legal title to ownership interests in the business
177 entity from one party to the other, without regard to the
178 limitations on the transfer of title to such property other-
179 wise provided in this subsection, if such transfer is re-
180 quired to achieve the other purposes of this article: *Pro-*
181 *vided further,* That in all such cases the court shall order
182 or the agreement of the parties shall provide for equitable
183 payment or transfer of legal title to other property, of fair
184 value in money or moneys' worth, in lieu of any owner-
185 ship interests in a business entity which are ordered to be
186 transferred under this subsection: *And provided further,*
187 That the court may order the transfer of such business
188 interests to a third party (such as the business entity itself
189 or another principal in the business entity) where the inter-
190 ests of the parties under this article can be protected and at
191 least one party consents thereto.

192 (f) In any order which divides or transfers the title to
193 any property, determines the ownership or value of any
194 property, designates the specific property to which any
195 party is entitled or grants any monetary award, the court

196 shall set out in detail its findings of fact and conclusions
197 of law, and the reasons for dividing the property in the
198 manner adopted.

199 (g) If an order entered in accordance with the provi-
200 sions of this article requires the transfer of title to property
201 and a party fails or refuses to execute a deed or other
202 instrument necessary to convey title to such property, the
203 deed or other instrument shall be executed by a special
204 commissioner appointed by the court for the purpose of
205 effecting such transfer of title pursuant to section seven,
206 article twelve, chapter fifty-five of this code.

207 (h) As to any third party, the doctrine of equitable
208 distribution of marital property and the provisions of this
209 article shall be construed as creating no interest or title in
210 property until and unless an order is entered under this
211 article judicially defining such interest or approving a
212 separation agreement which defines such interest. Neither
213 this article nor the doctrine of equitable distribution of
214 marital property shall be construed to create community
215 property nor any other interest or estate in property ex-
216 cept those previously recognized in this state. A husband
217 or wife may alienate property at any time prior to the
218 entry of an order under the provisions of this article or
219 prior to the recordation of a notice of lis pendens in ac-
220 cordance with the provisions of section thirty-five of this
221 article, and at anytime and in any manner not otherwise
222 prohibited by an order under this article, in like manner
223 and with like effect as if this article and the doctrine of
224 equitable distribution had not been adopted: *Provided,*
225 That as to any transfer prior to the entry of an order under
226 the provisions of this article, a transfer other than to a
227 bona fide purchaser for value shall be voidable if the court
228 finds such transfer to have been effected to avoid the ap-
229 plication of the provisions of this article or to otherwise be
230 a fraudulent conveyance. Upon the entry of any order
231 under this article or the admission to record of any notice
232 with respect to an action under this article, restraining the
233 alienation of property of a party, a bona fide purchaser
234 for value shall take such title or interest as he or she might
235 have taken prior to the effective date of this section and no
236 purchaser for value need see to the application of the

237 proceeds of such purchase except to the extent he or she
238 would have been required so to do prior to the effective
239 date of this section: *Provided, however,* That as to third
240 parties nothing in this section shall be construed to limit or
241 otherwise defeat the interests or rights to property which
242 any husband or wife would have had in property prior to
243 the enactment of this section or prior to the adoption of
244 the doctrine of equitable distribution by the supreme court
245 of appeals on the twenty-fifth day of May, one thousand
246 nine hundred eighty-three: *Provided further,* That no
247 order entered under this article shall be construed to de-
248 feat the title of a third party transferee thereof except to
249 the extent that the power to effect such a transfer of title or
250 interest in such property is secured by a valid and duly
251 perfected lien and, as to any personal property, secured by
252 a duly perfected security interest.

253 (i) Notwithstanding the provisions of chapter eleven of
254 this code, no transfer of interest in or title to property
255 under this section shall be taxable as a transfer of property
256 without consideration nor, except as to alimony, create
257 liability for sales, use, inheritance and transfer or income
258 taxes due the state or any political subdivision nor require
259 the payment of the excise tax imposed under article
260 twenty-two, chapter eleven of this code.

261 (j) Whenever under the terms of this article a court
262 enters an order requiring a division of property, if the
263 court anticipates the division of property will be effected
264 by requiring sums to be paid out of "disposable retired or
265 retainer pay" as that term is defined in 10 U.S.C. §1408,
266 relating to members or former members of the uniformed
267 services of the United States, the court shall specifically
268 provide for the payment of an amount, expressed in dol-
269 lars or as a percentage of disposable retired or retainer
270 pay, from the disposable retired or retainer pay of the
271 payor party to the payee party.

272 (k) The amendments to this section effected by the
273 reenactment of this section during the regular session of
274 the Legislature, one thousand nine hundred ninety-six, are
275 to be applied prospectively and shall have no application
276 to any action for annulment, divorce or separate mainte-

277 nance that was commenced on or before the effective date
278 of this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1. General Provisions.
- 1A. Definitions.
- 1B. Guidelines for Child Support Awards.
4. Proceedings Before a Master.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

1 If an obligation to pay interest arises under this chap-
2 ter, the rate of interest is that specified in section
3 thirty-one, article six, chapter fifty-six of this code. Inter-
4 est shall accrue only upon the outstanding principal of
5 such obligation. On and after the ninth day of June, one
6 thousand nine hundred ninety-five, this section shall be
7 construed to permit the accumulation of simple interest,
8 and may not be construed to permit the compounding of
9 interest. Interest which accrued on unpaid installments
10 accruing before the ninth day of June, one thousand nine
11 hundred ninety-five, may not be modified by any court,
12 irrespective of whether such installment accrued simple or
13 compound interest: *Provided*, That unpaid installments
14 upon which interest was compounded before the effective
15 date of this section shall accrue only simple interest there-
16 on on and after the ninth day of June, one thousand nine
17 hundred ninety-five.

ARTICLE 1A. DEFINITIONS.

- §48A-1A-1. Application of definitions.
- §48A-1A-2. Adjusted gross income.
- §48A-1A-3. Attributed income.
- §48A-1A-4. Automatic data processing and retrieval system.
- §48A-1A-5. Basic child support obligation.
- §48A-1A-6. Chief judge.
- §48A-1A-7. Child support enforcement division.
- §48A-1A-8. Children's advocate.
- §48A-1A-9. Combined adjusted gross income.
- §48A-1A-10. Contingent fee agreement.

- §48A-1A-11. Court.
- §48A-1A-12. Court of competent jurisdiction.
- §48A-1A-13. Custodial parent.
- §48A-1A-14. Director.
- §48A-1A-15. Domestic relations matter.
- §48A-1A-16. Employer.
- §48A-1A-17. Extraordinary medical expenses.
- §48A-1A-18. Family law master.
- §48A-1A-19. Gross income.
- §48A-1A-20. Guardian of the property of a child.
- §48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.
- §48A-1A-22. Obligee.
- §48A-1A-23. Obligor.
- §48A-1A-24. Primary caretaker of a child.
- §48A-1A-25. Secretary.
- §48A-1A-26. Shared physical custody.
- §48A-1A-27. Source of income.
- §48A-1A-28. Split physical custody.
- §48A-1A-29. Support.
- §48A-1A-30. Support order.
- §48A-1A-31. Unreimbursed health care expenses.
- §48A-1A-32. Work-related child care costs.

§48A-1A-1. Application of definitions.

1 For purposes of this chapter and chapter forty-eight of
2 this code, unless the context clearly requires otherwise, the
3 words and phrases defined in the following sections of this
4 article, and any variations of those words and phrases
5 required by the context, shall have the meanings ascribed
6 to them in this article.

§48A-1A-2. Adjusted gross income.

1 (a) "Adjusted gross income" means gross income less
2 the payment of previously ordered child support, spousal
3 support or separate maintenance.

4 (b) A further deduction from gross income for addi-
5 tional dependents may be allowed by the court or master
6 if the support obligor has legal dependents other than
7 those for whom support is being determined. An adjust-

8 ment may be used in the establishment of a child support
9 order or in a review of a child support order. However, in
10 cases where a modification is sought, the adjustment
11 should not be used to the extent that it results in a support
12 amount lower than the previously existing order for the
13 children who are the subject of the modification. The
14 court or master may elect to use the following adjustment
15 because it allots equitable shares of support to all of the
16 support obligor's legal dependents. Using the income of
17 the support obligor only, determine the basic child sup-
18 port obligation (from the Table of Basic Child Support
19 Obligations in section three, article one-b of this chapter)
20 for the number of additional legal dependents living with
21 the support obligor. Multiply this figure by 0.75 and
22 subtract this amount from the support obligor's gross
23 income.

§48A-1A-3. Attributed income.

1 (a) "Attributed income" means income not actually
2 earned by an obligor, but which may be attributed to the
3 obligor because he or she is unemployed, is not working
4 full time, or is working below full earning capacity. In-
5 come may be attributed to an obligor if the court or mas-
6 ter evaluates the obligor's earning capacity in the local
7 economy (giving consideration to relevant evidence that
8 pertains to the obligor's work history, qualifications, edu-
9 cation and physical or mental condition) and determines
10 that the obligor is unemployed, is not working full time, or
11 is working below full earning capacity.

12 (b) If an obligor: (1) Voluntarily leaves employment
13 or voluntarily alters his or her pattern of employment so
14 as to be unemployed, underemployed or employed below
15 full earning capacity; (2) is able to work and is available
16 for full-time work for which he or she is fitted by prior
17 training or experience; and (3) is not seeking employment
18 in the manner that a reasonably prudent person in his or
19 her circumstances would do, then an alternative method
20 for the court or master to determine gross income is to
21 attribute to the person an earning capacity based on his or
22 her previous income. If the obligor's work history, quali-
23 fications, education or physical or mental condition can-

24 not be determined, or if there is an inadequate record of
25 the obligor's previous income, the court or master may, as
26 a minimum, base attributed income on full-time employ-
27 ment (at forty hours per week) at the federal minimum
28 wage in effect at the time the support obligation is estab-
29 lished.

30 (c) Income shall not be attributed to an obligor who is
31 unemployed or underemployed or is otherwise working
32 below full earning capacity if any of the following condi-
33 tions exist:

34 (1) The parent is providing care required by the chil-
35 dren to whom the parties owe a joint legal responsibility
36 for support, and such children are of preschool age or are
37 handicapped or otherwise in a situation requiring particu-
38 lar care by the parent;

39 (2) The parent is pursuing a plan of economic
40 self-improvement which will result, within a reasonable
41 time, in an economic benefit to the children to whom the
42 support obligation is owed, including, but not limited to,
43 self-employment or education: *Provided*, That if the
44 parent is involved in an educational program, the court or
45 master shall ascertain that the person is making substantial
46 progress toward completion of the program;

47 (3) The parent is, for valid medical reasons, earning
48 an income in an amount less than previously earned; or

49 (4) The court or master makes a written finding that
50 other circumstances exist which would make the attribu-
51 tion of income inequitable: *Provided*, That in such case,
52 the court or master may decrease the amount of attributed
53 income to an extent required to remove such inequity.

§48A-1A-4. Automatic data processing and retrieval system.

1 (a) "Automatic data processing and retrieval system"
2 means a computerized data processing system designed to
3 do the following:

4 (1) To control, account for and monitor all of the
5 factors in the support enforcement collection and paterni-
6 ty determination process, including, but not limited to:

7 (A) Identifiable correlation factors (such as social
8 security numbers, names, dates of birth, home addresses
9 and mailing addresses of any individual with respect to
10 whom support obligations are sought to be established or
11 enforced and with respect to any person to whom such
12 support obligations are owing) to assure sufficient com-
13 patibility among the systems of different jurisdictions to
14 permit periodic screening to determine whether such indi-
15 vidual is paying or is obligated to pay support in more
16 than one jurisdiction;

17 (B) Checking of records of such individuals on a peri-
18 odic basis with federal, interstate, intrastate and local agen-
19 cies;

20 (C) Maintaining the data necessary to meet applicable
21 federal reporting requirements on a timely basis; and

22 (D) Delinquency and enforcement activities;

23 (2) To control, account for and monitor the collection
24 and distribution of support payments (both interstate and
25 intrastate) the determination, collection and distribution of
26 incentive payments (both interstate and intrastate), and the
27 maintenance of accounts receivable on all amounts owed,
28 collected and distributed;

29 (3) To control, account for and monitor the costs of
30 all services rendered, either directly or by exchanging
31 information with state agencies responsible for maintain-
32 ing financial management and expenditure information;

33 (4) To provide access to the records of the department
34 of health and human resources or aid to families with
35 dependent children in order to determine if a collection of
36 a support payment causes a change affecting eligibility for
37 or the amount of aid under such program;

38 (5) To provide for security against unauthorized ac-
39 cess to, or use of, the data in such system;

40 (6) To facilitate the development and improvement of
41 the income withholding and other procedures designed to
42 improve the effectiveness of support enforcement through
43 the monitoring of support payments, the maintenance of

44 accurate records regarding the payment of support and
45 the prompt provision of notice to appropriate officials
46 with respect to any arrearage in support payments which
47 may occur; and

48 (7) To provide management information on all cases
49 from initial referral or application through collection and
50 enforcement.

§48A-1A-5. Basic child support obligation.

1 "Basic child support obligation" means the base
2 amount of child support due by both parents as deter-
3 mined by the table of basic child support obligations set
4 forth in section three, article one-b of this chapter, based
5 upon the combined adjusted gross income of the parents
6 and the number of children to whom support is due.

§48A-1A-6. Chief judge.

1 "Chief judge" means the circuit judge in a judicial
2 circuit that has only one circuit judge, or the chief judge
3 of the circuit court in a judicial circuit that has two or
4 more circuit judges.

§48A-1A-7. Child support enforcement division.

1 "Child support enforcement division" means the agen-
2 cy created under the provisions of article two of this chap-
3 ter, or any public or private entity or agency contracting
4 to provide a service. The "child advocate office" or "child
5 support enforcement division" is that agency intended by
6 the Legislature to be the single and separate organizational
7 unit of state government administering programs of child
8 and spousal support enforcement and meeting the staffing
9 and organizational requirements of the secretary of the
10 federal department of health and human services. A refer-
11 ence in this chapter and elsewhere in this code to the
12 "child advocate office" shall be interpreted to refer to the
13 child support enforcement division.

§48A-1A-8. Children's advocate.

1 "Children's advocate" or "advocate" means any public
2 or private agency, entity or person providing child support
3 enforcement services required by this chapter. The term

4 includes those persons or agencies or entities providing
5 services under the direction of or pursuant to a contract
6 with the child support enforcement division as provided
7 for in article two of this chapter and in any such contract.

§48A-1A-9. Combined adjusted gross income.

1 "Combined adjusted gross income" means the com-
2 bined monthly adjusted gross incomes of both parents.

§48A-1A-10. Contingent fee agreement.

1 (a) "Contingent fee agreement" means a contract un-
2 der which an attorney may be compensated for work in
3 progress, dependent on the occurrence of some future
4 event which is not certain and absolute. As such, a contin-
5 gent fee agreement is not an asset, but is potential income
6 or income capacity. This potential income may have
7 current value, and a portion of that current value, if any,
8 may be considered to be a marital asset. In the event a
9 party seeks to quantify the current value of a particular
10 contingent fee agreement for the purpose of establishing
11 the value of the agreement as marital property, the court
12 must find that the party has proved such value by a pre-
13 ponderance of the evidence. Factors to be considered by
14 the court include, but are not limited to, the following:

15 (1) The nature of the particular case or claim which
16 underlies the agreement;

17 (2) The jurisdiction or venue of any projected trial or
18 proceeding;

19 (3) Any historical data relevant to verdicts or settle-
20 ments within the jurisdiction where the case or claim is
21 pending or may be brought;

22 (4) The terms and particulars of the agreement;

23 (5) The status of the case or claim at valuation date;

24 (6) The amount of time spent working on the case or
25 claim prior to the valuation date, and an analysis of the
26 nature of how that time was spent, including, but not limit-
27 ed to, such activities such as investigation, research, discov-
28 ery, trial or appellate practice;

29 (7) The extent of the person's active role in the work
30 in process, whether as an actual participant or as an indi-
31 rect participant such as a partner, local counsel or other
32 ancillary role;

33 (8) The age of the case or claim;

34 (9) The expenses accrued or projected to bring the
35 case or claim to resolution, including any office overhead
36 attributable to case or claim; and

37 (10) The probable tax consequences attendant to a
38 successful resolution of the case or claim.

39 (b) The provisions of this section as enacted during
40 the regular session of the Legislature, one thousand nine
41 hundred ninety-six, are to be applied prospectively and
42 shall have no application to any action for annulment,
43 divorce or separate maintenance that was commenced on
44 or before the effective date of this section.

§48A-1A-11. Court.

1 "Court" means a circuit court of this state, unless the
2 context in which such term is used clearly indicates that
3 reference to some other court is intended.

§48A-1A-12. Court of competent jurisdiction.

1 "Court of competent jurisdiction" means a circuit court
2 within this state or a court or administrative agency of
3 another state having jurisdiction and due legal authority to
4 deal with the subject matter of the establishment and en-
5 forcement of support obligations. Whenever in this chap-
6 ter reference is made to an order of a court of competent
7 jurisdiction, or similar wording, such language shall be
8 interpreted so as to include orders of an administrative
9 agency entered in a state where enforceable orders may by
10 law be properly made and entered by such administrative
11 agency.

§48A-1A-13. Custodial parent.

1 "Custodial parent" or "custodial parent of a child"
2 means a parent who has been granted custody of a child
3 by a court of competent jurisdiction. "Noncustodial par-

4 ent" means a parent of a child with respect to whom custo-
5 dy has been adjudicated with the result that such parent
6 has not been granted custody of the child.

§48A-1A-14. Director.

1 "Director" means any person appointed pursuant to
2 section thirteen, article two of this chapter, who directs all
3 child support establishment and enforcement services for
4 the child support enforcement division.

§48A-1A-15. Domestic relations matter.

1 "Domestic relations matter" means any circuit court
2 proceeding involving child custody, child visitation, child
3 support or alimony.

§48A-1A-16. Employer.

1 "Employer" means any individual, sole proprietorship,
2 partnership, association, public or private corporation, the
3 United States or any federal agency, this state or any polit-
4 ical subdivision of this state, any other state or a political
5 subdivision of another state and any other legal entity
6 which hires and pays an individual for his services.

§48A-1A-17. Extraordinary medical expenses.

1 "Extraordinary medical expenses" means reasonable
2 uninsured medical expenses in excess of two hundred fifty
3 dollars per year per child which are recurring and can
4 reasonably be predicted by the court or master at the time
5 of establishment or modification of a child support order.
6 Nonrecurring or subsequently occurring uninsured medi-
7 cal expenses in excess of two hundred fifty dollars per
8 year per child shall be separately divided between the
9 parties in proportion to their adjusted gross incomes.
10 Such expenses shall include, but not be limited to, insur-
11 ance copayments and deductibles, reasonable costs for
12 necessary orthodontia, dental treatment, asthma treatments,
13 physical therapy, and any uninsured chronic health prob-
14 lem.

§48A-1A-18. Family law master.

1 "Family law master" or "master" means a person ap-
2 pointed to such position under the provisions of section
3 one, article four of this chapter.

§48A-1A-19. Gross income.

1 (a) "Gross income" means all earned and unearned
2 income. When determining whether an income source
3 should be included in the child support calculation, the
4 court or master should consider the income source if it
5 would have been available to pay child-rearing expenses
6 had the family remained intact or, in cases involving a
7 nonmarital birth, if a household had been formed.

8 (b) "Gross income" includes, but is not limited to, the
9 following:

10 (1) Earnings in the form of salaries, wages, commis-
11 sions, fees, bonuses, profit sharing, tips and other income
12 due or to be due in the future to an obligor from his em-
13 ployer and successor employers;

14 (2) Any payment due or to be due in the future to an
15 obligor from a pension plan, an insurance contract, an
16 annuity, social security benefits, unemployment compen-
17 sation, supplemental employment benefits, workers' com-
18 pensation benefits, and state lottery winnings and prizes;

19 (3) Interest paid on any debt owing to the obligor as a
20 debt from an individual, partnership, association, public or
21 private corporation, the United States or any federal agen-
22 cy, this state or any political subdivision of this state, any
23 other state or a political subdivision of another state or any
24 other legal entity;

25 (4) Expense reimbursements or in-kind payments
26 such as business expense accounts, business credit ac-
27 counts, and tangible property such as automobiles and
28 meals, to the extent that they provide the obligor with
29 property or services he or she would otherwise have to
30 provide;

31 (5) Attributed income of the parent, calculated in
32 accordance with the provisions of section three, article
33 one-a of this chapter;

34 (6) Compensation paid for personal services as over-
35 time pay: *Provided*, That overtime compensation may be
36 excluded from gross income if the obligor with the over-
37 time income demonstrates to the court or master that the
38 overtime work is voluntarily performed and that he or she
39 did not have a previous pattern of working overtime hours
40 prior to divorce or birth of a nonmarital child;

41 (7) Income from self-employment or the operation of
42 a business, minus ordinary and necessary expenses which
43 are not reimbursable, and which are lawfully deductible in
44 computing taxable income under applicable income tax
45 laws;

46 (8) Income from seasonal employment or other spo-
47 radic sources: *Provided*, That the amount of monthly
48 income to be included in gross income shall be deter-
49 mined by averaging the income from seasonal employ-
50 ment or other sporadic sources received during the previ-
51 ous thirty-six-month period or during a period beginning
52 with the month in which the obligor first received such
53 compensation, whichever period is shorter; and

54 (9) Alimony and separate maintenance receipts.

55 (c) Depending on the circumstances of the particular
56 case, the court or master may also include severance pay,
57 capital gains, and net gambling, gifts or prizes as gross
58 income.

59 (d) "Gross Income" does not include:

60 (1) Income received by other household members
61 such as a new spouse;

62 (2) Child support received for the children of another
63 relationship;

64 (3) Means-tested assistance such as aid to families
65 with dependent children, supplemental security income
66 and food stamps; and

67 (4) A child's income unless the court or master deter-
68 mines that the child's income substantially reduces the
69 family's living expenses.

§48A-1A-20. Guardian of the property of a child.

1 "Guardian of the property of a child" means a person
2 lawfully invested with the power, and charged with the
3 duty, of managing and controlling the estate of a child.

§48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.

1 "Individual entitled to support enforcement services
2 under the provisions of this chapter and the provisions of
3 Title IV-D of the federal Social Security Act" means:

4 (1) An individual who has applied for or is receiving
5 services from the child support enforcement division and
6 who is the custodial parent of a child, or the primary care-
7 taker of a child, or the guardian of the property of a child
8 when:

9 (A) Such child has a parent and child relationship with
10 an obligor who is not such custodial parent, primary care-
11 taker or guardian; and

12 (B) The obligor with whom the child has a parent and
13 child relationship is not meeting an obligation to support
14 the child, or has not met such obligation in the past; or

15 (2) An individual who has applied for or is receiving
16 services from the child support enforcement division and
17 who is an adult or an emancipated minor whose spouse or
18 former spouse has been ordered by a court of competent
19 jurisdiction to pay spousal support to the individual,
20 whether such support is denominated alimony or separate
21 maintenance, or is identified by some other terminology,
22 thus establishing a support obligation with respect to such
23 spouse, when the obligor required to pay such spousal
24 support is not meeting the obligation, or has not met such
25 obligation in the past; or

26 (3) Any individual who is an obligee in a support
27 order, entered by a court of competent jurisdiction after
28 the thirty-first day of December, one thousand nine hun-
29 dred ninety-three.

§48A-1A-22. Obligee.

1 "Obligee" means:

2 (1) An individual to whom a duty of support is or is
3 alleged to be owed or in whose favor a support order has
4 been issued or a judgment determining parentage has
5 been rendered;

6 (2) A state or political subdivision to which the rights
7 under a duty of support or support order have been as-
8 signed or which has independent claims based on financial
9 assistance provided to an individual obligee; or

10 (3) An individual seeking a judgment determining
11 parentage of the individual's child.

§48A-1A-23. Obligor.

1 "Obligor" means an individual or the estate of a dece-
2 dent:

3 (1) Who owes or is alleged to owe a duty of support;

4 (2) Who is alleged, but has not been adjudicated, to be
5 a parent of a child; or

6 (3) Who is liable under a support order.

§48A-1A-24. Primary caretaker of a child.

1 "Primary caretaker of a child" means a parent or other
2 person having actual physical custody of a child without a
3 court order granting such custody and who has been pri-
4 marily responsible for exercising parental rights and re-
5 sponsibilities with regard to such child.

§48A-1A-25. Secretary.

1 "Secretary" means the secretary of the department of
2 health and human resources.

§48A-1A-26. Shared physical custody.

1 "Shared physical custody" means an arrangement
2 under which each parent keeps a child or children over-
3 night for more than thirty percent of the year and under

- 4 which both parents contribute to the expenses of the child
5 or children in addition to the payment of child support.

§48A-1A-27. Source of income.

- 1 "Source of income" means an employer or successor
2 employer or any other person who owes or will owe in-
3 come to an obligor.

§48A-1A-28. Split physical custody.

- 1 "Split physical custody" means a situation where there
2 is more than one child and where each parent has physical
3 custody of at least one child.

§48A-1A-29. Support.

- 1 "Support" means the payment of money including
2 interest:

3 (A) For a child or spouse, ordered by a court of com-
4 petent jurisdiction, whether the payment is ordered in an
5 emergency, temporary, permanent or modified order,
6 decree or judgment of such court, and the amount of
7 unpaid support shall bear simple interest from the date it
8 accrued, at a rate of ten dollars upon one hundred dollars
9 per annum, and proportionately for a greater or lesser
10 sum, or for a longer or shorter time;

11 (B) To third parties on behalf of a child or spouse,
12 including, but not limited to, payments to medical, dental
13 or educational providers, payments to insurers for health
14 and hospitalization insurance, payments of residential rent
15 or mortgage payments, payments on an automobile or
16 payments for day care; and/or

17 (C) For a mother, ordered by a court of competent
18 jurisdiction, for the necessary expenses incurred by or for
19 the mother in connection with her confinement or of other
20 expenses in connection with the pregnancy of the mother.

§48A-1A-30. Support order.

- 1 "Support order" means any order of a court of compe-
2 tent jurisdiction for the payment of support, whether or
3 not for a sum certain.

§48A-1A-31. Unreimbursed health care expenses.

1 "Unreimbursed medical expenses" means the child's
2 portion of health insurance premiums and extraordinary
3 medical expenses.

§48A-1A-32. Work-related child care costs.

1 "Work-related child care costs" shall mean the cost of
2 child care the parent incurs due to employment or the
3 search for employment.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

- §48A-1B-1. General provisions.
- §48A-1B-2. Calculation of child support order.
- §48A-1B-3. Basic child support obligation.
- §48A-1B-4. Child health care.
- §48A-1B-5. Work-related child care costs; deduction of tax credit.
- §48A-1B-6. Computation of child support order in sole custody cases.
- §48A-1B-7. Shared physical custody adjustment.
- §48A-1B-8. Split physical custody adjustment.
- §48A-1B-9. Adjustment for obligator's social security benefits sent directly to the child.
- §48A-1B-10. Application.
- §48A-1B-11. Modification.
- §48A-1B-12. Tax exemption for child due support.
- §48A-1B-13. Indebtedness.
- §48A-1B-14. Disregard of formula.
- §48A-1B-15. Present income as monthly amounts.

§48A-1B-1. General provisions.

1 (a) This section establishes guidelines for child sup-
2 port award amounts so as to ensure greater uniformity by
3 those persons who make child support recommendations
4 and enter child support orders and to increase predictabili-
5 ty for parents, children and other persons who are directly
6 affected by child support orders. There shall be a rebutta-
7 ble presumption, in any proceeding before a family law
8 master or circuit court judge for the award of child sup-
9 port, that the amount of the award which would result
10 from the application of these guidelines is the correct
11 amount of child support to be awarded.

12 (b) The Legislature recognizes that children have a
13 right to share in their natural parents' level of living. Ex-

14 expenditures in families are not made in accordance with
15 subsistence level standards, but are made in proportion to
16 household income, and as parental incomes increase or
17 decrease, the actual dollar expenditures for children also
18 increase or decrease correspondingly. In order to ensure
19 that children properly share in their parents' resources,
20 regardless of family structure, the guidelines are structured
21 so as to provide that after a consideration of respective
22 parental incomes, that child support will be related, to the
23 extent practicable, to the level of living that children would
24 enjoy if they were living in a household with both parents
25 present.

26 (c) The guidelines promulgated under the provisions
27 of this section take into consideration the financial contri-
28 butions of both parents. The Legislature recognizes that
29 expenditures in households are made in aggregate form
30 and that total family income is pooled to determine the
31 level at which the family can live. The guidelines consider
32 the financial contributions of both parents in relationship
33 to total income, so as to establish and equitably apportion
34 the child support obligation.

35 (d) The provisions of this article which would create a
36 new method of calculating child support obligations based
37 on an income shares model shall not become operative
38 until the first day of July, one thousand nine hundred
39 ninety-seven. The child support guidelines in effect on
40 the first day of January, one thousand nine hundred
41 ninety-six, as promulgated by legislative rule, shall contin-
42 ue in effect, notwithstanding the repeal of section seven-
43 teen, article two of this chapter during the regular session
44 of the Legislature, one thousand nine hundred ninety-six.
45 To the extent that any definition set forth in article one-a
46 of this chapter is inconsistent with the manner of calculat-
47 ing a support obligation under the legislative rule estab-
48 lishing child support guidelines that is in effect on the first
49 day of January, one thousand nine hundred ninety-six,
50 such definition shall have no application until the first day
51 of July, one thousand nine hundred ninety-seven.

§48A-1B-2. Calculation of child support order.

1 (a) Both parents' adjusted gross income, as defined in
 2 section two, article one-a of this chapter, is used to deter-
 3 mine the amount of child support. Unreimbursed child
 4 health care expenses and work-related child care expenses
 5 are added to the basic child support obligation to deter-
 6 mine the total child support obligation. The child support
 7 order is determined by dividing the total child support
 8 obligation between the parents in proportion to their in-
 9 come.

10 (b) The calculation of the support order amount re-
 11 quires the use of one of two worksheets which must be
 12 completed for each case. Worksheet A is used for a sole
 13 physical custody arrangement. Worksheet B is used for a
 14 shared physical custody arrangement.

§48A-1B-3. Basic child support obligation.

1 (a) The basic child support obligation is determined
 2 from the following table of monthly basic child support
 3 obligations:

4 **MONTHLY BASIC CHILD**
 5 **SUPPORT OBLIGATIONS**

6 Combined 7 Adjusted 8 Gross 9 Monthly 10 Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
11 650	50	50	50	50	50	50
12 700	71	72	73	74	75	75
13 750	101	103	104	105	106	107
14 800	135	136	138	139	141	142
15 850	168	170	172	174	176	178
16 900	184	204	206	209	211	213
17 950	193	238	240	243	246	248
18 1,000	201	272	275	278	281	284
19 1,050	210	306	309	312	316	319

20	1,100	218	329	343	347	351	354
21	1,150	227	342	377	381	385	390
22	1,200	235	355	411	416	420	425
23	1,250	243	368	436	450	455	459
24	1,300	252	381	451	484	489	494
25	1,350	261	393	465	514	524	529
26	1,400	270	405	479	529	558	564
27	1,450	279	417	493	545	590	599
28	1,500	289	429	507	560	607	634
29	1,550	298	441	521	576	624	668
30	1,600	307	453	535	591	641	686
31	1,650	316	465	549	607	658	704
32	1,700	325	477	563	623	675	722
33	1,750	334	489	578	638	692	740
34	1,800	344	501	592	654	709	758
35	1,850	353	513	606	669	726	776
36	1,900	361	525	620	685	742	794
37	1,950	370	537	634	701	759	812
38	2,000	378	549	648	716	776	831
39	2,050	386	561	662	732	793	849
40	2,100	395	573	676	747	810	867
41	2,150	403	585	690	763	827	885
42	2,200	411	597	704	778	844	903
43	2,250	420	609	718	794	860	921
44	2,300	428	621	732	809	877	939
45	2,350	436	633	746	825	894	957
46	2,400	445	645	760	840	911	975

47	2,450	453	657	774	856	927	992
48	2,500	460	668	787	869	942	1,008
49	2,550	467	677	798	882	956	1,023
50	2,600	474	687	809	894	969	1,037
51	2,650	480	696	820	906	982	1,051
52	2,700	487	706	831	918	995	1,065
53	2,750	494	715	842	930	1,008	1,079
54	2,800	500	725	853	942	1,022	1,093
55	2,850	507	734	864	955	1,035	1,107
56	2,900	514	744	875	967	1,048	1,122
57	2,950	520	753	886	979	1,061	1,136
58	3,000	527	763	897	991	1,074	1,150
59	3,050	534	772	908	1,003	1,088	1,164
60	3,100	540	782	919	1,016	1,101	1,178
61	3,150	546	790	929	1,026	1,113	1,191
62	3,200	551	797	937	1,036	1,123	1,201
63	3,250	556	804	946	1,045	1,133	1,212
64	3,300	560	811	954	1,054	1,143	1,223
65	3,350	565	818	963	1,064	1,153	1,234
66	3,400	570	825	971	1,073	1,163	1,245
67	3,450	575	832	980	1,083	1,174	1,256
68	3,500	579	839	988	1,092	1,184	1,267
69	3,550	584	846	997	1,101	1,194	1,277
70	3,600	589	853	1,005	1,111	1,204	1,288
71	3,650	594	860	1,014	1,120	1,214	1,299
72	3,700	598	867	1,022	1,129	1,224	1,310
73	3,750	603	874	1,030	1,138	1,234	1,320

74	3,800	608	881	1,038	1,148	1,244	1,331
75	3,850	612	887	1,046	1,156	1,253	1,341
76	3,900	616	893	1,052	1,163	1,260	1,348
77	3,950	620	898	1,058	1,169	1,267	1,356
78	4,000	624	904	1,064	1,176	1,275	1,364
79	4,050	628	909	1,070	1,183	1,282	1,372
80	4,100	632	915	1,076	1,190	1,289	1,380
81	4,150	636	920	1,083	1,196	1,297	1,387
82	4,200	640	926	1,089	1,203	1,304	1,395
83	4,250	644	931	1,095	1,210	1,311	1,403
84	4,300	648	937	1,101	1,217	1,319	1,411
85	4,350	652	942	1,107	1,223	1,326	1,419
86	4,400	657	948	1,113	1,230	1,333	1,427
87	4,450	661	953	1,119	1,237	1,341	1,434
88	4,500	665	959	1,125	1,244	1,348	1,442
89	4,550	669	964	1,131	1,250	1,355	1,450
90	4,600	671	969	1,136	1,255	1,361	1,456
91	4,650	674	972	1,141	1,260	1,366	1,462
92	4,700	677	976	1,145	1,265	1,372	1,468
93	4,750	679	980	1,150	1,270	1,377	1,473
94	4,800	682	984	1,154	1,275	1,382	1,479
95	4,850	684	987	1,158	1,280	1,387	1,484
96	4,900	687	991	1,163	1,285	1,392	1,490
97	4,950	689	995	1,167	1,289	1,398	1,495
98	5,000	692	998	1,171	1,294	1,403	1,501
99	5,050	694	1,002	1,176	1,299	1,408	1,506
100	5,100	697	1,006	1,180	1,304	1,413	1,512

101	5,150	700	1,010	1,185	1,309	1,419	1,518
102	5,200	703	1,014	1,189	1,314	1,424	1,524
103	5,250	704	1,015	1,191	1,317	1,427	1,527
104	5,300	709	1,023	1,200	1,326	1,437	1,538
105	5,350	714	1,030	1,208	1,335	1,447	1,549
106	5,400	719	1,037	1,216	1,344	1,457	1,559
107	5,450	725	1,045	1,225	1,353	1,467	1,570
108	5,500	730	1,052	1,233	1,363	1,477	1,580
109	5,550	735	1,059	1,241	1,372	1,487	1,591
110	5,600	740	1,066	1,250	1,381	1,497	1,602
111	5,650	745	1,074	1,258	1,390	1,507	1,612
112	5,700	750	1,081	1,266	1,399	1,517	1,623
113	5,750	756	1,088	1,275	1,409	1,527	1,634
114	5,800	761	1,096	1,283	1,418	1,537	1,644
115	5,850	766	1,103	1,291	1,427	1,547	1,655
116	5,900	771	1,110	1,299	1,436	1,557	1,666
117	5,950	776	1,117	1,308	1,445	1,567	1,676
118	6,000	781	1,124	1,315	1,454	1,576	1,686
119	6,050	785	1,130	1,322	1,461	1,584	1,695
120	6,100	789	1,135	1,329	1,469	1,592	1,703
121	6,150	793	1,141	1,336	1,476	1,600	1,712
122	6,200	797	1,147	1,343	1,484	1,609	1,721
123	6,250	801	1,153	1,350	1,491	1,617	1,730
124	6,300	805	1,158	1,356	1,499	1,625	1,738
125	6,350	809	1,164	1,363	1,507	1,633	1,747
126	6,400	813	1,170	1,370	1,514	1,641	1,756
127	6,450	817	1,176	1,377	1,522	1,649	1,765

128	6,500	821	1,182	1,384	1,529	1,658	1,773
129	6,550	825	1,187	1,391	1,537	1,666	1,782
130	6,600	829	1,193	1,397	1,544	1,674	1,791
131	6,650	833	1,199	1,404	1,552	1,682	1,800
132	6,700	837	1,205	1,411	1,559	1,690	1,809
133	6,750	841	1,211	1,418	1,567	1,699	1,817
134	6,800	845	1,216	1,425	1,575	1,707	1,826
135	6,850	849	1,222	1,432	1,582	1,715	1,835
136	6,900	853	1,228	1,438	1,590	1,723	1,844
137	6,950	857	1,234	1,445	1,597	1,731	1,852
138	7,000	861	1,240	1,452	1,605	1,740	1,861
139	7,050	865	1,246	1,460	1,613	1,748	1,871
140	7,100	870	1,253	1,467	1,621	1,757	1,881
141	7,150	874	1,259	1,475	1,630	1,766	1,890
142	7,200	879	1,266	1,482	1,638	1,776	1,900
143	7,250	883	1,272	1,490	1,646	1,785	1,910
144	7,300	888	1,279	1,497	1,655	1,794	1,919
145	7,350	893	1,285	1,505	1,663	1,803	1,929
146	7,400	897	1,292	1,513	1,671	1,812	1,939
147	7,450	902	1,298	1,520	1,680	1,821	1,949
148	7,500	906	1,305	1,528	1,688	1,830	1,958
149	7,550	911	1,311	1,535	1,697	1,839	1,968
150	7,600	915	1,318	1,543	1,705	1,848	1,978
151	7,650	920	1,324	1,550	1,713	1,857	1,987
152	7,700	925	1,331	1,558	1,722	1,866	1,997
153	7,750	929	1,337	1,566	1,730	1,875	2,007
154	7,800	934	1,344	1,573	1,738	1,884	2,017

155	7,850	938	1,350	1,581	1,747	1,894	2,026
156	7,900	943	1,357	1,588	1,755	1,903	2,036
157	7,950	947	1,363	1,596	1,763	1,912	2,046
158	8,000	952	1,370	1,603	1,772	1,921	2,055
159	8,050	956	1,376	1,611	1,780	1,930	2,065
160	8,100	961	1,383	1,619	1,789	1,939	2,075
161	8,150	966	1,389	1,626	1,797	1,948	2,084
162	8,200	970	1,396	1,634	1,805	1,957	2,094
163	8,250	975	1,402	1,641	1,814	1,966	2,104
164	8,300	979	1,409	1,649	1,822	1,975	2,114
165	8,350	984	1,415	1,656	1,830	1,984	2,123
166	8,400	988	1,422	1,664	1,839	1,993	2,133
167	8,450	992	1,428	1,671	1,846	2,002	2,142
168	8,500	996	1,433	1,678	1,854	2,010	2,151
169	8,550	1,000	1,439	1,685	1,862	2,018	2,160
170	8,600	1,004	1,445	1,692	1,869	2,027	2,168
171	8,650	1,008	1,451	1,699	1,877	2,035	2,177
172	8,700	1,012	1,457	1,706	1,885	2,043	2,186
173	8,750	1,016	1,463	1,713	1,893	2,052	2,195
174	8,800	1,020	1,469	1,720	1,900	2,060	2,204
175	8,850	1,024	1,475	1,727	1,908	2,069	2,213
176	8,900	1,028	1,480	1,734	1,916	2,077	2,222
177	8,950	1,032	1,486	1,741	1,923	2,085	2,231
178	9,000	1,036	1,492	1,748	1,931	2,094	2,240
179	9,050	1,040	1,498	1,755	1,939	2,102	2,249
180	9,100	1,044	1,504	1,762	1,946	2,110	2,258
181	9,150	1,048	1,510	1,769	1,954	2,119	2,267

182	9,200	1,053	1,516	1,776	1,962	2,127	2,276
183	9,250	1,057	1,522	1,783	1,970	2,135	2,285
184	9,300	1,061	1,528	1,790	1,977	2,144	2,294
185	9,350	1,065	1,533	1,797	1,985	2,152	2,302
186	9,400	1,069	1,539	1,804	1,993	2,160	2,311
187	9,450	1,073	1,545	1,811	2,000	2,169	2,320
188	9,500	1,077	1,551	1,817	2,008	2,177	2,329
189	9,550	1,081	1,557	1,824	2,016	2,185	2,338
190	9,600	1,085	1,563	1,831	2,023	2,194	2,347
191	9,650	1,089	1,569	1,838	2,031	2,202	2,356
192	9,700	1,093	1,575	1,845	2,039	2,210	2,365
193	9,750	1,097	1,581	1,853	2,047	2,219	2,375
194	9,800	1,101	1,586	1,859	2,054	2,227	2,383
195	9,850	1,104	1,591	1,865	2,061	2,234	2,391
196	9,900	1,108	1,596	1,872	2,068	2,242	2,399
197	9,950	1,111	1,601	1,878	2,075	2,249	2,407
198	10,000	1,115	1,607	1,884	2,082	2,257	2,415
199	10,050	1,118	1,612	1,890	2,089	2,264	2,423
200	10,100	1,122	1,617	1,897	2,096	2,272	2,431
201	10,150	1,126	1,622	1,903	2,103	2,279	2,439
202	10,200	1,129	1,627	1,909	2,110	2,287	2,447
203	10,250	1,133	1,632	1,915	2,116	2,294	2,455
204	10,300	1,136	1,638	1,922	2,123	2,302	2,463
205	10,350	1,140	1,643	1,928	2,130	2,309	2,471
206	10,400	1,143	1,648	1,934	2,137	2,316	2,478
207	10,450	1,146	1,652	1,939	2,143	2,323	2,486
208	10,500	1,149	1,657	1,945	2,149	2,330	2,493

209	10,550	1,153	1,662	1,951	2,156	2,337	2,500
210	10,600	1,156	1,667	1,957	2,162	2,344	2,508
211	10,650	1,159	1,672	1,962	2,168	2,351	2,515
212	10,700	1,162	1,676	1,968	2,175	2,357	2,522
213	10,750	1,166	1,681	1,974	2,181	2,364	2,530
214	10,800	1,169	1,686	1,980	2,188	2,371	2,537
215	10,850	1,172	1,691	1,985	2,194	2,378	2,545
216	10,900	1,175	1,695	1,991	2,200	2,385	2,552
217	10,950	1,178	1,700	1,997	2,207	2,392	2,559
218	11,000	1,182	1,705	2,003	2,213	2,399	2,567
219	11,050	1,185	1,710	2,008	2,219	2,406	2,574
220	11,100	1,188	1,714	2,014	2,226	2,412	2,581
221	11,150	1,191	1,719	2,020	2,232	2,419	2,589
222	11,200	1,195	1,724	2,026	2,238	2,426	2,596
223	11,250	1,198	1,729	2,032	2,245	2,434	2,604
224	11,300	1,202	1,736	2,039	2,254	2,443	2,614
225	11,350	1,206	1,742	2,047	2,262	2,452	2,624
226	11,400	1,210	1,748	2,055	2,270	2,461	2,633
227	11,450	1,214	1,754	2,062	2,279	2,470	2,643
228	11,500	1,219	1,760	2,070	2,287	2,479	2,653
229	11,550	1,223	1,767	2,077	2,295	2,488	2,662
230	11,600	1,227	1,773	2,085	2,304	2,497	2,672
231	11,650	1,231	1,779	2,092	2,312	2,506	2,682
232	11,700	1,235	1,785	2,100	2,320	2,516	2,691
233	11,750	1,239	1,791	2,107	2,329	2,525	2,701
234	11,800	1,243	1,798	2,115	2,337	2,534	2,711
235	11,850	1,248	1,804	2,123	2,345	2,543	2,720

236	11,900	1,252	1,810	2,130	2,354	2,552	2,730
237	11,950	1,256	1,816	2,138	2,362	2,561	2,740
238	12,000	1,260	1,822	2,145	2,370	2,570	2,750
239	12,050	1,264	1,829	2,153	2,379	2,579	2,759
240	12,100	1,268	1,835	2,160	2,387	2,588	2,769
241	12,150	1,272	1,841	2,168	2,395	2,597	2,779
242	12,200	1,277	1,847	2,175	2,404	2,606	2,788
243	12,250	1,281	1,853	2,183	2,412	2,615	2,798
244	12,300	1,285	1,860	2,191	2,421	2,624	2,808
245	12,350	1,289	1,866	2,198	2,429	2,633	2,817
246	12,400	1,293	1,872	2,206	2,437	2,642	2,827
247	12,450	1,297	1,878	2,213	2,446	2,651	2,837
248	12,500	1,301	1,884	2,221	2,454	2,660	2,846
249	12,550	1,306	1,891	2,228	2,462	2,669	2,856
250	12,600	1,310	1,897	2,236	2,471	2,678	2,866
251	12,650	1,314	1,903	2,243	2,479	2,687	2,875
252	12,700	1,318	1,909	2,251	2,487	2,697	2,885
253	12,750	1,322	1,916	2,258	2,495	2,705	2,894
254	12,800	1,325	1,920	2,263	2,501	2,711	2,901
255	12,850	1,328	1,924	2,268	2,507	2,717	2,907
256	12,900	1,331	1,928	2,273	2,512	2,723	2,913
257	12,950	1,334	1,933	2,278	2,518	2,729	2,920
258	13,000	1,337	1,937	2,283	2,523	2,735	2,926
259	13,050	1,340	1,941	2,288	2,529	2,741	2,933
260	13,100	1,343	1,945	2,293	2,534	2,747	2,939
261	13,150	1,346	1,950	2,298	2,540	2,753	2,945
262	13,200	1,349	1,954	2,303	2,545	2,759	2,952

263	13,250	1,352	1,958	2,308	2,551	2,765	2,958
264	13,300	1,355	1,963	2,313	2,556	2,771	2,964
265	13,350	1,358	1,967	2,318	2,562	2,777	2,971
266	13,400	1,361	1,971	2,323	2,567	2,783	2,977
267	13,450	1,364	1,975	2,328	2,573	2,789	2,984
268	13,500	1,367	1,980	2,333	2,578	2,794	2,990
269	13,550	1,370	1,984	2,338	2,584	2,800	2,996
270	13,600	1,373	1,988	2,343	2,589	2,806	3,003
271	13,650	1,376	1,993	2,348	2,595	2,812	3,009
272	13,700	1,379	1,997	2,353	2,600	2,818	3,016
273	13,750	1,382	2,001	2,358	2,606	2,824	3,022
274	13,800	1,385	2,005	2,363	2,611	2,830	3,028
275	13,850	1,388	2,010	2,368	2,617	2,836	3,035
276	13,900	1,391	2,014	2,373	2,622	2,842	3,041
277	13,950	1,394	2,018	2,378	2,628	2,848	3,048
278	14,000	1,397	2,023	2,383	2,633	2,854	3,054
279	14,050	1,400	2,027	2,388	2,639	2,860	3,060
280	14,100	1,403	2,031	2,393	2,644	2,866	3,067
281	14,150	1,406	2,035	2,398	2,650	2,872	3,073
282	14,200	1,409	2,040	2,403	2,655	2,878	3,080
283	14,250	1,412	2,044	2,408	2,661	2,884	3,086
284	14,300	1,415	2,048	2,413	2,666	2,890	3,092
285	14,350	1,418	2,052	2,418	2,672	2,896	3,099
286	14,400	1,421	2,057	2,423	2,677	2,902	3,105
287	14,450	1,424	2,061	2,428	2,683	2,908	3,112
288	14,500	1,427	2,065	2,433	2,689	2,914	3,118
289	14,550	1,430	2,070	2,438	2,694	2,920	3,124

290	14,600	1,433	2,074	2,443	2,700	2,926	3,131
291	14,650	1,436	2,078	2,448	2,705	2,932	3,137
292	14,700	1,439	2,082	2,453	2,711	2,938	3,144
293	14,750	1,442	2,087	2,458	2,716	2,944	3,150
294	14,800	1,445	2,091	2,463	2,722	2,950	3,156
295	14,850	1,448	2,095	2,468	2,727	2,956	3,163
296	14,900	1,451	2,100	2,473	2,733	2,962	3,169
297	14,950	1,454	2,104	2,478	2,738	2,968	3,176
298	15,000	1,457	2,108	2,483	2,744	2,974	3,182

299 (b) This subsection provides for incomes below table.
 300 If combined adjusted gross income is below six hundred
 301 fifty dollars per month, which is the lowest amount of
 302 income considered in the table of monthly basic child
 303 support obligations set forth in subsection (a) of this sec-
 304 tion, the basic child support obligation shall be set at fifty
 305 dollars per month or a discretionary amount determined
 306 by the court or master based on the resources and living
 307 expenses of the obligor and the number of children due
 308 support. The amount shall not deny the obligor the
 309 means for self-support at a minimum subsistence level, yet
 310 a specific amount of child support should always be or-
 311 dered, no matter how minimal, to establish the principle of
 312 that parent's obligation to provide monetary support to
 313 the child or children.

314 (c) This subsection provides for incomes above table.
 315 If combined adjusted gross income is above fifteen thou-
 316 sand dollars per month, which is the highest amount of
 317 income considered in the table of monthly basic child
 318 support obligations set forth in subsection (a) of this sec-
 319 tion, the basic child support obligation shall not be less
 320 than it would be based on a combined adjusted gross in-
 321 come of fifteen thousand dollars. The court or master
 322 may also compute the basic child support obligation for
 323 combined adjusted gross incomes above fifteen thousand
 324 dollars by the following:

325 (1) One child — $\$1,457 + 0.088 \times$ combined adjust-
326 ed gross income above fifteen thousand dollars per
327 month;

328 (2) Two children — $\$2,108 + 0.129 \times$ combined ad-
329 justed gross income above fifteen thousand dollars per
330 month;

331 (3) Three children — $\$2,483 + 0.153 \times$ combined
332 adjusted gross income above fifteen thousand dollars per
333 month;

334 (4) Four children — $\$2,744 + 0.169 \times$ combined
335 adjusted gross income above fifteen thousand dollars per
336 month;

337 (5) Five children — $\$2,974 + 0.183 \times$ combined
338 adjusted gross income above fifteen thousand dollars per
339 month; and

340 (6) Six children — $\$3,182 + 0.196 \times$ combined ad-
341 justed gross income above fifteen thousand dollars per
342 month.

343 (d) When the amount of a support obligation exceeds
344 two thousand dollars per month per child, the court or
345 master may order a portion of the excess over two thou-
346 sand dollars per month to be invested or placed in trust for
347 the benefit of the child or children. The court or master
348 may place terms and conditions on the access to the mon-
349 eys as are in the best interests of the child or children:
350 *Provided*, That the court or master shall order that all
351 funds so invested or held in trust shall be paid over and
352 delivered to the child or children at their majority or
353 emancipation.

§48A-1B-4. Child health care.

1 (a) A child support order shall also provide for the
2 child's current and future medical needs by providing
3 relief in accordance with the provisions of section
4 fifteen-a, article two, chapter forty-eight of this code.

5 (b) The payment of a premium to provide health
6 insurance coverage on behalf of the children subject to the
7 order shall be added to the basic child support obligation

8 and shall be divided between the parents in proportion to
9 their adjusted gross income. The amount to be added to
10 the basic child support obligation shall be the actual
11 amount of the total insurance premium that is attributable
12 to the number of children due support. If this amount is
13 not available or cannot be verified, the total cost of the
14 premium should be divided by the total number of per-
15 sons covered by the policy. The cost per person derived
16 from this calculation shall be multiplied by the number of
17 children who are the subject of the order and who are
18 covered under the policy.

19 (c) After the total child support obligation is calculat-
20 ed and divided between the parents in proportion to their
21 adjusted gross income, the amount of the health insurance
22 premium added to the basic child support obligation shall
23 be deducted from the support obligor's share of the total
24 child support obligation if the support obligor is actually
25 paying the premium.

26 (d) Extraordinary medical expenses shall be added to
27 the basic child support obligation and shall be divided
28 between the parents in proportion to their adjusted gross
29 income.

§48A-1B-5. Work-related child care costs; deduction of tax credit.

1 (a) The amount of the federal tax credit for child care
2 expenses that can be realized by the custodial parent
3 should be deducted from work-related child care costs,
4 except that no such deduction shall be made for custodial
5 parents with monthly gross incomes below the following
6 amounts:

- 7 (1) One child — \$1,150;
- 8 (2) Two children — \$1,550;
- 9 (3) Three children — \$1,750;
- 10 (4) Four children — \$1,950;
- 11 (5) Five children — \$2,150; and
- 12 (6) Six children — \$2,350.

2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Amount from Schedule) (Apply line 2 Combined to Child Support Schedule.)			\$
5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs (Actual costs minus Federal Tax Credit.)	\$	\$	
b. Extraordinary Health Care Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
d. Minus Extraordinary Adjustments.	\$	\$	
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract line 5d. Add two totals for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

1 (d) In a case where the actual or attributed income of
2 a party, if factored into the computation of child support
3 would result in the obligation of the other party being
4 increased rather than decreased because of a self-support
5 reserve built into the calculations, then such actual or at-
6 tributed income shall not be considered.

§48A-1B-7. Shared physical custody adjustment.

1 (a) Child support for cases with shared physical custo-
2 dy shall be calculated using the Worksheet B. The follow-
3 ing method should be used only for shared physical cus-
4 tody as defined in section twenty-six, article one-a of this
5 chapter: That is, cases where each parent has the child for
6 more than one hundred nine days per year (thirty per-
7 cent). In addition, a shared physical custody adjustment
8 shall only be made if the sum of the obligee gross adjust-
9 ed monthly income and the child support order award is
10 above two and one-half times the U.S. poverty guideline
11 for the parent with the highest level of physical custody (if
12 custody is not equally shared) and the number of children
13 for whom support is being determined.

14 (b) The basic child support obligation shall be multi-
15 plied by 1.5 to arrive at a shared custody basic child sup-
16 port obligation. The shared custody basic child support
17 obligation is apportioned to each parent according to his
18 or her income. In turn, a child support obligation is com-
19 puted for each parent by multiplying that parent's portion
20 of the shared custody child support obligation by the
21 percentage of time the child spends with the other parent.
22 The respective child support obligations are then offset,
23 with the parent owing more child support paying the dif-
24 ference between the two amounts.

25 (c) Final adjustments are made by adding the obli-
26 gor's share of the child's share of any unreimbursed
27 health care expenses, work-related child care expenses and
28 any other extraordinary expenses agreed to by the parents
29 or ordered by the court or master less any credits to the
30 obligor for the obligor's direct expenditures on the
31 child's unreimbursed health care expenses, and extraordi-
32 nary credits agreed to by the parents or ordered by the
33 court or master.

b. Extraordinary Health Care Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
d. Minus Extraordinary Adjustments	-	-	
e. Total Adjustments (For each column, add 12a, 12b, and 12c. Subtract line 12d. Add two totals for Combined amount.)	\$	\$	\$
13. EACH PARENT'S SHARE OF THE TOTAL ADJUSTMENTS (Line 3 x line 12e for each parent)	\$	\$	
14. ADJUSTMENTS PAID IN EXCESS OF SHARE (Line 12e minus line 13. If negative number, enter zero.)	\$	\$	
15. EACH PARENT'S ADJUSTED SUPPORT OBLIGATION (Line 11 minus line 14)	\$	\$	
16. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in line 15 and enter result under greater amount.)	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

§48A-1B-8. Split physical custody adjustment.

1 In cases with split physical custody, the court or master
2 shall use Worksheet A (Sole-Parenting) as set forth in
3 subsection (c), section six of this article to calculate a sepa-
4 rate child support order for each parent based on the
5 number of children in that parent's custody. Instead of
6 transferring the calculated orders between parents, the two
7 orders are offset. The difference of the two orders is the
8 child support order to be paid by the parent with the high-
9 er sole-parenting order.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child.

1 If a proportion of the support obligor's social security
2 benefit is paid directly to the custodian of his or her de-
3 pendants who are the subject of the child support order,
4 the following adjustment shall be made. The total amount
5 of the social security benefit which includes the amounts
6 paid to the support obligor and the obligee shall be count-
7 ed as gross income to the support obligor. In turn, the
8 child support order will be calculated as described in sec-
9 tion six of this article. To arrive at the final child support
10 amount, however, the amount of the social security bene-
11 fits sent directly to the child's household will be subtract-
12 ed from the child support order. If the child support
13 order amount results in a negative amount it shall be set at
14 zero.

§48A-1B-10. Application.

1 The guidelines in child support awards apply as a
2 rebuttable presumption to all child support orders estab-
3 lished or modified in West Virginia. The guidelines must
4 be applied to all actions in which child support is being
5 determined including temporary orders, interstate
6 (URESAs and UIFSAs), domestic violence, foster care, di-
7 vorce, nondissolution, public assistance, nonpublic assis-
8 tance and support decrees arising despite nonmarriage of
9 the parties. The guidelines must be used by the court or
10 master as the basis for reviewing adequacy of child sup-
11 port levels in noncontested cases as well as contested hear-
12 ings.

§48A-1B-11. Modification.

1 The provisions of a child support order may be modi-
2 fied if there is a substantial and continuing change of
3 circumstances. If application of the guideline would result
4 in a new order that is more than fifteen percent different,
5 then the circumstances are considered to be a substantial
6 and continuing change.

§48A-1B-12. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court
2 shall allocate the right to claim dependent children for
3 income tax purposes to the custodial parent except in

4 cases of shared custody. In shared custody cases, these
5 rights shall be allocated between the parties in proportion
6 to their adjusted gross incomes for child support calcula-
7 tions. In a situation where allocation would be of no tax
8 benefit to a party, the court or master need make no allo-
9 cation to that party.

§48A-1B-13. Indebtedness.

1 The term "indebtedness" means any legal or contractu-
2 al obligation incurred as follows:

3 (1) For the necessary support of a child with regard to
4 food, clothing, shelter and medical care; or

5 (2) For the purpose of acquisitions or additions to or
6 additions intended to add to the value of marital property
7 of the parties as defined in section one, article two, chapter
8 forty-eight of this code.

9 The court or master may disregard any debt which is
10 incurred with the obvious intent of decreasing child sup-
11 port payments.

§48A-1B-14. Disregard of formula.

1 (a) If the court or master finds that the guidelines are
2 inappropriate in a specific case, the court or master may
3 either disregard the guidelines or adjust the
4 guidelines-based award to accommodate the needs of the
5 child or children or the circumstances of the parent or
6 parents. In either case, the reason for the deviation and
7 the amount of the calculated guidelines award must be
8 stated on the record (preferably in writing on the
9 worksheet or in the order). Such findings clarify the basis
10 of the order if appealed or modified in the future.

11 (b) These guidelines do not take into account the
12 economic impact of the following factors and can be possi-
13 ble reasons for deviation:

14 (1) Special needs of the child or support obligor;

15 (2) Educational expenses for the child or the parent
16 (i.e. those incurred for private, parochial, or trade schools,
17 other secondary schools, or post-secondary education

18 where there is tuition or costs beyond state and local tax
19 contributions);

20 (3) Families with more than six children;

21 (4) Long distance visitation costs; or

22 (5) The child resides with third party.

§48A-1B-15. Present income as monthly amounts.

1 To the extent practicable, all information relating to
2 income shall be presented to the court or master based on
3 monthly amounts. For example, when a party is paid
4 wages weekly, the pay should be multiplied by fifty-two
5 and divided by twelve to arrive at a correct monthly
6 amount. If the court or master deems appropriate, such
7 information may be presented in such other forms as the
8 court or master directs.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy;
removal.

§48A-4-4. Assignment of family law masters by geographical regions.

§48A-4-20. Circuit court review of master's recommended order.

§48A-4-23. Family law masters fund.

**§48A-4-1. Appointment of family law masters; term of office;
vacancy; removal.**

1 (a) The family law masters holding office on the ef-
2 fective date of this section by virtue of appointments made
3 under the prior enactments of this article shall continue
4 their service for a term of office ending on the thirtieth
5 day of June, one thousand nine hundred ninety-eight.
6 Before the first day of July, one thousand nine hundred
7 ninety-eight, the governor shall appoint family law masters
8 in such numbers and to serve from geographical regions
9 of the state as provided for under the provisions of section
10 four of this article, with terms commencing on the first
11 day of July, one thousand nine hundred ninety-eight, and
12 on a like date in every fourth year thereafter, and ending
13 on the thirtieth day of June, two thousand two, and on a
14 like date in every fourth year thereafter. Upon the expira-
15 tion of his or her term, a family law master may continue

16 to perform the duties of the office until the governor
17 makes the appointment, or for sixty days after the date of
18 the expiration of the master's term, whichever is earlier. If
19 a vacancy occurs in the office of family law master, the
20 governor shall, within thirty days after such vacancy oc-
21 curs, fill the vacancy by appointment for the unexpired
22 term: *Provided*, That if the remaining portion of the un-
23 expired term to be filled is less than one year, the gover-
24 nor may, in his or her discretion, simultaneously appoint
25 an individual to the unexpired term and to the next suc-
26 ceeding full four-year term.

27 (b) An individual may be reappointed to succeeding
28 terms as a family law master to serve in the same or a dif-
29 ferent region of the state.

30 (c) Removal of a master during the term for which he
31 or she is appointed shall be as follows:

32 (1) Upon a recommendation by the judicial hearing
33 board created pursuant to the rules of procedure for the
34 handling of complaints against justices, judges, magistrates
35 and family law masters, if the supreme court of appeals
36 shall find that a family law master has violated the judicial
37 code of ethics or that the master, because of advancing
38 years and attendant physical or mental incapacity, should
39 not continue to serve, the supreme court of appeals may,
40 in lieu of or in addition to any disposition authorized by
41 such rules, remove the family law master from office; and

42 (2) The supreme court of appeals may remove a mas-
43 ter when conduct of the family law master evidences in-
44 competence, unsatisfactory performance, misconduct,
45 neglect of duty or physical or mental disability.

§48A-4-4. Assignment of family law masters by geographical regions.

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety-four, there shall be a total of
3 twenty-six family law masters, not more than fourteen of
4 whom shall be full-time masters, to serve throughout the
5 state. During the year immediately preceding the appoint-
6 ment of law masters as provided for in section one of this

7 article, the supreme court of appeals shall apportion the
8 state into geographical regions which may be
9 single-master regions or multi-master regions, or a combi-
10 nation of both. County boundaries shall be strictly ob-
11 served and no county may be divided among two or more
12 regions. Otherwise, in making such apportionment, the
13 supreme court of appeals shall construct regions which
14 provide, as nearly as is practicable, for the caseload of
15 each master to be equal to that of other masters. Mathe-
16 matical exactness as to caseload is not required and devia-
17 tions from an absolute standard may be based upon con-
18 cerns, other than caseload, including, but not limited to,
19 deviations dictated by the following considerations:

20 (1) Judicial circuits;

21 (2) Geographical features which affect the time and
22 expense of travel;

23 (3) Traditional patterns of practice by members of the
24 bar; and

25 (4) Population variances between regions.

26 (b) In the region that includes Kanawha County, of
27 the masters appointed, not less than two shall be part-time
28 masters.

29 (c) Notwithstanding the provisions of subsection (a)
30 of this section, for the time period extending from the first
31 day of August, one thousand nine hundred ninety-six,
32 until the thirtieth day of June, one thousand nine hundred
33 ninety-eight, there shall temporarily be a total of
34 twenty-seven family law masters, not more than fourteen
35 of whom shall be full-time masters, to serve throughout
36 the state, and the additional part-time position of family
37 law master created by this subsection shall be assigned to
38 the region that includes Marshall County.

39 (d) Nothing contained herein shall prohibit the chief
40 justice of the supreme court of appeals from temporarily
41 assigning a family law master from one geographical
42 region to another geographical region, as caseload, dis-
43 qualification, recusal, vacation or illness may dictate.

44 (e) The administrative office of the supreme court
45 shall promulgate any procedural rule necessary to delin-
46 eate the duties of the part-time and full-time law masters
47 consistent with this article.

§48A-4-20. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,
4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right to
9 file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant ques-
12 tions of law, interpret constitutional and statutory provi-
13 sions and determine the appropriateness of the terms of
14 the recommended order of the master.

15 (c) The circuit court shall examine the recommended
16 order of the master, along with the findings and conclu-
17 sions of the master, and may enter the recommended or-
18 der, may recommit the case, with instructions, for further
19 hearing before the master or may, in its discretion, enter
20 an order upon different terms, as the ends of justice may
21 require. Conclusions of law of the family law master shall
22 be subject to review by the circuit court. The circuit court
23 shall not follow the recommendation, findings and conclu-
24 sions of a master found to be:

25 (1) Arbitrary, capricious, an abuse of discretion or
26 otherwise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege or
28 immunity;

29 (3) In excess of statutory jurisdiction, authority or
30 limitations or short of statutory right;

- 31 (4) Without observance of procedure required by law;
32 (5) Unsupported by substantial evidence; or
33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section, the
35 circuit court shall review the whole record or those parts of
36 it cited by a party. If the circuit court finds that a master's
37 recommended order is deficient as to matters which might
38 be affected by evidence not considered or inadequately
39 developed in the master's recommended order, the court
40 may recommit the recommended order to the master, with
41 instructions indicating the court's opinion, or the circuit
42 court may proceed to take such evidence without recom-
43 mitting the matter.

44 (e) The order of the circuit court entered pursuant to
45 the provisions of subsection (d) of this section shall be
46 entered not later than ten days after the time for filing
47 pleadings or briefs has expired or after the filing of a
48 notice or notices waiving the right to file such pleading or
49 brief.

50 (f) If a case is recommitted by the circuit court, the
51 master shall retry the matter within twenty days.

52 (g) At the time a case is recommitted, the circuit court
53 shall enter appropriate temporary orders awarding custo-
54 dy, visitation, child support, spousal support or such other
55 temporary relief as the circumstances of the parties may
56 require.

§48A-4-23. Family law masters fund.

1 The office and the clerks of the circuit courts shall, on
2 or before the tenth day of each month, transmit all fees
3 and costs received for the services of the office under this
4 chapter to the state treasurer for deposit in the state trea-
5 sury to the credit of a special revenue fund to be known as
6 the "family law masters fund", which is hereby created.
7 All moneys collected and received under this chapter and
8 paid into the state treasury and credited to the "family law
9 masters fund" shall be used by the administrative office of
10 the supreme court of appeals solely for paying the costs
11 associated with the duties imposed upon the family law

12 masters under the provisions of this chapter which require
13 activities by the masters which are not subject to being
14 matched with federal funds or subject to reimbursement
15 by the federal government. Such moneys shall not be
16 treated by the auditor and treasurer as part of the general
17 revenue of the state.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

*§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and col-
2 lect for services rendered as such clerk the following fees,
3 and such fees shall be paid in advance by the parties for
4 whom such services are to be rendered:

5 For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any ex-
7 traordinary remedy, the docketing of civil appeals, or any
8 other action, cause, suit or proceeding, seventy-five dol-
9 lars: *Provided*, That the fee for instituting an action for
10 divorce shall be one hundred five dollars.

11 (b) In addition to the foregoing fees, the following
12 fees shall likewise be charged and collected:

13 (1) For preparing an abstract of judgment, five dol-
14 lars;

15 (2) For any transcript, copy or paper made by the
16 clerk for use in any other court or otherwise to go out of
17 the office, for each page, fifty cents;

18 (3) For action on suggestion, ten dollars;

19 (4) For issuing an execution, ten dollars;

20 (5) For issuing or renewing a suggestee execution,
21 including copies, postage, registered or certified mail fees

22

23 *Clerk's Note: This section was also amended by S. B. 19 (Chap-
24 ter 157), which passed prior to this act.

22 and the fee provided by section four, article five-a, chapter
23 thirty-eight of this code, three dollars;

24 (6) For vacation or modification of a suggestee exe-
25 cution, one dollar;

26 (7) For docketing and issuing an execution on a tran-
27 script of judgment from magistrate's court, three dollars;

28 (8) For arranging the papers in a certified question,
29 writ of error, appeal or removal to any other court, five
30 dollars:

31 (9) For postage and express and for sending or re-
32 ceiving decrees, orders or records, by mail or express,
33 three times the amount of the postage or express charges;

34 (10) For each subpoena, on the part of either plaintiff
35 or defendant, to be paid by the party requesting the same,
36 fifty cents;

37 (11) For additional service (plaintiff or appellant)
38 where any case remains on the docket longer than three
39 years, for each additional year or part year, twenty dollars.

40 (c) The clerk shall tax the following fees for services
41 in any criminal case against any defendant convicted in
42 such court:

43 (1) In the case of any misdemeanor, fifty-five dollars;

44 (2) In the case of any felony, sixty-five dollars.

45 (d) No such clerk shall be required to handle or ac-
46 cept for disbursement any fees, cost or amounts, of any
47 other officer or party not payable into the county treasury,
48 except it be on order of the court or in compliance with
49 the provisions of law governing such fees, costs or ac-
50 counts.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from
2 amounts equaling filing fees received for the institution of
3 divorce actions as prescribed in subsection (b) of this
4 section, for each civil action instituted under the rules of

5 civil procedure, any statutory summary proceeding, any
6 extraordinary remedy, the docketing of civil appeals, or
7 any other action, cause, suit or proceeding in the circuit
8 court, the clerk of the court shall, at the end of each
9 month, pay into the funds or accounts described in this
10 subsection an amount equal to the amount set forth in this
11 subsection of every filing fee received for instituting such
12 action as follows:

13 (1) Into the regional jail and correctional facility de-
14 velopment fund in the state treasury established pursuant
15 to the provisions of section ten, article twenty, chapter
16 thirty-one of this code, the amount of sixty dollars;

17 (2) Into the court security fund in the state treasury
18 established pursuant to the provisions of section fourteen,
19 article three, chapter fifty-one of this code, the amount of
20 five dollars.

21 (b) For each divorce action instituted in the circuit
22 court, the clerk of the court shall, at the end of each
23 month, pay into the funds or accounts in this subsection
24 an amount equal to the amount set forth in this subsection
25 of every filing fee received for instituting such divorce
26 action as follows:

27 (1) Into the regional jail and correctional facility
28 development fund in the state treasury established pursu-
29 ant to the provisions of section ten, article twenty, chapter
30 thirty-one of this code, the amount of ten dollars;

31 (2) Into the special revenue account of the state trea-
32 sury, established pursuant to section twenty-four, article
33 one, chapter forty-eight of this code, an amount of thirty
34 dollars;

35 (3) Into the family law masters fund in the state trea-
36 sury, established pursuant to section twenty-three, article
37 four, chapter forty-eight-a of this code, an amount of fifty
38 dollars; and

39 (4) Into the court security fund in the state treasury,
40 established pursuant to the provisions of section fourteen,

41 article three, chapter fifty-one of this code, the amount of
42 five dollars.

43 (c) The clerk of each circuit court shall, at the end of
44 each month, pay into the regional jail and prison develop-
45 ment fund in the state treasury an amount equal to forty
46 dollars of every fee for service received in any criminal
47 case against any defendant convicted in such court and
48 shall pay an amount equal to five dollars of every such fee
49 into the court security fund in the state treasury estab-
50 lished pursuant to the provisions of section fourteen, arti-
51 cle three, chapter fifty-one of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who: (a) Persistently fails to provide
2 support which he or she can reasonably provide and which
3 he or she knows he or she has a duty to provide to a mi-
4 nor; or (b) is subject to court order to pay any amount for
5 the support of a minor child and is delinquent in meeting
6 the full obligation established by the order and has been
7 delinquent for a period of at least six months' duration, is
8 guilty of a misdemeanor and, upon conviction thereof,
9 shall be fined not less than one hundred dollars nor more
10 than one thousand dollars, or imprisoned in the county jail
11 for not more than one year, or both fined and imprisoned.

12 (2) A person who persistently fails to provide support
13 which he or she can reasonably provide and which he or
14 she knows he or she has a duty to provide to a minor by
15 virtue of a court or administrative order and the failure
16 results in: (a) An arrearage of not less than eight thousand
17 dollars; or (b) twelve consecutive months without payment
18 of support, is guilty of a felony and, upon conviction
19 thereof, shall be fined not less than one hundred dollars
20 nor more than one thousand dollars, or imprisoned for not
21 less than one year nor more than three years, or both fined
22 and imprisoned.

CHAPTER 111

(S. B. 590—Originating in the Committee on Finance)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section eleven, article two, chapter eighteen of said code; to amend and reenact section one, article three of said chapter; to amend and reenact sections eighteen, twenty-two and thirty-nine, article five of said chapter; to amend article seven-a of said chapter by adding thereto two new sections, designated sections twenty-six-n and twenty-six-o; to amend and reenact section ten, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section twenty-five; to amend and reenact section two, article seventeen of said chapter; to amend and reenact section thirteen, article two, chapter eighteen-a of said code; to amend and reenact sections two, three, eight, eight-a, eight-b, eight-g, fifteen and sixteen, article four of said chapter; to further amend said article by adding thereto a new section, designated section eight-h; and to amend and reenact section eight, article five of said chapter, all relating to public education; compensation and allowances for appointive state officers; sabbatical leaves for teachers and certain aides; compensation of state superintendent of schools; kindergarten programs; specialized health procedures; establishment of summer school programs; supplemental benefits for certain teachers; foundation allowance to improve instructional programs; state allowance for state teacher of the year salary; admission of students to schools for the deaf and blind; recommended guidelines for full-day and half-day cooks; state minimum salary schedule for teachers; the principals' index; employment term and class titles of service personnel; service personnel minimum monthly salaries; seniority rights for school service personnel; determination of seniority for service personnel; limitation on number of school service personnel positions to be held by an employee; employment of service

personnel substitutes; extracurricular assignments; authority of certain aides to exercise control over pupils.

Be it enacted by the Legislature of West Virginia:

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

Chapter

6. General Provisions Respecting Officers.

18. Education.

18A. School Personnel.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

- 1 (a) Notwithstanding any other provision of this code
- 2 to the contrary enacted prior to the first day of January,
- 3 one thousand nine hundred ninety-four, each of the fol-
- 4 lowing appointive state officers named in this subsection
- 5 shall be appointed by the governor, by and with the advice

6 and consent of the Senate. Each of such appointive state
7 officers shall serve at the will and pleasure of the governor
8 for the term for which the governor was elected and until
9 the respective state officers' successors have been appoint-
10 ed and qualified. Each of such appointive state officers
11 shall hereafter be subject to the existing qualifications for
12 holding each such respective office and each shall have
13 and is hereby granted all of the powers and authority and
14 shall perform all of the functions and services heretofore
15 vested in and performed by virtue of existing law respect-
16 ing each such office.

17 Beginning on the first day of July, one thousand nine
18 hundred ninety-four, the annual salary of each such
19 named appointive state officer shall be as follows:

20 Administrator, division of highways, sixty-five thou-
21 sand dollars; administrator, division of health, fifty-seven
22 thousand two hundred dollars; administrator, division of
23 human services, forty-seven thousand eight hundred dol-
24 lars; administrator, state tax division, forty-nine thousand
25 nine hundred dollars; administrator, division of energy,
26 sixty-five thousand dollars; administrator, division of cor-
27 rections, fifty-five thousand dollars; administrator, division
28 of natural resources, sixty-five thousand dollars; adminis-
29 trator, division of public safety, sixty thousand dollars;
30 administrator, lottery division, sixty thousand dollars;
31 director, public employees insurance agency, fifty-five
32 thousand dollars; administrator, division of banking,
33 fifty-five thousand dollars; administrator, division of in-
34 surance, fifty-five thousand dollars; administrator, division
35 of culture and history, fifty thousand dollars; administra-
36 tor, alcohol beverage control commission, sixty thousand
37 dollars; administrator, division of motor vehicles, fifty-five
38 thousand dollars; director, division of personnel, fifty
39 thousand dollars; adjutant general, fifty thousand dollars;
40 chairman, health care cost review authority, fifty-five thou-
41 sand dollars; members, health care cost review authority,
42 fifty-one thousand two hundred dollars; director, human
43 rights commission, forty thousand dollars; administrator,
44 division of labor, fifty-five thousand dollars; administrator,
45 division of veterans affairs, forty thousand dollars; admin-
46 istrator, division of emergency services, forty thousand

47 dollars; members, board of parole, forty thousand dollars;
48 members, employment security review board, seventeen
49 thousand dollars; members, workers' compensation appeal
50 board, seventeen thousand eight hundred dollars.

51 Prior to the first day of July, one thousand nine hun-
52 dred ninety-four, each of the aforesaid officers shall con-
53 tinue to receive the annual salaries they were receiving as
54 of the last day of December, one thousand nine hundred
55 ninety-three.

56 (b) Notwithstanding any other provisions of this code
57 to the contrary enacted prior to the first day of January,
58 one thousand nine hundred ninety-four, each of the state
59 officers named in this subsection shall continue to be
60 appointed in the manner prescribed in this code, and, prior
61 to the first day of July, one thousand nine hundred
62 ninety-four, each of the state officers named in this sub-
63 section shall continue to receive the annual salaries they
64 were receiving as of the last day of December, one thou-
65 sand nine hundred ninety-three, and shall thereafter be
66 paid an annual salary as follows: Administrator, division
67 of risk and insurance management, fifty thousand dollars;
68 director, division of rehabilitation services, fifty-five thou-
69 sand dollars; executive director, educational broadcasting
70 authority, fifty-five thousand dollars; secretary, library
71 commission, forty-seven thousand five hundred dollars;
72 director, geologic and economic survey, forty-seven thou-
73 sand five hundred dollars; executive director, water devel-
74 opment authority, fifty-four thousand two hundred dol-
75 lars; executive director, public defender services, fifty-five
76 thousand dollars; director, commission on aging, forty
77 thousand dollars; commissioner, oil and gas conservation
78 commission, forty thousand dollars; director, farm man-
79 agement commission, thirty-two thousand five hundred
80 dollars; director, railroad maintenance authority, fifty
81 thousand dollars; executive secretary, women's commis-
82 sion, thirty thousand one hundred dollars; director, re-
83 gional jail authority, fifty-five thousand dollars; director,
84 hospital finance authority, twenty-five thousand eight
85 hundred dollars.

86 (c) No increase in the salary of any appointive state
87 officer pursuant to this section shall be paid until and
88 unless such appointive state officer shall have first filed
89 with the state auditor and the legislative auditor a sworn
90 statement, on a form to be prescribed by the attorney
91 general, certifying that his or her spending unit is in com-
92 pliance with any general law providing for a salary in-
93 crease for his or her employees. The attorney general
94 shall prepare and distribute such form to the affected
95 spending units: *Provided*, That no decrease in salary shall
96 be effective for any current appointive state officer ap-
97 pointed prior to the first day of January, one thousand
98 nine hundred eighty-nine: *Provided, however*, That such
99 decreases shall take effect at such time as any appointive
100 office is vacated: *Provided further*, That the increase pro-
101 vided for the state superintendent of schools enacted dur-
102 ing the regular session, one thousand nine hundred
103 ninety-four, should not become effective until the first day
104 of January, one thousand nine hundred ninety-seven.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.
3. State Superintendent of Schools.
5. County Board of Education.
- 7A. State Teachers Retirement System.
- 9A. Public School Support.
17. West Virginia Schools for the Deaf and the Blind.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-11. Sabbatical leaves for teachers and certain aides.

1 (a) The state board shall by the first day of December,
2 one thousand nine hundred eighty-eight, establish by
3 policy a sabbatical leave program. Such program partici-
4 pation shall be considered optional for each county board.
5 Individuals employed as professional educators, as defined
6 in section one, article one, chapter eighteen-a of this code,
7 and aides shall be eligible for the sabbatical leave pro-
8 gram: *Provided*, That such aides have a cumulative grade
9 point of three and two tenths on a possible four point scale
10 pursuant to successful completion of at least sixty-four
11 semester hours of course work at an approved institution

12 of higher education. Such policy shall establish the edu-
13 cational objectives, peer selection criteria and other guide-
14 lines the board deems necessary. The sabbatical leave
15 policy shall provide that not less than ninety-five percent
16 of sabbatical leaves granted shall be for classroom teachers
17 and such policy shall not provide for the granting of sab-
18 batical leave to any employee who has fewer than ten
19 years of West Virginia public school service, nor shall
20 compensation during such leave be more than one half of
21 the employee's regular salary. While on sabbatical leave
22 the employee shall be deemed to be a full-time employee
23 for purposes of years of experience and participation in
24 the teachers retirement system and the public employee
25 insurance program. Any employee receiving a sabbatical
26 leave shall be required to return to employment by the
27 board which granted the leave for a period of at least one
28 year or repay the compensation and benefits received
29 during that time and have deducted the retirement credit
30 and years of service credit accrued during sabbatical leave:
31 *Provided, however,* That sabbatical leaves for teachers and
32 certain aides shall be optional by the respective boards.

33 (b) Notwithstanding any other provision of this code
34 to the contrary, if the state teacher of the year either works
35 with programs approved by the state department or attends
36 school at a college or university to further his or her edu-
37 cation, the teacher shall receive a sabbatical from his or
38 her position for up to one year in which the teacher has
39 been selected as state teacher of the year: *Provided,* That
40 if the state teacher of the year chooses to take a sabbatical,
41 then the state department shall provide the county from
42 where the teacher is taking the sabbatical with an allow-
43 ance equal to the state average contractual salary for
44 teachers.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence.

1 There shall be appointed by the state board a state
2 superintendent of schools. He shall be a person of good
3 moral character, of recognized ability as a school adminis-
4 trator, holding at least a master's degree in educational

5 administration, and shall have had not less than five years
6 of experience in public school work. He shall receive an
7 annual salary set by the state board, to be paid monthly:
8 *Provided*, That the annual salary may not exceed one
9 hundred thousand dollars. The state superintendent shall
10 also receive necessary traveling expenses incident to the
11 performance of his duties, the same to be paid out of the
12 general school fund upon warrants of the state auditor.
13 The superintendent shall have his office at the state capital.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

§18-5-39. Establishment of summer school programs; tuition.

§18-5-18. Kindergarten programs.

1 County boards shall provide by the school year one
2 thousand nine hundred eighty-three—eighty-four, and
3 continue thereafter, kindergarten programs for all children
4 who shall have attained the age of five prior to the first
5 day of September of the school year in which the pupil
6 enters such kindergarten program and may establish kin-
7 dergarten programs designed for children below the age
8 of five: *Provided*, That beginning with the school year
9 one thousand nine hundred ninety-six—ninety-seven,
10 such programs shall be full-day everyday: *Provided, how-*
11 *ever*, That nothing contained herein shall prevent the state
12 superintendent from granting an extension to those coun-
13 ties currently with building or renovation projects that will
14 provide adequate space or counties having at least two
15 percent net enrollment increase over the previous five
16 years. The county board must apply with the supporting
17 data to meet the criteria for which they are eligible on or
18 before the twenty-fifth day of March for the following
19 school year. The state superintendent shall grant or deny
20 the requested waiver on or before the fifteenth day of
21 April of that same year.

22 Persons employed as kindergarten teachers, as distin-
23 guished from paraprofessional personnel, shall be re-
24 quired to hold a certificate valid for teaching at the as-

25 signed level as prescribed by regulations established by
26 the state board. The state board shall establish and pre-
27 scribe guidelines and criteria setting forth the minimum
28 requirements for all paraprofessional personnel employed
29 in kindergarten programs established pursuant to the pro-
30 visions of this section and no such paraprofessional per-
31 sonnel shall be employed in any kindergarten program
32 unless he meets such minimum requirements.

33 The state board with the advice of the state superinten-
34 dent of free schools shall establish and prescribe guide-
35 lines and criteria relating to the establishment, operation
36 and successful completion of kindergarten programs in
37 accordance with the other provisions of this section.
38 Guidelines and criteria so established and prescribed are
39 also intended to serve for the establishment and operation
40 of nonpublic kindergarten programs and shall be used for
41 the evaluation and approval of such programs, provided
42 application for such evaluation and approval is made in
43 writing to the state board by proper authorities in control
44 of such programs. The state superintendent of free
45 schools at intervals not to exceed two years shall publish a
46 list of nonpublic kindergarten programs that have been
47 approved in accordance with the provisions of this section
48 and a list of Montessori kindergartens established and
49 operated in accordance with usual and customary practices
50 for the use of the Montessori method. Teachers who have
51 training or experience in the use of the Montessori meth-
52 od of instruction for kindergartens shall be deemed to be
53 approved to teach in such kindergartens using the Montes-
54 sori method without additional certification.

55 Pursuant to such guidelines and criteria, and only
56 pursuant to such guidelines and criteria, the county boards
57 may establish programs taking kindergarten to the homes
58 of the children involved, using educational television,
59 paraprofessional personnel in addition to and to supple-
60 ment regularly certified teachers, mobile or permanent
61 classrooms and other means developed to best carry kin-
62 dergarten to the child in its home and enlist the aid and
63 involvement of its parent or parents in presenting the pro-
64 gram to the child; or may develop programs of a more
65 formal kindergarten type, in existing school buildings, or

66 both, as such county board may determine, taking into
67 consideration the cost, the terrain, the existing available
68 facilities, the distances each child may be required to trav-
69 el, the time each child may be required to be away from
70 home, the child's health, the involvement of parents and
71 such other factors as each county board may find perti-
72 nent. Such determinations by any county board shall be
73 final and conclusive.

74 Funds for implementing the kindergarten programs
75 during the fiscal year one thousand nine hundred
76 seventy-two, and thereafter, shall be allocated to counties
77 from a special appropriation to the state department from
78 the general revenue fund: *Provided*, That except for ex-
79 penditures from the general revenue funds for regional
80 kindergarten demonstration centers, in no event shall any
81 state money from the general fund be expended under the
82 provisions of this section unless federal funds are available
83 for the purposes of this section.

84 Allocations to counties will be made on the basis of
85 approved kindergarten programs. The state board shall
86 establish criteria and standards necessary to guide counties
87 in developing approvable kindergarten programs and shall
88 determine funding levels of said programs on local oper-
89 ating costs.

90 An additional appropriation shall be made to the state
91 department from the general revenue fund to establish and
92 operate during the fiscal year one thousand nine hundred
93 seventy-two, regional kindergarten demonstration centers
94 in educational regions three, four, five, six and seven, and
95 thereafter in regions one through seven. Said funds shall
96 be allocated to said regions for establishing and operating
97 regional demonstration centers in accordance with criteria
98 and standards established by the state board. Said region-
99 al centers shall be established to provide exemplary and
100 innovative kindergarten programs, to provide laboratory
101 experiences for preservice and in-service education for
102 professional personnel and staff development programs
103 for training paraprofessional personnel, to establish orga-
104 nizational and administrative machinery designed to pro-
105 mote cooperation between and among all agencies in-

106 volved in the education and development of young chil-
107 dren and to promote cooperation between counties in
108 providing high cost supervisory, developmental, research
109 and evaluative services not currently available to individual
110 counties.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

1 County boards shall provide proper medical and den-
2 tal inspections for all pupils attending the schools of their
3 county and shall further have the authority to take any
4 other action necessary to protect the pupils from infec-
5 tious diseases, including the authority to require from all
6 school personnel employed in their county, certificates of
7 good health and of physical fitness.

8 Each county board shall employ full time at least one
9 school nurse for every one thousand five hundred kinder-
10 garten through seventh grade pupils in net enrollment or
11 major fraction thereof: *Provided*, That each county shall
12 employ full time at least one school nurse: *Provided*,
13 *however*, That a county board may contract with a public
14 health department for services considered equivalent to
15 those required by this section in accordance with a plan to
16 be approved by the state board: *Provided further*, That
17 the state board shall promulgate rules requiring the em-
18 ployment of school nurses in excess of the number re-
19 quired by this section to ensure adequate provision of
20 services to severely handicapped pupils.

21 Any person employed as a school nurse shall be a
22 registered professional nurse properly licensed by the
23 West Virginia board of examiners for registered profes-
24 sional nurses in accordance with article seven, chapter
25 thirty of this code.

26 Specialized health procedures that require the skill,
27 knowledge and judgment of a licensed health professional,
28 shall be performed only by school nurses, other licensed
29 school health care providers as provided for in this section,
30 or school employees who have been trained and retrained
31 every two years who are subject to the supervision and

32 approval by school nurses. After assessing the health
33 status of the individual student, a school nurse, in collabo-
34 ration with the student's physician, parents and in some
35 instances an individualized education program team, may
36 delegate certain health care procedures to a school em-
37 ployee who shall be trained pursuant to this section, con-
38 sidered competent, have consultation with, and be moni-
39 tored or supervised by the school nurse: *Provided*, That
40 nothing herein shall prohibit any school employee from
41 providing specialized health procedures or any other pru-
42 dent action to aid any person who is in acute physical
43 distress or requires emergency assistance. For the purpos-
44 es of this section "specialized health procedures" means,
45 but is not limited to, catheterization, suctioning of trache-
46 ostomy, naso-gastric tube feeding or gastrostomy tube
47 feeding. "School employee" means "teachers", as defined
48 in section one, article one of this chapter and "aides", as
49 defined in section eight, article four, chapter eighteen-a of
50 this code.

51 Any school employee who elects, or is required by
52 this section, to undergo training or retraining to provide,
53 in the manner specified in this section, the specialized
54 health care procedures for those students for which the
55 selection has been approved by both the principal and the
56 county board, shall receive additional pay of at least one
57 pay grade higher than the highest pay grade for which the
58 employee is paid: *Provided*, That any training required in
59 this section may be considered in lieu of required
60 in-service training of the school employee and a school
61 employee may not be required to elect to undergo the
62 training or retraining: *Provided, however*, That com-
63 mencing with the first day of July, one thousand nine
64 hundred eighty-nine, any newly employed school em-
65 ployee in the field of special education shall be required
66 to undergo the training and retraining as provided for in
67 this section: *Provided further*, That if an employee who
68 holds a class title of an aide is employed in a school and
69 such aide has received the training, pursuant to this sec-
70 tion, then an employee in the field of special education
71 shall not be required to perform the specialized health
72 care procedures.

73 Each county school nurse, as designated and defined
74 by this section, shall perform a needs assessment. These
75 nurses shall meet on the basis of the area served by their
76 regional educational service agency, prepare recommen-
77 dations and elect a representative to serve on the council
78 of school nurses established under this section.

79 There shall be established a council of school nurses
80 which shall be convened by the state board of education.
81 This council shall prepare a procedural manual and shall
82 provide recommendations regarding a training course to
83 the director of the state division of health who shall con-
84 sult with the state department of education. The state
85 division of health then has the authority to promulgate
86 rules to implement the training and to create standards
87 used by those school nurses and school employees per-
88 forming specialized health procedures. The council shall
89 meet every two years to review the certification and train-
90 ing program regarding school employees.

91 The state board of education shall work in conjunc-
92 tion with county boards to provide training and retraining
93 every two years as recommended by the council of school
94 nurses and implemented by the state division of health.

§18-5-39. Establishment of summer school programs; tuition.

1 Inasmuch as the present county school facilities for
2 the most part lie dormant and unused during the summer
3 months, and inasmuch as there are many students who are
4 in need of remedial instruction and others who desire
5 accelerated instruction, it is the purpose of this section to
6 provide for the establishment of a summer school pro-
7 gram, which is to be separate and apart from the full
8 school term as established by each county.

9 The board of any county has the authority to establish
10 a summer school program utilizing the public school
11 facilities and to charge tuition for students who attend the
12 summer school. The tuition may not exceed in any case
13 the actual cost of operation of the summer school pro-
14 gram: *Provided*, That any deserving pupil whose parents,
15 in the judgment of the board, are unable to pay the tuition,
16 may attend the summer school program at a reduced

17 charge or without charge. The county board shall have
18 the authority to determine the term and curriculum of the
19 summer schools based upon the particular needs of the
20 individual county. The curriculum may include, but is not
21 limited to, remedial instruction, accelerated instruction and
22 the teaching of manual arts. The term of the summer
23 school program may not be established in such a manner
24 as to interfere with the regular school term.

25 The county boards may employ any certified teacher
26 as teachers for this summer school program. Certified
27 teachers employed by the county board to teach in the
28 summer school program shall be paid an amount to be
29 determined by the county board and shall enter into a
30 contract of employment in such form as is prescribed by
31 the county board: *Provided*, That teachers who teach
32 summer courses of instruction which are offered for credit
33 and which are taught during the regular school year shall
34 be paid at the same daily rate they would receive if paid in
35 accordance with the then current minimum monthly salary
36 in effect for teachers in that county.

37 Any funds accruing from the tuitions shall be credited
38 to and expended within the existing framework of the
39 general current expense fund of the county board.

40 Notwithstanding any other provision of this code to
41 the contrary, the board shall fill professional positions
42 established pursuant to the provisions of this section on
43 the basis of certification and length of time the profession-
44 al has been employed in the county's summer school pro-
45 gram. In the event that no employee who has been previ-
46 ously employed in the summer school program holds a
47 valid certification or licensure, a board shall fill the posi-
48 tion as a classroom teaching position in accordance with
49 section eight-b, article four, chapter eighteen-a of this
50 code.

51 Notwithstanding any other provision of the code to
52 the contrary, the county board is authorized to employ
53 school service personnel to perform any related duties
54 outside the regular school term as defined in section eight,
55 article four, chapter eighteen-a of this code. An employee
56 who was employed in any service personnel job or posi-

57 tion during the previous summer shall have the option of
58 retaining the job or position if the job or position exists
59 during any succeeding summer. If the employee is un-
60 available or if the position is newly created, the position
61 shall be filled pursuant to section eight-b, article four,
62 chapter eighteen-a of this code. When any summer em-
63 ployee who is employed in a summer position is granted a
64 leave of absence for the summer months, the board shall
65 give regular employment status to the employee for that
66 summer position which shall be filled under the procedure
67 set forth in section eight-b, article four, chapter eighteen-a
68 of this code. The summer employee on leave of absence
69 shall have the option of returning to that summer position
70 if the position exists the succeeding summer or whenever
71 the position is reestablished if it were abolished. The sala-
72 ry of a summer employee shall be in accordance with the
73 salary schedule of persons regularly employed in the same
74 position in the county where employed and persons em-
75 ployed in those positions are entitled to all rights, privileg-
76 es and benefits provided in sections five-b, eight, eight-a,
77 ten and fourteen, article four, chapter eighteen-a of this
78 code: *Provided*, That those persons are not entitled to a
79 minimum employment term of two hundred days for their
80 summer position.

81 If a county board reduces in force the number of
82 employees to be employed in a particular summer pro-
83 gram or classification from the number employed in that
84 position in previous summers, the reductions in force and
85 priority in reemployment to that summer position shall be
86 based upon the length of service time in the particular
87 summer program or classification.

88 For the purpose of this section, summer employment
89 for service personnel includes, but is not limited to, filling
90 jobs and positions as defined in section eight, article four,
91 chapter eighteen-a of this code and especially established
92 for and which are to be predominantly performed during
93 the summer months to meet the needs of a county board.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26n. Supplemental benefits for certain teachers who retired on or
after July 1, 1984, but prior to July 1, 1986.

§18-7A-26o. Supplemental benefits for certain teachers who retired prior to July 1, 1986.

§18-7A-26n. Supplemental benefits for certain teachers who retired on or after July 1, 1984, but prior to July 1, 1986.

1 As an additional supplement to other retirement allow-
2 ances provided, each annuitant who retired on or after the
3 first day of July, one thousand nine hundred eighty-four,
4 and before the first day of July, one thousand nine hun-
5 dred eighty-six, shall receive a monthly amount equal to
6 two dollars multiplied by his or her total service credit.

§18-7A-26o. Supplemental benefits for certain teachers who retired prior to July 1, 1986.

1 As an additional supplement to other retirement allow-
2 ances provided, each annuitant who retired before the first
3 day of July, one thousand nine hundred eighty-six, and
4 who is receiving a monthly pension of three hundred
5 dollars or less, shall receive a monthly total amount equal
6 to one dollar multiplied by his or her total service credit.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-25. State allowance for state teacher of the year salary.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) For the school year beginning on the first day of
2 July, one thousand nine hundred ninety-four, and thereaf-
3 ter, the sum of the allocations shall be in an amount at
4 least equal to the amount appropriated by the Legislature,
5 in addition to funds which accrue from balances in the
6 general school fund, or from appropriations for such
7 purposes:

8 (1) One hundred fifty thousand dollars shall be allo-
9 cated to each county;

10 (2) Distribution to the counties of the remainder of
11 these funds shall be made proportional to the average of
12 each county's average daily attendance for the preceding

13 year and the county's second month net enrollment.
14 Moneys allocated by provision of this section shall be
15 used to improve instructional programs according to a
16 plan for instructional improvement which the affected
17 county board shall file with the state board by the first day
18 of August of each year, to be approved by the state board
19 by the first day of September of that year if such plan
20 substantially complies with standards to be adopted by the
21 state board: *Provided*, That notwithstanding any other
22 provision of this code to the contrary, moneys allocated
23 by provision of this section may also be used in the imple-
24 mentation and maintenance of the uniform integrated
25 regional computer information system; and

26 (3) Up to twenty-five percent of this allocation may be
27 used to employ professional educators and/or service per-
28 sonnel in counties after all applicable provisions of sec-
29 tions four and five of this article have been fully utilized:
30 *Provided*, That for the school year beginning on the first
31 day of July, one thousand nine hundred ninety-six, only,
32 up to an additional twenty-five percent of this allocation
33 may be used to employ classroom teachers, as defined in
34 section one, article one, chapter eighteen-a of this code,
35 and/or service personnel in counties after all applicable
36 provisions of sections four and five of this article have
37 been fully utilized: *Provided, however*, That service per-
38 sonnel employed with the additional twenty-five percent
39 for the school year beginning on the first day of July, one
40 thousand nine hundred ninety-six, only, may not include
41 directors, coordinators or supervisors.

42 Prior to the use of any funds from this section for
43 personnel costs, the county board must receive authoriza-
44 tion from the state superintendent of schools. The state
45 superintendent shall require the district board to demon-
46 strate: (1) The need for the allocation; (2) efficiency and
47 fiscal responsibility in staffing; and (3) sharing of services
48 with adjoining counties and the regional educational ser-
49 vice agency for that county in the use of the total local
50 district board budget. District boards shall make applica-
51 tion for available funds for the next fiscal year by the first
52 day of May of each year. On or before the first day of
53 June, the state superintendent shall review all applications

54 and notify applying district boards of the distribution of
55 the allocation: *Provided*, That for the school year begin-
56 ning on the first day of July, one thousand nine hundred
57 ninety-three, only, the state superintendent shall review all
58 applications and notify applying district boards of the
59 distribution of the allocation on or before the first day of
60 July, one thousand nine hundred ninety-three. Such
61 funds shall be distributed during the fiscal year as appro-
62 priate. The state superintendent shall require the county
63 board to demonstrate the need for an allocation for per-
64 sonnel based upon the county's inability to meet the re-
65 quirements of state law or state board policy: *Provided*,
66 *however*, That the funds available for personnel under this
67 section may not be used to increase the total number of
68 professional noninstructional personnel in the central
69 office beyond four. Such instructional improvement plan
70 shall be made available for distribution to the public at the
71 office of each affected county board.

72 (b) Commencing with the school year beginning on
73 the first day of July, one thousand nine hundred
74 ninety-three, an amount not less than the amount required
75 to meet debt service requirements on any revenue bonds
76 issued prior to the first day of January, one thousand nine
77 hundred ninety-four, and the debt service requirements on
78 any revenue bonds issued for the purpose of refunding
79 revenue bonds issued prior to the first day of January, one
80 thousand nine hundred ninety-four, shall be paid into the
81 school building capital improvements fund created by
82 section six, article nine-d of this chapter, and shall be used
83 solely for the purposes of said article. The school build-
84 ing capital improvements fund shall not be utilized to
85 meet the debt services requirement on any revenue bonds
86 or revenue refunding bonds for which moneys contained
87 within the school building debt service fund have been
88 pledged for repayment pursuant to said section.

**§18-9A-25. State allowance for state teacher of the year sala-
ry.**

1 To provide for the support of a sabbatical for the state
2 teacher of the year, there shall be appropriated for that
3 purpose from the general revenue fund an amount equal

4 to the state average contractual salary for teachers for the
 5 year in which the teacher is selected as state teacher of the
 6 year.

**ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND
 THE BLIND.**

**§18-17-2. Admission and record of applicants; special pro-
 grams and services.**

1 Deaf and/or blind youth residents in the state, between
 2 the ages of five and twenty-three, inclusive, shall be en-
 3 rolled in the schools on application to the superintendent,
 4 until the schools are filled. Applicants shall be admitted
 5 by the superintendent on the basis of need and degree of
 6 impairment as determined by the schools' admissions
 7 committee. It shall be the duty of the superintendent to
 8 keep a careful record of the names of all applicants with
 9 the dates of their admission and discharge, their ages,
 10 post-office addresses, the names of their parents or guard-
 11 ians, and the degree, cause and circumstances of their
 12 deafness or blindness.

13 Nothing in this section shall be construed to prevent
 14 the school from providing special education programs
 15 including, but not limited to, classes, parent education,
 16 home teaching or visiting teacher services for deaf and
 17 blind children from birth. The schools may also enter
 18 into contractual arrangements with counties to provide
 19 evaluation, short-term instruction and other educational
 20 services, including direct instruction.

21 Any deaf or blind youth who is not a resident of the
 22 state of West Virginia may apply to the state board for
 23 admission to the school. The state board may approve
 24 such admission: *Provided*, That such youth shall be re-
 25 quired to pay all related costs of attending the school.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. **School Personnel.**
4. **Salaries, Wages and Other Benefits.**
5. **Authority; Rights; Responsibility.**

ARTICLE 2. SCHOOL PERSONNEL.**§18A-2-13. Recommended guidelines for full-day and half-day cooks.**

1 The following guidelines are optional guidelines that
 2 county boards may use when scheduling full-day and
 3 half-day cooks:

4	<i>Number of</i>	<i>Number of</i>	<i>Average Number of</i>
5	<i>Meals</i>	<i>Cooks</i>	<i>Meals Served Per</i>
6			<i>Cook's Hours Worked</i>
7	1-90	1	12.00
8	91-135	1.5	12.00
9	136-180	2	12.00
10	181-225	2.5	12.00
11	226-270	3	12.00
12	271-315	3.5	12.00
13	316-360	4	12.00
14	361-405	4.5	12.00
15	406-450	5	12.00
16	451-495	5.5	12.00
17	496-540	6	12.00
18	541-585	6.5	12.00
19	586-630	7	12.00
20	631-675	7.5	12.00
21	676-720	8	12.00
22	721-765	8.5	12.00
23	766-810	9	12.00
24	811-855	9.5	12.00
25	856-900	10	12.00

26 A meal prepared for a school lunch shall be estab-
 27 lished as a whole meal. Other meals shall be equal to three
 28 fourths of a school lunch meal.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-8g. Determination of seniority for service personnel.

§18A-4-8h. Limitation on number of school service personnel positions to be held by an employee.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-16. Extracurricular assignments.

§18A-4-2. State minimum salaries for teachers.

1 (a) Each teacher shall receive the amount prescribed in
 2 the "state minimum salary schedule" as set forth in this
 3 section, specific additional amounts prescribed in this
 4 section or article, and any county supplement in effect in a
 5 county pursuant to section five-a of this article during the
 6 contract year.

7 **STATE MINIMUM SALARY SCHEDULE**

8	(1)	(2)	(3)	(4)	(5)	(6)	(7)
9	Years	4th	3rd	2nd		A.B.	
10	Exp.	Class	Class	Class	A.B.	+15	M.A.
11	0	17,816	18,453	18,708	19,918	20,653	22,361
12	1	18,097	18,734	18,989	20,383	21,118	22,826
13	2	18,378	19,016	19,271	20,848	21,583	23,291
14	3	18,660	19,297	19,552	21,313	22,048	23,756
15	4	19,177	19,814	20,070	22,014	22,749	24,457
16	5	19,458	20,096	20,351	22,479	23,214	24,922
17	6	19,740	20,377	20,632	22,944	23,679	25,387
18	7		20,658	20,914	23,409	24,144	25,852

19	8	20,940	21,195	23,874	24,609	26,317
20	9		21,476	24,339	25,074	26,782
21	10		21,757	24,805	25,540	27,248
22	11			25,270	26,005	27,713
23	12			25,735	26,470	28,178
24	13			26,200	26,935	28,643
25	14					29,108
26	15					29,573
27	16					30,038
28	17					
29	18					
30	19					
31	(1)	(8)	(9)	(10)	(11)	
32	Years	M.A.	M.A.	M.A.	Doc-	
33	Exp.	+15	+30	+45	torate	
34	0	23,096	23,831	24,566	25,566	
35	1	23,561	24,296	25,031	26,031	
36	2	24,026	24,761	25,496	26,496	
37	3	24,491	25,226	25,961	26,961	
38	4	25,192	25,927	26,662	27,662	
39	5	25,657	26,392	27,127	28,127	
40	6	26,122	26,857	27,592	28,592	
41	7	26,587	27,322	28,057	29,057	
42	8	27,052	27,787	28,522	29,522	
43	9	27,517	28,252	28,987	29,987	
44	10	27,983	28,718	29,453	30,453	
45	11	28,448	29,183	29,918	30,918	
46	12	28,913	29,648	30,383	31,383	
47	13	29,378	30,113	30,848	31,848	
48	14	29,843	30,578	31,313	32,313	
49	15	30,308	31,043	31,778	32,778	
50	16	30,773	31,508	32,243	33,243	

51	17	31,973	32,708	33,708
52	18	32,438	33,173	34,173
53	19	32,903	33,638	34,638

54 (b) Six hundred dollars shall be paid annually to each
 55 classroom teacher who has at least twenty years of teach-
 56 ing experience. The payments: (i) Shall be in addition to
 57 any amounts prescribed in the "state minimum salary
 58 schedule"; (ii) shall be paid in equal monthly installments;
 59 and (iii) shall be considered a part of the state minimum
 60 salaries for teachers.

**§18A-4-3. State minimum annual salary increments for prin-
 cipals and assistant principals.**

1 In addition to any salary increments for principals and
 2 assistant principals, in effect on the first day of January,
 3 one thousand nine hundred ninety-six, and paid from
 4 local funds, and in addition to the county schedule in
 5 effect for teachers, the county board shall pay each princi-
 6 pal, a principal's salary increment and each assistant prin-
 7 cipal an assistant principal's salary increment as prescribed
 8 by this section commencing on the first day of July, one
 9 thousand nine hundred ninety-six, from state funds appro-
 10 priated for the salary increments.

11 State funds for this purpose shall be paid within the
 12 West Virginia public school support plan in accordance
 13 with article nine-a, chapter eighteen of this code.

14 The salary increment in this section for each principal
 15 shall be determined by multiplying the basic salary for
 16 teachers in accordance with the classification of certifica-
 17 tion and of training of the principal as prescribed in this
 18 article, by the appropriate percentage rate prescribed in
 19 this section according to the number of teachers super-
 20 vised.

**STATE MINIMUM SALARY INCREMENT
 RATES FOR PRINCIPALS**

21 **No. of Teachers**

22 **Supervised**

Rates

25		
26	1-7	6.0%
27	8-14	6.5%
28	15-24	7.0%
29	25-38	7.5%
30	39-57	8.0%
31	58 and up	8.5%

32 The salary increment in this section for each assistant
33 principal shall be determined in the same manner as that
34 for principals, utilizing the number of teachers supervised
35 by the principal under whose direction the assistant princi-
36 pal works, except that the percentage rate shall be fifty
37 percent of the rate prescribed for the principal.

38 Salaries for employment beyond the minimum em-
39 ployment term shall be at the same daily rate as the sala-
40 ries for the minimum employment terms.

41 For the purpose of determining the number of teach-
42 ers supervised by a principal, the county board shall use
43 data for the second school month of the prior school term
44 and the number of teachers shall be interpreted to mean
45 the total number of professional educators assigned to
46 each school on a full-time equivalency basis: *Provided,*
47 That if there is a change in circumstances because of con-
48 solidation or catastrophe, the county board shall deter-
49 mine what is a reasonable number of supervised teachers
50 in order to establish the appropriate increment percentage
51 rate.

52 No county may reduce local funds allocated for salary
53 increments for principals and assistant principals in effect
54 on the first day of January, one thousand nine hundred
55 ninety-six, and used in supplementing the state minimum
56 salaries as provided for in this article, unless forced to do
57 so by defeat of a special levy, or a loss in assessed values
58 or events over which it has no control and for which the
59 county board has received approval from the state board
60 prior to making the reduction.

61 Nothing in this section prevents a county board from
62 providing, in a uniform manner, salary increments greater
63 than those required by this section.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The em-
3 ployment term for service personnel may be no less than
4 ten months. A month is defined as twenty employment
5 days: *Provided*, That the county board may contract with
6 all or part of these service personnel for a longer term.
7 The beginning and closing dates of the ten-month em-
8 ployment term may not exceed forty-three weeks.

9 Service personnel employed on a yearly or
10 twelve-month basis may be employed by calendar months.
11 Whenever there is a change in job assignment during the
12 school year, the minimum pay scale and any county sup-
13 plement are applicable.

14 Service personnel employed in the same classification
15 for more than the two hundred-day minimum employ-
16 ment term shall be paid for additional employment at a
17 daily rate of not less than the daily rate paid for the two
18 hundred-day minimum employment term.

19 No service employee, without his or her agreement,
20 may be required to report for work more than five days
21 per week and no part of any working day may be accu-
22 mulated by the employer for future work assignments,
23 unless the employee agrees thereto.

24 Should an employee whose regular work week is
25 scheduled from Monday through Friday agree to perform
26 any work assignments on a Saturday or Sunday, the em-
27 ployee shall be paid for at least one half day of work for
28 each day he or she reports for work, and if the employee
29 works more than three and one-half hours on any Satur-
30 day or Sunday, he or she shall be paid for at least a full
31 day of work for each day.

32 Custodians, aides, maintenance, office and school
33 lunch employees required to work a daily work schedule

34 that is interrupted, that is, who do not work a continuous
35 period in one day, shall be paid additional compensation
36 equal to at least one eighth of their total salary as provided
37 by their state minimum salary and any county pay supple-
38 ment, and payable entirely from county funds: *Provided,*
39 That when engaged in duties of transporting students
40 exclusively, aides shall not be regarded as working an
41 interrupted schedule.

42 Upon the change in classification or upon meeting the
43 requirements of an advanced classification of or by any
44 employee, the employee's salary shall be made to comply
45 with the requirements of this article, and to any county
46 salary schedule in excess of the minimum requirements of
47 this article, based upon the employee's advanced classifica-
48 tion and allowable years of employment.

49 An employee's contract as provided in section five,
50 article two of this chapter shall state the appropriate
51 monthly salary the employee is to be paid, based on the
52 class title as provided in this article and any county salary
53 schedule in excess of the minimum requirements of this
54 article.

55 The column heads of the state minimum pay scale and
56 class titles, set forth in section eight-a of this article, are
57 defined as follows:

58 "Pay grade" means the monthly salary applicable to
59 class titles of service personnel.

60 "Years of employment" means the number of years
61 which an employee classified as service personnel has
62 been employed by a board in any position prior to or
63 subsequent to the effective date of this section and includ-
64 ing service in the armed forces of the United States, if the
65 employee were employed at the time of his or her induc-
66 tion. For the purpose of section eight-a of this article,
67 years of employment shall be limited to the number of
68 years shown and allowed under the state minimum pay
69 scale as set forth in section eight-a of this article.

70 "Class title" means the name of the position or job held
71 by service personnel.

72 "Accountant I" means personnel employed to maintain
73 payroll records and reports and perform one or more
74 operations relating to a phase of the total payroll.

75 "Accountant II" means personnel employed to main-
76 tain accounting records and to be responsible for the ac-
77 counting process associated with billing, budgets, purchas-
78 ing and related operations.

79 "Accountant III" means personnel who are employed
80 in the county board office to manage and supervise ac-
81 counts payable and/or payroll procedures.

82 "Aide I" means those personnel selected and trained
83 for teacher-aide classifications such as monitor aide, cler-
84 ical aide, classroom aide or general aide.

85 "Aide II" means those personnel referred to in the
86 "Aide I" classification who have completed a training pro-
87 gram approved by the state board, or who hold a high
88 school diploma or have received a general educational
89 development certificate. Only personnel classified in an
90 Aide II class title may be employed as an aide in any spe-
91 cial education program.

92 "Aide III" means those personnel referred to in the
93 "Aide I" classification who hold a high school diploma or
94 a general educational development certificate, and have
95 completed six semester hours of college credit at an insti-
96 tution of higher education or are employed as an aide in a
97 special education program and have one year's experience
98 as an aide in special education.

99 "Aide IV" means personnel referred to in the "Aide I"
100 classification who hold a high school diploma or a general
101 educational development certificate and who have com-
102 pleted eighteen hours of state board-approved college
103 credit at a regionally accredited institution of higher edu-
104 cation, or who have completed fifteen hours of state
105 board-approved college credit at a regionally accredited
106 institution of higher education and successfully completed
107 an in-service training program determined by the state
108 board to be the equivalent of three hours of college credit.

109 "Audiovisual technician" means personnel employed
110 to perform minor maintenance on audiovisual equipment,
111 films, supplies and the filling of requests for equipment.

112 "Auditor" means personnel employed to examine and
113 verify accounts of individual schools and to assist schools
114 and school personnel in maintaining complete and accu-
115 rate records of their accounts.

116 "Autism mentor" means personnel who work with
117 autistic students and who meet standards and experience to
118 be determined by the state board: *Provided*, That the state
119 board shall determine these standards and experience on
120 or before the first day of July, one thousand nine hundred
121 ninety-two: *Provided, however*, That if any employee has
122 held or holds an aide title and becomes employed as an
123 autism mentor, the employee shall hold a multiclassifica-
124 tion status that includes aide and autism mentor titles, in
125 accordance with section eight-b of this article.

126 "Braille or sign language specialist" means personnel
127 employed to provide braille and/or sign language assis-
128 tance to students: *Provided*, That if any employee has
129 held or holds an aide title and becomes employed as a
130 braille or sign language specialist, the employee shall hold
131 a multiclassification status that includes aide and braille or
132 sign language specialist title, in accordance with section
133 eight-b of this article.

134 "Bus operator" means personnel employed to operate
135 school buses and other school transportation vehicles as
136 provided by the state board.

137 "Buyer" means personnel employed to review and
138 write specifications, negotiate purchase bids and recom-
139 mend purchase agreements for materials and services that
140 meet predetermined specifications at the lowest available
141 costs.

142 "Cabinetmaker" means personnel employed to con-
143 struct cabinets, tables, bookcases and other furniture.

144 "Cafeteria manager" means personnel employed to
145 direct the operation of a food services program in a
146 school, including assigning duties to employees, approv-

147 ing requisitions for supplies and repairs, keeping invento-
148 ries, inspecting areas to maintain high standards of sanita-
149 tion, preparing financial reports and keeping records per-
150 tinent to food services of a school.

151 "Carpenter I" means personnel classified as a carpen-
152 ter's helper.

153 "Carpenter II" means personnel classified as a journey-
154 man carpenter.

155 "Chief mechanic" means personnel employed to be
156 responsible for directing activities which ensure that stu-
157 dent transportation or other board-owned vehicles are
158 properly and safely maintained.

159 "Clerk I" means personnel employed to perform cleri-
160 cal tasks.

161 "Clerk II" means personnel employed to perform
162 general clerical tasks, prepare reports and tabulations and
163 operate office machines.

164 "Computer operator" means qualified personnel em-
165 ployed to operate computers.

166 "Cook I" means personnel employed as a cook's help-
167 er.

168 "Cook II" means personnel employed to interpret
169 menus, to prepare and serve meals in a food service pro-
170 gram of a school and shall include personnel who have
171 been employed as a "Cook I" for a period of four years, if
172 the personnel have not been elevated to this classification
173 within that period of time.

174 "Cook III" means personnel employed to prepare and
175 serve meals, make reports, prepare requisitions for sup-
176 plies, order equipment and repairs for a food service pro-
177 gram of a school system.

178 "Crew leader" means personnel employed to organize
179 the work for a crew of maintenance employees to carry
180 out assigned projects.

181 "Custodian I" means personnel employed to keep
182 buildings clean and free of refuse.

183 "Custodian II" means personnel employed as a watch-
184 man or groundsman.

185 "Custodian III" means personnel employed to keep
186 buildings clean and free of refuse, to operate the heating
187 or cooling systems and to make minor repairs.

188 "Custodian IV" means personnel employed as head
189 custodians. In addition to providing services as defined in
190 "Custodian III", their duties may include supervising other
191 custodian personnel.

192 "Director or coordinator of services" means personnel
193 who are assigned to direct a department or division. Noth-
194 ing herein may prohibit professional personnel or profes-
195 sional educators as defined in section one, article one of
196 this chapter, from holding this class title, but professional
197 personnel may not be defined or classified as service per-
198 sonnel unless the professional personnel held a service
199 personnel title under this section prior to holding class title
200 of "director or coordinator of services": *Provided*, That
201 funding for professional personnel in positions classified
202 as directors or coordinators of services who were assigned
203 prior to the first day of May, one thousand nine hundred
204 ninety-four, may not be required to be redirected from
205 service personnel categories as a result of this provision
206 until the first day of July, one thousand nine hundred
207 ninety-six. Thereafter, directors or coordinators of service
208 positions shall be classified as either a professional person-
209 nel or service personnel position for state aid formula
210 funding purposes and funding for directors or coordina-
211 tors of service positions shall be based upon the employ-
212 ment status of the director or coordinator either as a pro-
213 fessional personnel or service personnel.

214 "Draftsman" means personnel employed to plan, de-
215 sign and produce detailed architectural/engineering draw-
216 ings.

217 "Electrician I" means personnel employed as an ap-
218 prentice electrician helper or who holds an electrician
219 helper license issued by the state fire marshal.

220 "Electrician II" means personnel employed as an elec-
221 trician journeyman or who holds a journeyman electrician
222 license issued by the state fire marshal.

223 "Electronic technician I" means personnel employed at
224 the apprentice level to repair and maintain electronic
225 equipment.

226 "Electronic technician II" means personnel employed
227 at the journeyman level to repair and maintain electronic
228 equipment.

229 "Executive secretary" means personnel employed as
230 the county school superintendent's secretary or as a secre-
231 tary who is assigned to a position characterized by signifi-
232 cant administrative duties.

233 "Food services supervisor" means qualified personnel
234 not defined as professional personnel or professional
235 educators in section one, article one of this chapter, em-
236 ployed to manage and supervise a county school system's
237 food service program. The duties would include prepar-
238 ing in-service training programs for cooks and food ser-
239 vice employees, instructing personnel in the areas of quan-
240 tity cooking with economy and efficiency and keeping
241 aggregate records and reports.

242 "Foremen" means skilled persons employed for super-
243 vision of personnel who work in the areas of repair and
244 maintenance of school property and equipment.

245 "General maintenance" means personnel employed as
246 helpers to skilled maintenance employees and to perform
247 minor repairs to equipment and buildings of a county
248 school system.

249 "Glazier" means personnel employed to replace glass
250 or other materials in windows and doors and to do minor
251 carpentry tasks.

252 "Graphic artist" means personnel employed to prepare
253 graphic illustrations.

254 "Groundsmen" means personnel employed to perform
255 duties that relate to the appearance, repair and general care
256 of school grounds in a county school system. Additional
257 assignments may include the operation of a small heating
258 plant and routine cleaning duties in buildings.

259 "Handyman" means personnel employed to perform
260 routine manual tasks in any operation of the county
261 school system.

262 "Heating and air conditioning mechanic I" means
263 personnel employed at the apprentice level to install, re-
264 pair and maintain heating and air conditioning plants and
265 related electrical equipment.

266 "Heating and air conditioning mechanic II" means
267 personnel employed at the journeyman level to install,
268 repair and maintain heating and air conditioning plants
269 and related electrical equipment.

270 "Heavy equipment operator" means personnel em-
271 ployed to operate heavy equipment.

272 "Inventory supervisor" means personnel who are em-
273 ployed to supervise or maintain operations in the receipt,
274 storage, inventory and issuance of materials and supplies.

275 "Key punch operator" means qualified personnel em-
276 ployed to operate key punch machines or verifying ma-
277 chines.

278 "Locksmith" means personnel employed to repair and
279 maintain locks and safes.

280 "Lubrication man" means personnel employed to
281 lubricate and service gasoline or diesel-powered equip-
282 ment of a county school system.

283 "Machinist" means personnel employed to perform
284 machinist tasks which include the ability to operate a lathe,
285 planer, shaper, threading machine and wheel press. Such
286 personnel should also have ability to work from blueprints
287 and drawings.

- 288 "Mail clerk" means personnel employed to receive,
289 sort, dispatch, deliver or otherwise handle letters, parcels
290 and other mail.
- 291 "Maintenance clerk" means personnel employed to
292 maintain and control a stocking facility to keep adequate
293 tools and supplies on hand for daily withdrawal for all
294 school maintenance crafts.
- 295 "Mason" means personnel employed to perform tasks
296 connected with brick and block laying and carpentry tasks
297 related to such laying.
- 298 "Mechanic" means personnel employed who can inde-
299 pendently perform skilled duties in the maintenance and
300 repair of automobiles, school buses and other mechanical
301 and mobile equipment to use in a county school system.
- 302 "Mechanic assistant" means personnel employed as a
303 mechanic apprentice and helper.
- 304 "Multiclassification" means personnel employed to
305 perform tasks that involve the combination of two or more
306 class titles in this section. In such instances the minimum
307 salary scale shall be the higher pay grade of the class titles
308 involved.
- 309 "Office equipment repairman I" means personnel
310 employed as an office equipment repairman apprentice or
311 helper.
- 312 "Office equipment repairman II" means personnel
313 responsible for servicing and repairing all office machines
314 and equipment. Personnel shall be responsible for parts
315 being purchased necessary for the proper operation of a
316 program of continuous maintenance and repair.
- 317 "Painter" means personnel employed to perform duties
318 of painting, finishing and decorating of wood, metal and
319 concrete surfaces of buildings, other structures, equipment,
320 machinery and furnishings of a county school system.
- 321 "Paraprofessional" means a person certified pursuant
322 to section two-a, article three of this chapter to perform
323 duties in a support capacity including, but not limited to,
324 facilitating in the instruction and direct or indirect supervi-

325 sion of pupils under the direction of a principal, a teacher
326 or another designated professional educator: *Provided*,
327 That no person employed on the effective date of this
328 section in the position of an aide may be reduced in force
329 or transferred to create a vacancy for the employment of a
330 paraprofessional: *Provided, however*, That if any employ-
331 ee has held or holds an aide title and becomes employed
332 as a paraprofessional, the employee shall hold a
333 multiclassification status that includes aide and paraprofes-
334 sional titles in accordance with section eight-b of this arti-
335 cle: *Provided further*, That once an employee who holds
336 an aide title becomes certified as a paraprofessional and is
337 required to perform duties that may not be performed by
338 an aide without paraprofessional certification, he or she
339 shall receive the paraprofessional title pay grade.

340 "Plumber I" means personnel employed as an appren-
341 tice plumber and helper.

342 "Plumber II" means personnel employed as a journey-
343 man plumber.

344 "Printing operator" means personnel employed to
345 operate duplication equipment, and as required, to cut,
346 collate, staple, bind and shelve materials.

347 "Printing supervisor" means personnel employed to
348 supervise the operation of a print shop.

349 "Programmer" means personnel employed to design
350 and prepare programs for computer operation.

351 "Roofing/sheet metal mechanic" means personnel
352 employed to install, repair, fabricate and maintain roofs,
353 gutters, flashing and duct work for heating and ventilation.

354 "Sanitation plant operator" means personnel employed
355 to operate and maintain a water or sewage treatment plant
356 to ensure the safety of the plant's effluent for human con-
357 sumption or environmental protection.

358 "School bus supervisor" means qualified personnel
359 employed to assist in selecting school bus operators and
360 routing and scheduling of school buses, operate a bus
361 when needed, relay instructions to bus operators, plan

362 emergency routing of buses and promoting good relation-
363 ships with parents, pupils, bus operators and other employ-
364 ees.

365 "Secretary I" means personnel employed to transcribe
366 from notes or mechanical equipment, receive callers, per-
367 form clerical tasks, prepare reports and operate office
368 machines.

369 "Secretary II" means personnel employed in any ele-
370 mentary, secondary, kindergarten, nursery, special educa-
371 tion, vocational or any other school as a secretary. The
372 duties may include performing general clerical tasks, tran-
373 scribing from notes or stenotype or mechanical equipment
374 or a sound-producing machine, preparing reports, receiv-
375 ing callers and referring them to proper persons, operating
376 office machines, keeping records and handling routine
377 correspondence. There is nothing implied herein that
378 would prevent the employees from holding or being ele-
379 vated to a higher classification.

380 "Secretary III" means personnel assigned to the county
381 board office administrators in charge of various instruc-
382 tional, maintenance, transportation, food services, opera-
383 tions and health departments, federal programs or depart-
384 ments with particular responsibilities of purchasing and
385 financial control or any personnel who have served in a
386 position which meets the definition of "Secretary II" or
387 "Secretary III" herein for eight years.

388 "Supervisor of maintenance" means skilled personnel
389 not defined as professional personnel or professional
390 educators as in section one, article one of this chapter.
391 The responsibilities would include directing the upkeep of
392 buildings and shops, issuing instructions to subordinates
393 relating to cleaning, repairs and maintenance of all struc-
394 tures and mechanical and electrical equipment of a board.

395 "Supervisor of transportation" means qualified person-
396 nel employed to direct school transportation activities,
397 properly and safely, and to supervise the maintenance and
398 repair of vehicles, buses and other mechanical and mobile
399 equipment used by the county school system.

400 "Switchboard operator-receptionist" means personnel
401 employed to refer incoming calls, to assume contact with
402 the public, to direct and to give instructions as necessary,
403 to operate switchboard equipment and to provide clerical
404 assistance.

405 "Truck driver" means personnel employed to operate
406 light or heavy duty gasoline and diesel-powered vehicles.

407 "Warehouse clerk" means personnel employed to be
408 responsible for receiving, storing, packing and shipping
409 goods.

410 "Watchman" means personnel employed to protect
411 school property against damage or theft. Additional as-
412 signments may include operation of a small heating plant
413 and routine cleaning duties.

414 "Welder" means personnel employed to provide acety-
415 lene or electric welding services for a school system.

416 In addition to the compensation provided for in sec-
417 tion eight-a of this article, for service personnel, each ser-
418 vice employee is, notwithstanding any provisions in this
419 code to the contrary, entitled to all service personnel em-
420 ployee rights, privileges and benefits provided under this
421 or any other chapter of this code without regard to the
422 employee's hours of employment or the methods or
423 sources of compensation.

424 Service personnel whose years of employment exceed
425 the number of years shown and provided for under the
426 state minimum pay scale set forth in section eight-a of this
427 article may not be paid less than the amount shown for the
428 maximum years of employment shown and provided for
429 in the classification in which he or she is employed.

430 The county boards shall review each service personnel
431 employee job classification annually and shall reclassify
432 all service employees as required by the job classifications.
433 The state superintendent of schools is hereby authorized
434 to withhold state funds appropriated pursuant to this arti-
435 cle for salaries for service personnel who are improperly
436 classified by the county boards. Further, the state superin-
437 tendent shall order county boards to correct immediately

438 any improper classification matter and with the assistance
 439 of the attorney general shall take any legal action neces-
 440 sary against any county board to enforce the order.

441 No service employee, without his or her written con-
 442 sent, may be reclassified by class title, nor may a service
 443 employee, without his or her written consent, be relegated
 444 to any condition of employment which would result in a
 445 reduction of his or her salary, rate of pay, compensation
 446 or benefits earned during the current fiscal year or which
 447 would result in a reduction of his or her salary, rate of pay,
 448 compensation or benefits for which he or she would quali-
 449 fy by continuing in the same job position and classifica-
 450 tion held during that fiscal year and subsequent years.

451 Any board failing to comply with the provisions of
 452 this article may be compelled to do so by mandamus, and
 453 is liable to any party prevailing against the board for court
 454 costs and the prevailing party's reasonable attorney fee, as
 455 determined and established by the court.

456 Notwithstanding any provisions in this code to the
 457 contrary, service personnel who hold a continuing contract
 458 in a specific job classification and who are physically
 459 unable to perform the job's duties as confirmed by a phy-
 460 sician chosen by the employee shall be given priority
 461 status over any employee not holding a continuing con-
 462 tract in filling other service personnel job vacancies if
 463 qualified as provided in section eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE							
2	Years of						
3	Employ-						
4	ment	A	B	C	D	E	F
5	0	1,040.00	1,060.00	1,100.00	1,150.00	1,200.00	1,260.00
6	1	1,066.00	1,086.00	1,126.00	1,176.00	1,226.00	1,286.00
7	2	1,092.00	1,112.00	1,152.00	1,202.00	1,252.00	1,312.00

8	3	1,118.00	1,138.00	1,178.00	1,228.00	1,278.00	1,338.00
9	4	1,144.00	1,164.00	1,204.00	1,254.00	1,304.00	1,364.00
10	5	1,170.00	1,190.00	1,230.00	1,280.00	1,330.00	1,390.00
11	6	1,196.00	1,216.00	1,256.00	1,306.00	1,356.00	1,416.00
12	7	1,222.00	1,242.00	1,282.00	1,332.00	1,382.00	1,442.00
13	8	1,248.00	1,268.00	1,308.00	1,358.00	1,408.00	1,468.00
14	9	1,274.00	1,294.00	1,334.00	1,384.00	1,434.00	1,494.00
15	10	1,300.00	1,320.00	1,360.00	1,410.00	1,460.00	1,520.00
16	11	1,326.00	1,346.00	1,386.00	1,436.00	1,486.00	1,546.00
17	12	1,352.00	1,372.00	1,412.00	1,462.00	1,512.00	1,572.00
18	13	1,378.00	1,398.00	1,438.00	1,488.00	1,538.00	1,598.00
19	14	1,404.00	1,424.00	1,464.00	1,514.00	1,564.00	1,624.00
20	15	1,430.00	1,450.00	1,490.00	1,540.00	1,590.00	1,650.00
21	16	1,456.00	1,476.00	1,516.00	1,566.00	1,616.00	1,676.00
22	17	1,482.00	1,502.00	1,542.00	1,592.00	1,642.00	1,702.00
23	18	1,508.00	1,528.00	1,568.00	1,618.00	1,668.00	1,728.00
24	19	1,534.00	1,554.00	1,594.00	1,644.00	1,694.00	1,754.00
25	20	1,560.00	1,580.00	1,620.00	1,670.00	1,720.00	1,780.00
26	21	1,586.00	1,606.00	1,646.00	1,696.00	1,746.00	1,806.00
27	22	1,612.00	1,632.00	1,672.00	1,722.00	1,772.00	1,832.00
28	23	1,638.00	1,658.00	1,698.00	1,748.00	1,798.00	1,858.00
29	24	1,664.00	1,684.00	1,724.00	1,774.00	1,824.00	1,884.00
30	25	1,690.00	1,710.00	1,750.00	1,800.00	1,850.00	1,910.00
31	26	1,716.00	1,736.00	1,776.00	1,826.00	1,876.00	1,936.00
32	27	1,742.00	1,762.00	1,802.00	1,852.00	1,902.00	1,962.00

33	28	1,768.00	1,788.00	1,828.00	1,878.00	1,928.00	1,988.00
34	29	1,794.00	1,814.00	1,854.00	1,904.00	1,954.00	2,014.00
35	30	1,820.00	1,840.00	1,880.00	1,930.00	1,980.00	2,040.00
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59	20	1,810.00	1,880.00
60	21	1,836.00	1,906.00
61	22	1,862.00	1,932.00
62	23	1,888.00	1,958.00
63	24	1,914.00	1,984.00
64	25	1,940.00	2,010.00
65	26	1,966.00	2,036.00
66	27	1,992.00	2,062.00
67	28	2,018.00	2,088.00
68	29	2,044.00	2,114.00
69	30	2,070.00	2,140.00
70	CLASS TITLE		PAY GRADE
71	Accountant I		D
72	Accountant II		E
73	Accountant III		F
74	Aide I		A
75	Aide II		B
76	Aide III		C
77	Aide IV		D
78	Audiovisual Technician		C
79	Auditor		G
80	Autism Mentor		E
81	Braille or Sign Language Specialist		E
82	Bus Operator		D
83	Buyer		F
84	Cabinetmaker		G
85	Cafeteria Manager		D

86	Carpenter I	E
87	Carpenter II	F
88	Chief Mechanic	G
89	Clerk I	B
90	Clerk II	C
91	Computer Operator	E
92	Cook I	A
93	Cook II	B
94	Cook III	C
95	Crew Leader	F
96	Custodian I	A
97	Custodian II	B
98	Custodian III	C
99	Custodian IV	D
100	Director or Coordinator of Services	H
101	Draftsman	D
102	Electrician I	F
103	Electrician II	G
104	Electronic Technician I	F
105	Electronic Technician II	G
106	Executive Secretary	G
107	Food Services Supervisor	G
108	Foreman	G
109	General Maintenance	C
110	Glazier	D
111	Graphic Artist	D
112	Groundsman	B

113	Handyman	B
114	Heating and Air Conditioning Mechanic I	E
115	Heating and Air Conditioning Mechanic II	G
116	Heavy Equipment Operator	E
117	Inventory Supervisor	D
118	Key Punch Operator	B
119	Locksmith	G
120	Lubrication Man	C
121	Machinist	F
122	Mail Clerk	D
123	Maintenance Clerk	C
124	Mason	G
125	Mechanic	F
126	Mechanic Assistant	E
127	Office Equipment Repairman I	F
128	Office Equipment Repairman II	G
129	Painter	E
130	Paraprofessional	F
131	Plumber I	E
132	Plumber II	G
133	Printing Operator	B
134	Printing Supervisor	D
135	Programmer	H
136	Roofing/Sheet Metal Mechanic	F
137	Sanitation Plant Operator	F
138	School Bus Supervisor	E
139	Secretary I	D

140	Secretary II	E
141	Secretary III	F
142	Supervisor of Maintenance	H
143	Supervisor of Transportation	H
144	Switchboard Operator-Receptionist	D
145	Truck Driver	D
146	Warehouse Clerk	C
147	Watchman	B
148	Welder	F

149 (1) The minimum monthly pay for each service em-
 150 ployee whose employment is for a period of more than
 151 three and one-half hours a day shall be at least the
 152 amounts indicated in the "state minimum pay scale pay
 153 grade" and the minimum monthly pay for each service
 154 employee whose employment is for a period of three and
 155 one-half hours or less a day shall be at least one-half the
 156 amount indicated in the "state minimum pay scale pay
 157 grade" set forth in this section.

158 (2) An additional ten dollars per month shall be added
 159 to the minimum monthly pay of each service employee
 160 who holds a high school diploma or its equivalent.

161 (3) An additional ten dollars per month shall also be
 162 added to the minimum monthly pay of each service em-
 163 ployee who holds twelve college hours or comparable
 164 credit obtained in a trade or vocational school as approved
 165 by the state board.

166 (4) When any part of a school service employee's daily
 167 shift of work is performed between the hours of six
 168 o'clock p.m. and five o'clock a.m. the following day, the
 169 employee shall be paid no less than an additional ten dol-
 170 lars per month and one half of the pay shall be paid with
 171 local funds.

172 (5) Any service employee required to work on any
173 legal school holiday shall be paid at a rate one and
174 one-half times the employee's usual hourly rate.

175 (6) Any full-time service personnel required to work
176 in excess of their normal working day during any week
177 which contains a school holiday for which they are paid
178 shall be paid for the additional hours or fraction of the
179 additional hours at a rate of one and one-half times their
180 usual hourly rate and paid entirely from county board
181 funds.

182 (7) No service employee may have his or her daily
183 work schedule changed during the school year without the
184 employee's written consent, and the employee's required
185 daily work hours may not be changed to prevent the pay-
186 ment of time and one-half wages or the employment of
187 another employee.

188 (8) The minimum hourly rate of pay for extra duty
189 assignments as defined in section eight-b of this article
190 shall be no less than one seventh of the employee's daily
191 total salary for each hour the employee is involved in
192 performing the assignment and paid entirely from local
193 funds: *Provided*, That an alternative minimum hourly rate
194 of pay for performing extra duty assignments within a
195 particular category of employment may be utilized if the
196 alternate hourly rate of pay is approved both by the coun-
197 ty board and by the affirmative vote of a two-thirds major-
198 ity of the regular full-time employees within that classifi-
199 cation category of employment within that county: *Pro-*
200 *vided, however*, That the vote shall be by secret ballot if so
201 requested by a service personnel employee within that
202 classification category within that county. The salary for
203 any fraction of an hour the employee is involved in per-
204 forming the assignment shall be prorated accordingly.
205 When performing extra duty assignments, employees who
206 are regularly employed on a one-half day salary basis
207 shall receive the same hourly extra duty assignment pay
208 computed as though the employee were employed on a
209 full-day salary basis.

210 (9) The minimum pay for any service personnel em-
211 ployees engaged in the removal of asbestos material or

212 related duties required for asbestos removal shall be their
213 regular total daily rate of pay and no less than an addi-
214 tional three dollars per hour or no less than five dollars
215 per hour for service personnel supervising asbestos remov-
216 al responsibilities for each hour these employees are in-
217 volved in asbestos related duties. Related duties required
218 for asbestos removal include, but are not limited to, travel,
219 preparation of the work site, removal of asbestos decon-
220 tamination of the work site, placing and removal of equip-
221 ment and removal of structures from the site. If any
222 member of an asbestos crew is engaged in asbestos related
223 duties outside of the employee's regular employment
224 county, the daily rate of pay shall be no less than the mini-
225 mum amount as established in the employee's regular
226 employment county for asbestos removal and an addition-
227 al thirty dollars per each day the employee is engaged in
228 asbestos removal and related duties. The additional pay
229 for asbestos removal and related duties shall be payable
230 entirely from county funds. Before service personnel
231 employees may be utilized in the removal of asbestos
232 material or related duties, they shall have completed a
233 federal Environmental Protection Act approved training
234 program and be licensed. The employer shall provide all
235 necessary protective equipment and maintain all records
236 required by the Environmental Protection Act.

237 (10) For the purpose of qualifying for additional pay
238 as provided in section eight, article five of this chapter, an
239 aide shall be considered to be exercising the authority of a
240 supervisory aide and control over pupils if the aide is
241 required to supervise, control, direct, monitor, escort or
242 render service to a child or children when not under the
243 direct supervision of certificated professional personnel
244 within the classroom, library, hallway, lunchroom, gymna-
245 sium, school building, school grounds or wherever super-
246 vision is required. For purposes of this section, "under the
247 direct supervision of certificated professional personnel"
248 means that certificated professional personnel is present,
249 with and accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.

1 A county board shall make decisions affecting promo-
2 tions and the filling of any service personnel positions of
3 employment or jobs occurring throughout the school year
4 that are to be performed by service personnel as provided
5 in section eight of this article, on the basis of seniority,
6 qualifications and evaluation of past service.

7 Qualifications shall mean that the applicant holds a
8 classification title in his category of employment as pro-
9 vided in this section and must be given first opportunity
10 for promotion and filling vacancies. Other employees
11 then must be considered and shall qualify by meeting the
12 definition of the job title as defined in section eight of this
13 article, that relates to the promotion or vacancy. If re-
14 quested by the employee, the board must show valid cause
15 why an employee with the most seniority is not promoted
16 or employed in the position for which he or she applies.
17 Applicants shall be considered in the following order:

18 (1) Regularly employed service personnel;

19 (2) Service personnel whose employment has been
20 discontinued in accordance with this section;

21 (3) Professional personnel who held temporary service
22 personnel jobs or positions prior to the ninth day of June,
23 one thousand nine hundred eighty-two, and who apply
24 only for such temporary jobs or positions;

25 (4) Substitute service personnel; and

26 (5) New service personnel.

27 The county board may not prohibit a service employ-
28 ee from retaining or continuing his employment in any
29 positions or jobs held prior to the effective date of this
30 section and thereafter.

31 A promotion shall be defined as any change in his
32 employment that the employee deems to improve his
33 working circumstance within his classification category of
34 employment and shall include a transfer to another classi-
35 fication category or place of employment if the position is
36 not filled by an employee who holds a title within that
37 classification category of employment. Each class title

38 listed in section eight of this article shall be considered a
39 separate classification category of employment for service
40 personnel, except for those class titles having Roman nu-
41 meral designations, which shall be considered a single
42 classification of employment. The cafeteria manager class
43 title shall be included in the same classification category as
44 cooks. The executive secretary class title shall be included
45 in the same classification category as secretaries. Parapro-
46 fessional, autism mentor and braille or sign language spe-
47 cialist class titles shall be included in the same classifica-
48 tion category as aides.

49 . For purposes of determining seniority under this sec-
50 tion an employee's seniority begins on the date that he or
51 she enters into his assigned duties.

52 Notwithstanding any other provisions of this chapter
53 to the contrary, decisions affecting service personnel with
54 respect to extra-duty assignments shall be made in the
55 following manner: An employee with the greatest length
56 of service time in a particular category of employment
57 shall be given priority in accepting extra duty assignments,
58 followed by other fellow employees on a rotating basis
59 according to the length of their service time until all such
60 employees have had an opportunity to perform similar
61 assignments. The cycle then shall be repeated: *Provided,*
62 That an alternative procedure for making extra-duty as-
63 signments within a particular classification category of
64 employment may be utilized if the alternative procedure is
65 approved both by the county board and by an affirmative
66 vote of two thirds of the employees within that classifica-
67 tion category of employment. For the purpose of this
68 section, "extra-duty assignments" are defined as irregular
69 jobs that occur periodically or occasionally such as, but
70 not limited to, field trips, athletic events, proms, banquets
71 and band festival trips.

72 Boards shall be required to post and date notices of all
73 job vacancies of established existing or newly created
74 positions in conspicuous working places for all school
75 service employees to observe for at least five working
76 days. The notice of the job vacancies shall include the job
77 description, the period of employment, the amount of pay

78 and any benefits and other information that is helpful to
79 the employees to understand the particulars of the job.
80 After the five day minimum posting period all vacancies
81 shall be filled within twenty working days from the post-
82 ing date notice of any job vacancies of established existing
83 or newly created positions.

84 All decisions by county boards concerning reduction
85 in work force of service personnel shall be made on the
86 basis of seniority, as provided in this section.

87 The seniority of any service personnel shall be deter-
88 mined on the basis of the length of time the employee has
89 been employed by the county board within a particular
90 job classification. For the purpose of establishing seniori-
91 ty for a preferred recall list as provided in this section,
92 when an employee has been employed in one or more
93 classifications, the seniority accrued in each previous clas-
94 sification shall be retained by the employee.

95 If a county board is required to reduce the number of
96 employees within a particular job classification, the em-
97 ployee with the least amount of seniority within that classi-
98 fication or grades of classification shall be properly re-
99 leased and employed in a different grade of that classifica-
100 tion if there is a job vacancy: *Provided*, That if there is no
101 job vacancy for employment within the classification or
102 grades of classification, he or she shall be employed in
103 any other job classification which he or she previously
104 held with the county board if there is a vacancy and shall
105 retain any seniority accrued in the job classification or
106 grade of classification.

107 If two or more employees accumulate identical senior-
108 ity, the priority shall be determined by a random selection
109 system established by the employees and approved by the
110 county board.

111 All employees whose seniority with the county board
112 is insufficient to allow their retention by the county board
113 during a reduction in work force shall be placed upon a
114 preferred recall list and shall be recalled to employment
115 by the county board on the basis of seniority.

116 Employees placed upon the preferred list shall be
117 recalled to any position openings by the county board
118 within the classification(s), where they had previously been
119 employed, or to any lateral position for which the employ-
120 ee is qualified or to a lateral area for which an employee
121 has certification and/or licensure.

122 Employees on the preferred recall list shall not forfeit
123 their right to recall by the county board if compelling
124 reasons require an employee to refuse an offer of reem-
125 ployment by the county board.

126 The county board shall notify all employees on the
127 preferred recall list of all position openings that from time
128 to time exist. The notice shall be sent by certified mail to
129 the last known address of the employee; it is the duty of
130 each such employee to notify the county board of any
131 change in the address of the employee.

132 No position openings may be filled by the county
133 board, whether temporary or permanent, until all employ-
134 ees on the preferred recall list have been properly notified
135 of existing vacancies and have been given an opportunity
136 to accept reemployment.

137 Any board failing to comply with the provisions of
138 this article may be compelled to do so by mandamus and
139 is liable to any party prevailing against the board for court
140 costs and the prevailing party's reasonable attorney fee, as
141 determined and established by the court. Further, em-
142 ployees denied promotion or employment in violation of
143 this section shall be awarded the job, pay and any applica-
144 ble benefits retroactively to the date of the violation and
145 shall be paid entirely from local funds. Further, the board
146 is liable to any party prevailing against the board for any
147 court reporter costs including copies of transcripts.

§18A-4-8g. Determination of seniority for service personnel.

1 The seniority for service personnel shall be deter-
2 mined in the following manner:

3 Seniority accumulation for a regular school service
4 employee begins on the date the employee enters upon
5 regular employment duties pursuant to a contract as pro-

6 vided in section five, article two of this chapter and contin-
7 ues until the employee's employment as a regular employ-
8 ee is severed with the county board. Seniority shall not
9 cease to accumulate when an employee is absent without
10 pay as authorized by the county board or the absence is
11 due to illness or other reasons over which the employee
12 has no control as authorized by the county board. Senior-
13 ity accumulation for a substitute employee shall begin
14 upon the date the employee enters upon the duties of a
15 substitute as provided in section fifteen of this article, after
16 executing with the board a contract of employment as
17 provided in section five, article two of this chapter. The
18 seniority of a substitute employee, once established, shall
19 continue until such employee enters into the duties of a
20 regular employment contract as provided in section five,
21 article two of this chapter or employment as a substitute
22 with the county board is severed. Seniority of a regular or
23 substitute employee shall continue to accumulate except
24 during the time when an employee is willfully absent from
25 employment duties because of a concerted work stoppage
26 or strike or is suspended without pay.

27 For all purposes including the filling of vacancies and
28 reduction in force, seniority shall be accumulated within
29 particular classification categories of employment as those
30 classification categories are referred to in section eight-e
31 of this article: *Provided*, That when implementing a re-
32 duction in force, an employee with the least seniority with-
33 in a particular classification category shall be properly
34 released and placed on the preferred recall list. The par-
35 ticular classification title held by an employee within the
36 classification category shall not be taken into consider-
37 ation when implementing a reduction in force.

38 On or before the first day of September and the fif-
39 teenth day of January of each school year, county boards
40 shall post at each county school or working station the
41 current seniority list or lists of each school service classifi-
42 cation. Each list shall contain the name of each regularly
43 employed school service personnel employed in each
44 classification and the date that each employee began per-
45 forming his or her assigned duties in each classification.
46 Current seniority lists of substitute school service person-

47 nel shall be available to employees upon request at the
48 county board office.

49 The seniority of an employee who transfers out of a
50 class title or classification category of employment and
51 subsequently returns to that class title or classification
52 category of employment shall be calculated as follows:

53 The county board shall establish the number of calen-
54 dar days between the date the employee left the class title
55 or category of employment in question and the date of
56 return to the class title or classification category of em-
57 ployment. This number of days shall be added to the
58 employee's initial seniority date to establish a new begin-
59 ning seniority date within the class title or classification
60 category. The employee shall then be considered as hav-
61 ing held uninterrupted service within the class title or clas-
62 sification category from the newly established seniority
63 date. The seniority of an employee who has had a break
64 in the accumulation of seniority as a result of being will-
65 fully absent from employment duties because of a con-
66 certed work stoppage or strike shall be calculated in the
67 same manner.

68 A substitute school service employee shall acquire
69 regular employment status and seniority if said employee
70 receives a position pursuant to subsections (2) and (5),
71 section fifteen of this article: *Provided*, That a substitute
72 employee who accumulates regular employee seniority
73 while holding a position acquired pursuant to said subsec-
74 tions shall simultaneously accumulate substitute seniority.
75 County boards shall not be prohibited from providing any
76 benefits of regular employment for substitute employees,
77 but the benefits shall not include regular employee status
78 and seniority.

79 If two or more employees accumulate identical senior-
80 ity, the priority shall be determined by a random selection
81 system established by the employees and approved by the
82 county board.

83 A board shall conduct the random selection within
84 thirty days upon the employees establishing an identical
85 seniority date. All employees with an identical seniority

86 date within the same class title or classification category
87 shall participate in the random selection. As long as the
88 affected employees hold identical seniority within the
89 same classification category, the initial random selection
90 conducted by the board shall be permanent for the dura-
91 tion of the employment within the same classification
92 category of the employees by the board. This random
93 selection priority shall apply to the filling of vacancies and
94 to the reduction in force of school service personnel:
95 *Provided*, That if another employee or employees subse-
96 quently acquire seniority identical to the employees in-
97 volved in the original random selection, a second random
98 selection shall be held within thirty days to determine the
99 seniority ranking of the new employee or employees with-
100 in the group. The priority between the employees who
101 participated in the original random selection shall remain
102 the same. The second random selection will be performed
103 by placing numbered pieces of paper equal to the number
104 of employees with identical seniority in a container. The
105 employees who were not involved in the original random
106 selection will draw a number from the container which will
107 determine their seniority within the group as a whole.
108 This process will be repeated if additional employees sub-
109 sequently acquire identical seniority. The same process
110 will be utilized if additional employees are subsequently
111 discovered to have the same seniority as the original group
112 of employees but who did not participate in the original
113 random selection through oversight or mistake.

114 Service personnel who are employed in a classification
115 category of employment at the time when a vacancy is
116 posted in the same classification category of employment
117 shall be given first opportunity to fill the vacancy.

118 Seniority acquired as a substitute and as a regular
119 employee shall be calculated separately and shall not be
120 combined for any purpose. Seniority acquired within
121 different classification categories shall be calculated sepa-
122 rately: *Provided*, That when a school service employee
123 makes application for a position outside of the classifica-
124 tion category currently held, if the vacancy is not filled by
125 an applicant within the classification category of the va-
126 cancy, the applicant shall combine all regular employment

127 seniority acquired for the purposes of bidding on the
128 position.

129 School service personnel who hold multi-classification
130 titles shall accrue seniority in each classification category
131 of employment which said employee holds and shall be
132 considered an employee of each classification category
133 contained within his or her multi-classification title.
134 Multi-classified employees shall be subject to reduction in
135 force in any category of employment contained within
136 their multi-classification title based upon the seniority
137 accumulated within said category of employment: *Provid-*
138 *ed*, That if a multi-classified employee is reduced in force
139 in one classification category, said employee shall retain
140 employment in any of the other classification categories
141 that he holds within his multi-classification title. In such a
142 case, the county board shall delete the appropriate classifi-
143 cation title or classification category from the contract of
144 the multi-classified employee.

145 When applying to fill a vacancy outside the classifica-
146 tion categories held by the multi-classified employee,
147 seniority acquired simultaneously in different classifica-
148 tion categories shall be calculated as if accrued in one
149 classification category only.

150 The seniority conferred in this section applies retroac-
151 tively to all affected school service personnel, but the
152 rights incidental thereto shall commence as of the effective
153 date of this section.

**§18A-4-8h. Limitation on number of school service personnel
positions to be held by an employee.**

1 Upon the effective date of this section, no school ser-
2 vice personnel shall be permitted to become employed in
3 more than one regular full-day position, nor more than
4 two one-half day positions at the same time: *Provided*,
5 That nothing herein shall be construed to prohibit a
6 school service personnel from holding an extracurricular
7 assignment or assignments, as provided in section sixteen
8 of this article, or summer positions, as provided in section
9 thirty-nine, article five, chapter eighteen of this code, nor
10 from performing extra-duty assignments, as provided in

11 section eight-b of this article, in addition to his or her
12 regular position.

§18A-4-15. Employment of service personnel substitutes.

1 The county board shall employ and the county super-
2 intendent, subject to the approval of the county board,
3 shall assign substitute service personnel on the basis of
4 seniority to perform any of the following duties:

5 (1) To fill the temporary absence of another service
6 employee;

7 (2) To fill the position of a regular service employee
8 on leave of absence: *Provided*, That if such leave of ab-
9 sence is to extend beyond thirty days, the board, within
10 twenty working days from the commencement of the leave
11 of absence, shall give regular employee status to a person
12 hired to fill such position. The person employed on a
13 regular basis shall be selected under the procedure set
14 forth in section eight-b of this article. The substitute shall
15 hold such position and regular employee status only until
16 the regular employee shall be returned to such position
17 and the substitute shall have and shall be accorded all
18 rights, privileges and benefits pertaining to such position:
19 *Provided, however*, That if a regular or substitute employ-
20 ee fills a vacancy that is related to a leave of absence in
21 any manner as provided herein, upon termination of the
22 leave of absence said employee shall be returned to his or
23 her original position;

24 (3) To perform the service of a service employee who
25 is authorized to be absent from duties without loss of pay;

26 (4) To temporarily fill a vacancy in a permanent posi-
27 tion caused by severance of employment by the resigna-
28 tion, transfer, retirement, permanent disability, dismissal
29 pursuant to section eight, article two of this chapter, or
30 death of the regular service employee who had been as-
31 signed to fill such position: *Provided*, That within twenty
32 working days from the commencement of the vacancy, the
33 board shall fill such vacancy under the procedures set out
34 in section eight-b of this article and section five, article two
35 of this chapter and such person hired to fill the vacancy
36 shall have and shall be accorded all rights, privileges and
37 benefits pertaining to such position;

38 (5) To fill the vacancy created by a regular employee's
39 suspension: *Provided*, That if the suspension is for more
40 than thirty working days the substitute service employee
41 shall be assigned to fill the vacancy on a regular basis and
42 shall have and be accorded all rights, privileges and bene-
43 fits pertaining to such position until such termination by
44 the county board becomes final. If the suspended em-
45 ployee is not returned to his job, the board shall fill the
46 vacancy under the procedures set out in section eight-b of
47 this article and section five, article two of this chapter; and

48 (6) To temporarily fill a vacancy in a newly created
49 position prior to employment of a service personnel on a
50 regular basis under the procedure set forth in section
51 eight-b of this article.

52 Substitutes shall be assigned in the following manner:
53 A substitute with the greatest length of service time, that is,
54 from the date he began his assigned duties as a substitute
55 in that particular category of employment, shall be given
56 priority in accepting the assignment throughout the period
57 of the regular employee's absence or until the vacancy is
58 filled on a regular basis under the procedures set out in
59 section eight-b of this article. All substitutes shall be em-
60 ployed on a rotating basis according to the length of their
61 service time until each substitute has had an opportunity to
62 perform similar assignments: *Provided*, That if there are
63 regular service employees employed in the same building
64 or working station as the absent employee and who are
65 employed in the same classification category of employ-
66 ment, such regular employees shall be first offered the
67 opportunity to fill the position of the absent employee on
68 a rotating and seniority basis with the substitute then fill-
69 ing the regular employee's position. A regular employee
70 assigned to fill the position of an absent employee shall be
71 given the opportunity to hold that position throughout
72 such absence.

73 The salary of a substitute service employee shall be
74 based upon his years of employment as defined in section
75 eight of this article and as provided in the state minimum
76 pay scale set forth in section eight-a of this article and
77 shall be in accordance with the salary schedule of persons
78 regularly employed in the same position in the county in
79 which he is employed.

80 Before any substitute service employee enters upon his
81 or her duties, he shall execute with the county board a
82 written contract as provided in section five, article two of
83 this chapter.

84 To establish a uniform system of providing a fair and
85 equitable opportunity for substitutes to enter upon their
86 duties for the first time, the following method shall be
87 used: The initial order of assigning newly employed sub-
88 stitutes shall be determined by a random selection system
89 established by the affected substitute employees and ap-
90 proved by the county board. This initial priority order
91 shall be in effect only until the substitute service personnel
92 have entered upon their duties for the first time.

93 Substitute service employees who have worked thirty
94 days for a school system shall have all rights pertaining to
95 suspension, dismissal and contract renewal as is granted to
96 regular service personnel in sections six, seven, eight and
97 eight-a, article two of this chapter.

§18A-4-16. Extracurricular assignments.

1 (1) The assignment of teachers and service personnel
2 to extracurricular assignments shall be made only by mu-
3 tual agreement of the employee and the superintendent, or
4 designated representative, subject to board approval. Ex-
5 tracurricular duties shall mean, but not be limited to, any
6 activities that occur at times other than regularly scheduled
7 working hours, which include the instructing, coaching,
8 chaperoning, escorting, providing support services or
9 caring for the needs of students, and which occur on a
10 regularly scheduled basis: *Provided*, That all school ser-
11 vice personnel assignments shall be considered extracur-
12 ricular assignments, except such assignments as are con-
13 sidered either regular positions, as provided by section
14 eight of this article, or extra-duty assignments, as provided
15 by section eight-b of this article.

16 (2) The employee and the superintendent, or a desig-
17 nated representative, subject to board approval, shall mutu-
18 ally agree upon the maximum number of hours of extra-
19 curricular assignment in each school year for each extra-
20 curricular assignment.

21 (3) The terms and conditions of the agreement be-
22 tween the employee and the board shall be in writing and
23 signed by both parties.

24 (4) An employee's contract of employment shall be
25 separate from the extracurricular assignment agreement
26 provided for in this section and shall not be conditioned
27 upon the employee's acceptance or continuance of any
28 extracurricular assignment proposed by the superinten-
29 dent, a designated representative, or the board.

30 (5) The board shall fill extracurricular school service
31 personnel assignments and vacancies in accordance with
32 section eight-b of this article: *Provided*, That an alterna-
33 tive procedure for making extracurricular school service
34 personnel assignments within a particular classification
35 category of employment may be utilized if the alternative
36 procedure is approved both by the county board and by
37 an affirmative vote of two thirds of the employees within
38 that classification category of employment.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

1 (a) Within the limitations provided herein, any aide
2 who agrees to do so shall stand in the place of the parent
3 or guardian and shall exercise such authority and control
4 over pupils as is required of a teacher as defined and pro-
5 vided in section one of this article. The principal shall
6 designate aides in the school who agree to exercise that
7 authority on the basis of seniority as an aide and shall
8 enumerate the instances in which the authority shall be
9 exercised by an aide when requested by the principal,
10 assistant principal or professional employee to whom the
11 aide is assigned: *Provided*, That the authority does not
12 extend to suspending or expelling any pupil, participating
13 in the administration of corporal punishment or perform-
14 ing instructional duties as a teacher or substitute teacher.

15 An aide designated by the principal under this subsec-
16 tion shall receive a salary not less than one pay grade
17 above the highest pay grade held by the employee under
18 section eight-a, article four of this chapter, and any county
19 salary schedule in excess of the minimum requirements of
20 this article.

21 (b) An aide may not be required by the operation of
22 this section to perform noninstructional duties for an
23 amount of time which exceeds that required under the
24 aide's contract of employment or that required of other
25 aides in the same school, unless the assignment of such
26 duties is mutually agreed upon by the aide and the county
27 superintendent, or the superintendent's designated repre-
28 sentative, subject to board approval. The terms and condi-
29 tions of the agreement shall be in writing, signed by both
30 parties, and may include additional benefits. The agree-
31 ment shall be uniform as to aides assigned similar duties
32 for similar amounts of time within the same school. Aides
33 shall have the option of agreeing to supervise students and
34 of renewing related assignments annually: *Provided*, That
35 should an aide elect not to renew the previous agreement
36 to supervise students, the minimum salary of the aide shall
37 revert to the pay grade specified in section eight-a, article
38 four of this chapter for the classification title held by the
39 aide and any county salary schedule in excess of the mini-
40 mum requirements of this article.

41 (c) For the purposes of this section, aide shall mean
42 and include any aide class title as defined in section eight,
43 article four of this chapter, regardless of numeric classifi-
44 cation.

45 (d) An aide may transfer to another position of em-
46 ployment one time only during any one half of a school
47 term, unless otherwise mutually agreed upon by the aide
48 and the county superintendent, or the superintendent's
49 designee, subject to board approval: *Provided*, That dur-
50 ing the first year of employment as an aide, an aide may
51 not transfer to another position of employment during the
52 first one-half school term of employment, unless mutually
53 agreed upon by the aide and county superintendent, sub-
54 ject to board approval.

55 (e) Regular service personnel employed in a category
56 of employment other than aide who seek employment as
57 an aide shall hold a high school diploma or shall have
58 received a general educational development certificate and
59 shall have the opportunity to receive appropriate training
60 pursuant to subsection (10), section thirteen, article five,
61 chapter eighteen of this code and section two, article twen-
62 ty of said chapter.

CHAPTER 112

(Com. Sub. for S. B. 300—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to amend and reenact sections four, five and seven, article two-e of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend and reenact section four, article five-a of said chapter; to amend and reenact section one, article one, chapter eighteen-a of said code; to amend article three of said chapter by adding thereto a new section, designated section two-c; to amend and reenact section one, article three-a of said chapter; to further amend said article by adding thereto a new section, designated section two-b; and to amend article one, chapter eighteen-b of said code by adding thereto a new section, designated section one-e, all relating to creating jobs through education; defining "career clusters" and "work-based learning"; requiring the state board to report progress toward meeting educational goals; replacing certificates of proficiency with an electronic portfolio system; including information on statewide school report cards; establishing school accreditation and education standards; providing for high quality basic skills development and remediation in all public schools; utilizing technology in middle schools, junior high schools and high schools; stating comprehensive goals for jobs through education; increasing academic expectations and career development for all students; assessing student performance by grade level; focusing on basic skills in kindergarten through fourth grade; developing a rigorous curriculum; exploring career options; implementing an individualized student transition plan; choosing career majors; reporting by state school-to-work steering committee; increasing the ability of all students to meet higher academic expectations and become independent learners; establishing partnerships; creating guidelines for

work-based learning; creating work-based opportunities in rural areas; creating guidelines for certification on the electronic portfolio of student skills, competencies and readiness for employment; addressing staff development; requiring a state board rule; establishing criteria for selecting schools of excellence; defining "principals academy" and "center for professional development"; requiring training through the principals academy; creating the "Principals Standards Advisory Council"; creating the "Principals Academy" within the center for professional development and adding penalties for failure to comply; requiring public education and higher education collaboration for the preparation of students for college and other post-secondary education; and requiring the higher education governing boards to promulgate a joint rule.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

18B. Higher Education.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter; Goals for Education.

- 2. State Board of Education.
- 2E. High Quality Education Programs.
- 5A. Local School Involvement.

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;
GOALS FOR EDUCATION.**

§18-1-1. Definitions.

§18-1-4. Education improvement plan.

***§18-1-1. Definitions.**

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context
3 clearly indicates a different meaning, be construed as
4 follows:

5 (a) "School" means the pupils and teacher or teachers
6 assembled in one or more buildings, organized as a unit;

7 (b) "District" means county school district;

8 (c) "State board" means the West Virginia board of
9 education;

10 (d) "Board" means the county board of education;

11 (e) "State superintendent" means the state superinten-
12 dent of free schools;

13 (f) "Superintendent" means the county superintendent
14 of schools;

15 (g) "Teacher" means teacher, supervisor, principal,
16 superintendent, public school librarian; registered profes-
17 sional nurse, licensed by the West Virginia board of exam-
18 iners for registered professional nurses and employed by a
19 county board of education, who has a baccalaureate de-
20 gree; or any other person regularly employed for instruc-
21 tional purposes in a public school in this state;

22 (h) "Service personnel" means all nonteaching school
23 employees not included in the above definition of "teach-
24 er";

25 (i) "Regular full-time employee" means any person
26 employed by a county board of education who has a reg-

*Clerk's Note: This section was also amended by H. B. 4065 (Chapter 113), which passed subsequent to this act.

27 ular position or job throughout his employment term,
28 without regard to hours or method of pay;

29 (j) "Career clusters" means broad groupings of related
30 occupations; and

31 (k) "Work-based learning" means a structured activity
32 that correlates with and is mutually supportive of the
33 school-based learning of the student and includes specific
34 objectives to be learned by the student as a result of the
35 activity.

§18-1-4. Education improvement plan.

1 (a) The governor, the Legislature, the state board and
2 the people of West Virginia agree that the education of
3 their children is of utmost importance to the future
4 well-being of the state and that the purpose of enacting
5 education laws and providing funding to support a system
6 of free schools is to assure that all of our children have
7 every opportunity to secure an education which is thor-
8 ough and is provided in an efficient manner. The gover-
9 nor, the Legislature, the state board and the people of West
10 Virginia further agree that improvements are needed in
11 the education system of West Virginia if these objectives
12 are to be met.

13 (b) Therefore, the governor, the Legislature, the state
14 board and the people of West Virginia have established
15 goals for themselves which are measurable and achievable
16 through the combined efforts of the government, the
17 school system and the people through an increased focus
18 on the needs of children. These goals are:

19 (1) All children entering the first grade will be ready
20 for the first grade;

21 (2) All students will have equal education opportunity;

22 (3) Student performance on national measures of
23 student performance will equal or exceed national averag-
24 es and the performance of students falling in the lowest
25 quartile will improve by fifty percent;

26 (4) Ninety percent of ninth graders will graduate from
27 high school;

28 (5) High school graduates will be fully prepared for
29 college, other post-secondary education or gainful em-
30 ployment. The number of high school graduates entering
31 post-secondary education will increase by fifty percent;
32 and

33 (6) All working age adults will be functionally literate.

34 The intent of the governor, the Legislature and the
35 state board is to pursue the accomplishment of these goals
36 through strategies which focus on: (i) Early childhood
37 development; (ii) improving the quality of teaching; (iii)
38 technology and learning; (iv) helping at-risk students; (v)
39 work force preparation; and (vi) restructuring and ac-
40 countability in the education system.

41 (c) The state board shall report progress toward meet-
42 ing and achieving the goals, as set forth in subsection (b)
43 of this section, to the governor and the Legislature at the
44 beginning of the legislative session in each of the next
45 four years, beginning in the year one thousand nine hun-
46 dred ninety-seven, and shall include in such report how
47 the legislative priorities of the board address attainment of
48 the goals.

ARTICLE 2. STATE BOARD OF EDUCATION.

*§18-2-6. Classification and standardization of schools; stan- dards for degrees and diploma.

1 The state board shall make rules for the accreditation,
2 classification and standardization of all schools in the state,
3 except institutions of higher education, and shall deter-
4 mine the minimum standards for the granting of diplomas
5 and certificates of proficiency by those schools. Not later
6 than the school year one thousand nine hundred nine-
7 ty—ninety-one, certificates of proficiency including spe-
8 cific information regarding the graduate's skills, compe-
9 tence and readiness for employment or honors and ad-
10 vanced education shall be granted, along with the diploma,
11 to every eligible high school graduate.

12 No institution of less than collegiate or university
13 status may grant any diploma or certificate of proficiency

*Clerk's Note: This section was also amended by H. B. 4065 (Chapter 113), which passed subsequent to this act.

14 on any basis of work or merit below the minimum stan-
15 dards prescribed by the state board.

16 No charter or other instrument containing the right to
17 issue diplomas or certificates of proficiency shall be grant-
18 ed by the state of West Virginia to any institution or other
19 associations or organizations of less than collegiate or
20 university status within the state until the condition of
21 granting or issuing such diplomas or other certificates of
22 proficiency has first been approved in writing by the state
23 board.

24 Notwithstanding any other provisions of this section to
25 the contrary, the requirement for granting certificates of
26 proficiency shall be replaced by the requirement that
27 information be provided on an electronic portfolio system
28 established by the state board pursuant to section eight,
29 article two-e of this chapter and issued to every high
30 school graduate by the appropriate county board: *Provid-*
31 *ed*, That the requirements for granting certificates of pro-
32 ficiency shall be continued until such time as the electron-
33 ic portfolio system has been made available to the county
34 boards.

ARTICLE 2E. HIGH QUALITY EDUCATION PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and state-
wide school report cards.

§18-2E-5. School accreditation; standards compliance board; approval
status; intervention to correct impairments.

§18-2E-7. Providing for high quality basic skills development and
remediation in all public schools.

§18-2E-8. Creating jobs through education.

***§18-2E-4. Better schools accountability; school, school district and statewide school report cards.**

1 (a) For the purpose of providing information to the
2 parents of public school children and the general public
3 on the quality of education in the public schools which is
4 uniform and comparable between schools within and
5 among the various school districts, the state board shall
6 prepare forms for school, school district and statewide
7 school report cards and shall promulgate rules concerning

*Clerk's Note: This section was also amended by S. B. 104 (Chapter 114), which passed prior to this act.

8 the collection and reporting of data and the preparation,
9 printing and distribution of report cards under this sec-
10 tion. The forms shall provide for brief, concise reporting
11 in nontechnical language of required information. Any
12 technical or explanatory material a county board wishes to
13 include shall be contained in a separate appendix available
14 to the general public upon request.

15 (b) The school report cards shall include information
16 as shall be prescribed by lawfully promulgated rule by the
17 state board to give the parents of students at the school
18 and the general public an indication of the quality of
19 education at the school and other programs supportive of
20 community needs, including, but not limited to, the fol-
21 lowing:

22 (1) Indicators of student performance at the school in
23 comparison with the county, state, regional and national
24 student performance, as applicable, including student
25 performance by grade level in the various subjects mea-
26 sured pursuant to a uniform statewide assessment program
27 adopted by the state board; school attendance rates; the
28 percent of students not promoted to next grade; and the
29 graduation rate;

30 (2) Indicators of school performance in comparison
31 with the aggregate of all other schools in the county and
32 the state, as applicable, including average class size; per-
33 cent of enrollments in courses in high school mathematics,
34 science, English and social science; amount of time per
35 day devoted to mathematics, science, English and social
36 science at middle, junior high and high school grade lev-
37 els; percentage distribution of students by career cluster as
38 indicated on the individualized student transition plan;
39 pupil-teacher ratio; number of exceptions to pupil-teacher
40 ratio requested by the county board and the number of
41 exceptions granted; the number of split-grade classrooms;
42 pupil-administrator ratio; operating expenditure per pupil;
43 county expenditure by fund in graphic display; and the
44 average degree classification and years of experience of
45 the administrators and teachers at the school;

46 (3) The names of the members of the local school
47 improvement council, created pursuant to section two,
48 article five-a of this chapter; and

49 (4) The name or names of the business partner or
50 partners of the school.

51 In addition, every county board shall annually deter-
52 mine the number of administrators, classroom teachers
53 and service personnel employed that exceeds the number
54 allowed by the public school support plan and determine
55 the amount of salary supplements that would be available
56 per state authorized employee if all expenditures for the
57 excess employees were converted to annual salaries for
58 state authorized administrators, classroom teachers and
59 service personnel within their county. The information
60 shall be published annually in each school report card of
61 each such county.

62 (c) The school district report card shall include the
63 data for each school for each separately listed applicable
64 indicator and the aggregate of the data for all schools, as
65 applicable, in the county for each indicator. The statewide
66 school report card shall include the data for each county
67 for each separately listed indicator and the aggregate for
68 all counties for each indicator.

69 (d) The report cards shall be prepared using actual
70 local school, county, state, regional and national data indi-
71 cating the present performance of the school and shall
72 also include the state norms and the upcoming year's tar-
73 gets for the school and the county board.

74 The state board shall provide technical assistance to
75 each county board in preparing the school and school
76 district report cards.

77 Each county board shall prepare report cards in accor-
78 dance with the guidelines set forth in this section. The
79 school district report cards shall be presented at a regular
80 school board meeting subject to applicable notice require-
81 ments and shall be made available to a newspaper of gen-
82 eral circulation serving the district. The school report
83 cards shall be mailed directly to the parent or parents of
84 any child enrolled in that school. In addition, each county
85 board shall submit the completed report cards to the state
86 board which shall make copies available to any person
87 requesting them.

88 The report cards shall be completed and disseminated
89 prior to the first day of January, one thousand nine hun-
90 dred eighty-nine, and in each year thereafter, and shall be
91 based upon information for the current school year, or for
92 the most recent school year for which the information is
93 available, in which case the year shall be clearly footnoted.

94 (e) In addition to the requirements of subsection (c) of
95 this section, the school district report card shall list: (1)
96 The names of the members of the county board, the dates
97 upon which their terms expire and whether they have
98 attended an orientation program for new members ap-
99 proved by the state board and conducted by the West
100 Virginia school board association or other approved orga-
101 nizations, and other school board member training pro-
102 grams; and (2) the names of the county school superinten-
103 dent and every assistant and associate superintendent and
104 any training programs related to their area of school ad-
105 ministration which they have attended. The information
106 shall also be reported by district in the statewide school
107 report card.

108 (f) The state board shall develop and implement a
109 separate report card for nontraditional public schools
110 pursuant to the appropriate provisions of this section to
111 the extent practicable.

**§18-2E-5. School accreditation; standards compliance board;
approval status; intervention to correct impair-
ments.**

1 (a) The purpose of this section is to provide assurances
2 that a thorough and efficient system of education is being
3 provided for all West Virginia public school students on
4 an equal education opportunity basis and that the high
5 quality standards are being met. A system for the review
6 of school district education plans, performance-based
7 accreditation and periodic, random, unannounced on-site
8 effectiveness reviews of district education systems, includ-
9 ing individual schools within the districts, shall provide
10 assurances that the high quality standards established in
11 this section are being met.

12 (b) On or before the first day of November, one thou-
13 sand nine hundred ninety-six, the state board shall, in
14 accordance with the provisions of article three-b, chapter
15 twenty-nine-a of this code, establish and adopt high quali-
16 ty education standards in the following areas:

- 17 (1) Curriculum;
- 18 (2) Workplace readiness skills;
- 19 (3) Finance;
- 20 (4) Transportation;
- 21 (5) Special Education;
- 22 (6) Facilities;
- 23 (7) Administrative practices;
- 24 (8) Training of county board members and adminis-
25 trators;
- 26 (9) Personnel qualifications;
- 27 (10) Professional development and evaluation;
- 28 (11) Student and school performance;
- 29 (12) A code of conduct for students and employees;
- 30 and
- 31 (13) Any other such areas as determined by the state
32 board.

33 The standards shall assure that all graduates are pre-
34 pared for gainful employment or for continuing
35 post-secondary education and training and that schools
36 and school districts are making progress in achieving the
37 education goals of the state. Each school district shall
38 submit an annual improvement plan designed around
39 locally identified needs showing how the education pro-
40 gram of each school in the district will meet or exceed the
41 high quality standards.

42 A performance-based accreditation system shall be the
43 only statewide system used for accrediting or classifying
44 the public schools in West Virginia. The state board shall
45 establish a schedule and shall review each school within a

46 district and each county board for accreditation based on
47 information submitted to the board under the
48 performance-based accreditation system as set forth in
49 subsection (c) of this section.

50 (c) On or before the first day of September, one thou-
51 sand nine hundred ninety-six, the state board shall, in
52 accordance with the provisions of article three-b, chapter
53 twenty-nine-a of this code, establish by rule a system
54 which measures the quality of education and preparation
55 of students at each school based on measures of student
56 and school performance, including, but not limited to, the
57 following:

58 (1) The acquisition of student proficiencies as indicat-
59 ed by student performance by grade level measured,
60 where possible, by a uniform statewide assessment pro-
61 gram;

62 (2) School attendance rates;

63 (3) Student dropout rate;

64 (4) Percent of students promoted to next grade;

65 (5) Graduation rate;

66 (6) Average class size;

67 (7) Pupil-teacher ratio and number of exceptions to
68 ratio requested by county boards and number granted;

69 (8) Number of split-grade classrooms;

70 (9) Percentage of graduates who enrolled in college;
71 the percentage of graduates who enrolled in other
72 post-secondary education; and the percentage of gradu-
73 ates who become fully employed within one year of high
74 school graduation all as reported by the graduates on the
75 assessment form attached to their individualized student
76 transition plan, pursuant to section eight of this article and
77 the percentage of graduates reporting;

78 (10) Pupil-administrator ratio;

79 (11) Parent involvement;

80 (12) Parent, teacher and student satisfaction;

81 (13) Operating expenditures per pupil;

82 (14) Percentage of graduates who attain the minimum
83 level of performance in the basic skills recognized by the
84 state board as laying the foundation for further learning
85 and skill development for success in college, other
86 post-secondary education and gainful employment and
87 the grade level distribution in which the minimum level of
88 performance was met; and

89 (15) Percentage of graduates who received additional
90 certification of their skills, competence and readiness for
91 college, other post-secondary education or employment
92 above the minimum foundation level of basic skills.

93 The state board annually shall review the information
94 submitted for each school and shall issue to every school:
95 (i) Full accreditation status; or (ii) probationary accredita-
96 tion status.

97 Full accreditation status shall be given to a school
98 when the school's performance on the above indicators is
99 at a level which would be expected when all of the high
100 quality education standards are being met. Probationary
101 accreditation status shall be given to a school when the
102 measure of the school's performance is below such level.

103 Whenever a school is given probationary accreditation
104 status, the county board shall implement an improvement
105 plan which is designed to increase the performance of the
106 school to a full accreditation status level within one year.

107 (d) The state board shall establish and adopt standards
108 of performance to identify seriously impaired schools and
109 the state board may declare a school seriously impaired
110 whenever extraordinary circumstances exist as defined by
111 the state board. Whenever the state board determines that
112 the quality of education in a school is seriously impaired,
113 the state superintendent, with approval of the state board,
114 shall appoint a team of three improvement consultants to
115 make recommendations within sixty days of appointment
116 for correction of the impairment. Upon approval of the
117 recommendations by the state board, the recommenda-

118 tions shall be made to the county board. If progress in
119 correcting the impairment is not made within six months
120 of receipt of the recommendations, the state superinten-
121 dent shall provide consultation and assistance to the coun-
122 ty board to: (1) Improve personnel management; (2)
123 establish more efficient financial management practices;
124 (3) improve instructional programs and rules; or (4) make
125 such other improvements as may be necessary to correct
126 the impairment. If the impairment is not corrected within
127 one year of receipt of the recommendations, the district
128 shall be given probationary approval status or
129 nonapproval status.

130 (e) Whenever a school is given probationary status or
131 is determined to be seriously impaired and fails to im-
132 prove its status within one year, any student attending such
133 school may transfer once to the nearest fully accredited
134 school, subject to approval of the fully accredited school
135 and at the expense of the school from which the student
136 transferred.

137 (f) The state board shall issue one of the following
138 accreditation levels to each county board: (1) Full ap-
139 proval; (2) conditional approval; (3) probationary approv-
140 al; or (4) nonapproval.

141 Full approval shall be given to a county board whose
142 education system meets or exceeds all of the high quality
143 standards adopted by the state board and whose schools
144 have all been given full accreditation status. Full approval
145 shall be for a period not to exceed four years.

146 Conditional approval shall be given to a county board
147 whose education system meets at least ninety-five percent
148 of the high quality standards adopted by the state board
149 and in which at least ninety percent of the schools have
150 been given full accreditation status provided no school is
151 seriously impaired. Conditional approval shall be for a
152 period not to exceed one year: *Provided*, That for coun-
153 ties that have fewer than ten schools, the state board may
154 grant conditional approval without regard to the ninety
155 percent based on the total quality of the county education
156 program.

157 Probationary approval shall be given to a county
158 board whose education system has met less than
159 ninety-five percent of the high quality standards, or which
160 has eleven percent or more schools in the district given
161 probationary status or serious impairment. Probationary
162 approval is a warning that the county board must make
163 specified improvements. If the number of schools in the
164 district given probationary status is not reduced to a num-
165 ber that would allow full accreditation to be granted in the
166 following year, the county board shall be automatically
167 given nonapproval. In addition, nonapproval shall be
168 given to a county board which fails to submit an annual
169 program plan or fails to demonstrate a reasonable effort to
170 meet the high quality standards. The state board shall
171 establish and adopt standards to identify school districts in
172 which the program may be nonapproved or the state
173 board may issue nonapproval status whenever extraordi-
174 nary circumstances exist as defined by the state board.

175 (g) Whenever nonapproval status is given to a county,
176 the state board shall declare a state of emergency in the
177 district and may intervene in the operation of the district
178 to: (1) Limit the authority of the county superintendent
179 and county board as to the expenditure of funds, the em-
180 ployment and dismissal of personnel, the establishment
181 and operation of the school calendar, the establishment of
182 instructional programs and rules and such other areas as
183 may be designated by the state board by rule; (2) take
184 such direct action as may be necessary to correct the im-
185 pairment; and (3) declare that the office of the county
186 superintendent is vacant.

187 (h) To assist the state board in determinations of the
188 accreditation status of schools and the approval status of
189 school districts under this section, the state board shall
190 from time to time appoint an education standards compli-
191 ance review team to make unannounced on-site reviews of
192 the education programs in any school or school district in
193 the state to assess compliance of the school or district with
194 the high quality standards adopted by the state board,
195 including, but not limited to, facilities, administrative pro-
196 cedures, transportation, food services and the audit of all

197 matters relating to school finance, budgeting and adminis-
198 tration.

199 The teams shall be composed of not more than ten
200 persons, not more than half of whom may be members of
201 or currently employed by the state board, who possess the
202 necessary knowledge, skills and experience to make an
203 accurate assessment of such education programs. The
204 education standards compliance team shall report the
205 findings of its on-site reviews to the state board for inclu-
206 sion in the determination of a school's or district's accredi-
207 tation or approval status as applicable. The state board
208 shall encourage the sharing of information to improve
209 school effectiveness among the districts.

210 The state board shall make accreditation information
211 available to the Legislature, the governor, the general pub-
212 lic and to any individuals who request such information.

213 (i) The state board shall fully implement the accredita-
214 tion system established under this article for all schools on
215 the first day of July, one thousand nine hundred
216 ninety-one, and may pilot test the system prior to that
217 date. The state board shall adopt rules in accordance with
218 the provisions of article three-b, chapter twenty-nine-a of
219 this code necessary to implement the provisions of this
220 article.

**§18-2E-7. Providing for high quality basic skills development
and remediation in all public schools.**

1 (a) The Legislature finds that teachers must be provid-
2 ed the support, assistance and teaching tools necessary to
3 meet individual student instructional needs on a daily basis
4 in a classroom of students who differ in learning styles,
5 learning rates and in motivation to learn. The Legislature
6 further finds that attaining a solid foundation in the basic
7 skills of reading, composition and arithmetic is essential
8 for advancement in higher education, occupational and
9 avocational pursuits and that computers are an effective
10 tool for the teacher in corrective, remedial and enrichment
11 activities. Therefore, the state board shall develop a plan
12 which specifies the resources to be used to provide services
13 to students in the earliest grade level and moving upward

14 as resources become available based on a plan developed
15 by each individual school team.

16 This plan must provide for standardization of comput-
17 er hardware and software, and for technology upgrade and
18 replacement, for the purposes of achieving economies of
19 scale, facilitating teacher training, permitting the compari-
20 son of achievement of students in schools and counties
21 utilizing the hardware and software, and facilitating the
22 repair of equipment and ensuring appropriate utilization
23 of the hardware and software purchased for remediation
24 and basic skills development.

25 The state board shall determine the computer hard-
26 ware and software specifications after input from practic-
27 ing teachers at the appropriate grade levels and with the
28 assistance of education computer experts and the curricu-
29 lum technology resource center.

30 Computer hardware and software shall be purchased
31 either directly or through a lease-purchase arrangement
32 pursuant to the provisions of article three, chapter five-a of
33 this code in the amount equal to anticipated revenues
34 being appropriated: *Provided*, That nothing in this sec-
35 tion shall be construed to require any specific level of
36 funding by the Legislature.

37 The state board shall develop and provide through the
38 state curriculum technology resource center a program to
39 ensure adequate teacher training, continuous teacher sup-
40 port and updates.

41 To the extent practicable, such technology shall be
42 utilized to enhance student access to learning tools and
43 resources outside of the normal school day, such as: Be-
44 fore and after school; in the evenings, on weekends and
45 during vacations; and for student use for homework, re-
46 medial work, independent learning and career planning
47 and adult basic education.

48 (b) The Legislature finds that the continued imple-
49 mentation of computer utilization under this section for
50 high quality basic skills development and remediation in
51 the middle schools, junior high schools and high schools

52 is necessary to meet the goal that high school graduates
53 will be prepared fully for college, other post-secondary
54 education or gainful employment. Further, such imple-
55 mentation should provide a technology infrastructure at
56 the middle schools, junior high schools and high schools
57 that has multiple applications in enabling students to
58 achieve at higher academic levels. The technology infra-
59 structure should facilitate student development in the fol-
60 lowing areas:

61 (1) Attaining basic computer skills such as word pro-
62 cessing, spreadsheets, data bases, internet usage, telecom-
63 munications and graphic presentations;

64 (2) Learning critical thinking and decision-making
65 skills;

66 (3) Applying academic knowledge in real life situa-
67 tions through simulated workplace programs;

68 (4) Understanding the modern workplace environ-
69 ment, particularly in remote areas of the state, by bringing
70 the workplace to the school;

71 (5) Making informed career decisions based upon
72 information on labor markets and the skills required for
73 success in various occupations;

74 (6) Gaining access to labor markets and job place-
75 ment;

76 (7) Obtaining information and assistance about col-
77 lege and other post-secondary education opportunities
78 and financial aid; and

79 (8) Other uses for acquiring the necessary skills and
80 information to make a smooth transition from high school
81 to college, other post-secondary education or gainful
82 employment.

83 Therefore, the state board shall extend the plan as set
84 forth in subsection (a) of this section, and consistent with
85 the terms and conditions in said subsection, to address the
86 findings of this subsection regarding the continued imple-
87 mentation of computer hardware and software, and techni-

88 cal planning support in the middle schools, junior high
89 schools and high schools of the state.

§18-2E-8. Creating jobs through education.

1 (a) *Findings and intent.* — The Legislature finds that
2 the governor, the Legislature, the state board and the peo-
3 ple of West Virginia established goals for education
4 through an education summit and series of town meetings
5 in the summer of the year one thousand nine hundred
6 ninety, and that these goals were codified in section four,
7 article one of this chapter during the third extraordinary
8 session of the Legislature of that year. Among these goals
9 is the goal that high school graduates will be prepared
10 fully for college, other post-secondary education or gain-
11 ful employment and that the number of high school grad-
12 uates entering post-secondary education will increase by
13 fifty percent. The Legislature finds that this goal reflects a
14 fundamental belief that the result of a thorough and effi-
15 cient system of free schools is that the youth of the state
16 exit the system equipped with the skills, competencies and
17 attributes necessary to succeed, to continue learning
18 throughout their lifetimes and to attain economic
19 self-sufficiency.

20 The Legislature further finds that the full preparation
21 of youth as indicated in these findings cannot be accom-
22 plished by the school system alone, but requires the full
23 and active partnership with parents and people from busi-
24 ness, labor, higher education, economic development and
25 other organizations and entities in the community that
26 have an interest in providing quality education. Therefore,
27 the intent of this section is to establish a policy framework
28 and strategy for the state board in fulfilling its responsibil-
29 ity for the general supervision of free schools in order to
30 encourage and utilize actively involved partnerships in the
31 formulation of rules and practices to achieve the goal that
32 high school graduates will be prepared fully for college,
33 other post-secondary education or gainful employment,
34 particularly in the delivery of programs that provide
35 work-based learning opportunities for students within the
36 school or at the workplace. The Legislature recognizes
37 that many skilled jobs require education beyond the high

38 school level, that the goals of West Virginia include in-
39 creased post-secondary attendance and that the goals for
40 post-secondary education as set forth in section one-a,
41 article one, chapter eighteen-b of this code include an
42 increased focus within higher education on relevancy,
43 responsiveness to business, industry, labor and community
44 needs, and on the current and future work force needs of
45 the state. Therefore, it is further the intent of this section to
46 enhance the linkages between secondary and
47 post-secondary education.

48 (b) *Comprehensive goals for jobs through education.*
49 — The Legislature hereby establishes the following goals
50 to be accomplished by the year two thousand one for all
51 students in all schools:

52 (1) The elimination of student grouping or tracking
53 systems that result in high school students completing a
54 general curriculum that does not prepare them fully for
55 college, other post-secondary education or gainful em-
56 ployment;

57 (2) The replacement of the general curriculum, as
58 stated in subdivision (1) of this subsection, with a system
59 of career clusters and education majors that increases the
60 academic expectations for all students, includes a system
61 of career information and guidance and incorporates
62 structured work-based learning;

63 (3) The requirement that every student, in consultation
64 with his or her parents and school advisor, establish an
65 individualized student transition plan covering grades nine
66 through twelve and the first year beyond graduation from
67 high school;

68 (4) The active involvement of partners at the state,
69 regional and local levels in assuring the full preparation of
70 graduates for college, other post-secondary education or
71 gainful employment;

72 (5) The creation of a process through which qualified
73 graduates will receive a portable credential that is recog-
74 nized and valued by employers as an indicator of the

75 skills, competence and readiness for employment of the
76 graduates; and

77 (6) The implementation of continuous program as-
78 sessment, program improvement and staff development.

79 (c) *Increased academic expectations and career devel-*
80 *opment for all students.* — The Legislature finds that there
81 is a need to establish higher academic expectations and a
82 system of career development for all students that contains
83 the following elements:

84 (1) *Assessment.* — The implementation of an assess-
85 ment program that measures student performance by
86 grade level and assesses student attainment of the basic
87 academic foundation skills;

88 (2) *Focus on basic skills in kindergarten through*
89 *fourth grade.* — The strengthening and refocusing of
90 kindergarten through fourth grade in order to assure that
91 all students perform at grade level at the completion of the
92 fourth grade by concentrating on teaching the basics of
93 reading, writing, mathematics and computer skills;

94 (3) *Development of rigorous curriculum.* — The devel-
95 opment and implementation of a rigorous and relevant
96 curriculum of basic academic requirements that lays a
97 foundation for further learning and skill development.
98 The proficiencies of the students shall be assessed at the
99 end of the eighth grade and all students should attain the
100 basic academic requirement levels by no later than the end
101 of the tenth grade;

102 (4) *Career exploration in grades five through eight.* —
103 The exploration by students in the fifth through eighth
104 grades of their interests and abilities in career clusters
105 through accessing information about occupational skills
106 and labor markets;

107 (5) *Creation and initial implementation of individual*
108 *student transition plan for grades nine and ten.* — The
109 creation, by the end of the eighth grade, of the first two
110 years of an individualized student transition plan that
111 builds upon career awareness and exploration activities in
112 the earlier grades and enables the student in consultation

113 with his or her parents and school advisor to select a broad
114 career cluster for further exploration in grades nine and
115 ten;

116 (6) *Choosing career majors for grades eleven through*
117 *post-secondary.* — The creation of the second part of the
118 individualized student transition plan by the end of the
119 tenth grade. The second part of the individualized student
120 transition plan shall establish a career major for the final
121 years of high school and the first year after high school
122 that will prepare the student for college, other
123 post-secondary education or gainful employment;

124 (7) *Implementation of career majors.* — The fulfill-
125 ment of the secondary education component of the career
126 major in grades eleven and twelve, including the successful
127 completion of the necessary curriculum and participation
128 in work-based learning experiences; and

129 (8) *Completion of individualized student transition*
130 *plan and assessment.* — The completion of the individual-
131 ized student transition plan in the first year following
132 graduation from high school by attending college, other
133 post-secondary education or securing gainful employ-
134 ment. The state board shall provide an assessment form to
135 be completed by the student and returned to the high
136 school upon the completion of the individualized student
137 transition plan. The form shall provide for the student to
138 report his or her success in completing the plan and the
139 strengths and weaknesses of his or her education prepara-
140 tion.

141 (d) *Report of recommendations on comprehensive*
142 *career development.* — To assist in the establishment of a
143 comprehensive career development system, the state
144 school-to-work steering committee shall report to the state
145 board and the legislative oversight commission on educa-
146 tion accountability by the first day of November, one
147 thousand nine hundred ninety-six, the recommendations
148 of the career guidance committee established pursuant to
149 the state school-to-work implementation plan.

150 (e) *Guidelines for increasing the ability of all students*
151 *to meet higher academic expectations and become*

152 *self-motivated learners.* — Practices that increase the aca-
153 demic expectations for all students and help them to suc-
154 ceed in achieving those higher expectations include, but
155 are not limited to:

156 (1) Utilizing instructional methods that require the
157 student to be a worker who is actively engaged in the
158 learning process;

159 (2) Utilizing methodologies that require students to
160 apply academic knowledge in practical situations and
161 problem solving;

162 (3) Utilizing computers and other technologies to
163 provide opportunities for creative instruction, both indi-
164 vidually and in groups in all subjects;

165 (4) Providing structured opportunities for students to
166 participate in credit and noncredit learning activities out-
167 side the school that are integrated with and are an exten-
168 sion of the school-based program of study for the student
169 through such activities as field trips, job shadowing, com-
170 munity service, entrepreneurship development, mentoring,
171 internships, apprenticeships, school-based enterprises in
172 partnership with the private sector and other cooperative
173 learning experiences connected to student education ma-
174 jors and school-based instructional programs;

175 (5) Integrating and interrelating academic and techni-
176 cal content throughout the curriculum and ensuring nu-
177 merous opportunities for cross-disciplinary learning to
178 emphasize the importance of reading, writing, speaking,
179 listening and viewing; and

180 (6) Encouraging teachers to plan and work together
181 and exercise their professional judgment in the classroom.

182 (f) *Establishing partnerships.* — As soon as practica-
183 ble following the effective date of this section, the gover-
184 nor shall appoint or designate a "Jobs Through Education
185 Employer Panel", to assure the high quality preparation of
186 our youth for college, other post-secondary education or
187 gainful employment. The jobs through education em-
188 ployer panel shall advise and assist the state board, the
189 higher education governing boards and institutions, other

190 post-secondary education training programs and agencies
191 and employers in assuring that graduates are prepared
192 fully for further education and training or gainful em-
193 ployment and shall perform other functions as set forth in
194 this section. In providing such advice and assistance and
195 in the performance of such other functions, the jobs
196 through employer panel shall solicit input from the coun-
197 ty steering committees.

198 As soon as practicable, following the effective date of
199 this section, county boards shall appoint a county steering
200 committee that includes parents and people from business,
201 labor, higher education, economic development, local
202 school improvement councils, faculty senates and other
203 organizations and entities in the community as valuable
204 partners in developing and implementing a system within
205 the county that meets the intent of this section and adheres
206 to the rules of the state board. The membership of the
207 county steering committee and participation in the com-
208 munity and technical college district consortia committee,
209 as created by section three-a, article three, chapter
210 eighteen-b of this code, shall be coordinated to the extent
211 that it is practical.

212 (g) *Guidelines for work-based learning.* —
213 Work-based learning is a structured activity that correlates
214 with and is mutually supportive of school-based learning
215 for the student, and includes specific objectives to be mas-
216 tered by the student as a result of the activity. It is central
217 to the education preparation process to develop within the
218 student an awareness of the work environment and how
219 the skills the student is acquiring will be applied in that
220 environment. Broadly defined, work-based learning op-
221 portunities are activities that assist students to gain an
222 awareness of the workplace, develop an appreciation of the
223 relevancy of academic subject matter to workplace perfor-
224 mance and gain valuable work experience and skills while
225 exploring their occupational interests and abilities. Incorporating
226 work-based learning as a central part of the edu-
227 cation process and also as a final step in the formal educa-
228 tion process includes, but is not limited to:

229 (1) Providing students in the early grades with activi-
230 ties such as field trips, career-oriented speakers in the
231 classroom, courses such as junior achievement which are
232 taught by volunteers in the classroom, job shadowing and
233 other such activities to increase student awareness of the
234 workplace; and

235 (2) Providing students in the later grades, including
236 college and other post-secondary education, with activities
237 such as structured community service, apprenticeships,
238 internships, clinical experiences, cooperative education
239 and other work-site placements, school-based enterprises,
240 workplace simulations and entrepreneurial development,
241 that provide students with more specific work experience
242 in an occupational area associated with their education
243 major.

244 To the extent possible, student work-based learning,
245 and particularly workplace learning, should be jointly
246 assessed by a school-based educator or advisor and a
247 work-based mentor who possesses the skills set forth in the
248 work-based learning objectives of the student, and who has
249 been trained in mentoring and assessing student perfor-
250 mance.

251 (h) *Special consideration for providing work-based*
252 *learning in counties with few opportunities for employ-*
253 *ment.* — Providing work-based learning opportunities for
254 all students in counties with few employers will be particu-
255 larly difficult. While the following additional examples of
256 ways to increase opportunities for work-based learning are
257 applicable for all counties, they are most important in
258 counties with few employers. Additional examples in-
259 clude, but are not limited to:

260 (1) Computer software that simulates workplace situa-
261 tions and problem solving;

262 (2) Interactive and other technology to bring an expo-
263 sure to the workplace into the classroom;

264 (3) Community service;

265 (4) Partnerships with city, state and county govern-
266 ment for work-based placements;

267 (5) Volunteer programs, such as junior achievement
268 and other programs that utilize volunteers trained to deliv-
269 er work-related instruction;

270 (6) Assumption of recordkeeping and other measures
271 by the schools, or through the use of community-based
272 organizations or other intermediaries, that make it easier
273 for small businesses to participate in accepting students for
274 workplace learning;

275 (7) Rural entrepreneurship through action learning
276 programs;

277 (8) School-based enterprises;

278 (9) Projects through 4-H, scouts, junior ROTC and
279 other school and nonschool student and civic organiza-
280 tions;

281 (10) Multiple partnerships with existing employers,
282 such as hospitals that have multiple departments;

283 (11) Agricultural education, FFA projects and super-
284 vised work experience programs; and

285 (12) Programs at vocational-technical education cen-
286 ters.

287 The state board shall make recommendations to the
288 Legislature by the first day of November, one thousand
289 nine hundred ninety-six, on any further actions that may
290 be appropriate to assist counties with few employers in
291 providing work-based learning opportunities for all stu-
292 dents.

293 (i) *Electronic portfolio of student accomplishments*
294 *and preparation.* — For the purpose of better document-
295 ing the preparation of high school graduates for college,
296 other post-secondary education or gainful employment,
297 the state board shall develop an electronic portfolio which
298 will be a permanent record for every student. The elec-
299 tronic portfolio shall be issued by the appropriate county
300 board and shall include the accomplishments of the stu-
301 dent during his or her education preparation. Upon re-
302 quest, students shall receive the contents of the electronic
303 portfolio in written or computer readable form. The elec-

304 tronic portfolio shall be subject to the same confidentiality
305 and disclosure laws and rules as any other student records.
306 The electronic portfolio shall include, but not be limited
307 to:

308 (1) Documentation of attendance, grades, accomplish-
309 ments, education plans, education major interests, curricu-
310 lum, special activities, honors and advanced education and
311 other items appropriate for inclusion in the portfolio as
312 determined by state board rule to present the accomplish-
313 ments and achievements of the student;

314 (2) A separate area for the student to enter presenta-
315 tions, examples and other information on his or her spe-
316 cial areas of interest and advanced achievement;

317 (3) Certification of student attainment of the minimum
318 level of proficiency in the basic skills that lays the founda-
319 tion for further learning and skill development for success
320 in college, other post-secondary education or gainful
321 employment; and

322 (4) Certification of the skills, competence and readi-
323 ness for college, other post-secondary education or em-
324 ployment, as indicated by: (i) College entrance tests; (ii)
325 specialized assessments that measure the attainment of
326 necessary skills and competencies required in the
327 workplace; (iii) the attainment of industry recognized
328 credentials, licensure or certification; (iv) the completion
329 of nationally accredited technical education programs; (v)
330 performance in specialized learning experiences such as
331 paid and unpaid structured work-based learning in the
332 private or public sectors, including, but not limited to,
333 registered youth apprenticeships, internships, cooperative
334 education, community service, entrepreneurship develop-
335 ment and school-based enterprises in partnership with the
336 private sector; and (vi) other indicators relevant to the
337 student's skills, competence and readiness for college,
338 other post-secondary education or gainful employment.

339 (j) *Guidelines for certification on the electronic portfo-*
340 *lio of student skills, competencies and readiness for em-*
341 *ployment.* — The certification of student skills, competen-
342 cies and readiness for a particular industry or occupation

343 to be included on the electronic portfolio, including certifi-
344 cation offered by an institution of higher education or
345 other job training programs, shall require the approval of
346 an appropriate entity designated by the jobs through edu-
347 cation employer panel. Local education agencies, institu-
348 tions of higher education and other job training programs
349 desiring to issue such certification to meet local labor
350 market or community needs and circumstances may apply
351 to the panel for such approval. To the extent possible,
352 such certification shall provide the student with a profi-
353 ciency credential that is widely recognized and accepted
354 within an industry or occupational area as a reliable indi-
355 cator of the ability of the student. The jobs through edu-
356 cation employer panel shall consult other established skill
357 standards for use in certifying proficiency in skills, com-
358 petencies and readiness within specific industries and oc-
359 cupations. The intent of these provisions is to provide a
360 formal mechanism for the ongoing alignment of the cer-
361 tification of student skills, competencies and readiness with
362 current minimum requirements for success in the industry
363 or occupational area for which the student is preparing,
364 including requirements which will be met through addi-
365 tional education in college or other post-secondary educa-
366 tion.

367 (k) *Staff development.* — Meeting the intent and
368 objectives of this section will require a continued focus on
369 staff development to increase the ability of teachers and
370 administrators to employ various methodologies for
371 strengthening the rigor, content and relevance of the
372 learning process and help all students achieve at higher
373 levels. Teachers and administrators must know about
374 workplace requirements to help students internalize the
375 relationship between learning in school and success in the
376 careers they envision for themselves in adult life. The use
377 of student assessment and program evaluation information
378 continually to check and improve the curriculum, instruc-
379 tion, school climate and school organization and manage-
380 ment, is critical to maintaining high quality instruction that
381 is relevant to changing workplace requirements. Staff
382 development opportunities shall include, but not be limit-
383 ed to:

384 (1) Designation by the state board of exemplary coun-
385 ties and schools that have implemented comprehensive
386 school-to-work systems as model demonstration sites to be
387 visited and observed;

388 (2) Collaboration and utilization of the resources of
389 the state department of education, institutions of higher
390 education, the center for professional development and
391 county staff development councils for both in-service and
392 preservice preparation programs;

393 (3) Teacher and business exchange programs that
394 enable teachers to gain exposure and experience in the
395 workplace and business persons to gain exposure and
396 experience in the schools;

397 (4) Structured programs or institutes that take educa-
398 tors into the workplace to observe the work environment
399 and skills necessary to perform work tasks; and

400 (5) Staff development activities which include joint
401 participation by public school, college and other
402 post-secondary faculty where appropriate.

403 (1) *Study committee for staff development credits.* —
404 There is hereby created a study committee to make rec-
405 ommendations on the feasibility of, and the possible pro-
406 cess for, crediting staff development activities toward ful-
407 filling the requirement for renewal of certificates, pursuant
408 to section three, article three, chapter eighteen-a of this
409 code, and the progression through the state minimum
410 salary schedule, pursuant to section two, article four of
411 said chapter. The committee shall consist of the chancel-
412 lor of the university of West Virginia board of trustees, or
413 a designee; the state superintendent, or a designee, who
414 shall serve as chair of the committee; a member of the
415 state board, to be selected by the state board; a representa-
416 tive of West Virginia university to be selected by the presi-
417 dent of the university; a representative of Marshall univer-
418 sity, to be selected by the president of the university; a
419 representative of the West Virginia graduate college, to be
420 selected by the president of the college; four classroom
421 teachers to be appointed by the governor within thirty
422 days of the effective date of this section; and the director
423 of the center for professional development or a designee.
424 Such committee shall report its recommendations to the

425 legislative oversight commission on education account-
426 ability by the first day of January, one thousand nine
427 hundred ninety-seven.

428 (m) *State board rule.* — On or before the first day of
429 November, one thousand nine hundred ninety-six, the
430 state board, with advice from the jobs through education
431 employer panel, and in consultation with the higher edu-
432 cation governing boards, shall adopt a rule in accordance
433 with the provisions of article three-b, chapter
434 twenty-nine-a of this code for the implementation of this
435 section. The rule shall allow flexibility for local variation
436 to meet local circumstances and shall establish a five-year
437 plan for phased implementation. The proposed rule de-
438 veloped pursuant to this section shall contain a financial
439 impact statement as well as a job impact statement.

440 (n) Any study groups or committees created by the
441 state board to assist in development of policies or rules for
442 the implementation of this section shall contain significant
443 representation by classroom teachers as defined by section
444 one, article one, chapter eighteen-a of this code. Further,
445 the state board shall include in its annual budget request
446 sufficient funds to implement programs, policies or rules
447 adapted to meet the goals set out in this section: *Provided,*
448 That nothing in this section shall be construed to require
449 any specific level of funding by the Legislature.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-4. State board to establish criteria for selecting schools of excellence; annual school of excellence awards.

1 The state board of education shall promulgate rules, in
2 accordance with the provisions of article three-b, chapter
3 twenty-nine-a of this code, outlining criteria for the identi-
4 fication of schools of excellence. Such criteria shall in-
5 clude, but not be limited to, improvement in student
6 achievement in comparison to state and national norms,
7 improvement in reducing drop-out rates, improvement in
8 standardized test scores, implementation of advanced or
9 innovative programs, implementation of the goals and
10 purposes of jobs through education as provided in section

11 eight, article two-e of this chapter, improvement in parent
12 and community involvement, improvement in parent,
13 teacher and student satisfaction, improvement in student
14 attendance and other factors which promote excellence in
15 education. Such rules shall be promulgated by the first
16 day of January, one thousand nine hundred ninety-one.
17 Such rules may not prohibit any school from applying for
18 consideration as a school of excellence.

19 Each year, the state board shall select one high school,
20 one middle or junior high school and one elementary
21 school within each regional educational service agency
22 district, and one vocational school selected on a statewide
23 basis to be awarded school of excellence status.

24 The rules promulgated by the state board shall outline
25 appropriate methods of recognizing and honoring the
26 students, teachers and other employees and parents or
27 members of the school community who have contributed
28 to excellence in education at the school.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

1. General Provisions.

3. Training, Certification, Licening, Professional Development.

3A. Center for Professional Development.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one,
2 chapter eighteen shall be applicable to this chapter. In
3 addition, the following words used in this chapter and in
4 any proceedings pursuant thereto shall, unless the context
5 clearly indicates a different meaning, be construed as
6 follows:

7 (a) "School personnel" means all personnel employed
8 by a county board of education whether employed on a
9 regular full-time basis, an hourly basis or otherwise.
10 School personnel shall be comprised of two categories:
11 Professional personnel and service personnel.

12 (b) "Professional personnel" means persons who meet
13 the certification and/or licensing requirements of the state,
14 and shall include the professional educator and other
15 professional employees.

16 (c) "Professional educator" shall be synonymous with
17 and shall have the same meaning as "teacher" as defined in
18 section one, article one, chapter eighteen of this code.
19 Professional educators shall be classified as:

20 (1) "Classroom teacher" — The professional educator
21 who has direct instructional or counseling relationship
22 with pupils, spending the majority of his time in this ca-
23 pacity.

24 (2) "Principal" — The professional educator who as
25 agent of the board has responsibility for the supervision,
26 management and control of a school or schools within the
27 guidelines established by said board. The major area of
28 such responsibility shall be the general supervision of all
29 the schools and all school activities involving pupils, teach-
30 ers and other school personnel.

31 (3) "Supervisor" — The professional educator who,
32 whether by this or other appropriate title, is responsible for
33 working primarily in the field with professional and/or
34 other personnel in instructional and other school improve-
35 ment.

36 (4) "Central office administrator" — The superinten-
37 dent, associate superintendent, assistant superintendent and
38 other professional educators, whether by these or other
39 appropriate titles, who are charged with the administering
40 and supervising of the whole or some assigned part of the
41 total program of the county-wide school system.

42 (d) "Other professional employee" means that person
43 from another profession who is properly licensed and is
44 employed to serve the public schools and shall include a
45 registered professional nurse, licensed by the West Virgin-
46 ia board of examiners for registered professional nurses
47 and employed by a county board of education, who has
48 completed either a two-year (sixty-four semester hours) or
49 a three-year (ninety-six semester hours) nursing program.

50 (e) "Service personnel" means those who serve the
51 school or schools as a whole, in a nonprofessional capaci-
52 ty, including such areas as secretarial, custodial, mainte-
53 nance, transportation, school lunch and as aides.

54 (f) "Principals academy" or "academy" means the
55 academy created pursuant to section two-b, article three-a
56 of this chapter.

57 (g) "Center for professional development" means the
58 center created pursuant to section one, article three-a of
59 this chapter.

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PRO-
FESSIONAL DEVELOPMENT.**

§18A-3-2c. Training through the principals academy.

1 (a) *Principal training required.* — After the first day
2 of January, one thousand nine hundred ninety-seven, and
3 subject to the provisions of subsection (c) of this section,
4 every principal shall complete a training program through
5 the principals academy at least once every four years.

6 (b) *Admission to academy.* — The academy and the
7 persons attending such academy shall adhere to the fol-
8 lowing guidelines for admission to the academy:

9 (1) All persons assigned as a principal for the first
10 time in a West Virginia school after the first day of March,
11 one thousand nine hundred ninety-six, shall complete
12 training through the academy: *Provided*, That if training
13 through the academy is scheduled to begin within ninety
14 days from the date of assignment, such person may com-
15 plete the next scheduled training through the academy;

16 (2) All principals of schools which are designated by
17 the state board as being on probationary status or as being
18 seriously impaired, in accordance with section five, article
19 two-e, chapter eighteen of this code, shall complete the
20 next regularly scheduled training through the academy
21 following the date of such designation: *Provided*, That if
22 training through the academy is scheduled to begin within
23 thirty days from the date of such designation, such princi-

24 pal may complete the next scheduled training through the
25 academy;

26 (3) All principals who are subject to an improvement
27 plan, in accordance with section twelve, article two of this
28 chapter, shall complete the next regularly scheduled train-
29 ing through the academy: *Provided*, That if training
30 through the academy is scheduled to begin within thirty
31 days from the date the principal is first subject to the im-
32 provement plan, then such principal may complete the
33 next scheduled training through the academy;

34 (4) All principals who transfer to a school with a sig-
35 nificantly different grade configuration shall complete the
36 next regularly scheduled training through the academy:
37 *Provided*, That if training through the academy is sched-
38 uled to begin within ninety days from the date such prin-
39 cipal is transferred, then such principal may complete the
40 next scheduled training through the academy; and

41 (5) All persons serving as school principals who are
42 not described in subdivisions (1) through (4) of this sub-
43 section shall complete training through the academy at
44 least once every four years from and after the first day of
45 January, one thousand nine hundred ninety-seven.

46 (c) *Academy and attendance subject to funding.* —
47 The requirement that principals attend the academy shall
48 be subject to the availability of funds for the principals
49 academy from legislative appropriation or from other
50 sources. If such funds are insufficient to provide for the
51 total cost of admission to the academy for those required
52 to complete training, then the academy shall admit the
53 persons described in subdivisions (1) through (5), subsec-
54 tion (b) of this section according to the priority in which
55 the subdivisions appear in said subsection. If such funds
56 are insufficient to provide for the admission of all the
57 persons described in one or more of subdivisions (1)
58 through (5), subsection (b) of this section, the academy is
59 authorized to determine which persons described within
60 the said subdivision or subdivisions shall be admitted and
61 which shall not be admitted: *Provided*, That the principals
62 academy shall make every effort to ensure that all princi-
63 pals attend once every four years from and after the first

64 day of January, one thousand nine hundred ninety-seven:
65 *Provided, however,* That nothing in this section shall be
66 construed to require any specific level of funding by the
67 Legislature.

68 (d) *Principals standards advisory council.* — To assist
69 the state board in the performance of the duties described
70 in subsection (e) of this section, there is hereby created a
71 "Principals Standards Advisory Council", which shall con-
72 sist of nine persons, as follows: The executive director, or
73 designee, of the center for professional development, who
74 shall serve as the ex-officio chair; three principals, one
75 from an elementary school, one from a middle school or a
76 junior high school, and one from a high school, and one
77 county school superintendent, nominated by the state
78 board and appointed by the governor; two representatives
79 from higher education who teach in principal preparation
80 programs, nominated by the chancellor of the state univer-
81 sity system and appointed by the governor; and two citi-
82 zen representatives who are knowledgeable on issues ad-
83 dressed in this section, appointed by the governor. Of the
84 initial appointments, three of the members appointed shall
85 serve for a term of three years, three members shall serve
86 for a term of two years, and two members shall serve for a
87 term of one year. All successive appointments shall be for
88 a term of three years. Members of the council who are
89 public employees shall be granted release time from their
90 employment for attending meetings of the council. Mem-
91 bers may be reimbursed for reasonable and necessary
92 expenses actually incurred in the performance of their
93 official duties by the center for professional development.

94 (e) *Establishment of standards.* — On or before the
95 first day of October, one thousand nine hundred
96 ninety-six, the state board shall approve and promulgate
97 rules regarding the minimum qualities, proficiencies and
98 skills that will be required of principals after the first day
99 of January, one thousand nine hundred ninety-seven. The
100 state board shall promulgate such rules after consultation
101 with the principals standards advisory council created in
102 subsection (d) of this section. The rule developed by the
103 state board shall address at least the following:

104 (1) Staff relations, including, but not limited to, the
105 development and use of skills necessary to make a positive
106 use of faculty senates, to manage faculty and staff with
107 courtesy and mutual respect, coach and motivate employ-
108 ees and to build consensus as a means of management;

109 (2) School community leadership qualities, including,
110 but not limited to, the ability to organize and leverage
111 community initiative, communicate effectively, work ef-
112 fectively with local school improvement councils, manage
113 change, resolve conflict and reflect the highest personal
114 values;

115 (3) Educational proficiencies, including, but not limit-
116 ed to, knowledge of curriculum, instructional techniques,
117 student learning styles, student assessment criteria, school
118 personnel performance, evaluation skills and family issues;
119 and

120 (4) Administrative skills, including, but not limited to,
121 organizational, fiscal, public policy and total quality man-
122 agement skills and techniques.

123 (f) *Waivers*. — Any person desiring to be relieved of
124 the requirements of all or any part of this section may
125 apply in writing to the state board for a waiver. Upon a
126 showing of reasonable cause why relief should be granted,
127 the state board may grant a waiver, upon such terms and
128 conditions as the state board shall determine proper, as to
129 all or any part of this section.

130 (g) *Failure to comply*. — Any person who fails or
131 refuses to complete training through the academy, as re-
132 quired by the provisions of this section, and who fails to
133 obtain a waiver, as described in subsection (f) of this sec-
134 tion, shall be ineligible to be employed as, or serve in the
135 capacity of, a principal.

136 (h) *Tracking of requirement*. — On or before the first
137 day of January, one thousand nine hundred ninety-seven,
138 the state board shall establish a system to track the prog-
139 ress of each person required to complete training through
140 the academy and shall regularly advise such persons of
141 their progress.

142 (i) *Payment of reasonable and necessary expenses and*
143 *stipends.* — The center for professional development may
144 reimburse persons attending the academy for reasonable
145 and necessary expenses. Additionally, any person whose
146 attendance occurs outside his or her employment term, as
147 defined in section fifteen, article five, chapter eighteen of
148 this code, may be entitled to a stipend to be determined by
149 and paid by the center for professional development:
150 *Provided,* That nothing in this section shall be construed
151 to require any specific level of funding by the Legislature.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory council.

§18A-3A-2b. The principals academy.

§18A-3A-1. Center for professional development continued; intent; advisory council.

1 (a) Teaching is a profession that directly correlates to
2 the social and economic well-being of a society and its
3 citizens. Superior teaching is essential to a well educated
4 and productive populace. The intent of this article is to
5 recognize the value of professional involvement by expe-
6 rienced educators in building and maintaining a superior
7 teaching force and to establish avenues for applying such
8 involvement.

9 In furtherance of this intent, the center for profession-
10 al development is continued and reestablished. The gen-
11 eral mission of the center is to study matters relating to the
12 quality of teaching and management in the schools of
13 West Virginia and to promote the implementation of pro-
14 grams and practices to assure the highest quality in teach-
15 ing and management. The center shall also perform such
16 duties as are assigned to it by law.

17 The center shall consist of nine persons as members:
18 The secretary of education and the arts, ex officio; the
19 state superintendent of schools, ex officio; one member of
20 the state board of education, elected by the state board;
21 two experienced educators, of whom one shall be a work-
22 ing classroom teacher, appointed by the governor by and
23 with the advice and consent of the Senate; and four citi-

24 zens of the state who are knowledgeable in matters rele-
25 vant to the issues addressed by the center appointed by the
26 governor by and with the advice and consent of the Sen-
27 ate. No two appointees shall be residents within the same
28 region. The state superintendent of schools shall convene
29 the first meeting of the center to elect a chair, vice chair
30 and secretary.

31 The election and appointment of members shall be
32 made as soon as possible after the effective date of this
33 section. Of the initial appointed members, three shall be
34 appointed for two-year terms and four shall be appointed
35 for four-year terms. All successive appointments shall be
36 for four-year terms.

37 The center for professional development shall meet at
38 least quarterly and the appointed members shall be reim-
39 bursed for reasonable and necessary expenses actually
40 incurred in the performance of their official duties from
41 funds appropriated or otherwise made available for such
42 purposes upon submission of an itemized statement there-
43 for.

44 The center may employ and fix the compensation of
45 an executive director and such other persons as may be
46 necessary to carry out the mission and duties of the center.
47 When practical, personnel employed by state higher edu-
48 cation agencies and state, regional and county public edu-
49 cation agencies shall be made available to the center to
50 assist in the operation of projects of limited duration.

51 The center shall contract with existing agencies or
52 agencies created after the effective date of this section or
53 others to provide training programs in the most efficient
54 manner. Existing programs currently based in agencies of
55 the state shall be continued in the agency of their origin
56 unless the center establishes a compelling need to transfer
57 or cancel the existing program. The center shall recom-
58 mend to the governor the transfer of funds to the provid-
59 ing agency, if needed, to provide programs approved by
60 the center.

61 (b) To assist the center for professional development
62 in the performance of its duties related to teacher educa-

63 tion and professional development, there is continued an
64 advisory council on professional development which shall
65 consist of eleven persons as follows: An employee of the
66 center who shall chair the advisory council; two shall be
67 professors or associate or assistant professors of teacher
68 education, one from a public institution and one from a
69 private institution of higher education in this state offering
70 programs leading to certification to teach in the public
71 schools of this state; two county school superintendents,
72 one of whom shall be from a district with a student enroll-
73 ment above the statewide average and one of whom shall
74 be from a district with a student enrollment below such
75 average; two school principals, one of whom shall be from
76 a school including elementary grade levels and one of
77 whom shall be from a school including secondary grade
78 levels; and four professional instructional personnel, two
79 of whom shall be from a school including elementary
80 grade levels and two of whom shall be from a school in-
81 cluding secondary grade levels. To the extent possible,
82 the principals and instructional personnel shall be appoint-
83 ed from the members of county staff development coun-
84 cils. Except for the employee of the center, the members
85 shall be appointed jointly by the secretary of education
86 and the arts and the state superintendent for two-year
87 terms which overlap so that one member from each of the
88 classes shall be appointed in each successive year, except
89 that two members from the professional instructional per-
90 sonnel class shall be appointed in each successive year.
91 No two members of the council shall be from the same
92 college or university or school district. Members of the
93 council shall be granted release time from their employ-
94 ment for attending meetings of the council.

95 Pursuant to the provisions of article ten, chapter four
96 of this code, the center for professional development and
97 advisory council shall continue to exist until the first day
98 of July, two thousand one.

99 (c) On or before the first day of January, one thou-
100 sand nine hundred ninety-seven, the center for profession-
101 al development shall develop and communicate to the state
102 board a curriculum for the principals academy. The cur-
103 riculum shall be based upon the minimum qualities,

104 proficiencies and skills necessary for principals and rec-
105 ommended by the state board, pursuant to the terms of
106 section two-c, article three of this chapter.

107 (d) In accordance with section two-c, article three of
108 this chapter, the center shall be responsible for paying
109 reasonable and necessary expenses and any stipends for
110 persons attending the principals academy: *Provided*, That
111 nothing in this section shall be construed to require any
112 specific level of funding by the Legislature.

§18A-3A-2b. The principals academy.

1 There is hereby established within the center for pro-
2 fessional development the "Principals Academy". Training
3 through the principals academy shall include at least the
4 following:

5 (a) Training designed to build within principals the
6 minimum qualities, proficiencies and skills that will be
7 required of all principals pursuant to the rules of the state
8 board;

9 (b) Intensive summer training institutes; and

10 (c) Specialized training and professional development
11 programs for all principals, with special programs for the
12 following principals:

13 (1) Newly appointed principals;

14 (2) Principals of schools designated by the state board
15 as on probation or as seriously impaired;

16 (3) Principals subject to improvement plans; and

17 (4) Principals of schools with significantly different
18 grade level configurations.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

**§18B-1-1e. Public education and higher education collabora-
tion for the preparation of students for college
and other post-secondary education.**

1 (a) *Purpose.* — The purpose of this section is as fol-
2 lows:

3 (1) To assist students in the planning and preparation
4 for success in college and other post-secondary education
5 if their education major interests require such formal edu-
6 cation after high school;

7 (2) To establish the minimum expected level of
8 knowledge, skill and competency a student must possess to
9 be prepared fully for college and other post-secondary
10 education at state institutions of higher education;

11 (3) To implement a method for communicating the
12 minimum level of knowledge, skill and competency to
13 students, parents, educators and counselors in the public
14 schools, and admissions officers, advisors and faculty in
15 the higher education institutions; and

16 (4) To assure that the teacher preparation programs in
17 state institutions of higher education prepare educators to,
18 at a minimum, deliver instruction necessary to prepare
19 students fully for college and other post-secondary educa-
20 tion or gainful employment consistent with the provisions
21 of section eight, article two-e, chapter eighteen of this
22 code.

23 (b) *Joint rule.* — On or before the first day of Octo-
24 ber, one thousand nine hundred ninety-six, the higher
25 education governing boards shall promulgate a joint rule
26 to achieve the purposes of subsection (a) of this section. In
27 the development of such rule, the governing boards shall
28 consult with the state board and the jobs through educa-
29 tion employer panel, established pursuant to section eight,
30 article two-e, chapter eighteen of this code, and shall col-
31 laborate with the state board in the establishment of com-
32 patible practices within their separate systems.

33 (c) *Assessment of student readiness.* — To provide
34 continuous assessment and program improvement in the
35 preparation of high school students for success in college
36 or other post-secondary education, the higher education
37 governing boards shall communicate to the state board
38 and the legislative oversight commission on education

39 accountability by the first day of December in each year,
40 beginning in December, one thousand nine hundred
41 ninety-seven, or as soon thereafter as the establishment of
42 an electronic portfolio system permits, the number of
43 graduates from the public schools in the state by high
44 schools who were accepted in the last calendar year for
45 enrollment at each of the state institutions of higher edu-
46 cation within one year of graduation, whose electronic
47 portfolio indicated readiness for college or other
48 post-secondary education, and whose knowledge, skill and
49 competency were below the minimum expected levels for
50 full preparation as defined by the governing boards. The
51 governing boards also shall report the areas in which the
52 knowledge, skill and competency of the students were
53 below the minimum expected level. The state board shall
54 provide information to each of the high schools of the
55 state for graduates from the high school.

CHAPTER 113

**(Com. Sub. for H. B. 4065—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]**

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections six-a and thirteen-h; to amend and reenact section nineteen, article five of said chapter; to amend article nine-a of said chapter by adding thereto a new section, designated section twenty-one; to amend and reenact section one-a, article five, chapter eighteen-a of said code; and to further amend said article by adding thereto a new section, designated section one-b, all relating to definitions of "career clusters", "work-based learning", "school-age juveniles" and "stu-

dent with a disability"; the state board of education's rule-making authority for the accreditation, classification and standardization of the state's schools; the establishment of an electronic portfolio system; the sale of soft drinks in high schools and allocation of profits; the state board of education's policy-making authority for the approval of alternative education programs for disruptive students; the state board of education's and the department of health and human resources' responsibility for the provision of educational services for school-age juveniles who have been placed in residential facilities; the county boards of education's authority to expand school activities or to use school property for public meetings or other purposes; the state board of education's authority to distribute money to county boards of education to provide for alternative education programs; students' expulsion or suspension from the school or school bus, the notification procedures for certain pupil transfers; alternative procedures for expulsion hearings by county boards; and authority to employ hearing examiners.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections six-a and thirteen-h; that section nineteen, article five of said chapter be amended and reenacted; that article nine-a of said chapter be amended by adding thereto a new section, designated section twenty-one; that section one-a, article five, chapter eighteen-a of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-b, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

- 1. Definitions; Limitations of Chapter; Goals for Education.**
- 2. State Board of Education.**

5. County Board of Education.**9A. Public School Support.****ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;
GOALS FOR EDUCATION.*****§18-1-1. Definitions.**

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context
3 clearly indicates a different meaning, be construed as
4 follows:

5 (a) "School" means the pupils and teacher or teachers
6 assembled in one or more buildings, organized as a unit;

7 (b) "District" means county school district;

8 (c) "State board" means the West Virginia board of
9 education;

10 (d) "Board" means the county board of education;

11 (e) "State superintendent" means the state superinten-
12 dent of free schools;

13 (f) "Superintendent" means the county superintendent
14 of schools;

15 (g) "Teacher" means teacher, supervisor, principal,
16 superintendent, public school librarian; registered profes-
17 sional nurse, licensed by the West Virginia board of exam-
18 iners for registered professional nurses and employed by a
19 county board of education, who has a baccalaureate de-
20 gree; or any other person regularly employed for instruc-
21 tional purposes in a public school in this state;

22 (h) "Service personnel" means all nonteaching school
23 employees not included in the above definition of "teach-
24 er";

25 (i) "Regular full-time employee" means any person
26 employed by a county board of education who has a reg-
27 ular position or job throughout his employment term,
28 without regard to hours or method of pay;

29 (j) "Career clusters" means broad groupings of related
30 occupations;

***Clerk's Note:** This section was also amended by S. B. 300 (Chapter 112), which passed prior to this act.

31 (k) "Work-based learning" means a structured activity
32 that correlates with and is mutually supportive of the
33 school-based learning of the student and includes specific
34 objectives to be learned by the student as a result of the
35 activity;

36 (l) "School-age juveniles" means any individual who is
37 entitled to attend or who, if not placed in a residential
38 facility, would be entitled to attend public schools, in ac-
39 cordance with: (1) Section five, article two of this chapter;
40 (2) sections fifteen and eighteen, article five of this chap-
41 ter; or (3) section one, article twenty of this chapter; and

42 (m) "Student with a disability" means an exceptional
43 child, other than gifted, pursuant to section one, article
44 twenty of this chapter.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; establishment of alternative education programs.

§18-2-6a. Sale of soft drinks.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

*§18-2-6. Classification and standardization of schools; standards for degrees and diploma; establishment of alternative education programs.

1 The state board shall make rules for the accreditation,
2 classification and standardization of all schools in the state,
3 except institutions of higher education, and shall deter-
4 mine the minimum standards for the granting of diplomas
5 and certificates of proficiency by those schools. Not later
6 than the school year one thousand nine hundred ninety—
7 ninety-one, certificates of proficiency including specific
8 information regarding the graduate's skills, competence
9 and readiness for employment or honors and advanced
10 education shall be granted, along with the diploma, to
11 every eligible high school graduate.

12 No institution of less than collegiate or university
13 status may grant any diploma or certificate of proficiency
14 on any basis of work or merit below the minimum stan-

Clerk's Note: This section was also amended by S. B. 300 (Chapter 112), which passed prior to this act.

15 dards prescribed by the state board.

16 No charter or other instrument containing the right to
17 issue diplomas or certificates of proficiency shall be grant-
18 ed by the state of West Virginia to any institution or other
19 associations or organizations of less than collegiate or
20 university status within the state until the condition of
21 granting or issuing such diplomas or other certificates of
22 proficiency has first been approved in writing by the state
23 board.

24 Notwithstanding any other provisions of this section
25 to the contrary, the requirement for granting certificates of
26 proficiency shall be replaced by the requirement that
27 information be provided on an electronic portfolio system
28 established by the state board pursuant to section eight,
29 article two-e of this chapter and issued to every high
30 school graduate by the appropriate county board: *Provid-*
31 *ed*, That the requirements for granting certificates of pro-
32 ficiency shall be continued until such time as the electron-
33 ic portfolio system has been made available to the county
34 boards.

35 The state board also may establish policies and proce-
36 dures for the approval of alternative education programs
37 for disruptive students who are at risk of not succeeding in
38 the traditional school structure. These policies and proce-
39 dures may provide for the waiver of other policies of the
40 state board, the establishment and delivery of a nontradi-
41 tional curriculum, establishment of licensure requirements
42 for alternative education program teachers, and the estab-
43 lishment of performance measures for school accredita-
44 tion.

§18-2-6a. Sale of soft drinks.

1 In order to generate funding for necessary programs
2 and supplies, county boards may permit the sale of soft
3 drinks in county high schools except during breakfast and
4 lunch periods. The sale of such soft drinks shall be in
5 compliance with the rules of the national school lunch
6 program and the school breakfast program of the state
7 board and the nutrition service of the United States depart-
8 ment of agriculture, which became effective on the seven-
9 teenth day of June, one thousand nine hundred eighty-

10 five: *Provided*, That, if under such rules, the sale of soft
11 drinks shall become prohibited, such rules shall not pro-
12 hibit the sale of soft drinks in high schools in the state of
13 West Virginia. Seventy-five percent of the profits from
14 the sale of soft drinks shall be allocated by a majority vote
15 of the faculty senate of each school and twenty-five per-
16 cent of the profits from the sale of soft drinks shall be
17 allocated to the purchase of necessary supplies by the
18 principal of the school.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

1 (a) The state board of education and the department
2 of health and human resources are authorized to provide
3 for adequate and appropriate education opportunities for
4 school-age juveniles placed in the following residential
5 facilities as a result of proceedings commenced under the
6 provisions of chapters twenty-seven and forty-nine of this
7 code: Davis-Stuart, Inc., located in Lewisburg, West Vir-
8 ginia; the Elkins Mountain School, located in Elkins, West
9 Virginia; the Abraxas Foundation of West Virginia, locat-
10 ed in Waverly, West Virginia; and the Barboursville
11 School, located in Barboursville, West Virginia.

12 (b) Subject to appropriations by the Legislature, the
13 state board shall have the following authority: (1) To pro-
14 vide education programs and services for school-age juve-
15 niles on the grounds of residential facilities, pursuant to
16 agreements with the department of health and human
17 resources and the licensed child-care agencies of such
18 department; (2) to hire classroom teachers and other
19 school personnel necessary to provide adequate and ap-
20 propriate education opportunities to these juveniles; and
21 (3) to provide education services for school-age juveniles
22 in residential facilities on a twelve-month basis.

23 (c) The department of health and human resources
24 shall cooperate with the state board and the state superin-
25 tendent in the establishment and maintenance of education
26 programs authorized under this section. Subject to appro-
27 priations by the Legislature, the department of health and
28 human resources shall provide, or cause to be provided,

29 adequate space and facilities for such education programs.
 30 The state board shall not be required to construct, improve
 31 or maintain any building, other improvement to real estate
 32 or fixtures attached thereto at any residential facility for
 33 the purpose of establishing and maintaining an education
 34 program.

35 (d) The state board of education and the department
 36 of health and human resources are authorized to enter into
 37 agreements to provide adequate and appropriate education
 38 opportunities for school-age juveniles who are placed in
 39 residential facilities other than the facilities identified in
 40 this section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

**§18-5-19. Night schools and other school extension activities;
 use of school property for public meetings, etc.**

1 County boards shall have authority to establish and
 2 maintain evening classes or night schools, continuation or
 3 part-time day schools, alternative schools, and vocational
 4 schools, wherever practicable to do so, and shall admit
 5 thereto adult persons and all other persons, including
 6 persons of foreign birth. County boards may admit
 7 school-age children and youth to these classes or schools
 8 under the circumstances prescribed by a state board of
 9 education policy governing alternative education pro-
 10 grams. County boards shall have authority to use school
 11 funds for the financial support of such schools and to use
 12 the schoolhouses and their equipment for such purposes.
 13 Any such classes of schools shall be conducted in accor-
 14 dance with the rules of the state board.

15 County boards shall have authority to provide for the
 16 free, comfortable and convenient use of any school prop-
 17 erty to promote and facilitate frequent meetings and asso-
 18 ciations of the people for discussion, study, recreation and
 19 other community activities, and may secure, assemble and
 20 house material for use in the study of farm, home and
 21 community problems, and may provide facilities for the
 22 dissemination of information useful on the farm, in the
 23 home or in the community.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-21. Funding for alternative education programs.

1 For the fiscal year beginning the first day of July, one
2 thousand nine hundred ninety-six, an appropriation may
3 be made to the state department to be distributed to coun-
4 ty boards for the operation of alternative education pro-
5 grams established in accordance with policies and proce-
6 dures adopted by the state board under section six, article
7 two of this chapter: *Provided*, That nothing in this section
8 shall be construed to require any specific level of funding
9 by the Legislature: *Provided, however*, That ninety percent
10 of any appropriation which may be made for the purposes
11 set forth in this section shall be distributed to county
12 boards on the basis of net enrollment and ten percent of
13 this appropriation shall be distributed on a competitive
14 basis to county boards for the operation of pilot or inno-
15 vative alternative education programs. Each county board
16 shall apply to the state superintendent for receipt of its
17 share of the distribution in the manner set forth by the
18 state superintendent which is consistent with the policies
19 and procedures adopted by the state board for the estab-
20 lishment and maintenance of alternative education pro-
21 grams.

CHAPTER 18A. SCHOOL PERSONNEL.**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.

§18A-5-1b. Alternative procedures for expulsion hearings by county boards.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.

1 (a) A principal shall suspend a pupil from school or
2 from transportation to or from the school on any school
3 bus if the pupil, in the determination of the principal, after
4 an informal hearing pursuant to subsection (d) of this
5 section, has: (i) Violated the provisions of subsection (b),
6 section fifteen, article two, chapter sixty-one of this code;
7 (ii) violated the provisions of subsection (b), section
8 eleven-a, article seven, chapter sixty-one of this code; or
9 (iii) sold a narcotic drug, as defined in section one hun-
10 dred one, article one, chapter sixty-a of this code, on the
11 premises of an educational facility, at a school-sponsored
12 function or on a school bus. If a student has been sus-
13 pended pursuant to this subsection, the principal shall,
14 within twenty-four hours, request that the county superin-
15 tendent recommend to the county board that the student
16 be expelled. Upon such a request by a principal, the coun-
17 ty superintendent shall recommend to the county board
18 that the student be expelled. Upon such recommendation,
19 the county board shall conduct a hearing in accordance
20 with subsections (e) and (f) of this section to determine if
21 the student committed the alleged violation. If the county
22 board of education finds that the student did commit the
23 alleged violation, the county board of education shall
24 expel the student.

25 (b) A principal shall suspend a pupil from school, or
26 from transportation to or from the school on any school
27 bus, if the pupil, in the determination of the principal after
28 an informal hearing pursuant to subsection (d) of this
29 section, has: (i) Committed an act or engaged in conduct
30 that would constitute a felony under the laws of this state if
31 committed by an adult; or (ii) unlawfully possessed on the
32 premises of an educational facility or at a school-spon-
33 sored function a controlled substance governed by the
34 Uniform Controlled Substances Act as described in chap-
35 ter sixty-a of this code. If a student has been suspended
36 pursuant to this subsection, the principal may request that
37 the superintendent recommend to the county board that
38 the student be expelled. Upon such recommendation by
39 the county superintendent, the county board may hold a
40 hearing in accordance with the provisions of subsections
41 (e) and (f) of this section to determine if the student com-

42 mitted the alleged violation. If the county board finds that
43 the student did commit the alleged violation, the county
44 board may expel the student.

45 (c) A principal may suspend a pupil from school, or
46 transportation to or from the school on any school bus, if
47 the pupil, in the determination of the principal after an
48 informal hearing pursuant to subsection (d) of this sec-
49 tion: (i) Threatened to injure, or in any manner injured, a
50 pupil, teacher, administrator or other school personnel; (ii)
51 willfully disobeyed a teacher; (iii) possessed alcohol in an
52 educational facility, on school grounds, a school bus or at
53 any school-sponsored function; (iv) used profane lan-
54 guage directed at a school employee or pupil; (v) inten-
55 tionally defaced any school property; (vi) participated in
56 any physical altercation with another person while under
57 the authority of school personnel; or (vii) habitually vio-
58 lated school rules or policies. If a student has been sus-
59 pended pursuant to this subsection, the principal may
60 request that the superintendent recommend to the county
61 board that the student be expelled. Upon such recommen-
62 dation by the county superintendent, the county board
63 may hold a hearing in accordance with the provisions of
64 subsections (e) and (f) of this section to determine if the
65 student committed the alleged violation. If the county
66 board finds that the student did commit the alleged viola-
67 tion, the county board may expel the student.

68 (d) The actions of any pupil which may be grounds
69 for his or her suspension or expulsion under the provi-
70 sions of this section shall be reported immediately to the
71 principal of the school in which the pupil is enrolled. If
72 the principal determines that the alleged actions of the
73 pupil would be grounds for suspension, he or she shall
74 conduct an informal hearing for the pupil immediately
75 after the alleged actions have occurred. The hearing shall
76 be held before the pupil is suspended unless the principal
77 believes that the continued presence of the pupil in the
78 school poses a continuing danger to persons or property
79 or an ongoing threat of disrupting the academic process,
80 in which case the pupil shall be suspended immediately
81 and a hearing held as soon as practicable after the suspen-
82 sion.

83 The pupil and his or her parent(s), guardian(s) or
84 custodian(s), as the case may be, shall be given telephonic
85 notice, if possible, of this informal hearing, which notice
86 shall briefly state the grounds for suspension.

87 At the commencement of the informal hearing, the
88 principal shall inquire of the pupil as to whether he or she
89 admits or denies the charges. If the pupil does not admit
90 the charges, he or she shall be given an explanation of the
91 evidence possessed by the principal and an opportunity to
92 present his or her version of the occurrence. At the con-
93 clusion of the hearing or upon the failure of the noticed
94 student to appear, the principal may suspend the pupil for
95 a maximum of ten school days, including the time prior to
96 the hearing, if any, for which the pupil has been excluded
97 from school.

98 The principal shall report any suspension the same
99 day it has been decided upon, in writing, to the parent(s),
100 guardian(s) or custodian(s) of the pupil by certified mail,
101 return receipt requested: *Provided*, That certified mail is
102 not required if one or both of the parents, guardians, or
103 custodians of the pupil are present at the time the suspen-
104 sion is decided upon, or if any one of them acknowledges
105 receipt of the report by signing and dating a copy of the
106 report. The suspension also shall be reported to the coun-
107 ty superintendent and to the faculty senate of the school at
108 the next meeting after the suspension.

109 (e) Prior to a hearing before the county board, the
110 county board shall cause a written notice, which states the
111 charges and the recommended disposition, to be served
112 upon the pupil and his or her parent(s), guardian(s) or
113 custodian(s), as the case may be. Such notice shall set
114 forth a date and time at which such hearing shall be held,
115 which date shall be within the ten-day period of suspen-
116 sion imposed by the principal.

117 (f) The county board shall hold the scheduled hear-
118 ing to determine if the pupil should be reinstated or
119 should, or under the provisions of this section, must be
120 expelled from school. At this hearing the pupil may be
121 represented by counsel, may call his or her own witnesses
122 to verify his or her version of the incident and may con-

123 front and cross-examine witnesses supporting the charge
124 against him or her. The hearing shall be recorded by me-
125 chanical means, unless recorded by a certified court re-
126 porter. The hearing may be postponed for good cause
127 shown by the pupil but he or she shall remain under sus-
128 pension until after the hearing. The state board may adopt
129 other supplementary rules of procedure to be followed in
130 these hearings. At the conclusion of the hearing the coun-
131 ty board either shall order the pupil reinstated immedi-
132 ately or at the end of his or her initial suspension or shall
133 suspend the pupil for a further designated number of days
134 or shall expel the pupil from the public schools of such
135 county.

136 (g) Pupils may be expelled pursuant to the provisions
137 of this section for a period not to exceed one school year,
138 except that if a pupil is determined to have violated the
139 provisions of subsection (a) of this section the pupil shall
140 be expelled for a period of not less than twelve consecu-
141 tive months: *Provided*, That the county superintendent
142 may lessen the mandatory period of twelve consecutive
143 months for the expulsion of the pupil if the circumstances
144 of the pupil's case demonstrably warrant. Upon the reduc-
145 tion of the period of expulsion, the county superintendent
146 shall prepare a written statement setting forth the circum-
147 stances of the pupil's case which warrant the reduction of
148 the period of expulsion. The county superintendent shall
149 submit the statement to the county board, the principal, the
150 faculty senate and the local school improvement council
151 for the school from which the pupil was expelled.

152 (h) Notwithstanding the preceding provisions of this
153 section, if a pupil has been classified as a student with a
154 disability, prior to performing the actions giving rise to
155 this section, special consideration shall be given to such
156 pupil as hereinafter provided:

157 (1) Regardless of whether or not the misconduct is the
158 proximate result of the disability of a student, a student
159 with a disability may be suspended immediately for up to
160 ten consecutive days for each occurrence of misconduct
161 or when it is necessary for the protection of the student,
162 the protection of school personnel, or the protection of

163 other students;

164 (2) If the misconduct is found to be the proximate
165 result of the disability of the student, then, subject to the
166 provisions of subsection (3) of this section, the student
167 may not be suspended or expelled for more than ten con-
168 secutive days for each occurrence of misconduct or for
169 each occurrence when it is necessary for the protection of
170 the student, the protection of school personnel, or the
171 protection of other students;

172 (3) A student with a disability who has committed a
173 violation involving the possession of a firearm, as defined
174 in section two, article seven, chapter sixty-one of this code,
175 on the school premises or at a school-sponsored function
176 may be placed in an alternative educational setting by the
177 individualized education program committee, as described
178 in section one, article twenty, chapter eighteen of this code,
179 for a period of not more than forty-five calendar days.
180 During this time, if a parent, guardian, or custodian re-
181 quests a due process hearing to contest placement of the
182 student, the student shall remain in the alternative educa-
183 tion setting during the pendency of any proceeding, un-
184 less the parents and the county board agree otherwise. At
185 the conclusion of the proceeding, if it is determined that
186 the student with a disability committed a violation involv-
187 ing the possession of a firearm and the violation is not the
188 proximate result of the disability of the student, the stu-
189 dent with a disability shall be expelled from school for the
190 period set forth in the applicable provisions of this section:
191 *Provided*, That special education and related services must
192 be provided during this additional period of expulsion;

193 (4) If the behavior giving rise to the violation or activ-
194 ity is not the proximate result of the disability of the stu-
195 dent, a student with a disability who has committed a viola-
196 tion involving the possession of a deadly weapon, as de-
197 fined in section two, article seven, chapter sixty-one of this
198 code, other than a firearm, or who has committed a viola-
199 tion or has engaged in any other activity for which sus-
200 pension or expulsion is a punishment under the provisions
201 of this article, shall be suspended or expelled from school
202 in the manner described in this section. In addition, special

203 education and related services must be provided during
204 the period of a suspension or expulsion exceeding ten
205 days; and

206 (5) If the student with a disability has been suspended,
207 and it is determined that the misconduct is the proximate
208 result of the disability of the student, it is recommended
209 that school officials determine whether the student is re-
210 ceiving appropriate instructional and related services in the
211 current placement. In addition, the violations may be ad-
212 dressed through strategies, including, but not limited to,
213 the following: (i) Conflict management and behavior man-
214 agement strategies which are not inconsistent with the
215 individualized education program of the student; (ii) stu-
216 dent and teacher training initiatives which are not inconsis-
217 tent with the individualized education program of the
218 student; (iii) an initiation by professional educators, at any
219 time, of a change in the placement of the student through
220 an individualized education program meeting to be held
221 within twenty-one days, subject to the applicable proced-
222 ural safeguards; and (iv) an initiation of a court order to
223 remove the student from school, if there is belief that
224 maintaining the student in the current educational place-
225 ment is substantially likely to cause injury to the student
226 or others.

227 (i) In all hearings under this section, facts shall be
228 found by a preponderance of the evidence.

229 (j) For purposes of this section, nothing herein shall
230 be construed to be in conflict with the federal provisions
231 of the Individuals with Disabilities Education Act of 1990
232 (PL 101-476).

233 (k) If a pupil transfers to another school in West Vir-
234 ginia, the principal of the school from which the pupil
235 transfers shall provide a written record of any disciplinary
236 action taken against the pupil to the principal of the
237 school to which the pupil transfers.

238 (l) Principals may exercise any other authority and
239 perform any other duties to discipline pupils consistent
240 with state and federal law, including policies of the state
241 board of education.

§18A-5-1b. Alternative procedures for expulsion hearings by county boards.

1 The county boards may employ a hearing examiner
2 to conduct the expulsion hearings required by this article.
3 The hearing examiner shall be an attorney, duly licensed
4 to practice law in the state of West Virginia and shall not
5 be employed by the state or county boards for any other
6 reason.

7 The hearing examiner shall conduct hearings in com-
8 pliance with the guidelines of section one-a of this article.
9 All hearings shall be recorded by mechanical means, un-
10 less recorded by a certified court reporter. The hearing
11 examiner shall issue a decision and written findings of fact
12 and conclusions of law within five days of the conclusion
13 of the hearing. Hearings by a hearing examiner shall have
14 the same force and effect as a decision made by a county
15 board. Upon the written request of a parent, guardian, or
16 custodian of the student, or the county superintendent, the
17 county board shall review the decision of the hearing
18 examiner. Within ten calendar days from the date of the
19 request of the review, the county board shall enter an or-
20 der affirming, reversing, or modifying the decision of the
21 hearing examiner. A county board may, in its own discre-
22 tion, hold a hearing to determine any issues in question.

23 The authority of the county superintendent shall be
24 the same as contained in section one-a of this article.

CHAPTER 114

(Com. Sub. for S. B. 104—By Senators Miller, Wagner, Bowman, Bailey, Boley,
Buckalew, Kimble, Minear, Plymale, Deem, Schoonover, Blatnik and Love)

[Passed February 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact sections two and four of said article, all relating to eliminating the statewide testing of educational

progress program (WV-STEP); creating a new section requiring the state board of education to recommend an assessment program and report to the legislative oversight commission on education accountability; creating an advisory council for the purpose of consulting with the state board and state superintendent regarding the recommendation of the assessment program; providing an option for teachers to administer the WV-STEP test in the 1995-96 school year; and renaming section two of said article to retain the requirement of the national assessment of educational progress program testing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1a. Recommendation of assessment program; advisory council established.

§18-2E-2. National assessment of educational progress program testing.

§18-2E-4. Better schools accountability; school, school district and state-wide school report cards.

§18-2E-1a. Recommendation of assessment program; advisory council established.

1 (a) In order to further the purposes of this article, the
2 state board shall recommend to the legislative oversight
3 commission on education accountability an assessment
4 program for the measurement of the educational progress
5 of public school students in attaining a high quality edu-
6 cation. A model of such program shall be presented to
7 the legislative oversight commission on education ac-
8 countability on or before the first day of November, one
9 thousand nine hundred ninety-six.

10 (b) An advisory council is hereby established for the
11 purpose of consulting with and advising the state superin-
12 tendent of schools and the state board of education re-
13 garding the establishment of the assessment program men-
14 tioned in subsection (a) of this section. Members of the

15 council shall be appointed by the state superintendent and
 16 shall include the following: Two county superintendents,
 17 two school principals, three classroom teachers, and two
 18 members of the public at large who are also members of
 19 local school improvement councils. Upon recommenda-
 20 tion of the assessment program to the legislative oversight
 21 commission on education accountability by the state
 22 board, the advisory council shall be terminated.

23 (c) Nothing in this section shall be construed to pre-
 24 vent any teacher from administering the statewide testing
 25 of educational progress program (WV-STEP) during the
 26 school year of one thousand nine hundred ninety-five
 27 —ninety-six: *Provided*, That the cost of duplicating the
 28 test and all other related expenses shall be borne by the
 29 state board of education.

**§18-2E-2. National assessment of educational progress pro-
 gram testing.**

1 Beginning in the school year one thousand nine hun-
 2 dred ninety—ninety-one, and continuing thereafter, na-
 3 tional assessment of educational progress program tests
 4 shall be administered in academic areas at the various
 5 grades designated by the national assessment of educa-
 6 tional progress officials to provide comparisons of West
 7 Virginia students to a national sample.

***§18-2E-4. Better schools accountability; school, school dis-
 trict and statewide school report cards.**

1 (a) For the purpose of providing information to the
 2 parents of public school children and the general public
 3 on the quality of education in the public schools which is
 4 uniform and comparable between schools within and
 5 among the various school districts, the state board shall
 6 prepare forms for school, school district and statewide
 7 school report cards and shall promulgate rules concerning
 8 the collection and reporting of data and the preparation,
 9 printing and distribution of report cards under this sec-
 10 tion. The forms shall provide for brief, concise reporting
 11 in nontechnical language of required information. Any
 12 technical or explanatory material a county board wishes to
 13 include shall be contained in a separate appendix available
 14 to the general public upon request.

*Clerk's Note: This section was also amended by S. B. 300 (Chapter 112), which passed subsequent to this act.

15 (b) The school report cards shall include:

16 (1) The following indicators of student performance at
17 the school in comparison with the county, state, regional
18 and national student performance, as applicable: School
19 attendance rates; the percent of students not promoted to
20 next grade; the graduation rate; and student mobility
21 (turnover shown as a percent of transfers out and a percent
22 of transfers in); and

23 (2) The following indicators of school performance in
24 comparison with the aggregate of all other schools in the
25 county and the state, as applicable: Average class size;
26 percent of enrollments in courses in high school mathe-
27 matics, science, English and social science; amount of time
28 per day devoted to mathematics, science, English and
29 social science at middle, junior high and high school
30 grade levels; percent of enrollments in college preparato-
31 ry, general education and vocational education programs;
32 pupil-teacher ratio; number of exceptions to pupil-teacher
33 ratio requested by the county board and the number of
34 exceptions granted; the number of split-grade classrooms;
35 pupil-administrator ratio; operating expenditure per pupil;
36 county expenditure by fund in graphic display; and the
37 average degree classification and years of experience of
38 the administrators and teachers at the school;

39 (3) Every county board of education shall annually
40 determine the number of administrators, classroom teach-
41 ers and service personnel employed that exceeds the num-
42 ber allowed by the public school support plan and deter-
43 mine the amount of salary supplements that would be
44 available per state authorized employee if all expenditures
45 for the excess employees were converted to annual salaries
46 for state authorized administrators, classroom teachers and
47 service personnel within their county. The information
48 shall be published annually in each school report card of
49 each such county.

50 (c) The school district report card shall include the
51 data for each school for each separately listed applicable
52 indicator and the aggregate of the data for all schools, as
53 applicable, in the county for each indicator. The statewide
54 school report card shall include the data for each county

55 for each separately listed indicator and the aggregate for
56 all counties for each indicator.

57 (d) The report cards shall be prepared using actual
58 local school, county, state, regional and national data indi-
59 cating the present performance of the school and shall
60 also include the state norms and the upcoming year's tar-
61 gets for the school and the county board.

62 The state board shall provide technical assistance to
63 each county board in preparing the school and school
64 district report cards.

65 Each school district board shall prepare report cards in
66 accordance with the guidelines set forth in this section.
67 The school district report cards shall be presented at a
68 regular school board meeting subject to applicable notice
69 requirements and shall be made available to a newspaper
70 of general circulation serving the district. The school
71 report cards shall be mailed directly to the parent or par-
72 ents of any child enrolled in that school. In addition, each
73 county board shall submit the completed report cards to
74 the state board which shall make copies available to any
75 person requesting them.

76 The report cards shall be completed and disseminated
77 prior to the first day of January, one thousand nine hun-
78 dred eighty-nine, and in each year thereafter, and shall be
79 based upon information for the current school year, or for
80 the most recent school year for which the information is
81 available, in which case the year shall be clearly footnoted.

82 (e) In addition to the requirements of subsection (c) of
83 this section, the school district report card shall list: (1)
84 The names of the members of the district school board,
85 the dates upon which their terms expire and whether they
86 have attended an orientation program for new members
87 approved by the state board and conducted by the West
88 Virginia school board association or other approved orga-
89 nizations, and other school board member training pro-
90 grams; and (2) the names of the district school superinten-
91 dent and every assistant and associate superintendent and
92 any training programs related to their area of school ad-
93 ministration which they have attended. The information

94 shall also be reported by district in the statewide school
95 report card.

96 (f) The state board shall develop and implement a
97 separate report card for nontraditional public schools
98 pursuant to the appropriate provisions of this section to
99 the extent practicable.

CHAPTER 115

(H. B. 4663—By Delegates Kiss, Browning, Compton,
Doyle, Mezzatesta, Border and Miller)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code West Virginia, one thousand nine hundred thirty-one, as amended; to amend article nine-a of said chapter by adding thereto a new section, designated section fourteen; to amend and reenact sections three, six and fifteen, article nine-d of said chapter; to further amend said article by adding thereto a new section, designated section four-a, all relating to the authority of county boards of education generally; allowance for county transfers; powers of the school building authority; savings from issuance of refunding bonds; school building capital improvements fund in the state treasury; school construction fund in state treasury; school building debt service fund in the state treasury; school improvement fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis; and distribution of money by the school building authority.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; that article nine-a of said chapter be amended by adding thereto a new section, designated section fourteen; that sections three, six and fifteen, article nine-d of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

Article

5. County Board of Education.

9A. Public School Support.

9D. School Building Authority.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules of the state board, has authority:

3 (1) To control and manage all of the schools and
4 school interests for all school activities and upon all school
5 property, whether owned or leased by the county, includ-
6 ing the authority to require that records be kept of all
7 receipts and disbursements of all funds collected or re-
8 ceived by any principal, teacher, student or other person in
9 connection with the schools and school interests, any pro-
10 grams, activities or other endeavors of any nature operated
11 or carried on by or in the name of the school, or any or-
12 ganization or body directly connected with the school, to
13 audit the records and to conserve the funds, which shall be
14 considered quasi-public moneys, including securing sure-
15 ty bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish
18 schools and programs, or both, for post high school in-
19 struction, subject to approval of the state board of educa-
20 tion;

21 (3) To close any school which is unnecessary and to
22 assign the pupils of the school to other schools: *Provided,*
23 That the closing shall be officially acted upon and teach-
24 ers and service personnel involved notified on or before
25 the first Monday in April, in the same manner as provided
26 in section four of this article, except in an emergency,

27 subject to the approval of the state superintendent, or un-
28 der subdivision (5) of this section;

29 (4) To consolidate schools;

30 (5) To close any elementary school whose average
31 daily attendance falls below twenty pupils for two months
32 in succession and send the pupils to other schools in the
33 district or to schools in adjoining districts. If the teachers
34 in the closed school are not transferred or reassigned to
35 other schools, they shall receive one month's salary;

36 (6) (a) To provide at public expense adequate means
37 of transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road;
40 to provide at public expense and according to such rules
41 as the board may establish, adequate means of transporta-
42 tion for school children participating in board-approved
43 curricular and extracurricular activities; and to provide in
44 addition thereto at public expense, by rules and within the
45 available revenues, transportation for those within two
46 miles distance; to provide in addition thereto, at no cost to
47 the board and according to rules established by the board,
48 transportation for participants in projects operated, fi-
49 nanced, sponsored or approved by the commission on
50 aging: *Provided*, That all costs and expenses incident in
51 any way to transportation for projects connected with the
52 commission on aging shall be borne by the commission,
53 or the local or county chapter of the commission: *Pro-*
54 *vided, however*, That in all cases the school buses owned
55 by the board of education shall be driven or operated only
56 by drivers regularly employed by the board of education:
57 *Provided further*, That the county board may provide,
58 under rules established by the state board, for the certifica-
59 tion of professional employees as drivers of board-owned
60 vehicles with a seating capacity of less than ten passengers
61 used for the transportation of pupils for school-sponsored
62 activities other than transporting students between school
63 and home: *And provided further*, That the use of the
64 vehicles shall be limited to one for each school-sponsored
65 activity: *And provided further*, That buses shall be used for
66 extracurricular activities as provided in this section only

67 when the insurance provided for by this section is in ef-
68 fect;

69 (b) To enter into agreements with one another to pro-
70 vide, on a cooperative basis, adequate means of transporta-
71 tion across county lines for children of school age subject
72 to the conditions and restrictions of subdivisions (6) and
73 (8) of this section;

74 (7) (a) To lease school buses operated only by drivers
75 regularly employed by the board to public and private
76 nonprofit organizations or private corporations to trans-
77 port school-age children to and from camps or education-
78 al activities in accordance with rules established by the
79 board. All costs and expenses incurred by or incidental to
80 the transportation of the children shall be borne by the
81 lessee;

82 (b) To contract with any college or university or offi-
83 cially recognized campus organizations to provide trans-
84 portation for college or university students, faculty or staff
85 to and from the college or university: *Provided*, That only
86 college and/or university students, faculty and staff are
87 being transported. The contract shall include consider-
88 ation and compensation for bus operators, repairs and
89 other costs of service, insurance and any rules concerning
90 student behavior;

91 (8) To provide at public expense for insurance against
92 the negligence of the drivers of school buses, trucks or
93 other vehicles operated by the board; and if the transpor-
94 tation of pupils is contracted, then the contract for the
95 transportation shall provide that the contractor shall carry
96 insurance against negligence in an amount specified by
97 the board;

98 (9) To provide solely from county funds for all regu-
99 lar full-time employees of the board all or any part of the
100 cost of a group plan or plans of insurance coverage not
101 provided or available under the West Virginia public em-
102 ployees insurance act;

103 (10) To employ teacher aides, to provide in-service
104 training for teacher aides, the training to be in accordance

105 with rules of the state board and, in the case of service
106 personnel assuming duties as teacher aides in exceptional
107 children programs, to provide a four-clock-hour program
108 of training prior to the assignment which shall, in accor-
109 dance with rules of the state board, consist of training in
110 areas specifically related to the education of exceptional
111 children;

112 (11) To establish and conduct a self-supporting dor-
113 mitory for the accommodation of the pupils attending a
114 high school or participating in a post high school program
115 and of persons employed to teach in the high school or
116 post high school program;

117 (12) To employ legal counsel;

118 (13) To provide appropriate uniforms for school ser-
119 vice personnel;

120 (14) To provide at public expense and under rules as
121 established by any county board of education for the
122 payment of traveling expenses incurred by any person
123 invited to appear to be interviewed concerning possible
124 employment by the county board of education;

125 (15) To allow or disallow their designated employees
126 to use publicly provided carriage to travel from their resi-
127 dences to their workplace and return: *Provided*, That the
128 usage is subject to the supervision of the board and is
129 directly connected with and required by the nature and in
130 the performance of the employee's duties and responsibili-
131 ties;

132 (16) To provide, at public expense, adequate public
133 liability insurance, including professional liability insur-
134 ance for board employees;

135 (17) To enter into agreements with one another to
136 provide, on a cooperative basis, improvements to the in-
137 structional needs of each county. The cooperative agree-
138 ments may be used to employ specialists in a field of aca-
139 demic study or support functions or services, for the aca-
140 demic study. The agreements are subject to approval by
141 the state board of education;

142 (18) To provide information about vocational or high-
143 er education opportunities to students with handicapping
144 conditions. The board shall provide in writing to the stu-
145 dents and their parents or guardians information relating
146 to programs of vocational education and to programs
147 available at state funded institutions of higher education.
148 The information may include sources of available fund-
149 ing, including grants, mentorships and loans for students
150 who wish to attend classes at institutions of higher educa-
151 tion; and

152 (19) To enter into agreements with one another, with
153 the approval of the state board, for the transfer and receipt
154 of any and all funds determined to be fair when students
155 are permitted or required to attend school in a county
156 other than the county of their residence.

157 "Quasi-public funds" as used in this section means any
158 money received by any principal, teacher, student or other
159 person for the benefit of the school system as a result of
160 curricular or noncurricular activities.

161 The board of each county shall expend under rules it
162 establishes for each child an amount not to exceed the
163 proportion of all school funds of the district that each
164 child would be entitled to receive if all the funds were
165 distributed equally among all the children of school age in
166 the district upon a per capita basis.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-14. Allowance for county transfers.

1 In order to encourage county boards to utilize fully
2 their facilities and to provide county boards with fiscal
3 flexibility, county boards that agree to transfer students to
4 another county pursuant to an agreement approved by the
5 state board after the effective date of this article, pursuant
6 to subsection (19), section thirteen, article five, chapter
7 eighteen of this code, shall forward in the year in which
8 the transfers occur to the receiving county the amount
9 agreed upon in the agreement, not to exceed the per pupil
10 allocation in the state aid formula. Subject to appropri-
11 ations by the Legislature, funds equal to the agreed upon
12 amount will be provided to the county which transfers

13 students as an allowance for facility efficiency in the year
14 in which the transfers occur. Subject to appropriations by
15 the Legislature, for the first year after the transfers occur,
16 the county board shall receive one-half the amount pro-
17 vided for in the agreement. Subject to appropriations by
18 the Legislature, for the second year after the transfers
19 occur, the county board shall receive one-fourth the
20 amount provided for in the agreement. If professional or
21 service personnel obtain full-time employment pursuant to
22 the terms of section eight-i, article four, chapter eighteen-a
23 of this code, then the state board shall deduct an appropri-
24 ate amount from the funds to be received pursuant to this
25 section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-3. Powers of authority.

§18-9D-4a. Savings from issuance of refunding bonds.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

§18-9D-15. Legislative intent; distribution of money.

§18-9D-3. Powers of authority.

- 1 The school building authority has the power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to exceed
6 a term of twenty-five years, or otherwise, real property or
7 rights or easements necessary or convenient for its corpo-
8 rate purposes and to exercise the power of eminent do-
9 main to accomplish those purposes;
- 10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;
- 12 (5) To make bylaws for the management and rule of
13 its affairs;

14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees, managers,
17 officers and such other employees and agents as may be
18 necessary in the judgment of the authority and to fix their
19 compensation: *Provided*, That contracts entered into by
20 the school building authority in connection with the issu-
21 ance of bonds under this article to provide professional
22 and technical services, including, without limitation, ac-
23 counting, actuarial, underwriting, consulting, trustee, bond
24 counsel, legal services and contracts relating to the pur-
25 chase or sale of bonds are subject to the provisions of
26 article three, chapter five-a of this code: *Provided, howev-*
27 *er*, That notwithstanding any other provisions of this code,
28 any authority of the attorney general of this state relating
29 to the review of contracts and other documents to effectuate
30 the issuance of bonds under this article shall be exclu-
31 sively limited to the form of the contract and document:
32 *Provided further*, That the attorney general of this state
33 shall complete all reviews of contracts and documents
34 relating to the issuance of bonds under this article within
35 ten calendar days of receipt of the contract and document
36 for review;

37 (7) To make contracts and to execute all instruments
38 necessary or convenient to effectuate the intent of and to
39 exercise the powers granted to it by this article;

40 (8) To renegotiate all contracts entered into by it
41 whenever, due to a change in situation, it appears to the
42 authority that its interests will be best served;

43 (9) To acquire by purchase, eminent domain or other-
44 wise all real property or interests in the property necessary
45 or convenient to accomplish the purposes of this article;

46 (10) To require proper maintenance and insurance of
47 any project authorized under this section;

48 (11) To charge rent for the use of all or any part of a
49 project or buildings at any time financed, constructed,
50 acquired or improved, in whole or in part, with the reve-
51 nues of the authority;

52 (12) To assist any county board of education that
53 chooses to acquire land, buildings and capital improve-
54 ments to existing school buildings and property for use as
55 public school facilities, by lease from a private or public
56 lessor for a term not to exceed twenty-five years with an
57 option to purchase pursuant to an investment contract with
58 the lessor on such terms and conditions as may be deter-
59 mined to be in the best interests of the authority, the state
60 board of education and the county board of education,
61 consistent with the purposes of this article, by transferring
62 funds to the state board of education as provided in sub-
63 section (d), section fifteen of this article for the use of the
64 county board of education;

65 (13) To accept and expend any gift, grant, contribu-
66 tion, bequest or endowment of money to, or for the bene-
67 fit of, the authority, from the state of West Virginia or any
68 other source for any or all of the purposes specified in this
69 article or for any one or more of such purposes as may be
70 specified in connection with the gift, grant, contribution,
71 bequest or endowment;

72 (14) To enter on any lands and premises for the pur-
73 pose of making surveys, soundings and examinations;

74 (15) To contract for architectural, engineering or
75 other professional services considered necessary or eco-
76 nomical by the authority to provide consultative or other
77 services to the authority or to any regional educational
78 service agency or county board requesting professional
79 services offered by the authority, to evaluate any facilities
80 plan or any project encompassed in the plan, to inspect
81 existing facilities or any project that has received or may
82 receive funding from the authority, or to perform any
83 other service considered by the authority to be necessary
84 or economical. Assistance to the region or district may
85 include the development of preapproved systems, plans,
86 designs, models or documents; advice or oversight on any
87 plan or project; or any other service that may be efficient-
88 ly provided to regional educational service agencies or
89 county boards by the authority;

90 (16) To provide funds on an emergency basis to re-
91 pair or replace property damaged by fire, flood, wind,

92 storm, earthquake or other natural occurrence, the funds
93 to be made available in accordance with guidelines of the
94 school building authority;

95 (17) To transfer moneys to custodial accounts main-
96 tained by the school building authority with a state finan-
97 cial institution from the school construction fund and the
98 school improvement fund created in the state treasury
99 pursuant to the provisions of section six of this article, as
100 necessary to the performance of any contracts executed
101 by the school building authority in accordance with the
102 provisions of this article;

103 (18) To enter into agreements with county boards and
104 persons, firms or corporations to facilitate the develop-
105 ment of county board projects and county board facilities
106 plans. The county board participating in an agreement
107 shall pay at least twenty-five percent of the cost of the
108 agreement. Nothing in this section shall be construed to
109 supersede, limit or impair the authority of county boards
110 to develop and prepare their projects or plans; and

111 (19) To do all things necessary or convenient to carry
112 out the powers given in this article.

§18-9D-4a. Savings from issuance of refunding bonds.

1 Any aggregate savings resulting from the issuance of
2 refunding bonds pursuant to section four of this article
3 shall be retained by the school building authority. Any
4 savings shall be utilized solely for the construction and
5 maintenance of schools and may not be used to fund
6 administrative costs of the authority.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

1 (a) There is continued in the state treasury a school
2 building capital improvements fund to be expended by
3 the authority as provided in this article. The school build-

4 ing capital improvements fund shall be an interest bearing
5 account with interest credited to and deposited in the
6 school building capital improvements fund and expended
7 in accordance with the provisions of this article.

8 The school building authority has authority to pledge
9 all or such part of the revenues paid into the school build-
10 ing capital improvements fund as may be needed to meet
11 the requirements of any revenue bond issue or issues au-
12 thorized by this article prior to the twentieth day of July,
13 one thousand nine hundred ninety-three, or revenue
14 bonds issued to refund revenue bonds issued prior to that
15 date, including the payment of principal of, interest and
16 redemption premium, if any, on the revenue bonds and
17 the establishing and maintaining of a reserve fund or
18 funds for the payment of the principal of, interest and
19 redemption premium, if any, on the revenue bond issue or
20 issues when other moneys pledged may be insufficient for
21 the payment of the principal, interest and redemption
22 premium, including such additional protective pledge of
23 revenues as the authority in its discretion has provided by
24 resolution authorizing the issuance of the bonds or in any
25 trust agreement made in connection with the bond issue.
26 The authority may further provide in the resolution and
27 in the trust agreement for such priorities on the revenues
28 paid into the school building capital improvements fund
29 as may be necessary for the protection of the prior rights
30 of the holders of bonds issued at different times under the
31 provisions of this article.

32 Any balance remaining in the school building capital
33 improvements fund after the authority has issued bonds
34 authorized by this article, and after the requirements of all
35 funds including reserve funds established in connection
36 with the bonds issued prior to the twentieth day of July,
37 one thousand nine hundred ninety-three, pursuant to this
38 article have been satisfied, may be used for the redemption
39 of any of the outstanding bonds issued under this article
40 which by their terms are then redeemable, or for the pur-
41 chase of the bonds at the market price, but not exceeding
42 the price, if any, at which the bonds are in the same year
43 redeemable, and all bonds redeemed or purchased shall
44 immediately be canceled and shall not again be issued.

45 The school building authority, in its discretion, may
46 use the moneys in the school building capital improve-
47 ments fund to finance the cost of projects on a cash basis.
48 Any pledge of moneys in the fund for revenue bonds
49 issued prior to the twentieth day of July, one thousand
50 nine hundred ninety-three, is a prior and superior charge
51 on the fund over the use of any of the moneys in the
52 fund to pay for the cost of any project on a cash basis:
53 *Provided*, That any expenditures from the fund, other
54 than for the retirement of revenue bonds, may only be
55 made by the authority in accordance with the provisions
56 of this article.

57 (b) There is hereby continued in the state treasury a
58 special revenue fund named the school building debt
59 service fund into which shall be deposited on and after the
60 first day of April, one thousand nine hundred ninety-four,
61 the amounts specified in section eighteen, article
62 twenty-two, chapter twenty-nine of this code. All amounts
63 deposited in the fund shall be pledged to the repayment of
64 the principal, interest and redemption premium, if any, on
65 any revenue bonds or refunding revenue bonds autho-
66 rized by this article: *Provided*, That deposited moneys
67 may not be pledged to the repayment of any revenue
68 bonds issued prior to the first day of January, one thou-
69 sand nine hundred ninety-four, or with respect to revenue
70 bonds issued for the purpose of refunding revenue bonds
71 issued prior to the first day of January, one thousand nine
72 hundred ninety-four. The authority may further provide
73 in the resolution and in the trust agreement for priorities
74 on the revenues paid into the school building debt service
75 fund as may be necessary for the protection of the prior
76 rights of the holders of bonds issued at different times
77 under the provisions of this article. On or prior to the first
78 day of May of each year, commencing the first day of
79 May, one thousand nine hundred ninety-four, the authori-
80 ty shall certify to the state lottery director the principal
81 and interest and coverage ratio requirements for the fol-
82 lowing fiscal year on any revenue bonds issued on or after
83 the first day of January, one thousand nine hundred
84 ninety-four, and for which moneys deposited in the school

85 building debt service fund have been pledged, or will be
86 pledged, for repayment pursuant to this section.

87 After the authority has issued bonds authorized by this
88 article, and after the requirements of all funds have been
89 satisfied, including coverage and reserve funds established
90 in connection with the bonds issued pursuant to this arti-
91 cle, any balance remaining in the school building debt
92 service fund may be used for the redemption of any of the
93 outstanding bonds issued under this article which, by their
94 terms, are then redeemable or for the purchase of the
95 outstanding bonds at the market price, but not to exceed
96 the price, if any, at which the bonds are redeemable, and
97 all bonds redeemed or purchased shall be immediately
98 canceled and shall not again be issued.

99 (c) There is hereby continued in the state treasury a
100 special revenue fund named the school construction fund
101 into which shall be deposited on and after the first day of
102 July, one thousand nine hundred ninety-four, the amounts
103 specified in section thirty, article fifteen, chapter eleven of
104 this code, together with any moneys appropriated thereto
105 by the Legislature. Expenditures from the school con-
106 struction fund shall be for the purposes set forth in this
107 article, including lease-purchase payments under agree-
108 ments made pursuant to subsection (e), section fifteen of
109 this article and section nine, article five of this chapter and
110 are authorized from collections in accordance with the
111 provisions of article three, chapter twelve of this code and
112 from other revenues annually appropriated by the Legisla-
113 ture from lottery revenues as authorized by section eigh-
114 teen, article twenty-two, chapter twenty-nine of this code,
115 pursuant to the provisions set forth in article two, chapter
116 five-a of this code. Amounts collected which are found
117 from time to time to exceed the funds needed for purpos-
118 es set forth in this article may be transferred to other ac-
119 counts or funds and redesignated for other purposes by
120 appropriation of the Legislature. The school construction
121 fund shall be an interest bearing account, with the interest
122 credited to and deposited in the school construction fund
123 and expended in accordance with the provisions of this
124 article. Deposits to and expenditures from the school con-

125 struction fund are subject to the provisions of subsection
126 (i), section fifteen of this article.

127 (d) There is hereby continued in the state treasury a
128 special revenue fund named the school major improve-
129 ment fund into which shall be deposited on and after the
130 first day of July, one thousand nine hundred ninety-four,
131 the amounts specified in section thirty, article fifteen,
132 chapter eleven of this code, together with any moneys
133 appropriated to the fund by the Legislature. Expenditures
134 from the school major improvement fund shall be for the
135 purposes set forth in this article and are authorized from
136 collections in accordance with the provisions of article
137 three, chapter twelve of this code and from other revenues
138 annually appropriated by the Legislature from lottery
139 revenues as authorized by section eighteen, article
140 twenty-two, chapter twenty-nine of this code, pursuant to
141 the provisions set forth in article two, chapter five-a of this
142 code. Amounts collected which are found from time to
143 time to exceed the funds needed for purposes set forth in
144 this article may be transferred to other accounts or funds
145 and redesignated for other purposes by appropriation of
146 the Legislature. The school major improvement fund shall
147 be an interest bearing account, with interest being credited
148 to and deposited in the school major improvement fund
149 and expended in accordance with the provisions of this
150 article.

151 (e) The Legislature hereby finds and declares that the
152 supreme court of appeals of West Virginia has held that
153 the issuance of additional revenue bonds authorized under
154 the school building authority act, as enacted in this article
155 prior to the twentieth day of July, one thousand nine hun-
156 dred ninety-three, constituted an indebtedness of the state
157 in violation of section 4, article X of the constitution of
158 West Virginia, but that revenue bonds issued under this
159 article prior to the twentieth day of July, one thousand
160 nine hundred ninety-three, are not invalid. The Legislature
161 further finds and declares that the financial capacity of a
162 county to construct, lease and improve school facilities
163 depends upon the county's bonding capacity (local prop-
164 erty wealth), voter willingness to pass bond issues and the
165 county's ability to reallocate other available county funds

166 instead of criteria related to educational needs or upon the
167 ability of the school building authority created in this
168 article to issue bonds that comply with the holding of the
169 West Virginia supreme court of appeals or otherwise assist
170 counties with the financing of facilities construction and
171 improvement. The Legislature hereby further finds and
172 declares that this section, as well as section eighteen, article
173 twenty-two, chapter twenty-nine of this code, have been
174 reenacted during the first extraordinary session of the
175 West Virginia Legislature in the year one thousand nine
176 hundred ninety-four, in an attempt to comply with the
177 holding of the supreme court of appeals of West Virginia.

178 The Legislature hereby further finds and declares that
179 it intends, through the reenactment of this section and
180 section eighteen, article twenty-two, chapter twenty-nine of
181 this code, to dedicate a source of state revenues to special
182 revenue funds for the purposes of paying the debt service
183 on bonds and refunding bonds issued subsequent to the
184 first day of January, one thousand nine hundred
185 ninety-four, the proceeds of which will be utilized for the
186 construction and improvement of school building facili-
187 ties. The Legislature hereby further finds and declares that
188 it intends, through the reenactment of this section and
189 section thirty, article fifteen, chapter eleven of this code
190 and section eighteen, article twenty-two, chapter
191 twenty-nine of this code, to appropriate revenues to two
192 special revenue funds for the purposes of construction and
193 improvement of school building facilities. Furthermore,
194 the Legislature intends to encourage county boards of
195 education to maintain existing levels of county funding
196 for construction, improvement and maintenance of school
197 building facilities and to generate additional county funds
198 for such purposes through bonds and special levies when-
199 ever possible. The Legislature further encourages the
200 school building authority, the state board of education and
201 county boards of education to propose uniform project
202 specifications for comparable projects whenever possible
203 to meet county needs at the lowest possible cost.

204 The Legislature hereby further finds and declares that
205 it intends, through the reenactment of this section and
206 section eighteen, article twenty-two, chapter twenty-nine of

207 this code, to comply with the provisions of sections 4 and
208 6, article X; and section 1, article XII of the constitution of
209 West Virginia.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and major improvement of
4 school facilities so as to meet the educational needs of the
5 people of this state in an efficient and economical manner.
6 The authority shall make funding determinations in accord-
7 dance with the provisions of this article and shall assess
8 existing school facilities and each facility's school major
9 improvement plan in relation to the needs of the individu-
10 al student, the general school population, the communities
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority to
14 be available for distribution during the then current fiscal
15 year from: (1) Moneys paid into the school building capi-
16 tal improvements fund pursuant to section ten, article
17 nine-a of this chapter; (2) the issuance of revenue bonds
18 for which moneys in the school building debt service fund
19 are pledged as security; (3) moneys paid into the school
20 construction fund pursuant to section six of this article;
21 and (4) any other moneys received by the authority, ex-
22 cept moneys paid into the school major improvement
23 fund pursuant to section six of this article, may be allocat-
24 ed and may be expended by the authority for projects that
25 service the educational community statewide or, upon
26 application by the state board, for educational programs
27 that are under the jurisdiction of the state board. In addi-
28 tion, upon application by the state board or the adminis-
29 trative council of an area vocational educational center
30 established pursuant to article two-b of this chapter, the
31 authority may allocate and expend under this section
32 moneys for school major improvement projects proposed
33 by the state board or an administrative council for school
34 facilities under the direct supervision of the state board or
35 an administrative council, respectively: *Provided*, That the
36 authority may not expend any moneys for a school major

37 improvement project proposed by the state board or the
38 administrative council of an area vocational educational
39 center unless the state board or an administrative council
40 has submitted a ten-year school major improvement plan,
41 to be updated annually, pursuant to section sixteen of this
42 article: *Provided, however,* That the authority shall, before
43 allocating any moneys to the state board or the adminis-
44 trative council of an area vocational educational center for
45 a school improvement project, consider all other funding
46 sources available for the project.

47 (c) An amount that is no more than two percent of the
48 moneys that are determined by the authority to be avail-
49 able for distribution during the current fiscal year from:
50 (1) Moneys paid into the school building capital improve-
51 ments fund pursuant to section ten, article nine-a of this
52 chapter; (2) the issuance of revenue bonds for which mon-
53 eys in the school building debt service fund are pledged as
54 security; (3) moneys paid into the school construction
55 fund pursuant to section six of this article; and (4) any
56 other moneys received by the authority, except moneys
57 deposited into the school major improvement fund, shall
58 be set aside by the authority as an emergency fund to be
59 distributed in accordance with the guidelines adopted by
60 the school building authority.

61 (d) The remaining moneys determined by the authori-
62 ty to be available for distribution during the then current
63 fiscal year from: (1) Moneys paid into the school building
64 capital improvements fund pursuant to section ten, article
65 nine-a of this chapter; (2) the issuance of revenue bonds
66 for which moneys in the school building debt service fund
67 are pledged as security; (3) moneys paid into the school
68 construction fund pursuant to section six of this article;
69 and (4) any other moneys received by the authority, ex-
70 cept moneys deposited into the school major improvement
71 fund, shall be allocated and expended on the basis of need
72 and efficient use of resources, the basis to be determined
73 by the authority in accordance with the provisions of sec-
74 tion sixteen of this article.

75 (e) If a county board of education proposes to finance
76 a project that is approved pursuant to section sixteen of

77 this article through a lease with an option to purchase
78 leased premises upon the expiration of the total lease peri-
79 od pursuant to an investment contract, the authority may
80 allocate no moneys to the county board in connection
81 with the project: *Provided*, That the authority may trans-
82 fer moneys to the state board of education, which, with the
83 authority, shall lend the amount transferred to the county
84 board to be used only for a one-time payment due at the
85 beginning of the lease term, made for the purpose of re-
86 ducing annual lease payments under the investment con-
87 tract, subject to the following conditions:

88 (1) The loan shall be secured in the manner required
89 by the authority, in consultation with the state board, and
90 shall be repaid in a period and bear interest at a rate as
91 determined by the state board and the authority and shall
92 have such terms and conditions as are required by the
93 authority, all of which shall be set forth in a loan agree-
94 ment among the authority, the state board of education
95 and the county board;

96 (2) The loan agreement shall provide for the state
97 board and the authority to defer the payment of principal
98 and interest upon any loan made to the county board
99 during the term of the investment contract, and annual
100 renewals of the investment contract, among the state board,
101 the authority, such county board and a lessor: *Provided*,
102 That in the event a county board of education, which has
103 received a loan from the state building authority for a
104 one-time payment at the beginning of the lease term, does
105 not renew the subject lease annually until performance of
106 the investment contract in its entirety is completed: *Pro-*
107 *vided, however*, That if a county board renews the lease
108 annually through the performance of the investment con-
109 tract in its entirety, the county board shall exercise its
110 option to purchase the leased premises: *Provided further*,
111 That the failure of the county board to make a scheduled
112 payment pursuant to the investment contract shall consti-
113 tute an event of default under the loan agreement: *And*
114 *provided further*, That upon a default by a county board,
115 the principal of the loan, together with all unpaid interest
116 accrued to the date of the default, shall at the option of the
117 authority, in consultation with the state board, become due

118 and payable immediately or subject to renegotiation
119 among the state board, the authority and the county
120 board: *And provided further*, That if the loan becomes due
121 and payable immediately, the authority, in consultation
122 with the state board, shall use all means available under the
123 loan agreement and law to collect the outstanding princi-
124 pal balance of the loan, together with all unpaid interest
125 accrued to the date of payment of the outstanding princi-
126 pal balance; and

127 (3) The loan agreement shall provide for the state
128 board and the authority to forgive all principal and inter-
129 est of the loan upon the county board purchasing the
130 leased premises pursuant to the investment contract and
131 performance of the investment contract in its entirety.

132 To encourage county boards to proceed promptly
133 with facilities planning and to prepare for the expenditure
134 of any state moneys derived from the sources described in
135 this subsection, any county board failing to expend mon-
136 ey within three years of the allocation to the county board
137 shall forfeit the allocation and thereafter shall be ineligible
138 for further allocations pursuant to this subsection until the
139 county board is ready to expend funds in accordance with
140 an approved facilities plan: *Provided*, That the authority
141 may authorize an extension beyond the three-year forfei-
142 ture period not to exceed an additional two years. Any
143 amount forfeited shall be added to the total funds avail-
144 able in the school construction fund of the authority for
145 future allocation and distribution.

146 (f) The remaining moneys that are determined by the
147 authority to be available for distribution during the then
148 current fiscal year from moneys paid into the school ma-
149 jor improvement fund pursuant to section six of this arti-
150 cle shall be allocated and distributed on the basis of need
151 and efficient use of resources, the basis to be determined
152 by the authority in accordance with the provisions of sec-
153 tion sixteen of this article: *Provided*, That the moneys may
154 not be distributed to any county board that does not have
155 an approved school major improvement plan or to any
156 county board that is not prepared to commence expendi-
157 tures of the funds during the fiscal year in which the mon-

158 eys are distributed: *Provided, however,* That any moneys
159 allocated to a county board and not distributed to that
160 county board shall be deposited in an account to the credit
161 of that county board, the principal amount to remain to
162 the credit of and available to the county board for a peri-
163 od of two years. Any moneys which are unexpended after
164 a two-year period shall be redistributed on the basis of
165 need from the school major improvement fund in that
166 fiscal year.

167 (g) No local matching funds may be required under
168 the provisions of this section. However, the responsibilities
169 of the county boards of education to maintain school
170 facilities shall not be negated by the provisions of this
171 article, and therefore, to be eligible to receive an allocation
172 of school major improvement funds from the authority, a
173 county board must have expended in the previous fiscal
174 year an amount of county moneys equal to or exceeding
175 the lowest average amount of money included in the
176 county board's maintenance budget over any three of the
177 previous five years and must have budgeted an amount
178 equal to or greater than the average in the current fiscal
179 year: *Provided,* That the state board of education shall
180 promulgate rules relating to county boards' maintenance
181 budgets, including items which shall be included in the
182 budgets.

183 (h) Any county board may use moneys provided by
184 the authority under this article in conjunction with local
185 funds derived from bonding, special levy or other sources.
186 Distribution to a county board, or to the state board or the
187 administrative council of an area vocational educational
188 center pursuant to subsection (b) of this section, may be in
189 a lump sum or in accordance with a schedule of payments
190 adopted by the authority pursuant to such guidelines as it
191 shall adopt.

192 (i) Funds in the school construction fund shall first be
193 transferred and expended as follows:

194 Any funds deposited in the school construction fund
195 shall be expended first in accordance with an appropria-
196 tion by the Legislature. To the extent that funds are avail-
197 able in the school construction fund in excess of that

195 amount appropriated in any fiscal year, the excess funds
196 may be expended in accordance with the provisions of this
197 article. Any projects which the authority identified and
198 announced for funding on or before the first day of Au-
199 gust, one thousand nine hundred ninety-five, or identified
200 and announced for funding on or before the thirty-first
201 day of December, one thousand nine hundred ninety-five,
202 shall be funded by the authority in an amount which is not
203 less than the amount specified when the project was identi-
204 fied and announced.

205 (j) It is the intent of the Legislature to encourage
206 county boards to explore and consider arrangements with
207 other counties that may facilitate the highest and best use
208 of all available funds, which may result in improved trans-
209 portation arrangements for students, or which otherwise
210 may create efficiencies for county boards and the stu-
211 dents. In order to address the intent of the Legislature
212 contained in this subsection, the authority shall grant such
213 preference to those projects which involve multi-county
214 arrangements as the authority shall determine reasonable
215 and proper.

CHAPTER 116

(Com. Sub. for H. B. 4064—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-d, relating to limiting the liability of boards of education generally.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of state board of risk and insurance management.**

1 (a)(1) If the requirements of this subsection are met,
2 the board of education is not liable under any theory of
3 vicarious or imputed liability for the acts or omissions of:

4 (A) Any person, organization or association using
5 school property for a community activity described in
6 section nineteen of this article;

7 (B) Any member, employee or agent of such person,
8 organization or association; or

9 (C) Any person attending or participating in the com-
10 munity activity other than an employee of the board while
11 acting within the scope of employment.

12 (2) The limitation of liability extended the board of
13 education pursuant to this subsection does not apply un-
14 less:

15 (A) The person, organization or association using
16 school property for a community activity has in effect, at
17 the time of the act or omission described in subdivision
18 (1) of this subsection, a contract of insurance which pro-
19 vides general comprehensive liability coverage of any
20 claim, demand, action, suit or judgment by reason of al-
21 leged negligence or other acts resulting in bodily injury or
22 property damage to any person arising out of the use of
23 school property for a community activity described in
24 subdivision (1) of this subsection;

25 (B) The contract of insurance provides for the pay-
26 ment of any attorney fees, court costs and other litigation
27 expenses incurred by the board in connection with any
28 claim, demand, action, suit or judgment arising from such
29 alleged negligence or other act; and

30 (C) The insurance coverage is in the amounts speci-
31 fied in the provisions of section five-a, article twelve, chap-
32 ter twenty-nine of this code.

33 (3)(A) The insurance described in subdivision (2) of

34 this subsection may be obtained privately or may be ob-
35 tained pursuant to the provisions of this subdivision. If
36 requested by any person, organization or association seek-
37 ing such insurance coverage, the state board of risk and
38 insurance management is authorized to provide such in-
39 surance and to enter into any necessary contract of insur-
40 ance to further the intent of this subdivision.

41 (B) Where provided by the state board of risk and
42 insurance management, the cost of the insurance, as deter-
43 mined by the such board, shall be paid by the person,
44 organization or association and may include administra-
45 tive expenses. All funds received by such board shall be
46 deposited with the West Virginia board of investments for
47 investment purposes.

48 (C) The state board of risk and insurance manage-
49 ment is hereby authorized and empowered to negotiate
50 and effect settlement of any and all claims covered by the
51 insurance provided by such board pursuant to this subdivi-
52 sion to the extent the board is authorized and empow-
53 ered to negotiate and effect settlement of claims described
54 in section five, article twelve, chapter twenty-nine of this
55 code.

56 (4) As used in this subsection, "organization" or "asso-
57 ciation" means a bona fide, not for profit, tax-exempt,
58 benevolent, educational, philanthropic, humane, patriotic,
59 civic, eleemosynary, incorporated or unincorporated asso-
60 ciation or organization or a rescue unit or other similar
61 volunteer community service organization or association,
62 but does not include any nonprofit association or organi-
63 zation, whether incorporated or not, which is organized
64 primarily for the purposes of influencing legislation or
65 advocating or opposing the nomination, election or defeat
66 of any candidate, or the passage or defeat of any issue,
67 thing or item to be voted upon.

68 (b) Nothing in this section shall affect the rights, du-
69 ties, defenses, immunities or causes of action under other
70 statutes or the common law of this state which may be
71 applicable to boards of education.

CHAPTER 117

(S. B. 584—By Senators Jackson, Blatnik, Plymale, Boley, Minear, Wagner, Dugan, White, Bailey, Oliverio, Schoonover, Helmick, Miller and Grubb)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; and to amend and reenact section seventeen, article four, chapter eighteen-a of said code, all relating to personnel employed by the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-2a. Rehabilitation teachers.

1 Notwithstanding any other provision of this code to
2 the contrary, beginning the first day of July, one thousand
3 nine hundred ninety-six, rehabilitation teachers shall be
4 paid at the equivalent rate of pay of teachers, pursuant to
5 section two, article four of this chapter: *Provided*, That
6 rehabilitation teachers shall be paid outside the public
7 school support plan, defined in section one, article nine-a
8 of this chapter, and shall receive the equivalent of the
9 salary supplement paid to teachers employed by the coun-
10 ty board within the county where the facility of the divi-
11 sion is located, pursuant to section five-a, article four of
12 this chapter: *Provided, however*, That any person who
13 received an increase in salary, pursuant to section seven-

14 teen, article four, chapter eighteen-a of this code, prior to
15 the first day of July, one thousand nine hundred
16 ninety-six, shall continue to receive the increased salary
17 level.

18 For purposes of this section, the following words shall
19 be construed as follows:

20 (a) "Rehabilitation teacher" means any person em-
21 ployed by the division and who meets the certification
22 requirements of section two-a, article three, chapter
23 eighteen-a of this code, or who has been certified to teach
24 by a state or nationally recognized organization, as ap-
25 proved by the office of the secretary of education and the
26 arts. Such teachers shall maintain current certification in
27 their teaching areas in order to remain employed. Such
28 persons also shall teach only in the areas in which they are
29 certified: *Provided*, That teachers who were employed on
30 or before the first day of April, one thousand nine hun-
31 dred ninety-five, shall be exempt from the following re-
32 quirements: (1) Certification pursuant to section two-a,
33 article three, chapter eighteen-a of this code; (2) mainte-
34 nance of current certification in their teaching areas in
35 order to remain employed; and (3) teaching only in the
36 areas in which they are certified.

37 (b) "Equivalent rate of pay" means an annualized rate
38 based on a two hundred forty-day teaching schedule and
39 includes pay for vacation and legal state holidays.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional person-
2 nel and service personnel employed by the state depart-
3 ment of education to provide education and support ser-
4 vices to residents of state department of health and human
5 resources facilities, corrections facilities providing services
6 to juvenile and youthful offenders and in the West Virgin-
7 ia schools for the deaf and the blind shall be the same as
8 set forth in sections two, three and eight-a of this article.
9 Additionally, such personnel shall receive the equivalent
10 of salary supplements paid to professional and service
11 personnel employed by the county board of education in

12 the county wherein each facility is located, as set forth in
13 sections five-a and five-b of this article. Professional per-
14 sonnel and service personnel in these facilities who earn
15 advanced classification of training after the effective date
16 of this section shall be paid such advanced salary from the
17 date such classification of training is earned. Such profes-
18 sional personnel shall be required to be certified, licensed
19 or trained, and/or shall meet other eligibility classifications
20 as may be required by the provisions of this chapter and
21 by state board regulations for comparable instructional
22 personnel who are employed by county boards of educa-
23 tion, and shall be paid at the equivalent rate of pay of
24 teachers as set forth in section two of this article, but out-
25 side the public support plan, plus the equivalent of the
26 salary supplement paid to teachers employed by the coun-
27 ty board of education in the county wherein each facility
28 is located, as set forth in section five-a of this article.

29 (b) Professional personnel employed by the depart-
30 ment to provide educational service to residents in state
31 department of health and human resources facilities, cor-
32 rections facilities providing services to juvenile and youth-
33 ful offenders or in the West Virginia schools for the deaf
34 and the blind shall be afforded all the rights, privileges
35 and benefits established for such professional personnel
36 under this article: *Provided*, That such benefits shall ap-
37 ply only within the facility at which employed: *Provided*,
38 *however*, That benefits shall exclude salaries unless explic-
39 itly provided for under this or other sections of this article:
40 *Provided further*, That seniority for such professional
41 personnel shall be determined on the basis of the length of
42 time that the employee has been professionally employed
43 at the facility, regardless of which state agency was the
44 actual employer.

45 (c) Nothing contained in this section shall be con-
46 strued to mean that professional personnel and service
47 personnel employed by the department of education to
48 provide educational and support services to residents in
49 state department of health and human resources facilities,
50 corrections facilities providing services to juvenile and
51 youthful offenders and the West Virginia schools for the
52 deaf and the blind are other than state employees.

CHAPTER 118

(S. B. 42—By Senators Craigo, Ross, Sharpe, Walker, Plymale, Oliverio, Kimble, Love and Schoonover)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county boards of education, the teachers retirement board, the West Virginia board of education and the department of education and the arts to allow its employees to participate in certain tax deferred investments; specifying the terms of the investment and the amount of the reduction; and providing that the transaction of making an investment imposes no liability or responsibility on the state agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER EMPLOYEES.

§18-25-1. Authority to make tax deferred investments for teachers and other employees.

1 A county board of education, the teachers retirement
2 board, the West Virginia board of education and the de-
3 partment of education and the arts and their agencies may
4 provide by written agreement between the department, any
5 such board or agency and any teacher or other employee
6 to reduce the cash salary payable to the teacher or other
7 employee, and, in consideration thereof, to pay an amount
8 equal to the amount of the reduction as premiums on an
9 annuity contract or investments into a custodial account or
10 other investment owned by the teacher or other employee.
11 The annuity contract, custodial account or other invest-
12 ment shall be in such form and upon such terms as will
13 qualify the payments thereon for tax deferment under the

14 United States Internal Revenue Code. The amount of the
15 reduction may not exceed the amount excludable from
16 income under Section 403(b) of the United States Internal
17 Revenue Code, and amendments and successor provisions
18 thereto, and shall be considered a part of the teachers or
19 employees salary for all purposes other than federal and
20 state income tax.

21 The transaction of making the tax deferred investment
22 for a teacher or other employee by a board of education,
23 the teachers retirement board, the West Virginia board of
24 education and the department of education and the arts
25 and their agencies imposes no liability nor responsibility
26 whatsoever on the boards, department or members thereof
27 except to show that the payments have been remitted for
28 the purposes for which deducted.

CHAPTER 119

(S. B. 591—Originating in the Committee on Finance)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article fifteen of said chapter; to amend and reenact sections one-c, one-d, two and eight-a, article one, chapter eighteen-b of said code; to further amend said article by adding thereto a new section, designated section eight-b; to amend article two of said chapter by adding thereto a new section, designated section nine; to amend and reenact sections one, two and three-a, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact sections two, three and four, article six of said chapter; and to amend and reenact section one, article eight of said chapter, all relating to higher education generally; repealing obsolete language; strategic plans submitted by institutions of higher education; changing the submission dates for strategic plans and the requirements for approval of such plans; contents of

statewide report cards; changing the submission dates for statewide report cards required to be submitted by institutions of higher education; allocating funds appropriated to the higher education efficiency fund; transferring West Virginia Institute of Technology to the board of trustees; reconstituting the Board of Directors and providing for the election of a chairman; establishing institutional control accounts; community and technical college education; terms of office and election of the chairman of advisory councils of faculty; terms of office and election of the chairman of advisory councils of students; terms of office and election of the chairman of advisory councils of classified employees; establishing a coordinate affiliation between Marshall university and West Virginia graduate college; promulgation of legislative rules; updating language concerning the vice chancellor of health sciences; and defining institutions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that section one, article fifteen of said chapter be repealed; that sections one-c, one-d, two and eight-a, article one, chapter eighteen-b of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-b; that article two of said chapter be further amended by adding thereto a new section, designated section nine; that sections one, two and three-a, article three of said chapter be amended and reenacted; that section one, article four of said chapter be amended and reenacted; that sections two, three and four, article six of said chapter be amended and reenacted; and that section one, article eight of said chapter be amended and reenacted, all to read as follows:

Article

1. **Governance.**
2. **University of West Virginia Board of Trustees.**
3. **Board of Directors of the State College System.**
4. **General Administration.**
6. **Advisory Councils of Faculty.**
8. **Higher Education Full-Time Faculty Salaries.**

ARTICLE 1. GOVERNANCE.

- §18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.
- §18B-1-1d. Increasing flexibility and capacity for change.
- §18B-1-2. Definitions.
- §18B-1-8a. Higher education accountability; institutional and statewide report cards.
- §18B-1-8b. Coordinate affiliation between Marshall university and West Virginia graduate college.

§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

1 (a) *Purpose of strategic plans.* — To achieve the goals
2 for post-secondary education as set forth in section one-a
3 of this article, each of the following state institutions of
4 higher education shall prepare a strategic plan of change
5 to refocus its mission and leadership, and restructure its
6 existing resources and programs: Bluefield state college;
7 Concord college; Glenville state college; Fairmont state
8 college; Marshall university; West Virginia northern com-
9 munity college; Potomac state college of West Virginia
10 university; Shepherd college; southern West Virginia com-
11 munity college; West Liberty state college; the West Vir-
12 ginia graduate college; West Virginia university institute of
13 technology; West Virginia university at Parkersburg; West
14 Virginia school of osteopathic medicine; West Virginia
15 state college; West Virginia university; and all branch
16 campuses of these institutions of higher education. The
17 plans shall specifically state how the institution will, over a
18 five-year period, refocus its mission and leadership and
19 restructure its existing resources and programs to achieve
20 the goals for post-secondary education including, but not
21 limited to, the following: (1) Increase average faculty
22 salaries at the institution, not including health sciences, to a
23 level at least equal to ninety-five percent of the average
24 faculty salaries at peer institutions in the southern regional
25 education board region: *Provided*, That West Virginia
26 university, excluding West Virginia university at Parkers-
27 burg, Potomac state college of West Virginia university
28 and West Virginia university institute of technology shall
29 state specifically how it will increase average faculty sala-
30 ries at that institution, not including health sciences, to a

31 level at least equal to ninety percent of the average faculty
32 salaries at peer institutions in the southern regional educa-
33 tion board region; (2) achieve full funding of the uniform
34 employee classification system and salary policy for clas-
35 sified employees adopted by the respective governing
36 boards pursuant to section four, article nine of this chap-
37 ter; (3) eliminate duplicative programs and services, acting
38 alone or in conjunction with another institution, and elimi-
39 nate under-utilized or unnecessary programs; (4) may
40 combine administrative functions among other institu-
41 tions; and (5) use admission and exit standards for stu-
42 dents, incentives and staff development for assuring quali-
43 ty teaching and learning and the critical assessment of
44 programs to meet the goals. The plan shall also state the
45 manner in which any pay increases will be funded, the
46 sources of any funds used for pay increases, and the sav-
47 ings and costs associated with achieving any other goals
48 specified in the plan and how the funds are to be redirect-
49 ed. The faculty senate, classified staff council and the
50 student government association shall be consulted prior to
51 the submission of the plan and their recommendations
52 included in the president's report to the board. Beginning
53 the first day of July, one thousand nine hundred
54 ninety-six, the budgets of state institutions of higher edu-
55 cation shall reflect movement to the salary targets for
56 faculty and classified staff as set forth in this section and
57 any other goals specified in their strategic plan for
58 change.

59 (b) *Submission of strategic plans.* — The president or
60 administrative head of each state institution of higher
61 education shall submit the plan for the institution to its
62 respective governing board on or before the first day of
63 November, one thousand nine hundred ninety-five, and
64 every year thereafter, through and including the fiscal
65 year two thousand—two thousand one: *Provided*, That
66 community and technical college education shall not be
67 required to be segregated in the plan until the first day of
68 November, one thousand nine hundred ninety-six.

69 (c) *Approval of strategic plans by the governing*
70 *boards.* — The governing boards shall approve or disap-
71 prove the plans within sixty days of receipt of the plans

72 and notify the institution president or administrative head
73 of its decision. Approval or disapproval of the plan of
74 each institution shall be decided by a vote of the appropri-
75 ate governing board and shall be made part of its minute
76 record: *Provided*, That if the plan submitted by the insti-
77 tution includes retirement and separation incentives pursu-
78 ant to section one-d of this article, that portion of the plan
79 shall be submitted by the governing board to the legisla-
80 tive joint standing committee on pensions and retirement,
81 and the time required for review by the committee shall
82 not be included in the sixty days.

83 (d) *Approval of original strategic plans by the secre-*
84 *tary of education and the arts.* — Once the appropriate
85 governing board approves the original plan, for the fiscal
86 year beginning the first day of July, one thousand nine
87 hundred ninety-six, it shall submit the plan to the secretary
88 of education and the arts, as established in section two,
89 article one, chapter five-f of this code, and hereby known
90 as the "secretary" for purposes of this section, for approval
91 or disapproval. The secretary shall approve or disapprove
92 the plan and notify the appropriate governing board of
93 the decision within thirty calendar days. Upon such ap-
94 proval the institution shall receive its share of the funds
95 from the "higher education efficiency fund", pursuant to
96 subsection (j) of this section. If an original plan from any
97 institution is disapproved by the secretary, the secretary
98 shall notify the appropriate governing board and shall
99 return the plan to the institution for revision and resubmis-
100 sion to the appropriate governing board. When an institu-
101 tion resubmits its original strategic plan to the appropriate
102 governing board, the board shall vote to approve or disap-
103 prove the plan pursuant to subsection (c) of this section.
104 Once the original plan has been approved by the appro-
105 priate governing board, the governing board shall resub-
106 mit the plan to the secretary for approval or disapproval.
107 The secretary shall notify the appropriate governing board
108 within twenty calendar days of his or her action. Upon
109 such approval the institution shall receive its share of the
110 funds from the "higher education efficiency fund", pursu-
111 ant to subsection (j) of this section.

112 (e) *Disapproval of strategic plans by the governing*
113 *boards.* — If disapproved, the governing board shall
114 return the plan to the institution president or administra-
115 tive head stating its reasons for disapproval. The institu-
116 tion president or administrative head may modify and
117 resubmit a plan which was disapproved at any time and the
118 governing board shall vote, in accordance with subsection
119 (c) of this section, to approve or disapprove the resubmit-
120 ted plan within thirty calendar days and notify the institu-
121 tion president or administrative head. If the plan has not
122 been approved by the appropriate governing board on or
123 before the first day of February following the November
124 submission date, the board is authorized to develop a plan
125 for the institution. The president or administrative head of
126 every state institution of higher education with an ap-
127 proved plan shall update the plan on an annual basis to
128 reflect performance during the preceding year and make
129 any necessary modifications. The updated plan shall be
130 submitted on the first day of November in each of the
131 subsequent years through and including the fiscal year
132 two thousand—two thousand one, and the governing
133 board shall follow the same procedures for approval or
134 disapproval as provided in this section for the original
135 plan. Upon the approval of a plan or plan update which
136 includes the elimination of a program, the institution pres-
137 ident or administrative head immediately shall notify af-
138 fected students, faculty and staff.

139 (f) *Exceptions under the resource allocation model*
140 *and policies.* — Any state institution of higher education
141 with an approved plan may apply to its governing board
142 for an exception under the resource allocation model and
143 policies to retain funding for student enrollments that
144 decline due to planned program reductions or elimination
145 under the strategic plan. The number of student enroll-
146 ments subject to the exception shall be based on the aver-
147 age full-time equivalent enrollments over the five preced-
148 ing years in the program. The allocation exception shall
149 become effective in the next ensuing allocation cycle
150 following approval by the governing board and notifica-
151 tion of affected faculty, students and staff of the program
152 reduction or elimination, and shall remain effective for the

153 number of years normally required for students to com-
154 plete the full program from beginning enrollment to grad-
155 uation, subject to annual review by the governing board of
156 the actual decline in program enrollments. Notwithstand-
157 ing any other provision of this section, any program sus-
158 pended or discontinued by action of the governing board
159 on or after the first day of September, one thousand nine
160 hundred ninety-four, and prior to the eleventh day of
161 March, one thousand nine hundred ninety-five, which is
162 being eliminated pursuant to that action, is eligible for an
163 exception under the resource allocation model and poli-
164 cies pursuant to this section for the fiscal year one thou-
165 sand nine hundred ninety-six.

166 (g) Any state institution of higher education with an
167 approved plan may apply to its governing board for an
168 exception under the resource allocation model and poli-
169 cies to retain funding for student enrollments that decline
170 due to the planned reductions for the purpose of enhanc-
171 ing the quality of a particular program. The number of
172 student enrollments subject to the exception shall be based
173 on the average full-time equivalent enrollments over the
174 preceding five years in the program. Money allocated to
175 the institution as a result of this exception shall be used to
176 enhance the quality of that particular program. The allo-
177 cation exception shall become effective in the next ensu-
178 ing allocation cycle following approval by the governing
179 board and notification of affected faculty, students and
180 staff of the program reduction and shall remain in effect
181 subject to biennial review by the governing board of the
182 actual decline in program enrollments and enhancements
183 in quality of the program.

184 (h) The application for an exception under this sub-
185 section shall be submitted to the appropriate governing
186 board by the institution president or administrative head
187 and state how the funds will be redirected to achieve the
188 purposes of the institution's approved plan including, but
189 not limited to, salary increases to attract and retain quality
190 faculty and staff, expand and improve the quality of exist-
191 ing programs, and make additional investments in technol-
192 ogy and increased access. The governing board shall
193 approve or disapprove the application within sixty days of

194 receipt and if disapproved, shall return the application to
195 the institution president or administrative head stating the
196 reasons for disapproval. The institution president or ad-
197 ministrative head may modify and resubmit an application
198 which was disapproved at any time and the governing
199 board shall approve or disapprove the resubmitted appli-
200 cation within sixty days and notify the institution president
201 or administrative head as provided in this subsection for
202 the original plan.

203 (i) An exception to the resource allocation model and
204 policies granted under this section and any differential
205 approved for an institution by its governing board to re-
206 flect the high costs of a program within the institution's
207 mission shall be removed from the institutions base budget
208 and, to the extent included therein, from the indicated
209 level of state support for the purposes of subsection (d),
210 section two, article five of this chapter, and any governing
211 board rule to the contrary is hereby specifically modified.

212 (j) *Higher education efficiency fund.* — It is the ex-
213 pressed intent of the Legislature, subject to the availability
214 of funds and appropriations therefor, to increase state
215 appropriated funds for state institutions of higher educa-
216 tion in each of the five fiscal years, one thousand nine
217 hundred ninety-seven, through and including, fiscal year
218 two thousand—two thousand one, at a rate of at least three
219 and twenty-five one-hundredths percent per year to assist
220 the institutions in achieving their strategic plan of change,
221 subject to demonstrated effort by the institutions as deter-
222 mined by the Legislature to refocus and restructure their
223 missions, leadership, resources and programs to meet the
224 plans in accordance with this section. In any fiscal year in
225 which the state appropriated funds are less than the ex-
226 pressed intent, the governing boards may adjust the targets
227 set forth in the strategic plans for change by a like propor-
228 tion: *Provided*, That the target shall not be adjusted for
229 those institutions which have lost funds as a result of fail-
230 ure to secure approval, pursuant to this section, or failure
231 to comply with their approved strategic plans. Beginning
232 with legislative appropriations under this subsection for
233 the fiscal year one thousand nine hundred ninety-six
234 —ninety-seven, the Legislature shall appropriate the funds,

235 if any, to a separate account known as the "higher educa-
236 tion efficiency fund" in the state budget. Funds from the
237 higher education efficiency fund shall be allocated in the
238 following manner:

239 (1) For the fiscal year one thousand nine hundred
240 ninety-six—ninety-seven, appropriations to the fund shall
241 be allocated only to institutions with approved plans, pur-
242 suant to this section; and

243 (2) For the fiscal year one thousand nine hundred
244 ninety-seven—ninety-eight, and every year through and
245 including the fiscal year two thousand—two thousand one,
246 appropriations to the fund shall be allocated only to insti-
247 tutions with approved plans, pursuant to this section, which
248 are in compliance with their strategic plan for change as
249 approved by the appropriate governing board. The allo-
250 cations shall be made in accordance with the resource
251 allocation model and policies in the following manner:

252 (i) Any institution with a plan approved by the appro-
253 priate governing board by the first day of July of each
254 fiscal year is entitled to its full annual share of the moneys
255 appropriated to the higher education efficiency fund;

256 (ii) Any institution which fails to secure approval by
257 the appropriate governing board by the first day of July,
258 but secures the approval before the first day of October, is
259 entitled to the remaining three quarters of its annual share
260 of the moneys appropriated to the higher education effi-
261 ciency fund;

262 (iii) Any institution which fails to secure approval by
263 the appropriate governing board by the first day of July,
264 but secures approval before the first day of January, is
265 entitled to the remaining one half of its annual share of
266 the moneys appropriated to the higher education efficien-
267 cy fund; and

268 (iv) Any institution which fails to secure approval by
269 the appropriate governing board by the first day of July,
270 but secures approval before the first day of April, is enti-
271 tled to the remaining one quarter of its annual share of the

273 moneys appropriated to the higher education efficiency
274 fund.

275 The quarterly share of the higher education efficien-
276 cy fund of an institution which is not so allocated, by the
277 beginning of each quarter, shall be allocated immediately
278 to the higher education grant program, pursuant to article
279 five, chapter eighteen-c of this code, or if such program is
280 fully funded, for expenditure among all institutions for
281 scholarships and student grant programs.

§18B-1-1d. Increasing flexibility and capacity for change.

1 (a) *Retirement and separation incentives.* — Notwith-
2 standing any other provisions of this code to the contrary,
3 each state institution of higher education may include in
4 their strategic plans, pursuant to section one-c of this arti-
5 cle, policies that offer various incentives for voluntary,
6 early or phased retirement of employees, or voluntary
7 separation from employment, when necessary to imple-
8 ment programmatic changes effectively pursuant to the
9 findings, directives, goals and objectives of this article:
10 *Provided*, That such incentives for voluntary, early or
11 phased retirement of employees, or voluntary separation
12 from employment must be submitted by the governing
13 board to the legislative joint committee on pensions and
14 retirement and approved before such policies are adopted
15 as part of the institution's strategic plan. The policies may
16 include the following provisions:

17 (1) Payment of a lump sum to an employee to resign
18 or retire;

19 (2) Continuation of full salary to an employee for a
20 predetermined period of time prior to the employee's
21 resignation or retirement and a reduction in the employ-
22 ee's hours of employment during the predetermined peri-
23 od of time;

24 (3) Continuation of insurance coverage pursuant to
25 the provisions of article sixteen, chapter five of this code
26 for a predetermined period;

27 (4) Continuation of full employer contributions to an
28 employee's retirement plan during a phased retirement
29 period; and

30 (5) That an employee retiring pursuant to an early or
31 phased retirement plan may begin collecting an annuity
32 from the employee's retirement plan prior to the statutori-
33 ly designated retirement date without terminating their
34 service with the institution.

35 No incentive provided for in this section shall be
36 granted except in furtherance of programmatic changes
37 undertaken pursuant to the findings, directives, goals and
38 objectives set forth in this article.

39 No incentive proposed by an institution pursuant to
40 this section shall become a part of the institution's ap-
41 proved strategic plan or be implemented without approval
42 of the legislative joint committee on pensions and retire-
43 ment.

44 Any costs associated with any incentive adopted or
45 implemented in accordance with this section shall be
46 borne entirely by the institutions and no incentive shall be
47 granted that imposes costs on the retirement systems of the
48 state or the public employees insurance agency unless
49 those costs are paid entirely by the institutions.

50 The Legislature further finds and declares that there is
51 a compelling state interest in restricting the availability and
52 application of these incentives to individual employees
53 determined by the institutions to be in furtherance of the
54 aims of this section and nothing herein shall be interpreted
55 as granting a right or entitlement of any such incentive to
56 any individual or group of individuals. Any employee
57 granted incentives shall be ineligible for reemployment by
58 the institutions during or after the negotiated period of
59 their incentive concludes including contract employment
60 in excess of five thousand dollars per fiscal year.

61 The West Virginia network for educational
62 telecomputing may utilize the incentives contained in any
63 policy approved by the legislative joint committee on
64 pensions and retirement pursuant to this section.

65 (b) *Pilot flexibility initiative.* — The board of directors
66 is directed to submit a plan for a pilot flexibility initiative
67 to the legislative oversight commission on education ac-
68 countability on or before the first day of October, one
69 thousand nine hundred ninety-five. The plan shall in-
70 clude at least the following: (1) A system whereby the
71 state institutions of higher education in the state college
72 system may apply to the board of directors for a waiver of
73 board policies and rules; (2) a detailed application for
74 institutions seeking to participate in the pilot flexibility
75 initiative which shall set forth at a minimum: (i) A state-
76 ment of the specific goals and objectives that the institu-
77 tion proposes to accomplish if the application is approved;
78 (ii) the specific board policies and rules which the institu-
79 tion seeks to have waived for all or a portion of the waiver
80 period; and (iii) proposed rules and policies under which
81 the institution would operate during the period of waiver;
82 (3) the process by which the board of directors will review
83 the application; (4) the person or body who shall have the
84 final authority to approve the application of not more than
85 two institutions; (5) the time period for which the waiver
86 will be granted; (6) the specific board policies and rules
87 which the institution may request to have waived; (7) the
88 process by which the rules and policies of the institutions
89 participating in the pilot flexibility initiative may modify
90 its rules and policies; and (8) the person or body to whom
91 the institutions shall be reporting during the period of
92 waiver.

93 (c) It is the intent of this Legislature to review the pilot
94 flexibility plan and after such review to establish a pilot
95 flexibility initiative in the legislative session of one thou-
96 sand nine hundred ninety-six.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code shall have the meaning
3 hereinafter ascribed to them unless the context clearly
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the university
6 of West Virginia board of trustees or the board of direc-
7 tors of the state college system, whichever is applicable

8 within the context of the institution or institutions referred
9 to in this chapter or in other provisions of law;

10 (b) "Governing boards" or "boards" means both the
11 board of trustees and the board of directors;

12 (c) "Freestanding community colleges" means south-
13 ern West Virginia community and technical college and
14 West Virginia northern community and technical college,
15 which shall not be operated as branches or off-campus
16 locations of any other state institution of higher education;

17 (d) "Community college" or "community colleges"
18 means community and technical college or colleges as
19 those terms are defined in this section;

20 (e) "Community and technical college", in the singular
21 or plural, means the freestanding community and techni-
22 cal colleges, community and technical education programs
23 of regional campuses of West Virginia university, and
24 divisions of state institutions of higher education which
25 have a defined community and technical college district
26 and offer community and technical college education in
27 accordance with the provisions of section three-a, article
28 three of this chapter;

29 (f) "Community and technical college education"
30 means the programs, faculty, administration and funding
31 associated with the mission of community and technical
32 colleges as provided in section three-a, article three of this
33 chapter, and also shall include post-secondary vocational
34 education programs in the state as those terms are defined
35 in this section. Community and technical college educa-
36 tion shall be delivered through a system which includes
37 eleven community and technical college districts assigned
38 to state institutions of higher education under the jurisdic-
39 tion of the board of directors and the board of trustees,
40 respectively;

41 (g) "Directors" or "board of directors" means the
42 board of directors of the state college system created pur-
43 suant to article three of this chapter or the members there-
44 of;

45 (h) "Higher educational institution" means any institu-
46 tion as defined by Sections 401(f), (g) and (h) of the fed-
47 eral Higher Education Facilities Act of 1963, as amended;

48 (i) "Post-secondary vocational education programs"
49 means any college-level course or program beyond the
50 high school level provided through an institution of high-
51 er education which results in or may result in the awarding
52 of a two-year associate degree, under the jurisdiction of
53 the board of directors;

54 (j) "Rule" or "rules" means a regulation, standard,
55 policy or interpretation of general application and future
56 effect;

57 (k) "Senior administrator" means the person hired by
58 the governing boards in accordance with section one,
59 article four of this chapter, with such powers and duties as
60 may be provided for in section two of said article;

61 (l) "State college" means Bluefield state college, Con-
62 cord college, Fairmont state college, Glenville state college,
63 Shepherd college, West Liberty state college, or West Vir-
64 ginia state college;

65 (m) "State college system" means the state colleges and
66 community and technical colleges, and also shall include
67 post-secondary vocational education programs in the state
68 as those terms are defined in this section;

69 (n) "State college system community and technical
70 colleges" means the freestanding community and technical
71 colleges and community and technical colleges operated
72 on the campuses of state colleges under the jurisdiction of
73 the board of directors of the state college system and all of
74 their associated branches, centers and off-campus loca-
75 tions;

76 (o) "State institution of higher education" means any
77 university, college or community and technical college in
78 the state university system or the state college system as
79 those terms are defined in this section;

80 (p) "Trustees" and "board of trustees" means the uni-
81 versity of West Virginia board of trustees created pursuant
82 to article two of this chapter or the members thereof;

83 (q) "University", "university of West Virginia" and
84 "state university system" means the multi-campus, integrat-
85 ed university of the state, consisting of West Virginia uni-
86 versity, including West Virginia university at Parkersburg,
87 Potomac state college of West Virginia university, West
88 Virginia university institute of technology and the West
89 Virginia university school of medicine; Marshall universi-
90 ty, including the Marshall university school of medicine
91 and the Marshall university community and technical
92 college; the West Virginia graduate college; and the West
93 Virginia school of osteopathic medicine;

94 (r) "University system community and technical col-
95 leges" means Marshall university community and technical
96 college, community and technical education programs at
97 West Virginia university at Parkersburg, community and
98 technical education programs at Potomac state college of
99 West Virginia university and West Virginia university insti-
100 tute of technology community and technical college un-
101 der the jurisdiction of the university of West Virginia
102 board of trustees and all their associated branches, centers
103 and off-campus locations; and

104 (s) "Regional campus" means West Virginia university
105 at Parkersburg, Potomac state college of West Virginia
106 university, and West Virginia University institute of tech-
107 nology. The chief executive officer of a regional campus
108 shall be known as "campus president", shall serve at the
109 will and pleasure of the president of West Virginia univer-
110 sity, and shall report to the president of West Virginia
111 university or his or her designee in the method specified
112 by West Virginia university. The board of advisors for
113 West Virginia university established pursuant to section
114 one, article six of this chapter shall serve as the advisory
115 board for West Virginia university and its regional cam-
116 puses. The advisory boards previously appointed for each
117 regional campus shall be known as "Boards of Visitors"
118 and shall provide guidance to the regional campus presi-

119 dents. Each regional campus shall adopt separate strategic
120 plans required by section one-c of this article.

18B-1-8a. Higher education accountability; institutional and statewide report cards.

1 (a) The governing boards are directed to make infor-
2 mation available to parents, students, faculty, staff, state
3 policymakers and the general public on the quality and
4 performance of public higher education. This informa-
5 tion shall be consistent and comparable between and
6 among the state institutions of higher education and, if
7 applicable, comparable with information from peer institu-
8 tions in the region and the nation.

9 (b) On or before the first day of November, one thou-
10 sand nine hundred ninety-five, the governing boards are
11 directed to adopt a rule pursuant to the provisions of arti-
12 cle three-a, chapter twenty-nine-a of this code, providing
13 for the collection, analysis and dissemination of data and
14 information on the performance of the state institutions of
15 higher education, including health sciences education, in
16 relation to the findings, directives, goals and objectives set
17 forth in sections one-a and one-b of this article and in
18 comparison to their peers in the region and the nation. In
19 developing the rule, the governing boards shall consult
20 with the governor, the legislative oversight commission on
21 education accountability and the state department of edu-
22 cation regarding the relevant areas of data and informa-
23 tion considered necessary for inclusion in a higher educa-
24 tion report card. Upon approval of the rule by the legisla-
25 tive oversight commission on education accountability,
26 and the effective date of the rule, the provisions of subsec-
27 tion (c) of this section are null and void: The legislative
28 rules shall provide the legislative oversight commission on
29 education accountability with full and accurate informa-
30 tion while minimizing the institutional burden of
31 recordkeeping and reporting. The legislative rules shall
32 include uniform definitions for the various indicators of
33 student and institutional performance and guidelines for
34 the collection and reporting of data and the preparation,
35 printing and distribution of report cards under this sec-
36 tion. The report card forms shall provide for brief, con-

37 cise reporting in nontechnical language of required infor-
38 mation. Any technical or explanatory material which an
39 institution or governing board wishes to include shall be
40 contained in a separate appendix available to the general
41 public upon request.

42 (c) The president or chief executive officer of each
43 public college, university or community college shall
44 prepare and submit annually all requested data to the
45 appropriate governing board at the time as the governing
46 board may establish. The governing boards shall prepare
47 institutional report cards for institutions under their juris-
48 diction and systemwide report cards which shall include
49 the information required in the following subdivisions:

50 (1) For all undergraduate students and for all institu-
51 tions having undergraduate programs, the institution shall
52 report the following as available and applicable: Average
53 scores of incoming freshmen and transfer students on the
54 American college test (ACT) or scholastic aptitude test
55 (SAT); percentage of incoming freshmen enrolled in
56 developmental classes; student performance as measured
57 by grade point average and/or appropriate testing mea-
58 sures; the graduation or completion rate as may be de-
59 fined by federal law or regulation for the student body as
60 a whole and separately for students at the institution who
61 received athletically-related student aid categorized by sex
62 and athletic program; the rate at which individuals who
63 complete or graduate from the program of an institution
64 pass applicable licensure or certification examinations
65 required for employment in a particular vocation, trade or
66 professional field; student mobility (transfers in, transfers
67 out and withdrawals); number and percentage of student
68 body receiving tuition fee waivers; and number, percent-
69 age and dollar value of tuition fee waivers categorized by
70 whether the waiver is for athletic participation or is an
71 academic waiver and by whether the recipient is a resident
72 or nonresident of this state.

73 (2) For professional schools, defined for the purposes
74 of this section as academic programs leading to profes-
75 sions in which licensing is normally required and for
76 which an undergraduate degree is a general prerequisite,

77 the institution shall report the following as available and
78 applicable: Average scores of beginning students and
79 transfer students on standardized entrance examinations;
80 number and percentage of student body receiving tuition
81 fee waivers; number, percentage and dollar value of tuition
82 fee waivers categorized by whether the recipient is a resi-
83 dent or nonresident of this state; the number of degrees
84 granted; the graduation or completion rate as may be
85 defined by federal law or regulation for the student body
86 as a whole; the rate at which individuals who complete or
87 graduate from the program of an institution pass applica-
88 ble licensure or certification examinations required for
89 employment in the particular professional field; the total
90 number of students in each program, including the per-
91 centage of those students who are state residents, the per-
92 centage of students who are nonresidents of the state, the
93 percentage of students who are women and the percentage
94 of students who are minorities as the term is defined by
95 federal law; and the ratio of expenditures per pupil direct-
96 ly attributable to students enrolled in the professional
97 school as compared to expenditures per pupil calculated
98 as to students enrolled in the institution as a whole.

99 (3) For graduate schools, defined for the purposes of
100 this section as academic programs leading to advanced
101 degrees (masters or doctorates of philosophy in fields for
102 which bachelor's degree programs are available) and for
103 which an undergraduate degree is a general prerequisite,
104 the institution shall report the following as available and
105 applicable: Average scores of beginning students and
106 transfer students on standardized entrance examinations;
107 number and percentage of student body receiving tuition
108 fee waivers; number, percentage and dollar value of tuition
109 fee waivers categorized by whether the recipient is a resi-
110 dent or nonresident of this state; the number of degrees
111 granted; the graduation or completion rate as may be
112 defined by federal law or regulation for the student body
113 as a whole; the rate at which individuals who complete or
114 graduate from the program of an institution pass applica-
115 ble licensure or certification examinations required for
116 employment; and the total number of students in each
117 program, including the percentage of those students who

118 are state residents, the percentage of students who are
119 nonresidents of the state, the percentage of students who
120 are women and the percentage of students who are minori-
121 ties as the term is defined by federal law.

122 (4) In addition to any and all information required by
123 subdivision (2) of this subsection, each health sciences
124 school shall assist the vice chancellor for health sciences in
125 providing information for the institutional and statewide
126 report cards, which shall include reports on the following:

127 (A) Information on graduates, including, but not limited
128 to, placement of interns and residents, retention rates in
129 the state, retention rates in underserved areas as deter-
130 mined by the division of health, the percentage practicing
131 in primary care in this state to be defined as family medi-
132 cine, internal medicine, pediatrics and obstetrics/gynecolo-
133 gy, and other information pertinent to health sciences
134 education as it relates to health care delivery in this state
135 such as recruitment programs to attract health care provid-
136 ers to West Virginia; reasons obtained from graduate sur-
137 veys as to why health care graduates are leaving West Vir-
138 ginia; programs developed to direct graduates into prima-
139 ry care practices and specialty shortage areas in this state;
140 and ways in which the health sciences schools intend to
141 assist in meeting the projected health care needs of this
142 state, including specialty and subspecialty health care
143 professional needs and where those needs are expected to
144 arise, as those needs are defined by the division of health
145 or such other state agency as the division of health may
146 consider appropriate;

147 (B) Contractual and financial arrangements between
148 the health sciences schools and such nonprofit and
149 for-profit entities receiving moneys from the health sci-
150 ences schools that the board of trustees determines have a
151 significant impact on the provision of health sciences
152 education in this state. The report shall state the entity, the
153 amount of funds paid to the entity and what the payment
154 is for;

155 (C) The roles and missions of the health sciences
156 schools and evaluation of each school's performance in
157 accordance with outcome measures developed to evaluate

158 the attainment of the roles, missions and programs devel-
159 oped for each school;

160 (D) The annual audit of the expenditures of each
161 health sciences school and any audit received by the board
162 from the nonprofit and for-profit entities determined by
163 the board of trustees to have a significant affiliation to any
164 health sciences school;

165 (E) Findings regarding management and operation of
166 the health sciences schools, the findings to be based on the
167 annual audits and to include proposals for and barriers to
168 improving efficiency and generating cost savings in health
169 sciences education;

170 (F) The quality of health sciences education, includ-
171 ing, but not limited to, a review of any accrediting agen-
172 cy's report on health sciences education at any
173 state-funded health sciences school;

174 (G) The clinical health care services and programs
175 offered or delivered by the health sciences schools, includ-
176 ing, but not limited to, programs which use existing state
177 facilities for the purposes of clinical rotations;

178 (H) Matters relating to the funding and budgeting of
179 health sciences education in this state, including, but not
180 limited to, ways in which the budget effectuates the roles
181 and missions of the health sciences schools;

182 (I) The financing of health sciences education subse-
183 quent to an annual, comprehensive review thereof. The
184 report shall include anticipated capital costs, projected
185 operating expenses and future growth and recommenda-
186 tions on the allocation of any state or other tax dedicated
187 to the funding of health sciences education; and

188 (J) Such other administrative, budgetary, financial,
189 educational and other concerns as the board of trustees
190 may consider necessary or helpful in providing informa-
191 tion about the health sciences schools pursuant to this
192 subsection.

193 (5) For all public institutions of higher education in
194 the state, the following indicators of institutional perfor-

195 mance in comparison with the aggregate of all other insti-
196 tutions in the state, region and nation as applicable and to
197 the extent comparison data are available: Student-faculty
198 ratio by school; student-administrator ratio; faculty turn-
199 over by school; educational and general expenditure per
200 full-time equivalent (FTE) student; expenditure by fund in
201 graphic display; the academic rank and years of experi-
202 ence of the faculty and administrators at the institution;
203 percentage minorities comprise of faculty and major ad-
204 ministrative staff; percentage women comprise of faculty
205 and major administrative staff; percentage of classes
206 taught by adjunct or part-time faculty; statistics concern-
207 ing the occurrence on campus during the most recent
208 school year and during the preceding school years for
209 which data are available of criminal offenses reported to
210 campus security authorities or local police; and statistics
211 concerning the number of arrests for crimes occurring on
212 campus during the most recent school year and during the
213 preceding school years for which data are available.

214 The statewide report card shall include the data for
215 each institution for each separately listed applicable indi-
216 cator and the aggregate of the data for all institutions
217 under the jurisdiction of the board of trustees of the uni-
218 versity of West Virginia and for all institutions under the
219 jurisdiction of the board of directors of the state college
220 system for each indicator.

221 The statewide report cards shall be prepared using
222 actual institutional, state, regional and national data as
223 applicable and available indicating the present perfor-
224 mance of the individual institutions and the state systems
225 of higher education and shall also include goals and
226 trends for the institutions and the higher education sys-
227 tems. Each governing board as part of its assessment of
228 the individual institutions under its jurisdiction shall in-
229 clude the number and gross dollar amount of grants re-
230 ceived for academic research for each institution and a
231 succinct review of research projects including a brief de-
232 scription of each project and the numbers of faculty, grad-
233 uate and undergraduate students involved in each project.
234 In assessing progress toward meeting goals and in devel-
235 oping trend information, the governing boards shall re-

236 view report card data in relation to previously adopted
237 board goals, five-year plans, regional and national higher
238 education trends and the resource allocation model.

239 (d) The higher education central office staff under the
240 direction of the senior administrator shall provide techni-
241 cal assistance to each institution and governing board in
242 data collection and reporting and is responsible for assem-
243 bling the statewide report card from information submit-
244 ted by each governing board.

245 Each governing board shall prepare report card infor-
246 mation in accordance with the guidelines set forth in this
247 section and rules promulgated under this section. The
248 statewide report card shall be presented at a regular board
249 meeting of the appropriate governing board subject to
250 applicable notice requirements.

251 The statewide report cards shall be completed and
252 disseminated with copies to the legislative oversight com-
253 mission on education accountability prior to the first day
254 of January, one thousand nine hundred ninety-seven, and
255 each year thereafter. Statewide report cards shall be based
256 upon information for the current school year or for the
257 most recent school year for which the information is avail-
258 able, in which case such year shall be clearly footnoted.

259 The governing boards shall make copies of both the
260 institutional and statewide report cards available to any
261 individual requesting them.

**§18B-1-8b. Coordinate affiliation between Marshall university
and West Virginia graduate college.**

1 There is hereby established a coordinate affiliation
2 between Marshall university and the West Virginia gradu-
3 ate college to insure a jointly planned and operated pro-
4 gram of graduate education in the Charleston-Huntington
5 region of West Virginia. The two institutions, while main-
6 taining their individual identities, missions, faculty, curric-
7 ula and budgets, shall share facilities as appropriate, devel-
8 op integrated information technology systems, operate
9 joint programs where efficient and practicable, develop
10 joint electronic administrative and library systems, and

- 11 engage in joint appointment of faculty and administrators
- 12 as feasible and where cost effective.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-9. West Virginia University institute of technology.

1 (a) Notwithstanding any other provisions of this code
2 to the contrary, the authority to establish, maintain and
3 operate West Virginia institute of technology is hereby
4 transferred to the board of trustees effective the first day
5 of July, one thousand nine hundred ninety-six. West Vir-
6 ginia institute of technology shall henceforth be known as
7 West Virginia university institute of technology and shall
8 be operated as a regional campus of West Virginia univer-
9 sity under the same procedures, policies, rules and practic-
10 es utilized by West Virginia university and the board of
11 trustees in operating West Virginia university at
12 Parkersburg and Potomac state college of West Virginia
13 university.

14 (b) Notwithstanding any other provisions of this code
15 to the contrary and notwithstanding the resource alloca-
16 tion policy of the board of trustees, in allocating funds to
17 the institutions under its jurisdiction, the board of trustees,
18 through the first day of July, two thousand one, shall en-
19 sure that each institution receives no less than the amount
20 of funds that each institution would have received if West
21 Virginia institute of technology had not been transferred
22 to the jurisdiction of the trustees.

23 (c) Title to all property previously transferred to or
24 vested in the board of directors for the exclusive use or
25 benefit of West Virginia institute of technology is hereby
26 transferred to the board of trustees. Each valid agreement,
27 obligation or claim entered into or incurred by the board
28 of directors on behalf of West Virginia institute of tech-
29 nology is hereby transferred to the board of trustees.

30 (d) Revenues of West Virginia institute of technology
31 previously pledged to pay off the indebtedness of revenue
32 bonds issued by the board of directors shall continue to be
33 paid to the board of directors until the existing debt is

34 fully paid. An annual payment of three hundred
35 seventy-three thousand eighty-nine dollars for each of the
36 years remaining on the present system bond issue of the
37 board of directors shall constitute the debt of West Virgin-
38 ia university institute of technology to the board of direc-
39 tors under this subsection. If the board of directors ap-
40 proves, the board of trustees or West Virginia university
41 institute of technology may discharge this indebtedness
42 through alternative payment plans or methods, including
43 prepayment discounted appropriately.

44 (e) To compensate the other state college institutions
45 for the amount that would have been reallocated under the
46 resource allocation policy of the board of directors if West
47 Virginia institute of technology had remained under the
48 jurisdiction of the board of directors, West Virginia uni-
49 versity institute of technology shall transfer two hundred
50 eighty-four thousand five-hundred twenty-five dollars to
51 the board of directors for each of the fiscal years one
52 thousand nine hundred ninety-six—ninety-seven, one
53 thousand nine hundred ninety-seven—ninety-eight, and
54 one thousand nine hundred ninety-eight—ninety-nine.

55 (f) West Virginia university institute of technology
56 shall retain the same or a lower type of southern regional
57 education board classification as an institution until at least
58 the first day of July, two thousand.

59 (g) Until at least the first day of July, one thousand
60 nine hundred ninety-seven, West Virginia university insti-
61 tute of technology shall retain the same promotion and
62 tenure process in place prior to the transfer effectuated by
63 this section.

64 (h) For the purposes of meeting the requirements of
65 section one, article seven of this chapter, West Virginia
66 university institute of technology, West Virginia university
67 at Parkersburg, and Potomac state college of West Virginia
68 university shall be considered separate institutions of high-
69 er education.

70 (i) Any new moneys appropriated to or received by
71 West Virginia university institute of technology shall be

72 allocated to West Virginia university institute of technolo-
73 gy under the policies of the board of trustees.

74 It is the intent of the Legislature in implementing the
75 merger of West Virginia university and West Virginia
76 institute of technology that new graduate programs of-
77 fered by West Virginia university at the West Virginia
78 university institute of technology will not duplicate exist-
79 ing graduate programs currently offered by Marshall
80 university and the West Virginia graduate college. Before
81 any graduate programs are offered by West Virginia uni-
82 versity at the West Virginia university institute of technolo-
83 gy, they must be approved by the board of trustees.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-2. Meetings and compensation.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level administration and governance; programs; district consortia; implementation process; and implementation team.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of directors of the state college system
2 shall consist of sixteen persons, of whom one shall be the
3 chancellor of the university of West Virginia board of
4 trustees, ex officio, who shall not be entitled to vote; one
5 shall be the state superintendent of schools, ex officio, who
6 shall not be entitled to vote; one shall be the chair of the
7 joint commission for vocational-technical-occupational
8 education, ex officio, who shall not be entitled to vote; one
9 shall be the chairman of the advisory council of students,
10 ex officio, who shall be entitled to vote; one shall be the
11 chairman of the advisory council of faculty, ex officio,
12 who shall be entitled to vote; and one shall be the chair-
13 man of the advisory council of classified employees, ex
14 officio, who shall be entitled to vote. The other ten direc-
15 tors shall be citizens of the state, appointed by the gover-

16 nor, by and with the advice and consent of the Senate. On
17 or after the tenth day of March, one thousand nine hun-
18 dred ninety-six, the board shall be reconstituted and all
19 terms of members appointed by the governor prior to the
20 tenth day of March, one thousand nine hundred
21 ninety-six, shall expire upon the appointment by the gov-
22 ernor of all the directors required to be appointed by this
23 section. The governor shall make appointments required
24 by this section no later than the fifteenth day of March,
25 one thousand nine hundred ninety-six.

26 Each of the directors appointed to the board by the
27 governor shall represent the public interest and shall be
28 especially qualified in the field of higher education by
29 virtue of the person's knowledge, learning, experience or
30 interest in the field. The relative enrollments of baccalau-
31 reate and community and technical students in the state
32 college system shall be considered by the governor when
33 making such appointments and the governor shall use his
34 or her best efforts to achieve a balance among the mem-
35 bers who reflect the various interests, goals and concerns
36 reflected by the relative enrollments.

37 Except for the ex officio directors, no person shall be
38 eligible for appointment to membership on the board of
39 directors who is an officer, employee or member of an
40 advisory board of any state college or university, an offi-
41 cer or member of any political party executive committee,
42 the holder of any other public office or public employ-
43 ment under the government of this state or any of its polit-
44 ical subdivisions, or an appointee or employee of the
45 board of trustees or board of directors: *Provided*, That if
46 there are no ethical restrictions under state or federal law, a
47 federal employee may serve as a member of the board of
48 directors. Of the ten directors appointed by the governor
49 from the public at large, not more than five thereof shall
50 belong to the same political party and at least three direc-
51 tors of the board shall be appointed from each congressio-
52 nal district.

53 Except as provided in this section, no other person
54 may be appointed to the board.

55 (b) The governor shall appoint ten directors as soon
56 after the tenth day of March, one thousand nine hundred
57 ninety-six, as is practicable, and the original terms of all
58 directors shall commence on that date. The terms of the
59 directors appointed by the governor shall be for overlap-
60 ping terms of six years, except, of the original appoint-
61 ments, three shall be appointed to terms of two years, three
62 shall be appointed to terms of four years and four shall be
63 appointed to terms of six years. Each subsequent appoint-
64 ment which is not for the purpose of filling a vacancy in
65 an unexpired term shall be appointed to a term of six
66 years.

67 The governor shall appoint a director to fill any va-
68 cancy among the ten directors appointed by the governor,
69 by and with the advice and consent of the Senate, which
70 director appointed to fill such vacancy shall serve for the
71 unexpired term of the vacating director. The governor
72 shall fill the vacancy within sixty days of the occurrence
73 of the vacancy.

74 All directors appointed by the governor shall be eligi-
75 ble for reappointment: *Provided*, That a person who
76 serves as a director or trustee during all or any part of two
77 consecutive terms beginning after the first day of March,
78 one thousand nine hundred ninety-six, shall be ineligible
79 to serve as a director for a period of three years immedi-
80 ately following the second of the two consecutive terms.

81 The chairman of the advisory council of students, ex
82 officio; the chairman of the advisory council of faculty, ex
83 officio; and the chairman of the advisory council of classi-
84 fied employees, ex officio, shall serve the terms for which
85 they were elected by their respective advisory councils.
86 These members shall be eligible to succeed themselves.

87 (c) Before exercising any authority or performing any
88 duties as a director, each director shall qualify as such by
89 taking and subscribing to the oath of office prescribed by
90 section five, article IV of the constitution of West Virginia,
91 and the certificate thereof shall be filed with the secretary
92 of state.

93 (d) No director appointed by the governor shall be
94 removed from office by the governor except for official
95 misconduct, incompetence, neglect of duty or gross im-
96 morality, and then only in the manner prescribed by law
97 for the removal by the governor of the state elective offi-
98 cers.

§18B-3-2. Meetings and compensation.

1 (a) The board of directors shall hold at least ten meet-
2 ings in every fiscal year, including an annual meeting each
3 June: *Provided*, That a meeting for the purpose of select-
4 ing the first chairman shall be held during March, one
5 thousand nine hundred ninety-six. Except for the annual
6 meeting, which may be held at a location anywhere in the
7 state, the meetings shall be held on different campuses of
8 institutions in the state college system on a rotating basis
9 or at the central office. The directors may set aside time at
10 these meetings held at the campuses to afford administra-
11 tors, faculty, students and classified staff at these institu-
12 tions an opportunity to discuss issues affecting these
13 groups. The directors shall hold at least one meeting each
14 year with the advisory council of faculty, the advisory
15 council of students and the advisory council of classified
16 employees, each of these bodies to be met with separately.
17 Except as otherwise provided in this section, meetings shall
18 be held on such dates and at such places as the directors
19 may prescribe. In addition to the statutorily required
20 meetings, the directors may meet at such other times as
21 may be necessary, such meetings to be held upon its own
22 resolution or at the written request of at least five appoint-
23 ed directors.

24 Of the thirteen voting members of the board of direc-
25 tors, seven shall constitute a quorum, and a majority vote
26 of the quorum shall be necessary to pass upon matters
27 before the directors.

28 (b) The directors shall be reimbursed for actual and
29 necessary expenses incident to the performance of such
30 duties, upon presentation of an itemized sworn statement
31 thereof. The foregoing reimbursement for actual and
32 necessary expenses shall be paid from appropriations
33 made by the Legislature to the directors.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level administration and governance; programs; district consortia; implementation process; and implementation team.

1 (a) *General.* — The purpose of this section is to estab-
2 lish community and technical college education that is
3 well articulated with the public schools and four-year
4 colleges; that makes maximum use of shared facilities,
5 faculty, staff, equipment and other resources; that encour-
6 ages traditional and nontraditional students and adult
7 learners to pursue a life-time of learning; that serves as an
8 instrument of economic development; and that has the
9 independence and flexibility to respond quickly to chang-
10 ing needs. The respective governing boards shall provide
11 for community and technical college education at state
12 institutions of higher education under their jurisdiction to
13 have the administrative, programmatic and budgetary
14 control necessary to allow maximum flexibility and re-
15 sponsiveness to district and community needs consistent
16 with the goal of sharing facilities, faculty, staff, equipment
17 and other resources within and among the districts, the
18 other systems of public and higher education and other
19 education and training programs.

20 (b) *State level governance.* — The board of directors
21 and the board of trustees shall jointly employ a vice chan-
22 cellor for community and technical college education.
23 The vice chancellor for community and technical college
24 education shall report directly to and provide assistance to
25 the board of directors and the board of trustees on matters
26 related to community and technical college education and
27 shall serve at their will and pleasure. The vice chancellor
28 for community and technical college education shall ad-
29 vise, assist and consult regularly with the administrative
30 heads, institutional boards of advisors, and district consor-
31 tia committees of each state institution of higher education
32 involved in community and technical college education.

33 In appointing members to the institutional boards of
34 advisors within the state college system pursuant to section
35 one, article six of this chapter, the board of directors shall

36 consider the relative distribution of baccalaureate and
37 community and technical college enrollments of the re-
38 spective institutions and shall make up to three of such
39 appointments from the membership of district consortia
40 committee on the basis of such proportional enrollments.
41 All appointments shall be reflective of the economic, in-
42 dustrial, educational, community and employment charac-
43 teristics of the institution's region and be geographically
44 dispersed to the extent practical.

45 (c) *Formation of community and technical college*
46 *districts.* — The eleven community and technical college
47 districts shall be comprised of contiguous areas of the state
48 which have similar economic, industrial, educational, com-
49 munity and employment characteristics to facilitate spe-
50 cialization in mission and programming. For the purposes
51 of initial implementation and organization, the districts
52 shall be comprised as follows:

53 (1) Ohio, Brooke, Hancock, Marshall, Tyler and
54 Wetzel counties;

55 (2) Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and
56 Wirt counties;

57 (3) Kanawha, Putnam and Clay counties;

58 (4) Cabell, Mason, Putnam and Wayne counties;

59 (5) Fayette, Clay, Kanawha, Raleigh and Nicholas
60 counties;

61 (6) Logan, Boone, Lincoln, McDowell, Mingo, Raleigh
62 and Wyoming counties;

63 (7) Mercer, Greenbrier, McDowell, Monroe,
64 Pocahontas, Raleigh and Summers counties;

65 (8) Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis,
66 Nicholas, Upshur and Webster counties;

67 (9) Marion, Doddridge, Harrison, Monongalia,
68 Preston, Randolph, Taylor, Barbour and Tucker counties;

69 (10) Jefferson, Berkeley, Grant, Hardy and Morgan
70 counties; and

71 (11) Mineral, Grant, Hampshire, Hardy and Pendleton
72 counties.

73 It is the intent of the Legislature that counties which
74 are listed in more than one district shall be served by the
75 associated community and technical colleges as a coopera-
76 tive service area, or shall be divided as the board of direc-
77 tors determines. The boundaries of the eleven districts
78 may be modified from time to time by the board of direc-
79 tors upon request of the affected community and technical
80 colleges to better serve the needs within the districts. Such
81 modifications are not required to follow county bound-
82 aries.

83 Subject to any restrictions imposed by the board of
84 directors, the district boundaries shall not be employed to
85 restrict other state institutions of higher education from
86 offering programs of strength to meet underserved needs,
87 consistent with the objective of not duplicating efforts as
88 determined by the governing boards: *Provided*, That
89 nothing herein shall be construed to prevent state institu-
90 tions of higher education from offering courses at
91 off-campus centers or locations now operating or estab-
92 lished in the future which are not duplicative. Distance
93 learning technology, resource networking and other coop-
94 erative and collaborative efforts shall be used to the maxi-
95 mum extent prudent and practical to avoid unnecessary
96 duplication of program development and delivery.

97 The main campus of the community and technical
98 college shall be identified under the name of the commu-
99 nity and technical college for the district and the district
100 shall be known as the "community and technical college
101 district". In addition, the name of all branches, centers and
102 programs shall reflect the name of the district.

103 (d) *Allocation of resources and budgets.* — All funds
104 for community and technical college education shall be
105 proposed by the governing boards for their respective
106 institutions and appropriated by the Legislature in an
107 institutional control account under the jurisdiction of the
108 board of directors for those institutions governed by the
109 board of directors for their respective institutions and a
110 separate institutional control account under the jurisdic-

111 tion of the board of trustees for those institutions gov-
112 erned by the board of trustees. The board of directors
113 and the board of trustees shall establish by joint legislative
114 rule a formula for the allocation of such funds to control
115 accounts of individual university system and state college
116 system community and technical colleges, which rule shall
117 include uniform guidelines for the allocation and report-
118 ing of student enrollments, costs, reimbursements and
119 revenues for community and technical colleges located on
120 the campus of another state institution of higher educa-
121 tion.

122 (e) *College level administration and governance.* —
123 The administrative head of a state college system commu-
124 nity and technical college shall be the president, in the
125 case of the freestanding community and technical colleg-
126 es, and the provost of the community and technical col-
127 lege in the case of all other state college system communi-
128 ty and technical colleges. Such provost shall be employed
129 by the president of the state institution of higher education
130 upon which the main campus of the community and tech-
131 nical college is located and the provost shall serve at the
132 will and pleasure of the president. The administrative
133 head shall be responsible for coordination and other ad-
134 ministrative arrangements with the host institution and
135 other duties assigned pursuant to this section. Nothing in
136 this section shall prohibit a current employee in communi-
137 ty and technical education from being employed as a
138 provost. The administrative and business offices and
139 functions of community and technical colleges, except
140 freestanding, shall be consolidated with those of the host
141 institution to the extent practical. To enhance program
142 flexibility and mobility, to enhance program coordination
143 and delivery in the public schools and to take advantage
144 of the expertise and experience of persons in business and
145 industry, community and technical colleges shall make
146 extensive use of combined courses with four-year colleges
147 and universities, employ by contract or other arrange-
148 ments college and university faculty to teach community
149 and technical college courses, employ qualified public
150 school teachers as adjunct professors and employ quali-

151 fied business, industry and labor persons as adjunct pro-
152 fessors in technical areas.

153 (f) *Community and technical college programs.* —
154 The mission of each community and technical college
155 shall include the following programs which may be of-
156 fered on or off campus, at the work site, in the public
157 schools and at other locations at times that are convenient
158 for the intended population:

159 (1) Career and technical education certificate, associate
160 of applied science and selected associate of science degree
161 programs for students seeking immediate employment,
162 individual entrepreneurship skills; occupational develop-
163 ment, skill enhancement and career mobility;

164 (2) Transfer education associate of arts and associate
165 of science degree programs for students whose education-
166 al goal is to transfer into a baccalaureate degree program;

167 (3) Developmental/remedial education courses, tutori-
168 als, skills development labs and other services for students
169 who need to improve their skills in mathematics, English,
170 reading, study skills, computers and other basic skill areas;

171 (4) Work force training and retraining contract educa-
172 tion with business and industry to train or retrain employ-
173 ees;

174 (5) Continuing development assistance and education
175 credit and noncredit courses for professional and
176 self-development, certification and licensure and literacy
177 training; and

178 (6) Community service workshops, lectures, seminars,
179 clinics, concerts, theatrical performances and other
180 noncredit activities to meet the cultural, civic and personal
181 interests and needs of the community.

182 All administrative, programmatic and budgetary con-
183 trol over community and technical education within the
184 district shall be vested in the administrative head and the
185 institutional board of advisors of state college system com-
186 munity and technical colleges, subject to rules adopted by
187 the board of directors. The administrative head and insti-

188 tutional board of advisors shall be responsible for the
189 regular review, revision, elimination and establishment of
190 programs within the district to assure that the needs of the
191 district for community and technical college programs are
192 met. It is the intent of the Legislature that the program
193 review and approval process for community and technical
194 education be separate and distinct from baccalaureate
195 education. The administrative head and institutional
196 board of advisors shall seek assistance from and utilize a
197 district consortia committee in fulfilling this responsibility.

198 (g) *District consortia committee.* — The administra-
199 tive head of each university system and state college sys-
200 tem community and technical college shall form a district
201 consortia committee which shall include representatives
202 distributed geographically to the extent practical of the
203 major community college branches, vocational-technical
204 centers, comprehensive high schools, four-year colleges
205 and universities, community service or cultural organiza-
206 tions, economic development organizations, business,
207 industry, labor, elected public officials and employment
208 and training programs and offices within the district. The
209 consortia committee shall be chaired by the administrative
210 head or his or her designee and shall advise and assist the
211 administrative head with the following:

212 (1) Completing a comprehensive assessment of the
213 district to determine what education and training programs
214 are necessary to meet the short and long-term work force
215 development needs of the district;

216 (2) Coordinating efforts with regional labor market
217 information systems that identify the ongoing needs of
218 business and industry, both current and projected, and
219 provide information to assist in an informed program of
220 planning and decisionmaking;

221 (3) Planning and development of a unified effort to
222 meet the documented work force development needs of
223 the district through individual and cooperative programs,
224 shared facilities, faculty, staff, equipment and other re-
225 sources and the development and use of distance learning
226 and other educational technologies;

227 (4) Increasing the integration of secondary and
228 post-secondary curriculum and programs that are targeted
229 to meet regional labor market needs, including the plan-
230 ning and implementation of a comprehensive school-to-
231 work transition system that helps students focus on career
232 objectives, builds upon current programs such as high
233 schools that work, tech prep associate degree programs,
234 registered apprenticeships and rural entrepreneurship
235 through action learning and addresses the needs of at-risk
236 students and school dropouts;

237 (5) Planning and implementation of integrated profes-
238 sional development activities for secondary and post-sec-
239 ondary faculty, staff and administrators and other consor-
240 tia partners throughout the district;

241 (6) Ensuring that program graduates have attained the
242 competencies required for successful employment
243 through the involvement of business, industry and labor in
244 establishing student credentialing;

245 (7) Performance assessment of student knowledge and
246 skills which may be gained from multiple sources so that
247 students gain credit toward program completion and ad-
248 vance more rapidly without repeating coursework in which
249 they already possess competency;

250 (8) Establishing one-stop-shop career centers with
251 integrated employment and training and labor market
252 information systems that enable job seekers to assess their
253 skills, identify and secure needed education training and
254 secure employment and employers to locate available
255 workers;

256 (9) Increasing the integration of adult literacy, adult
257 basic education, federal job opportunities and basic skills,
258 and community and technical college programs and ser-
259 vices to expedite the transition of adults from welfare to
260 gainful employment; and

261 (10) Establish a single point of contact for employers
262 and potential employers to access education and training
263 programs throughout the district.

264 (h) *Implementation process.* — The implementation of
265 community and technical college education as set forth in
266 this article shall be accomplished over a three-year period.
267 Major program elements shall be accomplished within the
268 following time frames:

269 (1) One thousand nine hundred ninety-five—
270 ninety-six:

271 (i) Form necessary governance structures and make
272 necessary appointments;

273 (ii) Form consortia committees and complete a survey
274 of the educational and training needs of the community
275 college district;

276 (iii) Establish the information necessary to separately
277 budget the community and technical college education for
278 fiscal year one thousand nine hundred ninety-six—
279 ninety-seven, including the rules required pursuant to
280 subsection (d) of this section;

281 (iv) Establish an ongoing method of providing fund-
282 ing for appropriate staff from the public schools and the
283 community and technical colleges for personnel and other
284 costs related to shared facility projects, including recom-
285 mendations for any necessary legislative enactments; and

286 (v) Make recommendations to the governor and Leg-
287 islature as may be necessary.

288 (2) One thousand nine hundred ninety-six—
289 ninety-seven:

290 (i) Begin separate budgeting; and

291 (ii) Begin full operations of the community and tech-
292 nical colleges as provided in this article.

293 (3) One thousand nine hundred ninety-seven—
294 ninety-eight:

295 (i) Review and evaluation.

296 (i) *Implementation team.* — There is hereby estab-
297 lished an implementation team to monitor and oversee
298 implementation of the community and technical college

299 education in accordance with the provisions of this article.
300 The implementation team shall report to the governor and
301 the legislative oversight commission on education ac-
302 countability no later than the first day of December, in the
303 years one thousand nine hundred ninety-five, one thou-
304 sand nine hundred ninety-six and one thousand nine hun-
305 dred ninety-seven, on the status of such implementation
306 and any further needs for legislative enactment. The im-
307 plementation oversight team shall be composed of the
308 secretary of education and the arts, one representative of
309 public education, one representative of community and
310 technical colleges, one representative of four-year colleg-
311 es, one representative of the private sector, one representa-
312 tive of employment and training programs, one represen-
313 tative of vocational-technical-occupational education, four
314 members of the Senate and four members of the House of
315 Delegates, all appointed by the governor. The secretary of
316 education and the arts shall be responsible for staffing the
317 implementation oversight team utilizing existing person-
318 nel, equipment and offices of the affected agencies.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1 (a) At its annual meeting in June of each year, each
2 governing board shall elect from its members appointed
3 by the governor a president and such other officers as it
4 may consider necessary or desirable: *Provided*, That the
5 initial annual meeting shall be held during July, one thou-
6 sand nine hundred eighty-nine. The president and such
7 other officers shall be elected for a one-year term com-
8 mencing on the first day of July following the annual
9 meeting and ending on the thirtieth day of June of the
10 following year. The president of the board shall serve no
11 more than two consecutive terms.

12 (b) Each governing board shall employ a chancellor
13 who shall serve at the will and pleasure of the employing
14 board and shall assist the governing board in the perfor-
15 mance of its duties and responsibilities. No chancellor
16 may hold or retain any other administrative position with-
17 in the system of higher education while employed as

18 chancellor. Each chancellor is responsible for carrying
19 out the directives of the governing board by which he or
20 she is employed and shall work with the board in develop-
21 ing policy options. For the purpose of developing or
22 evaluating policy options, the chancellors may request the
23 assistance of the presidents and other administrative heads
24 of the institutions under their jurisdiction and their staffs.
25 The respective chancellors shall jointly agree to and shall
26 hire one senior administrator who shall serve at their will
27 and pleasure in accordance with section two of this article.

28 (c) The vice chancellor for health sciences shall coor-
29 dinate the West Virginia university school of medicine, the
30 Marshall university school of medicine and the West Vir-
31 ginia school of osteopathic medicine.

32 (d) Suitable offices for the senior administrator and
33 other staff shall be provided in Charleston.

34 (e) The governing boards shall jointly employ a vice
35 chancellor for instructional technology to establish a plan
36 and funding recommendations for development and im-
37 plementation of a multifaceted instructional technology
38 strategy that includes, but is not limited to, a goal that
39 every full-time freshman student beginning in the fall
40 semester, one thousand nine hundred ninety-six, and
41 thereafter, and as many other students and faculty as pos-
42 sible will own or lease a computer, and alternatively that
43 computers be available for part-time students through
44 on-site labs; the integration of computer usage into all
45 course work; the involvement of faculty in the develop-
46 ment and use of technology-based instruction and instruc-
47 tional courseware for community and technical colleges,
48 colleges and universities; and the expansion of distance
49 learning and technology networks throughout the higher
50 education systems to enhance teaching and learning, pro-
51 mote access to quality educational offerings with mini-
52 mum duplication of effort, increase the delivery of in-
53 struction to nontraditional students, provide services to
54 business and industry, and increase the management capa-
55 bilities of the higher education system. The vice chancel-
56 lor shall submit the plan to the Legislature on or before

57 the first day of January, one thousand nine hundred nine-
58 ty-six.

59 The vice chancellor for instructional technology shall
60 supervise the administration, oversight, coordination and
61 implementation of the plan, or portions of the plan, sub-
62 ject to the availability of funds and the direction of the
63 governing boards. In addition, the vice chancellor shall
64 review all technology related matters within the depart-
65 ment of education and the arts and suggest appropriate
66 integration and compatibility of the technology systems
67 within the department and the institutions governed by the
68 board.

69 (f) The governing boards shall jointly employ a vice
70 chancellor for community and technical education pursu-
71 ant to the provisions of section three-a, article three of this
72 chapter.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. Advisory councils of faculty.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of faculty.

4 During the month of April of each even-numbered
5 year, each president or other administrative head of a state
6 institution of higher education, including Potomac state
7 college of West Virginia university, West Virginia universi-
8 ty at Parkersburg, and West Virginia university institute of
9 technology, at the direction of the councils and in accord-
10 dance with procedures established by the councils, shall
11 convene a meeting or otherwise institute a balloting gov-
12 cess to elect one faculty to serve on the appropriate gov-
13 erning board's advisory council of faculty, which shall
14 consist of one faculty, so elected, from each such institu-
15 tion under the appropriate governing board. Terms of the
16 members of each council shall be for two years and shall
17 begin on the first day of July of each even-numbered year

18 and members of each advisory council shall be eligible to
19 succeed themselves.

20 The advisory councils of faculty shall meet at least
21 once each quarter. One of the quarterly meetings shall be
22 during the month of July, at which meeting each council
23 shall elect a chairman, who shall be by virtue of the office
24 a voting member of the appropriate governing board:
25 *Provided*, That the chair shall serve no more than two
26 consecutive terms. No member may vote by proxy at such
27 election. In the event of a tie in the last vote taken for
28 such election, a member authorized by the council shall
29 select the chairman by lot from the names of those per-
30 sons tied. Immediately following the election of a chair-
31 man, each council shall elect, in the manner prescribed by
32 this section for the election of a chairman, a member of
33 that council to preside over meetings of the council in the
34 chairman's absence. Should the chairman vacate the posi-
35 tion, the council shall meet and elect a new chairman to fill
36 the unexpired term within thirty days following such va-
37 cancy. In electing the chairman of the advisory council
38 for the board of trustees, West Virginia university and its
39 regional campuses shall have a total of two votes, which
40 shall be cast for one individual, and the elected representa-
41 tives from Marshall university, the West Virginia graduate
42 college, and West Virginia school of osteopathic medicine
43 shall have one vote per school.

44 Each advisory council of faculty, through its chairman
45 and in any other appropriate manner, shall consult and
46 advise its governing board in matters of higher education
47 in which the faculty members may have an interest.

48 Members of each advisory council shall serve without
49 compensation, but shall be entitled to reimbursement for
50 actual and necessary expenses incurred in the perfor-
51 mance of their official duties from funds allocated to the
52 state institution of higher education served.

53 Each governing board shall furnish secretarial services
54 to its advisory council of faculty, and each advisory coun-
55 cil shall cause to be prepared minutes of its meetings,
56 which minutes shall be available, upon request, to any
57 faculty member of a state institution of higher education

58 represented on the council. Such minutes shall be for-
59 warded to the advisory council of faculty serving the other
60 governing board.

§18B-6-3. Advisory councils of students.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of students.

4 The student government organization at each state
5 institution of higher education shall elect a student, who
6 may be the elected head or president of such organization,
7 to serve on the appropriate governing board's advisory
8 council of students, which are hereby created, consisting
9 of the elected representatives of each institution under the
10 appropriate governing board: *Provided*, That the student
11 government organization at each institution in the univer-
12 sity system, including Potomac state college of West Vir-
13 ginia university, West Virginia university at Parkersburg,
14 and West Virginia university institute of technology, shall
15 elect one student per three thousand students enrolled at
16 each institution with a minimum of one representative
17 from each institution. The student government of each
18 institution shall determine how its representatives shall be
19 elected. Terms of the members of such council shall be
20 for one year and shall begin on the first day of May of
21 each year, and members of the advisory councils shall be
22 eligible to succeed themselves.

23 Each institution shall have only one vote in all matters.
24 The advisory councils of students shall meet at least once
25 each quarter, and shall meet during each month of June, at
26 which meeting each council shall elect a chairman, who
27 prior to such elections must be entitled to vote in the state
28 of West Virginia. By virtue of the office, the chairman
29 shall be a voting member of the appropriate governing
30 board. No member may vote by proxy at such election.
31 In the event of a tie in the last vote taken for such election,
32 a member authorized by the council shall select the chair-
33 man by lot from the names of those persons tied. Immedi-
34 ately following the election of a chairman, each council
35 shall elect, in the manner prescribed by this section for the
36 election of a chairman, a member of that council to pre-

37 side over meetings of the council in the chairman's ab-
38 sence. Should the chairman vacate the position, the coun-
39 cil shall meet and elect a new chairman to fill the unex-
40 pired term within thirty days following such vacancy. In
41 electing the chairman of the advisory council for the
42 board of trustees, West Virginia university and its regional
43 campuses shall have a total of two votes, which shall be
44 cast for one individual, and the elected representatives
45 from Marshall university, the West Virginia graduate col-
46 lege, and West Virginia school of osteopathic medicine
47 shall have one vote per school.

48 Each advisory council of students, through its chair-
49 man and in any other appropriate manner, shall consult
50 and advise its governing board in matters of higher educa-
51 tion in which the students may have an interest.

52 Members of each advisory council shall serve without
53 compensation, but shall be entitled to reimbursement for
54 actual and necessary expenses incurred in the perfor-
55 mance of their official duties from funds allocated to the
56 state institution of higher education served.

57 Each governing board shall furnish secretarial services
58 to its advisory council of students, and each advisory
59 council shall cause to be prepared minutes of its meetings,
60 which minutes shall be available, upon request, to any
61 student of a state institution of higher education represent-
62 ed on the council. Such minutes shall be forwarded to the
63 advisory council of students serving the other governing
64 board.

§18B-6-4. Advisory councils of classified employees.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of classified employees.

4 During the month of April of each even-numbered
5 year, each president or other administrative head of a state
6 institution of higher education, including Potomac state
7 college of West Virginia university, West Virginia univer-
8 sity at Parkersburg and West Virginia university institute
9 of technology, at the direction of the councils and in ac-

10 cordance with procedures established by the councils, shall
11 convene a meeting or otherwise institute a balloting pro-
12 cess to elect one classified employee to serve on the ap-
13 propriate governing board's advisory council of classified
14 employees, which shall consist of one classified employee,
15 so elected, from each such institution under the appropri-
16 ate governing board. Terms of the members of such
17 councils shall be for two years and shall begin on the first
18 day of July of each even-numbered year, and members of
19 the advisory councils shall be eligible to succeed them-
20 selves. For the purpose of this section the term "institution
21 of higher education" includes the facilities and staff super-
22 vised by the senior administrator employed by the govern-
23 ing boards, who shall be deemed a part of the state college
24 system, and the West Virginia network for telecomputing,
25 who shall be deemed a part of the state university system.

26 Each advisory council of classified employees shall
27 meet at least once each quarter. One of the quarterly
28 meetings shall be during the month of July, at which meet-
29 ing each council shall elect a chairman, who shall be by
30 virtue of the office a voting member of the appropriate
31 governing board: *Provided*, That the chair shall serve no
32 more than two consecutive terms: *Provided, however*, That
33 the board of directors' advisory council for classified em-
34 ployees' chairman shall not be a member of the staff su-
35 pervised by the central administrative official. No mem-
36 ber may vote by proxy at such election. In the event of a
37 tie in the last vote taken for such election, a member au-
38 thorized by the council shall select the chairman by lot
39 from the names of those persons tied. Immediately fol-
40 lowing the election of a chairman, each council shall elect,
41 in the manner prescribed by this section for the election of
42 a chairman, a member of the council to preside over meet-
43 ings of the council in the chairman's absence. Should the
44 chairman vacate the position, the council shall meet and
45 elect a new chairman to fill the unexpired term within
46 thirty days following such vacancy. In electing the chair
47 of the advisory council for the board of trustees, West
48 Virginia university and its regional campuses shall have a
49 total of two votes, which shall be cast for one individual,
50 and the elected representatives from Marshall university,

51 the West Virginia graduate college, the West Virginia net-
52 work for telecomputing and West Virginia school of os-
53 teopathic medicine shall have one vote per school.

54 Each advisory council of classified employees,
55 through its chairman and in any other appropriate man-
56 ner, shall consult and advise its governing board in matters
57 of higher education in which the classified employees may
58 have an interest.

59 Members of each advisory council shall serve without
60 compensation, but shall be entitled to reimbursement for
61 actual and necessary expenses incurred in the perfor-
62 mance of their official duties from funds allocated to the
63 state institution of higher education served.

64 Each governing board shall furnish secretarial services
65 to its advisory council of classified employees, and each
66 advisory council shall cause to be prepared minutes of its
67 meetings, which minutes shall be available, upon request,
68 to any classified employee of a state institution of higher
69 education represented on the council. Such minutes shall
70 be forwarded to the advisory council of classified employ-
71 ees serving the other governing board.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALA- RIES.

§18B-8-1. Definitions.

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of
3 minimum salary figures listed in section two of this article;

4 (b) "Academic rank" means the position held by a
5 faculty member as determined by the president, consistent
6 with policy established by the governing board, and in-
7 cludes the positions of professor, associate professor, assis-
8 tant professor and instructor; all other ranks are excluded
9 from the provisions of this article;

10 (c) "Years of experience" means the actual number of
11 years a person has been a full-time faculty member at an
12 institution of higher education within this state. Employ-
13 ment for nine months shall equal one year of experience,
14 but no faculty member may accrue more than one year of
15 experience during any given academic year. Employment

16 for less than full time, or less than nine months during any
17 fiscal year, shall be prorated. In accordance with rules
18 established by the governing boards, a faculty member
19 may be granted additional years of experience for actual
20 years of work or teaching experience at institutions other
21 than institutions of higher education within this state;

22 (d) "Doctoral institutions" means West Virginia univer-
23 sity and Marshall university at Huntington. Doctoral pro-
24 grams at Marshall university shall be selective and
25 nonduplicative of West Virginia university unless an ex-
26 ception is recommended by both institutions and ap-
27 proved by the board of trustees. "Master's II institutions"
28 means West Virginia school of osteopathic medicine and
29 the West Virginia graduate college; "baccalaureate and
30 two-year institutions" means Bluefield state college, Con-
31 cord college, Fairmont state college, Glenville state college,
32 Shepherd college, West Liberty state college, West Virginia
33 university institute of technology, West Virginia state col-
34 lege, West Virginia university at Parkersburg, Southern
35 West Virginia community college, West Virginia northern
36 community college and Potomac state college of West
37 Virginia university and such other institutions as are desig-
38 nated community colleges by the board of directors;

39 (e) "Salary" means the total nine-month or ten-month
40 salary paid from state funds to a full-time faculty member,
41 or if other than nine or ten months, adjusted to a
42 nine-month base salary;

43 (f) "Full-time faculty" means any faculty member
44 designated as such by the president, consistent with ap-
45 proved policy of the appropriate governing board, and
46 those persons with faculty rank who have research or ad-
47 ministrative responsibilities;

48 (g) "Fiscal year" means twelve calendar months and
49 begins on the first day of July and ends on the thirtieth
50 day of June; and

51 (h) "Merit increases and salary adjustments" means the
52 amount of additional salary increase allowed on a merit
53 basis or to rectify salary inequities or accommodate com-
54 petitive market conditions, in accordance with policy es-
55 tablished by the appropriate governing board.

CHAPTER 120

(H. B. 4529—By Mr. Speaker, Mr. Chambers, and Delegates Browning, Beach, Gallagher, Prezioso and Wallace)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to creating the science and technology advisory council; stating the legislative purpose; establishing membership of the council; establishing the powers and duties; payment of expenses; compensation of director; creating public-private partnerships; and establishing funding of the council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. HIGHER EDUCATION — INDUSTRY PARTNERSHIPS.

§18B-18-1. Legislative purpose.

§18B-18-2. Science and technology advisory council; members, appointment and expenses; appointment, duties and compensation of director.

§18B-18-3. Powers and duties of science and technology council.

§18B-18-4. Public-private partnerships; funding.

§18B-18-1. Legislative purpose.

1 The Legislature hereby finds that a pressing need
2 exists for a strategy based upon science and technology
3 which promotes a scientifically literate citizenry, encour-
4 ages the creation of higher-paying jobs and enhances the
5 growth of West Virginia's gross state product. To that end,
6 the state recognizes the need for collaborative research
7 and development efforts among institutions of higher
8 education, industry, government and private organizations

9 which will advance the state's scientific and technological
10 development. The Legislature further finds that focused
11 research and technical assistance efforts related to West
12 Virginia industry will speed such development, improve
13 technology transfer, assist companies in becoming growth
14 leaders and link basic research and technological develop-
15 ment to economic advancement.

16 The Legislature therefore declares that creation of a
17 science and technology advisory council will be advanta-
18 geous to the state by working to move West Virginia into a
19 strong competitive position in science and technology.
20 The council shall provide policy advice to the Legislature
21 and to the governor on scientific and technology subjects
22 and issues and provide policy advice to the council for
23 community and economic development on science and
24 technology issues that will serve to foster economic
25 growth. The council shall also develop a state science and
26 technology strategic plan for submission to the Legislature
27 and the governor.

**§18B-18-2. Science and technology advisory council; mem-
bers, appointment and expenses; appointment,
duties and compensation of director.**

1 (a) There is hereby created a science and technology
2 advisory council, which is a body corporate and politic,
3 constituting a public corporation and government instru-
4 mentality. The council shall consist of eleven members
5 who have professional, labor or managerial knowledge in
6 science and technology development and operations and
7 shall represent an equitable balance between academic and
8 nonacademic persons as follows:

9 (1) Five members to be appointed by the governor,
10 with the advice and consent of the Senate, with not more
11 than three belonging to the same political party, also three
12 of whom shall be from different congressional districts of
13 the state, and, as near as may be, provide a broad state
14 geographical distribution of members of the council;

15 (2) One member to be appointed by the governor,
16 with the advice and consent of the Senate, from a list of
17 two persons recommended by the speaker of the House of
18 Delegates;

19 (3) One member to be appointed by the governor,
20 with the advice and consent of the Senate, from a list of
21 two persons recommended by the president of the Senate;

22 (4) Two members to be appointed by the governor,
23 with the advice and consent of the Senate, from a list of
24 four persons recommended by the chancellor of the uni-
25 versity of West Virginia system;

26 (5) One member to be appointed by the governor,
27 with the advice and consent of the Senate, from a list of
28 two persons recommended by the chancellor of the state
29 college system of West Virginia; and

30 (6) One member to be appointed by the governor,
31 with the advice and consent of the Senate, from a list of
32 two persons recommended by the council for community
33 and economic development.

34 (b) Not later than the fifteenth day of April, one thou-
35 sand nine hundred ninety-six, the governor shall appoint
36 the eleven members of the council for staggered terms.
37 The terms of the council members first taking office on or
38 after the effective date of this legislation shall expire as
39 designated by the governor at the time of their appoint-
40 ment, three at the end of the first year, four at the end of
41 the second year, and four at the end of the third year. As
42 the original appointments expire, each subsequent ap-
43 pointment shall be for a full three-year term. Any mem-
44 ber whose term has expired shall serve until a successor
45 has been duly appointed and qualified. Any person ap-
46 pointed to fill a vacancy shall serve only for the unexpired
47 term. A member is eligible for only one successive reap-
48 pointment. In cases of any vacancy in the office of a
49 member, such vacancy shall be filled by the governor in
50 the same manner as the original appointment was made.

51 (c) Members of the council are not entitled to com-
52 pensation for services performed as members, but are
53 entitled to reimbursement for all reasonable and necessary
54 expenses actually incurred in the performance of their
55 duties. A majority of serving members constitutes a quo-
56 rum for the purpose of conducting business. The gover-
57 nor shall designate a chair, who is not a public official, for
58 a term to run concurrently with the term of office of the
59 member designated. The council shall conduct all meet-

60 ings in accordance with the open meeting law pursuant to
61 article nine-a, chapter six of this code.

62 (d) The council shall prepare and publish an annual
63 report of its activities and accomplishments and submit it
64 to the governor and to the legislative joint committee on
65 government and finance on or before the fifteenth day of
66 December of each year.

67 (e) Each year, the council shall submit to the governor
68 a list of science and technology projects recommended for
69 funding. Such projects shall serve to fulfill the policies
70 established by the science and technology strategic plan.
71 The recommendation shall itemize the funds requested
72 and shall identify any expenditures that will be matched
73 by federal funds, or matched by foundation, corporate or
74 by other funds.

75 (f) The chair of the council also shall serve as the
76 executive director of the council for his or her term of
77 office. He or she shall hold a graduate degree and have
78 professional experience in fields involving science and
79 technology research or development. The expenses of the
80 executive director shall be paid from funds provided by
81 foundation grants, in-kind contributions, or other funds
82 obtained pursuant to subsection (b), section four of this
83 article. The executive director shall provide or obtain
84 scientific and technical information to support the admin-
85 istrative work of the council, and to that end may contract
86 with the university system, a nonprofit organization, or
87 other state agency for research and administrative support.

88 (g) The executive director of the council shall be
89 available to the governor, the speaker of the House of
90 Delegates, and the president of the Senate, to analyze and
91 comment upon proposed legislation and rules which relate
92 to or materially affect state scientific and technical issues.

§18B-18-3. Powers and duties of science and technology council.

1 (a) The council shall consult with the higher education
2 governing boards and with state business leaders in the
3 exercise of its powers and duties, which shall include, but
4 not be limited to, the following: (1) Preparation of a com-
5 prehensive strategic plan and recommendation of pro-

6 grams in furtherance thereof that will support and foster
7 state science and technology research; (2) cooperation
8 with appropriate state agencies to retain and enlarge exist-
9 ing state industries through technology expansion; and (3)
10 formulation of plans to establish science and technology
11 research centers at state universities and colleges. The
12 council may seek public and private research grants and
13 contracts, matching funds and procurement arrangements
14 from the state and federal government, private industry
15 and other agencies, in furtherance of its mission and pro-
16 grams. An initial comprehensive strategic plan that will
17 support and foster economic growth in science and tech-
18 nology research and development in the state shall be
19 developed and provided to the governor and the Legisla-
20 ture no later than the first day of July, one thousand nine
21 hundred ninety-seven, and shall include, but not be limited
22 to, the following:

23 (1) A science and technology policy;

24 (2) The identification of strengths and weaknesses in
25 the basic science resources and research capabilities in the
26 state;

27 (3) The identification of methods that will coordinate
28 and engender collaborative research efforts between re-
29 search entities throughout the state, whether public or
30 private;

31 (4) The designation of areas for potential scientific
32 and technological development, including those related to
33 and having a direct impact upon the economic develop-
34 ment of the state;

35 (5) Recommendations on how to improve and
36 strengthen the partnership between the private sector, insti-
37 tutions of higher education and government;

38 (6) Recommendations on how to improve the infra-
39 structure for research and research training;

40 (7) Recommendations on a system to transfer technol-
41 ogy to the private sector in the state;

42 (8) Recommendations on legislative changes required
43 to improve the overall science and technology environ-
44 ment in the state; and

45 (9) Other recommendations on science and technolo-
46 gy policy and programs as appropriate.

47 The strategic plan may be updated and refiled on or
48 before the first day of July of each year; an annual work
49 plan shall be submitted each year beginning the first day
50 of July, one thousand nine hundred ninety-eight.

51 (b) In developing its strategic plan, the science and
52 technology council shall utilize its resources as well as the
53 technical support available to it through the university of
54 West Virginia system, the state college system of West
55 Virginia, the West Virginia development office, the West
56 Virginia experimental program to stimulate competitive
57 research (EPSCoR), federal and state agencies, and other
58 appropriate organizations that have an interest in fostering
59 science and technology research and development in West
60 Virginia.

61 (c) The council shall undertake to keep abreast of state
62 and national scientific and technological developments
63 and work to establish, foster, and successfully conclude
64 university, college, and other scientific research projects or
65 clusters.

66 (d) To reduce and avoid duplication of research work
67 and expenditures, the council shall, as a part of its strategic
68 plan, formulate methods that will coordinate and generate
69 collaborative efforts between research entities throughout
70 West Virginia, whether public or private, and foster syner-
71 gistic relationships among them. Cooperating agencies
72 may contract with the council, as hereinafter provided, so
73 as to participate in science and technology projects, jointly
74 or through the programs of the council with other partici-
75 pating institutions, government units, and private business
76 firms.

§18B-18-4. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the science and tech-
2 nology council is authorized to enter into contracts or
3 joint venture agreements with federal and state agencies;
4 with nonprofit corporations organized pursuant to the
5 corporate laws of this state or other jurisdictions that are
6 qualified under section 501(c)(3) of the Internal Revenue
7 Code; and with other organizations that conduct research,
8 make grants, improve educational programs, and work for

9 the scientific, educational or economic development of
10 this state. All contracts and joint venture agreements must
11 be approved by a majority vote of the council. The coun-
12 cil may also enter into such contractual agreements for
13 consideration or recompense to it even though such enti-
14 ties are funded from sources other than the state. Mem-
15 bers of the council are not prohibited from sitting on the
16 boards of directors of any contracting private nonprofit
17 corporation, foundation, or firm: *Provided*, That mem-
18 bers of the council shall not be exempt from any of the
19 provisions of chapter six-b of this code.

20 (b) The council is authorized to receive and accept
21 gifts or grants from private foundations, corporations,
22 individuals, devises and bequests or from other lawful
23 sources. Such funds shall be paid into a special account in
24 the state treasury for the use and benefit of the science and
25 technology advisory council.

CHAPTER 121

(Com. Sub. for H. B. 2341—By Delegates Smirl, Kiss, Hutchins, Amores,
Leggett and Pino)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating generally to emergency services; authorizing paid leave for not more than fifteen work days for a state employee who is a certified disaster service volunteer of the American Red Cross; requiring American Red Cross to request leave; requiring approval by supervisors; and providing that no loss of pay or benefits will result from leave.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMERGENCY SERVICES.

§15-5-15a. Paid leave for disaster service volunteers.

1 Any state employee who is a certified disaster service
2 volunteer of the American Red Cross may be granted
3 leave from his or her state employment with pay, for not
4 more than fifteen work days in each year, to participate in
5 specialized disaster relief services for the American Red
6 Cross. Leave shall be granted under this section upon the
7 request of the American Red Cross for the services of that
8 employee and only upon the approval of that employee's
9 immediate supervisor. Leave shall be granted without loss
10 of pay, annual leave, sick leave, earned overtime compen-
11 sation, seniority or compensatory time. The state shall
12 compensate an employee granted leave under this section
13 at the employee's regular rate of pay for those regular
14 work hours during which the employee is absent from his
15 or her state employment. Any supervisor granting leave
16 to an employee for purposes of participating in special-
17 ized disaster relief shall make a report to the governor
18 which includes the name of the employee and the cost of
19 salary and benefits of that employee during the period of
20 the leave. The governor shall keep a record of the total
21 cost of the salary and benefits of employees who have
22 been granted leave and in no event shall the total cost for
23 all state agencies exceed one hundred thousand dollars:
24 *Provided*, That upon approval of the governor and repay-
25 ment of the cost to the employing agency, from the civil
26 contingent fund, leave may be granted in an excess of a
27 total cost of one hundred thousand dollars if a state of
28 emergency has been proclaimed pursuant to section six of
29 this article.

CHAPTER 122

(H. B. 4567—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interstate civil defense and disaster compact; adoption by the state of West Virginia of the emergency management assistance compact so as to provide for mutual assistance between the states in managing emergencies or disasters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMERGENCY SERVICES.

§15-5-22. Emergency Management Assistance Compact.

1 The "Emergency Management Assistance Compact" is
2 hereby approved, ratified, adopted, enacted into law and
3 entered into by the state of West Virginia with all other
4 jurisdictions legally joining therein in accordance with its
5 terms, in a form substantially as follows:

6 EMERGENCY MANAGEMENT ASSISTANCE
7 COMPACT

8 ARTICLE I - PURPOSE AND AUTHORITIES

9 This compact is made and entered into by and
10 between the participating member states which enact this
11 compact, hereinafter called party states. For the purposes
12 of this agreement, the term "states" is taken to mean the
13 several states, the Commonwealth of Puerto Rico, the
14 District of Columbia, and all United States territorial
15 possessions.

16 The purpose of this compact is to provide for mutual
17 assistance between the states entering into this compact in
18 managing any emergency or disaster that is duly declared
19 by the governor of the affected state(s), whether arising
20 from natural disaster, technological hazard, man-made
21 disaster, civil emergency aspects of resources shortages,
22 community disorders, insurgency or enemy attack.

23 This compact shall also provide for mutual
24 cooperation in emergency-related exercises, testing or
25 other training activities using equipment and personnel
26 simulating performance of any aspect of the giving and
27 receiving of aid by party states or subdivisions of party
28 states during emergencies, such actions occurring outside
29 actual declared emergency periods. Mutual assistance in
30 this compact may include the use of the states' National
31 Guard forces, either in accordance with the National
32 Guard Mutual Assistance Compact or by mutual
33 agreement between states.

34 ARTICLE II - GENERAL IMPLEMENTATION

35 Each party state entering into this compact recognizes
36 many emergencies transcend political jurisdictional
37 boundaries and that intergovernmental coordination is
38 essential in managing these and other emergencies under
39 this compact. Each state further recognizes that there will
40 be emergencies which require immediate access and
41 present procedures to apply outside resources to make a
42 prompt and effective response to such an emergency.
43 This is because few, if any, individual states have all the
44 resources they may need in all types of emergencies or the
45 capability of delivering resources to areas where
46 emergencies exist.

47 The prompt, full, and effective utilization of resources
48 of the participating states, including any resources on
49 hand or available from the federal government or any
50 other source, that are essential to the safety, care and
51 welfare of the people in the event of any emergency or
52 disaster declared by a party state, shall be the underlying
53 principle on which all articles of this compact shall be
54 understood.

55 On behalf of the governor of each state participating
56 in the compact, the legally designated state official who is
57 assigned responsibility for emergency management will be
58 responsible for formulation of the appropriate interstate
59 mutual aid plans and procedures necessary to implement
60 this compact.

61 **ARTICLE III - PARTY STATE RESPONSIBILITIES**

62 (a) It shall be the responsibility of each party state to
63 formulate procedural plans and programs for interstate
64 cooperation in the performance of the responsibilities
65 listed in this article. In formulating such plans, and in
66 carrying them out, the party states, insofar as practical,
67 shall:

68 (1) Review individual state hazards analyses and, to
69 the extent reasonably possible, determine all those
70 potential emergencies the party states might jointly suffer,
71 whether due to natural disaster, technological hazard,
72 man-made disaster, emergency aspects of resource
73 shortages, civil disorders, insurgency or enemy attack.

74 (2) Review party states' individual emergency plans
75 and develop a plan which will determine the mechanism
76 for the interstate management and provision of assistance
77 concerning any potential emergency.

78 (3) Develop interstate procedures to fill any identified
79 gaps and to resolve any identified inconsistencies or
80 overlaps in existing or developed plans.

81 (4) Assist in warning communities adjacent to or
82 crossing the state boundaries.

83 (5) Protect and assure uninterrupted delivery of
84 services, medicines, water, food, energy and fuel, search
85 and rescue and critical lifeline equipment, services and
86 resources, both human and material.

87 (6) Inventory and set procedures for the interstate
88 loan and delivery of human and material resources,
89 together with procedures for reimbursement or for-
90 giveness.

91 (7) Provide, to the extent authorized by law, for

92 temporary suspension of any statutes or ordinances that
93 restrict the implementation of the above responsibilities.

94 (b) The authorized representative of a party state may
95 request assistance of another party state by contacting the
96 authorized representative of that state. The provisions of
97 this agreement shall only apply to requests for assistance
98 made by and to authorized representatives. Requests may
99 be verbal or in writing. If verbal, the request shall be
100 confirmed in writing within thirty days of the verbal
101 request. Requests shall provide the following information:

102 (1) A description of the emergency service function
103 for which assistance is needed, such as but not limited to
104 fire services, law enforcement, emergency medical, trans-
105 portation, communications, public works and engineer-
106 ing, building inspection, planning and information assis-
107 tance, mass care, resource support, health and medical ser-
108 vices and search and rescue.

109 (2) The amount and type of personnel, equipment,
110 materials and supplies needed and a reasonable estimate of
111 the length of time they will be needed.

112 (3) The specific place and time for staging of the
113 assisting party's response and a point of contact at that
114 location.

115 (c) There shall be frequent consultation between state
116 officials who have assigned emergency management
117 responsibilities and other appropriate representatives of
118 the party states with affected jurisdictions and the United
119 States government, with free exchange of information,
120 plans and resource records relating to emergency
121 capabilities.

122 ARTICLE IV - LIMITATIONS

123 Any party state requested to render mutual aid or
124 conduct exercises and training for mutual aid shall take
125 such action as is necessary to provide and make available
126 the resources covered by this compact in accordance with
127 the terms hereof: *Provided*, That it is understood that the
128 state rendering aid may withhold resources to the extent
129 necessary to provide reasonable protection for such state.

130 Each party state shall afford to the emergency forces
131 of any party state, while operating within its state limits
132 under the terms and conditions of this compact, the same
133 powers (except that of arrest unless specifically authorized
134 by the receiving state), duties, rights and privileges as are
135 afforded forces of the state in which they are performing
136 emergency services. Emergency forces will continue
137 under the command and control of their regular leaders,
138 but the organizational units will come under the
139 operational control of the emergency services authorities
140 of the state receiving assistance. These conditions may be
141 activated, as needed, only subsequent to a declaration of a
142 state of emergency or disaster by the governor of the
143 party state that is to receive assistance or commencement
144 of exercises or training for mutual aid and shall continue
145 so long as the exercises or training for mutual aid are in
146 progress, the state of emergency or disaster remains in
147 effect or loaned resources remain in the receiving state(s),
148 whichever is longer.

149 ARTICLE V - LICENSES AND PERMITS

150 Whenever any person holds a license, certificate or
151 other permit issued by any state party to the compact
152 evidencing the meeting of qualifications for professional,
153 mechanical or other skills, and when such assistance is
154 requested by the receiving party state, such person shall be
155 deemed licensed, certified, or permitted by the state
156 requesting assistance to render aid involving such skill to
157 meet a declared emergency or disaster, subject to such
158 limitations and conditions as the governor of the
159 requesting state may prescribe by executive order or
160 otherwise.

161 ARTICLE VI - LIABILITY

162 Officers or employees of a party state rendering aid
163 in another state pursuant to this compact shall be
164 considered agents of the requesting state for tort liability
165 and immunity purposes; and no party state or its officers
166 or employees rendering aid in another state pursuant to
167 this compact shall be liable on account of any act or
168 omission in good faith on the part of such forces while so
169 engaged or on account of the maintenance or use of any

170 equipment or supplies in connection therewith. Good
171 faith in this article shall not include willful misconduct,
172 gross negligence or recklessness.

173 ARTICLE VII - SUPPLEMENTARY AGREEMENTS

174 Inasmuch as it is probable that the pattern and detail
175 of the machinery for mutual aid among two or more states
176 may differ from that among the states that are party here-
177 to, this instrument contains elements of a broad base com-
178 mon to all states, and nothing herein contained shall pre-
179 clude any state from entering into supplementary agree-
180 ments with another state or affect any other agreements
181 already in force between states. Supplementary agree-
182 ments may comprehend, but shall not be limited to, provi-
183 sions for evacuation and reception of injured and other
184 persons and the exchange of medical, fire, police, public
185 utility, reconnaissance, welfare, transportation and commu-
186 nications personnel, and equipment and supplies.

187 ARTICLE VIII - COMPENSATION

188 Each party state shall provide for the payment of
189 compensation and death benefits to injured members of
190 the emergency forces of that state and representatives of
191 deceased members of such forces in case such members
192 sustain injuries or are killed while rendering aid pursuant
193 to this compact, in the same manner and on the same
194 terms as if the injury or death were sustained within their
195 own state.

196 ARTICLE IX - REIMBURSEMENT

197 Any party state rendering aid in another state
198 pursuant to this compact shall be reimbursed by the party
199 state receiving such aid for any loss or damage to or
200 expense incurred in the operation of any equipment and
201 the provision of any service in answering a request for aid
202 and for the costs incurred in connection with such
203 requests: *Provided*, That any aiding party state may
204 assume, in whole or in part, such loss, damage, expense or
205 other cost, or may loan such equipment or donate such
206 services to the receiving party state without charge or cost:
207 *Provided, however*, That any two or more party states may
208 enter into supplementary agreements establishing a dif-

209 ferent allocation of costs among those states. Article VIII
210 expenses shall not be reimbursable under this provision.

211 ARTICLE X - EVACUATION

212 Plans for the orderly evacuation and interstate
213 reception of portions of the civilian population as the
214 result of any emergency or disaster of sufficient
215 proportions to so warrant, shall be worked out and
216 maintained between the party states and the emergency
217 management/services directors of the various jurisdictions
218 where any type of incident requiring evacuations might
219 occur. Such plans shall be put into effect by request of
220 the state from which evacuees come and shall include the
221 manner of transporting such evacuees, the number of
222 evacuees to be received in different areas, the manner in
223 which food, clothing, housing and medical care will be
224 provided, the registration of the evacuees, the providing of
225 facilities for the notification of relatives or friends, and the
226 forwarding of such evacuees to other areas or the bringing
227 in of additional materials, supplies and all other relevant
228 factors. Such plans shall provide that the party state
229 receiving evacuees and the party state from which the
230 evacuees come shall mutually agree as to reimbursement
231 of out-of-pocket expenses incurred in receiving and
232 caring for such evacuees, for expenditures for trans-
233 portation, food, clothing, medicines and medical care, and
234 like items. Such expenditures shall be reimbursed as
235 agreed by the party state from which the evacuees come.
236 After the termination of the emergency or disaster, the
237 party state from which the evacuees come shall assume the
238 responsibility for the ultimate support of repatriation of
239 such evacuees.

240 ARTICLE XI - IMPLEMENTATION

241 (a) This compact shall become operative immediately
242 upon its enactment into law by any two states; thereafter,
243 this compact shall become effective as to any other state
244 upon its enactment by such state.

245 (b) Any party state may withdraw from this compact
246 by enacting a statute repealing the same, but no such
247 withdrawal shall take effect until thirty days after the

248 governor of the withdrawing state has given notice in
249 writing of such withdrawal to the governors of all other
250 party states. Such action shall not relieve the withdrawing
251 state from obligations assumed hereunder prior to the
252 effective date of withdrawal.

253 (c) Duly authenticated copies of this compact and of
254 such supplementary agreements as may be entered into
255 shall, at the time of their approval, be deposited with each
256 of the party states and with the federal emergency
257 management agency and other appropriate agencies of the
258 United States government.

259 ARTICLE XII - VALIDITY

260 This compact shall be construed to effectuate the
261 purposes stated in Article I hereof. If any provision of
262 this compact is declared unconstitutional, or the applic-
263 ability thereof to any person or circumstances is held
264 invalid, the constitutionality of the remainder of this
265 compact and the applicability thereof to other persons and
266 circumstances shall not be affected thereby.

267 ARTICLE XIII - ADDITIONAL PROVISIONS

268 Nothing in this compact shall authorize or permit the
269 use of military force by the National Guard of a state at
270 any place outside that state in any emergency for which
271 the President is authorized by law to call into federal
272 service the militia, or for any purpose for which the use of
273 the Army or the Air Force would in the absence of express
274 statutory authorization be prohibited under Section 1385
275 of Title 18, United States Code.

276 ARTICLE XIV - REPORTING TO LEGISLATURE

277 The director of the office of emergency services shall,
278 on or before the first day of January, one thousand nine
279 hundred ninety-seven, provide to the joint committee on
280 government and finance copies of all mutual aid plans and
281 procedures promulgated, developed or entered into after
282 the effective date of this section. The director shall annual-
283 ly thereafter provide the joint committee on government
284 and finance with copies of all new or amended mutual aid
285 plans and procedures on or before the first day of January
286 of each year.

CHAPTER 123

(Com. Sub. for H. B. 4171—By Delegates Beach and Fleischauer)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to prohibiting persons or organizations from using "911" in their name; directing the public service commission to promulgate legislative rules regarding the acceptable use of "911"; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-10. Prohibition against using "911" in company name.

1 No person or organization of any kind may use "911"
2 or such other numbers which are similar and calculated to
3 deceive the public as representing "911" services in their
4 name unless the person or organization is authorized to
5 provide emergency telephone services for firefighting, law
6 enforcement and medical personnel. The public service
7 commission shall propose rules for legislative promulga-
8 tion in accordance with article three, chapter twenty-nine-a
9 of this code regarding the acceptable use of "911" and
10 shall have the authority to authorize any organization or
11 person to use "911" for the purposes of promoting the
12 education of the public regarding the "911" service. This
13 section may not be construed as affecting motor vehicle
14 license plate numbers issued by the division of motor
15 vehicles, or race cars that use a "911" logo, when the num-
16 ber is not used for purposes of deceiving the public that
17 the operator or owner operates "911" services. Any person
18 or organization convicted of a violation of this section
19 shall be guilty of a misdemeanor, punishable by a fine of
20 not more than five hundred dollars per occurrence.

CHAPTER 124

(Com. Sub. for H. B. 4213—By Delegate Kiss)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to laboratory certification; expanding the aggregate amount which can be received annually in the environmental laboratory certification fund; requiring out-of-state laboratories performance testing and payment of certification fees; and allowing the division of environmental protection to expend any interest accumulated in the environmental laboratory certification fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

1 (a) The director shall promulgate rules to require the
2 certification of laboratories conducting waste and
3 wastewater tests and analyses to be used for purposes of
4 demonstrating compliance under the covered statutory
5 programs, including reasonable annual certification fees
6 based upon the type or classification of tests or analyses
7 being conducted by laboratories not to exceed an annual
8 program aggregate of three hundred thousand dollars, to
9 be assessed against laboratory owners or operators in an
10 amount necessary to cover the actual costs of administra-
11 tion of this program and the processing of certification
12 applications, to be deposited in the state environmental
13 laboratory certification fund created pursuant to this sec-
14 tion. By the first day of July of each year, the director

15 shall provide to the secretary a written report reflecting
16 funds collected, how the funds were expended, and an
17 assessment of the adequacy of the funding to administer
18 the program.

19 (b) After the effective date of the rules promulgated
20 pursuant to this section, waste and wastewater tests and
21 analyses conducted in laboratories that are not certified
22 for the parameters or toxicity being tested or analyses
23 shall not be accepted by the division, except as otherwise
24 provided, as being in compliance with the requirements,
25 rules or orders of the division issued under authority of
26 one or more of the covered statutory programs: *Provided,*
27 That field tests and remote monitoring or testing equip-
28 ment which is conducted or located away from any labo-
29 ratory shall not be considered a laboratory for purposes of
30 assessing the fee, but shall be subject to such quality assur-
31 ance and quality control standards as may be established
32 by the director in rules promulgated pursuant to this sec-
33 tion. The director shall provide by rule for the granting
34 of certification for laboratories located outside of West
35 Virginia pursuant to this section if the laboratories provide
36 written documentation that approval has been received
37 under requirements in their state and determined by the
38 director to be equivalent to the West Virginia laboratory
39 certification program. The reciprocal certification shall be
40 granted only for testing methods and parameters for
41 which the laboratory holds a valid authorization in the
42 other state and only for laboratories in states which allow
43 reciprocity with respect to laboratories located in this state.

44 (c) Application shall be made to the director for ap-
45 proval or certification by laboratories on forms and in a
46 manner prescribed by the director.

47 (d) Certification shall be renewed on an annual basis.
48 The existing certification remains in effect until the direc-
49 tor notifies the applicant for renewal that renewal of certif-
50 ication has been granted or denied.

51 (e) Certification shall be granted for those tests or
52 parameters for which the laboratory demonstrates ade-
53 quate performance on performance evaluation tests based
54 on the criteria established in rules by the director. The

55 director shall, by rule, establish criteria governing what
56 shall be considered in any decision to deny or issue a
57 certification.

58 (f) Failure to comply with the requirements of the
59 applicable analytical methods and procedures or standards
60 specified in the rules of the director is grounds for revoca-
61 tion or suspension of certification for the affected test
62 procedures or parameters.

63 (g) No person subject to the covered statutory pro-
64 grams shall be allowed to use data or test results from
65 waste and wastewater tests and analyses conducted at labo-
66 ratories lacking certification for purposes of demonstrat-
67 ing compliance under the covered statutory programs:
68 *Provided*, That any person whose data or test results are
69 invalidated because that person had relied upon a labora-
70 tory which loses its certification, shall be granted thirty
71 days after notice of the invalidated test results by the di-
72 rector during which data or test results may be repeated or
73 reanalyzed by a certified laboratory for purposes of dem-
74 onstrating compliance under the covered statutory pro-
75 grams.

76 (h) A special revenue fund designated the "environ-
77 mental laboratory certification fund" shall be continued in
78 the state treasury on the first day of July, one thousand
79 nine hundred ninety-four. The net proceeds of all fees
80 collected pursuant to this section shall be deposited in the
81 environmental laboratory certification fund. Upon line
82 item appropriation by the Legislature, the director shall
83 expend the proceeds, including the interest thereon, of the
84 environmental laboratory certification fund solely for the
85 administration of the requirements of this section.

86 (i) For purposes of this section, "covered statutory
87 program" means one of the regulatory programs devel-
88 oped under statutory authority of one of the following
89 acts of the Legislature: Water Pollution Control Act, arti-
90 cle eleven of this chapter; Hazardous Waste Management
91 Act, article eighteen of this chapter; Hazardous Waste
92 Emergency Response Fund Act, article nineteen of this
93 chapter; Underground Storage Tank Act, article seventeen
94 of this chapter; the Solid Waste Management Act, article

95 fifteen of this chapter; or the Groundwater Protection Act,
96 article twelve of this chapter.

97 (j) Any person adversely affected by an order or ac-
98 tion by the director pursuant to this section, or aggrieved
99 by the failure or refusal of the director to act within a
100 reasonable time, or by the action of the director in grant-
101 ing or denying a certification or renewal of a certification
102 may appeal to the environmental quality board pursuant
103 to article one, chapter twenty-two-b of this code.

104 (k) The provisions of this section apply only to tests
105 and analyses of waste or wastewater subject to regulation
106 by the division of environmental protection. The provi-
107 sions of this section do not apply to tests or analyses of
108 potable or drinking water.

CHAPTER 125

(Com. Sub. for S. B. 415—By Senators Ross and Helmick)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, relating generally to creating the West Virginia limited liability for persons responding to oil discharges act; providing definitions; and providing limited immunity from liability for removal costs and damages for those persons responding to oil discharges or the threat of oil discharges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. WEST VIRGINIA LIMITED LIABILITY FOR PERSONS RESPONDING TO OIL DISCHARGES ACT.

§22-22A-1. Short title.

§22-22A-2. Definitions.

§22-22A-3. Exemption from liability.

§22-22A-1. Short title.

1 This article may be cited as the "West Virginia Limited
2 Liability for Persons Responding to Oil Discharges Act".

§22-22A-2. Definitions.

1 For the purposes of this article:

2 (a) "Damages" means damages of any kind for which
3 liability may exist under the laws of this state resulting
4 from, arising out of, or related to the discharge or threat-
5 ened discharge of oil;

6 (b) "Discharge" means any emission (other than natu-
7 ral seepage), intentional or unintentional, and includes, but
8 is not limited to, spilling, leaking, pumping, pouring, emit-
9 ting, emptying or dumping;

10 (c) "Federal on-scene coordinator" means the federal
11 official designated by the lead agency or predesignated by
12 the United States environmental protection agency or the
13 United States coast guard to coordinate and direct re-
14 sponses under the national contingency plan (NCP);

15 (d) "National contingency plan" means the national
16 contingency plan prepared and published under Section
17 311(d) of the federal Water Pollution Control Act, 33
18 U.S.C. §1321(d), as amended by the Oil Pollution Act of
19 1990, Public Law No. 101-380, 104 Stat. 484 (1990) as in
20 effect as of the effective date of this article;

21 (e) "Oil" means oil of any kind or in any form, includ-
22 ing, but not limited to, petroleum, fuel oil, sludge, oil re-
23 fuse and oil mixed with wastes other than dredged spoil;

24 (f) "Person" means an individual, corporation, partner-
25 ship, association, state, municipality, commission or politi-
26 cal subdivision of a state or any interstate body;

27 (g) "Remove" or "removal" means containment and

28 removal of oil or a hazardous substance from water and
29 shorelines or the taking of other actions as may be neces-
30 sary to minimize or mitigate damage to the public health
31 or welfare, including, but not limited to, fish, shellfish,
32 wildlife and public and private property, shorelines and
33 beaches;

34 (h) "Removal costs" means the costs of removal that
35 are incurred after a discharge of oil has occurred or, in
36 any case in which there is a substantial threat of a dis-
37 charge of oil, the costs to prevent, minimize or mitigate oil
38 pollution from such an incident; and

39 (i) "Responsible party" means a responsible party as
40 defined under §1001 of the Oil Pollution Act of 1990,
41 Public Law No. 101-380, 104 Stat. 484 (1990).

§22-22A-3. Exemption from liability.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, a person engaged in removal activities is
3 not liable for removal costs or damages which result from
4 acts or omissions in the course of rendering care, assis-
5 tance or advice consistent with the national contingency
6 plan or as otherwise directed by the federal on-scene coor-
7 dinator or by the state official charged with responsibility
8 for oil discharge responses.

9 (b) Subsection (a) of this section does not apply:

10 (1) To a responsible party;

11 (2) With respect to personal injury or wrongful death;
12 or

13 (3) If the person is grossly negligent or engages in
14 willful misconduct.

15 (c) A responsible party is liable for any removal costs
16 and damages that another person is relieved of under the
17 provisions of subsection (a) of this section.

18 (d) Nothing in this section affects the liability of a
19 responsible party for oil spill response under state law.

CHAPTER 126

(S. B. 347—By Senators Wooton, Anderson, Bowman, Buckalew, Dittmar, Grubb, Miller, Ross, Schoonover, Wagner, White and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article three-a of said chapter, all relating to the order in which debts of a decedent are to be paid and relieving the decedent's estate and surviving spouse of the obligation to pay the decedent's funeral expenses if payment of those funeral expenses is provided for by an irrevocable pre-need funeral contract or trust.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six, article three-a of said chapter be amended and reenacted, all to read as follows:

Article

2. Proof and Allowance of Claims Against Estates of Decedents.

3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-21. Order in which debts of decedent are to be paid.

- 1 (a) If the applicable assets of the estate are insufficient
- 2 to pay all claims against the estate in full, the personal
- 3 representative shall make payment in the following order:
- 4 (1) Costs and expenses of administration;
- 5 (2) Reasonable funeral expenses;
- 6 (3) Debts and taxes with preference under federal law;

7 (4) Unpaid child support which is due and owing at
8 the time of the decedent's death;

9 (5) Debts and taxes with preference under other laws
10 of the state of West Virginia;

11 (6) Reasonable and necessary medical and hospital
12 expenses of the last illness of the decedent, including com-
13 pensation for persons attending the decedent during his or
14 her last illness; and

15 (7) All other claims.

16 (b) If the applicable assets of the estate are insufficient
17 to pay all claims within a class, those claims within that
18 class shall be paid on a pro-rata basis. No preference shall
19 be given in the payment of any claim over any other claim
20 of the same class, and a claim due and payable shall not be
21 entitled to a preference over claims not due.

22 (c) Notwithstanding the provisions of subsection (a) of
23 this section, if the payment of all funeral expenses of the
24 decedent is provided for by an irrevocable pre-need fu-
25 neral contract or trust, neither the decedent's estate nor the
26 decedent's surviving spouse shall have any obligation for
27 the payment of such funeral expenses.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND AL-
LOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDENTS; COUNTY OPTION.**

§44-3A-26. Order in which debts of decedent are to be paid.

1 (a) If the applicable assets of the estate are insufficient
2 to pay all claims against the estate in full, the personal
3 representative shall make payment in the following order:

4 (1) Costs and expenses of administration;

5 (2) Reasonable funeral expenses;

6 (3) Debts and taxes with preference under federal law;

7 (4) Unpaid child support which is due and owing at
8 the time of the decedent's death;

9 (5) Debts and taxes with preference under other laws
10 of the state of West Virginia;

11 (6) Reasonable and necessary medical and hospital
12 expenses of the last illness of the decedent, including com-
13 pensation for persons attending the decedent during his or
14 her last illness; and

15 (7) All other claims.

16 (b) If the applicable assets of the estate are insuffi-
17 cient to pay all claims within a class, those claims within
18 that class shall be paid on a pro-rata basis. No preference
19 shall be given in the payment of any claim over any other
20 claim of the same class, and a claim due and payable shall
21 not be entitled to a preference over claims not due.

22 (c) Notwithstanding the provisions of subsection (a)
23 of this section, if the payment of all funeral expenses of
24 the decedent is provided for by an irrevocable pre-need
25 funeral contract or trust, neither the decedent's estate nor
26 the decedent's surviving spouse shall have any obligation
27 for the payment of such funeral expenses.

CHAPTER 127

(S. B. 294—By Senators Grubb, Anderson, Bowman, Deem and Schoonover)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article six-c, all relating to enacting the uniform prudent investor act; establishing standards of care for investment and management decisions of trustees who invest and manage trust assets; duties of trustee; standard of review; duties of trustee upon delegation of functions; language authorizing investments or strategy permitted by act; application of act to ex-

isting trusts; application and construction; short title; severability; and effective date.

Be it enacted by the Legislature of West Virginia:

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

Article

6. Investments by Fiduciaries.

6C. Uniform Prudent Investor Act.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 Any executor, administrator, guardian, curator, com-
2 mittee, trustee or other fiduciary whose duty it may be to
3 loan or invest money entrusted to him as such, may, with-
4 out any order of any court, invest the same or any part
5 thereof in any of the following securities, and without
6 liability for any loss resulting from investments therein:
7 *Provided*, That, except as otherwise provided in article six-
8 c of this chapter, such fiduciary shall exercise the judg-
9 ment and care under the circumstances then prevailing
10 which men of prudence, discretion and intelligence exer-
11 cise in the management of their own affairs, not in regard
12 to speculation, but in regard to the permanent disposition
13 of their funds, considering the probable income as well as
14 the probable safety of their capital:

15 (a) In bonds or interest-bearing notes or obligations of
16 the United States, or those for which the faith of the Unit-
17 ed States is distinctly pledged to provide for the payment
18 of the principal and interest thereof, including, but not by
19 way of limitation, bonds or debentures issued under the
20 "Farm Credit Act Amendments of 1986" (12 U. S. C.
21 §2001 et. seq.), as amended, debentures issued by the
22 federal national mortgage association, securities issued by
23 the federal home loan bank system; and in bonds,
24 interest-bearing notes and obligations issued, guaranteed
25 or assumed by the "International Bank for Reconstruction

26 and Development" or by the "Inter-American Develop-
27 ment Bank" or by the "Asian Development Bank" or by
28 the "African Development Bank";

29 (b) In bonds or interest-bearing notes or obligations
30 of this state;

31 (c) In bonds of any state of the United States which
32 has not within ten years previous to the making of such
33 investment defaulted in the payment of any part of either
34 principal or interest on any of its bonds issued by authori-
35 ty of the Legislature of such state;

36 (d) In the bonds or interest-bearing notes or obliga-
37 tions of any county, district, school district or independent
38 school district, municipality or any other political division
39 of this state that have been issued pursuant to the authority
40 of any law of this state, since the ninth day of May, one
41 thousand nine hundred seventeen;

42 (e) In bonds and negotiable notes secured by first
43 mortgage or first trust deed upon improved real estate
44 where the amount secured by such mortgage or trust deed
45 shall not at the time of making the same exceed eighty
46 percent of the assessed value, or sixty-six and two-thirds
47 percent of the appraised value as determined by wholly
48 disinterested and independent appraisers, whichever value
49 shall be the higher, of the real estate covered by such
50 mortgage or trust deed, and when such mortgage or trust
51 deed is accompanied by a satisfactory abstract of title,
52 certificate of title or title insurance policy, showing good
53 title in the mortgagor when making such mortgage or trust
54 deed, and by a fire insurance policy in an old line compa-
55 ny with loss, if any, payable to the mortgagee or trustee as
56 his interest may appear: *Provided*, That the rate of interest
57 upon the above enumerated securities in this subdivision,
58 in which such investments may be made, shall not be less
59 than three and one-half percent per annum nor greater
60 than the maximum rate of interest which such bonds or
61 negotiable notes may bear under applicable law: *Provid-*
62 *ed, however*, That the provisions herein establishing a
63 minimum rate of interest shall not apply to investments in
64 force as of the effective date of this section;

65 (f) In savings accounts and time deposits of bank or
66 trust companies to the extent that such deposits are insured
67 by the federal deposit insurance corporation, or by any
68 other similar federal instrumentality that may be hereafter
69 created, provided there shall be such an instrumentality in
70 existence and available for the purpose, or by bonds of
71 solvent surety companies: *Provided*, That the rate of in-
72 terest upon such savings accounts or time deposits shall
73 not be less than the rate paid other depositors in such bank
74 or trust company;

75 (g) In shares of state building and loan associations, or
76 federal savings and loan associations, to the extent that
77 such shares are insured by the federal savings and loan
78 insurance corporation, or by any other similar federal
79 instrumentality that may be hereafter created: *Provided*,
80 That there shall be such an instrumentality in existence
81 and available for the purpose, or by bonds of solvent sure-
82 ty companies: *Provided, however*, That the dividend rate
83 upon such shares shall not be less than the rate paid to
84 other shareholders in such associations; and

85 (h) In other securities of corporations organized and
86 existing under the laws of the United States, or of the Dis-
87 trict of Columbia or any state of the United States, includ-
88 ing, but not by way of limitation, bonds, debentures, notes,
89 equipment trust obligations or other evidences of indebt-
90 edness and shares of common and preferred stocks of
91 such corporations and securities of any open end or
92 closed end management type investment company or
93 investment trust registered under the "Federal Investment
94 Company Act" of one thousand nine hundred forty, as
95 from time to time amended, which men of prudence, dis-
96 cretion and intelligence acquire or retain for their own
97 account, provided, and upon conditions, however, that:

98 (1) No investment shall be made pursuant to the provi-
99 sions of this subdivision which, at the time such investment
100 shall be made, will cause the aggregate market value there-
101 of to exceed fifty percent of the aggregate market value at
102 that time of all of the property of the fund held by such
103 fiduciary. Notwithstanding the aforesaid percentage limi-
104 tation the cash proceeds of the sale of securities received

105 or purchased by a fiduciary and made eligible by this
106 subdivision may be reinvested in any securities of the type
107 described in this subdivision;

108 (2) No bonds, debentures, notes, equipment trust obli-
109 gations or other evidence of indebtedness of such corpo-
110 rations shall be purchased under authority of this subdivi-
111 sion unless such obligations, if other than issues of a com-
112 mon carrier subject to the provisions of section twenty-a
113 of the "Interstate Commerce Act", as amended, shall be
114 obligations issued, guaranteed or assumed by corporations
115 which have any securities currently registered with the
116 securities and exchange commission; and

117 (3) No common or preferred stocks, other than bank
118 and insurance company stocks, shall be purchased under
119 authority of this subdivision unless currently fully listed
120 and registered upon an exchange registered with the secu-
121 rities and exchange commission as a national securities
122 exchange. No sale or other liquidation of any investment
123 shall be required solely because of any change in the
124 relative market value of those investments made eligible
125 by this subdivision and those made eligible by the preced-
126 ing subdivisions of this section. In determining the aggre-
127 gate market value of the property of a fund and the per-
128 centage of a fund to be invested under the provisions of
129 this subdivision, a fiduciary may rely upon published
130 market quotations as to those investments for which such
131 quotations are available, and upon such valuations of other
132 investments as in the fiduciary's best judgment seem fair
133 and reasonable according to available information.

134 Trust funds received by executors, administrators,
135 guardians, curators, committees, trustees and other fiducia-
136 ries may be kept invested in the securities originally re-
137 ceived by them, or if the trust funds originally received
138 were stock or securities of a bank, in shares of stock or
139 other securities (and securities received as distributions in
140 respect thereof) of a holding company subject to the fed-
141 eral Bank Holding Company Act of 1956, as amended,
142 received upon conversion of, or in exchange for, shares of
143 stock or other securities of such bank; unless otherwise
144 ordered by a court having jurisdiction of the matter, as

145 hereinafter provided, or unless the instrument under which
146 the trust was created shall direct that a change of invest-
147 ment be made, and any such fiduciary shall not be liable
148 for any loss that may occur by depreciation of such secu-
149 rities.

150 This section shall not apply where the instrument cre-
151 ating the trust, or the last will and testament of any testator
152 or any court having jurisdiction of the matter, specially
153 directs in what securities the trust funds shall be invested,
154 and every such court is hereby given power specially to
155 direct by order or orders, from time to time, additional
156 securities in which trust funds may be invested, and any
157 investment thereof made in accordance with any such
158 special direction shall be legal, and no executor, adminis-
159 trator, guardian, curator, committee, trustee or other fidu-
160 ciary shall be held for any loss resulting in any such case.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

- §44-6C-1. Prudent investor rule.
- §44-6C-2. Standard of care; portfolio strategy; risk and return objectives.
- §44-6C-3. Diversification.
- §44-6C-4. Duties at inception of trusteeship.
- §44-6C-5. Loyalty.
- §44-6C-6. Impartiality.
- §44-6C-7. Investment costs.
- §44-6C-8. Reviewing compliance.
- §44-6C-9. Delegation of investment and management functions.
- §44-6C-10. Language invoking standard of article.
- §44-6C-11. Application to existing trusts.
- §44-6C-12. Uniformity of application and construction.
- §44-6C-13. Short title.
- §44-6C-14. Severability.
- §44-6C-15. Effective date.

§44-6C-1. Prudent investor rule.

1 (a) Notwithstanding the provisions of section two,
2 article six of this chapter, and except as otherwise provided
3 in subsection (b) of this section, a trustee who invests and
4 manages trust assets owes a duty to the beneficiaries of the
5 trust to comply with the prudent investor rule set forth in
6 this article.

7 (b) The prudent investor rule, a default rule, may be
8 expanded, restricted, eliminated or otherwise altered by the
9 provisions of a trust. A trustee is not liable to a beneficia-
10 ry to the extent that the trustee acted in reasonable reliance
11 on the provisions of the trust.

**§44-6C-2. Standard of care; portfolio strategy; risk and re-
turn objectives.**

1 (a) A trustee shall invest and manage trust assets as a
2 prudent investor would, by considering the purposes,
3 terms, distribution requirements and other circumstances
4 of the trust. In satisfying this standard, the trustee shall
5 exercise reasonable care, skill and caution.

6 (b) A trustee's investment and management decisions
7 respecting individual assets must be evaluated not in isola-
8 tion but in the context of the trust portfolio as a whole and
9 as a part of an overall investment strategy having risk and
10 return objectives reasonably suited to the trust.

11 (c) Among circumstances that a trustee shall consider
12 in investing and managing trust assets are such of the
13 following as are relevant to the trust or its beneficiaries:

14 (1) General economic conditions;

15 (2) The possible effect of inflation or deflation;

16 (3) The expected tax consequences of investment
17 decisions or strategies;

18 (4) The role that each investment or course of action
19 plays within the overall trust portfolio, which may include
20 financial assets, interests in closely held enterprises, tangi-
21 ble and intangible personal property and real property;

22 (5) The expected total return from income and the
23 appreciation of capital;

24 (6) Other resources of the beneficiaries;

25 (7) Needs for liquidity, regularity of income and pres-
26 ervation or appreciation of capital; and

27 (8) An asset's special relationship or special value, if
28 any, to the purposes of the trust or to one or more of the
29 beneficiaries.

30 (d) A trustee shall make a reasonable effort to verify
31 facts relevant to the investment and management of trust
32 assets.

33 (e) A trustee may invest in any kind of property or
34 type of investment consistent with the standards of this
35 article.

36 (f) A trustee who has special skills or expertise, or is
37 named trustee in reliance upon the trustee's representation
38 that the trustee has special skills or expertise, has a duty to
39 use those special skills or expertise.

§44-6C-3. Diversification.

1 A trustee shall diversify the investments of the trust
2 unless the trustee reasonably determines that, because of
3 special circumstances, the purposes of the trust are better
4 served without diversifying.

§44-6C-4. Duties at inception of trusteeship.

1 Within a reasonable time after accepting a trusteeship
2 or receiving trust assets, a trustee shall review the trust
3 assets and make and implement decisions concerning the
4 retention and disposition of assets, in order to bring the
5 trust portfolio into compliance with the purposes, terms,
6 distribution requirements and other circumstances of the
7 trust, and with the requirements of this article.

§44-6C-5. Loyalty.

1 A trustee shall invest and manage the trust assets solely
2 in the interest of the beneficiaries.

§44-6C-6. Impartiality.

1 If a trust has two or more beneficiaries, the trustee
2 shall act impartially in investing and managing the trust
3 assets, taking into account any differing interests of the
4 beneficiaries.

§44-6C-7. Investment costs.

1 In investing and managing trust assets, a trustee may
2 only incur costs that are appropriate and reasonable in
3 relation to the assets, the purposes of the trust and the
4 skills of the trustee.

§44-6C-8. Reviewing compliance.

1 Compliance with the prudent investor rule is deter-
2 mined in light of the facts and circumstances existing at
3 the time of a trustee's decision or action and not by hind-
4 sight.

**§44-6C-9. Delegation of investment and management func-
tions.**

1 (a) A trustee may delegate investment and manage-
2 ment functions that a prudent trustee of comparable skills
3 could properly delegate under the circumstances. The
4 trustee shall exercise reasonable care, skill and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust; and

8 (3) Periodically reviewing the agent's actions in order
9 to monitor the agent's performance and compliance with
10 the terms of the delegation.

11 (b) In performing a delegated function, an agent owes
12 a duty to the trust to exercise reasonable care to comply
13 with the terms of the delegation.

14 (c) A trustee who complies with the requirements of
15 subsection (a) of this section is not liable to the beneficia-
16 riest or to the trust for the decisions or actions of the agent
17 to whom the function was delegated.

18 (d) By accepting the delegation of a trust function
19 from the trustee of a trust that is subject to the law of this
20 state, an agent submits to the jurisdiction of the courts of
21 this state.

§44-6C-10. Language invoking standard of article.

1 The following terms or comparable language in the-
2 provisions of a trust, unless otherwise limited or modified,

3 authorizes any investment or strategy permitted under this
4 article: "investments permissible by law for investment of
5 trust funds", "legal investments", "authorized investments",
6 "using the judgment and care under the circumstances
7 then prevailing that persons of prudence, discretion, and
8 intelligence exercise in the management of their own af-
9 fairs, not in regard to speculation but in regard to the
10 permanent disposition of their funds, considering the
11 probable income as well as the probable safety of their
12 capital", "prudent man rule", "prudent trustee rule", "pru-
13 dent person rule" and "prudent investor rule".

§44-6C-11. Application to existing trusts.

1 This article applies to trusts existing on and created
2 after its effective date. As applied to trusts existing on its
3 effective date, this article governs only decisions or actions
4 occurring after that date.

§44-6C-12. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate
2 its general purpose to make uniform the law with respect
3 to the subject of this article among the states enacting
4 it.

§44-6C-13. Short title.

1 This article may be cited as the "West Virginia Uni-
2 form Prudent Investor Act".

§44-6C-14. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does
3 not affect other provisions or applications of this article
4 which can be given effect without the invalid provision or
5 application, and to this end the provisions of this article
6 are severable.

§44-6C-15. Effective date.

1 This article takes effect on the first day of July, one
2 thousand nine hundred ninety-six.

CHAPTER 128

(S. B. 274—By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Grubb, Miller, Ross, Scott, Wagner, Wiedebusch and Yoder)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to clarifying the duties of the trustee of an irrevocable life insurance trust.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2a. Duties of the trustee of an irrevocable life insurance trust.

1 (a) Unless otherwise directed by the terms of the trust
 2 instrument, the duties of a trustee of an irrevocable life
 3 insurance trust with respect to acquiring or retaining a
 4 contract of insurance upon the life of the settlor, or the
 5 lives of the settlor and the settlor's spouse, do not include a
 6 duty: (i) To determine whether any such contract is or
 7 remains a proper investment; (ii) to exercise policy op-
 8 tions available under any such contract in the event the
 9 policy lapses or is terminated due to failure to pay premi-
 10 ums; or (iii) to diversify any such contract. A trustee is
 11 not liable to the beneficiaries of the trust or to any other
 12 party for any loss arising from the absence of those duties
 13 upon the trustee.

14 (b) The trustee of a trust described under subsection (a)
 15 of this section which was established prior to the effective
 16 date of this section, shall notify the settlor in writing that,
 17 unless the settlor provides written notice to the contrary to
 18 the trustee within sixty days of the trustee's notice, the

19 provisions of subsection (a) of this section shall apply to
20 the trust. Subsection (a) of this section shall not apply if,
21 within sixty days of the trustee's notice, the settlor notifies
22 the trustee that subsection (a) does not apply.

CHAPTER 129

(Com. Sub. for H. B. 4100—By Delegates Love, Pettit and Thomas)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article four, chapter twelve of said code, all relating to volunteer fire companies; authorizing expenditure of state funds or grants for certain filing fees required by the legislative auditor's office and for certain insurance premiums; requiring deposit of filing fees in special revenue account; and authorizing expenditures from said account for payment of costs associated with conducting audits.

Be it enacted by the Legislature of West Virginia:

That section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen, article four, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

12. Public Moneys and Securities.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

1 Revenues allocated to volunteer and part volunteer fire
2 companies and departments may be expended only for
3 the items listed in subdivisions (a) through (j) of this
4 section. Such expenditures may be made for the
5 following:

6 (a) Personal protective equipment, including protective
7 head gear, bunker coats, pants, boots, combination of
8 bunker pants and boots, coats and gloves;

9 (b) Equipment for compliance with the national fire
10 protection standard or automotive fire apparatus,
11 NFPA-1901;

12 (c) Compliance with insurance service office
13 recommendations relating to fire departments;

14 (d) Rescue equipment, communications equipment
15 and ambulance equipment: *Provided*, That no moneys
16 received from the municipal pensions and protection fund
17 or the fire protection fund may be used for equipment for
18 personal vehicles owned or operated by volunteer fire
19 company or department members;

20 (e) Capital improvements reasonably required for
21 effective and efficient fire protection service and
22 maintenance thereof;

23 (f) Retirement of debts;

24 (g) Payment of utility bills;

25 (h) Payment of the cost of immunizations, including
26 any laboratory work incident thereto, for firefighters
27 against hepatitis-b and other blood borne pathogens:
28 *Provided*, That the vaccine shall be purchased through the
29 state immunization program or from the lowest cost
30 vendor available: *Provided, however*, That volunteer and
31 part volunteer fire companies and departments shall seek
32 to obtain no cost administration of the vaccinations
33 through local boards of health: *Provided further*, That in
34 the event any volunteer or part volunteer fire company or

35 department is unable to obtain no cost administration of
36 the vaccinations through a local board of health, the
37 company or department shall seek to obtain the lowest
38 cost available for the administration of the vaccinations
39 from a licensed health care provider;

40 (i) Any filing fee required to be paid to the legislative
41 auditor's office under section fourteen, article four,
42 chapter twelve of this code relating to sworn statements of
43 annual expenditures submitted by volunteer or part
44 volunteer fire companies or departments that receive state
45 funds or grants; and

46 (j) Property/casualty insurance premiums for pro-
47 tection and indemnification against loss or damage or
48 liability.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 Any corporation, association or other organization in
2 West Virginia, whether nonprofit or for profit, which
3 receives state funds or grants in the amount of fifteen
4 thousand dollars or more shall file an audit of the
5 disbursement of funds with the legislative auditor's office.
6 The audit shall be filed within two years of the
7 disbursement of funds or grants by the grantee and shall
8 be made by an independent certified public accountant at
9 the cost of the corporation, association or other
10 organization and must show that the funds or grants were
11 spent for the purposes intended when the grant was made.
12 Audits of state funds or grants under fifteen thousand
13 dollars may be authorized by the joint committee on
14 government and finance to be conducted by the legislative
15 auditor's office, at no cost to the grantee: *Provided*, That
16 volunteer fire departments will satisfy the audit require-
17 ments of this section by submitting a sworn statement of
18 annual expenditures to the legislative auditor's office,
19 along with a filing fee of seventy-five dollars, on or before

20 the fourteenth day of February of each year, if such
21 volunteer fire department elects not to be audited. The
22 sworn statement of expenditures must be signed by the
23 chief or director of the volunteer fire department, and
24 shall be made under oath and acknowledged before a
25 notary public. The office of the legislative auditor may
26 assign an employee or employees to perform audits per
27 the direction of the legislative auditor of the disbursement
28 of funds or grants to volunteer fire departments. Filing
29 fees paid by volunteer fire departments pursuant to this
30 section shall be paid into a special revenue account created
31 in the state treasury known as the "Special Legislative
32 Audit Fund". Expenditures from the fund are authorized
33 to be made by the legislative auditor's office solely for the
34 purposes of payment of costs associated with the audits
35 conducted pursuant to this section. Any person who files
36 a fraudulent sworn statement of expenditures under this
37 section is guilty of a felony and, upon conviction thereof,
38 shall be fined not less than one thousand dollars nor more
39 than five thousand dollars, or imprisoned in the state
40 penitentiary for a period of time not less than one year
41 nor more than five years, or both fined and imprisoned.

CHAPTER 130

(H. B. 4798—By Delegates Douglas, Ashley and Pino)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of venue following appointment and appointment of new guardian or conservator; appointment of adult protective services; and requirement that adult protective services accept the appointment in limited circumstances.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-7. Transfer of venue following appointment.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

§44A-1-7. Transfer of venue following appointment.

1 Following the appointment of a full or limited guard-
2 ian or conservator or committee, the court with jurisdiction
3 over the proceeding may, upon petition, order the transfer
4 of jurisdiction to another circuit court in this state or to an
5 appropriate tribunal in another state if it appears to the
6 court that the interests of the protected person will be best
7 served by such transfer. Upon the transfer, the court shall
8 appoint a new guardian or conservator in the county as-
9 suming jurisdiction and shall discharge the original ap-
10 pointee.

**§44A-1-8. Persons and entities qualified to serve as guardian
or conservator.**

1 (a) Any adult individual may be appointed to serve as
2 a guardian, a conservator, or both, upon determination by
3 the court that the individual is capable of providing an
4 active and suitable program of guardianship or conserva-
5 torship for the protected person: *Provided*, That such
6 individual is not employed by or affiliated with any public
7 agency, entity or facility which is providing substantial
8 services or financial assistance to the protected person.

9 (b) Any nonprofit corporation chartered in this state
10 and licensed as set forth in subsection (c) of this section or
11 a public agency that is not a provider of health care servic-
12 es to the protected person may be appointed to serve as a
13 guardian, a conservator, or both: *Provided*, That such
14 entity is capable of providing an active and suitable pro-
15 gram of guardianship or conservatorship for the protected
16 person and is not otherwise providing substantial services
17 or financial assistance to the protected person.

18 (c) A nonprofit corporation chartered in this state may
19 be appointed to serve as a guardian or conservator or as a
20 limited or temporary guardian or conservator for a pro-
21 tected person if it is licensed to do so by the secretary of
22 health and human resources. The secretary shall propose
23 legislative rules, for promulgation in accordance with the
24 provisions of chapter twenty-nine-a of this code, for the
25 licensure of such nonprofit corporations and shall provide
26 for the review of such licenses. The rules shall, at a mini-
27 mum, establish standards to assure that any corporation
28 licensed for such guardianship or conservatorship:

29 (1) Has sufficient fiscal and administrative resources to
30 perform the fiduciary duties and make the reports and
31 accountings required by this chapter;

32 (2) Will respect and maintain the dignity and privacy
33 of the protected person;

34 (3) Will protect and advocate the legal human rights of
35 the protected person;

36 (4) Will assure that the protected person is receiving
37 appropriate educational, vocational, residential and medi-
38 cal services in the setting least restrictive of the individual's
39 personal liberty;

40 (5) Will encourage the protected person to participate
41 to the maximum extent of his or her abilities in all deci-
42 sions affecting him or her and to act in his or her own
43 behalf on all matters in which he or she is able to do so;

44 (6) Does not provide educational, vocational, residen-
45 tial or medical services to the protected person; and

46 (7) Has written provisions in effect for the distribution
47 of assets and for the appointment of temporary guardians
48 and conservators for any protected persons it serves in the
49 event the corporation ceases to be licensed by the depart-
50 ment of health and human resources or otherwise becomes
51 unable to serve as guardian.

52 (d) A duly licensed nonprofit corporation that has
53 been appointed to serve as a guardian or as a conservator

54 pursuant to the provisions of this article is entitled to com-
55 pensation in accordance with the provisions of section
56 thirteen of this article.

57 (e) Except as provided in section thirteen of this arti-
58 cle, no guardian or conservator nor any officer, agent,
59 director, servant or employee of any such guardian or
60 conservator shall do business with or in any way profit,
61 either directly or indirectly, from the estate or income of
62 any protected person for whom services are being per-
63 formed by such guardian or conservator.

64 (f) Any bank or trust company authorized to exercise
65 trust powers or to engage in trust business in this state may
66 be appointed as a conservator if the court determines it is
67 capable of providing suitable conservatorship for the pro-
68 tected person.

69 (g) The department of adult protective services or a
70 department designated by the secretary of health and
71 human resources may be appointed to serve as a guardian,
72 a conservator, or both, for individuals under its care or to
73 whom it is providing services or financial assistance, but
74 such appointment may only be made if there is no other
75 individual, nonprofit corporation, bank or trust company,
76 or other public agency that is equally or better qualified
77 and willing to serve: *Provided*, That when venue is trans-
78 ferred pursuant to the provisions of this article and any
79 sheriff was initially appointed as guardian or conservator
80 or committee for the person, the department may not
81 refuse to accept that appointment.

82 (h) The sheriff of the county in which a court has
83 assumed jurisdiction may be appointed as a guardian, a
84 conservator, or both.

85 (i) Other than a bank or trust company authorized to
86 exercise trust powers or to engage in trust business in this
87 state, a person who has an interest as a creditor of a pro-
88 tected person shall not be eligible for appointment as
89 either a guardian or conservator of the protected person.

CHAPTER 131

(S. B. 416—By Senators Tomblin, Mr. President, Helmick and Jackson)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the authority of certain hospitals to enter into joint and cooperative undertakings; authorizing certain hospitals to cooperate with both public and private agencies; authorizing the expenditure of public funds, allocation of personnel and contribution of certain property for purposes of joint and cooperative undertakings; and imposing limitations with respect to joint and cooperative undertakings by hospitals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. INTERGOVERNMENTAL RELATIONS — CONTRACTING AND JOINT ENTERPRISES.

§8-23-3a. Joint and cooperative undertakings by certain hospitals.

1 Any county or municipal hospital or hospital created
 2 by special act of the Legislature may enter into a joint or
 3 cooperative undertaking pursuant to this article and may
 4 further enter into joint or cooperative undertakings with
 5 private agencies or corporations in accordance with this
 6 section. The expenditure of public funds, allocation of
 7 personnel and provision of services for joint and cooperative
 8 undertakings are authorized. The undertaking may
 9 include the creation of a separate entity to carry out the
 10 purpose of the undertaking and, if appropriate in connection
 11 with the undertaking, may include provision for the
 12 ownership or control of all or a portion of the separate

13 entity by the hospital. The contribution of funds derived
14 from the operation of a hospital, and real or personal
15 property acquired in connection with the operation of the
16 hospital, may be contributed to the joint undertaking or
17 separate entity, if the hospital owns or controls all or a
18 portion of the separate entity or joint undertaking. All
19 joint and cooperative undertakings are subject to the fol-
20 lowing limitations:

21 (1) All joint and cooperative undertakings entered into
22 by a hospital are subject to the provisions of article two-d,
23 chapter sixteen of this code;

24 (2) For any joint and cooperative undertaking entered
25 into by a hospital, which undertaking involves the expen-
26 diture of public funds and includes the creation of a sepa-
27 rate entity to carry out the purpose of the undertaking, the
28 separate entity created is subject to the provisions of article
29 nine-a, chapter six and articles five-b and five-g, chapter
30 sixteen of this code;

31 (3) For any joint and cooperative undertaking entered
32 into by a hospital, which undertaking involves the expen-
33 diture of public funds and includes the creation of a sepa-
34 rate entity to carry out the purpose of the undertaking, the
35 separate entity created is subject to the same charity care
36 obligation as the hospital;

37 (4) The board of the hospital must find by resolution
38 that the purposes of the joint and cooperative undertaking
39 further the same public purpose and are in keeping with
40 the mission and vision for which the hospital was created;

41 (5) Appropriate action by resolution of the governing
42 board of the hospital is necessary before any agreement
43 for a joint or cooperative undertaking may take effect.
44 For any joint and cooperative undertaking which involves
45 the contribution of real property acquired in connection
46 with the operation of the hospital, appropriate action by
47 ordinance, resolution or otherwise pursuant to the law of
48 the governing body of the municipality, in the case of a
49 municipal hospital; by ordinance, resolution or otherwise
50 pursuant to the law of the county commission in the case
51 of a county hospital; or appropriate action by ordinance,

52 resolution or otherwise pursuant to the law of both the
53 municipality where the hospital is located and the county
54 commission of the county where the hospital is located, in
55 the case of a hospital created by special act of the
56 Legislature and involving the contribution of public funds
57 of both counties and municipalities, shall be necessary
58 before any agreement for a joint or cooperative
59 undertaking may take effect. An agreement entered into
60 by a hospital pursuant to this section shall contain
61 substantially the same provisions as set forth in section
62 three of this article. No agreement made pursuant to the
63 provisions of this section shall relieve any hospital of any
64 obligation or responsibility imposed upon it by law,
65 except to the extent that actual and timely performance
66 thereof by a joint board or other legal or administrative
67 entity created by an agreement made hereunder may be
68 offered in satisfaction of the obligation or responsibility;
69 and

70 (6) No agreement for a joint and cooperative
71 undertaking entered into pursuant to this article may
72 contain any provision intended to or having the effect of
73 reducing reimbursements to local or community-based
74 emergency services or ambulance providers, or reducing
75 the extent to which services are provided by local or
76 community-based emergency services or ambulance
77 providers in the geographic area served by a provider.

CHAPTER 132

(H. B. 4137—By Delegates Compton, Rowe, Petersen,
Leach, Burke, Hutchins and Wallace)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-f of said chapter, relating to certificate of need standards generally; clarifying certificate of need standards for hospice agencies and home health facilities; allowing conversion of certain beds at hospi-

tals; and allowing rate and regulatory relief to be granted by the state agency.

Be it enacted by the Legislature of West Virginia:

That sections two, three and five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to amend and reenact section two, article five-f of said chapter, all to read as follows:

Article

2D. Certificate of Need.

5F. Health Care Financial Disclosure.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-3. Certificate of need; new institutional health services defined.

§16-2D-5. Powers and duties of state agency.

§16-2D-2. Definitions.

1 As used in this article, unless otherwise indicated by
2 the context:

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) An agency or organization representing consum-
6 ers;

7 (3) Any individual residing within the geographic area
8 served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care
10 facilities within that geographic area;

11 (5) The health care facilities which provide services
12 similar to the services of the facility under review and
13 which will be significantly affected by the proposed pro-
14 ject;

15 (6) The health care facilities which, prior to receipt by
16 the state agency of the proposal being reviewed, have
17 formally indicated an intention to provide similar services
18 in the future;

19 (7) Third-party payors who reimburse health care
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility
25 which is free-standing and not physically attached to a
26 health care facility and which provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. This definition does not include the pri-
29 vate office practice of any one or more health profession-
30 als licensed to practice in this state pursuant to the provi-
31 sions of chapter thirty of this code: *Provided*, That such
32 exemption from review of private office practice shall not
33 be construed to include such practices where major medi-
34 cal equipment otherwise subject to review under the provi-
35 sions of this article is acquired, offered or developed:
36 *Provided, however*, That such exemption from review of
37 private office practice shall not be construed to include
38 certain health services otherwise subject to review under
39 the provisions of subdivision (1), subsection (a), section
40 four of this article.

41 (c) "Ambulatory surgical facility" means a facility
42 which is free-standing and not physically attached to a
43 health care facility and which provides surgical treatment
44 to patients not requiring hospitalization. This definition
45 does not include the private office practice of any one or
46 more health professionals licensed to practice surgery in
47 this state pursuant to the provisions of chapter thirty of
48 this code: *Provided*, That such exemption from review of
49 private office practice shall not be construed to include
50 such practices where major medical equipment otherwise
51 subject to review under the provisions of this article is
52 acquired, offered or developed: *Provided, however*, That
53 such exemption from review of private office practice
54 shall not be construed to include certain health services
55 otherwise subject to review under the provisions of subdi-
56 vision (1), subsection (a), section four of this article.

57 (d) "Applicant" means: (1) The governing body or the
58 person proposing a new institutional health service who is,
59 or will be, the health care facility licensee wherein the new
60 institutional health service is proposed to be located; and
61 (2) in the case of a proposed new institutional health ser-
62 vice not to be located in a licensed health care facility, the
63 governing body or the person proposing to provide such
64 new institutional health service. Incorporators or promot-
65 ers who will not constitute the governing body or persons
66 responsible for the new institutional health service may not
67 be an applicant.

68 (e) "Bed capacity" means the number of beds for
69 which a license is issued to a health care facility, or, if a
70 facility is unlicensed, the number of adult and pediatric
71 beds permanently staffed and maintained for immediate
72 use by inpatients in patient rooms or wards.

73 (f) "Capital expenditure" means an expenditure:

74 (1) Made by or on behalf of a health care facility; and

75 (2) (A) Which (i) under generally accepted accounting
76 principles is not properly chargeable as an expense of
77 operation and maintenance, or (ii) is made to obtain either
78 by lease or comparable arrangement any facility or part
79 thereof or any equipment for a facility or part; and (B)
80 which (i) exceeds the expenditure minimum, or (ii) is a
81 substantial change to the bed capacity of the facility with
82 respect to which the expenditure is made, or (iii) is a sub-
83 stantial change to the services of such facility. For purpos-
84 es of subparagraph (i), paragraph (B), subdivision (2) of
85 this definition, the cost of any studies, surveys, designs,
86 plans, working drawings, specifications, and other activi-
87 ties, including staff effort and consulting and other servic-
88 es, essential to the acquisition, improvement, expansion, or
89 replacement of any plant or equipment with respect to
90 which an expenditure described in paragraph (B), subdivi-
91 sion (2) of this definition is made shall be included in
92 determining if such expenditure exceeds the expenditure
93 minimum. Donations of equipment or facilities to a health
94 care facility which if acquired directly by such facility
95 would be subject to review shall be considered capital
96 expenditures, and a transfer of equipment or facilities for

97 less than fair market value shall be considered a capital
98 expenditure for purposes of such subdivisions if a transfer
99 of the equipment or facilities at fair market value would be
100 subject to review. A series of expenditures, each less than
101 the expenditure minimum, which when taken together are
102 in excess of the expenditure minimum, may be deter-
103 mined by the state agency to be a single capital expendi-
104 ture subject to review. In making its determination, the
105 state agency shall consider: Whether the expenditures are
106 for components of a system which is required to accom-
107 plish a single purpose; whether the expenditures are to be
108 made over a two-year period and are directed towards the
109 accomplishment of a single goal within the health care
110 facility's long-range plan; or whether the expenditures are
111 to be made within a two-year period within a single de-
112 partment such that they will constitute a significant mod-
113 ernization of the department.

114 (g) "Expenditure minimum" means seven hundred
115 fifty thousand dollars per fiscal year.

116 (h) "Health," used as a term, includes physical and
117 mental health.

118 (i) "Health care facility" is defined as including hospi-
119 tals, skilled nursing facilities, kidney disease treatment
120 centers, including free-standing hemodialysis units, inter-
121 mediate care facilities, ambulatory health care facilities,
122 ambulatory surgical facilities, home health agencies, hos-
123 pice agencies, rehabilitation facilities and health mainte-
124 nance organizations; community mental health and mental
125 retardation facilities, whether under public or private own-
126 ership, or as a profit or nonprofit organization and wheth-
127 er or not licensed or required to be licensed in whole or in
128 part by the state. For purposes of this definition, "commu-
129 nity mental health and mental retardation facility" means a
130 private facility which provides such comprehensive servic-
131 es and continuity of care as emergency, outpatient, partial
132 hospitalization, inpatient and consultation and education
133 for individuals with mental illness, mental retardation or
134 drug or alcohol addiction.

135 (j) "Health care provider" means a person, partnership,
136 corporation, facility or institution licensed or certified or

137 authorized by law to provide professional health care
138 service in this state to an individual during that individual's
139 medical care, treatment or confinement.

140 (k) "Health maintenance organization" means a public
141 or private organization, organized under the laws of this
142 state, which:

143 (1) Is a qualified health maintenance organization
144 under Section 1310(d) of the Public Health Service Act, as
145 amended, Title 42 United States Code Section 300e-9(d);
146 or

147 (2) (A) Provides or otherwise makes available to en-
148 rolled participants health care services, including substan-
149 tially the following basic health care services: Usual physi-
150 cian services, hospitalization, laboratory, X ray, emergency
151 and preventive services and out-of-area coverage; and

152 (B) Is compensated except for copayments for the
153 provision of the basic health care services listed in para-
154 graph (A), subdivision (2), subsection (k) of this definition
155 to enrolled participants on a predetermined periodic rate
156 basis without regard to the date the health care services are
157 provided and which is fixed without regard to the frequen-
158 cy, extent or kind of health service actually provided; and

159 (C) Provides physicians' services primarily (i) directly
160 through physicians who are either employees or partners
161 of such organization, or (ii) through arrangements with
162 individual physicians or one or more groups of physicians
163 organized on a group practice or individual practice basis.

164 (l) "Health services" means clinically related preven-
165 tive, diagnostic, treatment or rehabilitative services, includ-
166 ing alcohol, drug abuse and mental health services.

167 (m) "Home health agency" is an organization primari-
168 ly engaged in providing professional nursing services
169 either directly or through contract arrangements and at
170 least one of the following services: Home health aide ser-
171 vices, other therapeutic services, physical therapy, speech
172 therapy, occupational therapy, nutritional services or med-
173 ical social services to persons in their place of residence on
174 a part-time or intermittent basis.

175 (n) "Hospice agency" means a private or public agen-
176 cy or organization licensed in West Virginia for the ad-
177 ministration or provision of hospice care services to termi-
178 nally ill persons in such persons' temporary or permanent
179 residences by using an interdisciplinary team, including, at
180 a minimum, persons qualified to perform nursing, social
181 work services, the general practice of medicine or osteopa-
182 thy and pastoral or spiritual counseling.

183 (o) "Hospital" means an institution which is primarily
184 engaged in providing to inpatients, by or under the super-
185 vision of physicians, diagnostic and therapeutic services
186 for medical diagnosis, treatment, and care of injured, dis-
187 abled or sick persons, or rehabilitation services for the
188 rehabilitation of injured, disabled or sick persons. This
189 term also includes psychiatric and tuberculosis hospitals.

190 (p) "Intermediate care facility" means an institution
191 which provides, on a regular basis, health-related care and
192 services to individuals who do not require the degree of
193 care and treatment which a hospital or skilled nursing
194 facility is designed to provide, but who, because of their
195 mental or physical condition, require health-related care
196 and services above the level of room and board.

197 (q) "Long-range plan" means a document formally
198 adopted by the legally constituted governing body of an
199 existing health care facility or by a person proposing a
200 new institutional health service. Each long-range plan shall
201 consist of the information required by the state agency in
202 regulations adopted pursuant to section eight of this arti-
203 cle.

204 (r) "Major medical equipment" means a single unit of
205 medical equipment or a single system of components with
206 related functions which is used for the provision of medi-
207 cal and other health services and which costs in excess of
208 three hundred thousand dollars, except that such term
209 does not include medical equipment acquired by or on
210 behalf of a clinical laboratory to provide clinical laborato-
211 ry services if the clinical laboratory is independent of a
212 physician's office and a hospital and it has been deter-
213 mined under Title XVIII of the Social Security Act to
214 meet the requirements of paragraphs ten and eleven of

215 Section 1861(s) of such act, Title 42 United States Code
216 Sections 1395x (10) and (11). In determining whether
217 medical equipment costs more than three hundred thou-
218 sand dollars, the cost of studies, surveys, designs, plans,
219 working drawings, specifications and other activities essen-
220 tial to the acquisition of such equipment shall be included.
221 If the equipment is acquired for less than fair market val-
222 ue, the term "cost" includes the fair market value.

223 (s) "Medically underserved population" means the
224 population of an urban or rural area designated by the
225 state agency as an area with a shortage of personal health
226 services or a population having a shortage of such services,
227 after taking into account unusual local conditions which
228 are a barrier to accessibility or availability of such services.
229 Such designation shall be in regulations adopted by the
230 state agency pursuant to section eight of this article, and
231 the population so designated may include the state's medi-
232 cally underserved population designated by the federal
233 secretary of health and human services under Section
234 330(b)(3) of the Public Health Service Act, as amended,
235 Title 42 United States Code Section 254(b)(3).

236 (t) "New institutional health service" means such ser-
237 vice as described in section three of this article.

238 (u) "Offer", when used in connection with health ser-
239 vices, means that the health care facility or health mainte-
240 nance organization holds itself out as capable of provid-
241 ing, or as having the means for the provision of, specified
242 health services.

243 (v) "Person" means an individual, trust, estate, partner-
244 ship, committee, corporation, association and other organi-
245 zations such as joint-stock companies and insurance com-
246 panies, a state or a political subdivision or instrumentality
247 thereof or any legal entity recognized by the state.

248 (w) "Physician" means a doctor of medicine or oste-
249 opathy legally authorized to practice by the state.

250 (x) "Proposed new institutional health service" means
251 such service as described in section three of this article.

252 (y) "Psychiatric hospital" means an institution which
253 primarily provides to inpatients, by or under the supervi-
254 sion of a physician, specialized services for the diagnosis,
255 treatment and rehabilitation of mentally ill and emotional-
256 ly disturbed persons.

257 (z) "Rehabilitation facility" means an inpatient facility
258 which is operated for the primary purpose of assisting in
259 the rehabilitation of disabled persons through an integrat-
260 ed program of medical and other services which are pro-
261 vided under competent professional supervision.

262 (aa) "Review agency" means an agency of the state,
263 designated by the governor as the agency for the review of
264 state agency decisions.

265 (bb) "Skilled nursing facility" means an institution or
266 a distinct part of an institution which is primarily engaged
267 in providing to inpatients skilled nursing care and related
268 services for patients who require medical or nursing care,
269 or rehabilitation services for the rehabilitation of injured,
270 disabled or sick persons.

271 (cc) "State agency" means the health care cost review
272 authority created, established and continued pursuant to
273 article twenty-nine-b of this chapter.

274 (dd) "State health plan" means the document ap-
275 proved by the governor after preparation by the former
276 statewide health coordinating council, or that document as
277 approved by the governor after amendment by the health
278 care planning council or its successor agency.

279 (ee) "Health care planning council" means the body
280 established by section five-a of this article to participate in
281 the preparation and amendment of the state health plan
282 and to advise the state agency.

283 (ff) "Substantial change to the bed capacity" of a
284 health care facility means any change, with which a capital
285 expenditure is associated, that increases or decreases the
286 bed capacity, or relocates beds from one physical facility
287 or site to another, but does not include a change by which
288 a health care facility reassigns existing beds as swing beds
289 between acute care and long-term care categories: *Provid-*

290 *ed*, That a decrease in bed capacity in response to federal
291 rural health initiatives shall be excluded from this defini-
292 tion.

293 (gg) "Substantial change to the health services" of a
294 health care facility means the addition of a health service
295 which is offered by or on behalf of the health care facility
296 and which was not offered by or on behalf of the facility
297 within the twelve-month period before the month in which
298 the service is first offered, or the termination of a health
299 service which was offered by or on behalf of the facility:
300 *Provided*, That "substantial change to the health services"
301 does not include the providing of ambulance service,
302 wellness centers or programs, adult day care or respite care
303 by acute care facilities.

304 (hh) "To develop", when used in connection with
305 health services, means to undertake those activities which
306 upon their completion will result in the offer of a new
307 institutional health service or the incurring of a financial
308 obligation, in relation to the offering of such a service.

§16-2D-3. Certificate of need; new institutional health services defined.

1 (a) Except as provided in section four of this article,
2 any new institutional health service may not be acquired,
3 offered or developed within this state except upon applica-
4 tion for and receipt of a certificate of need as provided by
5 this article. Whenever a new institutional health service for
6 which a certificate of need is required by this article is
7 proposed for a health care facility for which, pursuant to
8 section four of this article, no certificate of need is or was
9 required, a certificate of need shall be issued before the
10 new institutional health service is offered or developed.
11 No person may knowingly charge or bill for any health
12 services associated with any new institutional health service
13 that is knowingly acquired, offered or developed in viola-
14 tion of this article, and any bill made in violation of this
15 section is legally unenforceable.

16 (b) For purposes of this article, a proposed "new insti-
17 tutional health service" includes:

18 (1) The construction, development, acquisition or
19 other establishment of a new health care facility or health
20 maintenance organization;

21 (2) The partial or total closure of a health care facility
22 or health maintenance organization with which a capital
23 expenditure is associated;

24 (3) Any obligation for a capital expenditure incurred
25 by or on behalf of a health care facility, except as exempt-
26 ed in section four of this article, or health maintenance
27 organization in excess of the expenditure minimum or
28 any obligation for a capital expenditure incurred by any
29 person to acquire a health care facility. An obligation for
30 a capital expenditure is considered to be incurred by or on
31 behalf of a health care facility;

32 (A) When a contract, enforceable under state law, is
33 entered into by or on behalf of the health care facility for
34 the construction, acquisition, lease or financing of a capital
35 asset;

36 (B) When the governing board of the health care
37 facility takes formal action to commit its own funds for a
38 construction project undertaken by the health care facility
39 as its own contractor; or

40 (C) In the case of donated property, on the date on
41 which the gift is completed under state law;

42 (4) A substantial change to the bed capacity of a
43 health care facility with which a capital expenditure is
44 associated;

45 (5) The addition of health services which are offered
46 by or on behalf of a health care facility or health mainte-
47 nance organization and which were not offered on a regu-
48 lar basis by or on behalf of the health care facility or
49 health maintenance organization within the twelve-month
50 period prior to the time the services would be offered;

51 (6) The addition of ventilator services for any nursing
52 facility bed by any health care facility or health mainte-
53 nance organization;

54 (7) The deletion of one or more health services, previ-
55 ously offered on a regular basis by or on behalf of a
56 health care facility or health maintenance organization
57 which is associated with a capital expenditure;

58 (8) A substantial change to the bed capacity or health
59 services offered by or on behalf of a health care facility,
60 whether or not the change is associated with a proposed
61 capital expenditure, if the change is associated with a pre-
62 vious capital expenditure for which a certificate of need
63 was issued and if the change will occur within two years
64 after the date the activity which was associated with the
65 previously approved capital expenditure was undertaken;

66 (9) The acquisition of major medical equipment;

67 (10) A substantial change in an approved new institu-
68 tional health service for which a certificate of need is in
69 effect. For purposes of this subsection, "substantial
70 change" shall be defined by the state agency in regulations
71 adopted pursuant to section eight of this article; or

72 (11) An expansion of the service area for hospice or
73 home health service, regardless of the time period in which
74 the expansion is contemplated or made.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency is hereby empowered to adminis-
2 ter the certificate of need program as provided by this
3 article.

4 (b) The state agency shall be responsible for coordi-
5 nating and developing the health planning research efforts
6 of the state and for amending and modifying the state
7 health plan which includes the certificate of need stan-
8 dards.

9 (c) The state agency may seek advice and assistance of
10 other persons, organizations and other state agencies in the
11 performance of the state agency's responsibilities under
12 this article.

13 (d) For health services for which competition appro-
14 priately allocates supply consistent with the state health
15 plan, the state agency shall, in the performance of its func-

16 tions under this article, give priority, where appropriate to
17 advance the purposes of quality assurance, cost effective-
18 ness and access, to actions which would strengthen the
19 effect of competition on the supply of such services.

20 (e) For health services for which competition does not
21 or will not appropriately allocate supply consistent with
22 the state health plan, the state agency shall, in the exercise
23 of its functions under this article, take actions, where ap-
24 propriate to advance the purposes of quality assurance,
25 cost effectiveness and access and the other purposes of this
26 article, to allocate the supply of such services.

27 (f) Notwithstanding the provisions of section seven of
28 this article, the state agency may charge a fee for the filing
29 of any application, the filing of any notice in lieu of an
30 application, the filing of any exemption determination
31 request or the filing of any request for a declaratory rul-
32 ing. The fees charged may vary according to the type of
33 matter involved, the type of health service or facility in-
34 volved or the amount of capital expenditure involved. The
35 state agency shall implement this subsection by filing
36 procedural rules pursuant to chapter twenty-nine-a of this
37 code. The fees charged shall be deposited into a special
38 fund known as the certificate of need program fund to be
39 expended for the purposes of this article.

40 (g) No hospital, nursing home or other health care
41 facility shall add any intermediate care or skilled nursing
42 beds to its current licensed bed complement. This prohibi-
43 tion also applies to the conversion of acute care or other
44 types of beds to intermediate care or skilled nursing beds:
45 *Provided*, That hospitals eligible under the provisions of
46 section four-a and subsection (i), section five of this article
47 may convert acute care beds to skilled nursing beds in
48 accordance with the provisions of these sections, upon
49 approval by the state agency. Furthermore, no certificate
50 of need shall be granted for the construction or addition
51 of any intermediate care or skilled nursing beds except in
52 the case of facilities designed to replace existing beds in
53 unsafe existing facilities. A health care facility in receipt
54 of a certificate of need for the construction or addition of
55 intermediate care or skilled nursing beds which was ap-

56 proved prior to the effective date of this section must incur
57 an obligation for a capital expenditure within twelve
58 months of the date of issuance of the certificate of need.
59 No extensions shall be granted beyond the twelve-month
60 period: *Provided, however,* That a maximum of sixty beds
61 may be approved, as a demonstration project, by the state
62 agency for a unit to provide nursing services to patients
63 with alzheimer's disease if: (1) The unit is located in an
64 existing facility which was formerly owned and operated
65 by the state of West Virginia and is presently owned by a
66 county of the state of West Virginia; (2) the facility has
67 provided health care services, including personal care
68 services, within one year prior to the effective date of this
69 section; (3) the facility demonstrates that awarding the
70 certificate of need and operating the facility will be cost
71 effective for the state; and (4) that any applicable lease,
72 lease-purchase or contract for operating the facility was
73 awarded through a process of competitive bidding consis-
74 tent with state purchasing practices and procedures: *Pro-*
75 *vided further,* That an application for said demonstration
76 project shall be filed with the state agency on or before the
77 twenty-first day of October, one thousand nine hundred
78 ninety-three.

79 (h) No additional intermediate care facility for the
80 mentally retarded (ICF/MR) beds shall be granted a certifi-
81 cate of need, except that prohibition does not apply to
82 ICF/MR beds approved under the Kanawha County circuit
83 court order of the third day of August, one thousand nine
84 hundred eighty-nine, civil action number MISC-81-585
85 issued in the case of *E. H. v. Matin*, 168 W.V. 248, 284
86 S.E.2d 232 (1981).

87 (i) Notwithstanding the provisions of subsection (g),
88 section five of this article and, further notwithstanding the
89 provisions of subsection (d), section three of this article, an
90 existing acute care hospital may apply to the health care
91 cost review authority for a certificate of need to convert
92 acute care beds to skilled nursing beds: *Provided,* That the
93 proposed skilled nursing beds are medicare certified only:
94 *Provided, however,* That any hospital which converts acute
95 care beds to medicare certified only skilled nursing beds is
96 prohibited from billing for any medicaid reimbursement

97 for any beds so converted. In converting beds, the hospital
98 must convert a minimum of one acute care bed into one
99 medicare certified only skilled nursing bed. The health
100 care cost review authority may require a hospital to con-
101 vert up to and including three acute care beds for each
102 medicare certified only skilled nursing bed: *Provided*
103 *further*, That a hospital designated or provisionally desig-
104 nated by the state agency as a rural primary care hospital
105 may convert up to thirty beds to a distinct-part nursing
106 facility, including skilled nursing beds and intermediate
107 care beds, on a one-for-one basis if said rural primary care
108 hospital is located in a county without a certified
109 free-standing nursing facility and the hospital may bill for
110 medicaid reimbursement for the converted beds: *And*
111 *provided further*, that if the hospital rejects the designation
112 as a rural primary care hospital then the hospital may not
113 bill for medicaid reimbursement. The health care cost
114 review authority shall adopt rules to implement this sub-
115 section which require that:

116 (1) All acute care beds converted shall be permanently
117 deleted from the hospital's acute care bed complement and
118 the hospital may not thereafter add, by conversion or
119 otherwise, acute care beds to its bed complement without
120 satisfying the requirements of subsection (d), section three
121 of this article for which purposes such an addition, wheth-
122 er by conversion or otherwise, shall be considered a sub-
123 stantial change to the bed capacity of the hospital notwith-
124 standing the definition of that term found in subsection
125 (ee), section two of this article.

126 (2) The hospital shall meet all federal and state licens-
127 ing certification and operational requirements applicable
128 to nursing homes including a requirement that all skilled
129 care beds created under this subsection shall be located in
130 distinct-part, long-term care units.

131 (3) The hospital must demonstrate a need for the pro-
132 ject.

133 (4) The hospital must use existing space for the medi-
134 care certified only skilled nursing beds. Under no circum-
135 stances shall the hospital construct, lease or acquire addi-
136 tional space for purposes of this section.

137 (5) The hospital must notify the acute care patient,
138 prior to discharge, of facilities with skilled nursing beds
139 which are located in or near the patient's county of resi-
140 dence.

141 Nothing in this subsection shall negatively affect the
142 rights of inspection and certification which are otherwise
143 required by federal law or regulations or by this code of
144 duly adopted regulations of an authorized state entity.

145 (j) Notwithstanding the provisions of subsection (g) of
146 this section, a retirement life care center with no skilled
147 nursing beds may apply to the health care cost review
148 authority for a certificate of need for up to sixty skilled
149 nursing beds provided the proposed skilled beds are medi-
150 care certified only. On a statewide basis, a maximum of
151 one hundred eighty skilled beds which are medicare certi-
152 fied only may be developed pursuant to this subsection.
153 The state health plan shall not be applicable to projects
154 submitted under this subsection. The health care cost re-
155 view authority shall adopt rules to implement this subsec-
156 tion which shall include:

157 (1) A requirement that the one hundred eighty beds
158 are to be distributed on a statewide basis;

159 (2) There shall be a minimum of twenty beds and a
160 maximum of sixty beds in each approved unit;

161 (3) The unit developed by the retirement life care
162 center shall meet all federal and state licensing certifica-
163 tion and operational requirements applicable to nursing
164 homes;

165 (4) The retirement center must demonstrate a need for
166 the project;

167 (5) The retirement center must offer personal care,
168 home health services and other lower levels of care to its
169 residents; and

170 (6) The retirement center must demonstrate both short
171 and long-term financial feasibility.

172 Nothing in this subsection shall negatively affect the
173 rights of inspection and certification which are otherwise
174 required by federal law or regulations or by this code of
175 duly adopted regulations of an authorized state entity.

176 (k) The provisions of this article are severable and if
177 any provision, section or part thereby shall be held invalid,
178 unconstitutional or inapplicable to any person or circum-
179 stance, such invalidity, unconstitutionality or inapplicability
180 shall not affect or impair any other remaining provi-
181 sions contained herein.

182 (l) The state agency is hereby empowered to order a
183 moratorium upon the processing of an application or
184 applications for the development of a new institutional
185 health service filed pursuant to section three of this article,
186 when criteria and guidelines for evaluating the need for
187 such new institutional health service have not yet been
188 adopted or are obsolete. Such moratorium shall be de-
189 clared by a written order which shall detail the circum-
190 stances requiring the moratorium. Upon the adoption of
191 criteria for evaluating the need for the new institutional
192 health service affected by the moratorium, or one hundred
193 eighty days from the declaration of a moratorium, which-
194 ever is less, the moratorium shall be declared to be over
195 and affected applications shall be processed pursuant to
196 section six of this article.

197 (m) The state agency shall coordinate the collection of
198 information needed to allow the state agency to develop
199 recommended modifications to certificate of need stan-
200 dards as required in this article. When the state agency
201 proposes amendments or modifications to the certificate
202 of need standards, they shall file with the secretary of state,
203 for publication in the state register, a notice of proposed
204 action, including the text of all proposed amendments and
205 modifications, and a date, time and place for receipt of
206 general public comment. To comply with the public com-
207 ment requirement of this section, the state agency may
208 hold a public hearing or schedule a public comment peri-
209 od for the receipt of written statements or documents.

210 All proposed amendments and modifications to the
211 certificate of need standards, with a record of the public
212 hearing or written statements and documents received
213 pursuant to a public comment period, shall be presented to
214 the governor. Within thirty days of receiving said pro-
215 posed amendments or modifications, the governor shall
216 either approve or disapprove all or part of said amend-
217 ments and modifications, and, for any portion of amend-
218 ments or modifications not approved, shall specify the
219 reason or reasons for nonapproval. Any portions of the
220 amendments or modifications not approved by the gover-
221 nor may be revised and resubmitted.

222 (n) The state agency may exempt from or expedite
223 rate review, certificate of need, and annual assessment
224 requirements and issue grants and loans to financially
225 vulnerable health care facilities located in underserved
226 areas that the state agency and the office of community
227 and rural health services determine are collaborating with
228 other providers in the service area to provide cost effective
229 health care services.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report
3 for the covered facility's or related organization's fiscal
4 year prepared by an accountant or the covered facility's or
5 related organization's auditor.

6 (2) "Board" means the West Virginia health care cost
7 review authority.

8 (3) "Covered facility" means any hospital, skilled nurs-
9 ing facility, kidney disease treatment center, including a
10 free-standing hemodialysis unit; intermediate care facility;
11 ambulatory health care facility; ambulatory surgical facili-
12 ty; home health agency; hospice agency; rehabilitation
13 facility; health maintenance organization; or community
14 mental health or mental retardation facility, whether under
15 public or private ownership or as a profit or nonprofit

16 organization and whether or not licensed or required to be
17 licensed in whole or in part by the state: *Provided*, That
18 nonprofit, community-based primary care centers provid-
19 ing primary care services without regard to ability to pay
20 which provide the board with a year-end audited financial
21 statement prepared in accordance with generally accepted
22 auditing standards and with governmental auditing stan-
23 dards issued by the comptroller general of the United
24 States shall be deemed to have complied with the disclo-
25 sure requirements of this section.

26 (4) "Related organization" means an organization,
27 whether publicly owned, nonprofit, tax-exempt or for
28 profit, related to a covered facility through common mem-
29 bership, governing bodies, trustees, officers, stock owner-
30 ship, family members, partners or limited partners, includ-
31 ing, but not limited to, subsidiaries, foundations, related
32 corporations and joint ventures. For the purposes of this
33 subdivision "family members" shall mean brothers and
34 sisters whether by the whole or half blood, spouse, ances-
35 tors and lineal descendants.

36 (5) "Rates" means all rates, fees or charges imposed by
37 any covered facility for health care services.

38 (6) "Records" includes accounts, books, charts, con-
39 tracts, documents, files, maps, papers, profiles, reports,
40 annual and otherwise, schedules and any other fiscal data,
41 however recorded or stored.

CHAPTER 133

(Com. Sub. for S. B. 262—By Senator Tomblin, Mr. President)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-a, all relating to establishing emergency medical services agencies;

defining new terms and amending certain definitions; deleting references to the director; placing the office of emergency medical services within the bureau of public health; amending the composition of the advisory council, defining the length of members terms, terminating the existing council and appointing a new council on a date certain, staggering terms of newly appointed members; authorizing licensure of emergency medical services agencies, authorizing promulgation of legislative rules to determine licensure fees; deleting obsolete references to past-time requirements; establishing criminal penalties for violations of licensure; authorizing legislative rules for determining the services that may be provided by each class of personnel; and creating criminal penalties for obstructing, interfering with or causing bodily injury and specifying criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

- §16-4C-1. Short title.
- §16-4C-2. Purposes of article.
- §16-4C-3. Definitions.
- §16-4C-4. Office of emergency medical services created; staffing.
- §16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.
- §16-4C-6. Powers and duties of commissioner.
- §16-4C-6a. Emergency medical services agency licensure.
- §16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.
- §16-4C-8. Standards for emergency medical service personnel.
- §16-4C-9. Suspension or revocation of certificate or temporary certificate or license.
- §16-4C-10. Notice of refusal, suspension or revocation of certificate or license; appeals to commissioner; judicial review.
- §16-4C-11. Liability for cost of emergency medical service.
- §16-4C-12. Violations; criminal penalties.
- §16-4C-13. Actions to enjoin violations; injunctive relief.

- §16-4C-14. Services that may be performed by emergency medical service personnel.
- §16-4C-15. Powers of emergency medical service attendants, emergency medical technicians-basic and emergency medical technicians-paramedic during emergency communications failures and disasters.
- §16-4C-16. Limitation of liability; mandatory errors and omissions insurance.
- §16-4C-17. Limitation of liability for failure to obtain consent.
- §16-4C-18. Authority of emergency medical service personnel in charge of emergency medical services.
- §16-4C-19. Obstructing emergency medical service personnel; criminal penalties.
- §16-4C-20. Service reciprocity agreements for mutual aid.
- §16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.
- §16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.
- §16-4C-23. Authority of the commissioner to make rules.

§16-4C-1. Short title.

- 1 This article shall be known as the "Emergency Medical
2 Services Act of 1996".

§16-4C-2. Purposes of article.

- 1 The Legislature finds and declares: (1) That the safe
2 and efficient operation of life-saving and life-preserving
3 emergency medical service to meet the needs of citizens of
4 this state is a matter of general public interest and concern;
5 (2) to ensure the provision of adequate emergency medi-
6 cal services within this state for the protection of the public
7 health, safety and welfare, it is imperative that minimum
8 standards for emergency medical service personnel be
9 established and enforced by the state; (3) that emergency
10 medical service personnel should meet minimum training
11 standards promulgated by the commissioner; (4) that it is
12 the public policy of this state to enact legislation to carry
13 out these purposes and comply with minimum standards
14 for emergency medical service personnel as specified
15 herein; (5) that any patient who receives emergency medi-
16 cal service and who is unable to consent thereto should be
17 liable for the reasonable cost of such service; and (6) that

18 it is the public policy of this state to encourage emergency
19 medical service providers to do those things necessary to
20 carry out the powers conferred in this article unless other-
21 wise forbidden by law.

§16-4C-3. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:

3 (a) "Ambulance" means any privately or publicly-
4 owned vehicle or aircraft which is designed, constructed or
5 modified; equipped or maintained; and operated for the
6 transportation of patients;

7 (b) "Commissioner" means the commissioner of the
8 bureau of public health;

9 (c) "Council" means the emergency medical service
10 advisory council created pursuant to section five of this
11 article;

12 (d) "Emergency medical services" means all services
13 which are set forth in Public Law 93-154 "The Emergency
14 Medical Services Act of 1973" and those included in and
15 made a part of the emergency medical services plan of the
16 department of health and human resources inclusive of,
17 but not limited to, responding to the medical needs of an
18 individual to prevent the loss of life or aggravation of
19 illness or injury;

20 (e) "Emergency medical service agency" means any
21 agency licensed under section six-a of this article to pro-
22 vide emergency medical services;

23 (f) "Emergency medical service attendant" means a
24 person certified by the commissioner pursuant to the pro-
25 visions of section eight of this article to render the services
26 authorized pursuant to the provisions of section fourteen
27 of this article;

28 (g) "Emergency medical service personnel" means any
29 person certified by the commissioner to provide emergen-
30 cy medical services authorized in section eight of this
31 article and includes, but is not limited to, emergency medi-

32 cal service attendant, emergency medical technician-basic
33 and emergency medical technician-paramedic;

34 (h) "Emergency medical service provider" means any
35 authority, person, corporation, partnership or other entity,
36 public or private, which owns or operates a licensed emer-
37 gency medical services agency providing emergency med-
38 ical service in this state;

39 (i) "Emergency medical technician-basic" means a
40 person certified by the commissioner pursuant to the pro-
41 visions of section eight of this article to render the services
42 authorized pursuant to the provisions of section fourteen
43 of this article;

44 (j) "Emergency medical technician-paramedic" means
45 a person certified by the commissioner pursuant to the
46 provisions of section eight of this article to render services
47 as authorized pursuant to the provisions of section four-
48 teen of this article;

49 (k) "Governing body" has the meanings ascribed to it
50 as applied to a municipality in subdivision (1), subsection
51 (b), section two, article one, chapter eight of this code;

52 (l) "Line officer" means the emergency medical ser-
53 vice personnel, present at the scene of an accident, injury
54 or illness, who has taken the responsibility for patient care;

55 (m) "Medical command" means the issuing of orders
56 by a physician from a medical facility to emergency med-
57 ical service personnel for the purpose of providing appro-
58 priate patient care;

59 (n) "Municipality" has the meaning ascribed to it in
60 subdivision (1), subsection (a), section two, article one,
61 chapter eight of this code;

62 (o) "Patient" means any person who is a recipient of
63 the services provided by emergency medical services;

64 (p) "Service reciprocity" means the provision of emer-
65 gency medical services to citizens of this state by emer-
66 gency medical service personnel certified to render those
67 services by a neighboring state; and

68 (q) "Small emergency medical service provider" means
69 any emergency medical service provider which is made up
70 of less than twenty emergency medical service personnel.

§16-4C-4. Office of emergency medical services created; staffing.

1 There is hereby created within state government under
2 the commissioner of the bureau of public health an office
3 to be known as the office of emergency medical services.

4 The commissioner may employ any technical, clerical,
5 stenographic and other personnel as may be necessary to
6 carry out the purposes of this article. The personnel may
7 be paid from funds appropriated therefor or from other
8 funds as may be made available for carrying out the pur-
9 poses of this article.

10 The office of emergency medical services as created
11 by former section four, article four-d of this chapter, shall
12 continue in existence as the office of emergency medical
13 services established by this section.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

1 The emergency medical services advisory council,
2 heretofore created and established by former section seven
3 of this article, shall be continued for the purpose of devel-
4 oping, with the commissioner, standards for emergency
5 medical service personnel and for the purpose of provid-
6 ing advice to the office of emergency medical services and
7 the commissioner with respect to reviewing and making
8 recommendations for and providing assistance to the es-
9 tablishment and maintenance of adequate emergency
10 medical services for all portions of this state.

11 The council shall have the duty to advise the commis-
12 sioner in all matters pertaining to his or her duties and
13 functions in relation to carrying out the purposes of this
14 article.

15 The council shall be composed of fifteen members
16 appointed by the governor by and with the advice and

17 consent of the Senate. The mountain state emergency
18 medical services association shall submit to the governor a
19 list of six names of representatives from their association
20 and a list of three names shall be submitted to the gover-
21 nor of representatives of their respective organizations by
22 the county commissioners' association of West Virginia,
23 the West Virginia state firemen's association, the West Vir-
24 ginia hospital association, the West Virginia chapter of the
25 American college of emergency physicians, the West Vir-
26 ginia emergency medical services administrators associa-
27 tion, the West Virginia emergency medical services coal-
28 tion, the ambulance association of West Virginia, the coun-
29 ty commissioner's association and the state department of
30 education. The governor shall appoint from the respective
31 lists submitted, two persons who represent the mountain
32 state emergency medical services association, one of whom
33 shall be a paramedic and one of whom shall be an emer-
34 gency medical technician-basic, and one person from the
35 county commissioners' association of West Virginia, the
36 West Virginia state firemen's association, the West Virginia
37 hospital association, the West Virginia chapter of the
38 American college of emergency physicians, the West Vir-
39 ginia emergency medical services administrators associa-
40 tion, the West Virginia emergency medical services coal-
41 tion, the ambulance association of West Virginia and the
42 state department of education. In addition the governor
43 shall appoint one person to represent emergency medical
44 service providers operating within the state, one person to
45 represent small emergency medical service providers oper-
46 ating within this state and three persons to represent the
47 general public. Not more than six of the members may be
48 appointed from any one congressional district.

49 The current advisory council members' terms shall end
50 on the thirtieth day of June, one thousand nine hundred
51 ninety-six, and, pursuant to the provisions of this section,
52 the governor shall appoint an advisory council on the first
53 day of July, one thousand nine hundred ninety-six. Of
54 those first appointed, one-third shall serve for one year,
55 one-third shall serve for two years and one-third shall
56 serve for three years. Each subsequent term is to be for

57 three years and no member may serve more than four
58 consecutive terms.

59 The council shall choose its own chairman and meet at
60 the call of the commissioner at least twice a year.

61 The members of the council may be reimbursed for
62 any and all reasonable and necessary expenses actually
63 incurred in the performance of their duties.

64 The Legislature hereby finds and declares that the
65 emergency medical services advisory council should be
66 continued and reestablished. Accordingly, notwithstand-
67 ing the provisions of article ten, chapter four of this code,
68 the emergency medical services advisory council shall
69 continue to exist until the first day of July, one thousand
70 nine hundred ninety-seven, to allow for monitoring of
71 compliance with recommendations contained in the pre-
72 liminary performance review through the joint committee
73 on government operations.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner shall have the following powers and
2 duties:

3 (a) In accordance with chapter twenty-nine-a of this
4 code, to propose rules regarding the age, training, retrain-
5 ing, testing, certification and recertification of emergency
6 medical service personnel: *Provided*, That the commis-
7 sioner may not propose any rule required by the provi-
8 sions of this article until it has been submitted for review
9 to the emergency medical services advisory council and
10 this council has had at least thirty days to review such
11 proposed rule. The council may take no action unless a
12 quorum is present;

13 (b) To apply for, receive and expend advances, grants,
14 contributions and other forms of assistance from the state
15 or federal government or from any private or public agen-
16 cies or foundations to carry out the provisions of this
17 article;

18 (c) To design, develop and annually review a statewide
19 emergency medical services implementation plan. The

20 plan shall recommend aid and assistance and all other acts
21 necessary to carry out the purposes of this article:

22 (1) To encourage local participation by area, county
23 and community officials and regional emergency medical
24 services boards of directors; and

25 (2) To develop a system for monitoring and evaluat-
26 ing emergency medical services programs throughout the
27 state;

28 (d) To provide professional and technical assistance
29 and to make information available to regional emergency
30 medical services boards of directors and other potential
31 applicants or program sponsors of emergency medical
32 services for purposes of developing and maintaining a
33 statewide system of services;

34 (e) To assist local government agencies, regional
35 emergency medical services boards of directors and other
36 public or private entities in obtaining federal, state or other
37 available funds and services;

38 (f) To cooperate and work with federal, state and local
39 governmental agencies, private organizations and other
40 entities as may be necessary to carry out the purposes of
41 this article;

42 (g) To acquire in the name of the state by grant, pur-
43 chase, gift, devise or any other methods appropriate real
44 and personal property as may be reasonable and necessary
45 to carry out the purposes of this article;

46 (h) To make grants and allocations of funds and prop-
47 erty so acquired or which may have been appropriated to
48 the agency to other agencies of state and local government
49 as may be appropriate to carry out the purposes of this
50 article;

51 (i) To expend and distribute by grant or bailment
52 funds and property to all state and local agencies for the
53 purpose of performing the duties and responsibilities of
54 the agency all funds which it may have so acquired or
55 which may have been appropriated by the Legislature of
56 this state;

57 (j) To develop a program to inform the public con-
58 cerning emergency medical services;

59 (k) To review and disseminate information regarding
60 federal grant assistance relating to emergency medical
61 services;

62 (l) To prepare and submit to the governor and Legis-
63 lature recommendations for legislation in the area of
64 emergency medical services;

65 (m) To review, make recommendations for and assist
66 in all projects and programs that provide for emergency
67 medical services whether or not the projects or programs
68 are funded through the office of emergency medical ser-
69 vices. A review and approval shall be required for all
70 emergency medical services projects, programs or services
71 for which application is made to receive state or federal
72 funds for their operation after the effective date of this act;
73 and

74 (n) To take all necessary and appropriate action to
75 encourage and foster the cooperation of all emergency
76 medical service providers and facilities within this state.

77 Nothing in this article may be construed to allow the
78 commissioner to dissolve, invalidate or eliminate any exist-
79 ing emergency medical service program or ambulance
80 providers in service at the time of adoption of the amend-
81 ment to this article in the regular session of the Legislature
82 in the year one thousand nine hundred eighty-four, or to
83 deny them fair access to federal and state funding, medical
84 facilities and training programs.

§16-4C-6a. Emergency medical services agency licensure.

1 Any person who proposes to establish or maintain an
2 emergency medical services agency shall file an applica-
3 tion with the commissioner. The application is to include
4 the identity of the applicant, any parent or affiliated entity,
5 the proposed level of service and the number of emergen-
6 cy medical service response vehicles of the agency or
7 proposed agency. The commissioner may require that
8 additional information be included on each application.

9 Upon receipt and review of the application the com-
10 missioner shall issue a license if he or she finds that the
11 applicant meets the requirements and quality standards, to
12 be established by the commissioner, for an emergency
13 medical services agency license, and if the applicant has
14 certified under penalty of perjury that he or she is current
15 with all lawful obligations owed the state of West Virginia,
16 excluding obligations owed in the current quarter, includ-
17 ing, but not limited to, payment of taxes and workers'
18 compensation premiums: *Provided*, That the certification
19 set forth in this paragraph shall be required for the origi-
20 nal application and subsequent renewal thereof.

21 Upon review and consultation with the advisory coun-
22 cil the commissioner may, pursuant to the provisions of
23 article three, chapter twenty-nine-a of this code, establish
24 reasonable fee schedules for application and licensure.

§16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.

1 The following vehicles and aircraft are exempted from
2 the provisions of this article and rules promulgated pursu-
3 ant to it and persons aboard them are not required to com-
4 ply with the provisions of section eight of this article:

5 (a) Privately-owned vehicles and aircraft not ordinarily
6 used in the business or service of transporting patients;

7 (b) Vehicles and aircraft used as ambulances in case of
8 a catastrophe or emergency when the ambulances normal-
9 ly staffed by certified emergency medical service person-
10 nel based in the locality of the catastrophe or emergency
11 are insufficient to render the service required;

12 (c) Ambulances based outside this state, except that
13 emergency medical service personnel aboard any such
14 ambulance receiving a patient within this state for trans-
15 portation to a location within this state shall comply with
16 the provisions of this article and the rules promulgated
17 pursuant to it except in the event of a catastrophe or emer-
18 gency when the ambulances normally staffed by certified
19 emergency medical service personnel based in the locality

20 of the catastrophe or emergency are insufficient to render
21 the services required;

22 (d) Ambulances owned by or operated under the di-
23 rect control of a governmental agency of the United
24 States; and

25 (e) Vehicles and aircraft designed primarily for rescue
26 operations which do not ordinarily transport patients.

**§16-4C-8. Standards for emergency medical service person-
nel.**

1 (a) Every ambulance operated by an emergency medi-
2 cal service agency shall carry at least two personnel. At
3 least one person shall be certified in cardiopulmonary
4 resuscitation or first aid and the person in the
5 patient-compartment shall be minimally certified as an
6 emergency medical technician-basic.

7 (b) As a minimum the training for each class of emer-
8 gency medical service personnel shall include:

9 (1) Emergency medical service attendant: Shall have
10 earned and possess valid certificates from the department
11 or by authorities recognized and approved by the com-
12 missioner;

13 (2) Emergency medical technician-basic: Shall have
14 successfully completed the course for certification as an
15 emergency medical technician-basic as established by the
16 commissioner or authorities recognized and approved by
17 the commissioner; and

18 (3) Emergency medical technician-paramedic: Shall
19 have successfully completed the course for certification as
20 an emergency medical technician-paramedic established
21 by the commissioner or authorities recognized and ap-
22 proved by the commissioner.

23 The foregoing may not be considered to limit the
24 power of the commissioner to prescribe training, certifica-
25 tion and recertification standards.

26 (c) Any person desiring emergency medical service
27 personnel certification shall apply to the commissioner

28 using forms and procedures prescribed by the commis-
29 sioner. Upon receipt of the application, the commissioner
30 shall determine whether the applicant meets the certifica-
31 tion requirements and may examine the applicant, if nec-
32 essary to make that determination. If it is determined that
33 the applicant meets all of the requirements, the commis-
34 sioner shall issue an appropriate emergency medical ser-
35 vice personnel certificate which shall be valid for a period
36 as determined by the commissioner.

37 State and county continuing education and recertifica-
38 tion programs for all levels of emergency medical service
39 providers shall be available to emergency medical service
40 providers at a convenient site within one hundred miles of
41 the provider's primary place of operation at sites deter-
42 mined by the regional emergency medical services offices.
43 The continuing education program shall be provided at a
44 cost specified in a fee schedule to be promulgated by
45 legislative rule in accordance with the provisions of article
46 three, chapter twenty-nine-a of this code by the depart-
47 ment of health to all nonprofit emergency medical service
48 personnel.

49 (d) The commissioner may issue a temporary emer-
50 gency medical service personnel certificate to an applicant,
51 with or without examination of the applicant, when he or
52 she finds that issuance to be in the public interest. Unless
53 suspended or revoked, a temporary certificate shall be
54 valid initially for a period not exceeding one hundred
55 twenty days and may not be renewed unless the commis-
56 sioner finds the renewal to be in the public interest. The
57 expiration date of a temporary certificate shall be extend-
58 ed until the holder is afforded at least one opportunity to
59 take an emergency medical service personnel training
60 course within the general area where he or she serves as an
61 emergency medical service personnel, but the expiration
62 date may not be extended for any longer period of time
63 or for any other reason.

**§16-4C-9. Suspension or revocation of certificate or tempo-
rary certificate or license.**

1 (a) The commissioner may at any time upon his or her
2 own motion, and shall, upon the verified written complaint

3 of any person, cause an investigation to be conducted to
4 determine whether there are any grounds for the suspen-
5 sion or revocation of a certificate, temporary certificate or
6 license issued under the provisions of this article.

7 (b) The commissioner shall suspend or revoke any
8 certificate, temporary certificate or license when he or she
9 finds the holder thereof has:

10 (1) Obtained a certificate, temporary certificate or
11 license by means of fraud or deceit; or

12 (2) Been grossly incompetent, and/or grossly negligent
13 as defined by the commissioner in accordance with rules
14 or by prevailing standards of emergency medical services
15 care; or

16 (3) Failed or refused to comply with the provisions of
17 this article or any reasonable rule promulgated by the
18 commissioner hereunder or any order or final decision of
19 the commissioner.

20 (c) The commissioner shall suspend or revoke any
21 certificate or temporary certificate if he or she finds the
22 existence of any grounds which would justify the denial of
23 an application for the certificate, temporary permit or
24 license if application were then being made for it.

**§16-4C-10. Notice of refusal, suspension or revocation of cer-
tificate or license; appeals to commissioner;
judicial review.**

1 An application for an original, renewal or temporary
2 emergency medical service personnel certificate or emer-
3 gency medical services agency license, shall be acted upon
4 by the commissioner and the certificate delivered or
5 mailed, or a copy of any order of the commissioner deny-
6 ing any such application delivered or mailed to the appli-
7 cant, within fifteen days after the date upon which the
8 application including test scores, if applicable, was re-
9 ceived by the commissioner.

10 Whenever the commissioner refuses to issue an emer-
11 gency medical service personnel certificate or a temporary
12 emergency medical service personnel certificate or emer-

13 gency medical services agency license, or suspends or
14 revokes an emergency medical service personnel certifi-
15 cate, or a temporary emergency medical service personnel
16 certificate, he or she shall make and enter an order to that
17 effect, which shall specify the reasons for the denial, sus-
18 pension or revocation, and shall cause a copy of the order
19 to be served in person or by certified mail, return receipt
20 requested, on the applicant or certificate or license holder,
21 as the case may be.

22 Whenever a certificate or license is suspended or re-
23 voked, the commissioner shall in the order of suspension
24 or revocation direct the holder thereof to return his or her
25 certificate to the commissioner. It shall be the duty of the
26 certificate or license holder to comply with any such order
27 following expiration of the period provided for an appeal
28 to the commissioner.

29 Any applicant or certificate or license holder, adversely
30 affected by an order made and entered by the commis-
31 sioner may appeal to the commissioner for an order vacat-
32 ing or modifying the order or for such order as the com-
33 missioner should have entered. The person so appealing
34 shall be known as the appellant. An appeal shall be per-
35 fected by filing a notice of appeal with the commissioner
36 within ten days after the date upon which the appellant
37 received the copy of the order. The notice of appeal shall
38 be in a form and contain the information prescribed by
39 the commissioner, but in all cases shall contain a descrip-
40 tion of any order appealed from and the grounds for the
41 appeal. The filing of the notice of appeal shall operate to
42 stay or suspend execution of any order which is the sub-
43 ject matter of the appeal. All of the pertinent provisions
44 of article five, chapter twenty-nine-a of this code apply to
45 and govern the hearing on appeal and the administrative
46 procedures in connection with and following the hearing,
47 with like effect as if the provisions of said article were set
48 forth in extenso herein.

49 The commissioner shall set a hearing date which shall
50 be not less than ten days after he or she received the notice
51 of appeal unless there is a postponement or continuance.
52 The commissioner may postpone or continue any hearing

53 on his or her own motion, or for good cause shown upon
54 the application of the appellant. The appellant shall be
55 given notice of the hearing in person or by certified mail,
56 return receipt requested. Any such hearing shall be held
57 in Charleston, Kanawha County, West Virginia, unless
58 another place is specified by the commissioner.

59 After the hearing and consideration of all of the testi-
60 mony, evidence and record in the case, the commissioner
61 shall make and enter an order affirming, modifying or
62 vacating his or her initial order or shall make and enter
63 any new order. The order shall be accompanied by find-
64 ings of fact and conclusions of law as specified in section
65 three, article five, chapter twenty-nine-a of this code, and a
66 copy of the order and accompanying findings and con-
67 clusions shall be served upon the appellant, in person or
68 by certified mail, return receipt requested. The order of
69 the commissioner shall be final unless vacated or modified
70 upon judicial review thereof.

71 Any appellant adversely affected by a final order made
72 and entered by the commissioner is entitled to judicial
73 review thereof. All of the pertinent provisions of section
74 four, article five, chapter twenty-nine-a of this code shall
75 apply to and govern the review with like effect as if the
76 provisions of said section were set forth in extenso herein.
77 The judgment of the circuit court shall be final unless
78 reversed, vacated or modified on appeal to the supreme
79 court of appeals in accordance with the provisions of sec-
80 tion one, article six, chapter twenty-nine-a of this code.

§16-4C-11. Liability for cost of emergency medical service.

1 Any patient who receives an emergency medical ser-
2 vice and who is unable to give his or her consent to or
3 contract for the service, whether or not he or she has
4 agreed or consented to liability for the service, shall be
5 liable in implied contract to the entity providing the emer-
6 gency medical service for the cost thereof.

7 Any person who receives an emergency medical ser-
8 vice upon his or her request for the service shall be liable
9 for the cost thereof.

§16-4C-12. Violations; criminal penalties.

1 Any person who violates any condition of licensure or
2 operates an ambulance with an insufficient number of
3 emergency medical service personnel aboard when not
4 lawfully permitted to do so, or who represents himself or
5 herself as a certified emergency medical service personnel
6 knowing the representation to be untrue, is guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined
8 not less than one hundred dollars nor more than one thou-
9 sand dollars.

§16-4C-13. Actions to enjoin violations; injunctive relief.

1 Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article or any final order of the commis-
4 sioner, the commissioner may apply in the name of the
5 state, to the circuit court of the county in which the viola-
6 tion or any part thereof has occurred, is occurring or is
7 about to occur, for an injunction against the person and
8 any other persons who have been, are or are about to be,
9 involved in, or in any way participating in, any practices,
10 acts or omissions, so in violation, enjoining the person or
11 persons from any such violation. The application may be
12 made and prosecuted to conclusion whether or not any
13 such violation has resulted or shall result in prosecution or
14 conviction under the provisions of section twelve of this
15 article.

16 Upon application by the commissioner, the circuit
17 courts of this state may by mandatory or prohibitory in-
18 junction compel compliance with the provisions of this
19 article and all final orders of the commissioner.

20 The circuit court may issue a temporary injunction in
21 any case pending a decision on the merits of any applica-
22 tion filed.

23 The judgment of the circuit court upon any applica-
24 tion permitted by the provisions of this section shall be
25 final unless reversed, vacated or modified on appeal to the
26 supreme court of appeals. Any such appeal shall be
27 sought in the manner and within the time provided by law
28 for appeals from circuit courts in other civil cases.

§16-4C-14. Services that may be performed by emergency medical service personnel.

1 Notwithstanding any other provision of law, emergen-
2 cy medical service personnel, by each class, may provide
3 the services as determined by the commissioner by legisla-
4 tive rule pursuant to the provisions of article three, chapter
5 twenty-nine-a of this code.

§16-4C-15. Powers of emergency medical service attendants, emergency medical technicians-basic and emergency medical technicians-paramedic during emergency communications failures and disasters.

1 (a) In the event of a communications failure between
2 the certified emergency medical services agency person-
3 nel, as defined in section three of this article, and the phy-
4 sician during an emergency situation, the certified person-
5 nel is authorized to deliver the services as authorized in
6 section fourteen of this article.

7 (b) In the event of a disaster or other occurrence which
8 renders the communication system ineffective for purpos-
9 es of adequate individual direction between the physician
10 and the certified emergency medical services agency per-
11 sonnel, the personnel may perform the services as autho-
12 rized pursuant to the provisions of section fourteen and
13 may release immediate control of the patient to any other
14 emergency medical service personnel in order to provide
15 immediate services to other patients affected by the disas-
16 ter or other occurrence.

17 (c) In the event that services are provided under sub-
18 section (a) or (b) of this section, the emergency medical
19 services personnel shall, within five days, provide a report
20 to the commissioner, on the forms prescribed by him or
21 her, of the services performed, the identity of the patient
22 and the circumstances justifying the provision of the ser-
23 vices. The commissioner may require any other informa-
24 tion deemed necessary.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

1 (1) Every person, corporation, ambulance service,
2 emergency medical service provider, emergency ambu-

3 lance authority, emergency ambulance service or other
4 person which employs emergency medical service person-
5 nel with or without wages for ambulance service or pro-
6 vides ambulance service in any manner, shall obtain a
7 policy of insurance insuring the person or entity and ev-
8 ery employee, agent or servant thereof, against loss from
9 the liability imposed by law for damages arising from any
10 error or omission in the provision of emergency medical
11 services as enumerated by this article, in an amount no less
12 than one million dollars per incident: *Provided*, That each
13 emergency medical services agency having less than this
14 amount on the first day of January, one thousand nine
15 hundred ninety-six, shall obtain the policy of insurance
16 required in this section in the amount of one million dol-
17 lars on or before the first day of March, one thousand
18 nine hundred ninety-seven. New applicants shall obtain
19 the insurance required in this section in the amount of one
20 million dollars.

21 (2) No emergency medical service personnel or emer-
22 gency medical service provider may be liable for civil
23 damages or injuries in excess of the amounts for which the
24 person or entity is actually insured, unless the damages or
25 injuries are intentionally or maliciously inflicted.

26 (3) Every person or entity required to obtain a policy
27 of insurance as contemplated by this section, shall furnish
28 to the commissioner on or before the first day of January
29 of each calendar year proof of the existence of the policy
30 of insurance required by this section.

31 (4) In the event that any person or entity fails to secure
32 a policy of insurance before the person or entity under-
33 takes the provision of emergency medical services or
34 emergency medical service agency, whichever occurs last,
35 and keeps the policy of insurance in force thereafter, that
36 person or entity is not entitled to the limited immunity
37 created by subsection (2) of this section: *Provided*, That
38 any physician, who gives instructions to emergency medi-
39 cal service personnel without being compensated therefor,
40 or who treats any patient transported in an ambulance or
41 treats any patient prior to the transport, without being
42 compensated therefor, is entitled to the limited immunity
43 provided in subsection (2) of this section.

§16-4C-17. Limitation of liability for failure to obtain consent.

1 No emergency medical service personnel may be sub-
2 ject to civil liability, based solely upon failure to obtain
3 consent in rendering emergency medical services to any
4 individual regardless of age where the patient is unable to
5 give his or her consent for any reason, including minority,
6 and where there is no other person reasonably available
7 who is legally authorized to consent to the providing of
8 such care or who is legally authorized to refuse to consent
9 to the providing of such care.

10 Nothing in this article may be construed to require
11 medical treatment or transportation for any adult in con-
12 travention of his or her stated objection thereto upon reli-
13 gious grounds or pursuant to any living will or do not
14 resuscitate orders: *Provided*, That the emergency medical
15 service provider is actually aware of the living will or do
16 not resuscitate order.

**§16-4C-18. Authority of emergency medical service personnel
in charge of emergency medical services.**

1 When any department, agency or entity which provides
2 emergency medical services under the authority of this
3 article is responding to, operating at or returning from an
4 emergency medical service, any emergency medical ser-
5 vice personnel serving in the capacity of an emergency
6 medical service line officer in charge, shall control and
7 direct the providing of emergency medical services. The
8 emergency medical service personnel serving in the capac-
9 ity of an emergency medical service line officer shall
10 determine whether a patient shall be transported from the
11 emergency scene, determine what care shall be rendered
12 prior to the transport, determine the appropriate facility to
13 which the patient shall be transported, and otherwise fully
14 direct and control the providing of emergency medical
15 services and patient care under the direction of medical
16 command.

17 Nothing included in this section may be construed to
18 restrict or interfere with the authority of a fire officer in
19 charge to supervise or direct those fire department person-
20 nel under his or her command or to restrict any person
21 from entering a hazardous area for which the fire officer
22 has assumed the responsibility.

§16-4C-19. Obstructing or causing bodily injury to emergency medical service personnel; criminal penalties.

1 (a) It shall be unlawful for any person to intentionally
2 obstruct or interfere with any emergency medical service
3 agency personnel engaged in the act of delivering or ad-
4 ministering emergency medical services. Any person vio-
5 lating the provisions of this subsection is guilty of a mis-
6 demeanor and, upon conviction thereof, shall be fined not
7 more than one thousand dollars or confined in the county
8 or regional jail for a period not more than one year, or
9 both fined and confined.

10 (b) It shall be unlawful for any person to willfully
11 cause bodily injury to any person designated to be an
12 emergency medical personnel engaged in the act of deliv-
13 ering or administering emergency medical services. Any
14 person violating the provisions of this subsection is guilty
15 of a felony and, upon conviction thereof, shall be con-
16 fined in the penitentiary not less than one nor more than
17 ten years or fined not more than five thousand dollars, or
18 both fined and confined.

19 (c) Nothing in this section shall be construed to pre-
20 vent law-enforcement officials from controlling traffic and
21 otherwise maintaining order at the scene of an accident,
22 injury or illness where an emergency medical service
23 agency is rendering services.

§16-4C-20. Service reciprocity agreements for mutual aid.

1 Any persons or entities providing lawful emergency
2 medical services under the provisions of this article are
3 hereby authorized in their discretion to enter into and
4 renew service reciprocity agreements, for any period as
5 they may deem advisable, with the appropriate emergency
6 medical service providers, county, municipal or other
7 governmental units or in counties contiguous to the state
8 of West Virginia, in the state of Ohio, the commonwealth
9 of Pennsylvania, the state of Maryland, the commonwealth
10 of Virginia or the commonwealth of Kentucky, in order to
11 establish and carry into effect a plan to provide mutual aid
12 across state lines, through the furnishing of properly certi-
13 fied personnel and equipment for the provision of emer-
14 gency medical services in this state and the counties con-
15 tiguous to this state upon written approval by the commis-
16 sioner.

17 No person or entity may enter into any such agree-
18 ment unless the agreement provides that each of the par-
19 ties to the agreement shall waive any and all claims against
20 the other parties thereto, which may arise out of their ac-
21 tivities outside of their respective jurisdictions under the
22 agreement and shall indemnify and save harmless the
23 other parties to the agreement from all claims by third
24 parties for property damages or personal injuries which
25 may arise out of the activities of the other parties to the
26 agreement outside their respective jurisdictions under the
27 agreement.

28 The commissioner is hereby authorized to enter into
29 service reciprocity agreements with appropriate officials in
30 other states for the purpose of providing emergency medi-
31 cal services to the citizens of this state by emergency medi-
32 cal service personnel properly certified in their respective
33 state or states. A formal agreement between the commis-
34 sioner and an authorized official of another state shall be
35 in effect prior to the service being provided. Individual
36 certification of other state emergency medical service
37 personnel is not required for purposes of providing servic-
38 es to West Virginia citizens following the creation of the
39 agreement by the responsible officials.

§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.

1 The commissioner may issue an order on his or her
2 own motion upon written request of any emergency medi-
3 cal service provider or county commission in this state, to
4 restrict an out-of-state provider of emergency medical
5 services or an out-of-state emergency medical service
6 personnel to a particular geographic area of the state of
7 West Virginia or prohibit the provider or personnel from
8 providing emergency medical services within the borders
9 of this state when in the opinion of the commissioner the
10 services are not required or do not meet the standards set
11 forth herein or those established by rules as authorized by
12 this article.

§16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.

1 (a) Emergency medical service personnel shall
2 transport critically ill or injured, unconscious or otherwise
3 uncommunicative patients to the medical facility
4 designated by the medical command physician.

5 (b) No person may have the right to direct emergency
6 medical service personnel to transport a patient to a
7 specific medical facility unless the person is the legal
8 guardian, parent of a minor or has power of attorney for
9 the critically injured or ill patient.

§16-4C-23. Authority of the commissioner to make rules.

1 The commissioner shall promulgate rules pursuant to
2 the provisions of article three, chapter twenty-nine-a of
3 this code to carry out the purposes of this article.

CHAPTER 134

(Com. Sub. for H. B. 4103—By Delegates Douglas, Compton and Gallagher)

[Passed February 26, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-i, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative rules for hospice services; transferring the authority to promulgate rules for hospice services from the state board of health to the secretary of the department of health and human resources; and eliminating specific rule requirements regarding substituted consent for hospice services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5I. HOSPICE LICENSURE ACT.

§16-5I-5. Secretary of health and human resources to establish rules.

1 The secretary of the department of health and human
2 resources shall promulgate rules in accordance with the
3 provisions of chapter twenty-nine-a of this code for the
4 licensure of hospice programs to ensure adequate care,
5 treatment, health, safety, welfare and comfort of hospice
6 patients. Such rules shall include, but not be limited to:

7 (a) The qualifications and supervision of licensed and
8 nonlicensed personnel;

9 (b) The provision and coordination of inpatient care
10 and in-home treatment services, including the develop-
11 ment of a written plan of care;

12 (c) The management, operation, staffing and equip-
13 ping of the hospice program;

14 (d) The clinical and business records kept by the
15 hospice;

16 (e) The procedures for the review of utilization and
17 quality of patient care; and

18 (f) Such other requirements as the secretary
19 determines to be appropriate.

CHAPTER 135

(Com. Sub. for H. B. 4198—By Delegates Douglas, Compton, J. Martin,
Fleischauer and Petersen)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-m, relating to public health; creating the "Osteoporosis Prevention Education Act"; providing a short title; providing for the establishment of an osteoporosis prevention and

treatment education program and the components thereof; requiring the bureau of public health to establish strategies to promote and maintain an osteoporosis prevention education program; establishing an interagency council on osteoporosis; appointing representatives; and establishing the duties of the council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5M. OSTEOPOROSIS PREVENTION EDUCATION ACT.

§16-5M-1. Short title.

§16-5M-2. Responsibilities of bureau of public health.

§16-5M-3. Interagency council on osteoporosis.

§16-5M-1. Short title.

1 This article may be known and cited as the "West
2 Virginia Osteoporosis Prevention Education Act."

§16-5M-2. Responsibilities of bureau of public health.

1 (a) The bureau of public health shall establish
2 strategies to promote and maintain an osteoporosis
3 prevention education program in order to raise public
4 awareness, to educate consumers and to educate and train
5 health professionals, teachers and human service providers,
6 to include the following components:

7 (1) The bureau shall develop strategies for raising
8 public awareness of the causes and nature of osteoporosis,
9 personal risk factors, the value of prevention and early
10 detection and options for diagnosing and treating the
11 disease that include, but are not limited to, the following:

12 (A) Community forums;

13 (B) Health information and risk factor assessment at
14 public events;

15 (C) Targeting at-risk populations;

16 (D) Providing reliable information to policymakers;
17 and

18 (E) Distributing information through county health
19 departments, schools, area agencies on aging, employer
20 wellness programs, physicians, hospitals, health mainte-
21 nance organizations, women's groups, nonprofit organiza-
22 tions, community-based organizations and departmental
23 offices;

24 (2) The bureau shall develop strategies for educating
25 consumers about risk factors, diet and exercise, diagnostic
26 procedures and their indications for use, risks and benefits
27 of drug therapies currently approved by the United States
28 food and drug administration, environmental safety and
29 injury prevention and the availability of self-help diagnos-
30 tic, treatment and rehabilitation services;

31 (3) The bureau may develop strategies for educating
32 physicians and health professionals and training commu-
33 nity service providers on the most up-to-date, accurate
34 scientific and medical information on osteoporosis pre-
35 vention, diagnosis and treatment, therapeutic decision-
36 making, including guidelines for detecting and treating
37 the disease in special populations, risks and benefits of
38 medications and research advances;

39 (4) The bureau may conduct a needs assessment to
40 identify:

41 (A) Research being conducted within the state;

42 (B) Available up-to-date technical assistance and
43 educational materials and programs nationwide;

44 (C) The level of public and professional awareness
45 about osteoporosis;

46 (D) The needs of osteoporosis patients, their families
47 and caregivers;

48 (E) The needs of health care providers, including
49 physicians, nurses, managed care organizations and other
50 health care providers;

- 51 (F) The services available to the osteoporosis patient;
- 52 (G) The existence of osteoporosis treatment pro-
53 grams;
- 54 (H) The existence of osteoporosis support groups;
- 55 (I) The existence of rehabilitation services; and
- 56 (J) The number and location of bone density testing
57 equipment; and
- 58 (5) The bureau may replicate and use successful
59 osteoporosis programs and enter into contracts and
60 purchase materials or services from organizations with
61 appropriate expertise and knowledge of osteoporosis.
- 62 (b) Based on the needs assessment conducted pursuant
63 to this section, the bureau may develop and maintain a
64 resource guide to include osteoporosis related services.
65 This guide shall include a description of diagnostic testing
66 procedures, appropriate indications for their use, drug
67 therapies currently approved by the United States food
68 and drug administration, and a cautionary statement about
69 the current status of osteoporosis research, prevention and
70 treatment. The statement shall also indicate that the bureau
71 does not license, certify, or in any way approve
72 osteoporosis programs or centers in the state.
- 73 (c) The bureau may promulgate rules in accordance
74 with the provisions of article three, chapter twenty-nine-a
75 of this code necessary to implement the provisions of this
76 article.
- 77 (d) Nothing in this article may be construed or
78 interpreted to mean that osteoporosis treatment or
79 osteoporosis education are required to be provided by the
80 bureau or the council created in section three of this
81 article. Nothing contained in this article may be construed
82 to mandate funding for osteoporosis education or any of
83 the programs contained in this article or to require any
84 appropriation by the Legislature.

§16-5M-3. Interagency council on osteoporosis.

1 (a) There is hereby established the interagency council
2 on osteoporosis. The director of public health shall chair
3 the council. The council shall have representatives from
4 appropriate state departments and agencies including, but
5 not limited to, the entities with responsibility for aging,
6 health care reform implementation, education, public
7 welfare and women's programs.

8 (b) The council shall:

9 (1) Coordinate osteoporosis programs conducted by
10 or through the bureau of public health;

11 (2) Establish a mechanism for sharing information on
12 osteoporosis among all officials and employees involved
13 in carrying out osteoporosis-related programs;

14 (3) Review and coordinate the most promising areas
15 of education, prevention and treatment concerning
16 osteoporosis;

17 (4) Assist the bureau of public health and other offices
18 in developing and coordinating plans for education and
19 health promotion on osteoporosis;

20 (5) Establish mechanisms to use the results of research
21 concerning osteoporosis in the development of relevant
22 policies and programs; and

23 (6) Prepare a report that describes educational
24 initiatives on osteoporosis and transmit the report to the
25 Legislature and the governor and make the report
26 available to the public.

27 (c) The council shall establish and coordinate the
28 advisory panel on osteoporosis which will provide
29 nongovernmental input regarding the program. Member-
30 ship shall include, but is not limited to, persons with
31 osteoporosis, public health educators, osteoporosis experts,
32 providers of osteoporosis health care, persons knowledg-
33 eable in health promotion and education and representa-
34 tives of national osteoporosis organizations or their state
35 and regional affiliates.

CHAPTER 136

(Com. Sub. for H. B. 4072—By Delegates Compton, Gallagher and Douglas)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to the sale of items at flea markets or swap meets; setting forth legislative findings; defining terms; requiring transient vendors who sell babyfood, medical devices or nonprescription drugs at flea markets or swap meets to keep and maintain records of the source of such items; requiring the production of records; providing for confiscation of babyfood, nonprescription drugs or medical devices for which there is no required record; providing for criminal penalties; setting forth exceptions to applicability of the section; and authorizing the promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-8. Resale of certain food, drug, and medical devices prohibited; definitions; source documentation required; confiscation of food, drugs or medical devices; penalty and exceptions; rules.

1 (a) The Legislature finds that food manufactured and
 2 packaged for sale for consumption by a child under the
 3 age of two and nonprescription drugs sold by transient
 4 vendors at places such as flea markets and swap meets,
 5 where the sources of the food and nonprescription drugs
 6 are unknown, may be adulterated and thus constitute a
 7 hazard to the public's health and welfare. It further finds
 8 that these foods, nonprescription drugs or medical devices
 9 are likely to have been stolen. The Legislature determines
 10 that it is the policy of this state to prohibit the sale of these

11 foods, nonprescription drugs and medical devices if the
12 transient vendor cannot provide and document the sources
13 of the merchandise.

14 (b) For the purposes of this section:

15 (1) The term "babyfood" or "food" means any food
16 manufactured and packaged for sale for consumption by
17 a child under the age of two;

18 (2) The term "nonprescription drugs" does not include
19 natural or herbal nonprescription drugs;

20 (3) The term "medical device" means any apparatus or
21 tool which is defined by federal law as a medical device
22 and which has been specified by the secretary of the
23 department of health and human resources through
24 legislative rules as a device which may be marketed or sold
25 by transient vendors.

26 (c) Any transient vendor who sells babyfood,
27 nonprescription drugs or medical devices at any flea
28 market or swap meet in this state shall keep and make
29 available records of the sources of such babyfood,
30 nonprescription drugs or medical devices offered for sale
31 or sold. The records may be receipts or invoices from the
32 persons who sold the babyfood, nonprescription drugs or
33 medical devices to the transient vendor or any other
34 documentation that establishes the sources of the
35 babyfood, nonprescription drugs or medical devices. The
36 transient vendor shall keep those records with the
37 babyfood, nonprescription drugs or medical devices being
38 offered for sale so long as such goods are in his
39 possession and shall maintain those records for a period of
40 two years after the babyfood, nonprescription drugs or
41 medical devices are sold.

42 (d) Upon the request of a law-enforcement agent or a
43 representative of the state department of health, a transient
44 vendor shall produce records of the sources of babyfood,
45 nonprescription drugs or medical devices offered for sale
46 or sold. If the transient vendor fails to immediately
47 produce the requested records for goods offered for sale,
48 the law-enforcement agent or representative for the state
49 department of health may confiscate the babyfood,

50 nonprescription drugs or medical devices then in posses-
51 sion of the vendor. If the transient vendor fails to produce
52 the requested records for goods previously sold within a
53 reasonable time, the law-enforcement agent or representa-
54 tive for the state department of health may confiscate any
55 babyfood, nonprescription drugs or medical devices then
56 in the possession of the vendor.

57 (e) Any person who violates the provisions of this section
58 is guilty of a misdemeanor and, upon conviction thereof,
59 shall be fined not more than two hundred dollars for each
60 babyfood item, nonprescription drug or medical device
61 offered for sale or sold.

62 (f) The provisions of this section do not apply to a mer-
63 chant who is licensed by the state department of tax and
64 revenue; who sells food or nonprescription drugs or medi-
65 cal devices by sample, catalog or brochure for future de-
66 livery; or who sells at a residential premises pursuant to an
67 invitation issued by the owner or legal occupant of the
68 premises.

69 (g) The secretary of the department of health and human
70 resources shall promulgate rules in accordance with the
71 provisions of chapter twenty-nine-a of this code regarding
72 the designation and authorized sale of medical devices
73 sold by transient vendors pursuant to this subdivision.

CHAPTER 137

(Com. Sub. for H. B. 2261—By Delegate Prunty)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven-a, relating to public health; establishing a ban on the construction of nuclear power plants; legislative findings and purposes; a limited ban on construction of nuclear power plants;

application to the public service commission for construction or initiation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27A. BAN ON CONSTRUCTION OF NUCLEAR POWER PLANTS.

§16-27A-1. Legislative findings and purposes.

§16-27A-2 Limited ban on construction of nuclear power plants; application to the public service commission for construction or initiation.

§16-27A-1. Legislative findings and purposes.

1 The Legislature finds and declares that the use of
2 nuclear fuels and nuclear power poses an undue hazard to
3 the health, safety and welfare of the people of the state of
4 West Virginia, especially until there is an effective method
5 to safely and permanently dispose of the radioactive
6 wastes generated thereby. Therefore, it is the intent of the
7 Legislature and the purpose of this article to ban the con-
8 struction of any nuclear power plant, nuclear factory or
9 nuclear electric power generating plant until such time as
10 the proponents of any such facility can adequately dem-
11 onstrate that a functional and effective national facility,
12 which safely, successfully and permanently disposes of
13 radioactive wastes, has been developed; that the construc-
14 tion of any nuclear facility in this state will be economical-
15 ly feasible for West Virginia rate payers; and that such
16 facility shall comply with all applicable environmental
17 protection laws, rules and requirements. For the purposes
18 of this article, "nuclear power" means energy produced in
19 any nuclear power plant, nuclear factory or nuclear elec-
20 tric power generating plant capable of a thermal output
21 greater than one megawatt but shall not include electricity
22 carried over interstate transmission lines.

§16-27A-2. Limited ban on construction of nuclear power plants; application to the public service commission for construction or initiation.

1 (a) No nuclear power plant, nuclear factory or nuclear
2 electric power generating plant may be constructed or
3 initiated until the public service commission has approved
4 the application for the same in accordance with the provi-
5 sions of chapter twenty-four, article two of this code.

6 (b) Any person or organization seeking to construct
7 or initiate any nuclear power plant, nuclear factory or
8 nuclear electric power generating plant in this state shall,
9 prior to any construction or initiation, submit to the public
10 service commission an application for approval, together
11 with the documentation required by this section.

12 (c) An application for the construction or initiation of
13 any nuclear power plant, nuclear factory or nuclear elec-
14 tric power generating plant shall not be considered for
15 approval unless it contains documented reports or certifi-
16 cation that:

17 (1) A functional and effective national facility which
18 safely, successfully and permanently disposes of any and
19 all radioactive wastes associated with operating any such
20 nuclear power plant, nuclear factory or nuclear electric
21 power generating plant has been developed and that such
22 facility has been proven safe, functional and effective by a
23 minimum of twenty-four months' operation or experience;
24 and

25 (2) The construction of any nuclear facility in this
26 state will be economically feasible for West Virginia rate
27 payers; and

28 (3) The proposed nuclear facility shall comply with
29 all applicable environmental protection laws, rules and
30 requirements.

CHAPTER 138

(S. B. 137—By Senators Wagner and Bailey)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hospital rate setting; requiring approvals and expedited reviews for certain hospitals filing rate applications sixty days in advance of the hospital's fiscal year; and requiring retroactive application of the rates if not timely set.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29B. HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates
2 may be approved by the board nor payment be made for
3 services provided by hospitals under the jurisdiction of the
4 board by any purchaser or third-party payor to or on
5 behalf of any purchaser or class of purchasers unless:

6 (1) The costs of the hospital's services are reasonably
7 related to the services provided and the rates are reason-
8 ably related to the costs;

9 (2) The rates are equitably established among all pur-
10 chasers or classes of purchasers within a hospital without
11 discrimination unless federal or state statutes or rules and
12 regulations conflict with this requirement. On and after
13 the effective date of this section, a summary of every pro-
14 posed contract for the payment of patient care services
15 between a purchaser or third-party payor and a hospital
16 shall be filed by the hospital with its rate application for
17 review by the board. No contract for the payment of
18 patient care services between a purchaser or third-party

19 payor and a hospital which establishes discounts to the
20 purchaser or third-party payor shall take effect until it is
21 approved by the board. The board shall approve or deny
22 the proposed contract within the overall rate review period
23 established in section twenty-one of this article. No dis-
24 count shall be approved by the board which constitutes an
25 amount below the actual cost to the hospital.

26 The hospital shall demonstrate to the board that the
27 cost of any discount contained in the contract will not be
28 shifted to any other purchaser or third-party payor. The
29 hospital shall further demonstrate that the discount will not
30 result in a decrease in its proportion of medicare, medicaid
31 or uncompensated care patients. In addition, the hospital
32 shall demonstrate to the board that the discount is based
33 upon criteria which constitutes a quantifiable economic
34 benefit to the hospital. All information submitted to the
35 board shall be certified by the hospital administrator as to
36 its accuracy and truthfulness;

37 (3) The rates of payment for medicaid are reasonable
38 and adequate to meet the costs which must be incurred by
39 efficiently and economically operated hospitals subject to
40 the provisions of this article. The rates shall take into
41 account the situation of hospitals which serve dispropor-
42 tionate numbers of low income patients and assure that
43 individuals eligible for medicaid have reasonable access,
44 taking into account geographic location and reasonable
45 travel time, to inpatient hospital services of adequate quali-
46 ty;

47 (4) The rates are equitable in comparison to prevailing
48 rates for similar services in similar hospitals as determined
49 by the board; and

50 (5) In no event shall a hospital's receipt of emergency
51 disaster funds from the federal government be included in
52 the hospital's gross revenues for either rate-setting or as-
53 sessment purposes.

54 (b) In the interest of promoting efficient and appro-
55 priate utilization of hospital services, the board shall review
56 and make findings on the appropriateness of projected
57 gross revenues for a hospital as the revenues relate to

58 charges for services and anticipated incidence of service.
59 The board shall further render a decision as to the amount
60 of net revenue over expenditures that is appropriate for
61 the effective operation of the hospital.

62 (c) When applying the criteria set forth in subsections
63 (a) and (b) of this section, the board shall consider all
64 relevant factors, including, but not limited to, the follow-
65 ing: The economic factors in the hospital's area; the hos-
66 pital's efforts to share services; the hospital's efforts to
67 employ less costly alternatives for delivering substantially
68 similar services or producing substantially similar or better
69 results in terms of the health status of those served; the
70 efficiency of the hospital as to cost and delivery of health
71 care; the quality of care; occupancy level; a fair return on
72 invested capital, not otherwise compensated for; whether
73 the hospital is operated for profit or not for profit; costs of
74 education; and income from any investments and assets
75 not associated with patient care, including, but not limited
76 to, parking garages, residences, office buildings, and in-
77 come from related organizations and restricted funds
78 whether or not associated with patient care.

79 (d) Wages, salaries and benefits paid to or on behalf of
80 nonsupervisory employees of hospitals subject to this
81 article are not subject to review unless the board first de-
82 termines that the wages, salaries and benefits may be un-
83 reasonably or uncustomarily high or low. This exemption
84 does not apply to accounting and reporting requirements
85 contained in this article, nor to any that may be established
86 by the board. The term "nonsupervisory personnel", for
87 the purposes of this section, means, but is not limited to,
88 employees of hospitals subject to the provisions of this
89 article who are paid on an hourly basis.

90 (e) Reimbursement of capital and operating costs for
91 new services and capital projects subject to article two-d of
92 this chapter shall not be allowed by the board if the costs
93 were incurred subsequent to the eighth day of July, one
94 thousand nine hundred seventy-seven, unless they were
95 exempt from review or approved: (i) By the state health
96 planning and development agency prior to the first day of
97 July, one thousand nine hundred eighty-four; or (ii) there-

98 after, pursuant to the provisions of article two-d of this
99 chapter.

100 (f) The board shall consult with relevant licensing
101 agencies and may require them to provide written findings
102 with regard to their statutory functions and information
103 obtained by them in the pursuit of those functions. Any
104 licensing agency empowered to suggest or mandate
105 changes in buildings or operations of hospitals shall give
106 notice to the board together with any findings.

107 (g) A hospital shall file a complete rate application
108 with the board on an annual basis a minimum of sixty
109 days prior to the beginning of its fiscal year. If the appli-
110 cation is filed and determined to be complete by the board
111 sixty days prior to the beginning of the hospital's fiscal
112 year, and no hearing is requested on the application, the
113 board shall set the rates in advance of the year during
114 which they apply and shall not adjust the rates for costs
115 actually incurred: *Provided*, That if the board does not
116 establish rates by the beginning of the hospital's fiscal
117 year, and a hearing has not been requested, the board shall
118 establish rates retroactively to the beginning of the hospi-
119 tal's fiscal year: *Provided, however*, That if the board does
120 not establish rates by the beginning of the hospital's fiscal
121 year, and a hearing has been requested, the board may
122 establish rates retroactively to the beginning of the fiscal
123 year. This subsection shall not apply to the procedure set
124 forth in subsection (c), section twenty-one of this article.

125 (h) All determinations, orders and decisions of the
126 board with respect to rates and revenues shall be prospec-
127 tive in nature, except as provided in subsection (g) of this
128 section, when rates are not timely set.

129 (i) No hospital may charge for services at rates in
130 excess of those established in accordance with the require-
131 ments of and procedures set forth in this article.

132 (j) Notwithstanding any other provision of this article,
133 the board shall approve all requests for rate increases by
134 hospitals which are licensed for one hundred beds or less
135 and which are not located in a standard metropolitan sta-
136 tistical area where the rate of increase is equal to or less

137 than the lowest rate of inflation as established by a recog-
138 nized inflation index for either the national or regional
139 hospital industry. The board may, by rule, impose report-
140 ing requirements to ensure that a hospital does not exceed
141 the rate of increases permitted in this section.

142 (k) Notwithstanding any other provision of this arti-
143 cle, the board shall develop an expedited review process
144 applicable to all hospitals licensed for more than one hun-
145 dred beds or that are located in a standard metropolitan
146 statistical area for rate increase requests which may be
147 based upon a recognized inflation index for the national
148 or regional hospital industry.

CHAPTER 139

(Com. Sub. for H. B. 4181—By Delegates Mezzatesta, Michael, Ryan,
J. Martin, Burke, Douglas and Leach)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirty-three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections seven, eight, nine, ten, eleven and twelve, all relating to creating the breast and cervical cancer diagnostic and treatment fund; defining terms; setting forth the composition of the fund; providing for the appropriation of moneys; providing that nothing in the article will require an appropriation by the Legislature; providing for the administration of the fund; setting forth the advisory committee duties; requiring the committee to study the possibility of establishing a similar fund for patients in need of diagnostic and treatment services for prostate and colon cancer; setting forth the manner of establishing covered services; authorizing the promulgation of rules; establishing financial and medical eligibility; providing an application process; and providing for disbursement of funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-2. Definitions.

§16-33-7. Establishment of breast and cervical cancer diagnostic and treatment fund.

§16-33-8. Responsibilities of advisory committee; establishment of covered services, limitation of services and procedures; authorization for payment; promulgation of rules; annual reports.

§16-33-9. Financial eligibility.

§16-33-10. Medical eligibility.

§16-33-11. Application forms and process.

§16-33-12. Reimbursement process.

§16-33-2. Definitions.

1 As used in this article:

2 (a) "Advisory committee" means the medical advisory
3 committee to the breast and cervical cancer detection and
4 education program coalition established pursuant to the
5 provisions of section five of this article.

6 (b) "Approved organization" means an organization
7 approved by the director to provide medical services un-
8 der section four of this article.

9 (c) "Bureau" means the state bureau of public health
10 established pursuant to the provisions of article one of this
11 chapter.

12 (d) "Department" means the department of health and
13 human resources.

14 (e) "Director" means the director of the division of
15 health.

16 (f) "Unserved or underserved populations" means
17 persons having inadequate access and financial resources

18 to obtain breast and cervical cancer screening and detec-
19 tion services, including persons who lack health insurance
20 or whose health insurance coverage does not cover these
21 services.

22 (g) "Fund" means the breast and cervical cancer diag-
23 nostic and treatment fund.

24 (h) "Qualified applicant" means a person who meets
25 the financial and medical eligibility guidelines of this
26 article.

27 (i) "Provider" means a physician, hospital or medical
28 provider currently licensed, operating or practicing in this
29 state.

**§16-33-7. Establishment of breast and cervical cancer
diagnostic and treatment fund.**

1 (a) There is hereby established the breast and cervical
2 cancer diagnostic and treatment fund which shall provide
3 financial assistance for the medical care of indigent pa-
4 tients for diagnostic and treatment services for breast and
5 cervical cancer.

6 (b) The fund may be comprised of moneys appropri-
7 ated to the fund by the Legislature, allocated to the fund
8 by the federal government and all other sums designated
9 for deposit in the fund from any source, public or private.

10 (c) The fund shall be administered by the office of
11 maternal and child health within the bureau of public
12 health. The bureau shall file an annual report with the
13 joint committee on government and finance describing the
14 operation and status of the fund, acts, policies, practices or
15 procedures of the bureau in implementing the provisions
16 of this article, and the bureau's recommendations as to
17 changes in law or policy which it deems necessary or ap-
18 propriate.

19 (d) Nothing in this article may be construed or inter-
20 preted to mean that covered diagnostic and treatment
21 services are required to be provided by the bureau or the
22 department. Nothing in this article shall be construed to
23 mandate funding for the breast and cervical diagnostic

24 and treatment fund or to require any appropriation by the
25 Legislature to the fund.

§16-33-8. Responsibilities of advisory committee; establishment of covered services, limitation of services and procedures; authorization for payment; promulgation of rules; annual reports.

1 (a) The advisory committee shall establish procedures
2 and requirements regarding participation in the fund,
3 including, but not limited to, the following:

4 (1) Establishing a list of covered services approved for
5 payment through the fund, including (A) diagnostic and
6 treatment services for breast or cervical cancer or a condi-
7 tion suggestive of cancer, and (B) ancillary diagnostic
8 studies which may be authorized only when it is deter-
9 mined by the bureau to be directly related to the confir-
10 mation of a diagnosis of cancer or is necessary for treat-
11 ment planning;

12 (2) Establishing procedures for emergency admissions
13 or immediate patient entry into the health care system
14 upon a determination that covered services are necessary
15 so as to ensure prompt testing, diagnosis or treatment of
16 breast or cervical cancer.

17 (3) Setting a limitation on days of service covered by
18 the fund, and authorizing that the number of days for
19 reimbursement be based on the medical condition of the
20 patient and the procedure to be performed;

21 (4) Reviewing requests and providing authorization
22 for payment of diagnostic or treatment services covered
23 by the fund;

24 (5) Promulgating rules, in conjunction with the bu-
25 reau, in accordance with the provisions of chapter
26 twenty-nine-a of this code regarding the administration of
27 the fund; and

28 (6) Submitting annual reports to the state bureau of
29 public health regarding the operation and progress of the
30 fund, the number of patients treated through the fund, and
31 other statistical data as may be required by the bureau.

32 (b) The advisory committee shall study the possibility
33 of and the cost associated with establishing a fund to pro-
34 vided financial assistance to qualified applicants for diag-
35 nostic and treatment services for prostate and colon can-
36 cer. The committee shall provide a report to the joint
37 committee on government and finance on or before the
38 first day of January, one thousand nine hundred
39 ninety-seven.

§16-33-9. Financial eligibility.

1 To be eligible for services under the fund, a patient's
2 income must be at or below two hundred percent of the
3 federal poverty level in accordance with the prevailing
4 national poverty income guidelines and be medically
5 eligible for participation pursuant to the provisions of
6 section ten of this article. No patient who is covered by
7 medical insurance, medicaid or medicare may be finan-
8 cially eligible for participation in the fund.

§16-33-10. Medical eligibility.

1 (a) In addition to the requirements contained in sec-
2 tion nine of this article, in order to be eligible for services
3 under the fund, a patient shall have a condition strongly
4 suspicious of cancer which requires diagnostic services to
5 confirm the preliminary diagnosis to be medically eligible
6 for diagnostic authorization. The bureau may authorize
7 only those services determined by the advisory committee
8 to be medically necessary to confirm a preliminary diag-
9 nosis.

10 (b) A positive pathology report is required before
11 treatment services may be authorized by the fund.

§16-33-11. Application forms and process.

1 (a) The bureau shall develop authorization request
2 forms and make the forms available to the provider upon
3 request.

4 (b) An application for inpatient diagnostic services
5 shall be accompanied by a written, signed statement from
6 the attending physician which includes the medical basis
7 for requested inpatient services and explains why the ser-
8 vices may not be performed on an outpatient basis.

§16-33-12. Reimbursement process.

- 1 (a) The fund is the payor of last resort. Payment for
- 2 procedures shall be made at the prevailing rate established
- 3 by medicare.
- 4 (b) A claim for authorized services rendered shall be
- 5 processed in accordance with rules promulgated by the
- 6 bureau.

CHAPTER 140

(Com. Sub. for S. B. 529—Senators Wooton, Bailey, Walker and Macnaughtan)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to standard and emergency commitment proceedings for persons with communicable tuberculosis; authorizing the bureau of public health or its designee to make application for involuntary commitment in emergency situations; setting forth the procedures for involuntary commitment of persons suffering from tuberculosis; requiring information related to persons' uncooperative behavior; authorizing magistrate to accept application in certain circumstances; permitting immediate detention for specified period of time; permitting postponement of hearing for specified period of time; requiring immediate commitment upon finding of probable cause that the person is likely to cause serious harm to him or herself or others; and eliminating or updating obsolete references.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-2. Forms for committing patients; other records.

§26-5A-5. Procedure when patient is health menace to others.

§26-5A-7. Procedures for immediate involuntary commitment.

§26-5A-2. Forms for committing patients; other records.

1 The state bureau of public health or its designee is
2 authorized to prepare, prescribe and have printed forms to
3 be used in committing patients to any state tuberculosis
4 institution.

§26-5A-5. Procedure when patient is health menace to others.

1 (a) If any practicing physician, public health officer,
2 or chief medical officer having under observation or care
3 any person who is suffering from tuberculosis in a com-
4 municable stage is of the opinion that the environmental
5 conditions of that person are not suitable for proper isola-
6 tion or control by any type of local quarantine as pre-
7 scribed by the state bureau of public health of the depart-
8 ment of health and human resources or an authorized
9 designee thereof, and that the person is unable or unwill-
10 ing to conduct himself or herself and to live in such a
11 manner as not to expose members of his or her family or
12 household or other persons with whom he or she may be
13 associated to danger of infection, he or she shall report the
14 facts to the bureau of public health or its designee which
15 shall forthwith investigate or have investigated the circum-
16 stances alleged.

17 (b) If the bureau of public health or its designee finds
18 that any person's physical condition is a health menace to
19 others, the bureau of public health or its designee shall
20 petition the circuit court of the county in which the person
21 resides, or the judge thereof in vacation, alleging that the
22 person is afflicted with communicable tuberculosis and
23 that the person's physical condition is a health menace to
24 others, and requesting an order of the court committing
25 the person to one of the state institutions for the treatment
26 of tuberculosis: *Provided*, That if the bureau of public
27 health or its designee determines that an emergency situa-
28 tion exists which warrants the immediate detention and

29 commitment of a person suffering from tuberculosis, an
30 application for immediate involuntary commitment may
31 be filed pursuant to section seven of this article.

32 (c) Upon receiving the petition, the court shall fix a
33 date for hearing thereof and notice of the petition and the
34 time and place for hearing shall be served personally, at
35 least seven days before the hearing, upon the person who
36 is afflicted with tuberculosis and alleged to be dangerous
37 to the health of others.

38 (d) If, upon hearing, it appears that the complaint of
39 the bureau of public health or its designee is well founded,
40 that the person is afflicted with communicable tuberculo-
41 sis, and that the person is a source of danger to others, the
42 court shall commit the individual to an institution main-
43 tained for the care and treatment of persons afflicted with
44 tuberculosis. The person shall be deemed to be commit-
45 ted until discharged in the manner authorized in this sec-
46 tion.

47 (e) The chief medical officer of the institution to
48 which any person afflicted with tuberculosis has been
49 committed may discharge that person when, in his or her
50 judgment, the person may be discharged without danger
51 to the health or life of others. The chief medical officer
52 shall report immediately to the bureau of public health or
53 its designee each discharge of a person afflicted with tu-
54 berculosis.

55 (f) Every person committed under the provisions of
56 this section shall observe all the rules of the institution.
57 Any patient so committed may, by direction of the chief
58 medical officer of the institution, be placed apart from the
59 others and restrained from leaving the institution so long
60 as he or she continues to be afflicted with tuberculosis and
61 remains a health menace.

62 (g) Nothing in this section may be construed to pro-
63 hibit any person committed to any institution under the
64 provisions of this section from applying to the supreme
65 court of appeals for a review of the evidence on which the
66 commitment was made. Nothing in this section may be
67 construed or operate to empower or authorize the bureau

68 of public health, the department of health and human
69 resources or an authorized designee thereof or the chief
70 medical officer of the institution, or their representatives,
71 to restrict in any manner the individual's right to select any
72 method of tuberculosis treatment offered by the institu-
73 tion.

**§26-5A-7. Procedures for immediate involuntary commit-
ment.**

1 (a) An application for immediate involuntary commit-
2 ment of a person suffering from tuberculosis may be filed
3 by the commissioner of the bureau of public health, or his
4 or her designee, in the circuit court of the county in which
5 the person resides. The application shall be filed under
6 oath, and shall present information and facts which estab-
7 lish that the person suffering from tuberculosis in a com-
8 municable stage has been uncooperative or irresponsible
9 with regard to quarantine or safety measures, presents a
10 health menace to others, and is in need of immediate hos-
11 pitalization until his or her communicable tuberculosis
12 becomes noninfectious.

13 (b) Upon receipt of the application, the circuit court
14 may thereupon enter an order for the individual named in
15 the action to be detained and taken into custody for the
16 purpose of holding a probable cause hearing. The order
17 shall specify that the hearing be held forthwith and shall
18 appoint counsel for the individual: *Provided*, That in the
19 event immediate detention is believed to be necessary for
20 the protection of the individual or others at a time when
21 no circuit court judge is available for immediate presenta-
22 tion of the application, a magistrate may accept the appli-
23 cation and, upon a finding that immediate detention is
24 necessary pending presentation of the application to the
25 circuit court, may order the individual to be temporarily
26 committed until the earliest reasonable time that the appli-
27 cation can be presented to the circuit court, which tempo-
28 rary period of detention shall not exceed twenty-four
29 hours, except as provided for in subsection (c) of this
30 section.

31 (c) A probable cause hearing shall be held before a
32 magistrate or circuit judge of the county of which the

33 individual is a resident or where he or she was found. If
34 requested by the individual or his or her counsel, the hear-
35 ing may be postponed for a period not to exceed
36 forty-eight hours.

37 (d) The individual shall be present at the probable
38 cause hearing and shall have the right to present evidence,
39 confront all witnesses and other evidence against him or
40 her, and to examine testimony offered, including testimo-
41 ny by the bureau of public health or its designees.

42 (e) At the conclusion of the hearing the magistrate or
43 circuit court shall find and enter an order stating whether
44 there is probable cause to believe that the individual is
45 likely to cause serious harm to himself, herself or others as
46 a result of his or her disease and actions. If probable
47 cause is found, the individual shall be immediately com-
48 mitted to an institution maintained for the care and treat-
49 ment of persons afflicted with tuberculosis. The person
50 shall remain so committed until discharged in the manner
51 authorized pursuant to section five of this article.

52 (f) The bureau of public health shall promulgate rules
53 pursuant to the provisions of article three, chapter
54 twenty-nine-a of this code necessary to implement the
55 provisions of this article, including, but not limited to,
56 rules relating to the transport and temporary involuntary
57 commitment of patients.

CHAPTER 141

(S. B. 98—By Senators Love, Miller and Buckalew)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to authorizing the highways commissioner to establish cost principles for engineering and design contracts; and providing for legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-22. Administration of engineering and design related service contracts.

1 In order to promote engineering and design quality
2 and to ensure maximum competition by professional
3 companies of all sizes providing engineering and design
4 services, the commissioner of highways may establish cost
5 principles for determining the reasonableness and
6 allowability of various costs. These cost principles will
7 govern the overhead ceilings, salary limits, expense reim-
8 bursement and any other cost the commissioner may
9 deem necessary to regulate. The commissioner of high-
10 ways shall propose a legislative rule pursuant to article
11 three, chapter twenty-nine-a of this code regarding stan-
12 dard cost principles for determining the reasonableness
13 and allowability of various costs. The legislative rule may
14 include provisions for deviations from the standard cost
15 principles in special situations and circumstances.

CHAPTER 142

(Com. Sub. for S. B. 62—By Senators Whitlow, Scott, Yoder, Bowman, Chafin, Wagner, Blatnik, Boley, Minear, Ross, Love, Tomblin, Mr. President, Sharpe, Craigo, Jackson, Plymale, Bailey, Dittmar, Manchin, Buckalew, Deem, Kimble, Anderson, Oliverio, Dugan and Walker)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nine, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homestead exemptions; providing that homesteads are exempt from attachment for debts for hospital or medical expenses incurred

from a catastrophic illness or injury; providing for exceptions; defining the term "catastrophic illness or injury" for purposes of section; and requiring the commission to promulgate legislative rules to establish procedures to effectuate such exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. HOMESTEAD EXEMPTIONS.

§38-9-3. Debts enforceable against homestead.

1 (a) As of the effective date of this article, a homestead
2 shall be exempt up to the value of five thousand dollars
3 from all debts and liabilities, except debts incurred for the
4 purchase money thereof, or for the erection of permanent
5 improvements thereon, and claims for taxes or county or
6 district or municipal levies due thereon. The exemption
7 herein granted by operation of law shall not render the
8 homestead exempt from liens and all other debts and
9 liabilities contracted and incurred prior to the effective
10 date of this article: *Provided*, That with respect to a home-
11 stead exemption up to one thousand dollars perfected by
12 execution and recordation of a written instrument as re-
13 quired under the former provisions of this article, such
14 exemption shall for all purposes continue to be governed
15 by such former provisions of this article.

16 (b) In addition to the exemption provided in subsec-
17 tion (a) of this section and subject to the provisions of
18 section eleven-c, article five, chapter nine of this code,
19 effective the first day of July, one thousand nine hundred
20 ninety-six, a homestead shall be exempt up to the value of
21 seven thousand five hundred dollars from all debts and
22 liabilities for hospital or medical expenses incurred from a
23 catastrophic illness or injury. For purposes of this section,
24 "catastrophic illness or injury" means a medically verified
25 illness or injury for which any insurance or other applica-
26 ble benefits have been exhausted, and which incapacitates
27 and creates a financial hardship upon the debtor, his or

28 her spouse or sibling or dependent of the debtor, who uses
29 the homestead as a principal home at the time the debt was
30 incurred. The exemption provided by this section shall
31 expire upon the date of the death of the debtor, the death
32 of the debtor's spouse or the death of a disabled depen-
33 dent of the debtor who uses the homestead as a principal
34 home, whichever is the later.

35 The exemption provided pursuant to this subsection
36 by operation of law shall not render the homestead ex-
37 empt from liens and all other debts and liabilities contract-
38 ed and incurred prior to the first day of July, one thou-
39 sand nine hundred ninety-six.

40 The tax commissioner shall propose for promulgation
41 legislative rules, not inconsistent with this section, in accor-
42 dance with the provisions of article three, chapter
43 twenty-nine-a of this code, to establish the procedures for
44 exempting homesteads from debts and liabilities incurred
45 from a catastrophic illness or injury.

CHAPTER 143

(S. B. 473—By Senator Walker)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, seven and twenty-two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the administration of the West Virginia public employees insurance agency; definitions; salary of director; chief financial officer; providing that for plans which include maternity benefits that these plans not deny payment for specified minimum time periods where deemed medically necessary by the attending physician; optional life and accidental death insurance; and employer contributions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, seven and twenty-two, article sixteen, chapter five of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-22. Permissive participation; exemptions.

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the con-
3 text, have the following meanings:

4 (1) "Advisory board" means the public employees
5 insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance
7 agency created by this article.

8 (3) "Director" means the director of the public em-
9 ployees insurance agency, created by this article.

10 (4) "Employee" means any person, including elected
11 officers, who works regularly full time in the service of the
12 state of West Virginia and, for the purpose of this article
13 only, the term "employee" also means any person, includ-
14 ing elected officers, who works regularly full time in the
15 service of a county board of education; a county, city or
16 town in the state; any separate corporation or instrumen-
17 tality established by one or more counties, cities or towns,
18 as permitted by law; any corporation or instrumentality
19 supported in most part by counties, cities or towns; any
20 public corporation charged by law with the performance

21 of a governmental function and whose jurisdiction is co-
22 extensive with one or more counties, cities or towns; any
23 comprehensive community mental health center or com-
24 prehensive mental retardation facility established, operated
25 or licensed by the secretary of health and human resour-
26 ces pursuant to section one, article two-a, chapter
27 twenty-seven of this code, and which is supported in part
28 by state, county or municipal funds; any person who
29 works regularly full time in the service of the university of
30 West Virginia board of trustees or the board of directors
31 of the state college system; and any person who works
32 regularly full time in the service of a combined
33 city-county health department created pursuant to article
34 two, chapter sixteen of this code. On and after the first
35 day of January, one thousand nine hundred ninety-four,
36 and upon election by a county board of education to
37 allow elected board members to participate in the public
38 employees insurance program pursuant to this article, any
39 person elected to a county board of education shall be
40 deemed to be an "employee" during the term of office of
41 the elected member: *Provided*, That the elected member
42 shall pay the entire cost of the premium if he or she elects
43 to be covered under this act. Any matters of doubt as to
44 who is an employee within the meaning of this article shall
45 be decided by the director.

46 (5) "Employer" means the state of West Virginia, its
47 boards, agencies, commissions, departments, institutions or
48 spending units; a county board of education; a county,
49 city or town in the state; any separate corporation or in-
50 strumentality established by one or more counties, cities or
51 towns, as permitted by law; any corporation or instrumen-
52 tality supported in most part by counties, cities or towns;
53 any public corporation charged by law with the perfor-
54 mance of a governmental function and whose jurisdiction
55 is coextensive with one or more counties, cities or towns;
56 any comprehensive community mental health center or
57 comprehensive mental retardation facility established,
58 operated or licensed by the secretary of health and human
59 resources pursuant to section one, article two-a, chapter
60 twenty-seven of this code, and which is supported in part
61 by state, county or municipal funds; and a combined

62 city-county health department created pursuant to article
63 two, chapter sixteen of this code. Any matters of doubt as
64 to who is an "employer" within the meaning of this article
65 shall be decided by the director. The term "employer"
66 does not include within its meaning the national guard.

67 (6) "Finance board" means the public employees in-
68 surance agency finance board created by this article.

69 (7) "Plan" means the medical indemnity plan or a
70 managed care plan option offered by the agency.

71 (8) "Retired employee" means an employee of the
72 state who retired after the twenty-ninth day of April, one
73 thousand nine hundred seventy-one, and an employee of
74 the university of West Virginia board of trustees or the
75 board of directors of the state college system or a county
76 board of education who retires on or after the twenty-first
77 day of April, one thousand nine hundred seventy-two, and
78 all additional eligible employees who retire on or after the
79 effective date of this article and meet the minimum eligi-
80 bility requirements for their respective state retirement
81 system: *Provided*, That for the purposes of this article, the
82 employees who are not covered by a state retirement sys-
83 tem shall, in the case of education employees, meet the
84 minimum eligibility requirements of the state teachers
85 retirement system, and in all other cases, meet the mini-
86 mum eligibility requirements of the public employees
87 retirement system.

**§5-16-3. Public employees insurance agency continued; ap-
pointment, qualification, compensation and duties
of director of agency; employees; civil service
coverage; director vested after specified date with
powers of public employees insurance board;
expiration of agency.**

1 (a) The public employees insurance agency is contin-
2 ued, and consists of the director, the finance board, the
3 advisory board and any employees who may be autho-
4 rized by law. The director shall be appointed by the gov-
5 ernor, with the advice and consent of the Senate. He or
6 she shall serve at the will and pleasure of the governor,
7 unless earlier removed from office for cause as provided

8 by law. The director shall have at least three years experi-
9 ence in health insurance administration prior to appoint-
10 ment as director. The director shall receive an annual
11 salary established by the governor not to exceed sixty-five
12 thousand dollars and actual expenses incurred in the per-
13 formance of official business. The director shall employ
14 such administrative, technical and clerical employees as
15 are required for the proper administration of the insurance
16 programs provided for in this article. The director shall
17 perform such duties as are required of him or her under
18 the provisions of this article and is the chief administrative
19 officer of the public employees insurance agency.

20 (b) All positions in the agency, except for the director,
21 his or her personal secretary and the chief financial officer
22 shall be included in the classified service of the civil ser-
23 vice system pursuant to article six, chapter twenty-nine of
24 this code. Any person required to be included in the
25 classified service by the provisions of this subsection who
26 was employed in any of the positions included in this
27 subsection on or after the effective date of this article shall
28 not be required to take and pass qualifying or competitive
29 examinations upon or as a condition to being added to the
30 classified service: *Provided*, That no person required to
31 be included in the classified service by the provisions of
32 this subsection who was employed in any of the positions
33 included in this subsection as of the effective date of this
34 section shall be thereafter severed, removed or terminated
35 in his or her employment prior to his or her entry into the
36 classified service except for cause as if the person had
37 been in the classified service when severed, removed or
38 terminated.

39 (c) The director is responsible for the administration
40 and management of the public employees insurance agen-
41 cy as provided for in this article and in connection with his
42 or her responsibility shall have the power and authority to
43 make all rules necessary to effectuate the provisions of this
44 article. Nothing in section four or five of this article shall
45 limit the director's ability to manage on a day-to-day basis
46 the group insurance plans required or authorized by this
47 article, including, but not limited to, administrative con-
48 tracting, studies, analyses and audits, eligibility determina-

49 tions, utilization management provisions and incentives,
50 provider negotiations, provider contracting and payment,
51 designation of covered and noncovered services, offering
52 of additional coverage options or cost containment incen-
53 tives, pursuit of coordination of benefits and subrogation,
54 or any other actions which would serve to implement the
55 plan or plans designed by the finance board.

56 (d) The public employees insurance agency shall
57 terminate in the manner provided in article ten, chapter
58 four of this code, on the first day of July, two thousand
59 one, unless extended by legislation enacted before the
60 termination date: *Provided*, That the public employees
61 insurance agency advisory board, created in section six of
62 this article, shall terminate in the manner provided in arti-
63 cle ten, chapter four of this code on the first day of July,
64 one thousand nine hundred ninety-six.

**§5-16-7. Authorization to establish group hospital and surgi-
cal insurance plan, group major medical insur-
ance plan, group prescription drug plan and
group life and accidental death insurance plan;
rules for administration of plans; mandated bene-
fits; what plans may provide; optional plans;
separate rating for claims experience purposes.**

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance
4 plan or plans and a group life and accidental death insur-
5 ance plan or plans for those employees herein made eligi-
6 ble, and to establish and promulgate rules for the adminis-
7 tration of such plans, subject to the limitations contained
8 in this article. Those plans shall include:

9 (1) Coverages and benefits for X-ray and laboratory
10 services in connection with mammograms and pap smears
11 when performed for cancer screening or diagnostic servic-
12 es; (2) Annual checkups for prostate cancer in men age
13 fifty and over;

14 (3) For plans that include maternity benefits, coverage
15 for inpatient care in a duly licensed health care facility for
16 a mother and her newly born infant for the length of time

17 which the attending physician deems medically necessary
18 for the mother or her newly born child: *Provided*, That
19 no such plan may deny payment for a mother or her new
20 born child prior to forty-eight hours following a vaginal
21 delivery, or prior to ninety-six hours following a caesarean
22 section delivery, if the attending physician deems dis-
23 charge medically inappropriate; and

24 (4) For plans which provide coverages for
25 post-delivery care to a mother and her newly born child in
26 the home, coverage for inpatient care following childbirth
27 as provided in subdivision (3) of this subsection if such
28 inpatient care is determined to be medically necessary by
29 the attending physician. Those plans may also include,
30 among other things, medicines, medical equipment, pros-
31 thetic appliances, and such other inpatient and outpatient
32 services and expenses deemed appropriate and desirable
33 by the agency.

34 (b) The agency shall make available to each eligible
35 employee, at full cost to the employee, the opportunity to
36 purchase optional group life and accidental death insur-
37 ance as established under the rules of the agency. In addi-
38 tion, each employee is entitled to have his or her spouse
39 and dependents, as defined by the rules of the agency,
40 included in the optional coverage, at full cost to the em-
41 ployee, for each eligible dependent; and with full authori-
42 zation to the agency to make the optional coverage avail-
43 able and provide an opportunity of purchase to each em-
44 ployee.

45 (c) The finance board may cause to be separately
46 rated for claims experience purposes: (1) All employees
47 of the state of West Virginia; (2) all teaching and profes-
48 sional employees of the university of West Virginia board
49 of trustees or the board of directors of the state college
50 system and county boards of education; (3) all
51 nonteaching employees of the university of West Virginia
52 board of trustees or the board of directors of the state
53 college system and county boards of education; or (4) any
54 other categorization which would ensure the stability of
55 the overall program.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article are not mandatory upon
2 any employee or employer who is not an employee of or
3 is not the state of West Virginia, its boards, agencies, com-
4 missions, departments, institutions or spending units or a
5 county board of education, and nothing contained in this
6 article shall be construed so as to compel any employee or
7 employer to enroll in or subscribe to any insurance plan
8 authorized by the provisions of this article.

9 Those employees enrolled in the insurance program
10 authorized under the provisions of article two-b, chapter
11 twenty-one-a of this code shall not be required to enroll in
12 or subscribe to an insurance plan or plans authorized by
13 the provisions of this article, and the employees of any
14 department which has an existing insurance program for
15 its employees to which the government of the United
16 States contributes any part or all of the premium or cost of
17 the premium may be exempted from the provisions of this
18 article. Any employee or employer exempted under the
19 provisions of this paragraph may enroll in any insurance
20 program authorized by the provisions of this article at any
21 time, to the same extent as any other qualified employee
22 or employer, but employee or employer shall not remain
23 enrolled in both programs. The provisions of articles
24 fourteen, fifteen and sixteen, chapter thirty-three of this
25 code, relating to group life insurance, accident and sick-
26 ness insurance, and group accident and sickness insurance,
27 are not applicable to the provisions of this article whenever
28 the provisions of articles fourteen, fifteen and sixteen,
29 chapter thirty-three of this code are in conflict with or
30 contrary to any provision set forth in this article or to any
31 plan or plans established by the public employees insur-
32 ance agency.

33 Employers, other than the state of West Virginia, its
34 boards, agencies, commissions, departments, institutions,
35 spending units or a county board of education are exempt
36 from participating in the insurance program provided for
37 by the provisions of this article unless participation by the
38 employer has been approved by a majority vote of the
39 employer's governing body. It is the duty of the clerk or
40 secretary of the governing body of an employer who by
41 majority vote becomes a participant in the insurance pro-
42 gram to notify the director not later than ten days after the
43 vote.

44 Any employer, whether the employer participates in
45 the public employees insurance agency insurance pro-
46 gram as a group or not, which has retired employees, their
47 dependents or surviving dependents of deceased retired
48 employees who participate in the public employees insur-
49 ance agency insurance program as authorized by this
50 article, shall pay to the agency the same contribution to-
51 ward the cost of coverage for its retired employees, their
52 dependents or surviving dependents of deceased retired
53 employees as the state of West Virginia, its boards, agen-
54 cies, commissions, departments, institutions, spending units
55 or a county board of education pay for their retired em-
56 ployees, their dependents and surviving dependents of
57 deceased retired employees, as determined by the finance
58 board: *Provided*, That after the thirtieth day of June, one
59 thousand nine hundred ninety-six, an employer is only
60 required to pay a contribution toward the cost of coverage
61 for its retired employees, their dependents or the surviving
62 dependents of deceased retired employees who elect cov-
63 erage when the retired employee participated in the plan
64 as an active employee of the employer for at least five
65 years. Each employer is hereby authorized and required
66 to budget for and make such payments as are required by
67 this section.

CHAPTER 144

(S. B. 465—By Senator Walker)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one, chapter thirty-three of said code by adding thereto a new section, designated section twenty-one; to amend article sixteen of said chapter by adding thereto a new section, designated section three-i; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-e; to amend article twenty-five of said chapter by adding there-

to a new section, designated section eight-d; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-d, all relating to the West Virginia public employees insurance agency and other cooperative or private third-party payors of health services; defining emergency services for purposes of coverage within policies issued for accidents and sickness; requiring emergency services coverage to be included in policies issued for groups under the West Virginia public employees insurance agency; hospital, medical and dental corporations; health care corporations; and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article one, chapter thirty-three of said code be amended by adding thereto a new section, designated section twenty-one; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-i; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-e; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-d; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-d, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works, Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

33. Insurance.

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.

1 The insurance plans herein provided for shall be de-
2 signed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical, medical and prescription drug benefits
5 to be included and the expected reasonable and customary
6 hospital, surgical, medical and prescription drug expenses
7 as established by the director to be incurred by the affect-
8 ed employee, his or her spouse and his or her dependents.
9 The establishment of reasonable and customary expenses
10 by the public employees insurance agency pursuant to the
11 preceding sentence is not subject to the state administrative
12 procedures act in chapter twenty-nine-a of this code.

13 (2) To include reasonable controls which may include
14 deductible and coinsurance provisions applicable to some
15 or all of the benefits, and shall include other provisions,
16 including, but not limited to, copayments, preadmission
17 certification, case management programs and preferred
18 provider arrangements.

19 (3) To prevent unnecessary utilization of the various
20 hospital, surgical, medical and prescription drug services
21 available.

22 (4) To provide reasonable assurance of stability in
23 future years for the plans.

24 (5) To provide major medical insurance for said em-
25 ployees.

26 (6) To provide certain group life and accidental death
27 insurance for the employees covered under this article.

28 (7) To include provisions for the coordination of
29 benefits payable by the terms of such plans with the bene-
30 fits to which such employee, or his or her spouse or his or
31 her dependents may be entitled by the provisions of any
32 other group hospital, surgical, medical, major medical, or
33 prescription drug insurance or any combination thereof.

34 (8) To provide a cash incentive plan for employees,
35 spouses and dependents by the thirty-first day of Decem-
36 ber, one thousand nine hundred eighty-eight, to increase
37 utilization of, and to encourage the use of, lower cost alter-
38 native health care facilities, health care providers and ge-
39 neric drugs. Such plan shall be reviewed annually by the
40 director and the advisory board.

41 (9) To provide "wellness" programs and activities
42 which will include, but not be limited to, benefit plan in-
43 centives to discourage tobacco, alcohol and chemical
44 abuse and an educational program to encourage proper
45 diet and exercise. In establishing "wellness" programs, the
46 division of vocational rehabilitation shall cooperate with
47 the public employees insurance agency in establishing
48 statewide wellness programs and with such division of
49 vocational rehabilitation to contact county boards of edu-
50 cation for the use of facilities, equipment or any service
51 related to such purpose, at the request of the director,
52 under the authority hereby granted to contract therefor.
53 Boards of education shall be limited to charging only the
54 cost of janitorial service and increased utilities for the use
55 of the gymnasium and related equipment. The cost of the
56 exercise program shall be paid by county boards of edu-
57 cation, the public employees insurance agency, or partici-
58 pating employees, their spouses or dependents. All exer-
59 cise programs shall be made available to all employees,
60 their spouses or dependents and shall not be limited to
61 employees of county boards of education.

62 (10) To provide a program, to be administered by the
63 director, for a patient audit plan with reimbursement up to
64 a maximum of one thousand dollars annually, to employ-
65 ees for discovery of health care provider or hospital over-
66 charges when the affected employee brings such over-
67 charge to the attention of the plan. The hospital or health
68 care provider shall certify to the director that it has provid-
69 ed, prior to or simultaneously with the submission of the
70 statement of charges for payments, an itemized statement
71 of the charges to the employee participant for which pay-
72 ment is requested of the plan.

73 (11) To require that all employers give written notice
74 to each covered employee prior to institution of any
75 changes in benefits to employees, and to include appropri-
76 ate penalty for any employer not providing the required
77 information to any employee.

78 (12) To provide coverage for emergency services
79 under offered plans. For the purposes of this subsection,
80 "emergency services" means services provided in or by a
81 hospital emergency facility or the private office of a den-
82 tist to evaluate and treat a medical condition manifesting

83 itself by the sudden, and at the time, unexpected onset of
84 symptoms that require immediate medical attention and
85 that failure to provide medical attention would result in
86 serious impairment to bodily function, serious dysfunction
87 to any bodily organ or part, or would place the person's
88 health in jeopardy.

CHAPTER 33. INSURANCE.

Article

1. Definitions.
16. Group Accident and Sickness Insurance.
24. Hospital, Medical and Dental Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 1. DEFINITIONS.

§33-1-21. Emergency services.

1 Emergency services are those services provided in or
2 by a hospital emergency facility or the private office of a
3 dentist to evaluate and treat a medical condition manifest-
4 ing itself by the sudden, and at the time, unexpected onset
5 of symptoms that require immediate medical attention and
6 that failure to provide medical attention would result in
7 serious impairment to bodily function, serious dysfunction
8 to any bodily organ or part, or would place the person's
9 health in jeopardy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3i. Coverage of emergency services.

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article ap-
3 plies, any entity regulated by this article shall, on and after
4 the first day of July, one thousand nine hundred
5 ninety-six, provide as benefits to all subscribers and mem-
6 bers coverage for emergency services. A policy, provi-
7 sion, contract, plan or agreement may apply to emergency
8 services the same deductibles, coinsurance and other limi-
9 tations as apply to other covered services: *Provided*, That
10 preauthorization or precertification shall not be required.

ARTICLE 24. HOSPITAL, MEDICAL AND DENTAL CORPORATIONS.

§33-24-7e. Coverage of emergency services.

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article ap-
3 plies, any entity regulated by this article shall, on and after
4 the first day of July, one thousand nine hundred
5 ninety-six, provide as benefits to all subscribers and mem-
6 bers coverage for emergency services. A policy, provi-
7 sion, contract, plan or agreement may apply to emergency
8 services the same deductibles, coinsurance and other limi-
9 tations as apply to other covered services: *Provided*, That
10 preauthorization or precertification shall not be required.

ARTICLE 25. HEALTH CARE CORPORATIONS.**§33-25-8d. Coverage of emergency services.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article ap-
3 plies, any entity regulated by this article shall, on and after
4 the first day of July, one thousand nine hundred
5 ninety-six, provide as benefits to all subscribers and mem-
6 bers coverage for emergency services. A policy, provi-
7 sion, contract, plan or agreement may apply to emergency
8 services the same deductibles, coinsurance and other limi-
9 tations as apply to other covered services: *Provided*, That
10 preauthorization or precertification shall not be required.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**§33-25A-8d. Coverage of emergency services.**

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article ap-
3 plies, any entity regulated by this article shall, on and after
4 the first day of July, one thousand nine hundred
5 ninety-six, provide as benefits to all subscribers and mem-
6 bers coverage for emergency services. A policy, provi-
7 sion, contract, plan or agreement may apply to emergency
8 services the same deductibles, coinsurance and other limi-
9 tations as apply to other covered services: *Provided*, That
10 preauthorization or precertification shall not be required.

CHAPTER 145

(H. B. 4387—By Delegates Gallagher, Adkins, Cann, Tillis, Douglas,
Thompson and Greear)

[Passed February 15, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen-b, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; insurance commissioner; reinsurance agreements; and reduction of liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15b. Reinsurance agreements; reduction of liability; requirements.

- 1 (a) This section applies to all domestic life insurers,
- 2 domestic accident and sickness insurers, and domestic
- 3 property and casualty insurers with respect to their acci-
- 4 dent and sickness business. This section also applies to all
- 5 other licensed life insurers, accident and sickness insurers,
- 6 and property and casualty insurers with respect to their
- 7 accident and sickness business who are not subject to a
- 8 substantially similar law or regulation in their domiciliary
- 9 state. This section does not apply to assumption reinsur-
- 10 ance, yearly renewable term reinsurance, or certain non-
- 11 proportional reinsurance such as stop loss or catastrophic
- 12 reinsurance.

13 (b) An insurer subject to this section shall not, for
14 reinsurance ceded, reduce any liability or establish any
15 asset in any financial statement filed with the commission-
16 er if, by the terms of the reinsurance agreement, in sub-
17 stance or effect, any of the following conditions exist:

18 (1) The primary effect of the reinsurance agreement
19 is to transfer deficiency reserves or excess interest reserves
20 to the books of the reinsurer for a "risk charge" and the
21 agreement does not provide for significant participation
22 by the reinsurer in one or more of the following risks:
23 Mortality, morbidity, investment or surrender benefit;

24 (2) The reserve credit taken by the ceding insurer is
25 not in compliance with this chapter, including actuarial
26 interpretations or standards adopted by the commissioner;

27 (3) The reserve credit taken by the ceding insurer is
28 greater than the underlying reserve of the ceding compa-
29 ny supporting the policy obligation transferred under the
30 reinsurance agreement;

31 (4) The ceding insurer is required to reimburse the
32 reinsurer for negative experience under the reinsurance
33 agreement: *Provided*, That neither offsetting experience
34 refunds against current and prior years' losses nor pay-
35 ment by the ceding insurer of an amount equal to current
36 and prior years' losses upon voluntary termination of
37 in-force reinsurance by that ceding insurer shall be con-
38 sidered such a reimbursement to the reinsurer for negative
39 experience;

40 (5) The ceding insurer can be deprived of surplus at
41 the reinsurer's option or automatically upon the occur-
42 rence of some event, such as the insolvency of the ceding
43 insurer: *Provided*, That termination of the reinsurance
44 agreement by the reinsurer for nonpayment of reinsur-
45 ance premiums shall not be considered to be such a depri-
46 vation of surplus;

47 (6) The ceding insurer shall, at specific points in time

48 scheduled in the agreement, terminate or automatically
49 recapture all or part of the reinsurance ceded;

50 (7) No cash payment is due from the reinsurer,
51 throughout the lifetime of the reinsurance agreement, with
52 all settlements prior to the termination date of the agree-
53 ment made only in a "reinsurance account," and no funds
54 in such account are available for the payment of benefits;

55 (8) The reinsurance agreement involves the possible
56 payment by the ceding insurer to the reinsurer of amounts
57 other than from income reasonably expected from the
58 reinsured policies; or

59 (9) Any other conditions specified by rules promul-
60 gated by the commissioner pursuant to chapter
61 twenty-nine-a of this code.

62 (c) Notwithstanding the provisions of subsection (b)
63 of this section, an insurer subject to this article may, with
64 the prior approval of the commissioner, take such reserve
65 credit as the commissioner may deem consistent with this
66 chapter, including actuarial interpretations or standards
67 adopted by the commissioner.

68 (d) A reinsurance agreement or amendment to any
69 agreement shall not be used to reduce any liability or to
70 establish any asset in any financial statement filed with the
71 commissioner, unless the agreement, amendment or a
72 letter of intent has been duly executed by both parties no
73 later than the "as of date" of the financial statement.

74 (e) In the case of a letter of intent, a reinsurance
75 agreement or an amendment to a reinsurance agreement
76 shall be executed within a reasonable period of time, not
77 exceeding ninety days from the execution date of the
78 letter of intent, in order for credit to be granted for the
79 reinsurance ceded.

80 (f) Life insurers subject to this section may continue
81 to reduce liabilities or establish assets in financial state-

82 ments filed with the commissioner for reinsurance ceded
83 under types of reinsurance agreements described in sub-
84 section (b) of this section: *Provided*, That:

85 (1) The agreements were executed and in force prior
86 to the effective date of this section;

87 (2) No new business is ceded under the agreements
88 after the effective date of this section;

89 (3) The reduction of the liability or the asset estab-
90 lished for the reinsurance ceded is reduced to zero by the
91 thirty-first day of December, one thousand nine hundred
92 ninety-four, or such later date approved by the commis-
93 sioner as a result of an application made by the ceding
94 insurer prior to the thirty-first day of December, one thou-
95 sand nine hundred ninety-two;

96 (4) The reduction of the liability or the establishment
97 of the asset is otherwise permissible under all other appli-
98 cable provisions of this chapter, including actuarial inter-
99 pretations or standards adopted by the commissioner; and

100 (5) The commissioner is notified, within ninety days
101 after the effective date of this section, of the existence of
102 such reinsurance agreements and all corresponding credits
103 taken in the ceding insurer's annual statement for the year
104 one thousand nine hundred ninety-one.

105 (g) Accident and sickness insurers and property and
106 casualty insurers subject to this section shall be in compli-
107 ance with the requirements of this section, with respect to
108 their accident and sickness business, pursuant to such
109 terms and conditions as are contained in the legislative
110 rule to be promulgated by the commissioner.

111 (h) The commissioner shall promulgate a rule pursu-
112 ant to chapter twenty-nine-a of this code for the imple-
113 mentation and administration of this section on or before
114 the first day of July, one thousand nine hundred
115 ninety-six.

CHAPTER 146

(S. B. 303—By Senators Manchin, Helmick, Craig, Dittmar, Sharpe, Wagner, Wooton, Kimble, Scott, Blatnik, Chafin, Wiedebusch and Yoder)

[Passed March 9, 1996; in effect October 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to standard provisions in insurance policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-10. Standard provisions.

1 (a) Insurance contracts shall contain such standard
2 provisions as are required by the applicable provisions of
3 this chapter pertaining to contracts of particular kinds of
4 insurance. The commissioner may waive the required use
5 of a particular standard provision in a particular insurance
6 policy form, if he finds such provision unnecessary for the
7 protection of the insured and inconsistent with the purpos-
8 es of the policy, and the policy is otherwise approved by
9 him.

10 (b) No policy shall contain any provision inconsistent
11 with or contradictory to any standard provision used or
12 required to be used, but the commissioner may approve
13 any substitute provision which is, in his opinion, not less
14 favorable in any particular to the insured or beneficiary
15 than the standard provisions or optional standard provi-
16 sions, otherwise required. This section shall not apply to
17 the standard fire insurance policy.

18 (c) On or after the first day of October, one thousand
19 nine hundred ninety-six, the insurer shall provide to all
20 prospective purchasers of individual life insurance policies
21 with a face value of twenty-five thousand dollars or less a
22 notice upon a form prescribed by the commissioner to
23 such prospective policyholder that the total premiums paid
24 by the purchaser at some point in the future may exceed
25 the death benefit. For purposes of calculating whether or
26 at what point premiums paid by the policyholder will
27 exceed the death benefit, the insurer shall use the annual
28 premium for the life insurance death benefit. All other
29 costs, including, but not limited to, costs for benefits
30 provided pursuant to a policy rider, and costs associated
31 with the exercise of any option permitted by the policy,
32 shall be excluded from the calculation. This notice shall
33 be provided at the time of delivery of the policy. This
34 subsection does not apply to mass market life insurance
35 products as defined in section thirty-five of this article, to
36 life insurance policies used exclusively to fund preneed
37 burial contracts under article fourteen, chapter forty-seven
38 of this code or to life insurance policies for which the total
39 premiums paid by the purchaser will not at any time
40 exceed the death benefit.

CHAPTER 147

(H. B. 4388—By Delegates Gallagher, Azinger, Hunt, Kominar,
Hall, Nesbitt and Clements)

[Passed February 14, 1996; in effect ninety days from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

§33-11-5a. Replacement of life insurance.

1 (a) As used in this section:

2 (1) "Replacement" means any transaction in which new
3 life insurance is to be purchased and by reason of such
4 transaction existing life insurance has been or is to be:

5 (A) Lapsed, forfeited, surrendered or otherwise termi-
6 nated;

7 (B) Converted to reduced paid-up insurance, contin-
8 ued as extended term insurance or otherwise reduced in
9 value by the use of nonforfeiture benefits or other policy
10 values;

11 (C) Amended so as to effect either a reduction in ben-
12 efits or in the term for which coverage would otherwise
13 remain in force or for which benefits would be paid;

14 (D) Reissued with any reduction in cash value; or

15 (E) Pledged as collateral or subjected to borrowing,
16 whether in a single loan or under a schedule of borrowing
17 over a period of time for amounts in the aggregate ex-
18 ceeding twenty-five percent (25%) of the loan value set
19 forth in the policy;

20 (2) "Existing insurer" means the insurance company
21 whose existing life insurance policy is or will be terminat-
22 ed or otherwise affected in a replacement transaction;

23 (3) "Replacing insurer" means the insurance company,
24 including the same insurer or an insurer in the same group
25 of affiliated insurers, that issues new life insurance in a
26 replacement transaction; and

27 (4) "Existing life insurance" means any life insurance
28 in force including life insurance under a binding or con-
29 ditional receipt or a life insurance policy that is within an
30 unconditional refund period, but excluding life insurance

31 obtained through the exercise of a dividend option.

32 (b) No replacing insurer shall issue any life insurance
33 in a replacement transaction to replace existing life insur-
34 ance unless the replacing insurer shall agree in writing
35 with the insured that:

36 (1) The new life insurance issued by the replacing
37 insurer will not be contestable by it in the event of such
38 insured's death to any greater extent than the existing life
39 insurance would have been contestable by the existing
40 insurer had such replacement not taken place provided,
41 however, that this paragraph shall not apply to that amount
42 of insurance written and issued which exceeds the amount
43 of the existing life insurance; and

44 (2) The new life insurance issued by the replacing
45 insurer may be voluntarily surrendered by the insured at
46 any time within thirty (30) days after its delivery to the
47 insured in exchange for a full refund of premiums paid
48 by the replacing insurer to the insured.

49 (c) Unless otherwise specifically included, subsection
50 (b) of this section shall not apply to:

51 (1) Annuities;

52 (2) Individual credit life insurance;

53 (3) Group life insurance, group credit life insurance
54 and life insurance policies issued in connection with a
55 pension, profit-sharing or other benefit plan qualifying
56 for tax deductibility of premiums, provided, however, that
57 as to any plan described in this subsection, full and com-
58 plete disclosure of all material facts shall be given to the
59 administrator of any plan to be replaced;

60 (4) Variable life insurance under which the death
61 benefits and cash values vary in accordance with unit val-
62 ues of investments held in a separate account;

63 (5) An application to the existing insurer that issued
64 the existing life insurance and a contractual policy change
65 or conversion privilege or a privilege of policy change
66 granted by the insurer is being exercised;

67 (6) Existing life insurance that is a nonconvertible
68 term life insurance policy which will expire in five (5)
69 years or less and cannot be renewed; or

70 (7) Proposed life insurance that is to replace life insur-
71 ance under a binding or conditional receipt issued by the
72 same company.

73 (d) For purposes of inducing or attempting to induce
74 a policyholder to lapse, forfeit, borrow against, surrender,
75 retain, exchange, modify, convert, or otherwise alter or
76 dispose of any insurance policy or coverage, no person
77 shall:

78 (1) Prepare, make or issue, or cause to be prepared,
79 made or issued, any written or oral misrepresentation of a
80 material fact regarding the terms, conditions or benefits of
81 either existing insurance coverage or proposed replace-
82 ment insurance coverage; or

83 (2) Omit information concerning a material fact re-
84 garding the terms, conditions or benefits of either existing
85 insurance coverage or proposed replacement insurance
86 coverage.

CHAPTER 148

(Com. Sub. for S. B. 312—By Senators Macnaughtan, Bowman, Blatnik, Grubb,
Ross, Anderson, Scott, Wagner, Plymale, Sharpe and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-c; that article sixteen of said chapter be amended by adding thereto a new section, designated section sixteen; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to requiring insurance companies to cover the complete treatment and man-

agement of diabetes for their insureds to the same extent that they provide coverage for the complete treatment of other diseases; and relating generally to health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

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

Article

- 15C. Diabetes Insurance.**
- 16. Group Accident and Sickness Insurance.**
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25. Health Care Corporations.**
- 25A. Health Maintenance Organization Act.**

ARTICLE 15C. DIABETES INSURANCE.

§33-15C-1. Insurance for diabetics.

- 1 (a) Except as provided in section six, article fifteen of
- 2 this chapter, any policy which provides major medical or
- 3 similar comprehensive-type medical coverage shall in-
- 4 clude coverage for the following equipment and supplies
- 5 for the treatment and/or management of diabetes for both
- 6 insulin dependent and noninsulin dependent persons with
- 7 diabetes and those with gestational diabetes, if medically
- 8 necessary and prescribed by a licensed physician: Blood
- 9 glucose monitors, monitor supplies, insulin, injection aids,
- 10 syringes, insulin infusion devices, pharmacological agents
- 11 for controlling blood sugar, orthotics and any additional
- 12 items as promulgated by rule, pursuant to the provisions
- 13 of chapter twenty-nine-a of this code, by the insurance
- 14 commissioner, with the advice of the commissioner of the
- 15 bureau of public health.

16 (b) All policies affected by the provisions of this sec-
17 tion shall also include coverage for diabetes
18 self-management education to ensure that persons with
19 diabetes are educated as to the proper self-management
20 and treatment of their diabetes, including information on
21 proper diets. Coverage for self-management education
22 and education relating to diet and prescribed by a licensed
23 physician shall be limited to: (1) Visits medically neces-
24 sary upon the diagnosis of diabetes; (2) visits under cir-
25 cumstances whereby a physician identifies or diagnoses a
26 significant change in the patient's symptoms or conditions
27 that necessitates changes in a patient's self-management;
28 and (3) where a new medication or therapeutic process
29 relating to the person's treatment and/or management of
30 diabetes has been identified as medically necessary by a
31 licensed physician: *Provided*, That coverage for reeduca-
32 tion or refresher education shall be limited to one hundred
33 dollars annually.

34 (c) The education may be provided by the physician
35 as part of an office visit for diabetes diagnosis or treat-
36 ment, or by a licensed pharmacist for instructing and
37 monitoring a patient regarding the proper use of covered
38 equipment, supplies and medications prescribed by a li-
39 censed physician, or by a certified diabetes educator certi-
40 fied by a national diabetes educator certification program,
41 or registered dietitian registered by a nationally recog-
42 nized professional association of dietitians upon the refer-
43 ral of a physician: *Provided*, That such national diabetes
44 education certification program or nationally recognized
45 professional association of dieticians has been certified to
46 the commissioner of insurance by the commissioner of the
47 bureau of public health.

48 (d) Any deductible or coinsurance billed for any ser-
49 vice as provided in this section shall apply on an equal
50 basis with all other coverages provided by the insurer but
51 not included in this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-16. Insurance for diabetics.

1 (a) Except as provided in section six, article fifteen of
2 this chapter, any policy which provides major medical or
3 similar comprehensive-type medical coverage shall in-
4 clude coverage for the following equipment and supplies
5 for the treatment and/or management of diabetes for both
6 insulin dependent and noninsulin dependent persons with
7 diabetes and those with gestational diabetes, if medically
8 necessary and prescribed by a licensed physician: Blood
9 glucose monitors, monitor supplies, insulin, injection aids,
10 syringes, insulin infusion devices, pharmacological agents
11 for controlling blood sugar, orthotics and any additional
12 items as promulgated by rule, pursuant to the provisions
13 of chapter twenty-nine-a of this code, by the insurance
14 commissioner, with the advice of the commissioner of the
15 bureau of public health.

16 (b) All policies affected by the provisions of this sec-
17 tion shall also include coverage for diabetes
18 self-management education to ensure that persons with
19 diabetes are educated as to the proper self-management
20 and treatment of their diabetes, including information on
21 proper diets. Coverage for self-management education
22 and education relating to diet and prescribed by a licensed
23 physician shall be limited to: (1) Visits medically neces-
24 sary upon the diagnosis of diabetes; (2) visits under cir-
25 cumstances whereby a physician identifies or diagnoses a
26 significant change in the patient's symptoms or conditions
27 that necessitates changes in a patient's self-management;
28 and (3) where a new medication or therapeutic process
29 relating to the person's treatment and/or management of
30 diabetes has been identified as medically necessary by a
31 licensed physician: *Provided*, That coverage for reeduca-
32 tion or refresher education shall be limited to one hundred
33 dollars annually.

34 (c) The education may be provided by the physician
35 as part of an office visit for diabetes diagnosis or treat-
36 ment, or by a certified diabetes educator certified by a
37 national diabetes educator certification program, or regis-
38 tered dietitian registered by a nationally recognized pro-
39 fessional association of dietitians upon the referral of a
40 physician: *Provided*, That such national diabetes educa-
41 tion certification program or nationally recognized pro-

42 fessional association of dieticians has been certified to the
43 commissioner of insurance by the commissioner of the
44 bureau of public health.

45 (d) Any deductible or coinsurance billed for any ser-
46 vice as provided in this section shall apply on an equal
47 basis with all other coverages provided by the insurer but
48 not included in this section.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE COR-
PORATIONS.**

§33-24-4. Exemptions; applicability of insurance laws.

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provi-
5 sions are applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the provi-
8 sions as hereinbelow indicated, of the following articles of
9 this chapter: Article two (insurance commissioner), except
10 that, under section nine of said article, examinations shall
11 be conducted at least once every four years; article four
12 (general provisions), except that section sixteen of said
13 article shall not be applicable thereto; section thirty-four,
14 article six (fee for form and rate filing); article six-c
15 (guaranteed loss ratio); article seven (assets and liabilities);
16 article eleven (unfair trade practices); article twelve
17 (agents, brokers and solicitors), except that the agent's
18 license fee shall be five dollars; section fourteen, article
19 fifteen (individual accident and sickness insurance); sec-
20 tion sixteen, article fifteen (coverage of children); section
21 eighteen, article fifteen (equal treatment of state agency);
22 section nineteen, article fifteen (coordination of benefits
23 with medicaid); article fifteen-a (long-term care insur-
24 ance); article fifteen-c (diabetes insurance); section three,
25 article sixteen (required policy provisions); section three-a,
26 article sixteen (mental illness); section three-c, article six-
27 teen (group accident and sickness insurance); section
28 three-d, article sixteen (medicare supplement insurance);

29 section three-f, article sixteen (treatment of temporoman-
30 dibular joint disorder and craniomandibular disorder);
31 section eleven, article sixteen (coverage of children); sec-
32 tion thirteen, article sixteen (equal treatment of state agen-
33 cy); section fourteen, article sixteen (coordination of ben-
34 efits with medicaid); section sixteen, article sixteen (diabe-
35 tes insurance); article sixteen-a (group health insurance
36 conversion); article sixteen-c (small employer group poli-
37 cies); article sixteen-d (marketing and rate practices for
38 small employers); article twenty-six-a (West Virginia life
39 and health insurance guaranty association act), after the
40 first day of October, one thousand nine hundred
41 ninety-one; article twenty-seven (insurance holding com-
42 pany systems); article twenty-eight (individual accident
43 and sickness insurance minimum standards); article thirty-
44 three (annual audited financial report); article thirty-four
45 (administrative supervision); article thirty-four-a (stan-
46 dards and commissioner's authority for companies
47 deemed to be in hazardous financial condition); article
48 thirty-five (criminal sanctions for failure to report impair-
49 ment); and article thirty-seven (managing general agents);
50 and no other provision of this chapter may apply to these
51 corporations unless specifically made applicable by the
52 provisions of this article. If, however, the corporation is
53 converted into a corporation organized for a pecuniary
54 profit or if it transacts business without having obtained a
55 license as required by section five of this article, it shall
56 thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commis- sioner; exemption from insurance laws.

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to insurers
5 transacting similar kinds of insurance and not inconsistent
6 with the provisions of this article, shall be governed by and
7 be subject to the provisions as hereinbelow indicated of
8 the following articles of this chapter: Article four (general
9 provisions), except that section sixteen of said article shall

10 not be applicable thereto; article six-c (guaranteed loss
11 ratio); article seven (assets and liabilities); article eight
12 (investments); article ten (rehabilitation and liquidation);
13 section fourteen, article fifteen (individual accident and
14 sickness insurance); section sixteen, article fifteen (cover-
15 age of children); section eighteen, article fifteen (equal
16 treatment of state agency); section nineteen, article fifteen
17 (coordination of benefits with medicaid); article fifteen-c
18 (diabetes insurance); section three, article sixteen (required
19 policy provisions); section eleven, article sixteen (coverage
20 of children); section thirteen, article sixteen (equal treat-
21 ment of state agency); section fourteen, article sixteen
22 (coordination of benefits with medicaid); section sixteen,
23 article sixteen (diabetes insurance); article sixteen-a
24 (group health insurance conversion); article sixteen-c
25 (small employer group policies); article sixteen-d (market-
26 ing and rate practices for small employers); article
27 twenty-six-a (West Virginia life and health insurance guar-
28 anty association act); article twenty-seven (insurance hold-
29 ing company systems); article thirty-three (annual audited
30 financial report); article thirty-four-a (standards and com-
31 missioner's authority for companies deemed to be in haz-
32 ardous financial condition); article thirty-five (criminal
33 sanctions for failure to report impairment); and article
34 thirty-seven (managing general agents); and no other
35 provision of this chapter may apply to these corporations
36 unless specifically made applicable by the provisions of
37 this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article, provi-
2 sions of the insurance laws and provisions of hospital or
3 medical service corporation laws are not applicable to any
4 health maintenance organization granted a certificate of
5 authority under this article. The provisions of this article
6 shall not apply to an insurer or hospital or medical service
7 corporation licensed and regulated pursuant to the insur-
8 ance laws or the hospital or medical service corporation

*Clerk's Note: This section was also amended by H. B. 4511 (Chapter 151), which passed subsequent to this act.

9 laws of this state except with respect to its health mainte-
10 nance corporation activities authorized and regulated
11 pursuant to this article. The provisions of this article shall
12 not apply to an entity properly licensed by a reciprocal
13 state to provide health care services to employer groups,
14 where residents of West Virginia are members of an em-
15 ployer group, and the employer group contract is entered
16 into in the reciprocal state. For purposes of this subsec-
17 tion, a "reciprocal state" means a state which physically
18 borders West Virginia and which has subscriber or en-
19 rolled hold harmless requirements substantially similar to
20 those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation re-
22 garding the range of services provided, the premiums and
23 copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance organiza-
26 tion granted a certificate of authority, or its representative
27 shall not be construed to violate any provision of law relat-
28 ing to solicitation or advertising by health professions:
29 *Provided*, That nothing contained in this subsection shall
30 be construed as authorizing any solicitation or advertising
31 which identifies or refers to any individual provider or
32 makes any qualitative judgment concerning any provider.

33 (c) Any health maintenance organization authorized
34 under this article shall not be considered to be practicing
35 medicine and is exempt from the provision of chapter
36 thirty of this code, relating to the practice of medicine.

37 (d) The provisions of section fifteen, article four (gen-
38 eral provisions); section seventeen, article six (noncomply-
39 ing forms); article six-c (guaranteed loss ratio); article
40 seven (assets and liabilities); article eight (investments);
41 article nine (administration of deposits); article twelve
42 (agents, brokers, solicitors and excess line); section four-
43 teen, article fifteen (individual accident and sickness insur-
44 ance); section sixteen, article fifteen (coverage of chil-
45 dren); section eighteen, article fifteen (equal treatment of
46 state agency); section nineteen, article fifteen (coordina-
47 tion of benefits with medicaid); article fifteen-b (uniform
48 health care administration act); article fifteen-c (diabetes
49 insurance); section three, article sixteen (required policy
50 provisions); section three-f, article sixteen (treatment of
51 temporomandibular joint disorder and craniomandibular
52 disorder); section eleven, article sixteen (coverage of chil-

53 dren); section thirteen, article sixteen (equal treatment of
54 state agency); section fourteen, article sixteen (coordina-
55 tion of benefits with medicaid); section sixteen, article
56 sixteen (diabetes insurance); article sixteen-a (group
57 health insurance conversion); article sixteen-c (small em-
58 ployer group policies); article sixteen-d (marketing and
59 rate practices for small employers); article twenty-seven
60 (insurance holding company systems); article thirty-four-a
61 (standards and commissioner's authority for companies
62 deemed to be in hazardous financial condition); article
63 thirty-five (criminal sanctions for failure to report impair-
64 ment); article thirty-seven (managing general agents); and
65 article thirty-nine (disclosure of material transactions)
66 shall be applicable to any health maintenance organization
67 granted a certificate of authority under this article. In
68 circumstances where the code provisions made applicable
69 to health maintenance organizations by this section refer
70 to the "insurer", the "corporation" or words of similar im-
71 port, the language shall be construed to include health
72 maintenance organizations.

73 (e) Any long-term care insurance policy delivered or
74 issued for delivery in this state by a health maintenance
75 organization shall comply with the provisions of article
76 fifteen-a of this chapter.

77 (f) A health maintenance organization granted a cer-
78 tificate of authority under this article shall be exempt from
79 paying municipal business and occupation taxes on gross
80 income it receives from its enrollees, or from their em-
81 ployers or others on their behalf, for health care items or
82 services provided directly or indirectly by the health main-
83 tenance organization. This exemption applies to all tax-
84 able years through the thirty-first day of December, one
85 thousand nine hundred ninety-six. The commissioner and
86 the tax department shall conduct a study of the appropri-
87 ateness of imposition of the municipal business and occu-
88 pation tax or other tax on health maintenance organiza-
89 tions, and shall report to the regular session of the Legisla-
90 ture, one thousand nine hundred ninety-seven, on their
91 findings, conclusions and recommendations, together with
92 drafts of any legislation necessary to effectuate their rec-
93 ommendations.

CHAPTER 149

(H. B. 4112—By Mr. Speaker, Mr. Chambers, and Delegates Smirl,
Johnson, Leach, Hubbard and Jenkins)

[Passed February 15, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to farmers' mutual fire insurance companies; and abolishing the requirement that the domestic mutual insurer be the surviving entity resulting from a merger between a farmers' mutual insurance company and a domestic mutual insurer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-18. Mergers and consolidations.

- 1 (a) A farmers' mutual fire insurance company may
- 2 not merge or consolidate with any stock insurer.
- 3 (b) A farmers' mutual fire insurance company may
- 4 merge or consolidate with another farmers' mutual fire
- 5 insurance company or merge with a domestic mutual
- 6 insurer in the manner provided in section twenty-eight,
- 7 article five of this chapter for the merger or consolidation
- 8 of other types of domestic mutual insurers.

