

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2002
First Extraordinary Session, 2002
Second Extraordinary Session, 2002
Fifth Extraordinary Session, 2001
Sixth Extraordinary Session, 2001

Volume II
Chapters 189 – 326
Chapters 1 – 8
Chapters 1 – 31
Chapters 1 – 12
Chapters 1 – 23

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TABLE OF CONTENTS
ACTS
Regular Session, 2002
Volume II

GENERAL LAWS

Chapter	Bill No.	Page
LABOR (Continued)		
189.	(SB429) Relating to Licenses Issued by Contractor Licensing Board	1637
LAW ENFORCEMENT		
190.	(HB4314) Prohibiting Reserve Officers From Carrying Firearms	1645
191.	(*HB2808) Providing That Certain Sheriffs With Prior Service as Deputy Sheriff and Sheriff May Participate in the Deputy Sheriff's Retirement System	1648
192.	(*HB4268) Allowing a Previously Conditionally Employed Law-Enforcement Officer an Opportunity to Become a Conditional Employee and be Given One Year to Resubmit an Application to a Training Academy	1650
193.	(*HB4119) Allowing a Waiver of Annual In-Service Training for Law-Enforcement Officers Called Into Armed Forces, National Guard or Reserve Active Duty	1656
194.	(HB4289) Prohibiting Law-Enforcement Officers From Engaging in Racial Profiling	1657
LEGAL ADVERTISING		
195.	(*SB554) Modifying Requirements for Publishing Legal Advertisements; Increasing Rates	1660

TABLE OF CONTENTS

LEGAL SERVICES

196. (*HB4010) Allowing the Tax and Banking
Commissioners to Employ Legal
Counsel to Represent Them in
Certain Proceedings 1671

LEGISLATIVE RULES

197. (*HB4172) Authorizing the Department of
Administration to Promulgate
Legislative Rules 1673
198. (*HB4163) Authorizing the Department of
Environmental Protection to
Promulgate Legislative Rules 1677
199. (*HB4205) Authorizing the Department of
Health and Human Resources to
Promulgate Legislative Rules 1701
200. (*SB339) Authorizing Agencies in Department
of Military Affairs and Public
Safety to Promulgate Legislative
Rules 1705
201. (*SB397) Authorizing Agencies Within Department
of Tax and Revenue to Promulgate
Legislative Rules 1707
202. (*SB305) Authorizing Agencies Within Department
of Transportation to Promulgate
Legislative Rules 1712
203. (*HB4219) Authorizing the Bureau of Commerce
to Promulgate Legislative Rules 1714

LIENS

204. (*SB407) Increasing Time to Perfect Lien
Upon Improved Property 1726
205. (SB598) Relating to Exemptions of Property
in Bankruptcy Proceedings 1735

LIMITED LIABILITY COMPANIES

206. (HB4558) Relating to Fees for Articles of
Organization for Limited Liability
Companies and Certificate of
Authority for Foreign Limited
Liability Companies 1739

LOBBYIST ACTIVITIES

207. (*HB4016) Relating to the Regulation of
Lobbyist Activities 1765

MINES AND MINING

208. (*SB179) Relating to Miners' Health and
Safety 1772

MOTOR VEHICLES

209. (SB105) Exempting Certain Senior Service
Organizations From Automobile
Titling Privilege Tax 1777
210. (*SB543) Authorizing Special Motor Vehicle
Registration Plates Generally 1785
211. (*SB631) Authorizing Special License Plates
for County Sheriffs and Their
Deputies; Fees 1807
212. (*SB541) Relating to Certificate Showing
Liens and Encumbrances on Vehicles 1811
213. (SB725) Allowing Used Motor Vehicle Dealers
to Purchase New Motor Vehicles
and Sell Without Obtaining License
in Certain Cases 1815
214. (*SB695) Authorizing Certain Out-of-State
Dealers to Participate in Vehicle
Shows 1818
215. (*SB638) Authorizing Division of Motor
Vehicles Add Classification for
Deaf or Hard of Hearing and Handicapped
or Disabled Drivers 1820

TABLE OF CONTENTS

216. (SB438)	Relating to Requirement of Compliance With Selective Service Registration	1827
217. (SB256)	Granting Certain Division of Highways Weighing Crews Authority to Possess Handguns	1829
218. (*SB664)	Requiring Certain Vehicles Stop or Slow Down at Railroad Crossings; Penalty	1833
219. (*SB156)	Relating to Special Registration Plates or Placards for Persons With Mobility Impairments	1844
220. (SB278)	Relating to Authorized Emergency Vehicles Generally	1856
221. (*SB35)	Relating to Increasing Fees for Motor Vehicle Inspection	1858
MUNICIPALITIES		
222. (*HB4309)	Enabling Cities or Municipalities to Allow the Municipal Court Clerk to Serve as Municipal Court Judge in Certain Circumstances	1861
223. (HB4540)	Political Activities of Members of Paid Fire Departments	1863
224. (*HB4388)	Relating to Municipal Police and Firemen's Pension and Relief Funds	1865
225. (*SB601)	Relating to Municipal Police and Firemen's Pension and Relief Funds	1869
226. (*SB679)	Relating to Intergovernmental Relations Generally	1872
NATURAL RESOURCES		
227. (SB721)	Allowing Division of Natural Resources Enter Reciprocal Agreements With Ohio Regarding Hunting and Fishing	1876

TABLE OF CONTENTS

228. (SB576) Relating to Nonresident Class E
Hunting and Trapping License 1880

229. (HB2062) Relating to Class V and Class V V
Muzzle-Loading Deer Hunting
Licenses and Adding Open Sights
and Telescopic Sights 1882

230. (SB722) Relating to Class XJ Junior
Sportsman's Hunting, Fishing and
Trapping License 1883

NEIGHBORHOOD INVESTMENT PROGRAM

231. (*HB4437) Reauthorizing the Neighborhood
Investment Program Act 1885

OIL AND GAS WELLS

232. (SB712) Clarifying When Plats Must be Filed
Before Plugging Oil and Gas Wells 1898

PARKING

233. (SB724) Regulating Parking on Property
Owned or Leased by State 1903

PROBATION OFFICERS

234. (*SB91) Requiring Payment of Funeral
Expenses of Probation Officers
and Correctional Employees Killed
in Line of Duty 1906

235. (*SB48) Requiring Probation Officers to
Complete Training in Use of
Firearms 1908

PROFESSIONS AND OCCUPATIONS

236. (HB4124) Prohibiting Discrimination Against
Applicants for Professional Licenses 1912

237. (*SB555) Relating to License to Practice
Medicine and Surgery or Podiatry 1920

238. (*SB243) Relating to Professional Discipline
of Physicians and Podiatrists by
Board of Medicine 1925

239. (HB4275)	Development of Guidelines for End of Life Pain Management	1944
240. (HB4277)	Authorizing the Board of Pharmacy to Form Pharmacist Recovery Networks	1947
241. (HB4098)	Continuing the Board of Examiners for Registered Professional Nurses	1951
242. (HB4507)	Authorizing Permits for School Psychologists to Practice School Psychology Within the Scope of Their Employment by a County School Board	1952
243. (HB4346)	Relating to the State Radiologic Technology Board of Examiners	1954
244. (HB4417)	Providing That Fees and Continuing Education Requirements for Speech- Language Pathologists and Audiologists be Set by Legislative Rule	1959
245. (*SB453)	Creating Real Estate License Act	1961
PUBLIC EMPLOYEES		
246. (*SB115)	Eliminating Certain Service Cap on Incremental Salary Increases to State Employees	1998
247. (SB639)	Providing for Gender-Based Pay Equity Salary Adjustment for State Employees	2000
248. (SB592)	Defining "Plan" in Public Employees Insurance Act	2003
249. (HB4136)	Continuation of the Public Employees Insurance Agency	2007
250. (SB738)	Relating to Appropriation of Moneys From Public Employees Insurance Reserve Fund	2010

TABLE OF CONTENTS

IX

251. (*HB4012) Requiring Certain New Public Employees, Officers or Certain Officials Hired After a Certain Date to be Paid One Pay Cycle in Arrears 2011

PUBLIC MONEYS

252. (*SB409) Relating to Transfer of Certain Funds to Securities Division of Auditor's Office 2013

253. (*SB561) Relating to Small Business Linked Deposit Program 2016

254. (SB413) Relating to Purchasing Card Administration Fund 2023

255. (HB3034) Requiring State Spending Units to Submit a Receiving Report to the Auditor for Payment of a Claim for Commodities 2024

256. (SB737) Authorizing Secretary of Administration to Pay Expenses for Certain Visitors and Employees 2025

257. (SB566) Requiring State Treasurer Transfer Amounts Required by Legislature From Certain Funds 2028

258. (*HB4021) Repealing the Requirement in the Pension Liability Redemption Act That the Supreme Court of Appeals Render a Judicial Determination That the Issuance of Bonds are Constitutional 2029

PUBLIC SAFETY

259. (HB4511) Relating to the Division of Protective Services 2036

PUBLIC SERVICE COMMISSION

260. (SB736) Relating to Powers of Public Service Commission 2039

TABLE OF CONTENTS

RETIREMENT

261. (*SB608)	Amending Definition of Internal Revenue Code for Certain Public Retirement Systems	2041
262. (HB4658)	Relating to Public Employees Retirement and State Teachers' Retirement	2089
263. (SB652)	Relating to Public Employees Retirement Act; Deferred Annuity	2115
264. (SB615)	Prohibiting Certain Persons from Withdrawing PERS Contributions	2117
265. (HB4484)	Allowing Retired Members of the Teachers Retirement System to Name a New Joint Annuitant Upon the Death of a Spouse	2119

ROADS AND HIGHWAYS

266. (*SB279)	Providing Family Restrooms at All Rest Areas on Interstate Highways	2122
---------------	---	------

SALARIES

267. (*SB690)	Increasing Salary of Racing Commission and Water Development Authority Board	2128
268. (HB4060)	Removing the Sixteen-Year Cap on Salary Increments for Years of Service for Deputy Sheriffs	2134
269. (SB164)	Increasing Base Salary of State Police Personnel	2135
270. (SB648)	Increasing Salaries for Conservation Officers	2140

STATE POLICE

271. (SB111)	Increasing Benefits of Surviving Spouse of Certain State Police	2143
--------------	---	------

STORMWATER SYSTEMS

272. (HB4619)	Establishment of Stormwater Systems and Associated Stormwater Management Programs Within a Public Service District	2145
---------------	---	------

SUNSET

273. (SB471)	Continuing Capitol Building Commission	2171
274. (HB4662)	Changing Termination Dates Pursuant to the Sunset Law	2172
275. (SB468)	Continuing Division of Purchasing Within Department of Administration	2178
276. (SB472)	Continuing Records Management and Preservation Board	2179
277. (SB241)	Continuing Ethics Commission	2185
278. (HB4256)	Continuing the Department of Health and Human Resources	2186
279. (SB473)	Continuing Veterans' Council	2187
280. (HB4099)	Continuing the Educational Broadcasting Authority	2189
281. (HB4510)	Continuing the Investment Management Board	2191
282. (HB4299)	Continuing the Division of Protective Services	2192
283. (SB238)	Continuing Division of Highways	2193
284. (HB4321)	Continuing the Racing Commission	2195
285. (SB353)	Continuing Parks Section of Division of Natural Resources and Division of Natural Resources	2196
286. (SB354)	Continuing Public Land Corporation	2198
287. (HB4100)	Continuing the Whitewater Commission	2199
288. (SB469)	Continuing Division of Labor	2200

TABLE OF CONTENTS

289. (SB470)	Continuing Contractor Licensing Board	2201
290. (HB4368)	Continuing the Authority of the Commissioner to Administer the Bureau of Employment Programs	2202
291. (SB351)	Continuing Office of Water Resources	2203
292. (HB4298)	Continuing the Division of Corrections	2204
293. (SB352)	Continuing State Geological and Economic Survey	2205
294. (HB4454)	Continuing the State Rail Authority	2207
295. (HB4121)	Continuing the Women's Commission	2208
296. (HB4320)	Continuing Public Defender Services	2210
297. (SB239)	Continuing Board of Examiners for Licensed Practical Nurses	2211
298. (HB4122)	Continuing the Board of Architects	2212
299. (SB240)	Continuing Board of Examiners for Speech-Language Pathology and Audiology	2213
300. (HB4255)	Continuing the Bureau for Child Support Enforcement	2214

TAXATION

301. (*SB244)	Relating to Tax Increment Financing Act	2216
302. (*SB578)	Allowing Tax Commissioner Share Certain Confidential Information With Geological and Economic Survey	2267
303. (*HB4305)	Creating the West Virginia Tax Tribunal to Resolve Disputes Between the Tax Commissioner and Taxpayers	2269
304. (*SB290)	Extending Confidentiality and Nondisclosure of Tax Information to Local and Municipal Governments	2306
305. (*SB661)	Relating to Estate Taxes	2317
306. (*SB651)	Eliminating Provider Tax on Community Care Services	2329

TABLE OF CONTENTS

XIII

307. (SB731) Requiring the Tax Commissioner to Develop a Single Form for Reporting Oil and Gas Production to Government Agencies 2332

308. (SB285) Exempting Environmental Technical Testing Laboratories From Consumers Sales and Service Tax 2335

309. (*HB4017) Creating a Sales Tax Holiday for Purchases of Back-to-School Clothing During a Three-Day Period in August 2002 2353

310. (SB245) Creating Simplified Sales and Use Tax Administration Act 2355

311. (SB140) Updating Certain Terms Used in Personal Income Tax Act 2362

312. (SB713) Exempting Certain Military Retirement From Personal Income Tax 2364

313. (HB2372) Clarifying the Manner in Which Moneys Reserved for the Payment of Income Tax Refunds are to be Managed 2371

314. (SB114) Updating Section of Corporation Net Income Tax Act 2373

TIMBERING

315. (SB431) Relating to Timbering Licenses 2375

UNEMPLOYMENT COMPENSATION

316. (*SB497) Relating to Eligibility for Unemployment Compensation 2383

UNIFORM DISCLOSURE OF PROPERTY INTEREST ACT

317. (*SB484) Revising the Uniform Disclaimer of Property Interests Act 2393

UNIFORM INTERSTATE FAMILY SUPPORT ACT

318. (SB485) Relating to Uniform Interstate Family Support Act 2406

TABLE OF CONTENTS

UNIFORM SECURITIES ACT

319. (*SB475) Revising the Uniform Securities Act Generally 2450

VETERANS

320. (SB428) Revising Duties and Functions of Veterans' Council 2480

321. (HB4553) Creating a Special Revenue Account for the Payment of Architectural and Associated Costs for the Veterans Nursing Home 2481

WHEELCHAIRS

322. (*SB682) Defining Motorized Wheelchair and Electric Personal Assistive Mobility Device 2488

WHITE CANE LAW

323. (*HB2465) Rights and Privileges With Respect to Access to Public Facilities for Guide or Support Dogs and Trainers 2492

WORKFORCE INVESTMENT

324. (*HB4083) West Virginia Workforce Investment Act 2497

ZONING

325. (SB171) Authorizing Zoning Ordinance Elections 2507

LOCAL LAWS

WIRT COUNTY

326. (SB662) Extending Time for Wirt County Commission to Meet as Levying Body in Certain Cases 2510

ACTS

First Extraordinary Session, 2002

Chapter	Bill No.	Page
APPROPRIATIONS		
1.	(SB1001)	Expiring Funds to Balance of Board of Pharmacy From Health Care Authority, Health Care Cost Review Authority Fund 2511
2.	(SB1002)	Expiring Funds to Unappropriated Balance in General Revenue From Treasurer's Office, Banking Service Expense Fund 2512
3.	(SB1003)	Making Supplementary Appropriation of Public Moneys in General Revenue to Various Departments 2520
4.	(SB1004)	Supplementing, Amending, Reducing and Increasing Items From Lottery Net Profits to Division of Natural Resources 2526
5.	(SB1005)	Making Supplementary Appropriation From Unappropriated Balance to Bureau of Commerce, Division of Natural Resources 2528
6.	(SB1006)	Expiring Funds to Unappropriated Balance in General Revenue to Department of Military Affairs and Public Safety, State Police, Commercial Drivers' Licensing Program 2529
TAXATION		
7.	(SB1008)	Updating Meaning of Certain Terms Used in Personal Income Tax Act 2531
8.	(SB1009)	Updating Certain Terms Used in Corporation Net Income Tax Act 2533

ACTS

Second Extraordinary Session, 2002

Chapter	Bill No.		Page
APPROPRIATIONS			
1.	(*SB2006)	Making Supplementary Appropriation in State Fund, General Revenue, to Department of Health and Human Resources, Division of Human Services	2537
2.	(SB2008)	Expiring Funds to Unappropriated Balance From Revenue Shortfall Reserve Fund	2540
3.	(SB2009)	Making Supplementary Appropriation to Department of Agriculture From General Revenue Surplus	2542
4.	(SB2010)	Making Supplementary Appropriation to Department of Agriculture From Unappropriated General Revenue Balance	2544
5.	(SB2011)	Supplementing, Amending, Reducing and Increasing Items of Existing Appropriations to Governor's Office, Civil Contingent Fund	2545
6.	(SB2012)	Supplementing, Amending, Reducing and Increasing Items in General Revenue to Bureau of Commerce, Board of Coal Mine Health and Safety	2549
7.	(SB2013)	Supplementing, Amending, Reducing and Increasing Items From State Fund to Department of Military Affairs and Public Safety, Division of Corrections	2551
8.	(SB2014)	Making Supplementary Appropriation in State Fund, General Revenue, to Department of Tax and Revenue, Adding Reappropriating Language	2553

TABLE OF CONTENTS

9. (SB2015) Making Supplementary Appropriation in State Fund, General Revenue, to Higher Education Policy Commission 2555

10. (SB2016) Making Supplementary Appropriation of General Revenue to Department of Tax and Revenue, Office of Tax Appeals 2559

11. (SB2017) Making Supplementary Appropriation to Department of Agriculture, Donated Food Fund 2560

12. (SB2018) Supplementing and Expiring Funds From ABCA and Division of Banking to Division of Tax 2562

13. (SB2019) Supplementing, Amending, Reducing and Increasing Items From Division of Tourism to Division of Natural Resources 2564

14. (SB2020) Making Supplementary Appropriation to Bureau of Commerce, Division of Natural Resources, Hunting and Fishing License Fund 2566

15. (SB2021) Making Supplementary Appropriation to Bureau of Commerce, Division of Natural Resources 2567

16. (SB2022) Making Supplementary Appropriation to Department of Tax and Revenue, Insurance Commissioner 2569

17. (SB2023) Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission, Fund 7304 2570

18. (SB2024) Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission, Fund 7305 2572

19. (SB2025) Making Supplementary Appropriation to Board of Examiners for Registered Professional Nurses 2573

20. (SB2026) Making Supplementary Appropriation to Bureau of Commerce, Division of Labor 2575

21.	(SB2028)	Making Supplementary Appropriation from Unappropriated Surplus Balance to Governor's Office, Civil Contingent Fund	2576
22.	(SB2029)	Making Supplementary Appropriation to Bureau of Commerce, Division of Miners' Health, Safety and Training	2578
23.	(SB2031)	Making Supplementary Appropriation of Federal Funds to Bureau of Employment Programs	2580
24.	(SB2032)	Supplementing and Amending Chapter Thirteen, Acts of Legislature, Budget Bill	2582
BUSINESS CORPORATION ACT			
25.	(SB2004)	Establishing Business Corporation Act	2584
FIREFIGHTING AND PREVENTION			
26.	(HB203)	Exempting From Consumers Sales and Service Tax Fundraising Activities by Certain Volunteer Fire Departments and Rescue Squads	2765
LEGISLATIVE RULES			
27.	(SB2001)	Authorizing Miscellaneous Agencies and Boards to Promulgate Legislative Rules	2784
28.	(SB2002)	Relating to Legislative Rules of Department of Environmental Protection	2802
PUBLIC SERVICE COMMISSION			
29.	(SB2003)	Authorizing Public Service Commission to Acquire and Pay for Property	2804
SUNSET			
30.	(HB204)	Reestablishing the Board of Licensed Dietitians	2806
TAXATION			
31.	(SB2007)	Relating Generally to Tax Credits for Certain Business Activity	2807

ACTS

Fifth Extraordinary Session, 2001

Chapter	Bill No.		Page
APPROPRIATIONS			
1.	(HB501)	Supplemental Appropriation to the State Rail Authority, Unclassified	2831
2.	(HB502)	Supplemental Appropriation to the Department of Agriculture, Personal Services and Employee Benefits	2833
3.	(HB512)	Supplemental Appropriation to the Governor's Office, Civil Contingent Fund	2834
ECONOMIC DEVELOPMENT			
4.	(HB506)	Relating to the Joint Commission on Economic Development	2836
FAMILY COURT SYSTEM			
5.	(SB5007)	Relating to Family Court System	2839
GAMING ACTIVITIES			
6.	(SB5002)	Making Technical Changes to Certain Lottery Statutes	2955
HOMESTEAD EXEMPTION			
7.	(SB5001)	Changing Property Tax Year for Personal Income Tax Credit Allowed Certain Senior Citizens and Certain Disabled Persons	2966
RECLAMATION FUND ADVISORY COUNCIL			
8.	(SB5003)	Relating to Surface Coal Mining and Reclamation	2968
REDISTRICTING			
9.	(HB510)	Redistricting of the State's Congressional Districts	2979

TABLE OF CONTENTS

10. (HB511) Redistricting of the Senate and
House of Delegates 2981

SYNTHETIC FUEL

11. (SB5006) Relating to Privilege Taxes
Imposed on Production of
Synthetic Fuels 3027

TOURISM

12. (HB507) Relating to Use of the Tourism
Promotion Fund to Support the
2001 World Rafting Championships
in West Virginia 3042

ACTS

Sixth Extraordinary Session, 2001

Chapter	Bill No.	Page
APPROPRIATIONS		
1.	(HB609)	Supplemental Appropriation to the Department of Agriculture 3045
2.	(HB610)	Supplemental Appropriation to the Division of Natural Resources 3047
3.	(HB611)	Supplemental Appropriation to the Division of Forestry 3048
4.	(HB612)	Supplemental Appropriation to the Development Office 3050
5.	(HB613)	Supplemental Appropriation to the State Police 3051
6.	(HB614)	Supplemental Appropriation to the Division of Protective Services 3053
7.	(HB615)	Expiring Certain Funds to the General Revenue Fund and Making a Supplemental Appropriation to the Division of Protective Services 3054
8.	(HB618)	Supplemental Appropriation to the Board of Risk and Insurance Management 3056
9.	(SB6016)	Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission 3058
10.	(SB6017)	Making Supplementary Appropriation to Office of Emergency Services 3059
11.	(SB6018)	Making Supplementary Appropriation to Higher Education Policy Commission 3061

TABLE OF CONTENTS

12.	(SB6019)	Making Supplementary Appropriation to Bureau of Environment, Special Reclamation Fund	3064
13.	(SB6020)	Making Supplementary Appropriation to Bureau of Environment, Solid Waste Management Board	3065
14.	(SB6021)	Making Supplementary Appropriation to Bureau of Environment, Mining and Reclamation Operations Fund	3067
15.	(SB6022)	Making Supplementary Appropriation to Bureau of Environment, Solid Waste Reclamation and Environmental Response Fund	3069
16.	(SB6023)	Making Supplementary Appropriation to Auditor's Office, National White Collar Crime Center	3070

CORRECTIONAL FACILITIES

17.	(HB608)	Acquisition, Construction, Leasing and Financing of Regional Jail, Juvenile Detention, Corrections and State Police Facilities	3072
-----	---------	---	------

FAMILY COURT SYSTEM

18.	(SB6024)	Making Technical Revisions to Law Creating Family Court System; Adjusting Certain Salary Levels	3086
-----	----------	---	------

MEDICAL MALPRACTICE

19.	(HB601)	Establishment and Operation of Medical Professional Liability Insurance Programs	3092
20.	(SB6014)	Relating to Medical Malpractice Liability Insurance Generally	3169

MILITARY LEAVE OF ABSENCE

21.	(HB604)	Relating to Leave of Absence for Public Officials and Employees for Certain Military Obligations	3180
-----	---------	--	------

TAXATION

22. (HB605) Personal Income Tax Exemption
for Members of the National Guard
or Reserve Forces Called to
Active Duty for "Operation
Enduring Freedom" or Domestic
Security Duty 3181

TERRORIST ACTS

23. (*SB6002) Relating to Terrorist Threats
Generally 3183

CHAPTER 189

(S. B. 429 — By Senators Bowman, Bailey and Minear)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licenses issued by the contractor licensing board; deleting outdated language creating exemption from examination; clarifying right to a hearing before suspension or revocation of license; clarifying right to appeal board decisions to circuit court; requiring written contracts; requiring board to file procedural rule; allowing board to require financial assurance from contractors who violate act or rule; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-7. Application for and issuance of license.

§21-11-8. Licenses; expiration date; fees; renewal.

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

§21-11-13. Violation of article; injunction; criminal penalties.

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

§21-11-7. Application for and issuance of license.

1 (a) A person desiring to be licensed as a contractor under
2 this article shall submit to the board a written application
3 requesting licensure, providing the applicant's social security
4 number and such other information as the board may require,
5 on forms supplied by the board. The applicant shall pay a
6 license fee not to exceed one hundred fifty dollars: *Provided,*
7 That electrical contractors already licensed under section
8 four, article three-b, chapter twenty-nine of this code shall
9 pay no more than twenty dollars.

10 (b) A person holding a business registration certificate to
11 conduct business in this state as a contractor on the thirtieth
12 day of September, one thousand nine hundred ninety-one,
13 may register with the board, certify by affidavit the require-
14 ments of subsection (c), section fifteen of this article, and pay
15 such license fee not to exceed one hundred fifty dollars and
16 shall be issued a contractor's license without further exami-
17 nation: *Provided,* That no license may be issued without ex-
18 amination pursuant to this subsection after the first day of
19 April, two thousand two.

§21-11-8. Licenses; expiration date; fees; renewal.

1 (a) A license issued under the provisions of this article
2 expires one year from the date on which it is issued. The
3 board shall establish application and annual license fees not
4 to exceed one hundred fifty dollars.

5 (b) The board may propose rules in accordance with the
6 provisions of article three, chapter twenty-nine-a of this code,
7 to establish license and renewal fees.

**§21-11-10. Prerequisites to obtaining building permit; manda-
tory written contracts.**

1 (a) Any person making application to the building in-
2 spector or other authority of any incorporated municipality or
3 other political subdivision in this state charged with the duty
4 of issuing building or other permits for the construction of
5 any building, highway, sewer or structure or for any removal

6 of materials or earth, grading or improvement, shall, before
7 issuance of the permit, either furnish satisfactory proof to the
8 inspector or authority that such person is duly licensed under
9 the provisions of this article to carry out or superintend the
10 same, or file a written affidavit that such person is not subject
11 to licensure as a contractor or subcontractor as defined in this
12 article. The inspector or authority may not issue a building
13 permit to any person who does not possess a valid contrac-
14 tor's license when required by this article.

15 (b) Effective the first day of October, two thousand two,
16 no person licensed under the provisions of this article may
17 perform contracting work of an aggregate value of ten thou-
18 sand dollars or more, including materials and labor, without a
19 written contract, setting forth a description and cost of the
20 work to be performed, signed by the licensee and the person
21 for whom the work is to be performed.

22 (c) On or before the first day of June, two thousand two,
23 the board shall file a procedural rule setting forth a standard
24 contract form which meets the minimum requirements of this
25 subsection for use by licensees. The board shall post the con-
26 tract form on its website and shall assist licensees in the cor-
27 rect completion of the form. On or before the first day of
28 August, two thousand two, the board shall mail a written
29 notice of the requirements imposed by the rule to each li-
30 censed contractor at the address provided to the board by the
31 contractor on his or her last application for licensure or re-
32 newal.

§21-11-13. Violation of article; injunction; criminal penalties.

1 (a) Upon a determination that a person is engaged in
2 contracting business in the state without a valid license, the
3 board or commissioner shall issue a cease and desist order
4 requiring such person to immediately cease all operations in

5 the state. The order shall be withdrawn upon issuance of a
6 license to such person. After a hearing, the board may impose
7 a penalty of not less than two hundred dollars nor more than
8 one thousand dollars upon any person engaging in contract-
9 ing business in the state without a valid license.

10 (b) Any person continuing to engage in contracting busi-
11 ness in the state without a valid license after service of a
12 cease and desist order is guilty of a misdemeanor and, upon
13 conviction, is subject to the following penalties:

14 (1) For a first offense, a fine of not less than two hundred
15 dollars nor more than one thousand dollars;

16 (2) For a second offense, a fine of not less than five hun-
17 dred dollars nor more than five thousand dollars, or confine-
18 ment in the county or regional jail for not more than six
19 months, or both;

20 (3) For a third or subsequent offense, a fine of not less
21 than one thousand dollars nor more than five thousand dol-
22 lars, and confinement in the county or regional jail for not
23 less than thirty days nor more than one year.

24 (c) The board may institute proceedings in the circuit
25 court of the county in which the alleged violations of the
26 provisions of this article occurred or are now occurring to
27 enjoin any violation of any provision of this article.

28 (d) Any person who undertakes any construction work
29 without a valid license when such license is required by this
30 article, when the total cost of the contractor's construction
31 contract on any project upon which the work is undertaken is
32 twenty-five thousand dollars or more, shall, in addition to any
33 other penalty herein provided, be assessed by the board an

34 administrative penalty not to exceed two hundred dollars per
35 day for each day the person is in violation.

36 (e) The board shall, by rule, provide for an administrative
37 hearing before a penalty is levied and for review of any final
38 ruling issued pursuant to such hearing.

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

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

3 (1) Permanently revoke a license;

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

5 (3) Censure or reprimand a licensee;

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

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

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

15 (7) Order a contractor who has been found, after hearing,
16 to have violated any provision of this article or the rules of
17 the board to provide, as a condition of licensure, assurance of
18 financial responsibility. The form of financial assurance may
19 include, but is not limited to, a surety bond, a cash bond, a
20 certificate of deposit, an irrevocable letter of credit or perfor-
21 mance insurance: *Provided*, That the amount of financial

22 assurance required under this subdivision may not exceed the
23 total of the aggregate amount of the judgments or liens levied
24 against the contractor or the aggregate value of any corrective
25 work ordered by the board or both: *Provided, however,* That
26 the board may remove this requirement for licensees against
27 whom no complaints have been filed for a period of five
28 continuous years.

29 (b) No license issued under the provisions of this article
30 may be suspended or revoked without a prior hearing before
31 the board: *Provided,* That the board may summarily suspend
32 a licensee pending a hearing or pending an appeal after hear-
33 ing upon a determination that the licensee poses a clear, sig-
34 nificant and immediate danger to the public health and safety.

35 (c) The board may reinstate the suspended or revoked
36 license of a person, if, upon a hearing, the board finds and
37 determines that the person is able to practice with skill and
38 safety.

39 (d) The board may accept the voluntary surrender of a
40 license: *Provided,* That the license may not be reissued un-
41 less the board determines that the licensee is competent to
42 resume practice and the licensee pays the appropriate renewal
43 fee.

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

53 (f) Any party adversely affected by any action of the
54 board may appeal that action in either the circuit court of
55 Kanawha County, West Virginia, or in the circuit court of the
56 county in which the petitioner resides or does business,
57 within thirty days after the date upon which the petitioner
58 received notice of the final order or decision of the board.

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

60 (1) Abandonment, without legal excuse, of any construc-
61 tion project or operation engaged in or undertaken by the
62 licensee;

63 (2) Willful failure or refusal to complete a construction
64 project or operation with reasonable diligence, thereby caus-
65 ing material injury to another;

66 (3) Willful departure from or disregard of plans or speci-
67 fications in any material respect without the consent of the
68 parties to the contract;

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

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

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

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

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

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

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

101 (11) Performing work which is not commensurate with a
102 general standard of the specific classification of contractor or
103 which is below a building or construction code adopted by
104 the municipality or county in which the work is performed;

105 (12) Knowingly employing a person or persons who do
106 not have the legal right to be employed in the United States;

107 (13) Failing to execute written contracts prior to perform-
108 ing contracting work, in accordance with section ten of this
109 article; or

110 (14) Failing to abide by an order of the board.

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

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

CHAPTER 190

(H. B. 4314 — By Delegates Swartzmiller and DeLong)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing reserve officers to carry weapons other than firearms; requiring certification of completion of training; and providing for rule making to establish training requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

1 (a) The sheriff of any county may, for the purposes here-
2 inafter set forth, designate and appoint a deputy sheriffs'
3 reserve, hereinafter referred to as "reserve" or "reserves." A
4 reserve may not be designated or created without the prior
5 approval of the county commission for the establishment of
6 the reserve.

7 (b) Each sheriff may appoint as members of the reserve
8 bona fide citizens of the county who are of good moral char-
9 acter and who have not been convicted of a felony or other
10 crime involving moral turpitude. Any person so appointed
11 shall serve at the will and pleasure of the sheriff and is not
12 subject to the provisions of article fourteen, chapter seven of
13 this code. A member of the reserve may not engage in any
14 political activity or campaign involving the office of sheriff
15 or from which activity or campaign the sheriff or candidates
16 therefor appointing the member would directly benefit.

17 (c) Members of the reserves shall not serve as law-en-
18 forcement officers, nor carry firearms, but may carry other
19 weapons, provided that the sheriff certifies in writing to the
20 county commission that the reserve has met the special train-
21 ing requirements for the weapon as established by the gover-
22 nor's committee on crime, delinquency and corrections. The
23 governor's committee on crime, delinquency and corrections
24 is authorized to promulgate legislative rules and emergency
25 rules pursuant to the provisions of article three, chapter
26 twenty-nine-a of this code to establish appropriate training

27 standards. The reserves may be provided with radio commu-
28 nication equipment for the purpose of maintaining contact
29 with the sheriff's department or other law-enforcement agen-
30 cies. The duties of the reserves shall be limited to crowd
31 control or traffic control and direction within the county. In
32 addition, the reserves may perform such other duties of a
33 nonlaw-enforcement nature as are designated by the sheriff
34 or by a deputy sheriff designated and appointed by the sheriff
35 for that purpose: *Provided*, That a member of the reserves
36 may not aid or assist any law-enforcement officer in enforc-
37 ing the statutes and laws of this state in any labor trouble or
38 dispute between employer and employee.

39 (d) Members of the reserves may be uniformed; however,
40 if so uniformed, the uniforms shall clearly differentiate these
41 members from other law-enforcement deputy sheriffs.

42 (e) After appointment to the reserves but prior to service
43 each member of the reserves shall receive appropriate train-
44 ing and instruction in their functions and authority as well as
45 the limitations of authority. In addition, each member of the
46 reserves shall annually receive in-service training.

47 (f) Each member of the reserve shall take the same oath
48 as prescribed by section five, article IV of the constitution of
49 the state of West Virginia, but the taking of the oath does not
50 serve to make the member a public officer.

51 (g) The county commission of each county shall provide
52 for the bonding and liability insurance of each member of the
53 reserve.

54 (h) A member of the reserve is not an employee of either
55 the sheriff or of the county commission for any purpose or
56 purposes, including, but not limited to, the purposes of work-
57 ers' compensation, civil service, unemployment compensa-
58 tion, public employees retirement, public employees insur-
59 ance or for any other purpose. A member of the reserves may

60 not receive any compensation or pay for any services per-
61 formed as a member nor may a member use the designated
62 uniform for any other similar work performed.

63 (i) Neither the county commission nor the sheriff is liable
64 for any of the acts of any member of the reserves except in
65 the case of gross negligence on the part of the county com-
66 mission or sheriff in the appointment of the member or in the
67 case of gross negligence on the part of either the sheriff or
68 any of his or her deputies in directing any action on the part
69 of the member.

CHAPTER 191

(Com. Sub. for H. B. 2808 — By Delegates Stemple, Mezzatesta, Wil-
liams, Warner, Fletcher, Butcher and Martin)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four-
teen-d, chapter seven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to providing
that certain sheriffs with prior service as deputy sheriff and
sheriff may participate in the deputy sheriffs' retirement sys-
tem.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-24. Service as sheriff.

1 (a) Any active member who after the effective date of
2 this article is elected sheriff of a county in West Virginia may
3 elect to continue as a member in this plan by paying the
4 amounts required by section seven of this article. Upon the
5 election, service as a sheriff shall be treated as covered em-
6 ployment and the sheriff is not entitled to any credit for that
7 service under any other retirement system of the state.

8 (b) Any member retired as a deputy sheriff under this
9 plan who, after the effective date of this article, is elected or
10 appointed sheriff of a county in West Virginia, may elect to
11 suspend the payment of his or her annuity from this system
12 and again become a contributing member of this plan by
13 paying the amounts required by section seven of this article.
14 Upon such election, service as a sheriff shall be treated as
15 covered employment, and the sheriff is not entitled to any
16 credit for that period of elected service under any other retire-
17 ment system of the state. At the end of his or her term as
18 sheriff, the member making such election shall have his or
19 her annuity recalculated, and shall be granted an adjustment
20 to his or her previous annuity to include the period of elected
21 service.

22 (c) Any person, who before the effective date of this
23 article was elected sheriff of a county in West Virginia, and
24 who, immediately prior to being so elected sheriff, was a
25 deputy sheriff with at least twenty years of credited service
26 under the public employees retirement system, with at least
27 sixteen of those twenty years having been earned as a deputy
28 sheriff, may elect to become a member of this plan by paying
29 the amounts required by section seven of this article. Upon
30 such election, service shall be transferred from the public
31 employees retirement system pursuant to section eight of this
32 article: *Provided*, That any service as a sheriff shall be treated
33 as covered employment under this article and the sheriff is
34 not entitled to any credit for that service as a sheriff or the
35 prior service as a deputy sheriff under any other retirement
36 system of the state. Persons making the election provided for

37 in this subsection shall do so within ten days of taking office
38 as sheriff or within ten days of the effective date of this pro-
39 vision.

40 (d) Any person who, before the effective date of this
41 article, was elected sheriff of a county of West Virginia, and
42 who, prior to being elected sheriff, was a deputy sheriff and
43 also a previously elected sheriff, with credited service under
44 the public employees retirement system, with at least sixteen
45 of those years having been earned as combined service as a
46 deputy sheriff and a previously elected sheriff, may elect to
47 become a member of this plan by paying the amounts re-
48 quired by section seven of the article. Upon such election,
49 service shall be transferred from the public employees retire-
50 ment system pursuant to section eight of this article: *Pro-*
51 *vided*, That a person's service as a sheriff shall be treated as
52 covered employment under this article, and that person is not
53 entitled to any credit for that service as a sheriff or deputy
54 sheriff under any other retirement system of this state. A
55 person making the election provided in this subsection shall
56 do so within thirty days of taking office as a sheriff or within
57 thirty days of the effective date of this provision.

CHAPTER 192

**(Com. Sub. for H. B. 4268 — By Delegates C. White, Yeager, Caputo,
Hrutkay and Marshall)**

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to law-enforcement training and certification; permitting the certification in another

program of applicants who have completed minimum training requirements in the program to which he or she originally applied; permitting the conditional re-employment of certain persons as law-enforcement officers; and providing a one year period during which a person who was previously conditionally employed as a law-enforcement officer, but who failed to submit a timely application to an approved law-enforcement training academy, may submit an application to an approved law-enforcement training academy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below,
2 no person may be employed as a law-enforcement officer by
3 any West Virginia law-enforcement agency or by any state
4 institution of higher education on or after the effective date of
5 this article unless the person is certified, or is certifiable in
6 one of the manners specified in subsections (c) through (e)
7 below, by the governor's committee as having met the mini-
8 mum entry level law-enforcement qualification and training
9 program requirements promulgated pursuant to this article.

10 (b) Except as provided in subsection (g) below, a person
11 who is not certified, or certifiable in one of the manners spec-
12 ified in subsections (c) through (e) below, may be condition-
13 ally employed as a law-enforcement officer until certified:
14 *Provided, That* within ninety calendar days of the commence-
15 ment of employment or the effective date of this article if the
16 person is already employed on the effective date, he or she

17 makes a written application to attend an approved law-en-
18 forcement training academy. The person's employer shall
19 provide notice, in writing, of the ninety-day deadline to file a
20 written application to the academy within thirty calendar
21 days of that person's commencement of employment. The
22 employer shall provide full disclosure as to the consequences
23 of failing to file a timely written application. The academy
24 shall notify the applicant in writing of the receipt of the ap-
25 plication and of the tentative date of the applicant's enroll-
26 ment. Any applicant who, as the result of extenuating circum-
27 stances acceptable to his or her law-enforcement official, is
28 unable to attend the scheduled training program to which he
29 or she was admitted may reapply and shall be admitted to the
30 next regularly scheduled training program. An applicant who
31 satisfactorily completes the program shall, within thirty days
32 of completion, make written application to the governor's
33 committee requesting certification as having met the mini-
34 mum entry level law-enforcement qualification and training
35 program requirements. Upon determining that an applicant
36 has met the requirements for certification, the governor's
37 committee shall forward to the applicant documentation of
38 certification. An applicant who fails to complete the training
39 program to which he or she is first admitted, or was admitted
40 upon reapplication, may not be certified by the governor's
41 committee: *Provided, however,* That an applicant who has
42 completed the minimum training required by the governor's
43 committee may be certified as a law-enforcement officer,
44 notwithstanding the applicant's failure to complete additional
45 training hours required in the training program to which he or
46 she originally applied.

47 (c) Any person who is employed as a law-enforcement
48 officer on the effective date of this article and is a graduate of
49 the West Virginia basic police training course, the West Vir-
50 ginia state police cadet training program, or other approved
51 law-enforcement training academy, is certifiable as having

52 met the minimum entry level law-enforcement training pro-
53 gram requirements and is exempt from the requirement of
54 attending a law-enforcement training academy. To receive
55 certification, the person shall make written application within
56 ninety calendar days of the effective date of this article to the
57 governor's committee requesting certification. The gover-
58 nor's committee shall review the applicant's relevant scho-
59 lastic records and, upon determining that the applicant has
60 met the requirements for certification, shall forward to the
61 applicant documentation of certification.

62 (d) Any person who is employed as a law-enforcement
63 officer on the effective date of this article and is not a gradu-
64 ate of the West Virginia basic police training course, the
65 West Virginia state police cadet training program, or other
66 approved law-enforcement training academy, is certifiable as
67 having met the minimum entry level law-enforcement train-
68 ing program requirements and is exempt from the require-
69 ment of attending a law-enforcement training academy if the
70 person has been employed as a law-enforcement officer for a
71 period of not less than five consecutive years immediately
72 preceding the date of application for certification. To receive
73 certification, the person shall make written application within
74 ninety calendar days following the effective date of this arti-
75 cle to the governor's committee requesting certification. The
76 application shall include notarized statements as to the appli-
77 cant's years of employment as a law-enforcement officer.
78 The governor's committee shall review the application and,
79 upon determining that the applicant has met the requirements
80 for certification, shall forward to the applicant documentation
81 of certification.

82 (e) Any person who begins employment on or after the
83 effective date of this article as a law-enforcement officer is
84 certifiable as having met the minimum entry level law-en-
85 forcement training program requirements and is exempt from

86 attending a law-enforcement training academy if the person
87 has satisfactorily completed a course of instruction in law
88 enforcement equivalent to or exceeding the minimum appli-
89 cable law-enforcement training curricula promulgated by the
90 governor's committee. To receive certification, the person
91 shall make written application within ninety calendar days
92 following the commencement of employment to the gover-
93 nor's committee requesting certification. The application
94 shall include a notarized statement of the applicant's satisfac-
95 tory completion of the course of instruction in law enforce-
96 ment, a notarized transcript of the applicant's relevant scho-
97 lastic records, and a notarized copy of the curriculum of the
98 completed course of instruction. The governor's committee
99 shall review the application and, if it finds the applicant has
100 met the requirements for certification shall forward to the
101 applicant documentation of certification.

102 (f) Any person who is employed as a law-enforcement
103 officer on or after the effective date of this article and fails to
104 be certified shall be automatically terminated and no further
105 emoluments shall be paid to such officer by his or her em-
106 ployer. Any person terminated shall be entitled to reapply, as
107 a private citizen, to the subcommittee for training and certifi-
108 cation, and upon being certified may again be employed as a
109 law-enforcement officer in this state: *Provided*, That if a
110 person is terminated under this subsection because an appli-
111 cation was not timely filed to the academy, and the person's
112 employer failed to provide notice or disclosure to that person
113 as set forth in subsection (b) of this section, the employer
114 shall pay the full cost of attending the academy if the per-
115 son's application to the subcommittee as a private citizen is
116 subsequently approved.

117 (g) Nothing in this article may be construed as prohibit-
118 ing any governing body, civil service commission or chief
119 executive of any West Virginia law-enforcement agency

120 from requiring their law-enforcement officers to meet qualifi-
121 cations and satisfactorily complete a course of law-enforce-
122 ment instruction which exceeds the minimum entry level
123 law-enforcement qualification and training curricula promul-
124 gated by the governor's committee.

125 (h) The requirement of this section for qualification,
126 training and certification of law-enforcement officers shall
127 not be mandatory during the two years next succeeding the
128 effective date of this article for the law-enforcement officers
129 of a law-enforcement agency which employs a civil service
130 system for its law-enforcement personnel, nor shall such
131 provisions be mandatory during the five years next succeed-
132 ing the effective date of this article for law-enforcement offi-
133 cers of a law-enforcement agency which does not employ a
134 civil service system for its law-enforcement personnel: *Pro-*
135 *vided*, That such requirements shall be mandatory for all such
136 law-enforcement officers until their law-enforcement offi-
137 cials apply for their exemption by submitting a written plan
138 to the governor's committee which will reasonably assure
139 compliance of all law-enforcement officers of their agencies
140 within the applicable two or five-year period of exemption.

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

145 (j) Any person terminated from employment for not fil-
146 ing an application to the law-enforcement training academy
147 within ninety days after commencing employment as a law-
148 enforcement officer may appeal the termination to the gover-
149 nor's committee for reconsideration on an individual basis.

150 (k) Beginning the first day of July, two thousand two,
151 until the thirtieth day of June, two thousand three, any appli-

152 cant who has been conditionally employed as a law-enforce-
153 ment officer who failed to submit a timely application pursu-
154 ant to the provisions of this section, may be conditionally
155 employed as a law-enforcement officer and may resubmit an
156 application pursuant to subsection (b) of this section to an
157 approved law-enforcement training academy. If the applicant
158 is accepted, the employer shall pay compensation to the em-
159 ployee for attendance at the law-enforcement training acad-
160 emy at the rate provided in section eight of this article.

CHAPTER 193

(Com. Sub. for H. B. 4119 — By Delegates C. White, Givens, Pino,
Stemple, Perry, Shelton and Hrutkay)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to in-service law-enforcement training requirements for certain law-enforcement officers who are members of the armed forces, national guard, or reserve of any such group.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-6. Review of certification.

1 Certification of each West Virginia law-enforcement
2 officer shall be reviewed annually following the first certifi-
3 cation and until such time as the officer may achieve exempt
4 rank. Certification may be revoked or not renewed if any
5 law-enforcement officer fails to attend annually an in-service
6 approved law-enforcement training program, or if a law-en-
7 forcement officer achieving exempt rank fails to attend bien-
8 nially an approved in-service supervisory level training pro-
9 gram. When a law-enforcement officer is a member of the
10 United States air force, army, coast guard, marines or navy,
11 or a member of the national guard or reserve military forces
12 of any such armed forces, and has been called to active duty,
13 resulting in separation from a law-enforcement agency for
14 more than twelve months but less than twenty-four months,
15 he or she shall attend and complete the mandated in-service
16 training for the period and rank and qualify with his or her
17 firearm within ninety days from his or her reappointment as a
18 law-enforcement officer by a law-enforcement agency.

CHAPTER 194

(H. B. 4289 — By Delegates Amores, Manuel, Marshall, Webster,
Staton, Smirl and Webb)

[Passed February 25, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-nine, chapter thirty 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 racial profiling by law-enforcement officers and agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-10. Prohibition of racial profiling.

1 (a) The Legislature finds that the use by a law-enforce-
2 ment officer of race, ethnicity, or national origin in deciding
3 which persons should be subject to traffic stops, stops and
4 frisks, questioning, searches, and seizures is a problematic
5 law-enforcement tactic. The reality or public perception of
6 racial profiling alienates people from police, hinders commu-
7 nity policing efforts, and causes law-enforcement officers
8 and law-enforcement agencies to lose credibility and trust
9 among the people law-enforcement is sworn to protect and
10 serve. Therefore, the West Virginia Legislature declares that
11 racial profiling is contrary to public policy and should not be
12 used as a law-enforcement investigative tactic.

13 (b) For purposes of this section:

14 (1) The term “law-enforcement officer” means any duly
15 authorized member of a law-enforcement agency who is au-
16 thorized to maintain public peace and order, prevent and
17 detect crime, make arrests and enforce the laws of the state or
18 any county or municipality thereof.

19 (2) The term “municipality” means any incorporated
20 town or city whose boundaries lie within the geographic
21 boundaries of the state.

22 (3) The term “racial profiling” means the practice of a
23 law-enforcement officer relying, to any degree, on race, eth-

24 nicity, or national origin in selecting which individuals to
25 subject to routine investigatory activities, or in deciding upon
26 the scope and substance of law-enforcement activity follow-
27 ing the initial routine investigatory activity. Racial profiling
28 does not include reliance on race, ethnicity, or national origin
29 in combination with other identifying factors when the law-
30 enforcement officer is seeking to apprehend a specific sus-
31 pect whose race, ethnicity, or national origin is part of the
32 description of the suspect.

33 (4) The term “state and local law-enforcement agencies”
34 means any duly authorized state, county or municipal organi-
35 zation employing one or more persons whose responsibility
36 is the enforcement of laws of the state or any county or mu-
37 nicipality thereof.

38 (c) No law-enforcement officer shall engage in racial
39 profiling.

40 (d) All state and local law-enforcement agencies shall
41 establish and maintain policies and procedures designed to
42 prevent racial profiling. Policies and procedures shall include
43 the following:

44 (1) A prohibition on racial profiling;

45 (2) Independent procedures for receiving, investigating,
46 and responding to complaints alleging racial profiling by
47 law-enforcement officers;

48 (3) Procedures to discipline law-enforcement officers
49 who engage in racial profiling; and

50 (4) Any other policies and procedures deemed necessary
51 by state and local law-enforcement agencies to eliminate
52 racial profiling.

CHAPTER 195

(Com. Sub. for S. B. 554 — By Senators Sharpe, Minard, Ross, Wooton, Anderson, Oliverio, Burnette, Sprouse, Minear, Kessler, Fanning, Snyder, Caldwell, Mitchell, Helmick, Edgell, Unger, McCabe, Plymale, Craigo, Prezioso, Bowman, Jackson, Bailey, Hunter, Rowe, Love, McKenzie, Tomblin, Mr. President, and Chafin)

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three and four, article three, chapter fifty-nine of said code, all relating to legal advertising; increasing legal advertising rates; modifying requirements for publication, typesetting and circulation; and permitting qualified newspapers to charge usual and customary rates for notarizing and producing additional copies of affidavits and statements.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 8. Municipal Corporations.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-23. Preparation, publication and disposition of financial statements.

1 (a) Every city, within ninety days after the beginning of
2 each fiscal year, shall prepare on a form to be prescribed by
3 the state tax commissioner and cause to be published a sworn
4 statement revealing: (1) The receipts and expenditures of the
5 city during the previous fiscal year; (2) the name of each
6 person who received more than fifty dollars during the previ-
7 ous fiscal year, together with the amount received; and (3) all
8 debts of the city, the purpose for which each debt was con-
9 tracted, its due date and to what date the interest on the debt
10 has been paid. The statement shall be published as a Class I
11 legal advertisement in compliance with the provisions of
12 article three, chapter fifty-nine of this code and the publica-
13 tion area for the publication shall be the city: *Provided*, That
14 all salaries, receipts, payments to each individual vendor and
15 expenditures to employees of municipal offices, companies
16 and departments may be published in the aggregate.

17 (b) Every city shall transmit to any resident of the city
18 who requests it a copy of any published statement for the
19 fiscal year designated, supplemented by a document listing
20 the names of each person who received less than fifty dollars
21 from any fund during the fiscal year and showing the amount
22 paid to each and the purpose for which paid and an itemiza-
23 tion of the salaries, receipts, payments to each individual
24 vendor and expenditures to employees of municipal offices,
25 companies and departments otherwise published in the aggre-
26 gate.

27 (c) Every town or village, within one hundred twenty
28 days after the beginning of each fiscal year, shall prepare on
29 a form to be prescribed by the state tax commissioner a
30 sworn statement revealing: (1) The receipts and expenditures

31 of the town or village during the previous fiscal year ar-
32 ranged under descriptive headings; (2) the name of each per-
33 son who received money from any fund during the previous
34 fiscal year, together with the amount received and the pur-
35 pose for which paid; and (3) all debts of the town or village,
36 the purpose for which each debt was contracted, its due date
37 and to what date the interest on the debt has been paid: *Pro-*
38 *vided*, That all salaries, receipts, payments to each individual
39 vendor and expenditures to employees of municipal offices,
40 companies and departments may be published in the aggre-
41 gate.

42 (d) Every town or village shall transmit to any resident of
43 the town or village who requests it, a copy of any statement
44 for the fiscal year designated. Any town or village may, if its
45 governing body thereof elects, also publish the statement as a
46 Class I legal advertisement in compliance with the provisions
47 of article three, chapter fifty-nine of this code and in that
48 event, the publication area for the publication shall be the
49 town or village.

50 (e) The statement required by subsection (a) of this sec-
51 tion and the statement required by subsection (c) of this sec-
52 tion shall be sworn to by the recorder, the mayor and two
53 members of the governing body of the municipality. As soon
54 as practicable following the close of the fiscal year, a copy of
55 any statement required by this section shall be filed by the
56 municipality with the state tax commissioner, the clerk of the
57 county commission of the county and the clerk of the circuit
58 court of the circuit in which the municipality or the major
59 portion of the territory of the municipality is located. If the
60 governing body fails or refuses to perform any of the duties
61 set forth in this section, every member of the governing body
62 and the recorder of the governing body concurring in the
63 failure or refusal shall be guilty of a misdemeanor and, upon
64 conviction thereof, shall be fined not less than ten nor more

65 than one hundred dollars. If any of the provisions of this
66 section are violated, it is the duty of the prosecuting attorney
67 of the county in which the municipality or the major portion
68 of the territory of the municipality is located to immediately
69 present the evidence of the violation to the grand jury if in
70 session, and if not in session he or she shall cause the viola-
71 tions to be investigated by the next succeeding grand jury.

72 (f) Where in subsections (a), (b) and (c) of this section,
73 salaries, receipts, payments to each individual vendor and
74 expenditures are published in the aggregate, the city, town or
75 village shall, upon written request, provide to any resident of
76 the city, town or village an itemized accounting of the sala-
77 ries, receipts, payments to each individual vendor and expen-
78 ditures.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWS- PAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-1. Definitions and general provisions.

§59-3-2. Classification of legal advertisements; designation of newspapers; fre-
quency of publication; posting; manner of publishing.

§59-3-3. Rates for legal advertisements; computation; filing affidavits with secre-
tary of state.

§59-3-4. Proof of publication and posting.

§59-3-1. Definitions and general provisions.

1 (a) As used in this article, elsewhere in this code or in
2 any other provision of law:

3 (1) "Legal advertisement" means any notice, advertise-
4 ment, statement, information or other matter required by law
5 or court to be published.

6 (2) "Publication area" means the area or areas for which
7 a legal advertisement is required by law or court to be made.

8 (3) “Once a week for two successive weeks” means two
9 publications of a legal advertisement in a qualified newspa-
10 per occurring within a period of fourteen consecutive days
11 with at least an interval of six full days within the period
12 between the date of the first publication and the date of the
13 second publication.

14 (4) “Once a week for three successive weeks” means
15 three publications of a legal advertisement in a qualified
16 newspaper occurring within a period of twenty-one consecu-
17 tive days with at least an interval of six full days within the
18 period between the date of the first publication and the date
19 of the second publication and with at least an interval of six
20 full days within the period between the date of the second
21 publication and the date of the third publication.

22 (5) “Publication date” means the date on which a quali-
23 fied newspaper is first placed in circulation.

24 (6) “General circulation” means not only a newspaper
25 meeting the other qualifications specified in subsection (b) of
26 this section and circulated among and of interest to the gen-
27 eral public in the area in which it circulates, but also a news-
28 paper meeting said other qualifications, the actual circulation
29 of which throughout the publication area is large enough to
30 give basis for a reasonable belief that publication of a legal
31 advertisement in the newspaper will give effective notice to
32 the residents of the publication area.

33 (b) Wherever the term “qualified newspaper” or “quali-
34 fied newspapers” is used in this article, or the term “newspa-
35 per” or “newspapers” is used elsewhere in this code or in any
36 other provision of law in connection with a legal advertise-
37 ment as herein defined in this section, the terms shall be
38 taken to mean only a newspaper or newspapers, as the case
39 may be, published (unless otherwise expressly provided) in

40 the state of West Virginia and which meet the following
41 qualifications:

42 (1) Any newspaper shall be of regular issue and must
43 have a bona fide, general circulation in the publication area.
44 A newspaper is considered to be of regular issue if it is pub-
45 lished regularly, as frequently as once a week, for at least
46 fifty weeks during the calendar year as prescribed by its mail-
47 ing permit; and has been published for at least one year im-
48 mediately preceding the date on which the legal advertise-
49 ment is delivered to the newspaper for publication. A news-
50 paper is considered to be of bona fide, general circulation in
51 the publication area if it meets the definition of "general
52 circulation" as defined in this section and is circulated to the
53 general public at a definite price or consideration.

54 (2) Any newspaper shall bear a title or name, consist of
55 not less than four pages without a cover, and be a newspaper
56 to which the general public resorts for passing events of a
57 political, religious, commercial and social nature, and for
58 current happenings, announcements, miscellaneous reading
59 matters, advertisements and other notices.

60 (c) Notwithstanding any other provision of this code or
61 law to the contrary, a qualified newspaper shall for all pur-
62 poses be considered to be published where it is first placed in
63 circulation.

**§59-3-2. Classification of legal advertisements; designation of
newspapers; frequency of publication; posting;
manner of publishing.**

1 (a) A Class I legal advertisement shall be published one
2 time, a Class II legal advertisement shall be published once a
3 week for two successive weeks and a Class III legal adver-
4 tisement shall be published once a week for three successive
5 weeks in a qualified newspaper published in the publication

6 area; or if there is no qualified newspaper published in the
7 publication area or if no qualified newspaper published in the
8 publication area will publish the legal advertisement at the
9 rates specified in section three of this article, the legal adver-
10 tisement shall be published in a qualified newspaper pub-
11 lished outside the publication area; or if no qualified newspa-
12 per is published outside the publication area or if no qualified
13 newspaper published outside the publication area will publish
14 the legal advertisement at the rates specified in section three
15 of this article, the legal advertisement shall be posted in at
16 least three public places in the publication area, one of which
17 postings shall be in the county courthouse, at or near the front
18 door of the county court house, if a county courthouse is
19 located in the publication area and one of which postings
20 shall be in the municipal office building or municipal office
21 or offices, at or near the front door thereof, if the publication
22 area is a municipality.

23 (b) A Class I-0 legal advertisement shall be published
24 one time, a Class II-0 legal advertisement shall be published
25 once a week for two successive weeks, and a Class III-0 legal
26 advertisement shall be published once a week for three suc-
27 cessive weeks, in two qualified newspapers of opposite poli-
28 tics published in the publication area; or if two qualified
29 newspapers of opposite politics are not published in the pub-
30 lication area or if two qualified newspapers of opposite poli-
31 tics published in the publication area will not publish the
32 legal advertisement at the rates specified in section three of
33 this article, the legal advertisement shall be published in one
34 qualified newspaper published in the publication area; or if
35 there is no qualified newspaper published in the publication
36 area or if no qualified newspaper published in the publication
37 area will publish the legal advertisement at the rates specified
38 in section three of this article, the legal advertisement shall
39 be published in one qualified newspaper published outside
40 the publication area; or if no qualified newspaper is published

41 outside the publication area or if no qualified newspaper
42 published outside the publication area will publish the legal
43 advertisement at the rates specified in section three of this
44 article, the legal advertisement shall be posted in at least
45 three public places in the publication area, one of which post-
46 ings shall be in the county courthouse, at or near the front
47 door thereof, if a county courthouse is located in the publica-
48 tion area and one of which postings shall be in the municipal
49 office building or municipal office or offices, at or near the
50 front door thereof, if the publication area is a municipality.

51 (c) A legal advertisement may be published in a qualified
52 newspaper published on any day of the week except Sunday.

53 (d) All legal advertisements shall be published together
54 in continuous columns on one page of the newspaper publish-
55 ing them under a general heading styled "Legal Advertise-
56 ments", unless the number or size of the legal advertisements
57 requires the use of more than one page, in which event the
58 legal advertisements shall be published as near as practicable
59 in continuous columns on as many pages as necessary under
60 the same heading as above required.

**§59-3-3. Rates for legal advertisements; computation; filing
affidavits with secretary of state.**

1 (a) The rates which a publisher or proprietor of a quali-
2 fied newspaper in West Virginia may charge and receive for
3 a single or first publication of any legal advertisement set
4 solid depends on the bona fide circulation of the newspaper,
5 as follows:

6 (1) Four cents per word if the qualified newspaper has a
7 bona fide circulation of less than one thousand, except as
8 provided in subdivision (1), subsection (a) of this section;

9 (2) Eight and one-half cents per word if the qualified
10 newspaper has a bona fide circulation of one thousand to five
11 thousand;

12 (3) Nine cents per word if the qualified newspaper has a
13 bona fide circulation of more than five thousand but less than
14 ten thousand;

15 (4) Ten cents per word if the qualified newspaper has a
16 bona fide circulation of more than ten thousand and less than
17 thirty thousand; or

18 (5) Eleven cents per word if the qualified newspaper has
19 a bona fide circulation of thirty thousand or more: *Provided,*
20 That on the first day of July in the year two thousand three
21 and on the first day of July in the year two thousand four and
22 on the first day of July in the year two thousand five the al-
23 lowable rate per word in each of the classifications of quali-
24 fied newspapers with reference to circulation as set forth in
25 this subsection shall, for each classification, increase one cent
26 per word over the prior year's rate.

27 (b) In computing the number of words in a legal adver-
28 tisement, not set solid, the basis is the size of type in which
29 legal advertising is set by the qualified newspaper making the
30 publication and shall be computed at the legal rate as though
31 the matter were solid type, that is to say, on the basis of
32 eighty-four words to the single column inch in six point type
33 and fifty-four words to the single column inch in eight point
34 type and any other size type in proportion.

35 (c) In determining the cost of a legal advertisement
36 which is to appear more than once in the same qualified
37 newspaper, the cost for the first publication shall be com-
38 puted as specified in subsections (a) and (b) of this section
39 and the cost of the second and each subsequent publication
40 shall be seventy-five percent of the cost of the first publica-

41 tion computed as specified in subsections (a) and (b) of this
42 section.

43 (d) The average bona fide circulation stated by each qual-
44 ified newspaper in the statement filed by the newspaper with
45 the United States post office department in October of each
46 year shall control the rate of circulation classification of the
47 qualified newspaper for the period commencing the first day
48 of July of each year until the last day of June of the following
49 year. On or before the first day of November of each year, the
50 publisher or proprietor of each newspaper desiring to publish
51 any legal advertisement during the ensuing one year time
52 period commencing the first day of July shall file with the
53 secretary of state an affidavit stating the average bona fide
54 circulation of the newspaper during the preceding twelve
55 month time period ending the thirtieth day of September of
56 each year and shall set forth sufficient facts in the affidavit to
57 show whether the newspaper is a qualified newspaper. The
58 average bona fide circulation stated in the affidavit by each
59 qualified newspaper shall control the rate circulation classifi-
60 cation for the ensuing twelve-month period commencing the
61 first day of July. Any qualified newspaper for which the re-
62 quired affidavit is not filed on or before the first day of
63 March of any calendar year shall be conclusively presumed
64 to have for the ensuing twelve-month period commencing the
65 first day of July of such year a bona fide circulation of less
66 than one thousand. At the time a publisher or proprietor of a
67 qualified newspaper files an affidavit with the secretary of
68 state, as required by this subsection, the publisher or propri-
69 etor shall notify the clerk of the county commission and the
70 board of education of the county in which the qualified news-
71 paper is published of the circulation classification of the
72 qualified newspaper and of the applicable rate for publishing
73 legal advertisements in the qualified newspaper during the
74 ensuing twelve-month period commencing the first day of
75 July. If the qualified newspaper is published in a municipal-

76 ity, the publisher or proprietor shall at the same time also
77 furnish the same notification to the clerk or recorder of the
78 municipality.

79 (e) The rate charged for political advertising appearing in
80 a newspaper at any time or times during the time period com-
81 mencing thirty days prior to any primary or general election
82 and ending the day following the election may not exceed
83 one hundred five percent of the lowest commercial rate
84 charged by the newspaper in which the political advertising
85 appears.

86 (f) Nothing contained in this section prohibits qualified
87 newspapers from charging less than the specified rates for
88 any legal advertisement or from charging usual and custom-
89 ary rates for notarizing and producing additional copies of the
90 affidavits and statements required in section four of this arti-
91 cle.

§59-3-4. Proof of publication and posting.

1 (a) Any qualified newspaper publishing a legal advertise-
2 ment incident to any type of judicial proceeding or any provi-
3 sion in a deed of trust or contract, or incident to any other
4 case if required by the responsible party placing the legal
5 advertisement for publication, shall make and furnish under
6 oath an affidavit of publication of each legal advertisement
7 published, showing the number of times it was published in
8 the qualified newspaper, the dates of the publications and the
9 cost of the publications. When posting of any legal advertise-
10 ment is required in addition to publication of the legal adver-
11 tisement in a qualified newspaper, the posting shall be done
12 by the party responsible for causing the legal advertisement
13 to be published. In any case where any legal advertisement is
14 not required to be published in a qualified newspaper but is
15 required to be posted, an affidavit of the type provided for in

16 this section with respect to posting shall be made by the party
17 who would have been responsible for causing the legal adver-
18 tisement to be published in a qualified newspaper had it been
19 required.

20 (b) The affidavit of the publisher or proprietor of a quali-
21 fied newspaper required by this section, together with a copy
22 of the legal advertisement as published, constitutes prima
23 facie evidence that the legal advertisement was published or
24 published and posted as stated in the affidavit.

CHAPTER 196

(Com. Sub. for H. B. 4010 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 1, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend article two, chapter thirty-one-a of said code by adding thereto a new section, designated section four-b, all relating generally to powers of the commissioner of banking and of the tax commissioner; and providing that each commissioner has discretion to employ staff attorneys, retain outside counsel or request attorney general to provide representation in any judicial or administrative proceeding or furnish any other legal services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

31A. Banks and Banking.

CHAPTER 11. TAXATION.

ARTICLE 1. SUPERVISION.

§11-1-1a. Provision of legal services.

1 (a) The tax commissioner has plenary power and author-
2 ity to acquire those legal services the commissioner deems
3 necessary to carry out the functions and duties of the state tax
4 division or the office of tax commissioner, including, but not
5 limited to, representation of the tax division or the commis-
6 sioner in any administrative or judicial proceeding.

7 (b) The commissioner may acquire legal services from
8 attorneys licensed to practice law who are employed by the
9 commissioner on a salary basis or retained by the commis-
10 sioner on a reasonable fee basis.

11 (c) The commissioner may also request the assistance of
12 the attorney general and be represented in an administrative
13 or judicial proceeding by a deputy or assistant attorney gen-
14 eral acceptable to the commissioner.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4b. Provision of legal services.

1 (a) The commissioner of banking has plenary power and
2 authority to acquire those legal services the commissioner
3 deems necessary to carry out the functions and duties of the
4 division of banking or the office of commissioner of banking,
5 including, but not limited to, representation of the division or
6 the commissioner in any administrative or judicial proceed-
7 ing.

8 (b) The commissioner may acquire legal services from
9 attorneys licensed to practice law who are employed by the
10 commissioner on a salary basis or retained by the commis-
11 sioner on a reasonable fee basis.

12 (c) The commissioner may also request the assistance of
13 the attorney general and be represented in an administrative
14 or judicial proceeding by a deputy or assistant attorney gen-
15 eral acceptable to the commissioner.

CHAPTER 197

(Com. Sub. for H. B. 4172 — By Delegates Mahan, Wills, Cann,
Kominar, Faircloth and Riggs)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

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

ing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain legislative rules with amendments; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of administration to promulgate legislative rule relating to state purchasing card program; disapproving department of administration to promulgate legislative rule relating to parking; authorizing consolidated public retirement board to promulgate legislative rule relating to benefit determination and appeal; authorizing records management and preservation board to promulgate legislative rule relating to county records management and preservation grant program; authorizing consolidated public retirement board to promulgate legislative rule service credit for accrued and unused sick and annual leave; and authorizing board of risk and insurance management to promulgate legislative rule relating to mine subsidence insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

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

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

- §64-2-1. Department of administration and the auditor.
- §64-2-2. Consolidated public retirement board.
- §64-2-3. Records management and preservation board.
- §64-2-4. Board of risk and insurance management.

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

1 (a) The legislative rule filed in the state register on the
2 first day of November, two thousand one, under the authority
3 of section ten-a, article three, chapter twelve of this code,
4 relating to the department of administration and the auditor
5 (state purchasing card program, 148 CSR 7), is authorized
6 with the following amendment:

7 On page two, section 2.17.c., line three, after the words
8 'individuals where the' by striking out the words 'dues or';

9 (b) The legislative rule filed in the state register on the
10 thirteenth day of August, two thousand one, authorized under
11 the authority of section five, article four, chapter five-a, of
12 this code, modified by the department of administration to
13 meet the objections of the legislative rule-making review

14 committee and refiled in the state register on the tenth day of
15 January, two thousand two, relating to the department of
16 administration (parking, 148 CSR 6), is disapproved.

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

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, authorized under
3 the authority of section one, article ten-d, chapter five of this
4 code, relating to the consolidated public retirement board
5 (consolidated public retirement board benefit determination
6 and appeal, 162 CSR 2), is authorized.

7 (b) The legislative rule filed in the state register on the
8 first day of September, two thousand, authorized under the
9 authority of section one, article ten-d, chapter five, of this
10 code, modified by the consolidated public retirement board to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the fourteenth
13 day of December, two thousand, relating to the consolidated
14 public retirement board (service credit for accrued and un-
15 used sick and annual leave, 162 CSR 8), is authorized with
16 the amendments set forth below:

17 On page one, section 1.1, by adding a new sentence at the
18 end of the subdivision to read as follows: "Employees of the
19 judicial and legislative branches of government are exempt
20 from this rule.";

21 On page one, section 4.1, line twenty-six, following the
22 word "shall" by striking out the words "be deferential to" and
23 inserting in lieu thereof the word "accept"; and

24 On page two, section 4.1, line three, following the word
25 "policy" by striking out the words "shall have been formally
26 adopted in writing by the employer" and inserting in lieu
27 thereof the words "must be a written standard that is an ac-
28 cepted standard by the employer".

§64-2-3. Records management and preservation board.

1 The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand one, under the author-
3 ity of section fifteen, article eight, chapter five-a, of this
4 code, modified by the records management and preservation
5 board to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the fif-
7 teenth day of January, two thousand two, relating to the re-
8 cords management and preservation board (county records
9 management and preservation grant program, 100 CSR 1), is
10 authorized.

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

1 The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, under the
3 authority of section fifteen, article thirty, chapter thirty-three,
4 of this code, modified by the board of risk and insurance
5 management to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on
7 the fourteenth day of January, two thousand two, relating to
8 the board of risk and insurance management (mine subsi-
9 dence insurance, 115 CSR 1), is authorized.

CHAPTER 198

(Com. Sub. for H. B. 4163 — By Delegates Mahan, Wills, Cann,
Kominar, Faircloth and Riggs)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating generally to the promulga-

tion of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants; authorizing department of environmental protection to promulgate legislative rule relating to standard of performance for new stationary sources; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing department of environmental protection to promulgate legislative rule relating to acid rain provisions and permits; authorizing department of environmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of emissions from commercial and industrial solid waste incineration units; authorizing department of envi-

ronmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides from electric generating units; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants for source categories; authorizing department of environmental protection to promulgate legislative rule relating to awarding West Virginia stream partners program grants; authorizing department of environmental protection to promulgate legislative rule relating to voluntary remediation and redevelopment; authorizing department of environmental protection to promulgate legislative rule relating to surface mining and reclamation; authorizing department of environmental protection to promulgate legislative rule relating to coal-related dam safety; authorizing department of environmental protection to promulgate legislative rule relating to hazardous waste management; authorizing department of environmental protection to promulgate legislative rule relating to administrative proceedings and civil penalty assessment; authorizing department of environmental protection to promulgate legislative rule relating to state certification of activities requiring federal licenses and permits; authorizing department of environmental protection to promulgate legislative rule relating to underground injection control; authorizing department of environmental protection to promulgate legislative rule relating to groundwater protection standards at Dominion "Generation" steam electric generation facility at Mount Storm, West Virginia; authorizing department of environmental protection to promulgate legislative rule relating to WVNPDES rules for coal mining facilities; authorizing environmental quality board to promulgate legislative rule relating to requirements governing water quality standards; authorizing environmental quality board to promulgate legislative rule relating to requirements governing groundwater standards; and authorizing solid waste management board to promulgate legislative rule relating to disbursement of grants to solid waste authorities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

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

§64-3-2. Environmental quality board.

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

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

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, authorized
3 under the authority of section four, article five, chapter
4 twenty-two of this code, relating to the department of envi-
5 ronmental protection (ambient air quality standards for sulfur
6 oxides and particulate matter, 45 CSR 8), is authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-seventh day of July, two thousand one, authorized
9 under the authority of section four, article five, chapter
10 twenty-two of this code, relating to the department of envi-
11 ronmental protection (ambient air quality standards for car-
12 bon monoxide and ozone, 45 CSR 9), is authorized.

13 (c) The legislative rule filed in the state register on the
14 twenty-seventh day of July, two thousand one, authorized
15 under the authority of section four, article five, chapter
16 twenty-two of this code, relating to the department of envi-
17 ronmental protection (emission standards for hazardous air
18 pollutants pursuant to 40 CFR Part 61, 45 CSR 15), is autho-
19 rized.

20 (d) The legislative rule filed in the state register on the
21 twenty-seventh day of July, two thousand one, authorized
22 under the authority of section four, article five, chapter
23 twenty-two of this code, relating to the department of envi-
24 ronmental protection (standards of performance for new sta-
25 tionary sources pursuant to 40 CFR Part 60, 45 CSR 16), is
26 authorized.

27 (e) The legislative rule filed in the state register on the
28 twenty-seventh day of July, two thousand one, authorized
29 under the authority of section four, article five, chapter
30 twenty-two of this code, relating to the department of envi-
31 ronmental protection (to prevent and control air pollution
32 from hazardous waste treatment, storage or disposal facili-
33 ties, 45 CSR 25), is authorized.

34 (f) The legislative rule filed in the state register on the
35 twenty-seventh day of July, two thousand one, authorized
36 under the authority of section four, article five, chapter
37 twenty-two of this code, relating to the department of envi-
38 ronmental protection (acid rain provisions and permits, 45
39 CSR 33), is authorized.

40 (g) The legislative rule filed in the state register on the
41 twenty-seventh day of July, two thousand one, authorized
42 under the authority of section four, article five, chapter
43 twenty-two of this code, modified by the department of envi-
44 ronmental protection to meet the objections of the legislative
45 rule-making review committee and refiled in the state register
46 on the twenty-eighth day of November, two thousand one,
47 relating to the department of environmental protection (NOx
48 budget trading program as a means of control and reduction
49 of nitrogen oxides, 45 CSR 1), is authorized.

50 (h) The legislative rule filed in the state register on the
51 twenty-seventh day of July, two thousand one, authorized

52 under the authority of section four, article five, chapter
53 twenty-two of this code, modified by the department of envi-
54 ronmental protection to meet the objections of the legislative
55 rule-making review committee and refiled in the state register
56 on the twenty-sixth day of December, two thousand one,
57 relating to the department of environmental protection (to
58 prevent and control emissions from commercial and indus-
59 trial solid waste incineration units, 45 CSR 18), is authorized.

60 (i) The legislative rule filed in the state register on the
61 twenty-seventh day of July, two thousand one, authorized
62 under the authority of section four, article five, chapter
63 twenty-two of this code, modified by the department of envi-
64 ronmental protection to meet the objections of the legislative
65 rule-making review committee and refiled in the state register
66 on the twenty-eighth day of November, two thousand one,
67 relating to the department of environmental protection (NOx
68 budget trading program as a means of control and reduction
69 of nitrogen oxides from electric generating units, 45 CSR
70 26), is authorized with the following amendments:

71 On page sixteen, subsection 40.1, by striking out the
72 words “37,125 tons” and inserting in lieu thereof the words
73 “the number of NOx tons apportioned to electric generating
74 units in the State of West Virginia as set forth in paragraph
75 (g)(2)(ii) of 40 CFR §51.121, as amended from time to
76 time.”;

77 On page eighteen, subsection 42.2, in the first sentence,
78 after the words “a total number of NOx allowances equal to,”
79 by striking out the remainder of the sentence and by inserting
80 in lieu thereof the words “95 percent of the portion of the
81 state NOx trading program budget under section 40, covering
82 such units.”;

83 On page eighteen, subdivision 42.2.b, by striking out
84 subdivision 42.2.b in its entirety and inserting in lieu thereof
85 a new subdivision 42.2.b to read as follows:

86 “42.2.b. If the initial total number of NOx allowances
87 allocated to all NOx Budget units under subsection 4.1. for an
88 ozone season under subdivision 42.2.a. does not equal 95
89 percent of the portion of the state NOx trading program bud-
90 get under section 40, covering such units, the Secretary will
91 adjust the total number of NOx allowances allocated to all
92 such NOx Budget units for the ozone season under subdivi-
93 sion 42.2.a. so that the total number of NOx allowances allo-
94 cated equals 95 percent of the portion of the state NOx trad-
95 ing program budget under section 40, covering such units.
96 This adjustment will be made by multiplying each unit’s
97 allocation by 95 percent of the portion of the state NOx trad-
98 ing program budget under section 40, covering such units;
99 dividing by the total number of NOx allowances allocated
100 under subdivision 42.2.a. for the ozone season; and rounding
101 to the nearest whole number of NOx allowances as appropri-
102 ate.”

103 On page eighteen, subdivision 42.4.a, by striking out the
104 number “5,833” and inserting in lieu thereof the words “5
105 percent of the”;

106 And,

107 On page twenty, subsection 42.6, in the definition of the
108 term “State NOx trading program budget excluding alloca-
109 tion set-aside,” by striking out the words “less the allocation
110 set-aside set forth in subdivision 42.4.a” and inserting in lieu
111 thereof the words “multiplied by 95 percent,”.

112 (j) The legislative rule filed in the state register on the
113 twenty-seventh day of July, two thousand one, authorized
114 under the authority of section four, article five, chapter

115 twenty-two of this code, modified by the department of envi-
116 ronmental protection to meet the objections of the legislative
117 rule-making review committee and refiled in the state register
118 on the twenty-sixth day of December, two thousand one,
119 relating to the department of environmental protection (emis-
120 sion standards for hazardous air pollutants for source catego-
121 ries pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

122 (k) The legislative rule filed in the state register on the
123 twenty-fourth day of July, two thousand one, authorized un-
124 der the authority of section four, article thirteen, chapter
125 twenty of this code, relating to the department of environ-
126 mental protection (awarding of the West Virginia stream
127 partners program grant, 60 CSR 4), is authorized.

128 (l) The legislative rule filed in the state register on the
129 twenty-sixth day of July, two thousand one, authorized under
130 the authority of section three, article twenty-two, chapter
131 twenty-two of this code, modified by the department of envi-
132 ronmental protection to meet the objections of the legislative
133 rule-making review committee and refiled in the state register
134 on the twenty-first day of November, two thousand one, re-
135 lating to the department of environmental protection (volun-
136 tary remediation and redevelopment, 60 CSR 3), is autho-
137 rized with the following amendment:

138 On page forty-six, section 9.2.a. after the words “to the
139 satisfaction of the” by striking out the word “director” and
140 inserting in lieu thereof the word “secretary”.

141 (m) The legislative rule filed in the state register on the
142 twenty-fourth day of July, two thousand one, authorized un-
143 der the authority of sections four and twelve, article three,
144 chapter twenty-two of this code, modified by the department
145 of environmental protection to meet the objections of the
146 legislative rule-making review committee and refiled in the

147 state register on the sixteenth day of January, two thousand
148 two, relating to the department of environmental protection
149 (surface mining and reclamation rule, 38 CSR 2), is autho-
150 rized with the following amendments:

151 On page one hundred sixty-nine, at the beginning of the
152 second paragraph of subdivision 14.15.a. by designating the
153 second paragraph as 14.15.a.1. and the third paragraph as
154 14.15.a.2.;

155 On page one hundred sixty-nine, newly designated para-
156 graph 14.15.a.2., by striking out the word “Incorporate” and
157 by inserting in lieu thereof “All permit applications shall
158 incorporate”;

159 On page one hundred seventy, paragraph 14.15.b.5. at the
160 end of the paragraph by adding the following: “Regardless of
161 the allowable limits contained in this section, any disturbed
162 area other than those specified in subdivision 14.15.c. of this
163 rule must complete backfilling and rough grading within 180
164 days of final mineral removal.”;

165 On page one hundred seventy, at the end of subparagraph
166 14.15.b.6.A. by adding the following: “Where operations
167 contemplated under this section are approved with incidental
168 contour mining, which may include augering or highwall
169 mining, the acreage must be calculated in the allowable dis-
170 turbance authorized in this paragraph. The incidental contour
171 pit length cannot exceed 3000 feet and backfilling/grading
172 shall follow mineral removal within 180 days. Regardless of
173 the allowable limits contained in section fourteen of this rule,
174 any disturbed area other than those specified in subdivision
175 14.15.c. of this rule must complete backfilling and rough
176 grading within 180 days of final mineral removal. Operations
177 required to comply with AOC+ guidelines or approved spe-
178 cific post-mining land use requirements must complete back-

179 filling and rough grading within 270 days of final mineral
180 removal unless a waiver is otherwise granted by the Secretary
181 pursuant to this section.”;

182 On page one hundred seventy-one, by striking out part
183 14.15.b.6.B.1. in its entirety and inserting in lieu thereof a
184 new part 14.15.b.6.B.1. to read as follows:

185 “14.15.b.6.B.1. Pre-stripping or benching operations
186 cannot exceed four hundred (400) acres for any single permit
187 and cannot precede dragline operations more than twenty-
188 four (24) months unless otherwise approved by the Secretary
189 or necessary to satisfy AOC+ requirements, specific post-
190 mining land use requirements or special materials handling
191 facilities requirements. All fill construction must occur dur-
192 ing this phase of operation and be conducted in accordance
193 with subdivision 14.15.d. of this rule.”;

194 On page one hundred seventy-one, at the end of subpara-
195 graph 14.15.c.1. by adding the following: “*Provided*, That
196 with the exception of permanent haulroads, drainage control
197 systems and material handling facilities (including but are not
198 limited to such facilities as preparation plants, fixed coal
199 stockpiles/transfer areas and commercial forestry topsoil
200 areas) the total acreage of all other semi-permanent ancillary
201 facilities cannot exceed ten percent of the total permit acre-
202 age.”;

203 On page one hundred seventy-one, at the end of para-
204 graph 14.15.c.3. by adding the words: “The Secretary may
205 consider larger acreage for clearing operations where it can
206 be demonstrated that it is necessary to comply with applica-
207 ble National Environmental Policy Act requirements.”;

208 On page one hundred seventy-one, by striking out subdi-
209 vision 14.15.d. in its entirety and inserting in lieu thereof a
210 new subdivision 14.15.d. to read as follows:

211 “14.15.d. Excess Spoil Disposal Fills. All fills must be
212 constructed contemporaneously and contiguously with that
213 segment of the operation that contains the material that is
214 designated to be placed in the fill. In addition to all other
215 standards in effect, the following shall apply to excess spoil
216 disposal fills.”;

217 On pages one hundred seventy-one and one hundred
218 seventy-two, by striking out the second paragraph of subdivi-
219 sion 14.15.d. in its entirety and inserting in lieu thereof a
220 newly designated paragraph 14.15.d.1. to read as follows:

221 “14.15.d.1. All fills must be planned for continuous ma-
222 terial placement until designed capacity is reached and can-
223 not have a period of inactivity that exceeds 180 days unless
224 otherwise approved by the secretary on a permit specific
225 basis to accommodate AOC+, post-mining land use or special
226 material handling situations.”;

227 On page one hundred seventy-two, by striking out the
228 third paragraph of subdivision 14.15.d. in its entirety and
229 inserting in lieu thereof a newly designated paragraph
230 14.15.d.2. to read as follows:

231 “14.15.d.2. The areas where contour mining is proposed
232 within the confines of the fill are not eligible for the exemp-
233 tion contained in 14.15.c.2.”;

234 On page one hundred seventy-two, by striking out the
235 fourth paragraph of subdivision 14.15.d. in its entirety and
236 inserting in lieu thereof a newly designated paragraph
237 14.15.d.3. to read as follows:

238 “14.15.d.3. Operations that propose fills that are designed
239 to use single lift top-down construction shall bond the pro-
240 posed fill areas based upon the maximum amount per acre
241 specified in WV Code §22-3-12(c)(1).”;

242 On page one hundred seventy-two by inserting a newly
243 designated subdivision 14.15.e. to read as follows:

244 “14.15.e. Applicability. Permit applications pending ap-
245 proval on the first day of January, two thousand three, shall
246 within 120 days of permit approval have a mining and reclama-
247 tion plan which is consistent with the criteria set forth in
248 this subdivision. Permit applications which are submitted
249 after the first day of January, two thousand three, shall not be
250 issued a permit without a mining and reclamation plan which
251 is consistent with the criteria set forth in this subdivision.”;

252 On page one hundred seventy-one and one hundred
253 seventy-two, by inserting a newly designated paragraph
254 14.15.e.1. to read as follows:

255 “14.15.e.1. After the first day of January, two thousand
256 three, the mining and reclamation plan for all active mining
257 operations must be consistent with the applicable time crite-
258 ria set forth in this paragraph. Where permit revisions are
259 necessary to satisfy this requirement, the revisions shall be
260 prepared and submitted to the Secretary for approval within
261 180 days. Full compliance with the revised mining and recla-
262 mation plan shall be accomplished within twelve (12) months
263 from the date of the Secretary’s approval.”;

264 On page one hundred seventy-two, by inserting a newly
265 designated paragraph 14.15.e.2. to read as follows:

266 “14.15.e.2. After the first day of January, two thousand
267 three, the mining and reclamation plan for mining operations
268 which have approved inactive status or when permits have
269 been issued but the operation has not started must be consis-
270 tent with the applicable time criteria of this paragraph. Where
271 permit revisions are necessary to satisfy this requirement, the
272 revisions shall be prepared and submitted to the Secretary for
273 approval within 180 days. Full compliance with the revised

274 mining and reclamation plan shall be accomplished within
275 twelve (12) months from the date of the Secretary's ap-
276 proval.”;

277 On page one hundred seventy-two, by inserting a newly
278 designated paragraph 14.15.e.3. to read as follows:

279 “14.15.e.3. The Secretary may consider contemporaneous
280 reclamation plans on multiple permitted areas with contigu-
281 ous areas of disturbance to ensure that contemporaneous
282 reclamation is practiced on a total operational basis. In order
283 to establish a method of orderly transition between opera-
284 tions, plans submitted on multiple permitted areas cannot add
285 allowable disturbed areas in such a manner as to result in
286 increased disturbed areas on a single operation unless a vari-
287 ance is obtained pursuant to subdivision 14.15.g.”;

288 And by renumbering the remainder of the section;

289 On page one hundred seventy-two, by striking out current
290 subdivision 14.15.f. in its entirety and by inserting a newly
291 designated subdivision 14.15.g. in lieu thereof to read as
292 follows:

293 “14.15.g. Variance - Permit Applications. The Secretary
294 may grant approval of a mining and reclamation plan for a
295 permit which seeks a variance to one or more of the standards
296 set forth in this subsection, if on the basis of site specific
297 conditions and sound scientific and/or engineering data, the
298 applicant can demonstrate that compliance with one or more
299 of these standards is not technologically or economically
300 feasible. The Secretary shall make written findings in accor-
301 dance with the applicable provisions of section 3.32 of this
302 rule when granting or denying a request for variance under
303 this section.”;

304 And by renumbering the remainder of this section;

305 On page one hundred seventy-two, newly designated
306 paragraph 14.15.g.2., after the word “infeasible”, by adding a
307 comma and the words “including a discussion and feasibility
308 analysis of alternatives that were considered.”;

309 On page one hundred seventy-two, newly designated
310 subdivision 14.15.h., after the word “subdivision”, by striking
311 out “14.15.f.” and inserting in lieu thereof “14.15.g.”;

312 And,

313 On page one hundred seventy-two, by striking out subdi-
314 vision 14.15.i. in its entirety and inserting in lieu thereof, a
315 new subdivision 14.15.i. to read as follows:

316 “14.15.i. Notwithstanding any provision of this rule to
317 the contrary, revision of the mining and reclamation plan
318 contained in a permit is required prior to any change in min-
319 ing methods which would substantially affect the standards
320 contained in this section.”

321 (n) The legislative rule filed in the state register on the
322 twenty-fourth day of July, two thousand one, authorized un-
323 der the authority of section four, article fourteen, chapter
324 twenty-two of this code, modified by the department of envi-
325 ronmental protection to meet the objections of the legislative
326 rule-making review committee and refiled in the state register
327 on the sixteenth day of January, two thousand two, relating to
328 the department of environmental protection (coal related dam
329 safety, 38 CSR 4), is authorized.

330 (o) The legislative rule filed in the state register on the
331 twenty-fourth day of July, two thousand one, authorized un-
332 der the authority of section six, article eighteen, chapter
333 twenty-two of this code, modified by the department of envi-
334 ronmental protection to meet the objections of the legislative
335 rule-making review committee and refiled in the state register

336 on the fifth day of December, two thousand one, relating to
337 the department of environmental protection (hazardous waste
338 management, 33 CSR 20), is authorized.

339 (p) The legislative rule filed in the state register on the
340 twenty-sixth day of July, two thousand one, authorized under
341 the authority of section twenty-two, article eleven, chapter
342 twenty-two of this code, modified by the department of envi-
343 ronmental protection to meet the objections of the legislative
344 rule-making review committee and refiled in the state register
345 on the thirtieth day of October, two thousand one, relating to
346 the department of environmental protection (administrative
347 proceedings and civil penalty assessment, 47 CSR 1), is au-
348 thorized.

349 (q) The legislative rule filed in the state register on the
350 twenty-sixth day of July, two thousand one, authorized under
351 the authority of section four, article eleven, chapter twenty-
352 two of this code, modified by the department of environmen-
353 tal protection to meet the objections of the legislative rule-
354 making review committee and refiled in the state register on
355 the eighteenth day of January, two thousand two, relating to
356 the department of environmental protection (state certifica-
357 tion of activities requiring federal licenses and permits, 47
358 CSR 5A), is authorized with the following amendments:

359 On page two, subsection 2.12, following the words
360 “stream loss” by striking out the remainder of the sentence;

361 On page two, at the end of subsection 2.13 following the
362 words “or longer” by inserting a comma and the following:
363 “except for structures defined as temporary structures in this
364 section.”;

365 On page two, following subsection 2.15 by adding a new
366 subsection, to read as follows:

367 “2.16 ‘Temporary Structure’ means, for structures per-
368 mitted under §22-3-1 et seq., any structure which will be
369 removed before or upon final bond release; for structures not
370 permitted under §22-3-1 et seq., temporary structure means
371 any structure which will be removed upon completion of the
372 project.”;

373 On page three, subsection 4.1, by striking the word
374 “General” and inserting in lieu thereof, the following: “Infor-
375 mation contained within environmental processes and re-
376 views such as environmental assessments, environmental
377 impact statements and mining and reclamation plans, may be
378 used to meet part or all of the requirements of this rule.”

379 And, by renumbering the following subsection;

380 On page four, by striking out subdivision 4.2.a. in its
381 entirety; and, by renumbering the remainder of the subsec-
382 tion;

383 On page six, after the newly designated subdivision 4.2.e.
384 by adding a new subdivision 4.2.f. to read as follows:

385 “4.2.f. This subsection is only applicable to activities that
386 meet the definition of a surface mining operation as defined
387 in WV Code §22-3-3. This information shall accompany the
388 state 401 water quality certification application:

389 4.2.f.1. A No Practical Alternative Demonstration. A
390 demonstration containing, but not limited to, the following:

391 4.2.f.1.A. Demonstrate that there is not a practical alter-
392 native in the Water of the U.S., including other alternatives
393 that were considered but eliminated.

394 4.2.f.1.B. That treatment facilities will be located as close
395 as practical to the source(s) with which it is associated.

396 4.2.f.1.C. Such activity will impact Waters of the U.S. no
397 more than is necessary to accommodate its proper construc-
398 tion and operation.

399 4.2.f.1.D. Maps, plans, specification and design analyses
400 for the preferred alternative to the project.

401 4.2.f.2. An Impact Analysis. - A detailed analysis of the
402 potential impacts, the extent applicable, of the proposed pro-
403 ject on water quality and quantity, fish and wildlife, aquatic
404 habitat, parks, recreation, in-stream and downstream uses.

405 4.2.f.3. A Biological Survey of the Stream. - Each appli-
406 cant will follow established and accepted protocols for col-
407 lection, analysis, documentation and presentation of biologi-
408 cal data from Waters of the U.S., i.e., U.S. Environmental
409 Protection Agency's 'Rapid Bioassessment Protocols for Use
410 in Wadeable Streams and Rivers'. Station locations shall be
411 located one (1) above the proposed activity, one (1) at the
412 proposed activity and one (1) downstream of the proposed
413 activity or other station locations necessary to assess the
414 activity's impact. The Secretary, may at his or her discretion,
415 request from the applicant certain state preferred biologic
416 indices to facility review. The survey requirement may be
417 waived with the Department's concurrence.

418 4.2.f.4. A Delineation of the Stream to be Impacted. -
419 The length, width and depth of the stream segment impacted
420 shall be measured. Width and depth measurements shall be
421 made at one hundred (100) foot intervals. The stream delin-
422 eation shall indicate the ephemeral and intermittent/perennial
423 segments to be impacted. The stream shall be measured from
424 the farthest downstream disturbance, excluding stream cross-
425 ings associated with haul roads for surface mining operations,
426 upstream to the beginning of an intermittent stream, as de-
427 fined in 46 CSR 1-2.9 and/or 38 CSR 2-2.71. The applicant

428 shall provide a table listing the station number with the corre-
429 sponding acreage including the drainage area from the toe of
430 the pond and the toe of the fill.

431 4.2.f.4.A. Submit all findings in an appendix to the report
432 including, but not limited to, the following:

433 4.2.f.4.B. Name of person(s) conducting the stream delin-
434 eation and his or her qualifications (i.e., DEP representative,
435 company representative, consultant, biologist, etc.).

436 4.2.f.4.C. Date delineation was conducted.

437 4.2.f.4.D. Recent weather conditions and those on the day
438 of the delineation.

439 4.2.f.4.E. A statement verifying the October, 1999 DEP
440 Stream Delineation Memorandum was followed in the deter-
441 mination process.

442 4.2.f.4.F. Method used for determination (i.e., post-hold
443 or benthic).

444 4.2.f.4.G. A copy of field notes, photographs and stream
445 delineation map that indicates the results in relation to the
446 proposed activity, if possible.”

447 “5.1.a.1. The surface mining and NPDES permit numbers,
448 if applicable and available.”

449 On page nine, after paragraph 6.2.c.4. by adding a new
450 paragraph 6.2.c.5. to read as follows:

451 “6.2.c.5. An applicant for a proposed project who desires
452 to provide compensatory in-kind mitigation prior to the dis-
453 turbance of the mitigable resource, will comply with the fol-
454 lowing criteria:

455 A. Mitigation ration will be at one (1) unit created to
456 every one (1) unit impacted.

457 B. Mitigation shall be completed 12 months prior to the
458 impact of the resource.

459 C. Mitigation plans will meet the review and approval of
460 the Department of Environmental Protection and Division of
461 Natural Resources. Satisfactory completion will be deter-
462 mined by concurrence of DEP and DNR prior to final ap-
463 proval of mitigation obligation.”;

464 And,

465 By renumbering the remaining paragraphs in the subdivi-
466 sion.

467 (r) The legislative rule filed in the state register on the
468 nineteenth day of July, two thousand one, authorized under
469 the authority of section four, article eleven, chapter twenty-
470 two of this code, modified by the department of environmen-
471 tal protection to meet the objections of the legislative rule-
472 making review committee and refiled in the state register on
473 the twenty-seventh day of September, two thousand one,
474 relating to the department of environmental protection (un-
475 derground injection control, 47 CSR 13), is authorized.

476 (s) The legislative rule filed in the state register on the
477 nineteenth day of July, two thousand one, authorized under
478 the authority of section five, article twelve, chapter twenty-
479 two of this code, modified by the department of environmen-
480 tal protection to meet the objections of the legislative rule-
481 making review committee and refiled in the state register on
482 the twenty-seventh day of September, two thousand one,
483 relating to the department of environmental protection
484 (groundwater protection standards at Dominion “Generation”

485 steam electric generation facility, Mt. Storm, West Virginia,
486 47 CSR 57B), is authorized.

487 (t) The legislative rule filed in the state register on the
488 twenty-fourth day of July, two thousand one, authorized un-
489 der the authority of section one, article eleven, chapter
490 twenty-two of this code, relating to the department of envi-
491 ronmental protection (WVNPDES rules for coal mining facil-
492 ities, 47 CSR 30), is authorized with the following amend-
493 ments:

494 On page one, subsection 1.1, after the word "Scope" by
495 striking out the words "These rules establish" and inserting in
496 lieu thereof the words "This rule establishes";

497 On page one, subsection 1.9 after the word "his" by in-
498 serting the words "or her";

499 On page one, the first paragraph in section 2 by striking
500 out the word "shall";

501 On page three, by inserting a newly designated subsec-
502 tion 2.15. to read as follows:

503 "2.15. 'Director' means the director of the Division of
504 Water Resources."; And, by renumbering the remainder of
505 the section;

506 On page five, in newly designated subsection 2.52. after
507 the word "Code" by striking through "§22-3" and inserting in
508 lieu thereof "§22-3-1 et seq.";

509 On page seven, paragraph 3.5.b.1., line six, after the
510 words "granted for" by striking out the word "no";

511 On page eight, subdivision 3.5.c. by striking through the
512 last sentence in its entirety and inserting the following: "The

513 proposed permittee shall demonstrate that he or she has ac-
514 cepted all necessary permit responsibilities.”;

515 On page eight, subdivision 3.5.e. in the second sentence
516 after the words “inclusion in” by striking out the word “that”
517 and inserting in lieu thereof the word “the”;

518 On page eleven, subparagraph 4.5.a.6.L., after the words
519 “must be” by inserting the words “notarized and”;

520 On page thirteen, part 4.5.b.1.A.2., line five after the
521 words “request for” by striking out the word “such”;

522 On page thirteen, part 4.5.b.1.E.1., at the beginning of
523 line one by striking out the word “He” and inserting in lieu
524 thereof the words “The applicant”;

525 On page thirteen, subpart 4.5.b.1.E.2., at the beginning of
526 line one by striking out the word “He” and inserting in lieu
527 thereof the words “The applicant”;

528 On page fifteen, part 4.5.d.1.A.11., after the words “must
529 be” by inserting the words “notarized and”;

530 On page sixteen, paragraph 4.5.d.3., after the words “re-
531 quired by” by striking out the words “Sections 4.5.a. of these
532 rules” and inserting in lieu thereof the words “Section 4.5.a.
533 of this rule”;

534 On page sixteen, part 4.5.d.4.A.3., in line three after the
535 word “if” by striking out the word “such” and inserting in
536 lieu thereof the word “the”;

537 On page sixteen, part 4.5.d.4.A.3., in line four after the
538 word “unavailable,” by striking out the word “then”;

539 On page seventeen, subparagraph 4.5.f.2.A., line two
540 after the words “to the” by striking out the words “Regional
541 Administrator” and by inserting in lieu thereof the words
542 “Environmental Protection Agency Region III Administra-
543 tor”;

544 On page eighteen, paragraph 4.7.a.1., line three after the
545 words “purpose of” by striking out the words “Section 4.7 of
546 these rules” and by inserting in lieu thereof the words “this
547 section”;

548 On page nineteen, by striking out subsection 4.8 in its
549 entirety.

550 On page twenty, subdivision 5.1.g., after the words “En-
551 vironmental Quality Board” by inserting the words “Title
552 60”;

553 On page twenty-five, subsection 5.17., line seven after
554 the word “wastewaters” by striking out the word “and”;

555 On page twenty-five, subdivision 5.18.d., after the words
556 “the expiration of the WV/NPDES permit,” by striking out
557 the word “then”;

558 On page twenty-nine, paragraph 6.2.o.5., after the words
559 “Section 6.2.e of” by striking out the words “these rules are”
560 and by inserting in lieu thereof the words “this rule is”;

561 On page thirty-two, subparagraph 8.2.c.2.C., line one
562 after the word “New” by striking the word “Regulations” and
563 inserting in lieu thereof the word “Rules”;

564 On page thirty-two, subparagraph 8.2.c.2.C., line two
565 after the word “standards” by striking the word “regulations”
566 and inserting in lieu thereof the word “rules”;

567 On page thirty-two, subparagraph 8.2.c.2.C., line four
568 after the word “standards” by striking the word “regulations”
569 and inserting in lieu thereof a comma and the word “rules”;

570 On page thirty-two, part 8.2.c.2.C.1., line two after the
571 word “standards” by striking the word “regulations” and
572 inserting in lieu thereof the word “rules”;

573 On page thirty-two, part 8.2.c.2.C.2., line four after the
574 word “promulgated” by striking the word “regulations” and
575 inserting in lieu thereof the words “rules or”;

576 On page thirty-three, part 8.2.c.2.C.2., line five after the
577 words “that portion of the” by striking the word “regulations”
578 and inserting in lieu thereof the word “rules”;

579 On page thirty-four, subdivision 9.1.a., line four after the
580 words “major facilities by the” by striking out the words
581 “Regional Administrator” and by inserting in lieu thereof the
582 words “Environmental Protection Agency Regional III Ad-
583 ministrator”;

584 On page thirty-five, subdivision 9.2.a. by striking out the
585 words “Regional Administrator” and by inserting in lieu
586 thereof the words “Environmental Protection Agency Re-
587 gional III Administrator”;

588 On page thirty-five, paragraph 9.2.a.2. by striking out the
589 words “Regional Administrator” and by inserting in lieu
590 thereof the words “Environmental Protection Agency Re-
591 gional III Administrator”;

592 On page forty-three, subdivision 15.1.a., line two after
593 the words “in accordance with” by striking out the words
594 “Sections 11, 12, 15, and 19 of Article 11;” and by inserting
595 in lieu thereof “W.Va. Code §§ 22-11-11, 12, 15 and 19”;

596 On page forty-three, subdivision 15.1.b., line three after
597 the words “in accordance with” by striking out the words
598 “Section 22 of Article 11; and” and by inserting in lieu
599 thereof the words “W.Va. Code §22-11-22”;

600 And,

601 On page forty-three, subdivision 15.1.c., line two after
602 the words “in accordance with” by striking out the words
603 “Section 24 of Article 11” and by inserting in lieu thereof the
604 words “W.Va. Code §22-11-24”.

§64-3-2. Environmental quality board.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, authorized
3 under the authority of section four, article three, chapter
4 twenty-two-b of this code, modified by the environmental
5 quality board to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on
7 the eleventh day of January, two thousand two, relating to the
8 environmental quality board (requirements governing water
9 quality standards, 46 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-seventh day of July, two thousand one, authorized
12 under the authority of section four, article twelve, chapter
13 twenty-two of this code, modified by the environmental qual-
14 ity board to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the elev-
16 enth day of January, two thousand two, relating to the envi-
17 ronmental quality board (requirements governing groundwa-
18 ter standards 46 CSR 12), is authorized.

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

1 The legislative rule filed in the state register on the nine-
2 teenth day of July, two thousand one, authorized under the
3 authority of section six, article three, chapter twenty-two-c of
4 this code, modified by the solid waste management board to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the tenth day of
7 October, two thousand one, relating to the solid waste man-
8 agement board (disbursement of grants to solid waste author-
9 ities, 54 CSR 5), is authorized.

CHAPTER 199

**(Com. Sub. for H. B. 4205 — By Delegates Mahan, Wills, Cann,
Kominar, Faircloth and Riggs)**

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and

as amended by the Legislature; authorizing bureau for public health to promulgate legislative rule relating to design standards for swimming pools; authorizing bureau for public health to promulgate legislative rule relating to public water systems; authorizing bureau for public health to promulgate legislative rule relating to public water systems operators; authorizing bureau for public health to promulgate legislative rule relating to reportable diseases, events and conditions; authorizing bureau for public health to promulgate legislative rule relating to recreational water facilities; authorizing bureau for public health to promulgate legislative rule relating to emergency medical services; authorizing bureau for public health to promulgate legislative rule relating to birth score program; and authorizing bureau for public health to promulgate legislative rule relating to Alzheimer/dementia special care units and programs.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-1. Bureau of health.

1 (a) The legislative rule authorized under the authority of
2 section four, article one, chapter sixteen, of this code, relating
3 to the bureau for public health (design standards for swim-
4 ming pools, 64 CSR 25), is hereby repealed.

5 (b) The legislative rule filed in the state register on the
6 twenty-fifth day of July, two thousand one, authorized under
7 the authority of section nine-a, article one, chapter sixteen, of
8 this code, modified by the bureau for public health to meet
9 the objections of the legislative rule-making review commit-

10 tee and refiled in the state register on the twenty-sixth day of
11 November, two thousand one, relating to the bureau for pub-
12 lic health (public water systems, 64 CSR 3), is authorized.

13 (c) The legislative rule filed in the state register on the
14 twenty-seventh day of July, two thousand one, authorized
15 under the authority of section four, article one, chapter six-
16 teen of this code, modified by the bureau for public health to
17 meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the twenty-sixth
19 day of November, two thousand one, relating to the bureau
20 for public health (public water systems operators, 64 CSR 4),
21 is authorized.

22 (d) The legislative rule filed in the state register on the
23 twenty-seventh day of July, two thousand one, authorized
24 under the authority of section twelve, article three, chapter
25 sixteen, of this code, modified by the bureau for public health
26 to meet the objections of the legislative rule-making review
27 committee and refiled in the state register on the twenty-first
28 day of November, two thousand one, relating to the bureau
29 for public health (reportable diseases, events and conditions,
30 64 CSR 7), is authorized with the following amendments:

31 On page seven, paragraph 3.5.b.2. after the words “Au-
32 tism Spectrum Disorder” by inserting the words “not reported
33 to the Bureau according to the protocol in the West Virginia
34 Reportable Diseases Protocol Manual.”;

35 And,

36 On page seven, paragraph 3.5.b.4. after the word “malignant”
37 by striking out the word “brain” and inserting in lieu
38 thereof the words “intracranial and central nervous system”.

39 (e) The legislative rule filed in the state register on the
40 twenty-fifth day of July, two thousand one, authorized under
41 the authority of section four, article one, chapter sixteen, of

42 this code, modified by the bureau for public health to meet
43 the objections of the legislative rule-making review commit-
44 tee and refiled in the state register on the twenty-first day of
45 November, two thousand one, relating to the bureau for pub-
46 lic health (recreational water facilities, 64 CSR 16), is autho-
47 rized.

48 (f) The legislative rule filed in the state register on the
49 thirty-first day of July, two thousand one, authorized under
50 the authority of section twenty-three, article four-c, chapter
51 sixteen, of this code, modified by the bureau for public health
52 to meet the objections of the legislative rule-making review
53 committee and refiled in the state register on the eleventh day
54 of January, two thousand two, relating to the bureau for pub-
55 lic health (emergency medical services, 64 CSR 48), is autho-
56 rized.

57 (g) The legislative rule filed in the state register on the
58 twentieth day of July, two thousand one, authorized under the
59 authority of section four, article twenty-two-b, chapter six-
60 teen, of this code, modified by the bureau for public health to
61 meet the objections of the legislative rule-making review
62 committee and refiled in the state register on the sixteenth
63 day of August, two thousand one, relating to the bureau for
64 public health (birth score program, 64 CSR 83), is authorized.

65 (h) The legislative rule filed in the state register on the
66 twenty-fourth day of July, two thousand one, authorized un-
67 der the authority of section five, article five-r, chapter six-
68 teen, of this code, modified by the bureau for public health to
69 meet the objections of the legislative rule-making review
70 committee and refiled in the state register on the twenty-first
71 day of November, two thousand one, relating to the bureau
72 for public health (Alzheimer/dementia special care units and
73 programs, 64 CSR 85), is authorized.

CHAPTER 200

**(Com. Sub. for S. B. 339 — By Senators Ross, Anderson,
Minard, Snyder, Boley and Minear)**

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the fire commission to promulgate a legislative rule relating to the state fire code; authorizing the division of protective services to promulgate a legislative rule relating to qualification, training and certification requirements for members of the division; authorizing division of protective services to promulgate a legislative rule relating to ranks and duties of officers within membership of division; authorizing the division of protective services to promulgate a legislative rule relating to grievance procedure of the division; and authorizing the state police to promulgate a legislative rule relating to professional standards, investigations, employee rights, early

identification system, psychological assessment and progressive discipline.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire commission.

§64-6-2. Division of protective services.

§64-6-3. State police.

§64-6-1. Fire commission.

1 The legislative rule filed in the state register on the
2 twenty-third day of July, two thousand one, under the author-
3 ity of section five, article three, chapter twenty-nine of this
4 code, modified by the fire commission to meet the objections
5 of the legislative rule-making review committee and refiled
6 in the state register on the fourth day of October, two thou-
7 sand one, relating to the fire commission (state fire code, 87
8 CSR 1), is authorized with the following amendment:

9 On page one, by striking out section 2.2 in its entirety.

§64-6-2. Division of protective services.

1 The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, under the
3 authority of section three, article two-d, chapter fifteen of this
4 code, modified by the division of protective services to meet
5 the objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the eighth day of Janu-
7 ary, two thousand two, relating to the division of protective
8 services (ranks and duties of officers within the membership
9 of the division, 99 CSR 2), is authorized.

§64-6-3. State police.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, under the author-
3 ity of section twenty-five, article two, chapter fifteen of this
4 code, modified by the state police to meet the objections of
5 the legislative rule-making review committee and refiled in
6 the state register on the eleventh day of January, two thou-
7 sand two, relating to the state police (professional standards,
8 investigations, employee rights, early identification system,
9 psychological assessment and progressive discipline, 81 CSR
10 10), is authorized.

CHAPTER 201

(Com. Sub. for S. B. 397 — By Senators Ross,
Anderson, Minard, Snyder, Boley and Minear)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and

as amended by the Legislature; authorizing tax commissioner to promulgate legislative rule relating to pollution control facilities; authorizing tax commissioner to promulgate legislative rule relating to payment of taxes by credit card or debit card; authorizing tax commissioner to promulgate legislative rule relating to senior citizen tax credit for property taxes paid; authorizing tax commissioner to promulgate legislative rule relating to tobacco products excise tax; authorizing insurance commissioner to promulgate legislative rule relating to medical malpractice loss experience and loss expense annual reporting requirements; authorizing insurance commissioner to promulgate legislative rule relating to privacy of consumer financial and health information; authorizing insurance commissioner to promulgate legislative rule relating to external review of coverage denials; and authorizing lottery commission to promulgate legislative rule relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

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

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

§64-7-1. Tax commissioner.

§64-7-2. Insurance commissioner.

§64-7-3. Lottery commission.

§64-7-1. Tax commissioner.

- 1 (a) The legislative rule filed in the state register on the
- 2 twenty-third day of July, two thousand one, authorized under
- 3 the authority of section four, article six-a, chapter eleven of
- 4 this code, modified by the tax commissioner to meet the ob-
- 5 jections of the legislative rule-making review committee and
- 6 refiled in the state register on the fourth day of October, two
- 7 thousand one, relating to the tax commissioner (pollution
- 8 control facilities, 110 CSR 6), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-third day of July, two thousand one, authorized under
11 the authority of sections five and five-n, article ten, chapter
12 eleven of this code, modified by the tax commissioner to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the fourth day
15 of October, two thousand one, relating to the tax commis-
16 sioner (payment of taxes by credit card or debit card, 110
17 CSR 10B), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-third day of July, two thousand one, authorized under
20 the authority of section twenty-one, article twenty-one, chap-
21 ter eleven of this code, modified by the tax commissioner to
22 meet the objections of the legislative rule-making review
23 committee and refiled in the state register on the fourth day
24 of October, two thousand one, relating to the tax commis-
25 sioner (senior citizen tax for property taxes paid, 110 CSR
26 21B), is authorized with the following amendment:

27 On page three, section 5.1, line 2, after the word “that”
28 by striking out the word “qualify” and inserting in lieu
29 thereof the words “have qualified”.

30 (d) The legislative rule filed in the state register on the
31 twenty-third day of July, two thousand one, authorized under
32 the authority of section five, article ten and section one, arti-
33 cle seventeen, chapter eleven of this code, modified by the
34 tax commissioner to meet the objections of the legislative
35 rule-making review committee and refiled in the state register
36 on the twenty-sixth day of November, two thousand one,
37 relating to the tax commissioner (tobacco products excise tax,
38 110 CSR 17), is authorized with the following amendments:

39 On page 11, by adding a new subdivision 4.6.5. to read as
40 follows:

41 “Every taxpayer that pays excise tax on tobacco products
42 shall be allowed a discount of 4 percent on all tax due.”

43 And,

44 On page 12, by striking out all of subdivision 4.7.4. and
45 inserting in lieu thereof a new subdivision 4.7.4. to read as
46 follows:

47 “Every taxpayer that pays excise tax on tobacco products
48 shall be allowed a discount of 4 percent on all tax due.”

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, authorized under
3 the authority of section ten, article two and section six-a,
4 article seventy-b, chapter thirty-three of this code, relating to
5 the insurance commissioner (medical malpractice loss experi-
6 ence and loss expense annual reporting requirements, 114
7 CSR 23), is authorized.

8 (b) The legislative rule filed in the state register on the
9 twenty-fifth day of July, two thousand one, authorized under
10 the authority of section ten, article two, section one, article
11 six-f, and section four, article eleven-a, chapter thirty-three of
12 this code, modified by the insurance commissioner to meet
13 the objections of the legislative rule-making review commit-
14 tee and refiled in the state register on the twenty-first day of
15 December, two thousand one, relating to the insurance com-
16 missioner (privacy of consumer financial and health informa-
17 tion, 114 CSR 57), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-fifth day of July, two thousand one, authorized under
20 the authority of section ten, article two and sections six and
21 nine, article twenty-five-c, chapter thirty-three of this code,
22 modified by the insurance commissioner to meet the objec-
23 tions of the legislative rule-making review committee and
24 refiled in the state register on the twenty-first day of Decem-
25 ber, two thousand one, relating to the insurance commis-
26 sioner (external review of coverage denials, 114 CSR 58), is
27 authorized with the following amendments:

28 On page seven, Section 5.2.b., in the second sentence
29 following the words “numbers of two” by inserting the words
30 “randomly selected” and following the words “external re-
31 view organizations” by inserting the words “which have been
32 approved pursuant to section 8 and which do not have a con-
33 flict of interest as described in subdivision (d) of subsection
34 9.1.”;

35 On page seven, by striking all of section 5.5., and renum-
36 bering the subsequent sections accordingly;

37 On page fourteen, section 7.3., after the word “Code” by
38 striking out “§33-25A-6” and inserting in lieu thereof “§33-
39 25C-6”; And,

40 On page fourteen, section 8.1., after the word “Code” by
41 striking out “§33-25A-6” and inserting in lieu thereof “§33-
42 25C-6”.

§64-7-3. Lottery commission.

1 The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand one, under the author-
3 ity of section four hundred two, article twenty-two-b, chapter
4 twenty-nine of this code, modified by the lottery commission
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twentieth
7 day of December, two thousand one, relating to the lottery
8 commission (limited video lottery, 179 CSR 5), is authorized
9 with the following amendments:

10 On page two, paragraph 2.5.c.2., after the word ‘less’ by
11 changing the period to a colon and inserting the word ‘or’
12 and the following:

13 ‘2.5.d. The person was not able to comply with subdivi-
14 sion (a) of subsection 2.5. of this rule due to circumstances
15 beyond the control of the person, and the inability to comply

16 was not, in the determination of the commission, the result of
17 a willful act or neglect by the person;

18 2.5.d.1. If the commission determines that the applicant
19 relied on a paid tax preparer, the return will be considered
20 timely filed when filed within six months beyond the limit set
21 forth in subdivision 2.5.a. if the paid preparer submits an
22 affidavit to the commission, on a form acceptable to the com-
23 mission, stating the applicant's return was not filed within
24 twelve months of the end of the taxable year due to an error
25 or omission on the part of the paid preparer; or

26 2.5.d.2. If the commission determines that the applicant's
27 financial records were destroyed by fire, flood or other natu-
28 ral or man-made disaster, the return will be considered timely
29 filed when filed.';

30 And,

31 On page five, by striking out all of §179-5-3 and by re-
32 numbering the subsequent sections.

CHAPTER 202

**(Com. Sub. for S. B. 305 — By Senators Ross,
Anderson, Minard, Snyder, Boley and Minear)**

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legis-

lative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of highways to promulgate a legislative rule relating to transportation of hazardous wastes upon roads and highways; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle inspection manual; and authorizing the state rail authority to promulgate a legislative rule relating to the valuation of used rolling stock and equipment.

Be it enacted by the Legislature of West Virginia:

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

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

§64-8-1. Division of highways.

§64-8-2. Division of motor vehicles.

§64-8-3. State rail authority.

§64-8-1. Division of highways.

1 The legislative rule filed in the state register on the eighth
2 teenth day of July, two thousand one, under the authority of
3 section seven, article eighteen, chapter twenty-two of this
4 code, relating to the division of highways (transportation of
5 hazardous wastes upon the roads and highways, 157 CSR 7),
6 is authorized.

§64-8-2. Division of motor vehicles.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, authorized under
3 the authority of section four, article sixteen, chapter
4 seventeen-c of this code, modified by the division of motor
5 vehicles to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the six-
7 teenth day of August, two thousand one, relating to the divi-
8 sion of motor vehicles (motor vehicle inspection manual, 91
9 CSR 12), is authorized.

§64-8-3. State rail authority.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, under the author-
3 ity of section six, article eighteen, chapter twenty-nine of this
4 code, modified by the state rail authority to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twenty-fifth day of October,
7 two thousand one, relating to the state rail authority (valua-
8 tion of used rolling stock and equipment, 172 CSR 2), is
9 authorized.

CHAPTER 203

(Com. Sub. for H. B. 4219 — By Delegates Mahan, Wills, Cann,
Kominar, Faircloth and Riggs)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one,

as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing development office to promulgate legislative rules relating to workforce development initiative; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia capital company act; establishment of application procedures to implement act; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia venture capital act; authorizing division of labor to promulgate legislative rule relating to steam boiler inspection; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of natural resources to promulgate legislative rule relating to commercial whitewater outfitters; authorizing division of natural resources to promulgate legislative rule relating to small arms hunting; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to public use of West Virginia state parks, state forests and state wildlife management areas under division; authorizing division of natural resources to promulgate legislative rule relating to wild boar hunting; authorizing

division of natural resources to promulgate legislative rule relating to general trapping; and authorizing division of natural resources to promulgate legislative rule relating to issuance of hunting, trapping and fishing licenses by telephone and other electronic methods.

Be it enacted by the Legislature of West Virginia:

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

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

§64-10-1. Development office.

§64-10-2. Economic development authority.

§64-10-3. Division of labor.

§64-10-4. Manufactured housing construction and safety standards board.

§64-10-5. Division of natural resources.

§64-10-1. Development office.

1 The legislative rule filed in the state register on the tenth
2 day of July, two thousand one, under the authority of section
3 five, article three-d, chapter eighteen-b of this code, relating
4 to the development office (workforce development initiative
5 program), is authorized with the following amendment:

6 On page four, subdivision 8.1.4 after the word “modern-
7 ization” by striking out the word “of” and inserting in lieu
8 thereof the word “and”.

§64-10-2. Economic development authority.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day July, two thousand one, under the authority
3 of section five, article one, chapter five-e of this code, modi-
4 fied by the economic development authority to meet the ob-

5 jections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-ninth day of No-
7 vember, two thousand one, relating to the economic develop-
8 ment authority (general administration of the West Virginia
9 capital company act; establishment of the application proce-
10 dures to implement the act, 117 CSR 1), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-fourth day of July, two thousand one, authorized un-
13 der the authority of section three, article two, chapter five-e
14 of this code, modified by the economic development author-
15 ity to meet the objections of the legislative rule-making re-
16 view committee and refiled in the state register on the
17 twenty-ninth day of November, two thousand one, relating to
18 the economic development authority (general administration
19 of the West Virginia venture capital act, 117 CSR 3), is au-
20 thorized with the following amendments:

21 On pages one and two of the rule, Section 2. Definitions,
22 by inserting four new definitions as designated below and
23 renumbering the existing definitions in section two accord-
24 ingly:

25 “2.8. ‘Federal Program Participant’ means (a) An SBIC;
26 (b) a New Markets Venture Capital Company; or (c) an En-
27 tity which is not an ‘SBIC’ or a New Markets Venture Capi-
28 tal Company but which is designated by the Authority as a
29 Federal Program Participant due to the Entity’s participation
30 in a venture capital program administered by the United
31 States Small Business Administration or other federal
32 agency”;

33 “2.17. ‘New Markets Venture Capital Company’ means
34 an Entity which has been designated by the United States
35 Small Business Administration as a New Markets Venture
36 Capital Company pursuant to 13 C.F.R. §108 et seq.”;

37 “2.19. ‘Participation Agreement’ means a written agree-
38 ment executed by a Fund Manager and the applicable Fund or
39 Governing Entity, as the case may require, setting forth the
40 terms and conditions of the Fund Manager’s service to the
41 Fund or Fund Share. In instances where the Fund or Fund
42 Share purchases an ownership interest in its Fund Manager,
43 ‘participation agreement’ may, as applicable, include the
44 limited partnership agreement, limited liability company
45 operating agreement or other applicable written agreement
46 entered into by the Fund and other owners of the Fund Man-
47 ager.”; and

48 “2.22. ‘SBIC’ or ‘Small Business Investment Company’
49 means only an Entity which is licensed by the United States
50 Small Business Administration as a Small Business Invest-
51 ment Company under the Small Business Investment Act of
52 1958, 15 U.S.C. §661 et seq., as amended.”;

53 On page 2, section 4.1 by following the words “or Entity”
54 inserting a comma and the following: “including, without
55 limitation, a Federal Program Participant,”

56 On page 4, section 4.4, in the third sentence, following
57 the words “between the applicant and the” by inserting the
58 words “Fund or”;

59 On page 11, section 7.1 by following the words “Fund
60 Manager is assigned” by inserting the words “or which it
61 receives”;

62 On page 11, by striking all of sections 7.1.a., 7.1.b., and
63 7.1.c.;

64 On page 11, section 7.2. By following the words “and the
65 applicable” by inserting the words “Fund or”;

66 On page 11, section 7.3. By following the words “and the
67 applicable” by inserting the words “Fund or”;

68 On page 11, section 7.4 before the words “Investment
69 Restrictions.” by designating the paragraph number “7.4.1.”;

70 On page 11, section 7.4.1 by following the words “of the
71 applicable” by inserting the words “Fund or”;

72 On page 11, following section 7.4.1, inserting a new
73 section 7.4.2. to read as follows:

74 “Unless the prior written consent of the applicable Fund
75 or Governing Entity is obtained, a Fund Manager may not
76 invest any portion of or contribution from a Fund or Fund
77 Share in any West Virginia Business where there is a direct
78 or indirect economic relationship, in the form of ownership,
79 compensation or otherwise, between the West Virginia Busi-
80 ness, including the relatives, affiliates and members of the
81 Managing Body of the West Virginia Business, and an inves-
82 tor in the Fund or Fund Share, including relatives, affiliates
83 and members of the Managing Body of the investor.”

84 On page 11, following section 7.5, by inserting two new
85 sections, sections 7.6 and 7.7 to read as follows:

86 “7.6 Purchase of Ownership Interest in a Fund Manager.

87 7.6.1. Structure.- At the discretion of the Authority or
88 applicable Governing Entity, a Fund or Fund Share may in-
89 vest its assets by purchasing an ownership interest in a Fed-
90 eral Program Participant or other Entity serving as the Fund
91 Manager. Such purchase of an ownership interest in the Fund
92 Manager may be by original issue from the Fund Manager or
93 purchased on the secondary market from an owner of the
94 Fund Manager.

95 7.6.2. Pooling of Assets. - The assets of the Fund or Fund
96 Share used to purchase an ownership interest in its Fund
97 Manager may be pooled with that of other private or public
98 investors holding ownership interests in the Fund Manager so
99 that the assets of the Fund or Fund Share contributed to the
100 Fund Manager may become indistinguishable from those of
101 the other owners of the Fund Manager.

102 7.6.3. Investments. - In situations where the Fund or
103 Fund Share purchases an ownership interest in its Fund Man-
104 ager, the Fund Manager may invest its assets, including those
105 of the Fund or Fund Share, in businesses located in various
106 states: *Provided*, That the Fund Manager must invest an
107 amount equal to or exceeding the amount contributed by the
108 Fund or Fund Share, net of reasonable management fees and
109 operational expenses allocable to the Fund under the applica-
110 ble Participation Agreement, in the form of debt or equity
111 investments in West Virginia Businesses in accordance with
112 this section.

113 7.6.4. Investment Guidelines. - In the Participation
114 Agreement or other agreement executed by the applicable
115 Fund or Governing Entity and the Fund Manager, the Fund or
116 Governing Entity and the Fund Manager shall contractually
117 agree on the investment guidelines to be followed by the
118 Fund Manager when investing in West Virginia Businesses.

119 7.7. Where the Fund or Fund Share Does Not Purchase
120 an Ownership Interest In Its Fund Manager. - In situations
121 where the Fund or Fund Share does not purchase an owner-
122 ship interest in its Fund Manager:

123 7.7.1. Unless the prior written consent of the Governing
124 Entity is obtained, the Fund Manager shall not obtain owner-
125 ship of assets of the Fund or the Fund Share. Rather, the Fund
126 Manager, at least fifteen (15) days before the closing of an

127 investment in a West Virginia Business, shall advise the ap-
128 plicable Governing Entity in writing of the funds to be in-
129 vested to allow the applicable Governing Entity to make the
130 funds available for investment by the Fund Manager at clos-
131 ing;

132 7.7.2. Unless the prior written consent of the Governing
133 Entity is obtained, the Fund Manager shall make, and at all
134 times maintain, all investments on the name of the applicable
135 Fund; and

136 7.7.3. The Fund Manager shall have discretion as to the
137 selection of West Virginia Businesses for investment and the
138 terms upon which such investments are made; however, the
139 applicable Fund or Governing Entity may at all times revoke
140 or restrict such discretion of the Fund Manager and submit
141 investment guidelines to be followed by the Fund Manager.”

142 On page 12, section 8.2, lines fourteen and fifteen, fol-
143 lowing the words “Governing Entity and the investor” by
144 striking out the remainder of the sentence, and inserting a
145 period and the following sentence:

146 “Upon such repurchase of the investor’s ownership inter-
147 est, the investor shall receive, in the discretion of the applica-
148 ble Governing Entity, cash and/or a distribution in kind of
149 assets of the Fund or Fund Share which collectively equals
150 the value agreed to by the Governing Entity and the inves-
151 tor.”

152 And,

153 On page 12, section 9.2.a., by striking out “2.20” and
154 inserting in lieu thereof “2.25”.

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the fourth
2 day of September, two thousand one, authorized under the
3 authority of section seven, article three, chapter twenty-one
4 of this code, modified by the division of labor to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the twentieth day of De-
7 cember, two thousand one, relating to the division of Labor
8 (steam boiler inspection, 42 CSR 3), is authorized.

**§64-10-4. Manufactured housing construction and safety stan-
dards board.**

1 The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, authorized
3 under the authority of section four, article nine, chapter
4 twenty-one of this code, modified by the manufactured hous-
5 ing construction and safety standards board to meet the ob-
6 jections of the legislative rule-making review committee and
7 refiled in the state register on the twentieth day of December,
8 two thousand one, relating to the manufactured housing con-
9 struction and safety standards board (West Virginia manufac-
10 tured housing construction and safety standards board, 42
11 CSR 19), is authorized.

§64-10-5. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, authorized
3 under the authority of section twenty-three-a, article two,
4 chapter twenty of this code, modified by the division of natu-
5 ral resources to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on
7 the twenty-second day of August, two thousand one, relating
8 to the division of natural resources (commercial whitewater
9 outfitters, 58 CSR 12), is authorized with the following
10 amendment:

11 On page eight, section 4.9.3, following the words “sup-
12 plement the guide”, by striking out the word “trainee” and
13 inserting in lieu thereof the words “Trip Leader”;

14 On page eight, following section 4.9.3, by inserting a
15 new section, numbered 4.9.4 and the words “The licensee is
16 responsible for keeping on file the original or a certified copy
17 of the completed whitewater guide Trip Leader information
18 sheet. These records shall be maintained by the licensee for
19 two (2) years following the last date of employment. The
20 licensee shall provide the guide Trip Leader with a certified
21 copy of the guide Trip Leader information sheet and shall
22 forward a copy to the Division of Natural Resources, Law
23 Enforcement Section, Capitol Complex, Building 3,
24 Charleston, West Virginia 25305 upon request.”;

25 On page thirteen, section 9.12.2, following the words
26 “No duckie expeditions”, by striking out the words “or kayak
27 instruction”;

28 And,

29 On page fourteen, by striking the provisions of section
30 9.12.4.b, in its entirety, and inserting in lieu thereof:

31 “From the confluence of Manns Creek to Teays Landing
32 there shall be a minimum of one (1) trip guide in each
33 watercraft except on a kayak clinic where the instructor and
34 guests are in kayaks. Kayak clinics may be held by a com-
35 mercial whitewater outfitter. Daily use is restricted to nine
36 students per day per license and must have a ratio of one (1)
37 trip guide per three (3) students. Kayak clinics are not permit-
38 ted in this section of the New River on Saturdays between
39 Memorial Day and Labor Day. There shall be a minimum of
40 two (2) trip guides per trip on all other trips. Inflatable kayak
41 expeditions or trips are not permitted in this section of the
42 New River.”

43 (b) The legislative rule filed in the state register on the
44 twenty-seventh day of July, two thousand one, authorized
45 under the authority of section seven, article one, chapter
46 twenty of this code, modified by the division of natural re-
47 sources to meet the objections of the legislative rule-making
48 review committee and refiled in the state register on the
49 twenty-second day of August, two thousand one, relating to
50 the division of natural resources (small arms hunting, 58 CSR
51 14), is authorized.

52 (c) The legislative rule filed in the state register on the
53 twenty-seventh day of July, two thousand one, authorized
54 under the authority of section twenty-two, article seven,
55 chapter twenty of this code, modified by the division of natu-
56 ral resources to meet the objections of the legislative rule-
57 making review committee and refiled in the state register on
58 the twenty-second day of August, two thousand one, relating
59 to the division of natural resources (special boating, 58 CSR
60 26), is authorized.

61 (d) The legislative rule filed in the state register on the
62 twenty-seventh day of July, two thousand one, authorized
63 under the authority of section two, article five, chapter twenty
64 of this code, modified by the division of natural resources to
65 meet the objections of the legislative rule-making review
66 committee and refiled in the state register on the fourteenth
67 day of August, two thousand one, relating to the division of
68 natural resources (public use of West Virginia state parks,
69 state forests and state wildlife management areas under the
70 division of natural resources, 58 CSR 31), is authorized with
71 the amendments set forth below:

72 On page 3, subsection 2.21, after the words ‘boundaries
73 of’ by inserting the words ‘the following’;

74 On page 3, subsection 2.1 by striking out the comma and
75 the words ‘which include’;

76 On page 3, subsection 2.1 after the word ‘Audra’ by in-
77 sserting a comma and the words ‘except in reserved picnic
78 shelters’;

79 On page 3, subsection 2.21 by striking out the words
80 ‘Tomlinson Run except in reserved picnic shelters, in all boat
81 launch ramp parking areas, and all camping areas within the
82 boundary of Bluestone State Park; all camping areas within
83 the boundary of Beech Fork State Park; and in all of Hawks
84 Nest State Park except the lodge and Hawks Nest golf course
85 which is operated as part of Hawks Nest State Park’ and in-
86 sserting in lieu thereof the following;

87 ‘Tomlinson Run, except in reserved picnic shelters,

88 Bluestone State Park, in all boat launch ramp parking
89 areas and all camping areas within its boundaries,

90 Beech Fork State Park, in all camping areas within its
91 boundaries, and

92 Hawks Nest State Park, except the lodge and Hawks Nest
93 golf course which is operated as part of Hawks Nest State
94 Park;”

95 (e) The legislative rule filed in the state register on the
96 twenty-seventh day of July, two thousand one, authorized
97 under the authority of section seven, article one, chapter
98 twenty of this code, modified by the division of natural re-
99 sources to meet the objections of the legislative rule-making
100 review committee and refiled in the state register on the
101 twenty-second day of August, two thousand one, relating to
102 the division of natural resources (wild boar hunting, 58 CSR
103 52), is authorized.

104 (f) The legislative rule filed in the state register on the
105 twenty-seventh day of July, two thousand one, authorized

106 under the authority of section seven, article one, chapter
107 twenty of this code, modified by the division of natural re-
108 sources to meet the objections of the legislative rule-making
109 review committee and refiled in the state register on the
110 twenty-second day of August, two thousand one, relating to
111 the division of natural resources (general trapping, 58 CSR
112 53), is authorized.

113 (g) The legislative rule filed in the state register on the
114 twenty-seventh day of July, two thousand one, authorized
115 under the authority of section thirty-three, article two, chapter
116 twenty of this code, modified by the division of natural re-
117 sources to meet the objections of the legislative rule-making
118 review committee and refiled in the state register on the
119 twenty-second day of August, two thousand one, relating to
120 the division of natural resources (issuance of hunting, trap-
121 ping and fishing licenses by telephone and other electronic
122 methods, 58 CSR 68), is authorized.

CHAPTER 204

(Com. Sub. for S. B. 407 — By Senator Sharpe)

[Passed February 18, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, eight, nine, ten, eleven, twelve and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing the periods in which a contractor, subcontractor, materialman and mechanic or laborer may perfect a lien for improvements to real property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

§38-2-7. Necessity and period for perfecting lien.

§38-2-8. Notice and recordation of contractor's lien.

§38-2-9. Notice and recordation of subcontractor's lien.

§38-2-10. Notice and recordation of lien for supplies furnished to owner.

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

§38-2-12. Notice and recordation of lien of mechanic or laborer working for owner.

§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

§38-2-7. Necessity and period for perfecting lien.

1 But the lien created and authorized by section one of this
2 article shall be discharged from and after one hundred days
3 from the completion of the contract and the lien created and
4 authorized by section two of this article shall be discharged
5 from and after one hundred days from the completion of the
6 subcontract and the lien created and authorized by section
7 three of this article shall be discharged from and after one
8 hundred days from the furnishing of the last of the materials,
9 machinery or other supplies and equipment and the lien cre-
10 ated and authorized by section four of this article shall be
11 discharged from and after one hundred days from the date of
12 the furnishing of the last of the materials, machinery or other
13 equipment or supplies and the lien created and authorized by
14 section five of this article shall be discharged from and after
15 one hundred days from the date of the performing of the last
16 of the work and labor and the lien created and authorized by
17 section six of this article shall be discharged from and after
18 one hundred days from the date of the performing of the last
19 of the work and labor, unless, within the respective periods,

20 the claimant of any such lien shall have perfected and pre-
21 served the same, as hereinafter provided in this article.

§38-2-8. Notice and recordation of contractor’s lien.

1 For the purpose of perfecting and preserving his lien, any
2 such general contractor as is mentioned in section one of this
3 article shall, within one hundred days after the completion of
4 his work provided for in such contract, cause to be recorded,
5 in the office of the clerk of the county court of the county
6 wherein such property is situate, a notice of such lien, which
7 notice shall be sufficient if in form and effect as follows:

8 Notice of Mechanic’s Lien.

9 To.....

10 Notice is hereby given, in accordance with the laws of
11 the State of West Virginia, that the undersigned claims a lien
12 to secure the payment of the sum of \$..... upon
13 your interest in and to lot number of block
14 number as shown on the official map of the
15 city of (or other adequate and ascertainable
16 description of the real estate to be charged) and upon the
17 following buildings, structures and improvements thereon:
18 (List the buildings, structures or improvements sought to be
19 charged.)

20 Given under my hand this day of, 20.....

21

22 State of West Virginia,

23 County of, being first duly sworn, upon his
24 oath says that the statements contained in the foregoing no-
25 tice of lien are true, as he verily believes.

26 Taken, subscribed and sworn to before me this day
27 of....., 20.....

28 My commission expires

29

30 (Official Capacity)

§38-2-9. Notice and recordation of subcontractor’s lien.

1 For the purpose of perfecting and preserving his or her
2 lien, every subcontractor mentioned in section two of this
3 article shall, within seventy-five days after the completion of
4 his or her subcontract, give to the owner or his or her autho-
5 rized agent, by any of the methods provided by law for the
6 service of a legal notice or summons, a notice of lien, which
7 notice shall be sufficient if in form and effect as follows:

8 Notice of Mechanic’s Lien.

9 To.....

10 You will please take notice that the undersigned
11 was and is subcontractor with who was
12 and is general contractor for the furnishing of materials and
13 doing of the work and labor, necessary to the completion of
14 (here describe the nature of the subcontract) on that certain
15 building (or other structure or improvement as the case may
16 be), owned by you and situate on lot number of block
17 number as shown on the official map of (or
18 other definite and ascertainable description of the real estate)
19 and that the contract price and value of said work and materi-
20 als is \$..... You are further notified that the undersigned has
21 not been paid therefor (or has been paid only \$..... thereof)
22 and that he claims and will claim a lien upon your interest in
23 the said lot (or tract) of land and upon the buildings, struc-
24 tures and improvements thereon to secure the payment of the
25 said sum.

26

27 State of West Virginia,

28 County of, being first duly sworn, upon his oath
29 says that the statements in the foregoing notice of mechanic's
30 lien are true, as he verily believes.

31 Taken, subscribed and sworn to before me this day
32 of, 20....

33 My commission expires

34
35 (Official Capacity)

36 But the lien shall be discharged and avoided, unless,
37 within one hundred days after the completion of his or her
38 subcontract as aforesaid, the subcontractor shall cause to be
39 recorded in the office of the clerk of the county commission
40 of the county wherein the property is situate a notice of the
41 lien, which notice shall be sufficient if in form and effect as
42 that provided in section eight of this article.

§38-2-10. Notice and recordation of lien for supplies furnished to owner.

1 For the purpose of perfecting and preserving his lien,
2 every materialman or furnisher of machinery or other neces-
3 sary equipment, under a contract with the owner, as men-
4 tioned in section three of this article, shall cause to be re-
5 corded in the office of the clerk of the county court of the
6 county wherein such property is situate, within one hundred
7 days from the date when he shall have ceased to furnish ma-
8 terial or machinery or other necessary equipment, a notice of
9 such lien, which notice shall be sufficient if in form and ef-
10 fect as that provided in section eight of this article.

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

1 For the purpose of perfecting and preserving his or her
 2 lien, every materialman or furnisher of machinery or other
 3 necessary equipment, who shall have furnished material,
 4 machinery or equipment under a contract with any contractor
 5 or with any subcontractor, as set forth in section four of this
 6 article, within seventy-five days after he or she shall have
 7 ceased to furnish such material or machinery or other equip-
 8 ment, shall give to the owner or his or her authorized agent,
 9 by any of the methods provided by law for the service of a
 10 legal notice or summons, a notice of such lien, which notice
 11 shall be sufficient if in form and effect as follows:

12 Notice of Mechanic’s Lien.

13 To.....

14 You will please take notice that the undersigned
 15 has furnished and delivered to who was
 16 contractor with you (or subcontractor with, who
 17 was contractor with you, as the case may be) for use in the
 18 erection and construction (or repair, removal, improvement
 19 or otherwise, as the case may be) of (here list the buildings or
 20 other structure or improvement to be charged) on the real
 21 estate known as (here insert an adequate and ascertainable
 22 description of the real estate to be charged) and the said ma-
 23 terials were of the nature and were furnished on the dates and
 24 in the quantities and at the price as shown in the following
 25 account thereof:

26 (Here insert itemized account.)

27 You are further notified that the undersigned has not been
 28 paid the sum of \$ (or that there is still due and owing to
 29 the undersigned thereon the sum of \$) and that he claims
 30 a lien upon your interest in the said lot (or tract) of land and
 31 upon the buildings, structures and improvements thereon, to
 32 secure the payment of the said sum.

33

34 State of West Virginia,

35 County of, being first duly sworn, upon his oath
36 says that the statements in the foregoing notice of lien con-
37 tained are true, as he verily believes.

38 Taken, subscribed and sworn to before me this day
39 of, 20.....

40 My commission expires

41

42 (Official Capacity)

43 But the lien shall be discharged and avoided, unless,
44 within one hundred days after such materialman or other
45 furnisher of machinery or other necessary equipment shall
46 have ceased to furnish such materials or machinery or other
47 equipment, he or she shall cause to be recorded in the office
48 of the clerk of the county commission of the county wherein
49 such property is situate a notice of such lien, which notice
50 shall be sufficient if in form and effect as that provided in
51 section eight of this article and which recorded notice need
52 not include such itemized account.

**§38-2-12. Notice and recordation of lien of mechanic or laborer
working for owner.**

1 For the purpose of perfecting and preserving his lien
2 every such workman, artisan, mechanic, laborer or other
3 person as is mentioned in section five of this article who shall
4 have done any work or performed any labor upon any such
5 building or improvement, under a contract with the owner
6 thereof, shall cause to be recorded in the office of the clerk of
7 the county court of the county wherein such property is situ-

8 ate, within one hundred days after he shall have ceased to
9 perform any such work or labor, a notice of his lien, which
10 notice shall be sufficient if in form and effect as that pro-
11 vided in section eight of this article.

**§38-2-13. Notice and recordation of lien of mechanic or laborer
working for contractor or subcontractor.**

1 For the purpose of perfecting and preserving his or her
2 lien, every workman, artisan, mechanic, laborer or other per-
3 son who shall have performed any work or labor upon the
4 building or improvement thereto, under a contract with any
5 general contractor or with any subcontractor, as set forth in
6 section six of this article, shall cause to be given to the
7 owner, or his or her authorized agent, by any of the methods
8 provided by law for the service of a legal notice or summons,
9 within seventy-five days after he or she shall have ceased to
10 perform any such work or labor, a notice of the lien, which
11 notice shall be sufficient, if in form and effect as follows:

12 Notice of Mechanic’s Lien.

13 To.....

14 You will please take notice that the undersigned has per-
15 formed work and labor under a contract with who
16 was general contractor with you (or who was subcontractor
17 with, who was general contractor with you) in the
18 erection and construction (or removal, repair, improvement
19 or otherwise, as the case may be) of a certain building (or
20 other structure or improvement) on real estate known as (here
21 insert an adequate and ascertainable description of the real
22 estate to be charged) and that the work and labor was of the
23 kind, was performed on the dates, for the purposes and at the
24 prices, as shown in the following itemized account thereof:

25 (Here insert itemized account.)

CHAPTER 205

(S. B. 598 — By Senators Kessler, Rowe, Edgell and Minard)

[Passed March 8, 2002; 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 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 domi-
3 ciled in this state to exempt the property specified under the
4 provisions of 11 U.S.C. §522(d).

5 Any person who files a petition under the federal bank-
6 ruptcy law may exempt from property of the estate in a bank-
7 ruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed twenty-five thou-
9 sand dollars in value, in real property or personal property
10 that the debtor or a dependent of the debtor uses as a resi-
11 dence, in a cooperative that owns property that the debtor or a

12 dependent of the debtor uses as a residence or in a burial plot
13 for the debtor or a dependent of the debtor.

14 (b) The debtor's interest, not to exceed two thousand four
15 hundred dollars in value, in one motor vehicle.

16 (c) The debtor's interest, not to exceed four hundred
17 dollars in value in any particular item, in household furnish-
18 ings, household goods, wearing apparel, appliances, books,
19 animals, crops or musical instruments that are held primarily
20 for the personal, family or household use of the debtor or a
21 dependent of the debtor: *Provided*, That the total amount of
22 personal property exempted under this subsection may not
23 exceed eight thousand dollars.

24 (d) The debtor's interest, not to exceed one thousand
25 dollars in value, in jewelry held primarily for the personal,
26 family or household use of the debtor or a dependent of the
27 debtor.

28 (e) The debtor's interest, not to exceed in value eight
29 hundred dollars plus any unused amount of the exemption
30 provided under subsection (a) of this section in any property.

31 (f) The debtor's interest, not to exceed one thousand five
32 hundred dollars in value, in any implements, professional
33 books or tools of the trade of the debtor or the trade of a de-
34 pendent of the debtor.

35 (g) Any unmeasured life insurance contract owned by the
36 debtor, other than a credit life insurance contract.

37 (h) The debtor's interest, not to exceed in value eight
38 thousand dollars less any amount of property of the estate
39 transferred in the manner specified in 11 U.S.C. §542(d), in
40 any accrued dividend or interest under, or loan value of, any
41 unmeasured life insurance contract owned by the debtor un-
42 der which the insured is the debtor or an individual of whom
43 the debtor is a dependent.

44 (i) Professionally prescribed health aids for the debtor or
45 a dependent of the debtor.

46 (j) The debtor's right to receive:

47 (1) A social security benefit, unemployment compensa-
48 tion or a local public assistance benefit;

49 (2) A veterans' benefit;

50 (3) A disability, illness or unemployment benefit;

51 (4) Alimony, support or separate maintenance, to the
52 extent reasonably necessary for the support of the debtor and
53 any dependent of the debtor;

54 (5) A payment under a stock bonus, pension, profit shar-
55 ing, annuity or similar plan or contract on account of illness,
56 disability, death, age or length of service, to the extent rea-
57 sonably necessary for the support of the debtor and any de-
58 pendent of the debtor, and funds on deposit in an individual
59 retirement account (IRA), including a simplified employee
60 pension (SEP) regardless of the amount of funds, unless:

61 (A) The plan or contract was established by or under the
62 auspices of an insider that employed the debtor at the time
63 the debtor's rights under the plan or contract arose;

64 (B) The payment is on account of age or length of ser-
65 vice;

66 (C) The plan or contract does not qualify under Section
67 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue
68 Code of 1986; and

69 (D) With respect to an individual retirement account,
70 including a simplified employee pension, the amount is sub-
71 ject to the excise tax on excess contributions under Section

72 4973 and/or Section 4979 of the Internal Revenue Code of
73 1986, or any successor provisions, regardless of whether the
74 tax is paid.

75 (k) The debtor's right to receive, or property that is trace-
76 able to:

77 (1) An award under a crime victim's reparation law;

78 (2) A payment on account of the wrongful death of an
79 individual of whom the debtor was a dependent, to the extent
80 reasonably necessary for the support of the debtor and any
81 dependent of the debtor;

82 (3) A payment under a life insurance contract that in-
83 sured the life of an individual of whom the debtor was a de-
84 pendent on the date of the individual's death, to the extent
85 reasonably necessary for the support of the debtor and any
86 dependent of the debtor;

87 (4) A payment, not to exceed fifteen thousand dollars on
88 account of personal bodily injury, not including pain and
89 suffering or compensation for actual pecuniary loss, of the
90 debtor or an individual of whom the debtor is a dependent;

91 (5) A payment in compensation of loss of future earnings
92 of the debtor or an individual of whom the debtor is or was a
93 dependent, to the extent reasonably necessary for the support
94 of the debtor and any dependent of the debtor;

95 (6) Payments made to the prepaid tuition trust fund or to
96 the savings plan trust fund, including earnings, in accordance
97 with article thirty, chapter eighteen of this code on behalf of
98 any beneficiary.

CHAPTER 206

**(H. B. 4558 — By Delegates Kominar, Proudfoot,
Fletcher, Stalnaker, Boggs and Browning)**

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two hundred two, article two, chapter thirty-one-b of said code; to amend and reenact section one thousand two, article ten of said chapter; to amend and reenact section eight, article one-a, chapter thirty-eight of said code; to amend and reenact section five hundred twenty-five, article nine, chapter forty-six of said code; to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to fees for articles of organization for limited liability companies and certificate of authority for foreign limited liability companies; deleting bond requirements by a plaintiff against a nonresident prior to filing a complaint and summons in circuit court; providing for the deposit of certain fees; and removing certain contradictory language.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two hundred two, article two, chapter thirty-one-b of said code be amended and reenacted; that section one thousand two, article ten of said chapter be amended and reenacted; that section eight, article one-a, chapter

thirty-eight of said code be amended and reenacted; that section five hundred twenty-five, article nine, chapter forty-six of said code be amended and reenacted; that sections thirty-one and thirty-three, article three, chapter fifty-six of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

31B. Uniform Limited Liability Company Act.

38. Liens.

46. Uniform Commercial Code.

56. Pleading and Practice.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

1 (a) *Payment and collection of tax.* — When application is
2 made to the secretary of state for a certificate of incorpora-
3 tion or authority to do business in this state, the applicant
4 shall pay all taxes and fees due under this article; and the
5 secretary of state shall collect the corporate license tax for the
6 first year before issuing the certificate. Thereafter, on or be-
7 fore the first day of the license tax year next following the
8 date of the certificate, and on or before the first day of each
9 succeeding license tax year, the corporation shall pay and the
10 tax commissioner shall collect the tax for a full license tax
11 year together with the statutory attorney fee: *Provided*, That
12 if the application is made on or after the first day of the sec-
13 ond month preceding the beginning of the next license tax
14 year, and before the first day of the license tax year, the sec-
15 retary of state shall collect the tax for the full year beginning

16 on the first day of the next license tax year in addition to the
17 initial tax, together with the statutory attorney fee.

18 (b) *Deposit of money.* — The first year license tax re-
19 ceived by the secretary of state pursuant to the provisions of
20 this article shall be deposited by the secretary of state as fol-
21 lows: One-half shall be deposited in the state general revenue
22 fund and one-half shall be deposited in the services fees and
23 collections account established by section two, article one,
24 chapter fifty-nine of this code. The license tax received by
25 the tax commissioner every year after the initial registration
26 shall be deposited into the state general revenue fund.

27 (c) *Returns.* — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be ac-
29 companied by a return on forms provided by the tax commis-
30 sioner for that purpose. The tax commissioner shall upon
31 completion of processing the return, forward it to the secre-
32 tary of state, together with a list of all corporations which
33 have paid the tax. The return shall contain: (1) The address of
34 the corporation's principal office; (2) the names and mailing
35 addresses of its officers and directors; (3) the name and mail-
36 ing address of the person on whom notice of process may be
37 served; (4) the name and address of the corporation's parent
38 corporation and of each subsidiary of the corporation li-
39 censed to do business in this state; and (5) any other informa-
40 tion the tax commissioner considers appropriate. Notwith-
41 standing any other provision of law to the contrary, the secre-
42 tary of state shall, upon request of any person, disclose: (A)
43 The address of the corporation's principal office; (B) the
44 names and addresses of its officers and directors; (C) the
45 name and mailing address of the person on whom notice of
46 process may be served; and (D) the name and address of each
47 subsidiary of the corporation and the corporation's parent
48 corporation.

**CHAPTER 31B. UNIFORM LIMITED
LIABILITY COMPANY ACT.**

Article

2. Organization.

10. Foreign Limited Liability Companies.

ARTICLE 2. ORGANIZATION.

§31B-2-202. Organization.

1 (a) One or more persons may organize a limited liability
2 company, consisting of one or more members, by delivering
3 articles of organization to the office of the secretary of state
4 for filing, together with the fee prescribed by section two,
5 article one, chapter fifty-nine of this code.

6 (b) Unless a delayed effective date is specified, the exis-
7 tence of a limited liability company begins when the articles
8 of organization are filed.

9 (c) The filing of the articles of organization by the secre-
10 tary of state is conclusive proof that the organizers satisfied
11 all conditions precedent to the creation of a limited liability
12 company.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

1 (a) A foreign limited liability company may apply for a
2 certificate of authority to transact business in this state by
3 delivering an application to the secretary of state for filing,
4 together with the fee prescribed by section two, article one,
5 chapter fifty-nine of this code.

6 The application shall set forth:

7 (1) The name of the foreign company or, if its name is
8 unavailable for use in this state, a name that satisfies the re-
9 quirements of section 10-1005 of this article;

10 (2) The name of the state or country under whose law it
11 is organized;

12 (3) The street address of its principal office;

13 (4) The name and address of each member having author-
14 ity to execute instruments on behalf of the limited liability
15 company;

16 (5) The address of its initial designated office in this
17 state;

18 (6) The name and street address of its initial agent for
19 service of process in this state;

20 (7) Whether the duration of the company is for a speci-
21 fied term and, if so, the period specified;

22 (8) Whether the company is manager-managed, and, if
23 so, the name and address of each initial manager; and

24 (9) Whether the members of the company are to be liable
25 for its debts and obligations under a provision similar to sec-
26 tion 3-303(c).

27 (b) A foreign limited liability company shall deliver with
28 the completed application a certificate of existence or a re-
29 cord of similar import authenticated by the secretary of state
30 or other official having custody of company records in the
31 state or country under whose law it is organized.

CHAPTER 38. LIENS.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

§38-1A-8. How service of process or notice made.

1 Service of process or notice shall be made by mailing or
2 delivering to the office of the secretary of state three copies
3 of the process or notice, with a notation on the process or
4 notice of the residence address of the trustee upon whom
5 service is being had, as stated in the security trust; if the ad-
6 dress of the trustee is not stated in the security trust, the nota-
7 tion shall state the address of the beneficiary of the trust as
8 given in the security trust; and service of the process or no-
9 tice is complete upon the receipt in the office of the secretary
10 of state of the notice or process bearing the notation and ac-
11 companied by the fee required by section two, article one,
12 chapter fifty-nine of this code, which shall be taxed as costs
13 in the suit, action or proceeding. The secretary of state shall
14 keep one copy of all process and notices, with a record of the
15 day and hour of service of the process or notice.

CHAPTER 46. UNIFORM COMMERCIAL CODE.**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND
CHATTEL PAPER.****§46-9-525. Fees.**

1 (a) *Initial financing statement or other record: general*
2 *rule.* — Except as otherwise provided in subsection (e) of
3 this section, the fee for filing and indexing a record under this
4 part, other than an initial financing statement of the kind
5 described in subsection (b) of this section, is the amount
6 specified in subsection (c) of this section, if applicable, plus:

7 (1) Ten dollars if the record is communicated in writing
8 and consists of one or two pages; and

9 (2) Ten dollars if the record is communicated in writing
10 and consists of more than two pages; and

11 (3) Ten dollars if the record is communicated by another
12 medium authorized by filing-office rule.

13 (b) *Initial financing statement: Public-finance and manu-*
14 *factured housing transactions.* — Except as otherwise pro-
15 vided in subsection (e) of this section, the fee for filing and
16 indexing an initial financing statement of the following kind
17 is the amount specified in subsection (c) of this section, if
18 applicable, plus:

19 (1) Ten dollars if the financing statement indicates that it
20 is filed in connection with a public-finance transaction;

21 (2) Ten dollars if the financing statement indicates that it
22 is filed in connection with a manufactured-home transaction.

23 (c) *Number of names.* — The number of names required
24 to be indexed does not affect the amount of the fee in subsec-
25 tions (a) and (b) of this section.

26 (d) *Response to information request.* — The fee for re-
27 sponding to a request for information from the filing office,
28 including for issuing a certificate showing whether there is on
29 file any financing statement naming a particular debtor, is:

30 (1) Five dollars if the request is communicated in writ-
31 ing;

32 (2) Five dollars if the request is communicated by an-
33 other medium authorized by filing-office rule; and

34 (3) Fifty cents per page for each active lien.

35 (e) *Record of mortgage.* — This section does not require
36 a fee with respect to a record of a mortgage which is effective
37 as a financing statement filed as a fixture filing or as a fi-
38 nancing statement covering as-extracted collateral or timber

39 to be cut under section 9-502(c) of this article. However, the
40 recording and satisfaction fees that otherwise would be appli-
41 cable to the record of the mortgage apply.

42 (f) *Deposit of funds.* -- All fees and moneys collected by
43 the secretary of state pursuant to the provisions of this article
44 shall be deposited by the secretary of state as follows: One-
45 half shall be deposited in the state fund, general revenue, and
46 one-half shall be deposited in the service fees and collections
47 account established by section two, article one, chapter fifty-
48 nine of this code for the operation of the office of the secre-
49 tary of state. Any balance remaining on the thirtieth day of
50 June, two thousand one, in the existing special revenue ac-
51 count entitled "uniform commercial code" as established by
52 chapter two hundred four, acts of the Legislature, regular
53 session one thousand nine hundred eighty-nine, shall be
54 transferred to the service fees and collections account estab-
55 lished by section two, article one, chapter fifty-nine of this
56 code for the operation of the office of the secretary of state.
57 The secretary of state shall dedicate sufficient resources from
58 that fund or other funds to provide the services required in
59 this article, unless otherwise provided by appropriation or
60 other action by the Legislature.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

- §56-3-31. Actions by or against nonresident operators of motor vehicles in-
volved in highway accidents; appointment of secretary of state,
insurance company, as agents; service of process.
- §56-3-33. Actions by or against nonresident persons having certain contracts
with this state; authorizing secretary of state to receive process;
bond and fees; service of process; definitions; retroactive applica-
tion.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

1 (a) Every nonresident, for the privilege of operating a
2 motor vehicle on a public street, road or highway of this
3 state, either personally or through an agent, appoints the
4 secretary of state, or his or her successor in office, to be his
5 or her agent or attorney-in-fact upon whom may be served all
6 lawful process in any action or proceeding against him or her
7 in any court of record in this state arising out of any accident
8 or collision occurring in the state of West Virginia in which
9 the nonresident was involved: *Provided*, That in the event
10 process against a nonresident defendant cannot be effected
11 through the secretary of state, as provided by this section, for
12 the purpose only of service of process, the nonresident mo-
13 torist shall be considered to have appointed as his or her
14 agent or attorney-in-fact any insurance company which has a
15 contract of automobile or liability insurance with the nonresi-
16 dent defendant.

17 (b) For purposes of service of process as provided in this
18 section, every insurance company shall be considered the
19 agent or attorney-in-fact of every nonresident motorist in-
20 sured by that company if the insured nonresident motorist is
21 involved in any accident or collision in this state and service
22 of process cannot be effected upon the nonresident through
23 the office of the secretary of state. Upon receipt of process as
24 provided in this section, the insurance company may, within
25 thirty days, file an answer or other pleading or take any ac-
26 tion allowed by law on behalf of the defendant.

27 (c) A nonresident operating a motor vehicle in this state,
28 either personally or through an agent, is considered to ac-
29 knowledge the appointment of the secretary of state, or, as

30 the case may be, his or her automobile insurance company, as
31 his or her agent or attorney-in-fact, or the agent or attorney-
32 in-fact of his or her administrator, administratrix, executor or
33 executrix in the event the nonresident dies, and furthermore
34 is considered to agree that any process against him or her or
35 against his or her administrator, administratrix, executor or
36 executrix, which is served in the manner provided in this
37 section, shall be of the same legal force and validity as
38 though the nonresident or his or her administrator,
39 administratrix, executor or executrix were personally served
40 with a summons and complaint within this state.

41 Any action or proceeding may be instituted, continued or
42 maintained on behalf of or against the administrator,
43 administratrix, executor or executrix of any nonresident who
44 dies during or subsequent to an accident or collision resulting
45 from the operation of a motor vehicle in this state by the
46 nonresident or his or her duly authorized agent.

47 (d) At the time of filing a complaint against a nonresident
48 motorist who has been involved in an accident or collision in
49 the state of West Virginia and before a summons is issued on
50 the complaint, the plaintiff, or someone for him or her, shall
51 execute a bond in the sum of one hundred dollars before the
52 clerk of the court in which the action is filed, with surety to
53 be approved by the clerk, conditioned that on failure of the
54 plaintiff to prevail in the action he or she will reimburse the
55 defendant, or cause the defendant to be reimbursed, the nec-
56 essary expense incurred in the defense of the action in this
57 state. Upon the issue of a summons the clerk shall certify
58 thereon that the bond has been given and approved.

59 (e) Service of process upon a nonresident defendant shall
60 be made by leaving the original and two copies of both the
61 summons and complaint, together with the bond certificate of
62 the clerk, and the fee required by section two, article one,

63 chapter fifty-nine of this code with the secretary of state, or
64 in his or her office, and the service shall be sufficient upon
65 the nonresident defendant or, if a natural person, his or her
66 administrator, administratrix, executor or executrix: *Pro-*
67 *vided*, That notice of service and a copy of the summons and
68 complaint shall be sent by registered or certified mail, return
69 receipt requested, by the secretary of state to the nonresident
70 defendant. The return receipt signed by the defendant or his
71 or her duly authorized agent shall be attached to the original
72 summons and complaint and filed in the office of the clerk of
73 the court from which process is issued. In the event the regis-
74 tered or certified mail sent by the secretary of state is refused
75 or unclaimed by the addressee or if the addressee has moved
76 without any forwarding address, the registered or certified
77 mail returned to the secretary of state, or to his or her office,
78 showing on the mail the stamp of the post-office department
79 that delivery has been refused or not claimed or that the ad-
80 dressee has moved without any forwarding address, shall be
81 appended to the original summons and complaint and filed in
82 the clerk's office of the court from which process issued. The
83 court may order any reasonable continuances to afford the
84 defendant opportunity to defend the action.

85 (f) The fee remitted to the secretary of state at the time of
86 service, shall be taxed in the costs of the proceeding. The
87 secretary of state shall keep a record in his or her office of all
88 service of process and the day and hour of service of process.

89 (g) In the event service of process upon a nonresident
90 defendant cannot be effected through the secretary of state as
91 provided by this section, service may be made upon the de-
92 fendant's insurance company. The plaintiff shall file with the
93 clerk of the circuit court an affidavit alleging that the defen-
94 dant is not a resident of this state; that process directed to the
95 secretary of state was sent by registered or certified mail,
96 return receipt requested; that the registered or certified mail

97 was returned to the office of the secretary of state showing
98 the stamp of the post-office department that delivery was
99 refused or that the notice was unclaimed or that the defendant
100 addressee moved without any forwarding address; and that
101 the secretary of state has complied with the provisions of
102 subsection (e) of this section. Upon receipt of process the
103 insurance company may, within thirty days, file an answer or
104 other pleading and take any action allowed by law in the
105 name of the defendant.

106 (h) The following words and phrases, when used in this
107 article, for the purpose of this article and unless a different
108 intent on the part of the Legislature is apparent from the con-
109 text, have the following meanings:

110 (1) "Duly authorized agent" means and includes, among
111 others, a person who operates a motor vehicle in this state for
112 a nonresident as defined in this section and chapter, in pursuit
113 of business, pleasure or otherwise, or who comes into this
114 state and operates a motor vehicle for, or with the knowledge
115 or acquiescence of, a nonresident; and includes, among oth-
116 ers, a member of the family of the nonresident or a person
117 who, at the residence, place of business or post office of the
118 nonresident, usually receives and acknowledges receipt for
119 mail addressed to the nonresident.

120 (2) "Motor vehicle" means and includes any self-pro-
121 pelled vehicle, including a motorcycle, tractor and trailer, not
122 operated exclusively upon stationary tracks.

123 (3) "Nonresident" means any person who is not a resident
124 of this state or a resident who has moved from the state sub-
125 sequent to an accident or collision, and among others in-
126 cludes a nonresident firm, partnership, corporation or volun-
127 tary association, or a firm, partnership, corporation or volun-
128 tary association that has moved from the state subsequent to
129 an accident or collision.

130 (4) "Nonresident plaintiff or plaintiffs" means a nonresi-
131 dent who institutes an action in a court in this state having
132 jurisdiction against a nonresident in pursuance of the provi-
133 sions of this article.

134 (5) "Nonresident defendant or defendants" means a non-
135 resident motorist who, either personally or through his or her
136 agent, operated a motor vehicle on a public street, highway or
137 road in this state and was involved in an accident or collision
138 which has given rise to a civil action filed in any court in this
139 state.

140 (6) "Street", "road" or "highway" means the entire width
141 between property lines of every way or place of whatever
142 nature when any part of the street, road or highway is open to
143 the use of the public, as a matter of right, for purposes of
144 vehicular traffic.

145 (7) "Insurance company" means any firm, corporation,
146 partnership or other organization which issues automobile
147 insurance.

148 (i) The provision for service of process in this section is
149 cumulative and nothing contained in this section shall be
150 construed as a bar to the plaintiff in any action from having
151 process in the action served in any other mode and manner
152 provided by law.

***§56-3-33. Actions by or against nonresident persons having
certain contracts with this state; authorizing
secretary of state to receive process; bond and
fees; service of process; definitions; retroactive
application.**

1 (a) The engaging by a nonresident, or by his or her duly
2 authorized agent, in any one or more of the acts specified in

***Clerk's Note:** This section was also amended by S. B. 425 (Chapter 87), which
passed prior to this act.

3 subdivisions (1) through (7) of this subsection shall be
4 deemed equivalent to an appointment by such nonresident of
5 the secretary of state, or his or her successor in office, to be
6 his or her true and lawful attorney upon whom may be served
7 all lawful process in any action or proceeding against him or
8 her, in any circuit court in this state, including an action or
9 proceeding brought by a nonresident plaintiff or plaintiffs, for
10 a cause of action arising from or growing out of such act or
11 acts, and the engaging in such act or acts shall be a significa-
12 tion of such nonresident's agreement that any such process
13 against him or her, which is served in the manner hereinafter
14 provided, shall be of the same legal force and validity as
15 though such nonresident were personally served with a sum-
16 mons and complaint within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this
20 state;

21 (4) Causing tortious injury in this state by an act or omis-
22 sion outside this state if he or she regularly does or solicits
23 business, or engages in any other persistent course of con-
24 duct, or derives substantial revenue from goods used or con-
25 sumed or services rendered in this state;

26 (5) Causing injury in this state to any person by breach of
27 warranty expressly or impliedly made in the sale of goods
28 outside this state when he or she might reasonably have ex-
29 pected such person to use, consume or be affected by the
30 goods in this state: *Provided*, That he or she also regularly
31 does or solicits business, or engages in any other persistent
32 course of conduct, or derives substantial revenue from goods
33 used or consumed or services rendered in this state;

34 (6) Having an interest in, using or possessing real prop-
35 erty in this state; or

36 (7) Contracting to insure any person, property or risk
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely
39 upon the provisions of this section, only a cause of action
40 arising from or growing out of one or more of the acts speci-
41 fied in subdivisions (1) through (7), subsection (a) of this
42 section may be asserted against him or her.

43 (c) Service shall be made by leaving the original and two
44 copies of both the summons and the complaint, and the fee
45 required by section two, article one, chapter fifty-nine of this
46 code with the secretary of state, or in his or her office, and
47 such service shall be sufficient upon such nonresident: *Pro-*
48 *vided*, That notice of such service and a copy of the summons
49 and complaint shall forthwith be sent by registered or certi-
50 fied mail, return receipt requested, by the secretary of state to
51 the defendant at his or her nonresident address and the defen-
52 dant's return receipt signed by himself or herself or his or her
53 duly authorized agent or the registered or certified mail so
54 sent by the secretary of state which is refused by the ad-
55 dressee and which registered or certified mail is returned to
56 the secretary of state, or to his or her office, showing thereon
57 the stamp of the post-office department that delivery has been
58 refused, shall be appended to the original summons and com-
59 plaint and filed therewith in the clerk's office of the court
60 from which process issued. If any defendant served with
61 summons and complaint fails to appear and defend within
62 thirty days of service, judgment by default may be rendered
63 against him or her at any time thereafter. The court may order
64 such continuances as may be reasonable to afford the defen-
65 dant opportunity to defend the action or proceeding.

66 (d) The fee remitted to the secretary of state at the time
67 of service shall be taxed in the costs of the action or proceed-
68 ing. The secretary of state shall keep a record in his or her
69 office of all such process and the day and hour of service
70 thereof.

71 (e) The following words and phrases, when used in this
72 section, shall for the purpose of this section and unless a
73 different intent be apparent from the context, have the fol-
74 lowing meanings:

75 (1) "Duly authorized agent" means and includes among
76 others a person who, at the direction of or with the knowl-
77 edge or acquiescence of a nonresident, engages in such act or
78 acts and includes among others a member of the family of
79 such nonresident or a person who, at the residence, place of
80 business or post office of such nonresident, usually receives
81 and receipts for mail addressed to such nonresident.

82 (2) "Nonresident" means any person, other than volun-
83 tary unincorporated associations, who is not a resident of this
84 state or a resident who has moved from this state subsequent
85 to engaging in such act or acts, and among others includes a
86 nonresident firm, partnership or corporation or a firm, part-
87 nership or corporation which has moved from this state sub-
88 sequent to any of said such act or acts.

89 (3) "Nonresident plaintiff or plaintiffs" means a nonresi-
90 dent of this state who institutes an action or proceeding in a
91 circuit court in this state having jurisdiction against a nonres-
92 ident of this state pursuant to the provisions of this section.

93 (f) The provision for service of process herein is cumula-
94 tive and nothing herein contained shall be construed as a bar
95 to the plaintiff in any action or proceeding from having pro-
96 cess in such action served in any other mode or manner pro-
97 vided by the law of this state or by the law of the place in

98 which the service is made for service in that place in an ac-
99 tion in any of its courts of general jurisdiction.

100 (g) This section shall not be retroactive and the provi-
101 sions hereof shall not be available to a plaintiff in a cause of
102 action arising from or growing out of any of said acts occur-
103 ring prior to the effective date of this section.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 (a) Except as may be otherwise provided in this code, the
2 secretary of state shall charge for services rendered in his or
3 her office the following fees to be paid by the person to
4 whom the service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amend-
7 ment, change of name, registration of trade name, merger,
8 consolidation, conversion, renewal, dissolution, termination,
9 cancellation, withdrawal revocation and reinstatement of
10 business entities organized within the state, as follows:

11 (A) Articles of incorporation of for-profit
12 corporation \$50.00

13 (B) Articles of incorporation of nonprofit
14 corporation 25.00

15 (C) Articles of organization of limited liability
16 company 100.00

17 (D) Agreement of a general partnership 50.00

1756	LIMITED LIABILITY COMPANIES	[Ch. 206
18	(E) Certificate of a limited partnership	100.00
19	(F) Agreement of a voluntary association	50.00
20	(G) Articles of organization of a business trust	50.00
21	(H) Amendment or correction of articles of incorpora-	
22	tion, including change of name or increase of capital stock, in	
23	addition to any applicable license tax	25.00
24	(I) Amendment or correction, including change of name,	
25	of articles of organization of business trust, limited liability	
26	partnership, limited liability company or professional limited	
27	liability company or of certificate of limited partnership or	
28	agreement of voluntary association	25.00
29	(J) Amendment and restatement of articles of incorpora-	
30	tion, certificate of limited partnership, agreement of volun-	
31	tary association or articles of organization of limited liability	
32	partnership, limited liability company or professional limited	
33	liability company or business trust	25.00
34	(K) Registration of trade name, otherwise designated	
35	as a true name, fictitious name or D.B.A. (doing business	
36	as) name for any domestic business entity as permitted by	
37	law	25.00
38	(L) Articles of merger of two corporations, limited part-	
39	nerships, limited liability partnerships, limited liability com-	
40	panies or professional limited liability companies, voluntary	
41	associations or business trusts.	25.00
42	(M) Plus for each additional party to the merger in excess	
43	of two	15.00
44	(N) Statement of conversion, when permitted, from one	
45	business entity into another business entity, in addition to the	

46	cost of filing the appropriate documents to organize the sur-	
47	viving entity	25.00
48	(O) Articles of dissolution of a corporation, voluntary	
49	association or business trust, or statement of dissolution of a	
50	general partnership	25.00
51	(P) Revocation of voluntary dissolution of a corporation,	
52	voluntary association or business trust	15.00
53	(Q) Articles of termination of a limited liability com-	
54	pany, cancellation of a limited partnership or statement of	
55	withdrawal of limited liability partnership	25.00
56	(R) Reinstatement of a limited liability company or pro-	
57	fessional limited liability company after administrative disso-	
58	lution	25.00
59	(2) For filing, recording, indexing, preserving a record of	
60	and issuing a certificate relating to the registration, amend-	
61	ment, change of name, merger, consolidation, conversion,	
62	renewal, withdrawal or termination within this state of busi-	
63	ness entities organized in other states or countries, as follows:	
64	(A) Certificate of authority of for-profit	
65	corporation	\$100.00
66	(B) Certificate of authority of nonprofit	
67	corporation	50.00
68	(C) Certificate of authority of foreign limited liability	
69	companies	150.00
70	(D) Certificate of exemption from certificate of	
71	authority	25.00
72	(E) Registration of a general partnership	50.00

1758	LIMITED LIABILITY COMPANIES	[Ch. 206
73	(F) Registration of a limited partnership	150.00
74	(G) Registration of a limited liability partnership for two-	
75	year term	500.00
76	(H) Registration of a voluntary association	50.00
77	(I) Registration of a trust or business trust	50.00
78	(J) Amendment or correction of certificate of authority	
79	of a foreign corporation, including change of name or in-	
80	crease of capital stock, in addition to any applicable license	
81	tax	25.00
82	(K) Amendment or correction of certificate of limited	
83	partnership, limited liability partnership, limited liability	
84	company or professional limited liability company, voluntary	
85	association or business trust	25.00
86	(L) Registration of trade name, otherwise designated	
87	as a true name, fictitious name or D.B.A. (doing business	
88	as) name for any foreign business entity as permitted by	
89	law	25.00
90	(M) Amendment and restatement of certificate of author-	
91	ity or of registration of a corporation, limited partnership,	
92	limited liability partnership, limited liability company or	
93	professional limited liability company, voluntary association	
94	or business trust	25.00
95	(N) Articles of merger of two corporations, limited part-	
96	nerships, limited liability partnerships, limited liability com-	
97	panies or professional limited liability companies, voluntary	
98	associations or business trusts	25.00
99	(O) Plus for each additional party to the merger in excess	
100	of two	5.00

101 (P) Statement of conversion, when permitted, from one
 102 business entity into another business entity, in addition to the
 103 cost of filing the appropriate articles or certificate to organize
 104 the surviving entity 25.00

105 (Q) Certificate of withdrawal or cancellation of a
 106 corporation, limited partnership, limited liability partnership,
 107 limited liability company, voluntary association or business
 108 trust 25.00

109 (3) For receiving, filing and recording a change of the
 110 principal or designated office, change of the agent of process
 111 and/or change of officers, directors, partners, members or
 112 managers, as the case may be, of a corporation, limited part-
 113 nership, limited liability partnership, limited liability com-
 114 pany or other business entity as provided by law 15.00

115 (4) For receiving, filing and preserving a reservation of a
 116 name for each one hundred twenty days or for any other pe-
 117 riod in excess of seven days prescribed by law for a corpora-
 118 tion, limited partnership, limited liability partnership or lim-
 119 ited liability company 15.00

120 (5) For issuing a certificate relating to a corporation or
 121 other business entity, as follows:

122 (A) Certificate of good standing of a domestic or foreign
 123 corporation \$10.00

124 (B) Certificate of existence of a domestic limited liability
 125 company, and certificate of authorization foreign limited
 126 liability company 10.00

127 (C) Certificate of existence of any business entity,
 128 trademark or service mark registered with the secretary
 129 of state 10.00

130 (D) Certified copy of corporate charter or comparable
131 organizing documents for other business entities 15.00

132 (E) Plus, for each additional amendment, restatement or
133 other additional document 5.00

134 (F) Certificate of registration of the name of a foreign
135 corporation, limited liability company, limited partnership or
136 limited liability partnership 25.00

137 (G) And for the annual renewal of the name
138 registration 10.00

139 (H) Any other certificate not specified in this
140 subdivision 10.00

141 (6) For issuing a certificate other than those relating to
142 business entities, as provided in this subsection, as follows:

143 (A) Certificate or apostille relating to the authority of
144 certain public officers, including the membership of boards
145 and commissions \$10.00

146 (B) Plus, for each additional certificate pertaining to the
147 same transaction 5.00

148 (C) Any other certificate not specified in this
149 subdivision 10.00

150 (D) For acceptance, indexing and recordation of service
151 of process any corporation, limited partnership, limited liabil-
152 ity partnership, limited liability company, voluntary associa-
153 tion, business trust, insurance company, person or other en-
154 tity as permitted by law 15.00

155 (E) For shipping and handling expenses for execution of
156 service of process by certified mail upon any defendant
157 within the United States, which fee is to be deposited to the

158 special revenue account established in this section for the
159 operation of the office of the secretary of state. 5.00

160 (F) For shipping and handling expenses for execution of
161 service of process upon any defendant outside the United
162 States by registered mail, which fee is to be deposited to the
163 special revenue account established in this section for the
164 operation of the office of the secretary of state. 15.00

165 (7) For a search of records of the office conducted by
166 employees of or at the expense of the secretary of state upon
167 request, as follows:

168 (A) For any search of archival records maintained at
169 sites other than the office of the secretary of state, no less
170 than \$10.00

171 (B) For searches of archival records maintained at sites
172 other than the office of the secretary of state which require
173 more than one hour, for each hour or fraction of an hour con-
174 sumed in making such search 10.00

175 (C) For any search of records maintained on site for the
176 purpose of obtaining copies of documents or printouts of
177 data 5.00

178 (D) For any search of records maintained in electronic
179 format which requires special programming to be performed
180 by the state information services agency or other vendor, any
181 actual cost, but not less than 25.00

182 (E) The cost of the search is in addition to the cost of any
183 copies or printouts prepared or any certificate issued pursuant
184 to or based on the search.

185 (F) For recording any paper for which no specific fee is
186 prescribed 5.00

187 (8) For producing and providing photocopies or printouts
188 of electronic data of specific records upon request, as fol-
189 lows:

190 (A) For a copy of any paper or printout of electronic data,
191 if one sheet \$1.00

192 (B) For each sheet after the first50

193 (C) For sending the copies or lists by fax
194 transmission 5.00

195 (D) For producing and providing photocopies of lists,
196 reports, guidelines and other documents produced in multiple
197 copies for general public use, a publication price to be estab-
198 lished by the secretary of state at a rate approximating 2.00
199 plus .10 per page and rounded to the nearest dollar.

200 (E) For electronic copies of records obtained in data for-
201 mat on disk, the cost of the record in the least expensive
202 available printed format, plus, for each required disk, which
203 shall be provided by the secretary of state 5.00

204 (b) The secretary of state may propose legislative rules
205 for promulgation for charges for on-line electronic access to
206 database information or other information maintained by the
207 secretary of state.

208 (c) For any other work or service not enumerated in this
209 subsection, the fee prescribed elsewhere in this code or a rule
210 promulgated under the authority of this code.

211 (d) The records maintained by the secretary of state are
212 prepared and indexed at the expense of the state and those
213 records shall not be obtained for commercial resale without
214 the written agreement of the state to a contract including
215 reimbursement to the state for each instance of resale.

216 (e) The secretary of state may provide printed or elec-
217 tronic information free of charge as he or she considers nec-

218 essary and efficient for the purpose of informing the general
219 public or the news media.

220 (f) There is hereby continued in the state treasury a spe-
221 cial revenue account to be known as the “service fees and
222 collections” account. Expenditures from the account shall be
223 used for the operation of the office of the secretary of state
224 and are not authorized from collections, but are to be made
225 only in accordance with appropriation by the Legislature and
226 in accordance with the provisions of article three, chapter
227 twelve of this code and upon the fulfillment of the provisions
228 set forth in article two, chapter five-a of this code. Notwith-
229 standing any other provision of this code, one half of all the
230 fees and service charges established in the following sections
231 and for the following purposes shall be deposited by the sec-
232 retary of state or other collecting agency to that special reve-
233 nue account and used for the operation of the office of the
234 secretary of state:

235 (1) The annual attorney-in-fact fee for corporations and
236 limited partnerships established in section five, article
237 twelve-c, chapter eleven of this code;

238 (2) The fees received for the sale of the state register,
239 code of state rules and other copies established by rule and
240 authorized by section seven, article two, chapter twenty-nine-
241 a of this code;

242 (3) The registration fees, late fees and legal settlements
243 charged for registration and enforcement of the charitable
244 organizations and professional solicitations established in
245 sections five, nine and fifteen-b, article nineteen, chapter
246 twenty-nine of this code;

247 (4) The annual attorney-in-fact fee for limited liability
248 companies as designated in section one hundred eight, article
249 one, chapter thirty-one-b of this code and established in sec-
250 tion two hundred eleven, article two of said chapter;

251 (5) The filing fees and search and copying fees for uni-
252 form commercial code transactions established by section
253 five hundred twenty-five, article nine, chapter forty-six of
254 this code;

255 (6) The annual attorney-in-fact fee for licensed insurers
256 established in section twelve, article four, chapter thirty-three
257 of this code;

258 (7) The fees for the application and record maintenance
259 of all notaries public established by section one hundred
260 seven, article one, chapter twenty-nine-c of this code;

261 (8) The fees for the application and record maintenance
262 of commissioners for West Virginia as established by section
263 twelve, article four, chapter twenty-nine of this code;

264 (9) The fees for registering credit service organizations as
265 established by section five, article six-c, chapter forty-six-a
266 of this code;

267 (10) The fees for registering and renewing a West Vir-
268 ginia limited liability partnership as established by section
269 one, article ten, chapter forty-seven-b of this code;

270 (11) The filing fees for the registration and renewal of
271 trademarks and service marks established in section seven-
272 teen, article two, chapter forty-seven of this code;

273 (12) All fees for services, the sale of photocopies and
274 data maintained at the expense of the secretary of state as
275 provided in this section; and

276 (13) All registration, license and other fees collected by
277 the secretary of state not specified in this section.

278 (g) Any balance in the service fees and collections ac-
279 count established by this section which exceeds five hundred
280 thousand dollars as of the thirtieth day of June, two thousand
281 three, and each year thereafter, shall be expired to the state
282 fund, general revenue fund.

CHAPTER 207

(Com. Sub. for H. B. 4016 — By Delegates Amores,
Faircloth, Caputo and Smirl)

[Passed March 8, 2002; in effect July 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and nine, article three, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section three-a, all relating to the regulation of lobbyist activities; increasing the registration fee for lobbyists; eliminating the requirement that lobbyists file duplicate copies of the lobbyist's registration statement; eliminating the requirement that lobbyist registration statements and reports be signed under oath or affirmation; removing the references to false swearing and the associated criminal penalties; making the filing of a false or fraudulent application, statement or report by a lobbyist a misdemeanor; and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LOBBYISTS.

§6B-3-2. Registration of lobbyists.

§6B-3-3. Photograph and information-booklet-publication.

§6B-3-3a. Registration fees.

§6B-3-4. Reporting by lobbyists.

§6B-3-9. Penalties.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or within
2 thirty days after being employed as a lobbyist, whichever
3 occurs first, a lobbyist shall register with the ethics commis-
4 sion by filing a lobbyist registration statement. The registra-
5 tion statement shall contain information and be in a form
6 prescribed by the ethics commission by legislative rule, in-
7 cluding, but not limited to, the following information:

8 (1) The registrant's name, business address, telephone
9 numbers and any temporary residential and business ad-
10 dresses and telephone numbers used or to be used by the
11 registrant while lobbying during a legislative session;

12 (2) The name, address and occupation or business of the
13 registrant's employer;

14 (3) A statement as to whether the registrant is employed
15 or retained by his or her employer solely as a lobbyist or is a
16 regular employee performing services for the employer
17 which include, but are not limited to, lobbying;

18 (4) A statement as to whether the registrant is employed
19 or retained by his or her employer under any agreement, ar-
20 rangement or understanding according to which the regis-
21 trant's compensation, or any portion of the registrant's com-
22 pensation, is or will be contingent upon the success of his or
23 her lobbying activity;

24 (5) The general subject or subjects, if known, on which
25 the registrant will lobby or employ some other person to
26 lobby in a manner which requires registration under this arti-
27 cle; and

28 (6) An appended written authorization from each of the
29 lobbyist's employers confirming the lobbyist's employment
30 and the subjects on which the employer is to be represented.

31 (b) Any lobbyist who receives or is to receive compensa-
32 tion from more than one person for services as a lobbyist
33 shall file a separate notice of representation with respect to
34 each person compensating him or her for services performed
35 as a lobbyist. When a lobbyist whose fee for lobbying with
36 respect to the same subject is to be paid or contributed by
37 more than one person, then the lobbyist may file a single
38 statement, in which he or she shall detail the name, business
39 address and occupation of each person paying or contributing
40 to the fee.

41 (c) Whenever a change, modification or termination of
42 the lobbyist's employment occurs, the lobbyist shall, within
43 one week of the change, modification or termination, furnish
44 full information regarding the change, modification or termi-
45 nation by filing with the commission an amended registration
46 statement.

47 (d) Each lobbyist who has registered shall file a new
48 registration statement, revised as appropriate, on the Monday
49 preceding the second Wednesday in January of each
50 odd-numbered year, and failure to do so terminates his or her
51 registration. Until the registration is renewed, the person may
52 not engage in lobbying activities unless he or she is otherwise
53 exempt under paragraph (B), subdivision (7), section one of
54 this article.

§6B-3-3. Photograph and information-booklet-publication.

1 Each lobbyist shall, at the time he or she registers, submit
2 to the commission a recent photograph of the lobbyist of a
3 size and format as determined by rule of the commission,
4 together with the name of the lobbyist's employer, a brief

5 biographical description, and any other information the lob-
6 byist may wish to submit, not to exceed fifty words in length.
7 The photograph and information shall be published at least
8 annually in a booklet form by the commission for distribution
9 to government officers or employees, lobbyists, and to the
10 public. The method of distribution is in the discretion of the
11 commission, which is not required to compile and maintain a
12 distribution list of all persons who may be entitled to receive
13 the booklet.

§6B-3-3a. Registration fees.

1 (a) Each lobbyist shall, at the time he or she registers,
2 pay the commission a registration fee of sixty dollars to be
3 filed with the initial registration statement and with each new
4 registration statement filed by the lobbyist in subsequent odd
5 numbered years: *Provided*, That if a lobbyist files his or her
6 initial registration after the first day of January during an
7 even-numbered year, he or she shall only be required to pay a
8 reduced registration fee of thirty dollars for the balance of
9 that year.

10 (b) The commission shall collect the registration fees
11 authorized by this section and pay them into the state treasury
12 to the credit of the state general fund.

§6B-3-4. Reporting by lobbyists.

1 (a) A lobbyist shall file with the commission reports of
2 his or her lobbying activities, signed by the lobbyist. The
3 reports shall be filed as follows:

4 (1) On or before the Monday preceding the second
5 Wednesday in January of each year, a lobbyist shall file an
6 annual report of all lobbying activities which he or she en-
7 gaged in during the preceding calendar year; and

8 (2) If a lobbyist engages in lobbying with respect to leg-
9 islation, then:

10 (A) Between the fortieth and forty-fifth days of any regu-
11 lar session of the Legislature in which any lobbying occurred,
12 the lobbyist shall file a report describing all of his or her
13 lobbying activities which occurred since the beginning of the
14 calendar year; and

15 (B) Within twenty-one days after the adjournment *sine*
16 *die* of any regular or extraordinary session of the Legislature
17 in which any lobbying occurred, the lobbyist shall file a re-
18 port describing all of his or her lobbying activities which
19 occurred since the beginning of the calendar year or since the
20 filing of the last report required by this section, whichever is
21 later.

22 (b) (1) Except as otherwise provided in this section, each
23 report filed by a lobbyist shall show the total amount of all
24 expenditures for lobbying made or incurred by the lobbyist,
25 or on behalf of the lobbyist by the lobbyist's employer, dur-
26 ing the period covered by the report. The report shall also
27 show subtotals segregated according to financial category,
28 including meals and beverages; living accommodations; ad-
29 vertising; travel; contributions; gifts to public officials or
30 employees or to members of the immediate family of a public
31 official or employee; and other expenses or services.

32 (2) Lobbyists are not required to report the following:

33 (A) Unreimbursed personal living and travel expenses
34 not incurred directly for lobbying;

35 (B) Any expenses incurred for his or her own living ac-
36 commodations;

37 (C) Any expenses incurred for his or her own travel to
38 and from public meetings or hearings of the legislative and
39 executive branches;

40 (D) Any expenses incurred for telephone, and any office
41 expenses, including rent and salaries and wages paid for staff
42 and secretarial assistance; and

43 (E) Separate expenditures to or on behalf of a public
44 official or employee in an amount of less than five dollars.

45 (c) If a lobbyist is employed by more than one employer,
46 the report shall show the proportionate amount of the expen-
47 ditures in each category incurred on behalf of each of his or
48 her employers.

49 (d) The report shall describe the subject matter of the
50 lobbying activities in which the lobbyist has been engaged
51 during the reporting period.

52 (e) If, during the period covered by the report, the lobby-
53 ist made expenditures in the reporting categories of meals
54 and beverages, living accommodations, travel, gifts or other
55 expenditures, other than for those expenditures governed by
56 subsection (f) of this section, which expenditures in any re-
57 porting category total more than twenty-five dollars to or on
58 behalf of any particular public official or employee, the lob-
59 byist shall report the name of the public official or employee
60 to whom or on whose behalf the expenditures were made, the
61 total amount of the expenditures, and the subject matter of
62 the lobbying activity, if any. Under this subsection, no por-
63 tion of the amount of an expenditure for a dinner, party or
64 other function sponsored by a lobbyist or a lobbyist's em-
65 ployer need be attributed to or counted toward the reporting
66 amount of twenty-five dollars for a particular public official
67 or employee who attends the function if the sponsor has in-
68 vited to the function all the members of: (1) The Legislature;

69 (2) either house of the Legislature; (3) a standing or select
70 committee of either house; or (4) a joint committee of the
71 two houses of the Legislature. However, the amount spent for
72 the function shall be added to other expenditures for the pur-
73 pose of determining the total amount of expenditures re-
74 ported under subsection (b) of this section.

75 (f) If, during the period covered by the report, the lobby-
76 ist made expenditures in the reporting categories of meals
77 and beverages, lodging, travel, gifts and scheduled entertain-
78 ment, which reporting expenditures in any reporting category
79 total more than twenty-five dollars for or on behalf of a par-
80 ticular public official or public employee in return for the
81 participation of the public official or employee in a panel or
82 speaking engagement at the meeting, the lobbyist shall report
83 the name of the public official or employee to whom or on
84 whose behalf the expenditures were made and the total
85 amount of the expenditures.

§6B-3-9. Penalties.

1 (a) Any person who is required under the provisions of
2 this article to file an application, statement or report and who
3 willfully and knowingly makes a false statement, conceals a
4 material fact or otherwise commits a fraud in the application,
5 statement or report is guilty of a misdemeanor and, upon
6 conviction thereof, shall be fined not more than one thousand
7 dollars, or confined in a county or regional jail not more than
8 one year, or both.

9 (b) A person who is subject to the registration and report-
10 ing requirements of this article and who fails or refuses to
11 register or who fails or refuses to file a required statement or
12 report or who otherwise violates the provisions of this article
13 may be the subject of a complaint filed with the ethics com-
14 mission and may be proceeded against in the same manner

15 and to the same ends as a public officer or public employee
16 under the provisions of this chapter.

17 (c) A person who willfully and knowingly files a false
18 report under the provisions of this article is liable in a civil
19 action to any government officer or employee who sustains
20 damage as a result of the filing or publication of the report.

CHAPTER 208

**(Com. Sub. for S. B. 179 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to miners' health and safety; providing additional factor for determining amount of civil penalty for violation of rule or statute; promulgation of legislative and emergency rules; providing circumstances under which special assessment civil penalty may be imposed in lieu of civil penalty; providing amount of special assessment civil penalty that may be imposed; establishing special revenue fund for receipt of penalty moneys; and providing purposes for expenditures from fund.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

§22A-1-21. Penalties.

1 (a)(1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or who violates any other
3 provisions of this chapter shall be assessed a civil penalty by
4 the director under subdivision (3) of this subsection, which
5 shall be not more than three thousand dollars, for each viola-
6 tion, unless the director determines that it is appropriate to
7 impose a special assessment for said violation, pursuant to
8 the provisions of subdivision (2), subsection (b) of this sec-
9 tion. Each violation constitutes a separate offense. In deter-
10 mining the amount of the penalty, the director shall consider
11 the operator's history of previous violations, whether the
12 operator was negligent, the appropriateness of the penalty to
13 the size of the business of the operator charged, the gravity of
14 the violation and the demonstrated good faith of the operator
15 charged in attempting to achieve rapid compliance after noti-
16 fication of a violation. Not later than the first day of June,
17 two thousand two, the director shall promulgate as a rule the
18 procedure for assessing such civil penalties. This rule will be
19 in effect upon filing, without regard to the provisions of
20 chapter twenty-nine-a of this code.

21 (2) Any revisions to rules relating to the assessment of
22 civil penalties shall be proposed for promulgation as legisla-
23 tive rules in accordance with the provisions of article three,
24 chapter twenty-nine-a of this code.

25 (3) Any miner who knowingly violates any health or
26 safety provision of this chapter or health or safety rule pro-
27 mulgated pursuant to this chapter is subject to a civil penalty
28 assessed by the director under subdivision (4) of this subsec-
29 tion which shall not be more than two hundred fifty dollars
30 for each occurrence of the violation.

31 (4) A civil penalty under subdivisions (1) or (2) of sub-
32 section (a) of this section or subdivisions (1) or (2) of subsec-
33 tion (b) of this section shall be assessed by the director only
34 after the person charged with a violation under this chapter or
35 rule promulgated pursuant to this chapter has been given an
36 opportunity for a public hearing and the director has deter-
37 mined, by a decision incorporating the director's findings of
38 fact in the decision, that a violation did occur and the amount
39 of the penalty which is warranted and incorporating, when
40 appropriate, an order in the decision requiring that the pen-
41 alty be paid. Any hearing under this section shall be of re-
42 cord.

43 (5) If the person against whom a civil penalty is assessed
44 fails to pay the penalty within the time prescribed in the or-
45 der, the director may file a petition for enforcement of the
46 order in any appropriate circuit court. The petition shall des-
47 ignate the person against whom the order is sought to be
48 enforced as the respondent. A copy of the petition shall im-
49 mediately be sent by certified mail, return receipt requested,
50 to the respondent and to the representative of the miners at
51 the affected mine or the operator, as the case may be. The
52 director shall certify and file in the court the record upon
53 which the order sought to be enforced was issued. The court
54 has jurisdiction to enter a judgment enforcing, modifying and
55 enforcing as modified, or setting aside, in whole or in part,
56 the order and decision of the director or it may remand the
57 proceedings to the director for any further action it may di-
58 rect. The court shall consider and determine de novo all rele-
59 vant issues, except issues of fact which were or could have
60 been litigated in review proceedings before a circuit court
61 under section twenty of this article and, upon the request of
62 the respondent, those issues of fact which are in dispute shall
63 be submitted to a jury. On the basis of the jury's findings the
64 court shall determine the amount of the penalty to be im-
65 posed. Subject to the direction and control of the attorney

66 general, attorneys appointed for the director may appear for
67 and represent the director in any action to enforce an order
68 assessing civil penalties under this subdivision.

69 (b)(1) Any operator who knowingly violates a health or
70 safety provision of this chapter or health or safety rule pro-
71 mulgated pursuant to this chapter, or knowingly violates or
72 fails or refuses to comply with any order issued under section
73 fifteen of this article, or any order incorporated in a final
74 decision issued under this article, except an order incorpo-
75 rated in a decision under subsection (a) of this section or
76 subsection (b), section twenty-two of this article, shall be
77 assessed a civil penalty by the director under subdivision (5),
78 subsection (a) of this section of not more than five thousand
79 dollars and for a second or subsequent violation assessed a
80 civil penalty of not more than ten thousand dollars, unless the
81 director determines that it is appropriate to impose a special
82 assessment for said violation, pursuant to the provisions of
83 subdivision (2) of this subsection.

84 (2) In lieu of imposing a civil penalty pursuant to the
85 provisions of subsection (a) of this section or subdivision (1)
86 of this subsection, the director may impose a special assess-
87 ment if an operator violates a health or safety provision of
88 this chapter or health or safety rule promulgated pursuant to
89 this chapter and the violation is of serious nature and in-
90 volves one or more of the following by the operator:

91 (A) Violations involving fatalities and serious injuries;

92 (B) Failure or refusal to comply with any order issued
93 under section fifteen of this article;

94 (C) Operation of a mine in the face of a closure order;

95 (D) Violations involving an imminent danger;

96 (E) Violations involving an extraordinarily high degree
97 of negligence or gravity or other unique aggravating circum-
98 stances; or

99 (F) A discrimination violation under section twenty-two
100 of this article.

101 In situations in which the director determines that there
102 are factors present which would make it appropriate to im-
103 pose a special assessment, the director shall assess a civil
104 penalty of at least five thousand dollars and of not more than
105 ten thousand dollars.

106 (c) Whenever a corporate operator knowingly violates a
107 health or safety provision of this chapter or health or safety
108 rules promulgated pursuant to this chapter, or knowingly
109 violates or fails or refuses to comply with any order issued
110 under this law or any order incorporated in a final decision
111 issued under this law, except an order incorporated in a deci-
112 sion issued under subsection (a) of this section or subsection
113 (b), section twenty-two of this article, any director, officer or
114 agent of the corporation who knowingly authorized, ordered
115 or carried out the violation, failure or refusal is subject to the
116 same civil penalties that may be imposed upon a person un-
117 der subsections (a) and (b) of this section.

118 (d) Whoever knowingly makes any false statement, rep-
119 resentation or certification in any application, record, report,
120 plan or other document filed or required to be maintained
121 pursuant to this law or any order or decision issued under this
122 law is guilty of a misdemeanor and, upon conviction thereof,
123 shall be fined not more than five thousand dollars or impris-
124 oned in the county jail not more than six months, or both
125 fined and imprisoned. The conviction of any person under
126 this subsection shall result in the revocation of any certifica-
127 tions held by the person under this chapter which certified or
128 authorized the person to direct other persons in coal mining

129 by operation of law and bars that person from being issued
130 any license under this chapter, except a miner's certification,
131 for a period of not less than one year or for a longer period as
132 may be determined by the director.

133 (e) Whoever willfully distributes, sells, offers for sale,
134 introduces or delivers in commerce any equipment for use in
135 a coal mine, including, but not limited to, components and
136 accessories of the equipment, who willfully misrepresents the
137 equipment as complying with the provisions of this law, or
138 with any specification or rule of the director applicable to the
139 equipment, and which does not comply with the law, specifi-
140 cation or rule, is guilty of a misdemeanor and, upon convic-
141 tion thereof, is subject to the same fine and imprisonment
142 that may be imposed upon a person under subsection (d) of
143 this section.

144 (f) There is created in the treasury of the state of West
145 Virginia a special health, safety and training fund. All civil
146 penalty assessments collected under this section shall be
147 collected by the director and deposited with the treasurer of
148 the state of West Virginia to the credit of the special health,
149 safety and training fund. The fund shall be used by the direc-
150 tor who is authorized to expend the moneys in the fund for
151 the administration of this chapter.

CHAPTER 209

**(S. B. 105 — By Senators Love, Hunter, Anderson, Kessler, Caldwell,
Rowe, Minear, Sprouse, Redd, Minard, Edgell, Snyder, Chafin,
Fanning, Helmick, Ross, Unger, Mitchell and Facemyer)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting all senior service organizations that qualify for tax exemption under Title 26, §501(c)(3) of the United States Internal Revenue Service Code and are recognized as bonafide senior services organizations by the senior services bureau from payment of the automobile titling privilege tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or registra-
2 tion plates for the vehicle, whether original issues or dupli-
3 cates, may not be issued or furnished by the division of motor
4 vehicles or any other officer or agent charged with the duty,
5 unless the applicant therefor already has received, or at the
6 same time makes application for and is granted, an official
7 certificate of title of the vehicle in either an electronic or
8 paper format. The application shall be upon a blank form to
9 be furnished by the division of motor vehicles and shall con-
10 tain a full description of the vehicle, which description shall
11 contain a manufacturer's serial or identification number or
12 other number as determined by the commissioner and any
13 distinguishing marks, together with a statement of the appli-
14 cant's title and of any liens or encumbrances upon the vehi-
15 cle, the names and addresses of the holders of the liens and

16 any other information as the division of motor vehicles may
17 require. The application shall be signed and sworn to by the
18 applicant. A duly certified copy of the division's electronic
19 record of a certificate of title shall be admissible in any civil,
20 criminal or administrative proceeding in this state as evi-
21 dence of ownership.

22 (b) A tax is imposed upon the privilege of effecting the
23 certification of title of each vehicle in the amount equal to
24 five percent of the value of the motor vehicle at the time of
25 the certification, to be assessed as follows:

26 (1) If the vehicle is new, the actual purchase price or
27 consideration to the purchaser of the vehicle is the value of
28 the vehicle. If the vehicle is a used or secondhand vehicle, the
29 present market value at time of transfer or purchase is the
30 value of the vehicle for the purposes of this section: *Pro-*
31 *vided*, That so much of the purchase price or consideration as
32 is represented by the exchange of other vehicles on which the
33 tax imposed by this section has been paid by the purchaser
34 shall be deducted from the total actual price or consideration
35 paid for the vehicle, whether the vehicle be new or second-
36 hand. If the vehicle is acquired through gift or by any manner
37 whatsoever, unless specifically exempted in this section, the
38 present market value of the vehicle at the time of the gift or
39 transfer is the value of the vehicle for the purposes of this
40 section.

41 (2) No certificate of title for any vehicle may be issued to
42 any applicant unless the applicant has paid to the division of
43 motor vehicles the tax imposed by this section which is five
44 percent of the true and actual value of the vehicle whether the
45 vehicle is acquired through purchase, by gift or by any other
46 manner whatsoever, except gifts between husband and wife
47 or between parents and children: *Provided*, That the husband

48 or wife, or the parents or children, previously have paid the
49 tax on the vehicles transferred to the state of West Virginia.

50 (3) The division of motor vehicles may issue a certificate
51 of registration and title to an applicant if the applicant pro-
52 vides sufficient proof to the division of motor vehicles that
53 the applicant has paid the taxes and fees required by this
54 section to a motor vehicle dealership that has gone out of
55 business or has filed bankruptcy proceedings in the United
56 States bankruptcy court and the taxes and fees so required to
57 be paid by the applicant have not been sent to the division by
58 the motor vehicle dealership or have been impounded due to
59 the bankruptcy proceedings: *Provided*, That the applicant
60 makes an affidavit of the same and assigns all rights to
61 claims for money the applicant may have against the motor
62 vehicle dealership to the division of motor vehicles.

63 (4) The division of motor vehicles shall issue a certificate
64 of registration and title to an applicant without payment of
65 the tax imposed by this section if the applicant is a corpora-
66 tion, partnership or limited liability company transferring the
67 vehicle to another corporation, partnership or limited liability
68 company when the entities involved in the transfer are mem-
69 bers of the same controlled group and the transferring entity
70 has previously paid the tax on the vehicle transferred. For the
71 purposes of this section, control means ownership, directly or
72 indirectly, of stock or equity interests possessing fifty percent
73 or more of the total combined voting power of all classes of
74 the stock of a corporation or equity interests of a partnership
75 or limited liability company entitled to vote or ownership,
76 directly or indirectly, of stock or equity interests possessing
77 fifty percent or more of the value of the corporation, part-
78 nership or limited liability company.

79 (5) The tax imposed by this section does not apply to
80 vehicles to be registered as Class H vehicles or Class M vehi-

81 cles, as defined in section one, article ten of this chapter,
82 which are used or to be used in interstate commerce. Nor
83 does the tax imposed by this section apply to the titling of
84 Class B vehicles registered at a gross weight of fifty-five
85 thousand pounds or more, or to the titling of Class C
86 semitrailers, full trailers, pole trailers and converter gear:
87 *Provided*, That if an owner of a vehicle has previously titled
88 the vehicle at a declared gross weight of fifty-five thousand
89 pounds or more and the title was issued without the payment
90 of the tax imposed by this section, then before the owner may
91 obtain registration for the vehicle at a gross weight less than
92 fifty-five thousand pounds, the owner shall surrender to the
93 commissioner the exempted registration, the exempted certifi-
94 cate of title and pay the tax imposed by this section based
95 upon the current market value of the vehicle: *Provided, how-*
96 *ever*, That notwithstanding the provisions of section nine,
97 article fifteen, chapter eleven of this code, the exemption
98 from tax under this section for Class B vehicles in excess of
99 fifty-five thousand pounds and Class C semitrailers, full trail-
100 ers, pole trailers and converter gear does not subject the sale
101 or purchase of the vehicles to the consumers sales tax.

102 (6) The tax imposed by this section does not apply to
103 titling of vehicles leased by residents of West Virginia. A tax
104 is imposed upon the monthly payments for the lease of any
105 motor vehicle leased by a resident of West Virginia, which
106 tax is equal to five percent of the amount of the monthly
107 payment, applied to each payment, and continuing for the
108 entire term of the initial lease period. The tax shall be remit-
109 ted to the division of motor vehicles on a monthly basis by
110 the lessor of the vehicle.

111 (7) The tax imposed by this section does not apply to
112 titling of vehicles by a registered dealer of this state for resale
113 only, nor does the tax imposed by this section apply to titling
114 of vehicles by this state or any political subdivision thereof,

115 or by any volunteer fire department or duly chartered rescue
116 or ambulance squad organized and incorporated under the
117 laws of the state of West Virginia as a nonprofit corporation
118 for protection of life or property. The total amount of revenue
119 collected by reason of this tax shall be paid into the state road
120 fund and expended by the commissioner of highways for
121 matching federal funds allocated for West Virginia. In addi-
122 tion to the tax, there is a charge of five dollars for each origi-
123 nal certificate of title or duplicate certificate of title so issued:
124 *Provided*, That this state or any political subdivision of this
125 state, or any volunteer fire department or duly chartered res-
126 cue squad is exempt from payment of the charge.

127 (8) The certificate is good for the life of the vehicle, so
128 long as the vehicle is owned or held by the original holder of
129 the certificate, and need not be renewed annually, or any
130 other time, except as provided in this section.

131 (9) If, by will or direct inheritance, a person becomes the
132 owner of a motor vehicle and the tax imposed by this section
133 previously has been paid, to the division of motor vehicles,
134 on that vehicle, he or she is not required to pay the tax.

135 (10) A person who has paid the tax imposed by this sec-
136 tion is not required to pay the tax a second time for the same
137 motor vehicle, but is required to pay a charge of five dollars
138 for the certificate of retitling of that motor vehicle, except that
139 the tax shall be paid by the person when the title to the vehi-
140 cle has been transferred either in this or another state from
141 the person to another person and transferred back to the per-
142 son.

143 (11) The tax imposed by this section does not apply to
144 any passenger vehicle offered for rent in the normal course of
145 business by a daily passenger rental car business as licensed
146 under the provisions of article six-d of this chapter. For pur-

147 poses of this section, a daily passenger car means a Class A
148 motor vehicle having a gross weight of eight thousand
149 pounds or less and is registered in this state or any other state.
150 In lieu of the tax imposed by this section, there is hereby
151 imposed a tax of not less than one dollar nor more than one
152 dollar and fifty cents for each day or part of the rental period.
153 The commissioner shall propose an emergency rule in accor-
154 dance with the provisions of article three, chapter twenty-
155 nine-a of this code to establish this tax.

156 (12) The tax imposed by this article does not apply to the
157 titling of any vehicle purchased by a senior citizen service
158 organization which is exempt from the payment of income
159 taxes under the United States Internal Revenue Service Code,
160 Title 26 U.S.C. §501(c)(3) and which is recognized to be a
161 bonafide senior citizen service organization by the senior
162 services bureau existing under the provisions of article five,
163 chapter sixteen of this code.

164 (c) Notwithstanding any provisions of this code to the
165 contrary, the owners of trailers, semitrailers, recreational
166 vehicles and other vehicles not subject to the certificate of
167 title tax prior to the enactment of this chapter are subject to
168 the privilege tax imposed by this section: *Provided*, That the
169 certification of title of any recreational vehicle owned by the
170 applicant on the thirtieth day of June, one thousand nine hun-
171 dred eighty-nine, is not subject to the tax imposed by this
172 section: *Provided, however*, That mobile homes, manufac-
173 tured homes, modular homes and similar nonmotive pro-
174 pelled vehicles, except recreational vehicles and house trail-
175 ers, susceptible of being moved upon the highways but pri-
176 marily designed for habitation and occupancy, rather than for
177 transporting persons or property, or any vehicle operated on a
178 nonprofit basis and used exclusively for the transportation of
179 mentally retarded or physically handicapped children when
180 the application for certificate of registration for the vehicle is

181 accompanied by an affidavit stating that the vehicle will be
182 operated on a nonprofit basis and used exclusively for the
183 transportation of mentally retarded and physically handi-
184 capped children, are not subject to the tax imposed by this
185 section, but are taxable under the provisions of articles fifteen
186 and fifteen-a, chapter eleven of this code.

187 (d) Any person making any affidavit required under any
188 provision of this section who knowingly swears falsely, or
189 any person who counsels, advises, aids or abets another in the
190 commission of false swearing, or any person, while acting as
191 an agent of the division of motor vehicles, issues a vehicle
192 registration without first collecting the fees and taxes or fails
193 to perform any other duty required by this chapter to be per-
194 formed before a vehicle registration is issued is, on the first
195 offense, guilty of a misdemeanor and, upon conviction
196 thereof, shall be fined not more than five hundred dollars or
197 be confined in the county or regional jail for a period not to
198 exceed six months or, in the discretion of the court, both
199 fined and confined. For a second or any subsequent convic-
200 tion within five years, that person is guilty of a felony and,
201 upon conviction thereof, shall be fined not more than five
202 thousand dollars or be imprisoned in a state correctional fa-
203 cility for not less than one year nor more than five years or,
204 in the discretion of the court, both fined and imprisoned.

205 (e) Notwithstanding any other provisions of this section,
206 any person in the military stationed outside West Virginia, or
207 his or her dependents who possess a motor vehicle with valid
208 registration, are exempt from the provisions of this article for
209 a period of nine months from the date the person returns to
210 this state or the date his or her dependent returns to this state,
211 whichever is later.

212 (f) No person may transfer, purchase or sell a fac-
213 tory-built home without a certificate of title issued by the

214 commissioner in accordance with the provisions of this arti-
215 cle:

216 (1) Any person who fails to provide a certificate of title
217 upon the transfer, purchase or sale of a factory-built home is
218 guilty of a misdemeanor and, upon conviction thereof, shall
219 for the first offense be fined not less than one hundred dollars
220 nor more than one thousand dollars, or be confined in the
221 county or regional jail for not more than one year or, both
222 fined and confined. For each subsequent offense, the fine
223 may be increased to not more than two thousand dollars, with
224 confinement in the county or regional jail not more than one
225 year or, both fined and confined.

226 (2) Failure of the seller to transfer a certificate of title
227 upon sale or transfer of the factory-built home gives rise to a
228 cause of action, upon prosecution thereof, and allows for the
229 recovery of damages, costs and reasonable attorney fees.

230 (g) Notwithstanding any other provision to the contrary,
231 whenever reference is made to the application for or issuance
232 of any title or the recordation or release of any lien, it shall be
233 understood to include the application, transmission,
234 recordation, transfer of ownership and storage of information
235 in an electronic format.

CHAPTER 210

**(Com. Sub. for S. B. 543 — By Senators Facemyer,
Caldwell, Minear, Rowe, Snyder and Ross)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration and authorizing specialized motor vehicle registration plates; deleting the provision that division may not issue more than two Class A and two Class G special registration plates for certain officials; adding West Virginia circuit court judges, active and retired, as officials eligible for special registration plates; license plates for war veterans; reducing the registration fee for certain veterans; including bronze star recipients as veterans eligible for special plates; authorizing the division of motor vehicles to issue special registration plates for certified firefighters; providing for the issuance of special plates for all honorably discharged veterans; providing for a one-time fee of ten dollars for disabled veterans, former prisoners of war, Pearl Harbor survivors, purple heart recipients and recipients of the congressional medal of honor; authorizing the division of motor vehicles to issue special registration plates for volunteer firemen and women; authorizing the division of motor vehicles to issue special registration plates displaying patriotic themes; authorizing special registration plates showing the American flag bearing the logo "9/11/01"; authorizing the division of motor vehicles to issue special registration plates celebrating the centennial of the 4-H youth development movement; authorizing the division of motor vehicles to issue special registration plates for the future farmers of America organization; and authorizing the division of motor vehicles to issue special registration plates for educators.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue to
2 the owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet
5 the following requirements:

6 (1) Every registration plate shall be of reflectorized mate-
7 rial and have displayed upon it the registration number as-
8 signed to the vehicle for which it is issued; the name of this
9 state, which may be abbreviated; and the year number for
10 which it is issued or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of one hundred feet during daylight:
14 *Provided*, That the requirements of this subdivision shall not
15 apply to the year number for which the plate is issued or the
16 date of expiration.

17 (3) Registration numbering for registration plates shall
18 begin with number two.

19 (c) The division may not issue, permit to be issued or
20 distribute any special registration plates except as follows:

21 (1) The governor shall be issued two registration plates,
22 on one of which shall be imprinted the numeral one and on
23 the other the word one.

24 (2) State officials and judges may be issued special regis-
25 tration plates as follows:

26 (A) Upon appropriate application, the division shall issue
27 to the secretary of state, state superintendent of schools, audi-
28 tor, treasurer, commissioner of agriculture and the attorney
29 general, the members of both houses of the Legislature, in-
30 cluding the elected officials of both houses of the Legislature,
31 the justices of the supreme court of appeals of West Virginia,
32 the representatives and senators of the state in the Congress
33 of the United States, the judges of the West Virginia circuit
34 courts, active and retired on senior status, the judges of the
35 United States district courts for the state of West Virginia and
36 the judges of the United States court of appeals for the fourth
37 circuit, if any of the judges are residents of West Virginia, a
38 special registration plate for a Class A motor vehicle and a
39 special registration plate for a Class G motorcycle owned by
40 the official or his or her spouse: *Provided*, That the division
41 may issue a Class A special registration plate for each vehicle
42 titled to the official and a Class G special registration plate
43 for each motorcycle titled to the official.

44 (B) Each plate issued pursuant to this subdivision shall
45 bear any combination of letters and numbers not to exceed an
46 amount determined by the commissioner and a designation of
47 the office. Each plate shall supersede the regular numbered
48 plate assigned to the official or his or her spouse during the
49 official's term of office and while the motor vehicle is owned
50 by the official or his or her spouse.

51 (C) The division shall charge an annual fee of fifteen
52 dollars for every registration plate issued pursuant to this
53 subdivision, which is in addition to all other fees required by
54 this chapter.

55 (3) The division may issue members of the national
56 guard forces special registration plates as follows:

57 (A) Upon receipt of an application on a form prescribed
58 by the division and receipt of written evidence from the chief
59 executive officer of the army national guard or air national
60 guard, as appropriate, or the commanding officer of any
61 United States armed forces reserve unit that the applicant is a
62 member thereof, the division shall issue to any member of the
63 national guard of this state or a member of any reserve unit of
64 the United States armed forces a special registration plate
65 designed by the commissioner for any number of Class A
66 motor vehicles owned by the member. Upon presentation of
67 written evidence of retirement status, retired members of this
68 state's army or air national guard, or retired members of any
69 reserve unit of the United States armed forces, are eligible to
70 purchase the special registration plate issued pursuant to this
71 subdivision.

72 (B) The division shall charge an initial application fee of
73 ten dollars for each special registration plate issued pursuant
74 to this subdivision, which is in addition to all other fees re-
75 quired by this chapter. All initial application fees collected by
76 the division shall be deposited into a special revolving fund
77 to be used in the administration of this section.

78 (C) A surviving spouse may continue to use his or her
79 deceased spouse's national guard forces license plate until
80 the surviving spouse dies, remarries or does not renew the
81 license plate.

82 (4) Specially arranged registration plates may be issued
83 as follows:

84 (A) Upon appropriate application, any owner of a motor
85 vehicle subject to Class A registration, or a motorcycle sub-
86 ject to Class G registration, as defined by this article, may

87 request that the division issue a registration plate bearing
88 specially arranged letters or numbers with the maximum
89 number of letters or numbers to be determined by the com-
90 missioner. The division shall attempt to comply with the
91 request wherever possible.

92 (B) The commissioner shall propose rules for legislative
93 approval in accordance with the provisions of chapter
94 twenty-nine-a of this code regarding the orderly distribution
95 of the plates: *Provided*, That for purposes of this subdivision,
96 the registration plates requested and issued shall include all
97 plates bearing the numbers two through two thousand.

98 (C) An annual fee of fifteen dollars shall be charged for
99 each special registration plate issued pursuant to this subdivi-
100 sion, which is in addition to all other fees required by this
101 chapter.

102 (5) The division may issue honorably discharged veterans
103 special registration plates as follows:

104 (A) Upon appropriate application, the division shall issue
105 to any honorably discharged veteran of any branch of the
106 armed services of the United States a special registration
107 plate for any number of vehicles titled in the name of the
108 qualified applicant with an insignia designed by the commis-
109 sioner of the division of motor vehicles.

110 (B) The division shall charge a special initial application
111 fee of ten dollars in addition to all other fees required by law.
112 This special fee is to compensate the division of motor vehi-
113 cles for additional costs and services required in the issuing
114 of the special registration and shall be collected by the divi-
115 sion and deposited in a special revolving fund to be used for
116 the administration of this section: *Provided*, That nothing in
117 this section may be construed to exempt any veteran from
118 any other provision of this chapter.

119 (C) A surviving spouse may continue to use his or her
120 deceased spouse's honorably discharged veterans license
121 plate until the surviving spouse dies, remarries or does not
122 renew the license plate.

123 (6) The division may issue disabled veterans special reg-
124 istration plates as follows:

125 (A) Upon appropriate application, the division shall issue
126 to any disabled veteran who is exempt from the payment of
127 registration fees under the provisions of this chapter a regis-
128 tration plate for a vehicle titled in the name of the qualified
129 applicant which bears the letters "DV" in red and also the
130 regular identification numerals in red.

131 (B) A surviving spouse may continue to use his or her
132 deceased spouse's disabled veterans license plate until the
133 surviving spouse dies, remarries or does not renew the li-
134 cense plate.

135 (C) A qualified disabled veteran may obtain a second
136 disabled veteran license plate as described in this section for
137 use on a passenger vehicle titled in the name of the qualified
138 applicant. The division shall charge a one-time fee of ten
139 dollars to be deposited into a special revolving fund to be
140 used in the administration of this section, in addition to all
141 other fees required by this chapter, for the second plate.

142 (7) The division may issue recipients of the distinguished
143 purple heart medal special registration plates as follows:

144 (A) Upon appropriate application, there shall be issued to
145 any armed service person holding the distinguished purple
146 heart medal for persons wounded in combat a registration
147 plate for a vehicle titled in the name of the qualified applicant
148 bearing letters or numbers. The registration plate shall be
149 designed by the commissioner of motor vehicles and shall

150 denote that those individuals who are granted this special
151 registration plate are recipients of the purple heart. All letter-
152 ings shall be in purple where practical.

153 (B) Registration plates issued pursuant to this subdivision
154 are exempt from all registration fees otherwise required by
155 the provisions of this chapter.

156 (C) A surviving spouse may continue to use his or her
157 deceased spouse's purple heart medal license plate until the
158 surviving spouse dies, remarries or does not renew the li-
159 cense plate.

160 (D) A recipient of the purple heart medal may obtain a
161 second purple heart medal license plate as described in this
162 section for use on a passenger vehicle titled in the name of
163 the qualified applicant. The division shall charge a one-time
164 fee of ten dollars to be deposited into a special revolving fund
165 to be used in the administration of this section, in addition to
166 all other fees required by this chapter, for the second plate.

167 (8) The division may issue survivors of the attack on
168 Pearl Harbor special registration plates as follows:

169 (A) Upon appropriate application, the owner of a motor
170 vehicle who was enlisted in any branch of the armed services
171 that participated in and survived the attack on Pearl Harbor
172 on the seventh day of December, one thousand nine hundred
173 forty-one, the division shall issue a special registration plate
174 for a vehicle titled in the name of the qualified applicant. The
175 registration plate shall be designed by the commissioner of
176 motor vehicles.

177 (B) Registration plates issued pursuant to this subdivision
178 are exempt from the payment of all registration fees other-
179 wise required by the provisions of this chapter.

180 (C) A surviving spouse may continue to use his or her
181 deceased spouse's survivors of the attack on Pearl Harbor
182 license plate until the surviving spouse dies, remarries or
183 does not renew the license plate.

184 (D) A survivor of the attack on Pearl Harbor may obtain
185 a second survivors of the attack on Pearl Harbor license plate
186 as described in this section for use on a passenger vehicle
187 titled in the name of the qualified applicant. The division
188 shall charge a one-time fee of ten dollars to be deposited into
189 a special revolving fund to be used in the administration of
190 this section, in addition to all other fees required by this
191 chapter, for the second plate.

192 (9) The division may issue special registration plates to
193 nonprofit charitable and educational organizations as follows:

194 (A) Approved nonprofit charitable and educational orga-
195 nizations may accept and collect applications for special
196 registration plates from owners of Class A motor vehicles
197 together with a special annual fee of fifteen dollars, which is
198 in addition to all other fees required by this chapter. The
199 applications and fees shall be submitted to the division of
200 motor vehicles with the request that the division issue a regis-
201 tration plate bearing a combination of letters or numbers with
202 the organizations' logo or emblem, with the maximum num-
203 ber of letters or numbers to be determined by the commis-
204 sioner.

205 (B) The commissioner shall propose rules for legislative
206 approval in accordance with the provisions of article three,
207 chapter twenty-nine-a of this code regarding the procedures
208 for and approval of special registration plates issued pursuant
209 to this subdivision.

210 (C) The commissioner shall set an appropriate fee to
211 defray the administrative costs associated with designing and

212 manufacturing special registration plates for a nonprofit char-
213 itable or educational organization. The nonprofit charitable or
214 educational organization shall collect this fee and forward it
215 to the division for deposit in a special revolving fund to pay
216 the administrative costs. The nonprofit charitable or educa-
217 tional organization may also collect a fee for marketing the
218 special registration plates.

219 (10) The division may issue specified emergency or vol-
220 unteer registration plates as follows:

221 (A) Any owner of a motor vehicle who is a resident of
222 the state of West Virginia and who is a certified paramedic or
223 emergency medical technician, a member of a paid fire de-
224 partment, a member of the state fire commission, the state
225 fire marshal, the state fire marshal's assistants, the state fire
226 administrator and voluntary rescue squad members may ap-
227 ply for a special license plate for any number of Class A
228 vehicles titled in the name of the qualified applicant which
229 bears the insignia of the profession, group or commission.
230 Any insignia shall be designed by the commissioner. License
231 plates issued pursuant to this subdivision shall bear the re-
232 quested insignia in addition to the registration number issued
233 to the applicant pursuant to the provisions of this article.

234 (B) Each application submitted pursuant to this subdivi-
235 sion shall be accompanied by an affidavit signed by the fire
236 chief or department head of the applicant stating that the
237 applicant is justified in having a registration with the re-
238 quested insignia; proof of compliance with all laws of this
239 state regarding registration and licensure of motor vehicles;
240 and payment of all required fees.

241 (C) Each application submitted pursuant to this subdivi-
242 sion shall be accompanied by payment of a special initial
243 application fee of ten dollars, which is in addition to any

244 other registration or license fee required by this chapter. All
245 special fees shall be collected by the division and deposited
246 into a special revolving fund to be used for the purpose of
247 compensating the division of motor vehicles for additional
248 costs and services required in the issuing of the special regis-
249 tration and for the administration of this section.

250 (11) The division may issue specified certified firefighter
251 registration plates as follows:

252 (A) Any owner of a motor vehicle who is a resident of
253 the state of West Virginia and who is a certified firefighter
254 may apply for a special license plate which bears the insignia
255 of the profession, for any number of Class A vehicles titled in
256 the name of the qualified applicant. Any insignia shall be
257 designed by the commissioner. License plates issued pursu-
258 ant to this subdivision shall bear the requested insignia pursu-
259 ant to the provisions of this article. Upon presentation of
260 written evidence of certification as a certified firefighter,
261 certified firefighters are eligible to purchase the special regis-
262 tration plate, issued pursuant to this subdivision.

263 (B) Each year an application submitted pursuant to this
264 subdivision shall be accompanied by an affidavit signed by
265 the West Virginia state fire commission or a copy of the ap-
266 plicant's certification as a certified firefighter, with certifica-
267 tion number, stating that the applicant is justified in having a
268 registration with the requested insignia; proof of compliance
269 with all laws of this state regarding registration and licensure
270 of motor vehicles; and payment of all required fees.

271 (C) Each year an application submitted pursuant to this
272 subdivision shall be accompanied by payment of a special
273 initial application fee of ten dollars, which is in addition to
274 any other registration or license fee required by this chapter.
275 All special fees shall be collected by the division and depos-

276 ited into a special revolving fund to be used for the purpose
277 of compensating the division of motor vehicles for additional
278 costs and services required in the issuing of the special regis-
279 tration and for the administration of this section.

280 (12) The division may issue special scenic registration
281 plates as follows:

282 (A) Upon appropriate application, the commissioner shall
283 issue a special registration plate displaying a scenic design of
284 West Virginia which displays the words "Wild Wonderful" as
285 a slogan.

286 (B) The division shall charge a special one-time initial
287 application fee of ten dollars in addition to all other fees re-
288 quired by this chapter. All initial application fees collected by
289 the division shall be deposited into a special revolving fund
290 to be used in the administration of this chapter.

291 (13) The division may issue honorably discharged marine
292 corps league members special registration plates as follows:

293 (A) Upon appropriate application, the division shall issue
294 to any honorably discharged marine corps league member a
295 special registration plate for any number of vehicles titled in
296 the name of the qualified applicant with an insignia designed
297 by the commissioner of the division of motor vehicles.

298 (B) The division may charge a special one-time initial
299 application fee of ten dollars in addition to all other fees re-
300 quired by this chapter. This special fee is to compensate the
301 division of motor vehicles for additional costs and services
302 required in the issuing of the special registration and shall be
303 collected by the division and deposited in a special revolving
304 fund to be used for the administration of this section: *Pro-*
305 *vided*, That nothing in this section may be construed to ex-
306 empt any veteran from any other provision of this chapter.

307 (C) A surviving spouse may continue to use his or her
308 deceased spouse's honorably discharged marine corps league
309 license plate until the surviving spouse dies, remarries or
310 does not renew the license plate.

311 (14) The division may issue military organization regis-
312 tration plates as follows:

313 (A) The division may issue a special registration plate for
314 the members of any military organization chartered by the
315 United States congress upon receipt of a guarantee from or-
316 ganization of a minimum of one hundred applicants. The
317 insignia on the plate shall be designed by the commissioner.

318 (B) Upon appropriate application, the division may issue
319 members of the chartered organization in good standing, as
320 determined by the governing body of the chartered organiza-
321 tion, a special registration plate for any number of vehicles
322 titled in the name of the qualified applicant.

323 (C) The division shall charge a special one-time initial
324 application fee of ten dollars for each special license plate in
325 addition to all other fees required by this chapter. All initial
326 application fees collected by the division shall be deposited
327 into a special revolving fund to be used in the administration
328 of this chapter: *Provided*, That nothing in this section may be
329 construed to exempt any veteran from any other provision of
330 this chapter.

331 (D) A surviving spouse may continue to use his or her
332 deceased spouse's military organization registration plate
333 until the surviving spouse dies, remarries or does not renew
334 the special military organization registration plate.

335 (15) The division may issue special nongame wildlife
336 registration plates and special wildlife registration plates as
337 follows:

338 (A) Upon appropriate application, the division shall issue
339 a special registration plate displaying a species of West Vir-
340 ginia wildlife which shall display a species of wildlife native
341 to West Virginia as prescribed and designated by the com-
342 missioner and the director of the division of natural re-
343 sources.

344 (B) The division shall charge an annual fee of fifteen
345 dollars for each special nongame wildlife registration plate
346 and each special wildlife registration plate in addition to all
347 other fees required by this chapter. All annual fees collected
348 for nongame wildlife registration plates and wildlife registra-
349 tion plates shall be deposited in a special revenue account
350 designated the nongame wildlife fund and credited to the
351 division of natural resources.

352 (C) The division shall charge a special one-time initial
353 application fee of ten dollars in addition to all other fees re-
354 quired by this chapter. All initial application fees collected by
355 the division shall be deposited in a special revolving fund to
356 be used in the administration of this chapter.

357 (16) The division may issue members of the silver haired
358 legislature special registration plates as follows:

359 (A) Upon appropriate application, the division shall issue
360 to any person who is a duly qualified member of the silver
361 haired legislature a specialized registration plate which bears
362 recognition of the applicant as a member of the silver haired
363 legislature.

364 (B) A qualified member of the silver haired legislature
365 may obtain one registration plate described in this subdivi-
366 sion for use on a passenger vehicle titled in the name of the
367 qualified applicant. The division shall charge an annual fee of
368 fifteen dollars, in addition to all other fees required by this
369 chapter, for the plate. All annual fees collected by the divi-

370 sion shall be deposited in a special revolving fund to be used
371 in the administration of this chapter.

372 (17) Upon appropriate application, the commissioner
373 shall issue to a classic motor vehicle or classic motorcycle as
374 defined in section three-a, article ten of this chapter, a special
375 registration plate designed by the commissioner. An annual
376 fee of fifteen dollars, in addition to all other fees required by
377 this chapter, shall be charged for each classic registration
378 plate.

379 (18) Honorably discharged veterans may be issued spe-
380 cial registration plates for motorcycles subject to Class G
381 registration as follows:

382 (A) Upon appropriate application, there shall be issued to
383 any honorably discharged veteran of any branch of the armed
384 services of the United States a special registration plate for
385 any number of motorcycles subject to Class G registration
386 titled in the name of the qualified applicant with an insignia
387 designed by the commissioner of the division of motor vehi-
388 cles.

389 (B) A special initial application fee of ten dollars shall be
390 charged in addition to all other fees required by law. This
391 special fee is to compensate the division of motor vehicles
392 for additional costs and services required in the issuing of the
393 special registration and shall be collected by the division and
394 deposited in a special revolving fund to be used for the ad-
395 ministration of this section: *Provided*, That nothing in this
396 section may be construed to exempt any veteran from any
397 other provision of this chapter.

398 (C) A surviving spouse may continue to use his or her
399 deceased spouse's honorably discharged veterans license
400 plate until the surviving spouse dies, remarries or does not
401 renew the license plate.

402 (19) Racing theme special registration plates:

403 (A) The division may issue a series of special registration
404 plates displaying national association for stock car auto rac-
405 ing themes.

406 (B) An annual fee of twenty-five dollars shall be charged
407 for each special racing theme registration plate in addition to
408 all other fees required by this chapter. All annual fees col-
409 lected for each special racing theme registration plate shall be
410 deposited into a special revolving fund to be used in the ad-
411 ministration of this chapter.

412 (C) A special application fee of ten dollars shall be
413 charged at the time of initial application as well as upon ap-
414 plication for any duplicate or replacement registration plate,
415 in addition to all other fees required by this chapter. All ap-
416 plication fees shall be deposited into a special revolving fund
417 to be used in the administration of this chapter.

418 (20) The division may issue recipients of the navy cross,
419 distinguished service cross, distinguished flying cross, air
420 force cross, bronze star or silver star special registration
421 plates as follows:

422 (A) Upon appropriate application, the division shall issue
423 to any recipient of the navy cross, distinguished service cross,
424 distinguished flying cross, air force cross, silver star or
425 bronze star, a registration plate for any number of vehicles
426 titled in the name of the qualified applicant bearing letters or
427 numbers. A separate registration plate shall be designed by
428 the commissioner of motor vehicles for each award that de-
429 notes that those individuals who are granted this special reg-
430 istration plate are recipients of the navy cross, distinguished
431 service cross, distinguished flying cross, air force cross, sil-
432 ver star or bronze star, as applicable.

433 (B) The division shall charge a special initial application
434 fee of ten dollars in addition to all other fees required by law.
435 This special fee is to compensate the division of motor vehi-
436 cles for additional costs and services required in the issuing
437 of the special registration and shall be collected by the divi-
438 sion and deposited in a special revolving fund to be used for
439 the administration of this section: *Provided*, That nothing in
440 this section exempts the applicant for a special registration
441 plate under this subdivision from any other provision of this
442 chapter.

443 (C) A surviving spouse may continue to use his or her
444 deceased spouse's navy cross, distinguished service cross,
445 distinguished flying cross, air force cross, silver star or
446 bronze star special registration plate until the surviving
447 spouse dies, remarries or does not renew the special registra-
448 tion plate.

449 (21) The division may issue honorably discharged veter-
450 ans special registration plates as follows:

451 (A) Upon appropriate application, the division shall issue
452 to any honorably discharged veteran of any branch of the
453 armed services of the United States with verifiable service
454 during World War II, the Korean War, the Vietnam War, the
455 Persian Gulf War or the War against Terrorism, a special
456 registration plate for any number of vehicles titled in the
457 name of the qualified applicant with an insignia designed by
458 the commissioner denoting service in the applicable conflict.

459 (B) The division shall charge a special one-time initial
460 application fee of ten dollars in addition to all other fees re-
461 quired by law. This special fee is to compensate the division
462 of motor vehicles for additional costs and services required in
463 the issuing of the special registration and shall be collected
464 by the division and deposited in a special revolving fund to

465 be used for the administration of this section: *Provided*, That
466 nothing contained in this section may be construed to exempt
467 any veteran from any other provision of this chapter.

468 (C) A surviving spouse may continue to use his or her
469 deceased spouse's honorably discharged veterans registration
470 plate until the surviving spouse dies, remarries or does not
471 renew the special registration plate.

472 (22) The division may issue special volunteer firefighter
473 registration plates as follows:

474 (A) Any owner of a motor vehicle who is a resident of
475 West Virginia and who is a volunteer fireman or woman may
476 apply for a special license plate for one Class A vehicle titled
477 in the name of the qualified applicant which bears the insig-
478 nia of the profession in white letters on a red background.
479 The insignia shall be designed by the commissioner and shall
480 contain a fireman's helmet insignia on the left side of the
481 license plate.

482 (B) Each application submitted pursuant to this subdivi-
483 sion shall be accompanied by an affidavit signed by the appli-
484 cant's fire chief, stating that the applicant is a volunteer fire-
485 man or woman and justified in having a registration plate
486 with the requested insignia. The applicant must comply with
487 all other laws of this state regarding registration and licensure
488 of motor vehicles and must pay all required fees. Only one
489 such license plate may be issued to a volunteer fireman or
490 woman.

491 (C) Each application submitted pursuant to this subdivi-
492 sion shall be accompanied by payment of a special one-time
493 initial application fee of one dollar, which is in addition to
494 any other registration or license fee required by this chapter.

495 All application fees shall be deposited into a special revolv-
496 ing fund to be used in the administration of this chapter.

497 (23) The division may issue special registration plates
498 which reflect patriotic themes, including the display of any
499 United States symbol, icon, phrase or expression, which
500 evokes patriotic pride or recognition.

501 (A) Upon appropriate application, the division shall issue
502 to an applicant a registration plate of the applicant's choice,
503 displaying a patriotic theme as provided in this subdivision,
504 for a vehicle titled in the name of the applicant. A series of
505 registration plates displaying patriotic themes shall be de-
506 signed by the commissioner of motor vehicles for distribution
507 to applicants.

508 (B) The division shall charge a special one-time initial
509 application fee of ten dollars in addition to all other fees re-
510 quired by law. This special fee is to compensate the division
511 of motor vehicles for additional costs and services required in
512 the issuing of the special registration and shall be collected
513 by the division and deposited in a special revolving fund to
514 be used for the administration of this section.

515 (24) Special license plates bearing the American flag and
516 the logo "9/11/01".

517 (A) Upon appropriate application, the division shall issue
518 special registration plates which shall display the American
519 flag and the logo "9/11/01".

520 (B) An annual fee of fifteen dollars shall be charged for
521 each plate in addition to all other fees required by this chap-
522 ter.

523 (C) A special application fee of ten dollars shall be
524 charged at the time of initial application as well as upon ap-

525 plication for any duplicate or replacement registration plate,
526 in addition to all other fees required by this chapter. All ap-
527 plication fees shall be deposited into a special revolving fund
528 to be used in the administration of this chapter.

529 (25) The division may issue a special registration plate
530 celebrating the centennial of the 4-H youth development
531 movement and honoring the future farmers of America orga-
532 nization as follows:

533 (A) Upon appropriate application, the division may issue
534 a special registration plate depicting the symbol of the 4-H
535 organization which represents the head, heart, hands and
536 health as well as the symbol of the future farmers of America
537 organization which represents a cross section of an ear of
538 corn for any number of vehicles titled in the name of the
539 qualified applicant.

540 (B) The division shall charge a special initial application
541 fee of ten dollars in addition to all other fees required by law.
542 This special fee is to compensate the division of motor vehi-
543 cles for additional costs and services required in the issuing
544 of the special registration and shall be collected by the divi-
545 sion and deposited in a special revolving fund to be used for
546 the administration of this section.

547 (C) The division shall charge an annual fee of fifteen
548 dollars for each special 4-H future farmers of America regis-
549 tration plate in addition to all other fees required by this
550 chapter.

551 (26) The division may issue special registration plates to
552 educators in the state's elementary and secondary schools
553 and in the state's institutions of higher education as follows:

554 (A) Upon appropriate application, the division may issue
555 a special registration plate designed by the commissioner for

556 any number of vehicles titled in the name of the qualified
557 applicant.

558 (B) The division shall charge a special initial application
559 fee of ten dollars in addition to all other fees required by law.
560 This special fee is to compensate the division of motor vehi-
561 cles for additional costs and services required in the issuing
562 of the special registration and shall be collected by the divi-
563 sion and deposited in a special revolving fund to be used for
564 the administration of this section.

565 (C) The division shall charge an annual fee of fifteen
566 dollars for each special educator registration plate in addition
567 to all other fees required by this chapter.

568 (d) The commissioner shall propose rules for legislative
569 approval in accordance with the provisions of article three,
570 chapter twenty-nine-a of this code regarding the proper forms
571 to be used in making application for the special license plates
572 authorized by this section.

573 (e)(1) Nothing in this section may be construed to require
574 a charge for a free prisoner of war license plate or a free re-
575 cipient of the congressional medal of honor license plate for a
576 vehicle titled in the name of the qualified applicant as autho-
577 rized by other provisions of this code.

578 (2) A surviving spouse may continue to use his or her
579 deceased spouse's prisoner of war or congressional medal of
580 honor license plate until the surviving spouse dies, remarries
581 or does not renew the license plate.

582 (3) Qualified former prisoners of war and recipients of
583 the congressional medal of honor may obtain a second spe-
584 cial registration plate for use on a passenger vehicle titled in
585 the name of the qualified applicant. The division shall charge
586 a one-time fee of ten dollars to be deposited into a special

587 revolving fund to be used in the administration of this chap-
588 ter, in addition to all other fees required by this chapter, for
589 the second special plate.

590 (f) The division may issue special ten-year registration
591 plates as follows:

592 (1) The commissioner may issue or renew for a period of
593 no more than ten years any registration plate exempted from
594 registration fees pursuant to any provision of this code or any
595 restricted use antique motor vehicle license plate authorized
596 by section three-a, article ten of this chapter: *Provided*, That
597 the provisions of this subsection do not apply to any person
598 who has had a special registration suspended for failure to
599 maintain motor vehicle liability insurance as required by
600 section three, article two-a, chapter seventeen-d of this code
601 or failure to pay personal property taxes as required by sec-
602 tion three-a of this article.

603 (2) An initial nonrefundable fee shall be charged for each
604 special registration plate issued pursuant to this subsection,
605 which is the total amount of fees required by section fifteen,
606 article ten of this chapter, section three, article three of this
607 chapter or section three-a, article ten of this chapter for the
608 period requested.

609 (g) The provisions of this section may not be construed to
610 exempt any registrant from maintaining motor vehicle liabil-
611 ity insurance as required by section three, article two-a, chap-
612 ter seventeen-d of this code or from paying personal property
613 taxes on any motor vehicle as required by section three-a of
614 this article.

615 (h) The commissioner may, in his or her discretion, issue
616 a registration plate of reflectorized material suitable for per-
617 manent use on motor vehicles, trailers and semitrailers, to-
618 gether with appropriate devices to be attached to the registra-

619 tion to indicate the year for which the vehicles have been
620 properly registered or the date of expiration of the registra-
621 tion. The design and expiration of the plates shall be deter-
622 mined by the commissioner.

623 (i) Any license plate issued or renewed pursuant to this
624 chapter, which is paid for by a check that is returned for
625 nonsufficient funds, is void without further notice to the ap-
626 plicant. The applicant may not reinstate the registration until
627 the returned check is paid by the applicant in cash, money
628 order or certified check and all applicable fees assessed as a
629 result thereof have been paid.

CHAPTER 211

(Com. Sub. for S. B. 631 — By Senators Chafin,
Snyder, Caldwell, Love and Ross)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing special license plates for county sheriffs and their deputies; and fees to be paid by applicants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

1 (a) Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any of its
3 departments, bureaus, commissions or institutions, except
4 vehicles used by the governor, treasurer, three plates per
5 elected office of the board of public works, vehicles operated
6 by the state police, vehicles operated by conservation officers
7 of the division of natural resources, not to exceed ten vehicles
8 operated by the arson investigators of the office of state fire
9 marshal and not to exceed sixteen vehicles operated by in-
10 spectors of the office of the alcohol beverage control com-
11 missioner, may not be operated or driven by any person un-
12 less it has displayed and attached to the front thereof, in the
13 same manner as regular motor vehicle registration plates are
14 attached, a plate of the same size as the regular registration
15 plate, with white lettering on a green background bearing the
16 words "West Virginia" in one line and the words "State Car"
17 in another line and the lettering for the words "State Car"
18 shall be of sufficient size to be plainly readable from a dis-
19 tance of one hundred feet during daylight.

20 The vehicle shall also have attached to the rear a plate
21 bearing a number and any other words and figures as the
22 commissioner of motor vehicles shall prescribe. The rear
23 plate shall also be green with the number in white.

24 (b) On registration plates issued to vehicles owned by
25 counties, the color shall be white on red with the word
26 "County" on top of the plate and the words "West Virginia"
27 on the bottom. On any registration plates issued to a city or
28 municipality, the color shall be white on blue with the word
29 "City" on top and the words "West Virginia" on the bottom.

30 The colors may not be reversed and shall be of reflectorized
31 material. The registration plates issued to counties, municipi-
32 palities and other governmental agencies authorized to re-
33 ceive colored plates hereunder shall be affixed to both the
34 front and rear of the vehicles.

35 (c) Registration plates issued to vehicles operated by
36 county sheriffs shall be designed by the commissioner in
37 cooperation with the sheriffs' association with the word
38 "Sheriff" on top of the plate and the words "West Virginia"
39 on the bottom. The plate shall contain a gold shield represent-
40 ing the sheriff's star and a number assigned to that plate by
41 the commissioner. Every county sheriff shall provide the
42 commissioner with a list of vehicles operated by the sheriff,
43 unless otherwise provided in this section, and a fee of ten
44 dollars for each vehicle submitted by the first day of July,
45 two thousand two.

46 (d) The commissioner is authorized to designate the col-
47 ors and design of any other registration plates that are issued
48 without charge to any other agency in accordance with the
49 motor vehicle laws.

50 (e) Upon application, the commissioner is authorized to
51 issue a maximum of five Class A license plates per applicant
52 to be used by county sheriffs and municipalities on
53 law-enforcement vehicles while engaged in undercover in-
54 vestigations.

55 (f) The commissioner is authorized to issue an unlimited
56 number of license plates per applicant to authorized drug and
57 violent crime task forces in the state of West Virginia when
58 the chairperson of the control group of a drug and violent
59 crime task force signs a written affidavit stating that the vehi-
60 cle or vehicles for which the plates are being requested will

61 be used only for official undercover work conducted by a
62 drug and violent crime task force.

63 (g) The commissioner is authorized to issue twenty Class
64 A license plates to the criminal investigation division of the
65 department of tax and revenue for use by its investigators.

66 (h) The commissioner may issue a maximum of ten Class
67 A license plates to the division of natural resources for use by
68 conservation officers. The commissioner shall designate the
69 color and design of the registration plates to be displayed on
70 the front and the rear of all other state-owned vehicles owned
71 by the division of natural resources and operated by conser-
72 vation officers.

73 (i) The commissioner is authorized to issue an unlimited
74 number of Class A license plates to the commission on spe-
75 cial investigations for state-owned vehicles used for official
76 undercover work conducted by the commission on special
77 investigations.

78 (j) No other registration plate may be issued for, or at-
79 tached to, any state-owned vehicle.

80 (k) The commissioner of motor vehicles shall have a
81 sufficient number of both front and rear plates produced to
82 attach to all state-owned cars. The numbered registration
83 plates for the vehicles shall start with the number "five hun-
84 dred" and the commissioner shall issue consecutive numbers
85 for all state-owned cars.

86 (l) It is the duty of each office, department, bureau, com-
87 mission or institution furnished any vehicle to have plates as
88 described herein affixed thereto prior to the operation of the
89 vehicle by any official or employee.

90 (m) Any person who violates the provisions of this sec-
91 tion shall be guilty of a misdemeanor and, upon conviction
92 thereof, shall be fined not less than fifty dollars nor more
93 than one hundred dollars. Magistrates shall have concurrent
94 jurisdiction with circuit and criminal courts for the enforce-
95 ment of this section.

CHAPTER 212

(Com. Sub. for S. B. 541 — By Senators Wooton and Rowe)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to certificate to show liens and encumbrances; providing that liens and encumbrances placed on vehicles are void against lien creditors under particular circumstances; requiring a purchase money lien or encumbrance to be perfected on the date and time of delivery of same to the division; specifying the documents that will perfect a lien or encumbrance; requiring that an application for a certificate of title must be filed under certain time limitations in order to maintain perfected status; providing when an application is not filed within a certain time limitation that the division take action to void the perfected status of a lien or encumbrance; providing that no certificate of title will be delivered absent an application delivered to the division; and defining a “purchase money lien or encumbrance”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

§17A-4A3-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

1 (a) A certificate of title, when issued by the division
2 showing a lien or encumbrance, shall be considered from and
3 after the filing with the division of the application therefor or
4 the notice of lien authorized in section four of this article ade-
5 quate notice to the state and its agencies, boards and commis-
6 sions, to the United States government and its agencies,
7 boards and commissions, to creditors and to purchasers that a
8 lien against the vehicle exists.

9 (b) Notwithstanding any other provision of this code to
10 the contrary, and subject to the provisions of subsection (c) of
11 this section, any lien or encumbrance placed on a vehicle by
12 the voluntary act of the owner shall be void as against: (i)
13 Any lien creditor who, without knowledge of the lien, ac-
14 quires by attachment, levy or otherwise a lien thereupon, un-
15 less the lien or encumbrance is noted on the certificate of ti-
16 tle, a filed application for certificate of title or the notice of
17 lien authorized in section four of this article; and (ii) any pur-

18 chaser who, without knowledge of the lien or encumbrance,
19 purchases the vehicle, unless the lien or encumbrance is
20 noted on the certificate of title, a filed application for certifi-
21 cate of title or the notice of lien authorized in section four of
22 this article: *Provided*, That a purchaser under this subsection
23 who purchases the vehicle without knowledge of the lien or
24 encumbrance and contemporaneously obtains actual physical
25 possession of the vehicle and the certificate of title for the
26 vehicle without the lien or encumbrance noted on the certifi-
27 cate of title, receives the vehicle free and clear of the lien or
28 encumbrance.

29 (c) The creation and perfection of a lien against: (1) A
30 vehicle held as inventory for sale by a registered dealer hold-
31 ing title by assignment; or (2) a vehicle for which a certificate
32 of title has been issued and is held as inventory for lease by a
33 vehicle rental agency or similar person engaged solely in the
34 business of leasing vehicles in accordance with the provisions
35 of article nine, chapter forty-six of this code shall be deemed
36 adequate notice to the state and its agencies, boards and com-
37 missions, to the United States government and its agencies,
38 boards and commissions, to creditors and to purchasers that a
39 lien against the vehicle exists, subject to the provisions of
40 section three hundred seven, article nine, chapter forty-six of
41 this code, except that any lien or encumbrance on such a ve-
42 hicle shall not be effective against the rights of any purchaser
43 for value who purchases the vehicle primarily for personal,
44 family, household or agricultural purposes unless such lien or
45 encumbrance is recorded on the certificate of title or speci-
46 fied on the bill of sale.

§17A-4A-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

1 (a) A purchase money lien or encumbrance upon any ve-
2 hicle shall be perfected on the date and at time of delivery to
3 the division of motor vehicles of either the application for a

4 certificate of title with all supporting documents, or a com-
5 pleted notice of lien form in a format determined by the divi-
6 sion. The notice of lien form may be submitted to the division
7 in paper format, facsimile or in any other electronic format
8 approved by the division.

9 (b) If perfection occurs through the notice of lien form
10 pursuant to subsection (a) of this section, an application for
11 certificate of title must be received by the division of motor
12 vehicles within sixty days after the date of purchase of the
13 vehicle or refinancing of such purchase in order to maintain
14 the perfected status of such lien or encumbrance. When an
15 application is not filed within the time prescribed, the lien or
16 encumbrance shall become unperfected on the sixty-first day
17 following the purchase or refinancing date of the vehicle. If
18 an application for a certificate of title is received by the divi-
19 sion on or after the sixty-first day, the new perfection date for
20 the lien or encumbrance is the date the application for a cer-
21 tificate of title is received by the division. Nothing in this sec-
22 tion extends the sixty-day title application filing requirement
23 of section four, article four of this chapter. The name and ad-
24 dress of the lien holder shall be recorded on this title by the
25 division in either electronic or paper format.

26 (c) No certificate of title for a vehicle shall be issued un-
27 less an application is delivered to the division of motor vehi-
28 cles.

29 (d) In all transactions involving a purchase money lien or
30 encumbrance upon a motor vehicle, the motor vehicle dealer
31 shall collect and remit to the division of motor vehicles the
32 title, tax and registration fees required under section four,
33 article three of this chapter and file and record with the divi-
34 sion of motor vehicles any lien created as a result of the
35 transaction: *Provided*, That a motor vehicle dealer may remit
36 the title, tax and registration fees through any license service
37 that is licensed by the division of motor vehicles.

38 (e) No fee may be charged by a motor vehicle dealer for
39 its services required under this section except that fee autho-
40 rized by section one-b, article six of this chapter or subdivi-
41 sion (6), subsection (a), section one hundred nine, article
42 three, chapter forty-six-a of this code.

43 (f) For purposes of this section, a purchase money lien or
44 encumbrance is defined to include: (1) A lien taken or re-
45 tained by the seller or the vehicle to secure all or a part of its
46 price; (2) a lien taken by a person who by making advances
47 or incurring an obligation gives value to enable another to
48 acquire rights in or the use of a vehicle if such value is so
49 used; and (3) the refinancing of either of the foregoing for the
50 sole purpose of repaying a loan secured by the vehicle.

CHAPTER 213

**(S. B. 725 — By Senators Redd, Facemyer, Kessler,
McKenzie, Oliverio, Rowe and Ross)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article six-c, chapter seventeen-a of said code, all relating to allowing used motor vehicle dealers to purchase new motor vehicles and to sell the vehicle without first obtaining a new motor vehicle license under certain circumstances and to allowing automobile auction businesses to sell vehicles with a salvage or nonrepairable certificate.

Be it enacted by the Legislature of West Virginia:

That section five, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article six-c, chapter seventeen-a of said code be amended and reenacted, all to read as follows:

Article

- 6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.**
6C. Automobile Auction Businesses.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-5. License certificate exemption.

1 (a) Any new motor vehicle dealer, used motor vehicle
2 dealer, house trailer dealer, trailer dealer, recreational vehicle
3 dealer, motorcycle dealer or wrecker/dismantler/rebuilder
4 receiving a vehicle in trade of a type other than that he is
5 licensed to sell hereunder may sell such vehicle without ob-
6 taining a license certificate to engage in the business of sell-
7 ing vehicles of such type and without being considered to be
8 a dealer in vehicles of such type.

9 (b) Any used motor vehicle dealer may obtain a new
10 motor vehicle from a new motor vehicle dealer licensed in
11 this state or any other state and sell the new motor vehicle
12 without first obtaining a license to engage in the business of
13 selling new motor vehicles: *Provided*, That the used motor
14 vehicle dealer first titles the new motor vehicle in the name
15 of the used motor vehicle dealer.

ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

1 (a) A person, partnership or corporation may not engage
2 in, represent or advertise that he, she or it is in the business of
3 conducting automobile auctions without first obtaining a
4 license certificate from the office of the commissioner. The
5 commissioner shall provide an application form for appli-
6 cants seeking a license certificate. The applicant shall provide
7 full information required by the commissioner on the applica-
8 tion form. The applicant, if a person, shall verify the informa-
9 tion on the form by oath or affirmation. If the applicant is a
10 partnership or corporation, the oath or affirmation shall be
11 made by a partner or an officer of the corporation.

12 (b) For the purposes of this article, the term “automobile
13 auction” means an auction or other sale where twenty or
14 more used motor vehicles are offered for sale by auction
15 within a license year, but does not include a sale or auction of
16 surplus vehicles by an agency of this state, a municipality of
17 this state or of the federal government or a sale or auction of
18 repossessed vehicles by a financial institution or a sale or
19 auction by a licensed motor vehicle dealer of vehicles owned
20 by said dealer.

21 (c) The automobile auction may auction or sell vehicles
22 owned by the auction or may auction vehicles which are
23 owned by others.

24 (d) When the transferee of a vehicle is an automobile
25 auction which holds the same for resale and lawfully operates
26 the same under Class AA plates, such automobile auction
27 shall not be required to obtain a new registration of said vehi-
28 cle or be required to forward the certificate of title to the
29 division, but upon transfer of title or interest to another per-

30 son the automobile auction shall execute and acknowledge an
31 assignment and warranty of title upon the certificate of title
32 and deliver the same not later than sixty days from date of
33 sale to the person to whom such transfer is made.

34 (e) The tax imposed by section four, article three of this
35 chapter does not apply to the titling of vehicles purchased for
36 resale by an automobile auction.

37 (f) Notwithstanding any other provision of this article,
38 while the vehicle is in the possession and control of an auto-
39 mobile auction business, its employees may not operate or
40 allow another to operate a vehicle with a salvage or a
41 nonrepairable motor vehicle certificate issued pursuant to
42 section ten, article four of this chapter on the roads and high-
43 ways of this state. In accordance with the temporary plate
44 provisions and the special dealer plate provisions of this arti-
45 cle, an automobile auction may operate or allow another
46 person to operate a vehicle on the roads and highways of this
47 state that has a cosmetic total loss salvage certificate issued
48 pursuant to section ten, article four of this chapter.

CHAPTER 214

(Com. Sub. for S. B. 695 — By Senators Wooton and Unger)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to authorizing out-of-state dealers duly licensed in a contiguous state to participate in vehicle shows and exhibitions to the extent that the dealer's home state allows dealers

licensed under the laws of this state to participate in vehicle shows in the other state; establishing violation of this section as a misdemeanor offense; establishing criminal and civil penalties; and mandating the commissioner of motor vehicles propose or amend legislative rules in order to effectuate the purposes of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-5a. Reciprocity for out-of-state dealers; establishing violations of this section as misdemeanor offense; mandating that the commissioner propose or amend legislative rules.

1 (a) The division may permit a vehicle dealer licensed in
2 another state contiguous to this state to participate in industry
3 wide public vehicle shows and exhibitions subject to the
4 following:

5 (1) The division determines that the state in which the
6 out-of-state dealer is licensed permits dealers licensed by this
7 state to participate in public vehicle shows and exhibitions
8 under conditions substantially equivalent to the conditions
9 which are imposed upon dealers from that state who partici-
10 pate in public vehicle shows and exhibitions in this state;

11 (2) The division determines that the out-of-state dealer
12 holds a valid and unrevoked vehicle dealer license from the
13 dealer's home state;

14 (3) The dealer has secured the permission of its manufac-
15 turer; and

16 (4) The dealer first obtains an off-premises sales permit
17 issued under legislative rules promulgated by the division.

18 (b) Nothing in this section requires an organizer of a
19 public vehicle show or exhibition to invite or to include an
20 out-of-state vehicle dealer as a participant.

21 (c) Any person who violates the provisions of this section
22 is guilty of a misdemeanor and shall be fined not more than
23 five hundred dollars or confined in the regional or county jail
24 for not more than six months, or both.

25 (d) In addition to any penalty imposed pursuant to sub-
26 section (c) of this section, any person violating the provisions
27 of this section may be subject to a civil penalty as provided
28 for in section twenty-five-a of this article.

29 (e) The commissioner shall propose legislative rules for
30 promulgation, in accordance with the provisions of article
31 three, chapter twenty-nine-a of this code, to effectuate the
32 purposes of this section.

CHAPTER 215

**(Com. Sub. for S. B. 638 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the division of motor vehicles to add an optional classification on driver's licenses for the deaf or hard of hearing and for other handicapped or disabled drivers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a) No person, except those hereinafter expressly ex-
2 empted, may drive any motor vehicle upon a street or high-
3 way in this state or upon any subdivision street, as used in
4 article twenty-four, chapter eight of this code, when the use
5 of the subdivision street is generally used by the public un-
6 less the person has a valid driver's license under the provi-
7 sions of this code for the type or class of vehicle being
8 driven.

9 Any person licensed to operate a motor vehicle as pro-
10 vided in this code may exercise the privilege thereby granted
11 as provided in this code and, except as otherwise provided by
12 law, shall not be required to obtain any other license to exer-

13 cise the privilege by any county, municipality or local board
14 or body having authority to adopt local police regulations.

15 (b) The division, upon issuing a driver's license, shall
16 indicate on the license the type or general class or classes of
17 vehicle or vehicles the licensee may operate in accordance
18 with the provisions of this code, federal law or rule. Licenses
19 shall be issued in different colors for those drivers under age
20 eighteen, those drivers age eighteen to twenty-one and adult
21 drivers. The commissioner is authorized to select and assign
22 colors to the licenses of the various age groups. The commis-
23 sioner shall implement color-coded licenses on or before the
24 first day of January, two thousand one.

25 (c) Driver's licenses issued by the division shall be clas-
26 sified in the following manner:

27 (1) Class A, B or C license shall be issued to those per-
28 sons eighteen years of age or older with two years' driving
29 experience and who have qualified for the commercial
30 driver's license established by chapter seventeen-e of this
31 code and the federal Commercial Motor Vehicle Safety Act
32 of 1986, Title XII of public law 99-570 and subsequent rules,
33 and have paid the required fee.

34 (2) Class D license shall be issued to those persons eigh-
35 teen years and older with one year of driving experience who
36 operate motor vehicles other than those types of vehicles
37 which require the operator to be licensed under the provisions
38 of chapter seventeen-e of this code and federal law and rule
39 and whose primary function or employment is the transporta-
40 tion of persons or property for compensation or wages and
41 have paid the required fee. For the purposes of the regulation
42 of the operation of a motor vehicle, wherever the term chauff-
43 feur's license is used in this code, it shall be construed to
44 mean the Class A, B, C or D license described in this section

45 or chapter seventeen-e of this code or federal law or rule:
46 *Provided*, That anyone who is not required to be licensed
47 under the provisions of chapter seventeen-e of this code and
48 federal law or rule and who operates a motor vehicle which is
49 registered or which is required to be registered as a Class A
50 motor vehicle as that term is defined in section one, article
51 ten, chapter seventeen-a of this code with a gross vehicle
52 weight rating of less than eight thousand one pounds, is not
53 required to obtain a Class D license.

54 (3) Class E license shall be issued to those persons who
55 have qualified under the provisions of this chapter and who
56 are not required to obtain a Class A, B, C or D license and
57 who have paid the required fee. The Class E license may be
58 endorsed under the provisions of section seven-b of this arti-
59 cle for motorcycle operation. The Class E license for any
60 person under the age of eighteen may also be endorsed with
61 the appropriate graduated driver license level in accordance
62 with the provisions of section three-a of this article.

63 (4) Class F license shall be issued to those persons who
64 successfully complete the motorcycle examination procedure
65 provided for by this chapter and have paid the required fee,
66 but who do not possess a Class A, B, C, D or E driver's li-
67 cense.

68 (5) All licenses issued under this section may contain
69 information designating the licensee as a diabetic, or as deaf
70 or hard of hearing and for other handicapped or disabled
71 persons in accordance with criteria established by the divi-
72 sion, if the licensee requests this information on the license.

73 (d) No person, except those hereinafter expressly ex-
74 empted, shall drive any motorcycle upon a street or highway
75 in this state or upon any subdivision street, as used in article
76 twenty-four, chapter eight of this code, when the use of the

77 subdivision street is generally used by the public unless the
78 person has a valid motorcycle license or a valid license which
79 has been endorsed under section seven-b of this article for
80 motorcycle operation or has a valid motorcycle instruction
81 permit.

82 (e)(1) A nondriver identification card may be issued to
83 any person who:

84 (A) Is a resident of this state in accordance with the pro-
85 visions of section one-a, article three, chapter seventeen-a of
86 this code;

87 (B) Does not have a valid driver's license;

88 (C) Has reached the age of two years. The division may
89 also issue a nondriver identification card to a person under
90 the age of two years for good cause shown;

91 (D) Has paid the required fee of two dollars and fifty
92 cents per year for each year the identification card is issued to
93 be valid: *Provided*, That the fee is not required if the appli-
94 cant is sixty-five years or older or is legally blind; and

95 (E) Presents a birth certificate or other proof of age and
96 identity acceptable to the division with a completed applica-
97 tion on a form furnished by the division.

98 (2) The nondriver identification card shall contain the
99 same information as a driver's license except that the identi-
100 fication card shall be clearly marked as identification card.
101 However, the division may issue an identification card with
102 less information to persons under the age of sixteen. It may
103 be renewed on application and payment of the fee required by
104 this section.

105 (A) Every identification card issued to persons who have
106 attained their twenty-first birthday shall expire on the day of
107 the month designated by the commissioner in which the ap-
108 plicant's birthday occurs in those years in which the appli-
109 cant's age is evenly divisible by five. Except as provided in
110 paragraph (B) of this subdivision, no identification card may
111 be issued for less than three years nor more than seven years
112 and shall be valid for a period of five years expiring in the
113 month in which the applicant's birthday occurs and in a year
114 in which the applicant's age is evenly divisible by five.

115 (B) Every identification card issued to persons who have
116 not attained their twenty-first birthday shall expire on the day
117 of the month designated by the commissioner in the year in
118 which the applicant attains the age of twenty-one years.

119 (C) Every identification card issued to persons under the
120 age of sixteen shall expire on the day of the month designated
121 by the commissioner in which the applicant's birthday occurs
122 and shall be issued for a period of two years.

123 (3) The identification card shall be surrendered to the
124 division when the holder is issued a driver's license. The
125 division may issue an identification card to an applicant
126 whose privilege to operate a motor vehicle has been refused,
127 canceled, suspended or revoked under the provisions of this
128 code.

129 (f) Any person violating the provisions of this section is
130 guilty of a misdemeanor and, upon conviction thereof, shall
131 be fined not more than five hundred dollars; and upon a sec-
132 ond or subsequent conviction, shall be fined not more than
133 five hundred dollars or confined in the county or regional jail
134 not more than six months, or both.

**§17B-2-6. Application for license or instruction permit; fee to
accompany application.**

1 (a) Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by the
3 division. Every application shall be accompanied by the
4 proper fee and payment of the fee shall entitle an applicant
5 under the age of eighteen to not more than three attempts to
6 pass the road skills test. An applicant age eighteen years or
7 older is entitled to not more than three attempts to pass the
8 road skills test within a period of sixty days from the date of
9 issuance of the instruction permit. An applicant who fails
10 either the written test or the road skills test may not be tested
11 twice within a period of one week.

12 (b) Any applicant who has not been previously licensed
13 must hold an instruction permit for a minimum of thirty days.
14 For the purposes of this section, the term "previously li-
15 censed" means an applicant who has obtained at least a level
16 two graduated license or junior driver's license issued under
17 the provisions of this article or has obtained an equal or
18 greater level of licensure if previously licensed in another
19 state.

20 (c) Every said application shall state the full name, date
21 of birth, sex and residence address of the applicant and
22 briefly describe the applicant and shall state whether the ap-
23 plicant has theretofore been a licensed driver and, if so, when
24 and by what state or country and whether any such license
25 has ever been suspended or revoked within the five years
26 next preceding the date of application, or whether an applica-
27 tion has ever been refused and, if so, the date of and reason
28 for the suspension, revocation or refusal, whether the appli-
29 cant desires a notation on the driver's license indicating that
30 the applicant is a diabetic, deaf, or hard of hearing, or has any
31 other handicap or disability and such other pertinent informa-
32 tion as the commissioner may require.

CHAPTER 216

(S. B. 438 — By Senators Wooton, Bailey and Hunter)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to requiring division of motor vehicles to provide a mechanism on certain applications to allow persons to indicate their preference to register with selective service system; and specifying the effect of signing the application under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-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 two-a, to read as follows:

ARTICLE 2A. REQUIREMENT OF COMPLIANCE WITH SELECTIVE SERVICE REGISTRATION.

§17B-2A-1. Legislative intent.

§17B-2A-2. Compliance with registration requirements of military selective service act.

§17B-2A-1. Legislative intent.

- 1 It is the intent of the Legislature in enacting this article to
- 2 protect state residents from the penalties associated with
- 3 failing to register with the United States selective service

4 system and to help ensure that any future draft is fair and
5 equitable to all potential draftees.

6 The Legislature finds and declares that the penalties asso-
7 ciated with noncompliance are severe, including, but not
8 limited to, a felony conviction and forfeiture of the ability to
9 seek state employment from certain state agencies and de-
10 partments. In addition, failure to register may permanently
11 preclude the violator from acquiring many federal benefits,
12 such as federal employment, including employment with the
13 United States postal service, federal and state student finan-
14 cial assistance, participation in federally funded job training
15 programs and eligibility for United States citizenship for
16 immigrants seeking citizenship.

17 Therefore, in recognition of the severe consequences of
18 noncompliance and the importance of helping ensure that any
19 future draft is fair and equitable, it is the intent of the Legis-
20 lature to notify state residents of their responsibility to regis-
21 ter with selective service and to provide them the opportunity
22 to register concurrent with applying for a driver's license or
23 identification card.

**§17B-2A-2. Compliance with registration requirements of mili-
tary selective service act.**

1 The division of motor vehicles shall provide a mecha-
2 nism on each application for the issuance, renewal or dupli-
3 cate of an instruction permit, a driver's license, a professional
4 driver's license, a commercial driver's license or an identifi-
5 cation card by which those persons required to register in
6 compliance with the requirements of section three of the
7 "Military Selective Service Act", 50 U.S.C. App. 451, *et seq.*,
8 may indicate their preference to allow the division to forward
9 required information to the selective service system. If the
10 applicant so indicates, his signature on the application may
11 serve as his consent to registration with the selective service
12 system, if he is not already registered.

CHAPTER 217

(S. B. 256 — By Senators Wooton, Hunter, Kessler,
Minard, Mitchell, Ross and Rowe)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-nine, chapter thirty of said code, all relating to enforcement of motor vehicle laws; extending the power of special officers designated by the commissioner of highways on official weighing crews to possess firearms while on duty; training requirements; qualifications; requiring division of highways to pay for training; and clarifying responsibilities and duties of governor's committee on crime, delinquency and correction.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17C. Traffic Regulations and Laws of the Road.

30. Professions and Occupations.

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.**§17C-2-3. Enforcement of chapter; designation and power of special officers; bond of special officers; failure to obey police officer or special officers.**

1 (a) It is the duty of the West Virginia state police and its
2 members to enforce the provisions of this chapter and other
3 laws of this state governing the operation of vehicles upon
4 the streets and highways of this state as defined in section
5 thirty-five, article one of this chapter or in other designated
6 places specifically referred to in a given section in this chap-
7 ter; and it is the duty of sheriffs and their deputies and of the
8 police of municipalities to render to the West Virginia state
9 police assistance in the performance of said duties as the
10 superintendent of the West Virginia state police may require
11 of them.

12 (b) The West Virginia commissioner of highways is au-
13 thorized to designate employees of the West Virginia divi-
14 sion of highways as special officers to enforce the provisions
15 of this chapter only when special officers are directing traffic
16 upon bridges and the approaches to bridges which are a part
17 of the state road system when any bridge needs special traffic
18 direction and the superintendent of the West Virginia state
19 police has informed the West Virginia commissioner of high-
20 ways that he or she is unable to furnish personnel for traffic
21 direction. The West Virginia commissioner of highways may
22 also designate certain employees of the West Virginia divi-
23 sion of highways serving as members of official weighing
24 crews as special officers to enforce the provisions of article
25 seventeen of this chapter. Notwithstanding any provision of
26 this code to the contrary, designated special officers serving
27 as members of official weighing crews may carry handguns
28 in the course of their official duties after meeting specialized
29 qualifications established by the governor's committee on

30 crime, delinquency and correction, which qualifications shall
31 include the successful completion of handgun training, in-
32 cluding a minimum of four hours' training in handgun safety,
33 paid for by the division of highways and comparable to the
34 handgun training provided to law-enforcement officers by the
35 West Virginia state police: *Provided*, That nothing in this
36 section shall be construed to include designated special offi-
37 cers authorized by the provisions of this section as law-en-
38 forcement officers as such are defined in section one, article
39 twenty-nine, chapter thirty of this code. The West Virginia
40 commissioner of highways shall provide a blanket bond in
41 the amount of ten thousand dollars for all employees desig-
42 nated as special officers, as above provided.

43 (c) No person shall willfully fail or refuse to comply with
44 a lawful order or direction of any police officer or designated
45 special officer invested by law with authority to direct, con-
46 trol or regulate traffic.

47 (d) No person shall willfully fail or refuse to comply with
48 a lawful order or direction of any designated special officer
49 pursuant to the provisions of subsection (b) of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the governor's committee and the subcommittee.

1 Upon recommendation of the subcommittee, the gover-
2 nor's committee shall, by or pursuant to rule or regulation:

3 (a) Provide funding for the establishment and support of
4 law-enforcement training academies in the state;

5 (b) Establish standards governing the establishment and
6 operation of the law-enforcement training academies, includ-

7 ing regional locations throughout the state, in order to pro-
8 vide access to each law-enforcement agency in the state in
9 accordance with available funds;

10 (c) Establish minimum law-enforcement instructor quali-
11 fications;

12 (d) Certify qualified law-enforcement instructors;

13 (e) Maintain a list of approved law-enforcement instruc-
14 tors;

15 (f) Promulgate standards governing the qualification of
16 law-enforcement officers and the entry-level law-enforce-
17 ment training curricula. These standards shall require satis-
18 factory completion of a minimum of four hundred classroom
19 hours, shall provide for credit to be given for relevant class-
20 room hours earned pursuant to training other than training at
21 an established law-enforcement training academy if earned
22 within five years immediately preceding the date of applica-
23 tion for certification, and shall provide that the required
24 classroom hours can be accumulated on the basis of a part-
25 time curricula spanning no more than twelve months, or a
26 full-time curricula;

27 (g) Establish standards governing in-service law-enforce-
28 ment officer training curricula and in-service supervisory
29 level training curricula;

30 (h) Certify law-enforcement officers, as provided in sec-
31 tion five of this article;

32 (i) Seek supplemental funding for law-enforcement train-
33 ing academies from sources other than the fees collected
34 pursuant to section four of this article;

35 (j) Any responsibilities and duties as the Legislature may,
36 from time to time, see fit to direct to the committee; and

37 (k) Submit, on or before the thirtieth day of September of
38 each year, to the governor, and upon request to individual
39 members of the Legislature, a report on its activities during
40 the previous year and an accounting of funds paid into and
41 disbursed from the special revenue account establish pursuant
42 to section four of this article.

CHAPTER 218

(Com. Sub. for S. B. 664 — By Senators Ross, Sharpe and Fanning)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, twelve and thirteen, article one, chapter seventeen-e of said code, all relating to the requirement that certain vehicles stop or slow down at railroad crossings; and disqualifying violating drivers from operating commercial vehicles for certain periods of time in compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four, twelve and thirteen, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:

Chapter**17C. Traffic Regulations and Laws of the Road.****17E. Uniform Commercial Driver's License Act.****CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.****ARTICLE 12. SPECIAL STOPS REQUIRED.****§17C-12-3. Certain vehicles must stop at all railroad grade
crossings.**

1 (a) Except as provided in subsection (f) of this section,
2 the driver of a commercial motor vehicle specified in subsec-
3 tion (b) of this section shall not cross a railroad track or
4 tracks at grade unless he or she first: (1) Stops the commer-
5 cial motor vehicle within fifty feet of, and not closer than
6 fifteen feet to, the tracks; (2) thereafter, listens and looks in
7 each direction along the tracks for an approaching train; and
8 (3) ascertains that no train is approaching. When it is safe to
9 do so, the driver may drive the commercial motor vehicle
10 across the tracks in a gear that permits the commercial motor
11 vehicle to complete the crossing without a change of gears.
12 The driver shall not shift gears while crossing the tracks.

13 (b) The following commercial vehicles are required to
14 stop at railroad tracks or tracks at grade:

15 (1) Every bus transporting passengers;

16 (2) Every commercial motor vehicle transporting any
17 quantity of a United States department of transportation de-
18 fined division 2.3 chlorine;

19 (3) Every commercial motor vehicle which, in accor-
20 dance with United States department of transportation regula-
21 tions, is marked or placarded and is required to stop in accor-
22 dance with 49 C.F.R. part §392.10(a)(3)(2001);

23 (4) Every cargo tank motor vehicle, loaded or empty,
24 used for the transportation of any hazardous material, as de-
25 fined in federal department of transportation hazardous mate-
26 rials rules, 49 C.F.R. parts §107 through §180 (2001);

27 (5) Every cargo tank motor vehicle transporting a com-
28 modity which, at the time of loading, has a temperature
29 above its flashpoint as determined by 49 C.F.R. §173.120
30 (2001); and

31 (6) Every cargo tank motor vehicle, whether loaded or
32 empty, transporting any commodity exemption in accordance
33 with 49 C.F.R. part §107 subpart B (2001).

34 (c) Any vehicle owned by an employer which, in carrying
35 on the employer's business or in carrying employees to and
36 from work, carries more than six employees of the employer
37 is required to stop at all railroad tracks or tracks at grade, in
38 accordance with subsection (a) of this section.

39 (d) All drivers of commercial motor vehicles not required
40 to stop at railroad tracks or tracks at grade as provided in
41 subsection (a) of this section may not cross a railroad track or
42 tracks at grade unless he or she first slows the commercial
43 motor vehicle to a speed which will permit the commercial
44 motor vehicle to be stopped before reaching the nearest rail
45 of the railroad crossing and permit exercise of due caution to
46 ascertain that the tracks are clear of an approaching train.

47 (e) All drivers of commercial motor vehicles may not
48 proceed to cross a railroad crossing unless there is sufficient
49 space to drive completely through the crossing without stop-
50 ping and the vehicle has sufficient undercarriage clearance to
51 drive completely through the crossing without stopping.

52 (f) No stop need be made at:

53 (1) Any crossing where a police officer, crossing flagger
54 or a traffic-control signal directs traffic to proceed;

55 (2) A streetcar crossing, or railroad tracks used exclu-
56 sively for industrial switching purposes within a business
57 district, as defined in 49 C.F.R. §390.5 (2000);

58 (3) A railroad grade crossing controlled by a functioning
59 highway traffic signal transmitting a green indication which
60 under local law permits the commercial motor vehicle to
61 proceed across the track without slowing or stopping; or

62 (4) A railroad grade crossing which is marked with a sign
63 indicating that the rail line is out of service.

64 (g) Any person driving a vehicle specified in this section
65 or a vehicle that requires a commercial driver's license who
66 fails to comply with the requirements of this section is guilty
67 of a misdemeanor and, upon conviction thereof, shall be
68 fined one hundred dollars or imprisoned for not more than
69 ten days: *Provided*, That if the electric or mechanical signal
70 device is malfunctioning, this subsection shall not apply.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LI- CENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-4. Limitation on number of driver's licenses.

§17E-1-12. Classifications, endorsements and restrictions.

§17E-1-13. Disqualification and cancellation.

§17E-1-4. Limitation on number of driver's licenses.

1 No person who drives a commercial motor vehicle may
2 have more than one driver's license's at one time.

§17E-1-12. Classifications, endorsements and restrictions.

1 Commercial driver's licenses may be issued with the
2 following classifications, endorsements and restrictions; the
3 holder of a valid commercial driver's license may drive all
4 vehicles in the class for which that license is issued, and all
5 lesser classes of vehicles and vehicles which require an en-
6 dorsement, unless the proper endorsement appears on the
7 license:

8 (a) *Classifications.* —

9 (1) Class A - Any combination of vehicles with a gross
10 combined vehicle weight rating of twenty-six thousand one
11 pounds or more, provided the gross vehicle weight rating of
12 the vehicle being towed is in excess of ten thousand pounds.

13 (2) Class B - Any single vehicle with a gross vehicle
14 weight rating of twenty-six thousand one pounds or more and
15 any vehicle towing a vehicle not in excess of ten thousand
16 pounds.

17 (3) Class C - Any single vehicle or combination vehicle
18 with a gross vehicle weight rating of less than twenty-six
19 thousand one pounds or any vehicle towing a vehicle with a
20 gross vehicle weight rating not in excess of ten thousand
21 pounds comprising:

22 (A) Vehicles designed to transport sixteen or more pas-
23 sengers, including the driver; and

24 (B) Vehicles used in the transportation of hazardous ma-
25 terials which requires the vehicle to be placarded under 49
26 C.F.R., Part §172, subpart F (2001).

27 (b) *Endorsements and restrictions.* — The commissioner
28 upon issuing a commercial driver's license may impose en-
29 dorsements or restrictions determined by the commissioner to
30 be appropriate to assure the safe operation of a motor vehicle

31 and to comply with 49 U.S.C., *et seq.*, and federal rules im-
32 plementing the law.

33 (c) *Applicant record check.* — Before issuing a commer-
34 cial driver's license, the commissioner shall obtain driving
35 record information through the commercial driver's license
36 information system, the national driver register and from
37 each state in which the person has been commercially li-
38 censed.

39 (d) *Notification of license issuance.* — Within ten days
40 after issuing a commercial driver's license, the commissioner
41 shall notify the commercial driver's license information sys-
42 tem of that fact, providing all information required to ensure
43 identification of the person.

44 (e) *Expiration of license.* —

45 (1) Every commercial driver's license issued to persons
46 who have attained their twenty-first birthday expires on the
47 applicant's birthday in those years in which the applicant's
48 age is evenly divisible by five. Except as provided in subdivi-
49 sion (2) of this subsection, no commercial driver's license
50 may be issued for less than three years nor more than seven
51 years and the commercial driver's license shall be renewed
52 by the applicant's birthday and is valid for a period of five
53 years, expiring in the month in which the applicant's birthday
54 occurs and in a year in which the applicant's age is evenly
55 divisible by five.

56 (2) Every commercial driver's license issued to persons
57 who have not attained their twenty-first birthday expires on
58 the last day of the month in the year in which the applicant
59 attains the age of twenty-one years.

60 (3) Commercial driver's licenses held by any person in
61 the armed forces which expire while that person is on active

62 duty remains valid for thirty days from the date on which that
63 person reestablishes residence in West Virginia.

64 (4) Any person applying to renew a commercial driver's
65 license which has been expired for two years or more shall
66 follow the procedures for an initial issuance of a commercial
67 driver's license, including the testing provisions.

68 (f) *License renewal procedures.* — When applying for
69 renewal of a commercial driver's license, the applicant shall
70 complete the application form and provide updated informa-
71 tion and required certifications. If the applicant wishes to
72 retain a hazardous materials endorsement, the applicant shall
73 comply with a background check in accordance with 49
74 U.S.C. §5103a and pass the written test for a hazardous mate-
75 rials endorsement.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* — Any person is disquali-
2 fied from driving a commercial motor vehicle for a period of
3 one year if convicted of a first violation of:

4 (1) Driving a commercial motor vehicle under the influ-
5 ence of alcohol or a controlled substance;

6 (2) Driving a commercial motor vehicle while the per-
7 son's alcohol concentration of the person's blood, breath or
8 urine is four hundredths of one percent or more, by weight;

9 (3) Leaving the scene of an accident involving a commer-
10 cial motor vehicle driven by the person;

11 (4) Using a commercial motor vehicle in the commission
12 of any felony as defined in this article: *Provided*, That the
13 commission of any felony involving the manufacture, distri-
14 bution or dispensing of a controlled substance, or possession
15 with intent to manufacture, distribute or dispense a controlled

16 substance falls under the provisions of subsection (e) of this section;

17 (5) Refusing to submit to a test to determine the person's
18 alcohol concentration while driving a commercial motor
19 vehicle;

20 (6) Manslaughter or negligent homicide resulting from
21 the operation of a motor vehicle as defined in section five,
22 article three, chapter seventeen-b, and section one, article
23 five, chapter seventeen-c of this code;

24 (7) Driving while his or her license is suspended or re-
25 voked, as defined in section three, article four, chapter seven-
26 teen-b of this code; or

27 (8) Perjury or making a false affidavit or statement under
28 oath to the division of motor vehicles, as defined in subsec-
29 tion (4), section five, article three, chapter seventeen-b of this
30 code and section two, article four of said chapter.

31 If any of the violations in this subsection occurred while
32 transporting a hazardous material required to be placarded,
33 the person is disqualified for a period of not less than three
34 years for a first violation.

35 (b) A person is disqualified for life if convicted of two or
36 more violations of any of the offenses specified in subsection
37 (a) of this section, or any combination of those offenses,
38 arising from two or more separate incidents.

39 (c) The commissioner may propose rules for promulga-
40 tion in accordance with article three, chapter twenty-nine-a of
41 this code establishing guidelines, including conditions, under
42 which a disqualification for life under subsection (b) of this
43 section may be reduced to a period of not less than ten years.

44 (d) A person is disqualified from driving a commercial
45 motor vehicle for life who uses a commercial motor vehicle
46 in the commission of any felony involving the manufacture,

47 distribution or dispensing of a controlled substance, or pos-
48 session with intent to manufacture, distribute or dispense a
49 controlled substance.

50 (e) A person is disqualified from driving a commercial
51 motor vehicle for a period of sixty days if convicted of two
52 serious traffic violations, or one hundred twenty days if con-
53 victed of three serious violations, committed in a commercial
54 motor vehicle arising from separate incidents occurring
55 within a three-year period.

56 (f) In addition, in accordance with the provision of 49
57 C.F.R. §391.15 and §383.15 (1998), a conviction of violating
58 an out-of-service order is a disqualifying offense. For the first
59 offense, the period of disqualification shall be for ninety
60 days. For the second offense within a ten-year period for
61 violations in separate incidents, the period of disqualification
62 shall be for a period of one year. For the third or subsequent
63 offense within a ten-year period for violations in separate
64 incidents, the period of disqualification shall be for a period
65 of three years. If the violation of the out-of-service order
66 occurred while the person was operating a commercial motor
67 vehicle transporting hazardous material required to be plac-
68 arded under the Hazardous Transportation Act (49 U.S.C.
69 §§5101, *et seq.*) or while operating a motor vehicle designed
70 to transport sixteen or more passengers, including the driver,
71 the period of disqualification for the first offense shall be for
72 one hundred eighty days. For the second or subsequent of-
73 fense within a ten-year period for violations in separate inci-
74 dents, the period of disqualification shall be for three years.

75 (g) A person is disqualified from driving a commercial
76 motor vehicle if he or she has failed to pay overdue child
77 support or comply with subpoenas or warrants relating to
78 paternity or child support proceedings, if a circuit court has
79 ordered the suspension of the commercial driver's license as
80 provided in article five-a, chapter forty-eight-a of this code
81 and the child support enforcement division has forwarded to

82 the division a copy of the court order suspending the license,
83 or has forwarded its certification that the licensee has failed
84 to comply with a new or modified order that stayed the sus-
85 pension and provided for the payment of current support and
86 any arrearage due. A disqualification under this section con-
87 tinues until the division has received a court order restoring
88 the license or a certification by the child support enforcement
89 division that the licensee is complying with the original sup-
90 port order or a new or modified order that provides for the
91 payment of current support and any arrearage due.

92 (h) In accordance with the provisions of 49 C.F.R.
93 §383.51 (2001), any person convicted of operating a com-
94 mercial motor vehicle in violation of any federal, state or
95 local law or ordinance pertaining to any of the railroad cross-
96 ing violations described in subdivision (1) of this subsection
97 shall be disqualified for the period of time specified in subdi-
98 vision (2) of this subsection:

99 (1) Conviction for any of the following railroad crossing
100 violations shall result in disqualification:

101 (A) Failing to slow down and check that the tracks are
102 clear of an approaching train, if not required to stop in accor-
103 dance with the provisions of section three, article twelve,
104 chapter seventeen-c of this code;

105 (B) Failing to stop before reaching the crossing, if the
106 tracks are not clear, if not required to stop, in accordance
107 with the provisions of section one, article twelve, chapter
108 seventeen-c of this code;

109 (C) Failing to stop before driving onto the crossing, if
110 required to stop in accordance with the provisions of section
111 three, article twelve, chapter seventeen-c of this code;

112 (D) Failing to have sufficient space to drive completely
113 through the crossing without stopping in accordance with the

114 provisions of section three, article twelve, chapter seventeen-
115 c of this code;

116 (E) Failing to obey a traffic control device or the direc-
117 tions of an enforcement official at the crossing in accordance
118 with the provisions of section one, article twelve, chapter
119 seventeen-c of this code; or

120 (F) Failing to negotiate a crossing because of insufficient
121 undercarriage clearance in accordance with the provisions of
122 section three, article twelve, chapter seventeen-c of this code.

123 (2) Duration of disqualification time periods for rail-
124 road-highway grade crossing convictions are as follows:

125 (A) For the first conviction, a driver of a commercial
126 motor vehicle shall be disqualified for sixty days if the driver
127 is convicted of a first violation of a railroad-highway grade
128 crossing violation;

129 (B) For a second conviction, a driver of a commercial
130 vehicle shall be disqualified for one hundred twenty days if
131 during any three-year period the driver is convicted of a sec-
132 ond railroad-highway grade crossing violation in separate
133 incidents;

134 (C) For the third or subsequent conviction, a driver of a
135 commercial motor vehicle shall be disqualified for one year
136 if during any three-year period the driver is convicted of a
137 third or subsequent railroad-highway grade crossing violation
138 in separate incidents.

139 (i) After suspending, revoking or canceling a commercial
140 driver's license, the division shall update its records to reflect
141 that action within ten days.

CHAPTER 219

(Com. Sub. for S. B. 156 — By Senators Boley and McKenzie)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates or placards for persons with mobility impairments; providing entitlement for special registration plates or placards for persons who transport persons with disabilities; requiring persons other than the person with the mobility impairment to provide certification with the application; modifying definition of a person with a mobility impairment; providing that “accessible parking” is preferred language in reference to “handicapped parking”; increasing criminal penalties; creating new criminal offense for selling unofficially issued placards or identification cards; providing that identification cards shall be identical in design for both registration plates and placards; providing requirements relative to accessible parking space signposts; providing local authorities who adopt enforcement provisions contained in this section shall retain fines and fees associated with enforcement under the section; and providing the commissioner issue a separate document informing general public regarding the new provisions and increased fines under the legislation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.**§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.**

1 (a) (1) The following persons may apply for special reg-
2 istration plates or removable windshield placards:

3 (A) A person with a mobility impairment;

4 (B) A relative of a person with a mobility impairment;

5 (C) A person who regularly resides with a person with a
6 mobility impairment;

7 (D) A person who regularly transports a person who has a
8 mobility impairment; or

9 (E) A West Virginia organization which transports per-
10 sons with disabilities and facilitates the mobility of its cus-
11 tomers, patients, students or persons otherwise placed under
12 its responsibility.

13 (2) The commissioner may not issue a total of more than
14 two special registration plates or removable windshield plac-
15 ards to any person with a mobility impairment and any appli-
16 cant applying on behalf of that person under paragraphs (B),
17 (C) and (D), subdivision (1) of this subsection. Special
18 registration plates or placards may only be issued for place-
19 ment on a Class A or Class G motor vehicle registered under
20 the provisions of article three, chapter seventeen-a of this
21 code.

22 (3) The applicant shall specify whether he or she is ap-
23 plying for a special registration plate, a removable windshield

24 placard or both on the application form prescribed and fur-
25 nished by the commissioner.

26 (4) The applicant shall submit, with the application, a
27 certificate issued by a licensed physician stating that the ap-
28 plicant has a mobility impairment or that the applicant is a
29 relative of, regularly resides with, or regularly transports a
30 person with a mobility impairment as defined in this section.
31 The physician shall specify in the certificate whether the
32 disability is temporary or permanent. A disability which is
33 temporary shall not exceed six months. A disability which is
34 permanent is one which is one to five years or more in ex-
35 pected duration.

36 (5) Upon receipt of the completed application, the physi-
37 cian's certificate and the regular registration fee for the appli-
38 cant's vehicle class, if the commissioner finds that the appli-
39 cant qualifies for the special registration plate or a removable
40 windshield placard as provided in this section, he or she shall
41 issue to the applicant a special registration plate (upon remit-
42 tance of the regular registration fee) or a removable wind-
43 shield placard (red for temporary and blue for permanent), or
44 both. Upon request, the commissioner shall also issue to any
45 otherwise qualified applicant one additional placard having
46 the same expiration date as the applicant's original placard.
47 The placard shall be displayed by hanging it from the interior
48 rearview mirror of the motor vehicle so that it is conspicu-
49 ously visible from outside the vehicle when parked in a des-
50 ignated accessible parking space. The placard may be re-
51 moved from the rearview mirror whenever the vehicle is
52 being operated to ensure clear vision and safe driving. Only
53 in the event that there is no suitable rearview mirror in the
54 vehicle may the placard be displayed on the dashboard of the
55 vehicle.

56 (b) As used in this section, the following terms have the
57 meanings ascribed to them in this subsection:

58 (1) A person or applicant with a “mobility impairment”
59 means a person who is a citizen of West Virginia and as de-
60 termined by a physician, allopath or osteopath licensed to
61 practice in West Virginia:

62 (A) Cannot walk two hundred feet without stopping to
63 rest;

64 (B) Cannot walk without the use of or assistance from a
65 brace, cane, crutch, prosthetic device, wheelchair, other
66 assistive device or another person;

67 (C) Is restricted by lung disease to such an extent that the
68 person’s force (respiratory) expiratory volume for one sec-
69 ond, when measured by spirometry, is less than one liter or
70 the arterial oxygen tension is less than sixty mm/hg on room
71 air at rest;

72 (D) Uses portable oxygen;

73 (E) Has a cardiac condition to such an extent that the
74 person’s functional limitations are classified in severity as
75 Class III or Class IV according to standards established by
76 the American heart association; or

77 (F) Is severely limited in his or her ability to walk be-
78 cause of an arthritic, neurological or other orthopedic condi-
79 tion;

80 (2) “Special registration plate” means a registration plate
81 that displays the international symbol of access in a color that
82 contrasts with the background, in letters and numbers the
83 same size as those on the plate, and which may be used in
84 lieu of a regular registration plate;

85 (3) “Removable windshield placard” (permanent or tem-
86 porary) means a two-sided, hanger-style placard measuring
87 three inches by nine and one-half inches, with all of the fol-
88 lowing on each side:

89 (A) The international symbol of access, measuring at
90 least three inches in height, centered on the placard, in white
91 on a blue background for permanent designations and in
92 white on a red background for temporary designations;

93 (B) An identification number measuring one inch in
94 height;

95 (C) An expiration date in numbers measuring one inch in
96 height; and

97 (D) The seal or other identifying symbol of the issuing
98 authority;

99 (4) “Regular registration fee” means the standard regis-
100 tration fee for a vehicle of the same class as the applicant’s
101 vehicle;

102 (5) “Public entity” means state or local government or
103 any department, agency, special purpose district or other
104 instrumentality of a state or local government;

105 (6) “Public facility” means all or any part of any build-
106 ings, structures, sites, complexes, roads, parking lots or other
107 real or personal property, including the site where the facility
108 is located;

109 (7) “Place or places of public accommodation” means a
110 facility or facilities operated by a private entity whose opera-
111 tions affect commerce and fall within at least one of the fol-
112 lowing categories:

113 (A) Inns, hotels, motels and other places of lodging;

114 (B) Restaurants, bars or other establishments serving
115 food or drink;

116 (C) Motion picture houses, theaters, concert halls, stadi-
117 ums or other places of exhibition or entertainment;

118 (D) Auditoriums, convention centers, lecture halls or
119 other places of public gatherings;

120 (E) Bakeries, grocery stores, clothing stores, hardware
121 stores, shopping centers or other sales or rental establish-
122 ments;

123 (F) Laundromats, dry cleaners, banks, barber and beauty
124 shops, travel agencies, shoe repair shops, funeral parlors, gas
125 or service stations, offices of accountants and attorneys, phar-
126 macies, insurance offices, offices of professional health care
127 providers, hospitals or other service establishments;

128 (G) Terminals, depots or other stations used for public
129 transportation;

130 (H) Museums, libraries, galleries or other places of pub-
131 lic display or collection;

132 (I) Parks, zoos, amusement parks or other places of recre-
133 ation;

134 (J) Public or private nursery, elementary, secondary,
135 undergraduate or post-graduate schools or other places of
136 learning and day care centers, senior citizen centers, home-
137 less shelters, food banks, adoption agencies or other social
138 services establishments; and

139 (K) Gymnasiums, health spas, bowling alleys, golf
140 courses or other places of exercise or recreation;

141 (8) "Commercial facility" means a facility whose opera-
142 tions affect commerce and which are intended for nonresi-
143 dential use by a private entity;

144 (9) "Accessible parking" formerly known as "handi-
145 capped parking" is the present phrase consistent with lan-
146 guage within the Americans with Disabilities Act (ADA).

147 Any person who falsely or fraudulently obtains or seeks
148 to obtain the special plate or the removable windshield plac-
149 ard provided for in this section and any person who falsely
150 certifies that a person is mobility impaired in order that an
151 applicant may be issued the special registration plate or wind-
152 shield placard under this section is guilty of a misdemeanor
153 and, upon conviction thereof, in addition to any other penalty
154 he or she may otherwise incur, shall be fined five hundred
155 dollars. Any person who fabricates, uses or sells unofficially
156 issued windshield placards to any person or organization is
157 committing a fraudulent act and is guilty of a misdemeanor
158 and, upon conviction thereof, in addition to any other penalty
159 he or she may otherwise incur, shall be fined five hundred
160 dollars per placard fabricated, used or sold. Any person who
161 fabricates, uses or sells unofficially issued identification
162 cards to any person or organization is committing a fraudu-
163 lent act and is guilty of a misdemeanor and, upon conviction
164 thereof, in addition to any other penalty he or she may other-
165 wise incur, shall be fined seven hundred dollars per identifi-
166 cation card fabricated, used or sold. Any person who fabri-
167 cates, uses or sells unofficially issued labels imprinted with a
168 future expiration date to any person or organization is com-
169 mitting a fraudulent act and is guilty of a misdemeanor and,
170 upon conviction thereof, in addition to any other penalty he
171 or she may otherwise incur, shall be fined seven hundred
172 dollars. Any person covered by this section who sells or gives
173 away their officially issued windshield placard to any person
174 or organization not qualified to apply or receive the placard
175 and then reapplies for a new placard on the basis it was stolen

176 is committing a fraudulent act and is guilty of a misdemeanor
177 and, upon conviction thereof, in addition to any other penalty
178 he, she or they may otherwise incur, shall lose their right to
179 receive or use a special placard or special license plate for a
180 period of not less than five years.

181 (c) The commissioner shall set the expiration date for
182 special registration plates and permanent removable wind-
183 shield placards on the last day of a given month and year, to
184 be valid for a minimum of one year but not more than five
185 years, after which time a new application must be submitted
186 to the commissioner. After the commissioner receives the
187 new application, signed by a certified physician, the commis-
188 sioner shall issue: (i) A new special registration plate or new
189 permanent removable windshield placard; or (ii) official
190 labels imprinted with the new expiration date and designed so
191 as to be placed over the old dates on the original registration
192 plate or windshield placard.

193 (d) The commissioner shall set the expiration date of
194 temporary removable windshield placards to be valid for a
195 period of approximately six months after the application was
196 received and approved by the commissioner.

197 (e) The commissioner shall issue to each applicant who is
198 granted a special registration plate or windshield placard an
199 identification card bearing the applicant's name, assigned
200 identification number and expiration date. The applicant shall
201 thereafter carry this identification card on his or her person
202 whenever parking in an accessible parking space. The identi-
203 fication card shall be identical in design for both registration
204 plates and removable windshield placards.

205 (f) An accessible parking space should comply with the
206 provisions of the Americans with Disabilities Act accessibil-
207 ity guidelines, contained in 28 C.F.R. 36, Appendix A, Sec-
208 tion 4.6. In particular, the parking space should be a mini-
209 mum of eight feet wide with an adjacent eight-foot access

210 aisle for vans having side mounted hydraulic lifts or ramps or
211 a five-foot access aisle for standard vehicles. Access aisles
212 should be marked using diagonal two- to four-inch-wide
213 stripes spaced every twelve or twenty-four inches apart or
214 other appropriate markings denoting that the space is a no-
215 parking zone. All accessible parking spaces should have a
216 signpost in front or adjacent to the accessible parking space
217 displaying the international symbol of access sign mounted at
218 a minimum of eight feet above the pavement or sidewalk and
219 the top of the sign. Lines or markings on the pavement or
220 curbs for parking spaces and access aisles may be in any
221 color, although blue is the generally accepted color for acces-
222 sible parking.

223 (g) A vehicle from any other state, United States territory
224 or foreign country displaying an officially issued special
225 registration plate, placard or decal bearing the international
226 symbol of access shall be recognized and accepted as meet-
227 ing the requirements of this section, regardless of where the
228 plate, placard or decal is mounted or displayed on the vehi-
229 cle.

230 (h) Free stopping, standing or parking places marked
231 with the international symbol of access shall be designated in
232 close proximity to all public entities, including state, county
233 and municipal buildings and facilities, places of public ac-
234 commodation and commercial facilities. These parking
235 places shall be reserved solely for persons with a mobility
236 impairment at all times.

237 (i) Any person whose vehicle properly displays a valid,
238 unexpired special registration plate or removable windshield
239 placard may park the vehicle for unlimited periods of time in
240 parking zones unrestricted as to length of parking time per-
241 mitted: *Provided*, That this privilege does not mean that the
242 vehicle may park in any zone where stopping, standing or
243 parking is prohibited or which creates parking zones for spe-
244 cial types of vehicles or which prohibits parking during

245 heavy traffic periods during specified rush hours or where
246 parking would clearly present a traffic hazard. To the extent
247 any provision of any ordinance of any political subdivision of
248 this state is contrary to the provisions of this section, the
249 provisions of this section take precedence and apply.

250 The parking privileges provided for in this subsection
251 apply only during those times when the vehicle is being used
252 for the loading or unloading of a person with a mobility im-
253 pairment. Any person who knowingly exercises, or attempts
254 to exercise, these privileges at a time when the vehicle is not
255 being used for the loading or unloading of a person with a
256 mobility impairment is guilty of a misdemeanor and, upon
257 first conviction thereof, in addition to any other penalty he or
258 she may otherwise incur, shall be fined one hundred dollars;
259 upon second conviction thereof, in addition to any other pen-
260 alty he or she may otherwise incur, shall be fined three hun-
261 dred dollars; and upon third and subsequent convictions
262 thereof, in addition to any other penalty he or she may other-
263 wise incur, shall be fined five hundred dollars.

264 (j) Any person whose vehicle does not display a valid,
265 special registration plate or removable windshield placard
266 may not stop, stand or park a motor vehicle in an area desig-
267 nated, zoned or marked for accessible parking with signs or
268 instructions displaying the international symbol of access,
269 either by itself or with explanatory text. The signs may be
270 mounted on a post or a wall in front of the accessible parking
271 space and instructions may appear on the ground or pave-
272 ment, but use of both methods is preferred. Accessible park-
273 ing spaces for vans having an eight-foot adjacent access aisle
274 should be designated as "van accessible" but may be used by
275 any vehicle displaying a valid special registration plate or
276 removable windshield placard. These spaces are intended
277 solely for persons with a mobility impairment, as defined in
278 this section: *Provided*, That any person in the act of trans-
279 porting a person with a mobility impairment as defined in

280 this section, may stop, stand or park a motor vehicle not dis-
281 playing a special registration plate or removable windshield
282 placard in the area designated for accessible parking by the
283 international symbol of access for the limited purposes of
284 loading or unloading a passenger with a mobility impairment:
285 *Provided, however,* That the vehicle shall be promptly moved
286 after the completion of this limited purpose.

287 Any person who violates the provisions of this subsection
288 is guilty of a misdemeanor and, upon conviction thereof,
289 shall be fined one hundred dollars; upon second conviction
290 thereof, in addition to any other penalty he or she may other-
291 wise incur, shall be fined three hundred dollars; and upon
292 third and subsequent convictions thereof, in addition to any
293 other penalty he or she may otherwise incur, shall be fined
294 five hundred dollars.

295 (k) All signs that designate areas as “ accessible parking”
296 or that display the international symbol of access shall also
297 include the words “ Up to \$500 fine”.

298 (l) No person may stop, stand or park a motor vehicle in
299 an area designated or marked off as an access aisle adjacent
300 to a van-accessible parking space or regular accessible park-
301 ing space. Any person, including a driver of a vehicle dis-
302 playing a valid removable windshield placard or special reg-
303 istration plate, who violates the provisions of this subsection
304 is guilty of a misdemeanor and, upon conviction thereof,
305 shall be fined one hundred dollars; upon second conviction
306 thereof, in addition to any other penalty he or she may other-
307 wise incur, shall be fined three hundred dollars; and upon
308 third and subsequent convictions thereof, in addition to any
309 other penalty he or she may otherwise incur, shall be fined
310 five hundred dollars.

311 (m) Parking enforcement personnel who otherwise en-
312 force parking violations may issue citations for violations of

313 this section and shall reference the number on the vehicle's
314 license plate, since the driver normally will not be present.

315 (n) Law-enforcement agencies may establish a program
316 to use trained volunteers to collect information necessary to
317 issue citations to persons who illegally park in designated
318 accessible parking spaces. Any law-enforcement agency
319 choosing to establish a program shall provide for workers'
320 compensation and liability coverage. The volunteers shall
321 photograph the illegally parked vehicle and complete a form,
322 to be developed by supervising law-enforcement agencies,
323 that includes the vehicle's license plate number, date, time
324 and location of the illegally parked vehicle. The photographs
325 must show the vehicle in the accessible space and a readable
326 view of the license plate. Within the discretion of the super-
327 vising law-enforcement agency, the volunteers may issue
328 citations or the volunteers may submit the photographs of the
329 illegally parked vehicle and the form to the supervising law-
330 enforcement agency, who may issue a citation, which in-
331 cludes the photographs and the form, to the owner of the
332 illegally parked vehicle. Volunteers shall be trained on the
333 requirements for citations for vehicles parked in marked,
334 zoned or designated accessible parking areas by the supervis-
335 ing law-enforcement agency.

336 (o) Local authorities who adopt the basic enforcement
337 provisions of this section and issue their own local ordi-
338 nances shall retain all fines and associated late fees. These
339 revenues shall be used first to fund the provisions of subsec-
340 tion (n) of this section, if adopted by local authorities, or
341 otherwise shall go into the local authorities' general revenue
342 fund. Otherwise, any moneys collected as fines shall be col-
343 lected for and remitted to the state.

344 (p) The commissioner shall prepare and issue a document
345 to applicants describing the privileges accorded a vehicle
346 having a special registration plate and removable windshield
347 placard as well as the penalties when the vehicle is being

348 inappropriately used as described in this section and shall
349 include the document along with the issued special registra-
350 tion plate or windshield placard. In addition, the commis-
351 sioner shall issue a separate document informing the general
352 public regarding the new provisions and increased fines being
353 imposed either by way of newspaper announcements or other
354 appropriate means across the state.

355 (q) The commissioner shall adopt and promulgate rules
356 in accordance with the provisions of article three, chapter
357 twenty-nine-a of this code to effectuate the provisions of this
358 section within ninety days after being enacted by the Legisla-
359 ture in its regular session.

CHAPTER 220

(S. B. 278 — By Senators Love, Ross, Helmick,
Wooton, Bailey, Hunter, Minard and Rowe)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, all relating to authorized emergency vehicles generally; requiring motor vehicle drivers take certain precautions when approaching a stationary authorized emergency vehicle displaying emergency signals; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section nine-a, to read as follows:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-9a. Approaching authorized emergency vehicles; penalties.

1 (a) The driver of any vehicle approaching a stationary
2 authorized emergency vehicle, when the authorized emer-
3 gency vehicle is giving a signal by displaying alternately
4 flashing red, red and white, blue, or red and blue lights or
5 amber or yellow warning lights, shall:

6 (1) Proceed with due caution, yield the right-of-way by
7 making a lane change not adjacent to that of the authorized
8 emergency vehicle, if possible with regard to safety and traf-
9 fic conditions, if on a highway having at least four lanes with
10 not less than two lanes proceeding in the same direction as
11 the approaching vehicle and reduce speed to a safe level for
12 road conditions; or

13 (2) Proceed with due caution, reduce the speed of the
14 vehicle, maintaining a safe speed not to exceed fifteen miles
15 per hour on any nondivided highway or street and twenty-
16 five miles per hour on any divided highway depending on
17 road conditions, if changing lanes would be impossible or
18 unsafe.

19 (b) (1) Any person who violates any subsection of this
20 section is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined not more than five hundred dollars or
22 confined in the county or regional jail not more than sixty
23 days, or both fined and imprisoned.

24 (2) If violation of this section results in property damage
25 in addition to any other penalty imposed, driving privileges

26 of the persons causing the property damage shall be sus-
27 pended for ninety days.

28 (3) If violation of this section results in injury to another
29 person in addition to any other penalty imposed, the driving
30 privileges of the person causing the injury shall be suspended
31 for six months.

32 (4) If violation of this section results in the death of an-
33 other person in addition to any other penalty imposed, the
34 driving privileges of the person causing the death shall be
35 suspended for two years.

36 (5) Any person who violates any provision of this section
37 and while doing so also violates section two, article five of
38 this chapter is guilty of a misdemeanor and, upon conviction
39 thereof, shall, in addition to the penalties set out in section
40 two of said article and this section, be fined not less than one
41 thousand dollars nor more than five thousand dollars, or con-
42 fined in the county or regional jail for a period not more than
43 six months, or both fined and imprisoned.

CHAPTER 221

(Com. Sub. for S. B. 35 — By Senators Redd, Love and Snyder)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing fees for motor vehicle inspections.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

1 (a) The superintendent of the state police is responsible
2 for the inspection as provided in this article and shall pre-
3 scribe requirements and qualifications for official inspection
4 stations. He or she shall select and designate the stations and
5 shall issue permits for official inspection stations and furnish
6 instructions and all necessary forms for the inspection of
7 vehicles as required in this article and the issuance of official
8 certificates of inspection and approval. The certificate of
9 inspection shall be a paper sticker or decal to be affixed to
10 the windshield of a motor vehicle, shall be serially numbered
11 and shall properly identify the official inspection station
12 which issued it. A charge of one dollar per sticker shall be
13 charged by the state police to the inspection station, and the
14 funds received shall be deposited into the state treasury and
15 credited to the account of the state police for application in
16 the administration and enforcement of the provisions of this
17 article. Any balance remaining in the fund on the last day of
18 June of each fiscal year, not required for the administration
19 and enforcement of the provisions of this article, shall be
20 transferred to the state road fund. The superintendent may
21 exchange stickers or make refunds to official inspection sta-
22 tions for stickers on hand when permits are revoked or when,
23 for any reason, the stickers become obsolete.

24 (b) A person shall apply for a permit upon an official
25 form prescribed by the superintendent and the superintendent
26 shall grant permits only when the superintendent is satisfied
27 that the station is properly equipped and has competent per-
28 sonnel to make the inspections and adjustments and that the
29 inspections and adjustments will be properly conducted. The
30 superintendent, before issuing a permit, may require the ap-
31 plicant to file a bond with surety approved by the superinten-
32 dent, conditioned that such applicant, as a station operator,
33 will make compensation for any damage to a vehicle during
34 an inspection or adjustment due to negligence on the part of
35 the station operator or employees thereof.

36 (c) The superintendent shall properly supervise and cause
37 inspections to be made of the stations. Upon finding that a
38 station is not properly equipped or conducted, the superinten-
39 dent may, upon a first violation, suspend the permit for a
40 period of up to one year. Upon a second or subsequent find-
41 ing that a station is not properly equipped or conducted, the
42 superintendent shall permanently revoke and require the sur-
43 render of the permit. The superintendent may reinstate the
44 permit of any person whose permit was permanently revoked
45 prior to the effective date of this section upon a first finding
46 that a station was not properly equipped or conducted, upon
47 application, at any time after the expiration of six months
48 from the time of revocation and shall reinstate the permit,
49 upon application, after the expiration of one year. He or she
50 shall maintain and post at his or her office and at any other
51 places as he or she may select lists of all stations holding
52 permits and of those whose permits have been suspended or
53 revoked.

**§17C-16-6. Assignment, transfer and posting of official inspec-
tion station permit; issuance and record of cer-
tificate of inspection; inspection fee.**

1 (a) No permit for an official inspection station shall be
2 assigned or transferred or used at any location other than
3 designated in the permit and every permit shall be posted in a
4 conspicuous place at the station location designated in the
5 permit.

6 (b) The person operating the station shall issue a certifi-
7 cate of inspection and approval, upon an official form, to the
8 owner of a vehicle upon inspecting the vehicle and determin-
9 ing that its equipment required under this article is in good
10 condition and proper adjustment, but otherwise no certificate
11 shall be issued, except one issued pursuant to section two of
12 this article. When required by the superintendent, a record
13 and report shall be made of every inspection and every certifi-
14 cate issued.

15 (c) A fee of not more than twelve dollars may be charged
16 for an inspection and any necessary headlight adjustment to
17 proper focus, not including any replacement parts required,
18 and the issuance of the certificate, but the imposition of the
19 charge is not mandatory.

CHAPTER 222

(Com. Sub. for H. B. 4309 — By Delegates Amores,
Webster, J. Smith, Smirl and Webb)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enabling cities and municipalities to provide by charter provision or ordinance that, in the

absence of its municipal court judge, the municipal court clerk or other persons designated by city charter or ordinance may serve as municipal judge; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2. Municipal court for municipalities.

1 (a) Notwithstanding any charter provision to the contrary,
2 any city may provide by charter provision and any municipal-
3 ity may provide by ordinance for the creation and mainte-
4 nance of a municipal court, for the appointment or election of
5 an officer to be known as municipal court judge and for his or
6 her compensation, and authorize the exercise by the court or
7 judge of the jurisdiction and the judicial powers, authority
8 and duties set forth in section one of this article and similar
9 or related judicial powers, authority and duties enumerated in
10 any applicable charter provisions, as set forth in the charter or
11 ordinance. Additionally, any city may provide by charter
12 provision and any municipality may provide by ordinance,
13 that in the absence of or in the case of the inability of the
14 municipal court judge to perform his or her duties, the munic-
15 ipal court clerk or other official designated by charter or ordi-
16 nance may act as municipal court judge: *Provided*, That the
17 municipal court clerk or other official designated by charter
18 or ordinance to act as municipal court judge shall comply
19 with the requirements set forth in subsection (b) of this sec-
20 tion, as well as any other requirements that the city by charter
21 provision or the municipality by ordinance may require.

22 (b) Any person who assumes the duties of municipal
23 court judge who has not been admitted to practice law in this
24 state shall attend and complete the next available course of
25 instruction in rudimentary principles of law and procedure.
26 The course shall be conducted by the municipal league or a
27 like association whose members include more than one half
28 of the chartered cities and municipalities of this state. The
29 instruction must be performed by or with the services of an
30 attorney licensed to practice law in this state for at least three
31 years. Any municipal court judge may attend a course for the
32 purpose of continuing education. The cost of any course re-
33 ferred to in this section shall be paid by the municipality that
34 employs the municipal judge.

35 (c) Only a defendant who has been charged with an of-
36 fense for which a period of confinement in jail may be im-
37 posed is entitled to a trial by jury. If a municipal court judge
38 determines, upon demand of a defendant, to conduct a trial by
39 jury in a criminal matter, it shall follow the procedures set
40 forth in the rules of criminal procedure for magistrate courts
41 promulgated by the supreme court of appeals, except that the
42 jury in municipal court shall consist of twelve members.

CHAPTER 223

**(H. B. 4540 — By Delegates Fleischauer, Caputo,
Manuel, R. Thompson, Wills, Hrutkay and Givens)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article fifteen,
chapter eight of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the political activities of members of paid fire departments; amending the list of prohibited political activities by members of paid fire departments and exceptions thereto; prohibiting such members from being candidates for or holding public office in the municipality in which they are employed, but permitting such members to be candidates for or hold other public office; prohibiting a member of a paid fire department from soliciting political contributions or donations from members or employees of his or her own fire department; reenacting civil service protections related to unauthorized and permissible political activity; and amending penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-24. Political activities of members prohibited; exceptions.

1 (a) No member of any paid fire department may:

2 (1) Solicit any assessment, subscription or contribution
3 for any political party, committee or candidate from any per-
4 son who is a member or employee of the same fire depart-
5 ment by which they are employed;

6 (2) Use any official authority or influence, including, but
7 not limited to, the wearing by a member of a paid fire depart-
8 ment of his or her uniform, for the purpose of interfering with
9 or affecting the nomination, election or defeat of any candi-
10 date or the passage or defeat of any ballot issue: *Provided,*
11 That this subdivision shall not be construed to prohibit any
12 member of a paid fire department from casting his or her vote
13 at any election while wearing his or her uniform;

14 (3) Coerce or command anyone to pay, lend or contribute
15 anything of value to a party, committee, organization, agency
16 or person for the nomination, election or defeat of a ballot
17 issue; or

18 (4) Be a candidate for or hold any other public office in
19 the municipality in which he or she is employed: *Provided,*
20 That any paid member of a fire department that is subject to
21 the provisions of 15 U.S.C. §1501 et seq., may not be a can-
22 didate for elective office.

23 (b) Other types of partisan or nonpartisan political activi-
24 ties not inconsistent with the provisions of subsection (a) of
25 this section are permissible political activities for members of
26 paid fire departments.

27 (c) No person shall be appointed or promoted to or de-
28 moted or dismissed from any position in a paid fire depart-
29 ment or in any way favored or discriminated against because
30 of his or her engagement in any political activities authorized
31 by the provisions of this section. Any elected or appointed
32 official who violates the provisions of this subsection shall be
33 guilty of a misdemeanor and, upon conviction thereof, shall
34 be punished by the penalties contained in section twenty-six,
35 article fifteen, chapter eight of this code.

CHAPTER 224

(Com. Sub. for H. B. 4388 — By Delegates Campbell, J. Smith,
Browning, Hubbard, Keener, Hall and Harrison)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal police and firemen's pension and relief funds; and providing that no municipality may anticipate or use in any manner any state funds accruing to the police or firemen's pension fund to offset the minimum required funding amount for any fiscal year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund
2 shall have regularly scheduled actuarial valuation reports
3 prepared by a qualified actuary. All of the following stan-
4 dards must be met:

5 (a) An actuarial valuation report shall be prepared at least
6 once every three years commencing with the later of: (1) The
7 first day of July, one thousand nine hundred eighty-three; or
8 (2) three years following the most recently prepared actuarial
9 valuation report: *Provided*, That this most recently prepared
10 actuarial valuation report meets all of the standards of this
11 section.

12 (b) The actuarial valuation report shall consist of, but is
13 not limited to, the following disclosures: (1) The financial

14 objective of the fund and how the objective is to be attained;
15 (2) the progress being made toward realization of the finan-
16 cial objective; (3) recent changes in the nature of the fund,
17 benefits provided, or actuarial assumptions or methods; (4)
18 the frequency of actuarial valuation reports and the date of
19 the most recent actuarial valuation report; (5) the method
20 used to value fund assets; (6) the extent to which the quali-
21 fied actuary relies on the data provided and whether the data
22 was certified by the fund's auditor or examined by the quali-
23 fied actuary for reasonableness; (7) a description and expla-
24 nation of the actuarial assumptions and methods; and (8) any
25 other information the qualified actuary feels is necessary or
26 would be useful in fully and fairly disclosing the actuarial
27 condition of the fund.

28 (c)(1) After the thirtieth day of June, one thousand nine
29 hundred ninety-one, and thereafter, the financial objective of
30 each municipality shall not be less than to contribute to the
31 fund annually an amount which, together with the contribu-
32 tions from the members and the allocable portion of the state
33 premium tax fund for municipal pension and relief funds
34 established under section fourteen-d, article three, chapter
35 thirty-three of this code and other income sources as autho-
36 rized by law, will be sufficient to meet the normal cost of the
37 fund and amortize any actuarial deficiency over a period of
38 not more than forty years: *Provided*, That in the fiscal year
39 ending the thirtieth day of June, one thousand nine hundred
40 ninety-one, the municipality may elect to make its annual
41 contribution to the fund utilizing an alternative contribution
42 in an amount not less than: (i) One hundred seven percent of
43 the amount contributed for the fiscal year ending the thirtieth
44 day of June, one thousand nine hundred ninety; or (ii) an
45 amount equal to the average of the contribution payments
46 made in the five highest fiscal years beginning with the 1984
47 fiscal year whichever is greater: *Provided, however*, That
48 contribution payments in subsequent fiscal years under this

49 alternative contribution method may not be less than one
50 hundred seven percent of the amount contributed in the prior
51 fiscal year: *Provided further*, That prior to utilizing this alter-
52 native contribution methodology the actuary of the fund shall
53 certify in writing that the fund is projected to be solvent un-
54 der the alternative contribution method for the next consecu-
55 tive fifteen-year period. For purposes of determining this
56 minimum financial objective: (1) The value of the fund's
57 assets shall be determined on the basis of any reasonable
58 actuarial method of valuation which takes into account fair
59 market value; and (2) all costs, deficiencies, rate of interest,
60 and other factors under the fund shall be determined on the
61 basis of actuarial assumptions and methods which, in aggre-
62 gate, are reasonable (taking into account the experience of
63 the fund and reasonable expectations) and which, in combi-
64 nation, offer the qualified actuary's best estimate of antici-
65 pated experience under the fund.

66 (2) No municipality may anticipate or use in any manner
67 any state funds accruing to the police or firemen's pension
68 fund to offset the minimum required funding amount for any
69 fiscal year.

70 (3) Notwithstanding any other provision of this section or
71 article to the contrary, each municipality shall contribute
72 annually to the fund an amount which may not be less than
73 the normal cost, as determined by the actuarial report.

74 (d) For purposes of this section the term "qualified actu-
75 ary" means only an actuary who is a member of the society of
76 actuaries or the American academy of actuaries. The quali-
77 fied actuary shall be designated a fiduciary and shall dis-
78 charge his or her duties with respect to a fund solely in the
79 interest of the members and member's beneficiaries of that
80 fund. In order for the standards of this section to be met, the
81 qualified actuary shall certify that the actuarial valuation

82 report is complete and accurate and that in his or her opinion
83 the technique and assumptions used are reasonable and meet
84 the requirements of this section of this article.

85 (e) The cost of the preparation of the actuarial valuation
86 report shall be paid by the fund.

87 (f) Notwithstanding any other provision of this section,
88 for the fiscal year ending the thirtieth day of June, one thou-
89 sand nine hundred ninety-one, the municipality may calculate
90 its annual contribution based upon the provisions of the sup-
91 plemental benefit provided for in this article enacted during
92 the one thousand nine hundred ninety-one regular session of
93 the Legislature.

CHAPTER 225

**(Com. Sub. for S. B. 601 — By Senators Plymale, Fanning,
Edgell, Jackson, McCabe, Prezioso and Sprouse)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a, relating to municipal police and firemen's pension and relief funds; setting forth legislative findings; requiring the treasurer to select and contract with a single qualified actuary to serve as a consultant with respect to the funds; requiring annual valuations of the funds; specifying requirements for reporting the valuations; and providing that the funds are not a responsibility or obligation of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20a. Hiring of actuary; preparation of actuarial valuations.

1 (a) (1) The Legislature finds that it is in the best interests
2 of the state and its municipalities to have accurate data re-
3 garding the various municipal police and firemen's pension
4 and relief funds. The Legislature finds that data received
5 from the funds is not always reliable due to inconsistent
6 methods of reporting. The Legislature also finds that the
7 municipalities need to know if the data they are basing their
8 decisions on regarding pensions for their police and firemen
9 is accurate and that they can depend on it.

10 (2) The Legislature finds that the state treasurer should
11 contract with an actuary as a consultant for the municipal
12 police and firemen's pension and relief funds and that among
13 other duties the actuary should determine if there is consis-
14 tent reporting from the various funds. The Legislature further
15 finds that the state treasurer should share the results of the
16 actuary's annual valuation with the appropriate municipality.

17 (b) Notwithstanding any other provision of this code to
18 the contrary, beginning the first day of July, two thousand
19 two, the state treasurer shall select by competitive bid and

20 contract with a single qualified actuary. The actuary shall
21 serve as a consultant to the treasurer with regard to the opera-
22 tion of the municipal police and firemen's pension and relief
23 funds and shall report annually to the treasurer with regard to
24 all funds existing in this state by virtue of this article. The
25 treasurer may pay for costs associated with the actuary's
26 work out of the fund established pursuant to section fourteen-
27 d, article three, chapter thirty-three of this code.

28 (c) With respect to each municipal police or firemen's
29 pension and relief fund, the actuary shall complete an annual
30 valuation in accordance with actuarial standards of practice
31 promulgated by the actuarial standards board of the Ameri-
32 can academy of actuaries. The report of the valuation shall
33 include: (1) A summary of the benefit provisions evaluated;
34 (2) a summary of the census data and financial information
35 used in the valuation; (3) a description of the actuarial as-
36 sumptions, actuarial costs method and asset valuation method
37 used in the valuation, including a statement of the assumed
38 rate of payroll growth and assumed rate of growth or decline
39 in the number of the fund members' contribution to the pen-
40 sion fund; (4) a summary of findings that includes a state-
41 ment of the actuarially accrued pension liabilities and un-
42 funded actuarial accrued pension liabilities; (5) a schedule
43 showing the effect of any changes in the benefit provisions,
44 actuarial assumptions or cost methods since the last annual
45 actuarial valuation; (6) a statement of whether contributions
46 to the pension fund are in accordance with the provisions of
47 this chapter and whether they are expected to be sufficient;
48 and (7) any other matters determined by the treasurer to be
49 necessary or appropriate. The treasurer shall forward a copy
50 of the annual valuation to the municipality for which it was
51 completed.

52 (d) (1) The hiring of an actuary under the provisions of
53 this section shall not be construed to make the municipal

54 police and firemen's pension and relief funds the responsibil-
55 ity or obligation of the state of West Virginia.

56 (2) Any actuarial deficiency identified by the actuary
57 under this section or this article is not an obligation of the
58 state of West Virginia.

CHAPTER 226

(Com. Sub. for S. B. 679 — By Senators Burnette and Anderson)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six and eight, article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to intergovernmental relations generally; providing that certain separate legal or administrative entities are public corporations; extending the duration of certain intergovernmental agreements indefinitely; and limiting to one fiscal year certain other intergovernmental agreements.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 23. INTERGOVERNMENTAL RELATIONS — CONTRACTING
AND JOINT ENTERPRISES.**

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

§8-23-6. Appropriations; furnishings of property; personnel and services.

§8-23-8. Duration of intergovernmental agreements and contracts.

§8-23-3. Intergovernmental agreements generally.

1 Any power or powers, privilege or privileges, authority
2 or undertaking, exercised or capable of exercise, or which
3 may be engaged in, and any public works which may be un-
4 dertaken, by a public agency acting alone may be exercised,
5 enjoyed, engaged in or undertaken jointly with any other
6 public agency which could likewise act alone.

7 Any two or more public agencies may enter into a written
8 agreement with one another for joint or cooperative action
9 pursuant to the provisions of this section. Appropriate action
10 by ordinance, resolution or otherwise pursuant to law of the
11 governing bodies of the participating public agencies shall be
12 necessary before any such agreement shall become effective.
13 Any separate legal or administrative entity established here-
14 under is a public corporation and may exist for the length of
15 time set forth in the intergovernmental agreement.

16 Any such agreement shall specify the following:

17 (1) Its duration;

18 (2) The precise organization, composition and nature of
19 any separate legal or administrative entity created thereby,
20 together with the powers delegated thereto, provided such
21 entity may be legally created;

22 (3) Its purpose or purposes;

23 (4) The manner of financing the joint or cooperative un-
24 dertaking and of establishing and maintaining a budget there-
25 for;

26 (5) The permissible method or methods to be employed
27 in accomplishing the partial or complete termination of the

28 agreement and for disposing of property upon such partial or
29 complete termination; and

30 (6) Any other necessary and proper matters.

31 In the event that the agreement does not establish a sepa-
32 rate legal or administrative entity to conduct the joint or co-
33 operative undertaking, the agreement shall, in addition to the
34 items enumerated above, contain the following:

35 (1) Provision for an administrator or a joint board respon-
36 sible for administering the joint or cooperative undertaking
37 and in the event a joint board is provided for, there shall be a
38 representative on the board from each of the public agencies
39 which are party to the agreement; and

40 (2) The manner of acquiring, holding and disposing of
41 real and personal property used in the joint or cooperative
42 undertaking.

43 No agreement made pursuant to the provisions of this
44 section shall relieve any public agency of any obligation or
45 responsibility imposed upon it by law, except that to the ex-
46 tent of actual and timely performance thereof by a joint board
47 or other legal or administrative entity created by an agree-
48 ment made hereunder, said performance may be offered in
49 satisfaction of the obligation or responsibility.

50 Every agreement made pursuant to the provisions of this
51 section shall, prior to and as a condition precedent to its be-
52 coming effective, be submitted to the attorney general who
53 shall determine whether the agreement is in proper form and
54 is compatible with the laws of this state. The attorney general
55 shall approve any such agreement submitted to him unless he
56 shall find that it does not meet the conditions set forth herein,
57 in which event he shall detail in writing to the governing
58 bodies of the public agencies concerned the specific respects
59 in which the proposed agreement fails to meet the require-
60 ments of law. Failure to disapprove any such agreement so

61 submitted within thirty days of its submission shall constitute
62 approval thereof.

63 The financing of joint projects by agreement shall be as
64 provided by law.

§8-23-6. Appropriations; furnishing of property, personnel and services.

1 Any public agency entering into an agreement pursuant
2 to the provisions of section three of this article is hereby
3 empowered and authorized to appropriate funds to, and to
4 sell, lease, transfer or otherwise supply real or personal prop-
5 erty to, and to furnish personnel and services to, the adminis-
6 trative joint board or other legal or administrative entity cre-
7 ated to operate the joint or cooperative undertaking if the
8 public agency provides the funds and property in compliance
9 with the provisions of this code or other applicable law. The
10 board or entity is hereby empowered and authorized to re-
11 ceive, expend and utilize the same.

§8-23-8. Duration of intergovernmental agreements and contracts.

1 (a) If an intergovernmental agreement, entered into in
2 accordance with the provisions of section three of this article,
3 and if a contract for the performance of a service, activity or
4 undertaking entered into in accordance with the provisions of
5 section seven of this article does not create a financial obliga-
6 tion for a public agency except as provided by statute or other
7 applicable law, the agreement or contract is of a duration as
8 is specified in the agreement or contract.

9 (b) If an intergovernmental agreement entered into in
10 accordance with the provisions of section three of this article,
11 and if any contract for the performance of a service, activity
12 or undertaking entered into in accordance with the provisions
13 of section seven of this article, creates a financial obligation
14 for a public agency, the agreement or contract is one fiscal

15 year, but the same may be annually renewed each fiscal year:
16 *Provided*, That any such agreement or contract may be for
17 such period in excess of one fiscal year as is specified in the
18 agreement or contract, if such agreement or contract is rati-
19 fied by a majority of the legal votes cast by the qualified
20 voters of the several jurisdictions represented by the contract-
21 ing parties voting separately at a regular or special election.

CHAPTER 227

(S. B. 721 — By Senators Helmick, Mitchell, Bowman, Love, Minard,
Plymale, Ross, Rowe, Snyder, Deem and Minear)

[Passed March 5, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the director of natural resources to enter into reciprocal agreements with the state of Ohio with regard to hunting and fishing on tributaries of the Ohio River.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be required
2 to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident chil-
4 dren, or resident parents, or bona fide resident tenants of such
5 land, may hunt, trap or fish on their own land during open
6 season in accordance with the laws and regulations applying
7 to such hunting, trapping and fishing without obtaining a
8 license to do so unless such lands have been designated as a
9 wildlife refuge or preserve.

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing license
12 to do so. A written statement or certificate from a duly li-
13 censed physician of this state showing the said resident to be
14 totally blind shall serve in lieu of a fishing license and shall
15 be carried on the person of said resident at all times while he
16 or she is fishing in this state.

17 (c) All residents of West Virginia on active duty in the
18 armed forces of the United States of America, while on leave
19 or furlough, shall have the right and privilege to hunt, trap or
20 fish in season in West Virginia without obtaining a license to
21 do so. Leave or furlough papers shall serve in lieu of any
22 such license and shall be carried on the person at all times
23 while trapping, hunting or fishing.

24 (d) In accordance with the provisions of section twenty-
25 seven of this article, any resident sixty-five years of age or
26 older is not required to have a license to hunt, trap or fish
27 during the legal seasons in West Virginia, but in lieu of such
28 license any such person shall at all times while hunting, trap-
29 ping or fishing, carry on his or her person a valid West Vir-
30 ginia driver's license or nondriver identification card issued
31 by the division of motor vehicles.

32 (e) Residents of the state of Maryland who carry hunting
33 or fishing licenses valid in that state may hunt or fish from
34 the West Virginia banks of the Potomac River without ob-
35 taining licenses to do so, but such hunting or fishing shall be
36 confined to the fish and waterfowl of the river proper and not
37 on its tributaries: *Provided*, That the state of Maryland shall
38 first enter into a reciprocal agreement with the director ex-
39 tending a like privilege of hunting and fishing on the Poto-
40 mac River from the Maryland banks of said river to licensed
41 residents of West Virginia, without requiring said residents to
42 obtain Maryland hunting and fishing licenses.

43 (f) Residents of the state of Ohio who carry hunting or
44 fishing licenses valid in that state may hunt or fish on the
45 Ohio River or from the West Virginia banks of said river
46 without obtaining licenses to do so, but such hunting or fish-
47 ing shall be confined to fish and waterfowl of the river proper
48 and to points on West Virginia tributaries and embayments
49 identified by the director: *Provided*, That the state of Ohio
50 shall first enter into a reciprocal agreement with the director
51 extending a like privilege of hunting and fishing from the
52 Ohio banks of said river to licensed residents of West Vir-
53 ginia without requiring said residents to obtain Ohio hunting
54 and fishing licenses. In the event the state of Ohio accords
55 this privilege to residents of West Virginia, such Ohio resi-
56 dents will not be required to obtain the license provided for
57 by section forty-two of this article.

58 (g) Any resident of West Virginia who was honorably
59 discharged from the armed forces of the United States of
60 America and who receives a veteran's pension based on total
61 permanent service connected disability as certified to by the
62 veterans administration, shall be permitted to hunt, trap or
63 fish in this state without obtaining a license therefor. The
64 director shall propose rules for legislative approval in accor-
65 dance with the provisions of article three, chapter twenty-

66 nine-a of this code setting forth the procedure for the certifi-
67 cation of the veteran, manner of applying for and receiving
68 the certification and requirements as to identification while
69 said veteran is hunting, trapping or fishing.

70 (h) Any disabled veteran, who is a resident of West Vir-
71 ginia and who, as certified to by the commissioner of motor
72 vehicles, is eligible to be exempt from the payment of any fee
73 on account of registration of any motor vehicle owned by
74 such disabled veteran as provided for in section eight, article
75 ten, chapter seventeen-a of this code, shall be permitted to
76 hunt, trap or fish in this state without obtaining a license
77 therefor. The director shall propose rules for legislative ap-
78 proval in accordance with the provisions of article three,
79 chapter twenty-nine-a of this code setting forth the procedure
80 for the certification of the disabled veteran, manner of apply-
81 ing for and receiving the certification, and requirements as to
82 identification while said disabled veteran is hunting, trapping
83 or fishing.

84 (i) Any resident or inpatient in any state mental health,
85 health or benevolent institution or facility may fish in this
86 state, under proper supervision of the institution involved,
87 without obtaining a fishing license to do so. A written state-
88 ment or certificate signed by the superintendent of the mental
89 health, health or benevolent institution or facility in which
90 the resident or inpatient, as the case may be, is institutional-
91 ized shall serve in lieu of a fishing license and shall be car-
92 ried on the person of the resident or inpatient at all times
93 while he or she is fishing in this state.

94 (j) Any resident who is developmentally disabled, as
95 certified by a physician and the director of the division of
96 health, may fish in this state without obtaining a fishing li-
97 cense to do so. As used in this section, "developmentally

98 disabled” means a person with a severe, chronic disability
99 which:

100 (1) Is attributable to a mental or physical impairment, or
101 a combination of mental and physical impairments;

102 (2) Is manifested before the person attains age
103 twenty-two;

104 (3) Results in substantial functional limitations in three
105 or more of the following areas of major life activity: (A)
106 Self-care; (B) receptive and expressive language; (C) learn-
107 ing; (D) mobility; (E) self-direction; (F) capacity for inde-
108 pendent living; and (G) economic self-sufficiency; and

109 (4) Reflects the person’s need for a combination and
110 sequence of care, treatment or supportive services which are
111 of lifelong or extended duration and are individually planned
112 and coordinated.

CHAPTER 228

**(S. B. 576 — By Senators Helmick, Anderson,
Minard, Ross and Minear)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty-six-h, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty-three of said article, relating to nonresident Class E hunting and trapping licence.

Be it enacted by the Legislature of West Virginia:

That section forty-six-h, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section forty-three of said article be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F and Class H licenses for nonresidents.

1 The licenses in this section shall be required of nonresi-
2 dents to hunt, trap or fish in West Virginia. A Class E license
3 shall be a nonresident hunting and trapping license and shall
4 entitle the licensee to hunt or trap all legal species of wild
5 animals and wild birds in all counties of the state except
6 when other licenses or permits are required. The fee therefor
7 shall be one hundred dollars.

8 A Class EE license shall be a nonresident bear hunting
9 license and shall entitle the licensee to hunt bear in all coun-
10 ties of the state, except when additional licenses or permits
11 are required. The fee therefor shall be one hundred fifty dol-
12 lars.

13 A Class F license shall be a nonresident fishing license
14 and shall entitle the licensee to fish for all fish in all counties
15 of the state except when additional licenses or permits are
16 required. The fee therefor shall be thirty dollars.

17 Trout fishing is not permitted with a Class F license un-
18 less such license has affixed thereto an appropriate trout
19 stamp as prescribed by the division of natural resources.

20 A Class H license shall be a nonresident small game
21 hunting license and shall entitle the licensee to hunt small
22 game in all counties of the state, except when additional li-
23 censes or permits are required, for a period of six days begin-
24 ning with the date it is issued. The fee therefor shall be
25 twenty dollars. As used in this section, "small game" means
26 all game except bear, deer, wild turkey and wild boar.

CHAPTER 229

(H. B. 2062 — By Delegates Leggett, C. White,
Flanigan, Williams and Evans)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class V resident and Class VV nonresident muzzle-loading deer hunting licenses; and adding open sights and telescopic sights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1 A Class V license shall be a resident muzzle-loading deer
2 hunting license. A Class VV license shall be nonresident
3 muzzle-loading deer hunting license. A Class V and VV li-
4 cense shall entitle the licensee to hunt for and kill deer with a
5 muzzle-loader during muzzle-loading deer seasons in coun-
6 ties of the state, or parts thereof, excluding Logan,
7 McDowell, Mingo and Wyoming counties, as established by
8 the natural resources commission in section seventeen, article
9 one of this chapter. The director shall establish rules govern-
10 ing the issuance of Class V and Class VV licenses as neces-

11 sary to limit, on a fair and equitable basis, the number of
12 persons who may muzzle-loader hunt for deer in any special
13 management area. There shall be a season of at least three
14 days each year for the taking of deer with muzzle-loading
15 firearms, either rifles or pistols.

16 Only single shot muzzle-loading firearms with open
17 sights or telescopic sights having a bore diameter of no less
18 than thirty-eight one-hundredths inch are legal firearms for
19 the taking of deer during the muzzle-loading deer season
20 provided herein.

21 The licenses shall be issued in a form prescribed by the
22 director, are in addition to a Class A, Class AB or Class E
23 license and are valid only when accompanied thereby. The
24 fee for the Class V license shall be five dollars. The fee for
25 the Class VV license shall be twenty-five dollars.

CHAPTER 230

**(S. B. 722 — By Senators Helmick, Mitchell, Anderson, Bowman,
Love, Minard, Plymale, Prezioso, Ross, Rowe and Snyder)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-m, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class XJ junior sportsman's hunting, fishing and trapping licenses for residents fifteen to eighteen years old and nonresidents under the age of fifteen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46m. Class XJ junior sportsman's hunting, fishing and trapping license.

1 (a) On or after the first day of January, two thousand
2 three, a Class XJ license shall be a junior sportsman's hunt-
3 ing, fishing and trapping license and shall entitle the licensee
4 to hunt and trap for all legal species of wild animals and wild
5 birds, to fish for all legal species of fish and to take frogs in
6 all counties of the state, except as prohibited by the rules of
7 the director or when additional licenses and permits are re-
8 quired.

9 No additional fees shall be required of Class XJ licensees
10 for a Class I, U, UU, V, VV, W or WW license or for the
11 resident conservation stamp required by section nine, article
12 two-b of this chapter in order for the Class XJ licensee to
13 participate in the seasons for which said licenses are required.
14 Trout fishing is not permitted with a Class XJ license unless
15 said licensee possesses a valid Class O trout license.

16 (b) The Class XJ license may be issued to:

17 (1) A resident of this state who has not reached his or her
18 eighteenth birthday and is otherwise required by section
19 twenty-seven of this article to purchase a license; or

20 (2) A nonresident of this state who has not reached his or
21 her fifteenth birthday and is at least eight years old and is
22 otherwise required by section twenty-seven of this article to
23 purchase a license.

24 (c)(1) The fee charged to a resident for the Class XJ li-
25 cense shall be fifteen dollars, of which three dollars shall be
26 designated as conservation stamp revenue and expended
27 pursuant to section nine, article two-b of this chapter.

28 (2) The fee charged to a nonresident for the Class XJ
29 license shall be fifteen dollars. In addition to paying the XJ
30 license fee, a nonresident applicant must purchase a conser-
31 vation stamp for the fee required of a nonresident in section
32 nine, article two-b of this chapter, and a law-enforcement and
33 sports education stamp for the fee required of a nonresident
34 in section ten, article two-b of this chapter.

CHAPTER 231

(Com. Sub. for H. B. 4437 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reauthorizing the neighborhood investment program act; revising definitions; requiring independent program evaluation; and setting new termination date for the act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-3. Definitions.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

§11-13J-3. Definitions.

1 (a) *General.* — When used in this article, or in the ad-
2 ministration of this article, terms defined in subsection (b) of
3 this section have the meanings ascribed to them by this sec-
4 tion, unless a different meaning is clearly required by either
5 the context in which the term is used, or by specific defini-
6 tion in this article.

7 (b) *Terms defined.*

8 (1) “Affiliate” includes all business entities which are
9 affiliates of each other when either directly or indirectly:

10 (A) One business entity controls or has the power to con-
11 trol the other business entity; or

12 (B) A third party or third parties control or have the
13 power to control both affiliates. In determining whether busi-
14 ness entities are independently owned and operated and
15 whether or not affiliation exists, consideration shall be given
16 to all appropriate factors, including common ownership,
17 common management and contractual relationships.

18 (2) “Capacity building” means to generally enhance the
19 capacity of the community to achieve improvements and to
20 obtain the community services described in subparagraphs (i)
21 through (v), inclusive, of the definition of that term, as set
22 forth in subdivision (4) of this subsection. Capacity building
23 includes, but is not limited to, improvement of the means, or
24 capacity, to:

25 (i) Access, obtain and use private, charitable and govern-
26 mental assistance programs, administrative assistance and
27 private, charitable and governmental resources or funds;

28 (ii) Fulfill legal, bureaucratic and administrative require-
29 ments and qualifications for accessing assistance, resources
30 or funds; and

31 (iii) Attract and direct political and community attention
32 to needs of the community for the purpose of increasing ac-
33 cess to and use of assistance, resources or funds for a given
34 purpose, goal or need.

35 (3) "Commissioner or tax commissioner" are used inter-
36 changeably in this article and mean the tax commissioner of
37 the state of West Virginia, or his or her delegate.

38 (4) "Community services" means services, provided at no
39 charge whatsoever, of:

40 (i) Providing any type of health, personal finance, psy-
41 chological or behavioral, religious, legal, marital, educational
42 or housing counseling and advice to economically disadvan-
43 taged citizens or a specifically designated group of economi-
44 cally disadvantaged citizens or in an economically disadvan-
45 taged area;

46 (ii) Providing emergency assistance or medical care to
47 economically disadvantaged citizens or to a specifically des-
48 igned group of economically disadvantaged citizens or in
49 an economically disadvantaged area;

50 (iii) Establishing, maintaining or operating recreational
51 facilities, or housing facilities for economically disadvan-
52 taged citizens or a specifically designated group of economi-
53 cally disadvantaged citizens or in an economically disadvan-
54 taged area;

55 (iv) Providing economic development assistance to eco-
56 nomically disadvantaged citizens or a specifically designated
57 group of economically disadvantaged citizens; without regard
58 to whether they are located in an economically disadvantaged
59 area, or to individuals, groups or neighborhood or community
60 organizations, in an economically disadvantaged area; or

61 (v) Providing community technical assistance and capac-
62 ity building to economically disadvantaged citizens or a spe-
63 cifically designated group of economically disadvantaged
64 citizens, or to individuals, groups or neighborhood or com-
65 munity organizations in an economically disadvantaged area.

66 (5) "Compensation" means wages, salaries, commissions
67 and any other form of remuneration paid to employees for
68 personal services.

69 (6) "Corporation" means any corporation, joint-stock
70 company or association and any business conducted by a
71 trustee or trustees in which interest or ownership is evidenced
72 by a certificate of interest or ownership or similar written
73 instrument.

74 (7) "Crime prevention" means any activity which aids in
75 the reduction of crime.

76 (8) "Delegate" in the phrase "or his or her delegate,"
77 when used in reference to the tax commissioner, means any
78 officer or employee of the tax division of the department of
79 tax and revenue duly authorized by the tax commissioner
80 directly, or indirectly by one or more redelegations of author-
81 ity, to perform the functions mentioned or described in this
82 article.

83 (9) "Director or director of the West Virginia develop-
84 ment office" means the director of the West Virginia office.

85 (10) "Economically disadvantaged" means:

86 (A) *In a municipality.* — Any area not exceeding fifteen
87 square miles in West Virginia which contains any portion of
88 an incorporated municipality;

89 (i) In which area the aggregate poverty rate of persons
90 residing in the area, based upon the most recent decennial
91 census of population, is at least one hundred twenty-five
92 percent of the statewide poverty rate; and

93 (ii) That is certified as an economically disadvantaged
94 area by the West Virginia development office;

95 (B) *In a rural area.* — Any area not exceeding twenty-
96 five square miles in West Virginia:

97 (i) Which area is located in a rural area and which con-
98 tains no incorporated municipalities or portions thereof;

99 (ii) In which area the aggregate poverty rate of persons
100 residing in the area, based upon the most recent decennial
101 census of population, is at least one hundred twenty-five
102 percent of the statewide poverty rate; and

103 (iii) That is certified as an economically disadvantaged
104 area by the West Virginia development office;

105 (C) An economically disadvantaged area qualifies only
106 pursuant to a certification issued by the West Virginia devel-
107 opment office. The certifications issued by the West Virginia
108 development office expire after the passage of five calendar
109 years, unless specifically limited to a shorter time by specific
110 order of the West Virginia development office, and no area
111 shall hold the status of a certified economically disadvan-
112 taged area for a period of time greater than ten years, either
113 consecutively or in the aggregate;

114 (D) The certification of an economically disadvantaged
115 area shall be made on the basis of a determination by the
116 development office that an area meets the poverty criteria
117 established in paragraphs (A) and (B) of this subdivision;

118 (E) No economically disadvantaged area may be certified
119 within twenty-five miles of any other certified economically
120 disadvantaged area. Not more than six economically disad-
121 vantaged areas may hold the status of certified economically
122 disadvantaged areas at any one time in this state;

123 (F) At least a majority of all economically disadvantaged
124 areas holding designations as economically disadvantaged
125 areas at any one time shall be located in rural areas; and

126 (G) The certification shall be filed with the secretary of
127 state and shall specifically set forth the boundaries of the
128 economically disadvantaged area by both description and
129 map, the date of certification of the area as an economically
130 disadvantaged area, the date on which the certification will
131 terminate and a statement of the director's findings as to the
132 aggregate poverty rate of persons living in the certified eco-
133 nomically disadvantaged area.

134 (11) "Economically disadvantaged citizen" means a natu-
135 ral person, who during the current taxable year has, or during
136 the immediately preceding taxable year had, an annual gross
137 personal income not exceeding one hundred twenty-five per-
138 cent of the federal designated poverty level for personal in-
139 comes, and who is a domiciliary and resident of this state.

140 (12) "Education" means any type of scholastic instruction
141 to, or scholarship by, an individual that enables that individ-
142 ual to prepare for better life opportunities. Education does not
143 include courses in physical training, physical conditioning,
144 physical education, sports training, sports camps and similar
145 training or conditioning courses (except for physical therapy

146 prescribed by a physician or other person licensed to pre-
147 scribe courses of medical treatment under this code).

148 (13) "Eligible contribution" consists of:

149 (A)(i) Cash;

150 (ii) Tangible personal property, valued at its fair market
151 value;

152 (iii) Real property, valued at its fair market value;

153 (iv) In-kind professional services, valued at seventy-five
154 percent of fair market value; and

155 (v) Publicly traded common or preferred stock represent-
156 ing ownership in a corporation, valued at its fair market value
157 in accordance with the regulations of the internal revenue
158 service: *Provided*, That contributed stock shall be sold by the
159 project transferee within one hundred eighty days of its re-
160 ceipt.

161 (B) For purposes of this definition, the value of in-kind
162 professional services will not qualify as an eligible contribu-
163 tion unless the services are:

164 (i) Reasonably priced and valued, and reasonably neces-
165 sary services customarily and normally provided by the con-
166 tributor in the normal course of business to customers, clients
167 or patients other than those encompassed by the project plan;

168 (ii) Not reimbursable, in whole or in part, from sources
169 other than the tax credit provided under this article; and

170 (iii) Services which are not available without cost else-
171 where in the community;

172 (C) "Professional services" means only those services
173 provided directly by a physician licensed to practice in this
174 state, those services provided directly by a dentist licensed to
175 practice in this state, those services provided directly by a
176 lawyer licensed to practice in this state, those services pro-
177 vided directly by a registered nurse, licensed practical nurse,
178 dental hygienist or other health care professional licensed to
179 practice in this state, those services provided directly by a
180 certified public accountant or public accountant licensed to
181 practice in this state, and those services provided directly by
182 an architect licensed to practice in this state;

183 (D) *Minimum contribution.* — No contribution of cash,
184 stock, property or professional services or any combination
185 thereof contributed in any tax year by any taxpayer having a
186 fair market value of less than five hundred dollars qualifies as
187 an eligible contribution;

188 (E) *Maximum contribution.* — No contribution of cash,
189 stock, property or professional services or any combination
190 thereof contributed in any tax year by any taxpayer having a
191 fair market value in excess of two hundred thousand dollars
192 qualifies as an eligible contribution; and

193 (F) *Limitations.* — Not more than twenty-five percent of
194 total eligible contributions to a certified project may be in-
195 kind contributions. Not more than twenty-five percent of total
196 eligible contributions made by any taxpayer to any certified
197 project may be in-kind contributions.

198 (14) *Eligible taxpayer.* —

199 (A) "Eligible taxpayer" means any person subject to the
200 taxes imposed by article twenty-one, twenty-three or
201 twenty-four of this chapter which makes an eligible contribu-
202 tion to a qualified charitable organization pursuant to the
203 terms of a certified project plan for the purpose of providing

204 neighborhood assistance, community services or crime pre-
205 vention, or for the purpose of providing job training or educa-
206 tion for individuals not employed by the contributing tax-
207 payer or an affiliate of the contributing taxpayer or a person
208 related to the contributing taxpayer;

209 (B) "Eligible taxpayer" also includes an affiliated group
210 of taxpayers if the group elects to file a consolidated corpora-
211 tion net income tax return under article twenty-four of this
212 chapter and if one or more affiliates included in the affiliated
213 group would qualify as an eligible taxpayer under paragraph
214 (A) of this subdivision.

215 (15) "Includes and including" when used in a definition
216 contained in this article, shall not be considered to exclude
217 other things otherwise within the meaning of the term de-
218 fined.

219 (16) "Job training" means instruction to an individual
220 that enables the individual to acquire vocational skills to
221 become employable or able to seek a higher grade of employ-
222 ment.

223 (17) "Natural person or individual" means a human be-
224 ing. The terms "natural person" and "individual" do not
225 mean, and specifically exclude any corporation, limited lia-
226 bility company, partnership, joint venture, trust, organization,
227 association, agency, governmental subdivision, syndicate,
228 affiliate or affiliation, group, unit or any entity other than a
229 human being.

230 (18) "Neighborhood assistance" means either:

231 (A) Furnishing financial assistance, labor, material and
232 technical advice to aid in the physical or economic improve-
233 ment of any part or all of an economically disadvantaged
234 area; or

235 (B) Furnishing technical advice to promote higher em-
236 ployment in an economically disadvantaged area.

237 (19) "Neighborhood organization" means any organiza-
238 tion:

239 (A) Which is performing community services, as defined
240 in this section; and

241 (B) Which is exempt from income taxation under Section
242 501(c)(3) of the Internal Revenue Code.

243 (20) "Partnership and partner" includes a syndicate,
244 group, pool, joint venture or other unincorporated organiza-
245 tion through or by means of which any business, financial
246 operation or venture is carried on, and which is not a trust or
247 estate, a corporation or a sole proprietorship. The term "part-
248 ner" includes a member in a syndicate, group, pool, joint
249 venture or organization.

250 (21) "Person" includes any natural person, corporation,
251 limited liability company or partnership.

252 (22) "Project transferee" means any neighborhood orga-
253 nization, qualified charitable organization, charitable organi-
254 zation or other organization, entity or person that receives an
255 eligible contribution or part of an eligible contribution from
256 an eligible taxpayer for the purpose of directly or indirectly
257 providing neighborhood assistance, community services or
258 crime prevention, or for the purpose of providing job training
259 or education or other services or assistance pursuant to a
260 project plan. The project transferee is typically the first entity
261 or person receiving eligible contributions from eligible tax-
262 payers under a project plan. However, in the case of eligible
263 contributions of in-kind services or other eligible contribu-
264 tions or portions of those contributions made pursuant to a
265 certified project plan directly to indigent, disadvantaged or

266 needy persons, economically disadvantaged citizens or other
267 persons or organizations under the sponsorship or auspices of
268 any neighborhood organization, qualified charitable organi-
269 zation, charitable organization or other organization, entity or
270 person as a certified project participant, the eligible contribu-
271 tions shall be considered to have been made to the entity,
272 organization or person under whose sponsorship or auspices
273 the eligible contributions are made, and that entity, organiza-
274 tion or person is considered to be the project transferee with
275 relation to those eligible contributions. The project transferee
276 is the entity, organization or person that is liable under this
277 article for payment of the project certification fee to the West
278 Virginia development office. The term "project transferee"
279 means and includes any considered project transferee, con-
280 sidered as such under the provisions of this article.

281 (23) "Qualified charitable organization" means a neigh-
282 borhood organization, as defined in this section, which is the
283 sponsor of a project which has received certification by the
284 director of the West Virginia development office pursuant to
285 the requirements of this article: *Provided*, That no organiza-
286 tion may qualify as a qualified organization for purposes of
287 this article if the organization is not registered with this state
288 as required under the solicitation of charitable funds act.

289 (24) "Related person" or "person related to" a stated
290 taxpayer means:

291 (A) An individual, corporation, partnership, affiliate,
292 association or trust or any combination or group thereof con-
293 trolled by the taxpayer;

294 (B) An individual, corporation, partnership, affiliate,
295 association or trust or any combination or group thereof that
296 is in control of the taxpayer;

297 (C) An individual, corporation, partnership, affiliate,
298 association or trust or any combination or group thereof con-
299 trolled by an individual, corporation, partnership, affiliate,
300 association or trust or any combination or group thereof that
301 is in control of the taxpayer; or

302 (D) A member of the same controlled group as the tax-
303 payer.

304 For purposes of this article, "control," with respect to a
305 corporation means ownership, directly or indirectly, of stock
306 possessing fifty percent or more of the total combined voting
307 power of all classes of the stock of the corporation which
308 entitles its owner to vote. "Control," with respect to a trust,
309 means ownership, directly or indirectly, of fifty percent or
310 more of the beneficial interest in the principal or income of
311 the trust. The ownership of stock in a corporation, of a capital
312 or profits interest in a partnership or association or of a bene-
313 ficial interest in a trust shall be determined in accordance
314 with the rules for constructive ownership of stock provided in
315 Section 267(c), other than paragraph (3) of that section, of
316 the United States Internal Revenue Code, as amended.

317 (25) "State fiscal year" means a twelve-month period
318 beginning on the first day of July and ending on the thirtieth
319 day of June.

320 (26) "Taxpayer" means any person subject to the tax
321 imposed by article twenty-one, twenty-three or twenty-four
322 of this chapter (or any one or combination of the articles of
323 this chapter).

324 (27) "Technical assistance" means:

325 (A) Assistance in understanding, using and fulfilling the
326 legal, bureaucratic and administrative requirements and qual-
327 ifications which must be negotiated for the purpose of effec-

328 tively accessing, obtaining and using private, charitable, not-
329 for-profit or governmental assistance, resources or funds, and
330 maximizing the value of the assistance, resources or fund;

331 (B) Assistance provided by any person holding a license
332 under West Virginia law to practice any licensed profession
333 or occupation, by which the person, in the practice of the
334 profession or occupation, assists economically disadvantaged
335 citizens or the persons in an economically disadvantaged area
336 by:

337 (i) Providing any type of health, personal finance, psy-
338 chological or behavioral, religious, legal, marital, educational
339 or housing counseling and advice to economically disadvan-
340 taged citizens or a specifically designated group of economi-
341 cally disadvantaged citizens or in an economically disadvan-
342 taged area;

343 (ii) Providing emergency assistance or medical care to
344 economically disadvantaged citizens or to a specifically des-
345 igned group of economically disadvantaged citizens or in
346 an economically disadvantaged area;

347 (iii) Establishing, maintaining or operating recreational
348 facilities, or housing facilities for economically disadvan-
349 taged citizens or a specifically designated group of economi-
350 cally disadvantaged citizens or in an economically disadvan-
351 taged area;

352 (iv) Providing economic development assistance to eco-
353 nomically disadvantaged citizens or a specifically designated
354 group of economically disadvantaged citizens, without regard
355 to whether they are located in an economically disadvantaged
356 area, or to individuals, groups or neighborhood or community
357 organizations, in an economically disadvantaged area; or

358 (v) Providing community technical assistance and capac-
359 ity building to economically disadvantaged citizens or a spe-
360 cifically designated group of economically disadvantaged
361 citizens or to individuals, groups or neighborhood or commu-
362 nity organizations in an economically disadvantaged area.

**§11-13J-12. Program evaluation; expiration of credit; preserva-
tion of entitlement.**

1 Annually, on or before the fifteenth day of December,
2 the director shall secure an independent review of the neigh-
3 borhood investment program created by this article and pres-
4 ent the findings to the joint committee on government and
5 finance. Unless sooner terminated by law, the neighborhood
6 investment program act shall terminate on the first day of
7 July, two thousand five. No entitlement to the tax credit un-
8 der this article shall result from any contribution made to any
9 certified project after the first day of July, two thousand five,
10 and no credit shall be available to any taxpayer for any con-
11 tribution made after that date. Taxpayers which have gained
12 entitlement to the credit pursuant to eligible contributions
13 made to certified projects prior to the first day of July, two
14 thousand five, shall retain that entitlement and apply the
15 credit in due course pursuant to the requirements and limita-
16 tions of this article.

CHAPTER 232

**(S. B. 712 — By Senators Anderson, Deem,
Helmick, McKenzie, Oliverio and Ross)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article nine, chapter twenty-two-c of said code, all relating to the plugging of oil and gas wells; designating the plats required to be filed prior to commencing plugging operations; providing that lessees are not required to offer to sell or otherwise transfer interest in well prior to commencement of plugging operations to lessors or others with interests in wells; authorizing the use of global positioning system for identification of well locations; and authorizing legislative rules relating thereto.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Environmental Resources.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

1 All dry or abandoned wells or wells presumed to be aban-
2 doned under the provisions of section nineteen of this article
3 shall be plugged and reclaimed in accordance with this sec-

4 tion and the other provisions of this article and in accordance
5 with the rules promulgated by the secretary.

6 Prior to the commencement of plugging operations and
7 the abandonment of any well, the well operator shall either:
8 (a) Notify, by registered or certified mail, the secretary and
9 the coal operator operating coal seams, the coal seam owner
10 of record or lessee of record, if any, to whom notices are
11 required to be given by section twelve of this article, and the
12 coal operators to whom notices are required to be given by
13 section thirteen of this article, of its intention to plug and
14 abandon any such well (using such form of notice as the sec-
15 retary may provide), giving the number of the well and its
16 location and fixing the time at which the work of plugging
17 and filling will be commenced, which time shall be not less
18 than five days after the day on which such notice so mailed is
19 received or in due course should be received by the secretary,
20 in order that a representative or representatives of the secre-
21 tary and such coal operator, owner or lessee, if any, may be
22 present at the plugging and filling of the well: *Provided*, That
23 whether such representatives appear or do not appear, the
24 well operator may proceed at the time fixed to plug and fill
25 the well in the manner hereinafter described; or (b) first ob-
26 tain the written approval of the secretary and such coal opera-
27 tor, owner or lessee, if any; or (c) in the event the well to be
28 plugged and abandoned is one on which drilling or reworking
29 operations have been continuously progressing pursuant to
30 authorization granted by the secretary, first obtain the verbal
31 permission of the secretary or the secretary's designated rep-
32 resentative to plug and abandon the well, except that the well
33 operator shall, within a reasonable period not to exceed five
34 days after the commencement of the plugging operations,
35 give the written notices required by subdivision (a) above.

36 The well operator shall not be required to prepare or
37 submit to the director a plat prior to the commencement of

38 plugging operations as long as a plat pertaining to the partic-
39 ular well is on file with the director and accurately identifies
40 the location of the well, or so long as there is also on file with
41 the director the coordinates of the well established by a
42 global positioning system. The coordinates established by a
43 global positioning system must be filed with the secretary in
44 either a written or electronic form prescribed by the secre-
45 tary. The global positioning system used to establish the co-
46 ordinates shall be accurate within the variance allowed by
47 law for the distance between the actual location of the well
48 and location shown on the plat that is required to be filed
49 with a well permit application, or the secretary may establish
50 the accuracy of the global positioning system by legislative
51 rule promulgated pursuant to section two of this article.

52 No well may be plugged or abandoned unless prior to the
53 commencement of plugging operations and the abandonment
54 of any well the secretary is furnished a bond as provided in
55 section twenty-six of this article. In no event prior to the
56 commencement of plugging operations shall a lessee under a
57 lease covering a well be required to give or sell the well to
58 any person owning an interest in the well, including, but not
59 limited to, the respective lessor, or agent of the lessor, nor
60 may the lessee be required to grant a person with an interest
61 in the well, including, but not limited to, the respective les-
62 sor, or agent of the lessor, an opportunity to qualify under
63 section twenty-six of this article to continue operation of the
64 well.

65 When the plugging, filling and reclamation of a well
66 have been completed, an affidavit, in triplicate, shall be made
67 (on a form to be furnished by the secretary) by two experi-
68 enced persons who participated in the work, the secretary or
69 the secretary's designated representative, in which affidavit
70 shall be set forth the time and manner in which the well was
71 plugged and filled and the land reclaimed. One copy of this

72 affidavit shall be retained by the well operator, another (or
73 true copies of same) shall be mailed to the coal operator or
74 operators, if any, and the third to the secretary.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS
AND COMPACTS.**

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located in
3 this state, however owned, including any lands owned or
4 administered by any government or any agency or subdivi-
5 sion thereof, over which the state has jurisdiction under its
6 police power. The provisions of this article are in addition to
7 and not in derogation of or substitution for the provisions of
8 article six, chapter twenty-two of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than those utilized in secondary
11 recovery programs as set forth in section eight of this article;

12 (2) Any well commenced or completed prior to the ninth
13 day of March, one thousand nine hundred seventy-two, un-
14 less such well is, after completion (whether such completion
15 is prior or subsequent to that date):

16 (A) Deepened subsequent to that date to a formation at or
17 below the top of the uppermost member of the "Onondaga
18 Group"; or

19 (B) Involved in secondary recovery operations for oil
20 under an order of the commission entered pursuant to section
21 eight of this article;

22 (3) Gas storage operations or any well employed to inject
23 gas into or withdraw gas from a gas storage reservoir or any
24 well employed for storage observation; or

25 (4) Free gas rights.

26 (c) The provisions of this article shall not be construed to
27 grant to the commissioner or the commission authority or
28 power to:

29 (1) Limit production or output, or prorate production of
30 any oil or gas well, except as provided in subdivision (6),
31 subsection (a), section seven of this article; or

32 (2) Fix prices of oil or gas.

33 (d) Nothing contained in either this chapter or chapter
34 twenty-two of this code may be construed so as to require,
35 prior to commencement of plugging operations, a lessee un-
36 der a lease covering a well to give or sell the well to any
37 person owning an interest in the well, including, but not lim-
38 ited to, a respective lessor, or agent of the lessor, nor shall the
39 lessee be required to grant to a person owning an interest in
40 the well, including, but not limited to, a respective lessor, or
41 agent of a lessor, an opportunity to qualify under section
42 twenty-six, article six, chapter twenty-two of this code to
43 continue operation of the well.

CHAPTER 233

**(S. B. 724 — By Senators Wooton, Caldwell, Hunter, Kessler, Minard,
Redd, Ross, Rowe, Snyder, Deem and Facemyer)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of parking on property owned or leased by the state for the purpose of providing parking for state office buildings in Charleston.

Be it enacted by the Legislature of West Virginia:

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

§5A-4-5. Regulation of parking on state-owned or -leased property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

1 (a) It is the intent of the Legislature to provide a parking
2 facility for the general public and to direct the secretary of
3 the department of administration to plan and construct a park-
4 ing garage at the state capitol complex that will provide suffi-
5 cient and additional parking for the general public.

6 (b) The secretary may regulate the parking of motor vehi-
7 cles in accordance with the provisions of this section with
8 regard to the following state-owned property in the city of
9 Charleston, Kanawha County:

10 (1) The east side of Greenbrier street between Kanawha
11 boulevard and Washington street, east;

12 (2) The west side of California avenue between Kanawha
13 boulevard and Washington street, east;

14 (3) Upon the state-owned or -leased grounds upon which
15 state office buildings number one (1) through twenty (20) and
16 the Laidley Field complex are located; and

17 (4) Upon any other property now or hereafter owned or
18 leased by the state or any of its agencies and used for parking
19 purposes in conjunction with the state capitol or any state
20 office buildings.

21 (c) The secretary shall propose rules for promulgation
22 respecting parking and to allocate parking spaces to public
23 officers and employees of the state upon all of the property
24 set forth in subsection (a) of this section: *Provided*, That
25 during sessions of the Legislature, including regular, ex-
26 tended, extraordinary and interim sessions, parking on the
27 east side of Greenbrier street between Kanawha boulevard
28 and Washington street, east, in the science and culture center
29 parking lot, on the north side of Kanawha boulevard between
30 Greenbrier street and California avenue and on the west side
31 of California avenue between Kanawha boulevard and Wash-
32 ington street, east, is subject to rules promulgated jointly by
33 the speaker of the House of Delegates and the president of
34 the Senate. Any person parking any vehicle contrary to the
35 rules promulgated under authority of this subsection is sub-
36 ject to a fine of not less than one dollar nor more than
37 twenty-five dollars for each offense. In addition, the secretary
38 or the Legislature, as the case may be, may cause the re-
39 moval, immobilization or other remedy considered necessary,
40 at owner expense, of any vehicle that is parked in violation of
41 the rules. Magistrates in Kanawha County have jurisdiction
42 of all the offenses.

43 (d) The secretary may employ the persons as may be
44 necessary to enforce the parking rules promulgated under the
45 provisions of this section.

46 (e) There is created in the department of administration a
47 special fund to be named the "Parking Garage Fund" in
48 which shall be deposited funds that are appropriated and
49 funds from other sources to be used for the construction and
50 maintenance of a parking garage on the state capitol com-
51 plex.

CHAPTER 234

(Com. Sub. for S. B. 91 — By Senators Wooton, Burnette, Caldwell, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe, Snyder, Deem, Facemyer and McKenzie)

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the payment of funeral expenses of probation officers and correctional employees killed in the line of duty.

Be it enacted by the Legislature of West Virginia:

That section two, article eleven, 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 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

- 1 (a) The secretary of military affairs and public safety
- 2 shall, upon written request, direct payment from the fund in
- 3 the form of a draft as provided in this article up to and includ-
- 4 ing an amount not exceeding eight thousand dollars for the
- 5 reasonable funeral expenses, including burial expenses, of a
- 6 law-enforcement, safety or emergency worker killed on or
- 7 after the first day of January, one thousand nine hundred

8 ninety-nine, while carrying out official duties: *Provided*, That
9 no funds shall be expended for any funeral expense that is
10 otherwise payable pursuant to the provisions of article four,
11 chapter twenty-three of this code, as amended, or other bene-
12 fit programs established by a provision of this code which
13 does not involve employee participation: *Provided, however*,
14 That where other funds for funeral expenses are provided
15 pursuant to the laws of this state, from whatever source,
16 which amount to less than eight thousand dollars, funds pro-
17 vided by the provisions of this section shall be expended so
18 as to ensure that at least eight thousand dollars is available
19 for reasonable funeral expenses. The secretary shall direct
20 payment of the funeral expenses upon written request of an
21 employer or head of a volunteer organization, as is appropri-
22 ate pursuant to this article, certifying that the individual for
23 whom funeral expenses are requested was killed while per-
24 forming official duties.

25 (b) The secretary shall supply the draft in the name of the
26 person contracting for the funeral services and, if known, the
27 service provider to the employer or agency head making the
28 request who shall tender the draft to the person who con-
29 tracted for the services.

30 (c) For the purposes of this section, “law-enforcement,
31 safety or emergency worker” means:

32 (1) Any duly authorized member of a law-enforcement
33 agency who is authorized to maintain public peace and order,
34 prevent and detect crime, make arrests and enforce the laws
35 of the state or any county or municipality of the state, other
36 than parking ordinances, and including those persons em-
37 ployed as security officers at municipal, county, regional or
38 state offices, authorities or institutions, although their em-
39 ployers may not be public law-enforcement agencies, em-
40 ployed by the Hatfield-McCoy regional recreation authority

41 and members of the West Virginia national guard while en-
42 gaged in active duty service: *Provided*, That this section does
43 not apply to those persons employed by private security firms
44 or agencies;

45 (2) Any state, regional, county or municipal correctional
46 employee;

47 (3) Any firefighter employed by the state or any political
48 subdivision of the state and any volunteer firefighter per-
49 forming as a member of a volunteer fire department;

50 (4) Any “emergency medical services personnel”, as
51 defined in section three, article four-c, chapter sixteen of this
52 code, employed by or volunteering for any state agency or
53 institution or political subdivision of the state; or

54 (5) Any probation officer appointed under the provisions
55 of section five, article twelve, chapter sixty-two of this code.

CHAPTER 235

(Com. Sub. for S. B. 48 — By Senators Ross and Love)

[Passed February 12, 2002; in effect July 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article twelve, chapter sixty-two of said code, all relating to requiring probation officers to complete training in the use of firearms; prescribing training qualifications; and exempting certain officers from training requirements for two years.

Be it enacted by the Legislature of West Virginia:

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

Chapter

61. Crimes and Their Punishment.

62. Criminal Procedure.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

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

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

18 home, residence or place of business to a place of target prac-
19 tice and from any place of target practice back to his or her
20 home, residence or place of business, for using any such
21 weapon at a place of target practice in training and improving
22 his or her skill in the use of the weapons;

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

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

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

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

37 (7) Any resident of another state who has been issued a
38 license to carry a concealed weapon by a state or a political
39 subdivision which has entered into a reciprocity agreement
40 with this state. The governor may execute reciprocity agree-
41 ments on behalf of the state of West Virginia with states or
42 political subdivisions which have similar gun permitting laws
43 and which recognize and honor West Virginia licenses issued
44 pursuant to section four of this article;

45 (8) Any federal law-enforcement officer or federal police
46 officer authorized to carry a weapon in the performance of
47 the officer's duty; and

48 (9) Any Hatfield-McCoy regional recreation authority
49 ranger while the ranger is on duty.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-6. Powers and duties of probation officers.

1 (a) Each probation officer shall investigate all cases re-
2 ferred to him for investigation by the court and shall report in
3 writing thereon. He shall furnish to each person released on
4 probation under his supervision a written statement of the
5 conditions of his probation together with a copy of the rules
6 and regulations prescribed by the court for the supervision of
7 probationers. He shall keep himself informed concerning the
8 conduct and condition of those under his supervision and
9 shall report thereon in writing as often as the court may re-
10 quire. He shall use all practicable and suitable methods to aid
11 and encourage them and to bring about improvement in their
12 conduct and condition. He shall keep detailed records of his
13 work, shall keep accurate and complete accounts of and give
14 receipts for all money collected from persons under his su-
15 pervision and shall pay over the money to such person as the
16 court may designate. He shall give bond with good security,
17 to be approved by the court, in a penalty of not less than one
18 thousand nor more than three thousand dollars, as the court
19 may determine. He shall also perform such other duties as the
20 court may require. He shall have authority, with or without an
21 order or warrant, to arrest any probationer.

22 (b) Notwithstanding any provision of this code to the
23 contrary:

24 (1) Any probation officer appointed on or after the first
25 day of July, two thousand two, may carry handguns in the
26 course of their official duties after meeting specialized quali-

27 fications established by the governor's committee on crime,
28 delinquency and correction, which qualifications shall in-
29 clude the successful completion of handgun training, includ-
30 ing a minimum of four hours' training in handgun safety and
31 comparable to the handgun training provided to law-enforce-
32 ment officers by the West Virginia state police.

33 (2) Any person employed as a probation officer on the
34 thirtieth day of June, two thousand two, is exempt from the
35 licensure requirements set forth in article seven, chapter
36 sixty-one of this code until the thirtieth day of June, two
37 thousand four, while employed as a probation officer: *Pro-*
38 *vided*, That after the thirtieth day of June, two thousand four,
39 such probation officers may only carry handguns in the
40 course of their official duties after meeting the specialized
41 qualifications set forth in subdivision (1) of this subsection.

42 (3) Nothing in this subsection shall be construed to in-
43 clude probation officers within the meaning of law-enforce-
44 ment officers as defined in section one, article twenty-nine,
45 chapter thirty of this code.

CHAPTER 236

(H. B. 4124 — By Delegates Douglas, Kuhn,
Prunty, Stephens and Leggett)

[Passed February 15, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, seven, eight, eleven and thirteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto two new sections,

designated sections eight-a and eight-b, all relating to professional licensing boards; prohibiting discrimination; modifying contents of license or certificate; providing for denial of licenses and revocation of licenses; hearings; providing for reinstatement of license following revocation; providing for mediation of complaints; limiting compensation for board members to attendance at official meetings and other official duties; permitting boards to reimburse expenses; prohibiting board members from being compensated as employees of the board; permitting roster of licensees to be sorted alphabetically by county or city; and removing requirement for listing of social security numbers on rosters to be distributed to the public.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

- §30-1-6. Application for license or registration; examination fee; prohibiting discrimination.
- §30-1-7. Contents of license or certificate of registration.
- §30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.
- §30-1-8a. Reinstatement of license.
- §30-1-8b. Mediation of complaints.
- §30-1-11. Compensation of members; expenses.
- §30-1-13. Roster of licensed or registered practitioners.

§30-1-6. Application for license or registration; examination fee; prohibiting discrimination.

1 (a) Every applicant for license or registration under the
2 provisions of this chapter shall apply for the license or regis-
3 tration in writing to the proper board and shall transmit with
4 his or her application an examination fee which the board is
5 authorized to charge for an examination or investigation into
6 the applicant's qualifications to practice.

7 (b) Each board referred to in this chapter is authorized to
8 establish by rule a deadline for application for examination
9 which shall be no less than ten nor more than ninety days
10 prior to the date of the examination.

11 (c) Boards may set by rule fees relating to the licensing
12 or registering of individuals, which shall be sufficient to en-
13 able the boards to carry out effectively their responsibilities
14 of licensure or registration and discipline of individuals sub-
15 ject to their authority: *Provided*, That when any board pro-
16 poses to promulgate a rule regarding fees for licensing or
17 registration, that board shall notify its membership of the
18 proposed rule by mailing a copy of the proposed rule to the
19 membership at the time that the proposed rule is filed with
20 the secretary of state for publication in the state register in
21 accordance with section five, article three, chapter twenty-
22 nine-a of this code.

23 (d) In addition to any other information required, the
24 applicant's social security number shall be recorded on the
25 application.

26 (e) No board may discriminate against any applicant
27 because of political or religious opinion or affiliation, marital
28 status, race, color, gender, creed, age, national origin, disabil-
29 ity or other protected group status.

30 (f) Any board may deny the application for licensure or
31 registration of an applicant whose license or registration in
32 any other state, territory, jurisdiction or foreign nation has

33 been revoked by the licensing authority thereof. The applica-
34 tion may be denied by a board without a hearing unless the
35 applicant requests a hearing within thirty days of the denial.
36 Any hearing must be conducted pursuant to the provisions of
37 section eight of this article or provisions contained in the
38 rules of the board.

§30-1-7. Contents of license or certificate of registration.

1 Every license or certificate of registration issued by each
2 board shall bear a serial or license number, the full name of
3 the applicant, the date of issuance, and the seal of the board:
4 *Provided*, That licenses or certificates of registration issued
5 or renewed on or after the first day of July, two thousand
6 three, will indicate both the date of issuance and the date of
7 expiration. The licenses or certificates of registration shall be
8 signed by the board's president and secretary or executive
9 secretary. No license or certificate of registration granted or
10 issued under the provisions of this chapter may be assigned.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

1 (a) Every board referred to in this chapter may suspend
2 or revoke the license of any person who has been convicted
3 of a felony or who has been found to have engaged in con-
4 duct, practices or acts constituting professional negligence or
5 a willful departure from accepted standards of professional
6 conduct. Where any person has been convicted of a felony or
7 has been found to have engaged in such conduct, practices or
8 acts, every board referred to in this chapter may enter into
9 consent decrees, to reprimand, to enter into probation orders,
10 to levy fines not to exceed one thousand dollars per day per
11 violation, or any of these, singly or in combination. Each

12 board may also assess administrative costs. Any costs which
13 are assessed shall be placed in the special account of the
14 board, and any fine which is levied shall be deposited in the
15 state treasury's general revenue fund. For purposes of this
16 section, the word "felony" means a felony or crime punish-
17 able as a felony under the laws of this state, any other state,
18 or the United States. Every board referred to in this chapter
19 may promulgate rules in accordance with the provisions of
20 chapter twenty-nine-a of this code to delineate conduct, prac-
21 tices or acts which, in the judgment of the board, constitute
22 professional negligence, a willful departure from accepted
23 standards of professional conduct or which may render an
24 individual unqualified or unfit for licensure, registration or
25 other authorization to practice.

26 (b) Every board referred to in this chapter may revoke the
27 license or registration of an individual licensed or otherwise
28 lawfully practicing within this state whose license or registra-
29 tion in any other state, territory, jurisdiction or foreign nation
30 has been revoked by the licensing authority thereof.

31 (c) Notwithstanding any other provision of law to the
32 contrary, no certificate, license, registration or authority is-
33 sued under the provisions of this chapter may be suspended
34 or revoked without a prior hearing before the board or court
35 which issued the certificate, license, registration or authority.
36 However, this requirement does not apply in cases where a
37 board is authorized to suspend or revoke a certificate, license,
38 registration or authority prior to a hearing if the person's
39 continuation in practice constitutes an immediate danger to
40 the public.

41 (d) In all proceedings before a board or court for the sus-
42 pension or revocation of any certificate, license, registration
43 or authority issued under the provisions of this chapter, a
44 statement of the charges against the holder of the certificate,

45 license, registration or authority and a notice of the time and
46 place of hearing shall be served upon the person as a notice is
47 served under section one, article two, chapter fifty-six of this
48 code, at least thirty days prior to the hearing, and he or she
49 may appear with witnesses and be heard in person, by coun-
50 sel, or both. The board may take oral or written proof, for or
51 against the accused, as it may consider advisable. If upon
52 hearing the board finds that the charges are true, it may sus-
53 pend or revoke the certificate, license, registration or author-
54 ity, and suspension or revocation shall take from the person
55 all rights and privileges acquired thereby.

56 (e) Pursuant to the provisions of section one, article five,
57 chapter twenty-nine-a of this code, informal disposition may
58 also be made by the board of any contested case by stipula-
59 tion, agreed settlement, consent order or default. Further, the
60 board may suspend its decision and place a licensee found by
61 the board to be in violation of the applicable practice on pro-
62 bation.

63 (f) Any person denied a license, certificate, registration
64 or authority who believes the denial was in violation of this
65 article or the article under which the license, certificate, reg-
66 istration or authority is authorized shall be entitled to a hear-
67 ing on the action denying the license, certificate, registration
68 or authority. Hearings under this subsection are in accordance
69 with the provisions for hearings which are set forth in this
70 section.

71 (g) A stenographic report of each proceeding on the de-
72 nial, suspension or revocation of a certificate, license, regis-
73 tration or authority shall be made at the expense of the board
74 and a transcript of the hearing retained in its files. The board
75 shall make a written report of its findings, which shall consti-
76 tute part of the record.

77 (h) All proceedings under the provisions of this section
78 are subject to review by the supreme court of appeals.

79 (i) On or before the first day of July, two thousand one,
80 every board referred to in this chapter shall adopt procedural
81 rules in accordance with the provisions of article three, chap-
82 ter twenty-nine-a of this code, which shall specify a proce-
83 dure for the investigation and resolution of all complaints
84 against persons licensed under this chapter. The proposed
85 legislative rules relating only to complaint procedures or
86 contested case hearing procedures required by the prior en-
87 actment of this subsection shall be redesignated as procedural
88 rules in accordance with the provisions of article three, chap-
89 ter twenty-nine-a of this code. Each board shall file the pro-
90 cedural rules required by this subsection by the thirty-first
91 day of January, two thousand one. The public hearing or
92 public comment period conducted for the proposed legisla-
93 tive rules shall serve as the public hearing or public comment
94 period required by section five, article three, chapter twenty-
95 nine-a of this code.

§30-1-8a. Reinstatement of license.

1 (a) Every board referred to in this chapter is authorized to
2 consider the reinstatement of any license or registration that
3 has been suspended, revoked or not renewed, upon a showing
4 that the applicant can resume practicing with reasonable skill
5 and safety.

6 (b) Each board may adopt a procedural rule in accor-
7 dance with the provisions of article three, chapter twenty-
8 nine-a of this code, specifying forms and procedures for ap-
9 plication for reinstatement.

§30-1-8b. Mediation of complaints.

1 (a) Any board referred to in this chapter may, on its own
2 motion or by stipulation of the parties, refer any complaints
3 against persons licensed under this chapter to mediation.

4 (b) Any board may maintain a list of mediators with ex-
5 pertise in professional disciplinary matters or may obtain a
6 list from the West Virginia center for dispute resolution or
7 the West Virginia state bar's mediator referral service. The
8 board shall designate a mediator from the list by neutral rota-
9 tion.

10 (c) The mediation is not considered a proceeding open to
11 the public and any reports and records introduced at the me-
12 diation are not part of the public record. The mediator and all
13 participants in the mediation shall maintain and preserve the
14 confidentiality of all proceedings and records. The mediator
15 may not be subpoenaed or called to testify or otherwise be
16 subject to process requiring disclosure of confidential infor-
17 mation in any proceeding relating to or arising out of the
18 disciplinary or licensure matter mediated: *Provided*, That any
19 confidentiality agreement and any written agreement made
20 and signed by the parties as a result of mediation may be
21 used in any proceedings subsequently instituted to enforce
22 the written agreement. The agreements may be used in other
23 proceedings if the parties agree to the use in writing.

24 (d) The mediation may not be used to delay any disci-
25 plinary proceeding.

§30-1-11. Compensation of members; expenses.

1 (a) Each member of every board referred to in this chap-
2 ter shall receive compensation for attending official meetings
3 or engaging in official duties not to exceed the amount paid
4 to members of the Legislature for their interim duties as rec-
5 ommended by the citizens legislative compensation commis-
6 sion and authorized by law. The limitations contained in this

7 section do not apply if they conflict with provisions of this
8 chapter relating to a particular board and enacted after the
9 first day of January, one thousand nine hundred ninety-five.

10 (b) A board may reimburse actual and necessary ex-
11 penses incurred for each day or portion thereof engaged in
12 the discharge of official duties in a manner consistent with
13 guidelines of the travel management office of the department
14 of administration.

15 (c) No member of any board referred to in this chapter
16 may receive compensation as an employee of the board.

§30-1-13. Roster of licensed or registered practitioners.

1 The secretary of every board shall prepare and maintain a
2 complete roster of the names and office addresses of all per-
3 sons licensed, or registered, and practicing in this state the
4 profession or occupation to which such board relates, ar-
5 ranged alphabetically by name and also by the cities or coun-
6 ties in which their offices are situated. Each board shall make
7 the roster available upon request to any member of the pub-
8 lic.

CHAPTER 237

(Com. Sub. for S. B. 555 — By Senator Chafin)

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license to practice medicine

and surgery or podiatry; requiring applicants to have a passing score on all components of the examination within a specified time frame; and exception.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine
2 and surgery or to practice podiatry to any individual who is
3 qualified to do so in accordance with the provisions of this
4 article.

5 (b) For an individual to be licensed to practice medicine
6 and surgery in this state, he or she must meet the following
7 requirements:

8 (1) He or she shall submit an application to the board on
9 a form provided by the board and remit to the board a reason-
10 able examination fee, the amount of the reasonable fee to be
11 set by the board. The application must, as a minimum, re-
12 quire a sworn and notarized statement that the applicant is of
13 good moral character and that he or she is physically and
14 mentally capable of engaging in the practice of medicine and
15 surgery;

16 (2) He or she must provide evidence of graduation and
17 receipt of the degree of doctor of medicine or its equivalent
18 from a school of medicine, which is approved by the liaison
19 committee on medical education or by the board;

20 (3) He or she must submit evidence to the board of hav-
21 ing successfully completed a minimum of one year of gradu-
22 ate clinical training in a program approved by the accredita-
23 tion council for graduate medical education; and

24 (4) He or she must pass an examination approved by the
25 board, which examination can be related to a national stan-
26 dard. The examination shall be in the English language and
27 be designed to ascertain an applicant's fitness to practice
28 medicine and surgery. The board shall before the date of
29 examination determine what will constitute a passing score:
30 *Provided*, That the board, or a majority of it, may accept in
31 lieu of an examination of applicants the certificate of the
32 national board of medical examiners: *Provided, however*,
33 That the board is authorized to enter into reciprocity agree-
34 ments with medical licensing authorities in other states, the
35 District of Columbia, Canada or the Commonwealth of
36 Puerto Rico and, for an applicant who: (i) Is currently fully
37 licensed, excluding any temporary, conditional or restricted
38 license or permit, under the laws of another state or jurisdic-
39 tion having reciprocity; (ii) has been engaged on a full-time
40 professional basis in the practice of medicine within that state
41 or jurisdiction for a period of at least five years; and (iii) is
42 not the subject of any pending disciplinary action by a medi-
43 cal licensing board and has not been the subject of profes-
44 sional discipline by a medical licensing board in any jurisdic-
45 tion, the board may permit licensure in this state by reciproc-
46 ity. If an applicant fails to pass the examination on two occa-
47 sions, he or she shall successfully complete a course of study
48 or training, as approved by the board, designed to improve
49 his or her ability to engage in the practice of medicine and
50 surgery, before being eligible for reexamination: *Provided*
51 *further*, That an applicant is required to attain a passing score
52 on all components or steps of the examination within a period
53 of seven consecutive years: *And provided further*, That the
54 board may, in its discretion, extend this period of seven con-

55 secutive years for up to three additional years for any medical
56 student enrolled in a dual MD-PhD program.

57 (c) In addition to the requirements of subsection (b)
58 hereof, any individual who has received the degree of doctor
59 of medicine or its equivalent from a school of medicine lo-
60 cated outside of the United States, the Commonwealth of
61 Puerto Rico and Canada to be licensed to practice medicine
62 in this state must also meet the following additional require-
63 ments and limitations:

64 (1) He or she must be able to demonstrate to the satisfac-
65 tion of the board his or her ability to communicate in the
66 English language;

67 (2) Before taking a licensure examination, he or she must
68 have fulfilled the requirements of the educational commis-
69 sion for foreign medical graduates for certification, or he or
70 she must provide evidence of receipt of a passing score on
71 the examination of the educational commission for foreign
72 medical graduates: *Provided*, That an applicant who: (i) Is
73 currently fully licensed, excluding any temporary, condi-
74 tional or restricted license or permit, under the laws of an-
75 other state, the District of Columbia, Canada or the Common-
76 wealth of Puerto Rico; (ii) has been engaged on a full-time
77 professional basis in the practice of medicine within the state
78 or jurisdiction where the applicant is fully licensed for a pe-
79 riod of at least five years; and (iii) is not the subject of any
80 pending disciplinary action by a medical licensing board and
81 has not been the subject of professional discipline by a medi-
82 cal licensing board in any jurisdiction is not required to have
83 a certificate from the educational commission for foreign
84 medical graduates;

85 (3) He or she must submit evidence to the board of either:
86 (i) Having successfully completed a minimum of two years

87 of graduate clinical training in a program approved by the
88 accreditation council for graduate medical education; or (ii)
89 current certification by a member board of the American
90 board of medical specialties.

91 (d) For an individual to be licensed to practice podiatry in
92 this state, he or she must meet the following requirements:

93 (1) He or she shall submit an application to the board on
94 a form provided by the board and remit to the board a reason-
95 able examination fee, the amount of the reasonable fee to be
96 set by the board. The application must, as a minimum, re-
97 quire a sworn and notarized statement that the applicant is of
98 good moral character and that he or she is physically and
99 mentally capable of engaging in the practice of podiatric
100 medicine;

101 (2) He or she must provide evidence of graduation and
102 receipt of the degree of doctor of podiatric medicine and its
103 equivalent from a school of podiatric medicine which is ap-
104 proved by the council of podiatry education or by the board;

105 (3) He or she must pass an examination approved by the
106 board, which examination can be related to a national stan-
107 dard. The examination shall be in the English language and
108 be designed to ascertain an applicant's fitness to practice
109 podiatric medicine. The board shall before the date of exami-
110 nation determine what will constitute a passing score. If an
111 applicant fails to pass the examination on two occasions, he
112 or she shall successfully complete a course of study or train-
113 ing, as approved by the board, designed to improve his or her
114 ability to engage in the practice of podiatric medicine, before
115 being eligible for reexamination: *Provided*, That an applicant
116 is required to attain a passing score on all components or
117 steps of the examination within a period of seven consecutive
118 years; and

119 (4) He or she must submit evidence to the board of hav-
120 ing successfully completed a minimum of one year of gradu-
121 ate clinical training in a program approved by the council on
122 podiatric medical education, or the colleges of podiatric med-
123 icine. The board may consider a minimum of two years of
124 graduate podiatric clinical training in the U. S. armed forces
125 or three years private podiatric clinical experience in lieu of
126 this requirement.

127 (e) All licenses to practice medicine and surgery granted
128 prior to the first day of July, one thousand nine hundred
129 ninety-one, and valid on that date shall continue in full effect
130 for the term and under the conditions provided by law at the
131 time of the granting of the license: *Provided*, That the provi-
132 sions of subsection (d) of this section shall not apply to any
133 person legally entitled to practice chiropody or podiatry in
134 this state prior to the eleventh day of June, one thousand nine
135 hundred sixty-five: *Provided, however*, That all persons li-
136 censed to practice chiropody prior to the eleventh day of
137 June, one thousand nine hundred sixty-five, shall be permit-
138 ted to use the term “chiropody-podiatry” and shall have the
139 rights, privileges and responsibilities of a podiatrist set out in
140 this article.

CHAPTER 238

(Com. Sub. for S. B. 243 — By Senators Wooton, Bowman and Rowe)

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three-c of said chapter by adding thereto a new section, designated sec-

tion four, all relating to the professional discipline of physicians and podiatrists; requiring hospitals to report certain information to the board of medicine regarding disciplinary actions and related legal actions against physicians or podiatrists; requiring managed care organizations to report certain information to the board of medicine regarding physicians or podiatrists; defining "managed care organization"; including state board of risk and insurance management among entities which must report on certain legal actions to the board of medicine; requiring clerks of courts to forward certain court orders to the board of medicine; updating terminology and making certain technical revisions; authorizing board of medicine to revoke licenses for period not to exceed ten years; prohibiting physicians or podiatrists from practicing medicine, surgery or podiatry or to otherwise deliver health care services when license is temporarily suspended; eliminating ability of physician or podiatrist whose license is revoked because of a felony drug conviction from reapplying for licensure after five years; and authorizing defendants who prevail in civil actions filed as a result of peer review to recover attorney fees and court costs in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Article

3. West Virginia Medical Practice Act.

3C. Health Care Peer Review Organization Protection.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional

incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings based
3 on information received from medical peer review commit-
4 tees, physicians, podiatrists, hospital administrators, profes-
5 sional societies and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon crimi-
9 nal convictions; complaints by citizens, pharmacists, physi-
10 cians, podiatrists, peer review committees, hospital adminis-
11 trators, professional societies or others; or if there are five
12 judgments or settlements within the most recent five-year
13 period in excess of fifty thousand dollars each. The board
14 may not consider any judgments or settlements as conclusive
15 evidence of professional incompetence or conclusive lack of
16 qualification to practice.

17 (b) Upon request of the board, any medical peer review
18 committee in this state shall report any information that may
19 relate to the practice or performance of any physician or po-
20 diatrist known to that medical peer review committee. Copies
21 of the requests for information from a medical peer review
22 committee may be provided to the subject physician or podia-
23 trist if, in the discretion of the board, the provision of such
24 copies will not jeopardize the board's investigation. In the
25 event that copies are so provided, the subject physician or

26 podiatrist is allowed fifteen days to comment on the re-
27 quested information and such comments must be considered
28 by the board.

29 The chief executive officer of every hospital shall, within
30 sixty days after the completion of the hospital's formal disci-
31 plinary procedure and also after the commencement of and
32 again after the conclusion of any resulting legal action, report
33 in writing to the board the name of any member of the medi-
34 cal staff or any other physician or podiatrist practicing in the
35 hospital whose hospital privileges have been revoked, re-
36 stricted, reduced or terminated for any cause, including resig-
37 nation, together with all pertinent information relating to
38 such action. The chief executive officer shall also report any
39 other formal disciplinary action taken against any physician
40 or podiatrist by the hospital upon the recommendation of its
41 medical staff relating to professional ethics, medical incom-
42 petence, medical professional liability, moral turpitude or
43 drug or alcohol abuse. Temporary suspension for failure to
44 maintain records on a timely basis or failure to attend staff or
45 section meetings need not be reported. Voluntary cessation of
46 hospital privileges for reasons unrelated to professional com-
47 petence or ethics need not be reported.

48 Any managed care organization operating in this state
49 which provides a formal peer review process shall report in
50 writing to the board, within sixty days after the completion of
51 any formal peer review process and also within sixty days
52 after the commencement of and again after the conclusion of
53 any resulting legal action, the name of any physician or podi-
54 atrist whose credentialing has been revoked or not renewed
55 by the managed care organization. The managed care organi-
56 zation shall also report in writing to the board any other disci-
57 plinary action taken against a physician or podiatrist relating
58 to professional ethics, professional liability, moral turpitude
59 or drug or alcohol abuse within sixty days after completion of

60 a formal peer review process which results in the action taken
61 by the managed care organization. For purposes of this sub-
62 section, "managed care organization" means a plan that es-
63 tablishes, operates or maintains a network of health care pro-
64 viders who have entered into agreements with and been
65 credentialed by the plan to provide health care services to
66 enrollees or insureds to whom the plan has the ultimate obli-
67 gation to arrange for the provision of or payment for health
68 care services through organizational arrangements for ongo-
69 ing quality assurance, utilization review programs or dispute
70 resolutions.

71 Any professional society in this state comprised primar-
72 ily of physicians or podiatrists which takes formal disciplin-
73 ary action against a member relating to professional ethics,
74 professional incompetence, medical professional liability,
75 moral turpitude or drug or alcohol abuse, shall report in writ-
76 ing to the board within sixty days of a final decision the name
77 of the member, together with all pertinent information relat-
78 ing to the action.

79 Every person, partnership, corporation, association, in-
80 surance company, professional society or other organization
81 providing professional liability insurance to a physician or
82 podiatrist in this state, including the state board of risk and
83 insurance management, shall submit to the board the follow-
84 ing information within thirty days from any judgment or
85 settlement of a civil or medical professional liability action
86 excepting product liability actions: The date of any judgment
87 or settlement; whether any appeal has been taken on the judg-
88 ment and, if so, by which party; the amount of any settlement
89 or judgment against the insured; and other information as the
90 board may require.

91 Within thirty days from the entry of an order by a court
92 in a medical professional liability action or other civil action
93 wherein a physician or podiatrist licensed by the board is
94 determined to have rendered health care services below the
95 applicable standard of care, the clerk of the court in which
96 the order was entered shall forward a certified copy of the
97 order to the board.

98 Within thirty days after a person known to be a physician
99 or podiatrist licensed or otherwise lawfully practicing medi-
100 cine and surgery or podiatry in this state or applying to be so
101 licensed is convicted of a felony under the laws of this state
102 or of any crime under the laws of this state involving alcohol
103 or drugs in any way, including any controlled substance un-
104 der state or federal law, the clerk of the court of record in
105 which the conviction was entered shall forward to the board a
106 certified true and correct abstract of record of the convicting
107 court. The abstract shall include the name and address of the
108 physician or podiatrist or applicant, the nature of the offense
109 committed and the final judgment and sentence of the court.

110 Upon a determination of the board that there is probable
111 cause to believe that any person, partnership, corporation,
112 association, insurance company, professional society or other
113 organization has failed or refused to make a report required
114 by this subsection, the board shall provide written notice to
115 the alleged violator stating the nature of the alleged violation
116 and the time and place at which the alleged violator shall
117 appear to show good cause why a civil penalty should not be
118 imposed. The hearing shall be conducted in accordance with
119 the provisions of article five, chapter twenty-nine-a of this
120 code. After reviewing the record of the hearing, if the board
121 determines that a violation of this subsection has occurred,
122 the board shall assess a civil penalty of not less than one
123 thousand dollars nor more than ten thousand dollars against
124 the violator. Anyone so assessed shall be notified of the as-

125 assessment in writing and the notice shall specify the reasons
126 for the assessment. If the violator fails to pay the amount of
127 the assessment to the board within thirty days, the attorney
128 general may institute a civil action in the circuit court of
129 Kanawha County to recover the amount of the assessment. In
130 any such civil action, the court's review of the board's action
131 shall be conducted in accordance with the provisions of sec-
132 tion four, article five, chapter twenty-nine-a of this code.
133 Notwithstanding any other provision of this article to the
134 contrary, when there are conflicting views by recognized
135 experts as to whether any alleged conduct breaches an appli-
136 cable standard of care, the evidence must be clear and con-
137 vincing before the board may find that the physician has
138 demonstrated a lack of professional competence to practice
139 with a reasonable degree of skill and safety for patients.

140 Any person may report to the board relevant facts about
141 the conduct of any physician or podiatrist in this state which
142 in the opinion of that person amounts to medical professional
143 liability or professional incompetence.

144 The board shall provide forms for filing reports pursuant
145 to this section. Reports submitted in other forms shall be
146 accepted by the board.

147 The filing of a report with the board pursuant to any pro-
148 vision of this article, any investigation by the board or any
149 disposition of a case by the board does not preclude any ac-
150 tion by a hospital, other health care facility or professional
151 society comprised primarily of physicians or podiatrists to
152 suspend, restrict or revoke the privileges or membership of
153 the physician or podiatrist.

154 (c) The board may deny an application for license or
155 other authorization to practice medicine and surgery or podi-
156 atry in this state and may discipline a physician or podiatrist

157 licensed or otherwise lawfully practicing in this state who,
158 after a hearing, has been adjudged by the board as unquali-
159 fied due to any of the following reasons:

160 (1) Attempting to obtain, obtaining, renewing or attempt-
161 ing to renew a license to practice medicine and surgery or
162 podiatry by bribery, fraudulent misrepresentation or through
163 known error of the board;

164 (2) Being found guilty of a crime in any jurisdiction,
165 which offense is a felony, involves moral turpitude or di-
166 rectly relates to the practice of medicine. Any plea of nolo
167 contendere is a conviction for the purposes of this subdivi-
168 sion;

169 (3) False or deceptive advertising;

170 (4) Aiding, assisting, procuring or advising any unautho-
171 rized person to practice medicine and surgery or podiatry
172 contrary to law;

173 (5) Making or filing a report that the person knows to be
174 false; intentionally or negligently failing to file a report or
175 record required by state or federal law; willfully impeding or
176 obstructing the filing of a report or record required by state or
177 federal law; or inducing another person to do any of the fore-
178 going. The reports and records as are herein covered mean
179 only those that are signed in the capacity as a licensed physi-
180 cian or podiatrist;

181 (6) Requesting, receiving or paying directly or indirectly
182 a payment, rebate, refund, commission, credit or other form
183 of profit or valuable consideration for the referral of patients
184 to any person or entity in connection with providing medical
185 or other health care services or clinical laboratory services,
186 supplies of any kind, drugs, medication or any other medical

187 goods, services or devices used in connection with medical or
188 other health care services;

189 (7) Unprofessional conduct by any physician or podiatrist
190 in referring a patient to any clinical laboratory or pharmacy
191 in which the physician or podiatrist has a proprietary interest
192 unless the physician or podiatrist discloses in writing such
193 interest to the patient. The written disclosure shall indicate
194 that the patient may choose any clinical laboratory for pur-
195 poses of having any laboratory work or assignment per-
196 formed or any pharmacy for purposes of purchasing any pre-
197 scribed drug or any other medical goods or devices used in
198 connection with medical or other health care services;

199 As used herein, "proprietary interest" does not include an
200 ownership interest in a building in which space is leased to a
201 clinical laboratory or pharmacy at the prevailing rate under a
202 lease arrangement that is not conditional upon the income or
203 gross receipts of the clinical laboratory or pharmacy;

204 (8) Exercising influence within a patient-physician rela-
205 tionship for the purpose of engaging a patient in sexual activ-
206 ity;

207 (9) Making a deceptive, untrue or fraudulent representa-
208 tion in the practice of medicine and surgery or podiatry;

209 (10) Soliciting patients, either personally or by an agent,
210 through the use of fraud, intimidation or undue influence;

211 (11) Failing to keep written records justifying the course
212 of treatment of a patient, the records to include, but not be
213 limited to, patient histories, examination and test results and
214 treatment rendered, if any;

215 (12) Exercising influence on a patient in such a way as to
216 exploit the patient for financial gain of the physician or podi-

217 atrist or of a third party. Any influence includes, but is not
218 limited to, the promotion or sale of services, goods, appli-
219 ances or drugs;

220 (13) Prescribing, dispensing, administering, mixing or
221 otherwise preparing a prescription drug, including any con-
222 trolled substance under state or federal law, other than in
223 good faith and in a therapeutic manner in accordance with
224 accepted medical standards and in the course of the physi-
225 cian's or podiatrist's professional practice: *Provided*, That a
226 physician who discharges his or her professional obligation
227 to relieve the pain and suffering and promote the dignity and
228 autonomy of dying patients in his or her care and, in so do-
229 ing, exceeds the average dosage of a pain relieving controlled
230 substance, in Schedule II and III of the Uniform Controlled
231 Substance Act, does not violate this article;

232 (14) Performing any procedure or prescribing any ther-
233 apy that, by the accepted standards of medical practice in the
234 community, would constitute experimentation on human
235 subjects without first obtaining full, informed and written
236 consent;

237 (15) Practicing or offering to practice beyond the scope
238 permitted by law or accepting and performing professional
239 responsibilities that the person knows or has reason to know
240 he or she is not competent to perform;

241 (16) Delegating professional responsibilities to a person
242 when the physician or podiatrist delegating the responsibili-
243 ties knows or has reason to know that the person is not quali-
244 fied by training, experience or licensure to perform them;

245 (17) Violating any provision of this article or a rule or
246 order of the board or failing to comply with a subpoena or
247 subpoena duces tecum issued by the board;

248 (18) Conspiring with any other person to commit an act
249 or committing an act that would tend to coerce, intimidate or
250 preclude another physician or podiatrist from lawfully adver-
251 tising his or her services;

252 (19) Gross negligence in the use and control of prescrip-
253 tion forms;

254 (20) Professional incompetence; or

255 (21) The inability to practice medicine and surgery or
256 podiatry with reasonable skill and safety due to physical or
257 mental impairment, including deterioration through the aging
258 process or loss of motor skill or abuse of drugs or alcohol. A
259 physician or podiatrist adversely affected under this subdivi-
260 sion shall be afforded an opportunity at reasonable intervals
261 to demonstrate that he or she may resume the competent
262 practice of medicine and surgery or podiatry with reasonable
263 skill and safety to patients. In any proceeding under this sub-
264 division, neither the record of proceedings nor any orders
265 entered by the board shall be used against the physician or
266 podiatrist in any other proceeding.

267 (d) The board shall deny any application for a license or
268 other authorization to practice medicine and surgery or podi-
269 atry in this state to any applicant who, and shall revoke the
270 license of any physician or podiatrist licensed or otherwise
271 lawfully practicing within this state who, is found guilty by
272 any court of competent jurisdiction of any felony involving
273 prescribing, selling, administering, dispensing, mixing or
274 otherwise preparing any prescription drug, including any
275 controlled substance under state or federal law, for other than
276 generally accepted therapeutic purposes. Presentation to the
277 board of a certified copy of the guilty verdict or plea rendered
278 in the court is sufficient proof thereof for the purposes of this

279 article. A plea of nolo contendere has the same effect as a
280 verdict or plea of guilt.

281 (e) The board may refer any cases coming to its attention
282 to an appropriate committee of an appropriate professional
283 organization for investigation and report. Except for com-
284 plaints related to obtaining initial licensure to practice medi-
285 cine and surgery or podiatry in this state by bribery or fraudu-
286 lent misrepresentation, any complaint filed more than two
287 years after the complainant knew, or in the exercise of rea-
288 sonable diligence should have known, of the existence of
289 grounds for the complaint, shall be dismissed: *Provided*, That
290 in cases of conduct alleged to be part of a pattern of similar
291 misconduct or professional incapacity that, if continued,
292 would pose risks of a serious or substantial nature to the phy-
293 sician or podiatrist's current patients, the investigating body
294 may conduct a limited investigation related to the physician
295 or podiatrist's current capacity and qualification to practice
296 and may recommend conditions, restrictions or limitations on
297 the physician or podiatrist's license to practice that it consid-
298 ers necessary for the protection of the public. Any report
299 shall contain recommendations for any necessary disciplinary
300 measures and shall be filed with the board within ninety days
301 of any referral. The recommendations shall be considered by
302 the board and the case may be further investigated by the
303 board. The board after full investigation shall take whatever
304 action it deems appropriate, as provided herein.

305 (f) The investigating body, as provided for in subsection
306 (e) of this section, may request and the board under any cir-
307 cumstances may require a physician or podiatrist or person
308 applying for licensure or other authorization to practice medi-
309 cine and surgery or podiatry in this state to submit to a physi-
310 cal or mental examination by a physician or physicians ap-
311 proved by the board. A physician or podiatrist submitting to
312 any such examination has the right, at his or her expense, to

313 designate another physician to be present at the examination
314 and make an independent report to the investigating body or
315 the board. The expense of the examination shall be paid by
316 the board. Any individual who applies for or accepts the priv-
317 ilege of practicing medicine and surgery or podiatry in this
318 state is considered to have given his or her consent to submit
319 to all examinations when requested to do so in writing by the
320 board and to have waived all objections to the admissibility
321 of the testimony or examination report of any examining
322 physician on the ground that the testimony or report is privi-
323 leged communication. If a person fails or refuses to submit to
324 any such examination under circumstances which the board
325 finds are not beyond his or her control, failure or refusal is
326 prima facie evidence of his or her inability to practice medi-
327 cine and surgery or podiatry competently and in compliance
328 with the standards of acceptable and prevailing medical prac-
329 tice.

330 (g) In addition to any other investigators it employs, the
331 board may appoint one or more licensed physicians to act for
332 it in investigating the conduct or competence of a physician.

333 (h) In every disciplinary or licensure denial action, the
334 board shall furnish the physician or podiatrist or applicant
335 with written notice setting out with particularity the reasons
336 for its action. Disciplinary and licensure denial hearings shall
337 be conducted in accordance with the provisions of article
338 five, chapter twenty-nine-a of this code. However, hearings
339 shall be heard upon sworn testimony and the rules of evi-
340 dence for trial courts of record in this state shall apply to all
341 hearings. A transcript of all hearings under this section shall
342 be made, and the respondent may obtain a copy of the tran-
343 script at his or her expense. The physician or podiatrist has
344 the right to defend against any charge by the introduction of
345 evidence, the right to be represented by counsel, the right to
346 present and cross-examine witnesses and the right to have

347 subpoenas and subpoenas duces tecum issued on his or her
348 behalf for the attendance of witnesses and the production of
349 documents. The board shall make all its final actions public.
350 The order shall contain the terms of all action taken by the
351 board.

352 (i) In disciplinary actions in which probable cause has
353 been found by the board, the board shall, within twenty days
354 of the date of service of the written notice of charges or sixty
355 days prior to the date of the scheduled hearing, whichever is
356 sooner, provide the respondent with the complete identity,
357 address and telephone number of any person known to the
358 board with knowledge about the facts of any of the charges;
359 provide a copy of any statements in the possession of or un-
360 der the control of the board; provide a list of proposed wit-
361 nesses with addresses and telephone numbers, with a brief
362 summary of his or her anticipated testimony; provide disclo-
363 sure of any trial expert pursuant to the requirements of rule
364 26(b)(4) of the West Virginia rules of civil procedure; pro-
365 vide inspection and copying of the results of any reports of
366 physical and mental examinations or scientific tests or exper-
367 iments; and provide a list and copy of any proposed exhibit to
368 be used at the hearing: *Provided*, That the board shall not be
369 required to furnish or produce any materials which contain
370 opinion work product information or would be a violation of
371 the attorney-client privilege. Within twenty days of the date
372 of service of the written notice of charges, the board shall be
373 required to disclose any exculpatory evidence with a continu-
374 ing duty to do so throughout the disciplinary process. Within
375 thirty days of receipt of the board's mandatory discovery, the
376 respondent shall provide the board with the complete iden-
377 tity, address and telephone number of any person known to
378 the respondent with knowledge about the facts of any of the
379 charges; provide a list of proposed witnesses with addresses
380 and telephone numbers, to be called at hearing, with a brief
381 summary of his or her anticipated testimony; provide disclo-

382 sure of any trial expert pursuant to the requirements of rule
383 26(b)(4) of the West Virginia rules of civil procedure; pro-
384 vide inspection and copying of the results of any reports of
385 physical and mental examinations or scientific tests or exper-
386 iments; and provide a list and copy of any proposed exhibit to
387 be used at the hearing.

388 (j) Whenever it finds any person unqualified because of
389 any of the grounds set forth in subsection (c) of this section,
390 the board may enter an order imposing one or more of the
391 following:

392 (1) Deny his or her application for a license or other au-
393 thorization to practice medicine and surgery or podiatry;

394 (2) Administer a public reprimand;

395 (3) Suspend, limit or restrict his or her license or other
396 authorization to practice medicine and surgery or podiatry for
397 not more than five years, including limiting the practice of
398 that person to, or by the exclusion of, one or more areas of
399 practice, including limitations on practice privileges;

400 (4) Revoke his or her license or other authorization to
401 practice medicine and surgery or podiatry or to prescribe or
402 dispense controlled substances for a period not to exceed ten
403 years;

404 (5) Require him or her to submit to care, counseling or
405 treatment designated by the board as a condition for initial or
406 continued licensure or renewal of licensure or other authori-
407 zation to practice medicine and surgery or podiatry;

408 (6) Require him or her to participate in a program of
409 education prescribed by the board;

410 (7) Require him or her to practice under the direction of a
411 physician or podiatrist designated by the board for a specified
412 period of time; and

413 (8) Assess a civil fine of not less than one thousand dol-
414 lars nor more than ten thousand dollars.

415 (k) Notwithstanding the provisions of section eight, arti-
416 cle one, chapter thirty of this code, if the board determines
417 the evidence in its possession indicates that a physician's or
418 podiatrist's continuation in practice or unrestricted practice
419 constitutes an immediate danger to the public, the board may
420 take any of the actions provided for in subsection (j) of this
421 section on a temporary basis and without a hearing if institu-
422 tion of proceedings for a hearing before the board are initi-
423 ated simultaneously with the temporary action and begin
424 within fifteen days of the action. The board shall render its
425 decision within five days of the conclusion of a hearing under
426 this subsection.

427 (l) Any person against whom disciplinary action is taken
428 pursuant to the provisions of this article has the right to judi-
429 cial review as provided in articles five and six, chapter
430 twenty-nine-a of this code: *Provided*, That a circuit judge
431 may also remand the matter to the board if it appears from
432 competent evidence presented to it in support of a motion for
433 remand that there is newly discovered evidence of such a
434 character as ought to produce an opposite result at a second
435 hearing on the merits before the board and:

436 (1) The evidence appears to have been discovered since
437 the board hearing; and

438 (2) The physician or podiatrist exercised due diligence in
439 asserting his or her evidence and that due diligence would not
440 have secured the newly discovered evidence prior to the ap-
441 peal. A person may not practice medicine and surgery or

442 podiatry or deliver health care services in violation of any
443 disciplinary order revoking, suspending or limiting his or her
444 license while any appeal is pending. Within sixty days, the
445 board shall report its final action regarding restriction, limita-
446 tion, suspension or revocation of the license of a physician or
447 podiatrist, limitation on practice privileges or other disciplin-
448 ary action against any physician or podiatrist to all appropri-
449 ate state agencies, appropriate licensed health facilities and
450 hospitals, insurance companies or associations writing medi-
451 cal malpractice insurance in this state, the American medical
452 association, the American podiatry association, professional
453 societies of physicians or podiatrists in the state and any en-
454 tity responsible for the fiscal administration of medicare and
455 medicaid.

456 (m) Any person against whom disciplinary action has
457 been taken under the provisions of this article shall, at rea-
458 sonable intervals, be afforded an opportunity to demonstrate
459 that he or she can resume the practice of medicine and sur-
460 gery or podiatry on a general or limited basis. At the conclu-
461 sion of a suspension, limitation or restriction period the phy-
462 sician or podiatrist may resume practice if the board has so
463 ordered.

464 (n) Any entity, organization or person, including the
465 board, any member of the board, its agents or employees and
466 any entity or organization or its members referred to in this
467 article, any insurer, its agents or employees, a medical peer
468 review committee and a hospital governing board, its mem-
469 bers or any committee appointed by it acting without malice
470 and without gross negligence in making any report or other
471 information available to the board or a medical peer review
472 committee pursuant to law and any person acting without
473 malice and without gross negligence who assists in the orga-
474 nization, investigation or preparation of any such report or
475 information or assists the board or a hospital governing body

476 or any committee in carrying out any of its duties or func-
477 tions provided by law is immune from civil or criminal liabil-
478 ity, except that the unlawful disclosure of confidential infor-
479 mation possessed by the board is a misdemeanor as provided
480 for in this article.

481 (o) A physician or podiatrist may request in writing to the
482 board a limitation on or the surrendering of his or her license
483 to practice medicine and surgery or podiatry or other appro-
484 priate sanction as provided herein. The board may grant the
485 request and, if it considers it appropriate, may waive the
486 commencement or continuation of other proceedings under
487 this section. A physician or podiatrist whose license is lim-
488 ited or surrendered or against whom other action is taken
489 under this subsection may, at reasonable intervals, petition
490 for removal of any restriction or limitation on or for reinstate-
491 ment of his or her license to practice medicine and surgery or
492 podiatry.

493 (p) In every case considered by the board under this arti-
494 cle regarding discipline or licensure, whether initiated by the
495 board or upon complaint or information from any person or
496 organization, the board shall make a preliminary determina-
497 tion as to whether probable cause exists to substantiate
498 charges of disqualification due to any reason set forth in sub-
499 section (c) of this section. If probable cause is found to exist,
500 all proceedings on the charges shall be open to the public
501 who shall be entitled to all reports, records and
502 nondeliberative materials introduced at the hearing, including
503 the record of the final action taken: *Provided*, That any medi-
504 cal records, which were introduced at the hearing and which
505 pertain to a person who has not expressly waived his or her
506 right to the confidentiality of the records, may not be open to
507 the public nor is the public entitled to the records.

508 (q) Notwithstanding any other provisions of this article,
509 the board may, at any time, on its own motion, or upon motion
510 tion by the complainant, or upon motion by the physician or
511 podiatrist, or by stipulation of the parties, refer the matter to
512 mediation. The board shall obtain a list from the West Vir-
513 ginia state bar's mediator referral service of certified media-
514 tors with expertise in professional disciplinary matters. The
515 board and the physician or podiatrist may choose a mediator
516 from this list. If the board and the physician or podiatrist are
517 unable to agree on a mediator, the board shall designate a
518 mediator from this listing by neutral rotation. The mediation
519 shall not be considered a proceeding open to the public and
520 any reports and records introduced at the mediation shall not
521 become part of the public record. The mediator and all partic-
522 ipants in the mediation shall maintain and preserve the confi-
523 dentiality of all mediation proceedings and records. The me-
524 diator may not be subpoenaed or called to testify or otherwise
525 be subject to process requiring disclosure of confidential
526 information in any proceeding relating to or arising out of the
527 disciplinary or licensure matter mediated: *Provided*, That any
528 confidentiality agreement and any written agreement made
529 and signed by the parties as a result of mediation may be
530 used in any proceedings subsequently instituted to enforce
531 the written agreement. The agreements may be used in other
532 proceedings if the parties agree in writing.

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-4. Liability for court costs and attorney fees in certain civil actions.

1 Any party or parties who institute an action as a result of
2 a peer review may be liable for court costs and reasonable
3 attorney's fees, if the defendant substantially prevails and if
4 the action, or the plaintiff's conduct during the litigation of
5 the action, was frivolous, unreasonable, without foundation,
6 or in bad faith.

CHAPTER 239

(H. B. 4275 — By Mr. Speaker, Mr. Kiss, and Delegates Douglas, Staton, Leach, Amores, Compton and Stalnaker)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to end of life pain management; providing that any board, governed by chapter thirty that licenses health care practitioners, may develop guidelines for pain management.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms de-
2 fined in this section have the meanings ascribed to them.
3 These definitions are applicable unless a different meaning
4 clearly appears from the context.

5 (1) An “accepted guideline” is a care or practice guide-
6 line for pain management developed by a nationally recog-
7 nized clinical or professional association or a specialty soci-

8 ety or government-sponsored agency that has developed
9 practice or care guidelines based on original research or on
10 review of existing research and expert opinion. An accepted
11 guideline also includes policy or position statements relating
12 to pain management issued by any West Virginia board in-
13 cluded in chapter thirty of the West Virginia code with juris-
14 diction over various health care practitioners. Guidelines
15 established primarily for purposes of coverage, payment or
16 reimbursement do not qualify as accepted practice or care
17 guidelines when offered to limit treatment options otherwise
18 covered by the provisions of this article.

19 (2) "Board" or "licensing board" means the West Vir-
20 ginia board of medicine, the West Virginia board of osteopa-
21 thy, the West Virginia board of registered nurses or the West
22 Virginia board of pharmacy.

23 (3) "Intractable pain" means a state of pain having a
24 cause that cannot be removed. Intractable pain exists if an
25 effective relief or cure of the cause of the pain: (1) Is not
26 possible; or (2) has not been found after reasonable efforts.
27 Intractable pain may be temporary or chronic.

28 (4) "Nurse" means a registered nurse licensed in the state
29 of West Virginia pursuant to the provisions of article seven
30 of this chapter.

31 (5) "Pain-relieving controlled substance" includes, but is
32 not limited to, an opioid or other drug classified as a schedule
33 II controlled substance and recognized as effective for pain
34 relief, and excludes any drug that has no accepted medical
35 use in the United States or lacks accepted safety for use in
36 treatment under medical supervision including, but not lim-
37 ited to, any drug classified as a schedule I controlled sub-
38 stance.

39 (6) "Pharmacist" means a registered pharmacist licensed
40 in the state of West Virginia pursuant to the provisions of
41 article five of this chapter.

42 (7) "Physician" means a physician licensed in the state of
43 West Virginia pursuant to the provisions of article three or
44 article fourteen of this chapter.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.

1 (a) A physician shall not be subject to disciplinary sanc-
2 tions by a licensing board or criminal punishment by the state
3 for prescribing, administering or dispensing pain-relieving
4 controlled substances for the purpose of alleviating or con-
5 trolling intractable pain when:

6 (1) In a case of intractable pain involving a dying patient,
7 in practicing in accordance with an accepted guideline as
8 defined in section one of this article, the physician discharges
9 his or her professional obligation to relieve the dying pa-
10 tient's intractable pain and promote the dignity and autonomy
11 of the dying patient, even though the dosage exceeds the
12 average dosage of a pain-relieving controlled substance; or

13 (2) In the case of intractable pain involving a patient who
14 is not dying, the physician discharges his or her professional
15 obligation to relieve the patient's intractable pain, even
16 though the dosage exceeds the average dosage of a pain-re-
17 lieving controlled substance, if the physician can demonstrate
18 by reference to an accepted guideline that his or her practice
19 substantially complied with that accepted guideline. Evidence
20 of substantial compliance with an accepted guideline may be
21 rebutted only by the testimony of a clinical expert. Evidence
22 of noncompliance with an accepted guideline is not sufficient
23 alone to support disciplinary or criminal action.

24 (b) A registered nurse shall not be subject to disciplinary
25 sanctions by a licensing board or criminal punishment by the
26 state for administering pain-relieving controlled substances to
27 alleviate or control intractable pain, if administered in accor-
28 dance with the orders of a licensed physician.

29 (c) A registered pharmacist shall not be subject to disci-
30 plinary sanctions by a licensing board or criminal punishment
31 by the state for dispensing a prescription for a pain-relieving
32 controlled substance to alleviate or control intractable pain, if
33 dispensed in accordance with the orders of a licensed physi-
34 cian.

35 (d) For purposes of this section, the term “disciplinary
36 sanctions” includes both remedial and punitive sanctions
37 imposed on a licensee by a licensing board, arising from
38 either formal or informal proceedings.

39 (e) The provisions of this section shall apply to the treat-
40 ment of all patients for intractable pain, regardless of the
41 patient’s prior or current chemical dependency or addiction.
42 The board may develop and issue policies or guidelines es-
43 tablishing standards and procedures for the application of this
44 article to the care and treatment of persons who are chemi-
45 cally dependent or addicted.

CHAPTER 240

**(H. B. 4277 — By Delegates Douglas, Butcher, DeLong,
Ennis, Hatfield, Martin and Overington)**

[Passed February 22, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-c, relating to authorizing the board of pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, pharmacy interns and pharmacy technicians; providing for rule-making authority; and providing for fees to be set by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-7c. Authorization for the board of pharmacy to enter into agreements with organizations to form pharmacist recovery networks for treatment of impaired pharmacists, pharmacy interns and pharmacy technicians.

1 (a) The board may, under legislative rules adopted by the
2 board in accordance with article three, chapter twenty-nine-a
3 of this code, enter into agreements with organizations to form
4 pharmacist recovery networks. Any pharmacist recovery
5 network shall promote the early identification, intervention,
6 treatment, and rehabilitation of pharmacists, pharmacy in-
7 terns and pharmacy technicians who may be impaired by
8 reason of illness, alcohol or drug abuse, or as a result of any
9 other physical or mental condition. Activities to be covered
10 by the agreements shall include investigation, review and
11 evaluation of records, reports, complaints, litigation and other
12 information about the practices and practice patterns of phar-
13 macists licensed by the board, as such matters may relate to

14 impaired pharmacists, pharmacy interns or pharmacy techni-
15 cians.

16 (b) Agreements authorized under this section shall in-
17 clude provisions for the impaired pharmacist recovery net-
18 work to receive relevant information from the board and
19 other sources, conduct any investigation, review and evalua-
20 tion in an expeditious manner, provide assurance of confiden-
21 tiality of nonpublic information, make reports of investiga-
22 tions and evaluations to the board, and to do other related
23 activities for operating and promoting a coordinated and
24 effective peer review process. The agreements shall include
25 provisions assuring basic due process for pharmacists, phar-
26 macy interns or pharmacy technicians as well as provisions
27 for the adequate treatment, supervision and follow through
28 for participants.

29 (c) Any organization that enters into an agreement with
30 the board to create a pharmacist recovery network shall es-
31 tablish and maintain a program for impaired pharmacists,
32 pharmacy interns and pharmacy technicians for the purpose
33 of identifying, reviewing and evaluating the ability of those
34 individuals to function as pharmacist, pharmacy intern or
35 pharmacy technician, and to provide programs for treatment
36 and rehabilitation, including supervision and follow up for
37 participating persons.

38 (d) Prior to entering into any agreement with any organi-
39 zation to form a pharmacist recovery network, the board shall
40 propose rules for legislative approval in accordance with the
41 provisions of article three, chapter twenty-nine-a of this code
42 regarding the operation of any pharmacist recovery network,
43 with provisions for:

44 (1) Definitions of impairment;

45 (2) Guidelines for program elements;

46 (3) Procedures for receipt and use of information of sus-
47 pected impairment;

- 48 (4) Procedures for intervention and referral;
- 49 (5) Arrangements for mandatory monitoring, treatment,
50 rehabilitation, post-treatment support and performance;
- 51 (6) Reports of individual cases to the board;
- 52 (7) Periodic reporting of statistical information;
- 53 (8) Assurance of confidentiality of nonpublic information
54 and of the peer review process; and
- 55 (9) Assessment of a fee to be added to each licensure
56 renewal application fee payable to the board and dedication
57 of any revenue generated by the assessment for the operation
58 of pharmacist recovery networks developed under this sec-
59 tion.
- 60 (e) Upon investigation and review of a pharmacist, phar-
61 macy intern or pharmacy technician, or upon receipt of a
62 complaint or other information, an organization that enters
63 into an agreement with the board to operate a pharmacist
64 recovery network shall report immediately to the board de-
65 tailed information about any pharmacist, pharmacy intern or
66 pharmacy technician, if:
- 67 (1) The individual constitutes an imminent danger to the
68 public or himself or herself; or
- 69 (2) The individual refuses to cooperate with the program,
70 refuses to submit to treatment, refuses to participate in follow
71 up treatment and monitoring, or is still impaired after treat-
72 ment; or
- 73 (3) It reasonably appears that there are other grounds for
74 disciplinary action.
- 75 (f) Any confidential patient information acquired, created
76 or used by a pharmacist recovery network pursuant to this

77 section shall remain confidential and may not be subject to
78 discovery or subpoena in a civil case.

79 (g) If the board has not instituted any disciplinary pro-
80 ceedings as provided in this article, any information received,
81 maintained or developed by a pharmacist recovery network
82 relating to the alcohol or chemical dependency impairment of
83 any pharmacist, pharmacy intern or pharmacy technician
84 shall be confidential and not available for public information,
85 discovery or court subpoena nor for introduction into evi-
86 dence in any professional liability action or other action for
87 damages arising out of the provision of or failure to provide
88 health care services.

89 (h) No person participating in a pharmacist recovery
90 network developed under this section may be required in a
91 civil case to disclose any information, including opinions,
92 recommendations or evaluations, acquired or developed
93 solely in the course of participating in the program.

94 (i) All persons engaged in activities conducted pursuant
95 to a pharmacist recovery network developed under this sec-
96 tion when acting in good faith and without malice enjoy im-
97 munity from individual civil liability while acting within the
98 scope of their duties as part of a pharmacist recovery net-
99 work.

CHAPTER 241

**(H. B. 4098 — By Delegates Douglas, Kuhn, Varner,
Butcher, Hatfield, Leggett and Border)**

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for registered professional nurses; deleting severability language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-17. Continuation of board.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the board of examiners for registered professional
3 nurses shall continue to exist until the first day of July, two
4 thousand ten, unless sooner terminated, continued or reestab-
5 lished pursuant to that article.

CHAPTER 242

(H. B. 4507— By Delegates Paxton, Poling, Dempsey,
Romine, Swartzmiller, Susman and Louisos)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enabling school psychologists to practice school psychology within the scope of

their employment with a permit issued by the department of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

1 (a) No person shall engage in, offer to engage in, or hold
2 himself or herself out to the public as being engaged in, the
3 practice of psychology in this state, nor shall any person use
4 in connection with any trade, business, profession or occupa-
5 tion, except in those instances specifically excluded from the
6 definition of the practice of psychology by subparagraphs (1),
7 (2), (3), (4) and (6), subdivision (e), section two of this arti-
8 cle, the word "psychologist," "psychology," "psychological"
9 or any other title, word or abbreviation which induces or
10 tends to induce the belief that such person is qualified to
11 engage or is engaged in the practice of psychology, unless
12 and until he or she shall first obtain a license or temporary
13 permit to engage in the practice of psychology in accordance
14 with the provisions of this article, which license or temporary
15 permit remains unexpired, unsuspended and unrevoked: *Pro-*
16 *vided*, That such license or temporary permit shall not be
17 required for an individual who is the holder of a school psy-
18 chology certificate or permit issued by the West Virginia
19 department of education and who is engaged in the practice
20 of school psychology solely within the scope of employment
21 as a school board employee: *Provided, however*, That no such
22 license or temporary permit shall be required for a psycholo-
23 gist who is not a resident of this state, who is the holder of a

24 license or certificate to engage in the practice of psychology
25 issued by a state with licensing or certification requirements
26 determined by the board to be at least as great as those pro-
27 vided in this article, who has no regular place of practice in
28 this state and who engages in the practice of psychology in
29 this state for a period of not more than ten days in any calen-
30 dar year.

31 (b) No firm, association or corporation shall, except
32 through a licensee or licensees, render any service or engage
33 in any activity which if rendered or engaged in by any indi-
34 vidual would constitute the practice of psychology.

CHAPTER 243

(H. B. 4346 — By Delegates Compton, Hatfield and Brown)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the board of examiners for radiologic technologists; changing the qualifications for applicants; and revising the name of the national organization issuing requirements for approval standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-5. Board of examiners; powers and duties; funds of board.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

§30-23-5. Board of examiners; powers and duties; funds of board.

1 (a) The board shall:

2 (1) Propose legislative rules implementing the provisions
3 of this article and the powers and duties conferred upon the
4 board in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code;

6 (2) Determine applicants' eligibility for a license or tem-
7 porary permit to practice radiologic technology;

8 (3) Issue, renew, deny, suspend or revoke licenses and
9 temporary permits to engage in the practice of radiologic
10 technology in accordance with the provisions of this article
11 and, in accordance with the administrative procedures herein-
12 after provided, review, affirm, reverse, vacate or modify its
13 order with respect to any denial, suspension or revocation;

14 (4) Investigate alleged violations of provisions of this
15 article, rules promulgated hereunder and orders and final
16 decisions of the board and take appropriate disciplinary ac-
17 tion against any licensee for the violation thereof or institute
18 appropriate legal action for the enforcement of the provisions
19 of this article, rules promulgated hereunder and orders and
20 final decisions of the board;

21 (5) Employ, direct, discharge and define the duties of full
22 or part-time professional, clerical or other personnel neces-
23 sary to effectuate the provisions of this article;

24 (6) Keep accurate and complete records of its proceed-
25 ings, certify the records as may be appropriate, and prepare,

26 from time to time, a list showing the names and addresses of
27 all licensees;

28 (7) Provide standards for approved schools of technol-
29 ogy, procedures for obtaining and maintaining approval, and
30 procedures of revocation of approval where standards are not
31 maintained: *Provided*, That the standards for approved
32 schools meet at least the minimal requirements of the Ameri-
33 can registry of radiologic technologists;

34 (8) Whenever appropriate, confer with the attorney gen-
35 eral or his or her assistants in connection with all legal mat-
36 ters and questions; and

37 (9) Take such other action as may be reasonably neces-
38 sary or appropriate to effectuate the provisions of this article.

39 (b) All moneys paid to the board must be accepted by a
40 person designated by the board and deposited by him or her
41 with the treasurer of the state and credited to an account to be
42 known as the "board of examiners of radiologic technologist
43 fund." The reimbursement of all reasonable and necessary
44 expenses actually incurred by members of the board and all
45 other costs and expenses incurred by the board in the admin-
46 istration of this article must be paid from the fund, and no
47 part of the state's general revenue fund may be expended for
48 this purpose.

**§30-23-6. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to practice radiologic tech-
2 nology the applicant must:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school education
5 or its equivalent;

6 (3) Have successfully completed an eighteen-month
7 course in radiologic study in a school of radiologic technol-
8 ogy approved by the board;

9 (4) Have passed the examination prescribed by the board,
10 which examination shall cover the basic subject matter of
11 radiologic technology, skills and techniques; and

12 (5) Not have been convicted of a felony in any court in
13 this state or any federal court in this or any other state within
14 ten years preceding the date of application for registration,
15 which conviction remains unreversed; and not have been
16 convicted of a felony in any court in this state or any federal
17 court in this or any other state at any time if the offense for
18 which the applicant was convicted related to the practice of
19 radiologic technology, which conviction remains unreversed.

20 (b) Any person who holds a license or certificate, includ-
21 ing the American registry of radiologic technologists, to prac-
22 tice radiologic technology issued by any other state, the re-
23 quirements for which license or certificate are found by the
24 board to be at least equal to those provided in this article,
25 shall be eligible for a license to practice radiologic technol-
26 ogy in this state without examination.

27 (c) The following persons are not required to obtain a
28 license in accordance with the provisions of this article:

29 (1) A technology student enrolled in or attending an ap-
30 proved school of technology who as part of his or her course
31 of study applies ionizing radiation to a human being under
32 the supervision of a licensed practitioner;

33 (2) A person acting as a dental assistant who under the
34 supervision of a licensed dentist operates only radiographic
35 dental equipment for the sole purpose of dental radiography;

36 (3) A person engaged in performing the duties of a tech-
37 nologist in the person's employment by an agency, bureau or
38 division of the government of the United States;

39 (4) Any licensed practitioner, radiologist or radiology
40 resident; and

41 (5) Any person who demonstrates to the board that as of
42 the first day of July, one thousand nine hundred ninety-nine,
43 he or she:

44 (A) Has engaged in the practice of radiologic technology
45 for the limited purpose of performing bone densitometry in
46 this state for five or more years;

47 (B) Practices under the supervision of a licensed practi-
48 tioner; and

49 (C) Has received a densitometry technologist degree
50 certified by the international society for clinical
51 densitometry.

52 (d) Any person seeking a license shall submit an applica-
53 tion therefor at such time, in such manner, on such forms and
54 containing such information as the board may from time to
55 time by legislative rule prescribe, and shall pay to the board a
56 license fee, which fee shall be returned to the applicant if the
57 license application is denied.

CHAPTER 244

(H. B. 4417— By Delegates Douglas and Kuhn)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to speech-language pathology and audiology license renewal; allowing the board to establish continuing education hours by legislative rule; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-15. License renewal.

- 1 (a) Licenses issued under this article shall expire every
- 2 two years;

- 3 (b) Every person licensed under this bill shall:

- 4 (1) Pay an amount established by the board by legislative
- 5 rule in order for his or her license to be renewed;

- 6 (2) Submit an application for renewal on a form pre-
- 7 scribed by the board;

8 (3) Meet any other requirements the board establishes as
9 conditions for license renewal; and

10 (4) Engage in continuing education activities, as set forth
11 in legislative rule, whose content is directly related to the
12 professional growth and development of speech-language
13 pathologists and audiologists. The following are examples of
14 ways in which these hours may be obtained:

15 (i) Short courses, mini-seminars and teleconferences of
16 the American speech-language-hearing association;

17 (ii) Educational sessions of the West Virginia speech-
18 language-hearing association;

19 (iii) Educational sessions provided within the licensee's
20 work setting; or

21 (iv) Any other activities approved by the board.

22 (c) Licensees are granted a grace period of thirty days
23 after the expiration of their licenses in which to renew retro-
24 actively as long as they otherwise are entitled to have their
25 licenses renewed and pay to the board the renewal fee and
26 any late fee set by the board.

27 (d) A suspended license is subject to expiration and may
28 be renewed as provided in this article, but such renewal shall
29 not entitle the licensee, while the license remains suspended
30 and until it is reinstated, to engage in the licensed activity, or
31 in any other conduct or activity in violation of the order of
32 judgment by which the license was suspended.

33 (e) A license revoked on disciplinary grounds is subject
34 to expiration as provided in this article, but it may not be
35 renewed. If such license is reinstated after its expiration, the
36 licensee, as a condition of reinstatement, shall pay a rein-

37 statement fee that shall equal the renewal fee in effect on the
38 last regular renewal date immediately preceding the date of
39 reinstatement, plus any late fee set by the board by legislative
40 rule.

CHAPTER 245

(Com. Sub. for S. B. 453 — By Senators Bowman, Bailey and Rowe)

[Passed March 5, 2002; in effect from passage. Approved by the Governor.]

AN ACT to repeal article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty of said code by adding thereto a new article, designated article forty, relating to the West Virginia real estate license act; requiring license to sell real estate; providing definitions; scope of practice; exceptions; qualifications, terms, appointments and removal of members; powers and duties of commission; providing rule-making authority; qualifications and requirements for licensure; standards for examinations; continuing education requirements; issuing and renewing licenses; denying, suspending, revoking or reinstating licenses; professional conduct; fees; special revenue account; administrative fines; providing immunity from civil liability for commission members and persons reporting violations; requiring definite place of business of licensees; displaying license certificates; trust fund accounts; prohibiting commingling funds; delineating prohibited acts; investigating and resolving complaints against licensees; hearings and judicial review; penalties for violations; injunctions; criminal proceedings for violations; requirements for bringing action for recov-

ery of compensation; duties of licensees; duration of existing licenses; and continuation of commission.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty of said code be amended by adding thereto a new article, designated article forty to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

- §30-40-1. Legislative findings.
- §30-40-2. Short title.
- §30-40-3. License required.
- §30-40-4. Definitions.
- §30-40-5. Scope of practice; exceptions.
- §30-40-6. Commission created; membership; appointment and removal of members; qualifications; terms; organization.
- §30-40-7. General powers and duties.
- §30-40-8. Rule-making authority.
- §30-40-9. Fees; special revenue account; administrative fines.
- §30-40-10. Civil liability for commission members; liability limitations of person reporting to commission.
- §30-40-11. Application for license.
- §30-40-12. Qualifications for broker's license.
- §30-40-13. Qualifications for salesperson's license.
- §30-40-14. Prelicense education.
- §30-40-15. Licensing nonresidents.
- §30-40-16. Continuing professional education.
- §30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.
- §30-40-18. Trust fund accounts.
- §30-40-19. Refusal, suspension or revocation of a license.
- §30-40-20. Complaints; investigation.
- §30-40-21. Hearings; judicial review; cost of proceedings.
- §30-40-22. Penalties for violations.
- §30-40-23. Single act evidence of practice.
- §30-40-24. Injunctions; criminal proceedings.

§30-40-25. Collection of compensation.

§30-40-26. Duties of licensees.

§30-40-27. Duration of existing licenses.

§30-40-28. Continuation of commission.

§30-40-1. Legislative findings.

1 The Legislature hereby finds and declares that the prac-
2 tice of real estate brokerage is a privilege and any person
3 engaged in the professional practice of real estate brokerage
4 should possess the requisite experience and training and be
5 subject to adequate regulation and control. As a matter of
6 public policy, it is necessary to protect the public interest
7 from the unauthorized, unqualified and unregulated practice
8 of real estate brokerage through enactment of this article and
9 to regulate the granting of such privileges and their use. This
10 article shall be liberally construed to carry out these pur-
11 poses.

§30-40-2. Short title.

1 This article shall be known and may be cited as the
2 “West Virginia Real Estate License Act”.

§30-40-3. License required.

1 It shall be unlawful for any person to engage in or carry
2 on, directly or indirectly, or to advertise or hold himself or
3 herself out as engaging in or carrying on the business or act
4 in the capacity of a real estate broker, associate broker or
5 salesperson within this state without first obtaining a license
6 as provided for in this article.

§30-40-4. Definitions.

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

3 (a) "Applicant" means any person who is making appli-
4 cation to the commission for a license.

5 (b) "Associate broker" means any person who qualifies
6 for a broker's license, but who is employed or engaged by a
7 licensed broker to engage in any activity regulated by this
8 article, in the name of and under the direct supervision of the
9 licensed broker.

10 (c) "Broker" means any person who for compensation or
11 with the intention or expectation of receiving or collecting
12 compensation:

13 (1) Lists, sells, purchases, exchanges, options, rents,
14 manages, leases or auctions any interest in real estate; or

15 (2) Directs or assists in the procuring of a prospect calcu-
16 lated or intended to result in a real estate transaction; or

17 (3) Advertises or holds himself or herself out as engaged
18 in, negotiates or attempts to negotiate, or offers to engage in
19 any activity enumerated in subdivision (1) of this subsection.

20 (d) "Commission" means the West Virginia real estate
21 commission as established in section six of this article.

22 (e) "Compensation" means fee, commission, salary or
23 other valuable consideration, in the form of money or other-
24 wise.

25 (f) "Designated broker" means a person holding a bro-
26 ker's license who has been appointed by a partnership, asso-
27 ciation, corporation, or other form of business organization
28 engaged in the real estate brokerage business, to be responsi-
29 ble for the acts of the business and to whom the partners,
30 members, or board of directors have delegated full authority

31 to conduct the real estate brokerage activities of the business
32 organization.

33 (g) "Distance education" means courses of instruction in
34 which instruction takes place through media where the
35 teacher and student are separated by distance and sometimes
36 by time.

37 (h) "Inactive" means a licensee who is not authorized to
38 conduct any real estate business and is not required to com-
39 ply with any continuing education requirements.

40 (i) "License" means a license to act as a broker, associate
41 broker or salesperson.

42 (j) "Licensee" means a person holding a license.

43 (k) "Member" means a commissioner of the real estate
44 commission.

45 (l) "Real estate" means any interest or estate in land and
46 anything permanently affixed to land.

47 (m) "Salesperson" means a person employed or engaged
48 by or on behalf of a broker to do or deal in any activity in-
49 cluded in this article, in the name of and under the direct
50 supervision of a broker, other than an associate broker.

§30-40-5. Scope of practice; exceptions.

1 (a) The practice of real estate brokerage includes acting
2 in the capacity of a broker, associate broker or salesperson as
3 defined in section four of this article.

4 (b) The practice of real estate brokerage does not include
5 the activities normally performed by an appraiser, mortgage
6 company, lawyer, engineer, contractor, surveyor, home in-

7 spector or other professional who may perform an ancillary
8 service in conjunction with a real estate transaction.

9 (c) The provisions of this article do not apply to:

10 (1) Any person acting on his or her own behalf as owner
11 or lessor of real estate.

12 (2) The regular employees of an owner of real estate,
13 who perform any acts regulated by this article, where the acts
14 are incidental to the management of the real estate: *Provided*,
15 That the employee does not receive additional compensation
16 for the act and does not perform the act as a vocation.

17 (3) Attorneys-at-law: *Provided*, That attorneys-at-law
18 shall be required to submit to the written examination re-
19 quired under section twelve of this article in order to qualify
20 for a broker's license: *Provided, however*, That an attorney-
21 at-law who is licensed as a real estate broker prior to the first
22 day of July, one thousand nine hundred eighty, is exempt
23 from the written examination required under section twelve
24 of this article.

25 (4) Any person holding, in good faith, a valid power of
26 attorney from the owner or lessor of the real estate.

27 (5) Any person acting as a receiver, trustee, administra-
28 tor, executor, guardian, conservator or under the order of any
29 court or under the authority of a deed of trust or will.

30 (6) A public officer while performing his or her official
31 duties.

32 (7) Any person acquiring or disposing of any interest in
33 timber or minerals, or acquiring or disposing of properties for
34 easements and rights-of-ways for pipelines, electric power
35 lines and stations, public utilities, railroads or roads.

36 (8) Any person employed exclusively to act as the man-
37 agement or rental agent for the real estate of one person,
38 partnership or corporation.

39 (9) Any person properly licensed pursuant to the provi-
40 sions of article two-c, chapter nineteen of this code when
41 conducting an auction, any portion of which contains any
42 leasehold or estate in real estate, only when the person so
43 licensed is retained to conduct an auction by:

44 (A) A receiver or trustee in bankruptcy;

45 (B) A fiduciary acting under the authority of a deed of
46 trust or will; or

47 (C) A fiduciary of a decedent's estate.

48 (10) Any person employed by a broker in a noncommis-
49 sioned clerical capacity who may in the normal course of
50 employment, be required to:

51 (A) Disseminate brokerage preprinted and predetermined
52 real estate sales and rental information;

53 (B) Accept and process rental reservations or bookings
54 for a period not to exceed thirty consecutive days in a manner
55 and procedure predetermined by the broker;

56 (C) Collect predetermined rental fees for the rentals
57 which are to be promptly tendered to the broker; or

58 (D) Any combination thereof.

**§30-40-6. Commission created; membership; appointment and
removal of members; qualifications; terms;
organization.**

1 (a) The West Virginia real estate commission is hereby
2 continued. The members of the commission in office on the
3 date this section takes effect shall, unless sooner removed,
4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b) (1) Commencing with the terms beginning with the
7 first day of July, two thousand two, the commission shall
8 consist of five persons appointed for terms of four years by
9 the governor with the advice and consent of the Senate. Four
10 commissioners must be licensed under the provisions of this
11 article and one commissioner must be a citizen member who
12 is not licensed under the provisions of this article.

13 (2) Each licensed commissioner, at the time of his or her
14 appointment, must have been licensed and practiced in this
15 state as a real estate broker, associate broker or salesperson as
16 his or her primary vocation for a period of not less than ten
17 years immediately preceding the appointment. Each commis-
18 sioner must have been a resident of this state for at least six
19 years prior to his or her appointment and must remain a resi-
20 dent during the appointment term. No more than four com-
21 missioners shall belong to the same political party.

22 (3) The appointment of three licensed commissioners,
23 whether for a full term or to fill a vacancy, shall be made by
24 the governor with the advice and consent of the Senate. The
25 appointment of one licensed commissioner, whether for a full
26 term or to fill a vacancy, shall be made by the governor from
27 among three nominees selected by the West Virginia associa-
28 tion of realtors. If the appointment is for a full term, the nom-
29 inations must be submitted to the governor not later than
30 three months prior to the date on which the appointment be-
31 comes effective. If the appointment is to fill a vacancy, the
32 nominations must be submitted to the governor within thirty
33 days after a request for the nominations has been made by the

34 governor to the West Virginia association of realtors. If the
35 association fails to submit nominations in accordance with
36 the requirements of this section, the governor may make the
37 appointment without the nominations.

38 (c) Any commissioner immediately and automatically
39 forfeits his or her membership on the commission if he or she
40 has his or her license to practice as a real estate broker, asso-
41 ciate broker or salesperson suspended or revoked by the
42 board, is convicted of a felony under the laws of this state or
43 of the United States, becomes a nonresident of this state, or
44 holds any elective public office or becomes a member of any
45 political committee.

46 (d) No member of the commission may be removed from
47 office by the governor except for official misconduct, incom-
48 petency, neglect of duty, gross immorality or other good
49 cause, but then only in the manner prescribed by law for the
50 removal by the governor of state elective officials.

51 (e) No member of the commission may serve more than
52 two consecutive full terms and any member having served
53 two full terms may not be appointed for one year after com-
54 pletion of his or her second full term. A member shall con-
55 tinue to serve until his or her successor has been appointed
56 and qualified.

57 (f) The governor shall designate one member of the com-
58 mission as chairman and the members shall choose a vice
59 chairman and a secretary, each of whom shall continue to
60 serve in their respective capacity until replaced.

61 (g) Three members shall constitute a quorum for the
62 conduct of official business.

63 (h) Each commissioner shall receive the same compensa-
64 tion as is paid to members of the Legislature for their interim

65 duties as recommended by the citizens legislative compensa-
66 tion commission and authorized by law for each day or por-
67 tion thereof engaged in the discharge of official duties. Each
68 commissioner shall be reimbursed for his or her actual and
69 necessary expenses for each day or portion thereof engaged
70 in the discharge of official duties in a manner consistent with
71 guidelines of the travel management office of the department
72 of administration.

§30-40-7. General powers and duties.

1 The commission has all the powers set forth in article one
2 of this chapter and in addition:

3 (a) May sue and be sued in its official name as an agency
4 of this state;

5 (b) Shall employ an executive director and shall fix his or
6 her compensation subject to the general laws of this state.
7 The commission shall determine the duties of the executive
8 director, as it shall deem necessary and appropriate to dis-
9 charge the duties imposed by the provisions of this code;

10 (c) Shall employ or contract with such other investiga-
11 tors, hearing examiners, attorneys, consultants, clerks and
12 assistants as the commission deems necessary and determine
13 the duties and fix the compensation of such investigators,
14 clerks and assistants subject to the general laws of this state;

15 (d) Shall have the authority to issue subpoenas and sub-
16 poenas duces tecum through any member, its executive direc-
17 tor or any duly authorized representative;

18 (e) Shall prescribe, examine and determine the qualifica-
19 tions of any applicant for a license;

20 (f) Shall provide for an appropriate examination of any
21 applicant for a license;

22 (g) May enter into agreements with other jurisdictions
23 whereby the license issued by another jurisdiction may be
24 recognized as successfully qualifying a nonresident for a
25 license in this state without additional education or examina-
26 tion requirements;

27 (h) Shall issue, renew, deny, suspend, revoke or reinstate
28 licenses and take disciplinary action against any licensee;

29 (i) May investigate or cause to be investigated alleged
30 violations of the provisions of this article, the rules promul-
31 gated hereunder and the orders or final decisions of the com-
32 mission;

33 (j) Shall conduct hearings or cause hearings to be con-
34 ducted upon charges calling for the discipline of a licensee or
35 for the suspension or revocation of a license;

36 (k) May examine the books and records relating to the
37 real estate business of a licensee if the licensee is charged in
38 a complaint of any violation of this article, commission rule,
39 or any order or final decision issued by the commission: *Pro-*
40 *vided*, That such examination shall not extend beyond the
41 specific violation charged in the complaint;

42 (l) May impose one or more sanctions as considered ap-
43 propriate in the circumstances for the discipline of a licensee.
44 Available sanctions include, but are not limited to, denial of a
45 license or renewal thereof, administrative fine not to exceed
46 one thousand dollars per day per violation, probation, revoca-
47 tion, suspension, restitution, require additional education,
48 censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an
49 injured consumer;
50

51 (m) Shall meet at least once each calendar year at such
52 place and time as the commission shall designate and at such
53 other times and places as it considers necessary to conduct
54 commission business;

55 (n) Shall publish an annual directory of licensees in com-
56 pliance with the provisions of section thirteen, article one,
57 chapter thirty of this code;

58 (o) May sponsor real estate related educational seminars,
59 courses, workshops or institutes, may incur and pay the nec-
60 essary expenses and may charge a fee for attendance;

61 (p) May assist libraries, institutions and foundations with
62 financial aid or otherwise, in providing texts, sponsoring
63 studies, surveys and programs;

64 (q) May perform compliance audits on real estate broker-
65 age offices, education providers or any other person regulated
66 by the commission;

67 (r) May provide distance education courses for applicants
68 for a license sufficient to meet the educational requirements
69 contained in subsections (a) and (b), section fourteen of this
70 article; and

71 (s) Shall take all other actions necessary and proper to
72 effectuate the purposes of this article.

§30-40-8. Rule-making authority.

1 (a) The commission may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code which are necessary for
4 the conduct of its business, the holding of hearings and for
5 the general implementation, enforcement and administration

6 of the provisions of this article, including, but not limited to,
7 establishing, administering and governing the following:

8 (1) Fees for applications, examinations, licenses, renewal
9 of licenses, changes to licenses requiring reissuance, courses,
10 investigations, copies of records, license certifications and
11 other fees considered necessary by the commission, none of
12 which shall be prorated or refundable: *Provided*, That the fee
13 schedule in effect prior to enactment of this article, enumer-
14 ated in section nine, article twelve, chapter forty-seven of this
15 code, shall continue to be effective until withdrawn, revoked
16 or amended;

17 (2) The minimum requirements and qualifications neces-
18 sary for approval by the commission of providers, instructors
19 and the course content of any prelicense education course
20 required in section fourteen of this article;

21 (3) The experience required of an applicant;

22 (4) The minimum standards for licensure;

23 (5) The standards for examinations;

24 (6) The minimum requirements and qualifications neces-
25 sary for approval by the commission of providers, instructors
26 and courses of continuing professional education required by
27 section sixteen of this article;

28 (7) Continuing professional education requirements for
29 licensees, including any exemptions;

30 (8) Renewal of licenses;

31 (9) Use of firm or trade name;

32 (10) Denying, suspending, revoking or reinstating a li-
33 cense;

34 (11) Form and use of contracts used in a real estate trans-
35 action;

36 (12) Notification required to clients or customers of
37 agency relationship;

38 (13) Professional conduct requirements; and

39 (14) Any other purpose to carry out the requirements of
40 this article or to protect the public interest.

41 (b) All rules in effect as of the passage of this article
42 previously promulgated by the commission pursuant to arti-
43 cle twelve, chapter forty-seven of this code will remain in
44 effect until amended, modified, repealed or replaced, except
45 that references to provisions of former enactments of this
46 article are interpreted to mean provisions of this article.

§30-40-9. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the commission shall be deposited into the
3 treasury of the state, at least once each month, into a special
4 revenue fund known as the "real estate license fund" which is
5 continued.

6 (b) Except as may be provided in section ten, article one
7 of this chapter, the commission shall retain the amounts in
8 the special revenue fund from year to year and no funds col-
9 lected under this article may be used by the commission for
10 any purpose other than the administration and enforcement of
11 this article. No compensation or expense incurred under this
12 article is a charge against the general revenue fund.

13 (c) Any amounts received as administrative fines im-
14 posed pursuant to this article shall be deposited into the gen-
15 eral revenue fund of the state treasury.

§30-40-10. Civil liability for commission members; liability limitations of person reporting to commission.

1 (a) Members of the commission shall be immune from
2 individual civil liability for actions taken in good faith and
3 without malice, within the scope of their duties as commis-
4 sion members.

5 (b) Any person who reports or otherwise provides evi-
6 dence of violations of this article, the commission's rules,
7 orders or final decisions to the commission or other law-en-
8 forcement agency, is not liable for making the report if it is
9 made without malice and in the reasonable belief that the
10 report is warranted by the facts known to him or her at the
11 time.

§30-40-11. Application for license.

1 The commission shall only issue an original license to an
2 applicant if he or she:

3 (a) Submits an application, in writing, in a form pre-
4 scribed by the commission which must contain, but is not
5 limited to:

6 (1) The applicant's social security number;

7 (2) The recommendation of at least two persons who:

8 (A) Are property owners at the time of signing the appli-
9 cation;

10 (B) Have been property owners for at least twelve
11 months preceding the signing of the application;

12 (C) Have known the applicant for at least two years;

13 (D) Are not related to the applicant;

14 (E) Are not affiliated with the applicant as an employer,
15 partner or associate or with the broker that will employ the
16 applicant;

17 (F) Believe the applicant bears a good reputation for
18 honesty, trustworthiness and fair dealing; and

19 (G) Believe the applicant is competent to transact the
20 business of a real estate broker, associate broker or salesper-
21 son, as the case may be, in a manner that would protect the
22 interest of the public.

23 (3) A clear record indicating all jurisdictions where the
24 applicant holds or has held any professional license.

25 (4) A clear record indicating if the applicant has been
26 convicted of any criminal offense or if there is any criminal
27 charge pending against the applicant, or a member or officer
28 of the brokerage business, at the time of application.

29 (b) Is at least eighteen years of age.

30 (c) Is a high school graduate or the holder of an equiva-
31 lency diploma.

32 (d) Is trustworthy, of good moral character and compe-
33 tent to transact the business of a broker, associate broker or
34 salesperson.

35 (e) Has paid the appropriate fee, if any, which must ac-
36 company all applications for original license or renewal.

§30-40-12. Qualifications for broker's license.

1 (a) An applicant for a broker's license shall:

2 (1) Have served an apprenticeship as a licensed salesper-
3 son for two years or shall produce evidence satisfactory to

4 the commission, in its sole discretion, of real estate experi-
5 ence equivalent to two years full-time experience as a li-
6 censed salesperson;

7 (2) Submit satisfactory evidence of having completed the
8 required education course as provided for in section fourteen
9 of this article;

10 (3) Successfully pass the examination or examinations
11 provided by the commission.

12 (b) No broker's license shall be issued in the name of a
13 corporation, association or partnership except through one of
14 its members or officers.

15 (c) No broker's license shall be issued in the name of a
16 corporation, association or partnership unless each member
17 or officer, who will engage in the real estate business, obtains
18 a license as a real estate salesperson or associate broker.

§30-40-13. Qualifications for salesperson's license.

1 An applicant for a salesperson's license shall:

2 (1) Submit satisfactory evidence of having completed the
3 required education course as provided in section fourteen of
4 this article.

5 (2) Successfully pass the examination or examinations
6 provided by the commission.

§30-40-14. Prelicense education.

1 (a) Applicants for a broker's license shall provide evi-
2 dence satisfactory to the commission that he or she has com-
3 pleted at least one hundred eighty clock-hours, equivalent to
4 twelve college semester credit hours, in a course or courses
5 approved by the commission: *Provided*, That an applicant for

6 a broker's license who holds a salesperson's license in this
7 state shall only be required to provide evidence that he or she
8 has completed ninety clock-hours, equivalent to six college
9 semester hours, in a course or courses approved by the com-
10 mission.

11 (b) Applicants for a salesperson's license shall provide
12 evidence satisfactory to the commission that he or she has
13 completed ninety clock-hours, equivalent to six college se-
14 mester credit hours, in a course or courses approved by the
15 commission.

16 (c) Any course required by subsection (a) or (b) of this
17 section must have been completed during the five-year period
18 preceding the date of application in order to be accepted by
19 the commission.

§30-40-15. Licensing nonresidents.

1 (a) The commission may recognize a valid license issued
2 by another jurisdiction as satisfactorily qualifying a nonresi-
3 dent person to obtain a comparable license in this state: *Pro-*
4 *vided*, That the nonresident has qualified for original license
5 in his or her jurisdiction of residence by examination and by
6 complying with all the provisions for obtaining an original
7 license in that jurisdiction and the jurisdiction affords the
8 same privilege to licensees of this state.

9 (b) In order to obtain a license in this state, a nonresident
10 applicant must:

11 (1) Submit the appropriate application and fee, if any;

12 (2) Sign a statement that the applicant has read the real
13 estate license law and rules of this state and agrees to abide
14 by those provisions in all brokerage activity conducted in this
15 state;

16 (3) Cause the real estate licensing body of the applicant's
17 resident jurisdiction to furnish a certification of licensure
18 which shall contain a clear record of any disciplinary actions;

19 (4) Cause the real estate licensing body of any other ju-
20 risdiction where the applicant currently holds or has held a
21 real estate license to furnish a certification of licensure which
22 shall contain a clear record of any disciplinary actions;

23 (5) File with the commission an irrevocable written des-
24 ignation that appoints the executive director of the commis-
25 sion to act as the nonresident licensee's agent, upon whom all
26 judicial and other process or legal notices directed to the
27 licensee may be served. The designation must stipulate and
28 agree that service upon the executive director is equivalent to
29 personal service upon the licensee. A copy of the designation
30 of appointment, certified by the seal of the commission, may
31 be admitted into evidence with the same force and affect as
32 the original. The executive director shall mail a copy of any
33 process or legal notice immediately upon receipt, by certified
34 mail, to the last known business address of the licensee. No
35 judgment by default may be taken in any action or proceed-
36 ing until after thirty days of mailing and then only upon cer-
37 tification by the executive director that a copy of the judicial,
38 other process or legal notice was mailed as required; and

39 (6) File with the commission, a bond in the penalty of
40 two thousand dollars if the applicant wishes to maintain an
41 active license in this state. The bond must be issued by a
42 recognized surety and must be for the benefit of and to in-
43 demnify any person in this state who may have a cause of
44 action against the principal.

§30-40-16. Continuing professional education.

1 (a) Every licensee shall complete seven hours of continu-
2 ing professional education for each fiscal year, with each
3 hour equaling fifty minutes of instruction.

4 (b) Upon application for the renewal of a real estate li-
5 cense on active status, each licensee must furnish satisfactory
6 evidence, as established by the commission, that he or she
7 has completed seven hours of approved continuing profes-
8 sional education during the term of the previous license: *Pro-*
9 *vided*, That if the commission issues a license certificate for a
10 period of more than one fiscal year, each licensee must fur-
11 nish satisfactory evidence that he or she has completed the
12 equivalent of seven hours of continuing professional educa-
13 tion for each year covered by the term of the previous li-
14 cense.

15 (c) When a licensee in an inactive status makes applica-
16 tion to revert to an active status, he or she must furnish satis-
17 factory evidence to the commission that he or she has com-
18 pleted the approved continuing professional education that
19 would have been required for active status at the time the
20 license was renewed.

21 (d) Approval from the commission shall be obtained by
22 each provider and instructor and for any course prior to any
23 advertising or offering of the course.

24 (e) Real estate-related continuing education courses pro-
25 vided by or approved by the real estate appraiser licensing
26 and certification board, the department of highways, the West
27 Virginia state bar or other agency of this state shall be recog-
28 nized as approved by the commission.

29 (f) If approved in advance by the commission, distance
30 education courses may be used to satisfy the continuing edu-
31 cation requirement.

32 (g) Any licensee holding a license on the first day of
33 July, one thousand nine hundred sixty-nine, and continuously
34 thereafter, shall be exempt from the continuing professional
35 education requirement.

§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.

1 (a) Every person holding a broker's license under the
2 provisions of this article shall:

3 (1) Have and maintain a definite place of business within
4 this state, which shall be a room or rooms used for the trans-
5 action of real estate business and any allied business. The
6 definite place of business shall be designated in the license
7 certificate issued by the commission and the broker may not
8 transact business at any other location, unless such other
9 location is properly licensed by the commission as a branch
10 office: *Provided*, That a nonresident broker who maintains a
11 definite place of business in his or her jurisdiction of resi-
12 dence may not be required to maintain an office in this state
13 if said jurisdiction offers the same privilege to licensed bro-
14 kers of this state;

15 (2) Conspicuously display his or her broker's license in
16 the main office and the license of each associate broker and
17 salesperson employed by the broker who is primarily work-
18 ing from the main office;

19 (3) Conspicuously display his or her branch office license
20 in each branch office and the license of each associate broker
21 and salesperson employed by the broker who is primarily
22 working from each branch office;

23 (4) Make application to the commission before changing
24 the address of any office or within ten days after any change;

25 (5) Maintain in his or her custody and control the license
26 of each associate broker and salesperson employed by him or
27 her; and

28 (6) Promptly return the license of any associate broker or
29 salesperson whose employment with the broker is terminated.

30 (b) Every person holding an associate broker's or sales-
31 person's license under the provisions of this article shall:

32 (1) Conduct real estate brokerage activities only under
33 the direct supervision and control of his or her employing
34 broker, which shall be designated in the license certificate;

35 (2) Promptly make application to the commission of any
36 change of employing broker: *Provided*, That it shall be un-
37 lawful to perform any act contained in this article, either
38 directly or indirectly, after employment has been terminated
39 until the associate broker or salesperson has made application
40 to the commission for a change of employing broker and the
41 application is approved.

42 (c) The commission shall issue a license certificate which
43 shall:

44 (1) Be in such form and size as shall be prescribed by the
45 commission;

46 (2) Be imprinted with the seal of the commission and
47 shall contain such other information as the commission may
48 prescribe: *Provided*, That a salesperson's and an associate
49 broker's license shall show the name of the broker by whom
50 he or she is employed;

51 (3) In the case of an active licensee, be mailed or deliv-
52 ered to the broker's main office address;

53 (4) In the case of an inactive licensee, be held in the com-
54 mission office;

55 (5) Be valid for a period that coincides with the fiscal
56 year beginning on the first day of July and ending on the
57 thirtieth day of June and may be issued for a period covering
58 more than one fiscal year at the discretion of the commission:
59 *Provided*, That nothing contained herein shall authorize any
60 person to transact real estate business prior to becoming
61 properly licensed.

§30-40-18. Trust fund accounts.

1 (a) Every person licensed as a broker under the provi-
2 sions of this article who does not immediately deliver all
3 funds received, in relation to a real estate transaction, to his
4 or her principal or to a neutral escrow depository shall main-
5 tain one or more trust fund accounts in a recognized financial
6 institution and shall place all funds therein: *Provided*, That
7 nothing contained herein shall require a broker to maintain a
8 trust fund account if the broker does not hold any money in
9 trust for another party.

10 (b) Funds that must be deposited into a trust fund account
11 include, but are not limited to, earnest money deposits, secu-
12 rity deposits, rental receipts, auction proceeds and money
13 held in escrow at closing.

14 (c) Each trust fund account must be established at a fi-
15 nancial institution which is insured against loss by an agency
16 of the federal government and the amount deposited therein
17 cannot exceed the amount that is insured against loss.

18 (d) Each trust fund account must provide for the with-
19 drawal of funds without notice.

20 (e) No trust fund account may earn interest or any other
21 form of income, unless specifically authorized by commis-
22 sion rule.

23 (f) The broker may not commingle his or her own funds
24 with trust funds and the account may not be pledged as col-
25 lateral for a loan or otherwise utilized by the broker in a man-
26 ner that would violate his or her fiduciary obligations in rela-
27 tion to the trust funds: *Provided*, That nothing contained
28 herein prevents the broker from depositing a maximum of
29 one hundred dollars of his or her own money in the trust fund
30 account to maintain a minimum balance in the account.

31 (g) No financial institution, in which a trust fund account
32 is established under the provisions of this article, shall re-
33 quire a minimum balance in excess of the amount authorized
34 in subsection (f) of this section.

35 (h) The broker shall be the designated trustee of the ac-
36 count and shall maintain complete authority and control over
37 all aspects of each trust fund account, including signature
38 authority: *Provided*, That only one other member or officer
39 of a corporation, association or partnership, who is licensed
40 under the provisions of this article, may be authorized to
41 disburse funds from the account: *Provided, however*, That if
42 disbursements from a trust fund account require two signa-
43 tures, one additional member or officer may be a signatory as
44 hereinbefore provided.

45 (i) The broker shall, at a minimum, maintain records of
46 all funds deposited into the trust fund account, which shall
47 clearly indicate the date and from whom the money was re-
48 ceived, date deposited, date of withdrawal, to whom the
49 money belongs, for whose account the money was received

50 and other pertinent information concerning the transaction.
51 All records shall be open to inspection by the commission or
52 its duly authorized representative at all times during regular
53 business hours at the broker's place of business.

54 (j) The broker shall cause the financial institution
55 wherein a trust fund account is maintained, to execute a state-
56 ment, prepared by the commission, which shall include, but
57 is not limited to:

58 (1) Exact title of the account as registered by the finan-
59 cial institution;

60 (2) The account number of the trust fund account;

61 (3) Identification of all persons authorized to make with-
62 draws from the account;

63 (4) Name and address of the financial institution;

64 (5) Title of the person executing the statement on behalf
65 of the financial institution;

66 (6) Date the statement was executed; and

67 (7) Certification that the financial institution will notify
68 the real estate commission if any checks drawn against the
69 account are returned for any cause.

70 (k) The broker shall execute a statement authorizing the
71 commission, or its duly authorized representative, to make
72 periodic inspections of the trust fund account and to obtain
73 copies of records from any financial institution wherein a
74 trust fund account is maintained. A copy of any authorization
75 shall be accepted by any financial institution with the same
76 force and effect as the original.

77 (1) The broker shall notify the commission, within ten
78 days, of the establishment of or any change to a trust fund
79 account.

§30-40-19. Refusal, suspension or revocation of a license.

1 (a) The commission shall have full power to refuse a
2 license for reasonable cause or to revoke, suspend or impose
3 any other sanction against a licensee if the licensee:

4 (1) Obtains, renews or attempts to obtain or renew a li-
5 cense, for himself, herself or another, through the submission
6 of any application or other writing that contains false, fraudu-
7 lent or misleading information;

8 (2) Makes any substantial misrepresentation;

9 (3) Makes any false promises or representations of a
10 character likely to influence, persuade or induce a person
11 involved in a real estate transaction;

12 (4) Pursues a course of misrepresentation or makes false
13 promises or representations through agents or any medium of
14 advertising or otherwise;

15 (5) Uses misleading or false advertising;

16 (6) Uses any trade name or insignia of membership in
17 any organization in which the licensee is not a member;

18 (7) Acts for more than one party in a transaction without
19 the knowledge and written consent of all parties for whom he
20 or she acts;

21 (8) Fails, within a reasonable time, to account for or to
22 remit moneys or other assets coming into his or her posses-
23 sion, which belong to others;

24 (9) Commingles moneys belonging to others with his or
25 her own funds;

26 (10) Advertises or displays a “for sale”, “for rent” or
27 other such sign on any property without an agency relation-
28 ship being established or without the owner’s knowledge and
29 written consent;

30 (11) Advertises any property on terms other than those
31 authorized by the owner;

32 (12) Fails to disclose, on the notice of agency relation-
33 ship form promulgated by the commission, whether the li-
34 censee represents the seller, buyer or both;

35 (13) Fails to voluntarily furnish copies of the notice of
36 agency relationship, listing contract, sale contract, lease con-
37 tract or any other contract to each party executing the same;

38 (14) Pays or receives any rebate, profit, compensation,
39 commission or other valuable consideration, resulting from a
40 real estate transaction, to or from any person other than the
41 licensee’s principal: *Provided*, That this subsection may not
42 be construed to prevent the sharing of compensation or other
43 valuable consideration between licensed brokers;

44 (15) Induces any person to a contract to break the con-
45 tract for the purpose of substituting a new contract with a
46 third party;

47 (16) Accepts compensation as a salesperson or associate
48 broker for any act specified in this article from any person
49 other than his or her employer who must be a broker;

50 (17) Pays compensation to any person for acts or services
51 performed either in violation of this article or the real estate
52 licensure laws of any other jurisdiction;

53 (18) Pays a compensation to any person knowing that
54 they will pay a portion or all of that which is received, in a
55 manner that would constitute a violation of this article if it
56 were paid directly by a licensee of this state;

57 (19) Violates any of the provisions of this article, any
58 rule or any order or final decision issued by the commission;

59 (20) Procures an attorney for any client or customer, or
60 solicits legal business for any attorney-at-law;

61 (21) Engages in the unlawful or unauthorized practice of
62 law as defined by the supreme court of appeals of West Vir-
63 ginia;

64 (22) Commits or is a party to any material fraud, misrep-
65 resentation, concealment, conspiracy, collusion, trick,
66 scheme or other device whereby any other person relies upon
67 the word, representation or conduct of the licensee;

68 (23) Continues in the capacity of or accepts the services
69 of any broker, associate broker or salesperson who is not
70 properly licensed;

71 (24) Fails to disclose any information within his or her
72 knowledge or to produce any document, book or record in his
73 or her possession for inspection of and copying by the com-
74 mission or its duly authorized representatives;

75 (25) Accepts other than cash or its equivalent as earnest
76 money or other deposit unless this fact is disclosed in the
77 contract to which the deposit relates;

78 (26) Accepts, takes or charges any undisclosed compen-
79 sation on expenditures made by or on behalf of the licensee's
80 principal;

81 (27) Discriminates against any person involved in a real
82 estate transaction which is in violation of any federal or state
83 antidiscrimination law, including any fair housing law;

84 (28) Fails to preserve for five years following its con-
85 summation, records relating to any real estate transaction;

86 (29) Fails to maintain adequate records on the broker's
87 "trust fund account";

88 (30) In the case of a broker, fails to adequately supervise
89 all associate brokers and salespersons employed by him or
90 her;

91 (31) Breaches a fiduciary duty owed by a licensee to his
92 or her principal in a real estate transaction;

93 (32) Directs any party to a real estate transaction in
94 which the licensee is involved, to any lending institution for
95 financing with the expectation of receiving a financial incen-
96 tive, rebate or other compensation, without first obtaining
97 from his or her principal the signed acknowledgment of and
98 consent to the receipt of the financial incentive, rebate or
99 other compensation;

100 (33) Represents to any lending institution, or other inter-
101 ested party either verbally or through the preparation of false
102 documents, an amount in excess of the true and actual sale
103 price of the real estate or terms differing from those actually
104 agreed upon;

105 (34) Fails to disclose to an owner the licensee's true posi-
106 tion if he or she directly or indirectly through a third party,
107 purchases for himself or herself or acquires or intends to
108 acquire any interest in or any option to purchase the property;

109 (35) Lends a broker's license to any person, including a
110 salesperson, or permits a salesperson to operate as a broker;

111 (36) Has been convicted in a court of competent jurisdic-
112 tion in this or any other jurisdiction of forgery, embezzle-
113 ment, obtaining money under false pretense, bribery, larceny,
114 extortion, conspiracy to defraud, any other similar offense, a
115 crime involving moral turpitude, or a felony;

116 (37) Engages in any act or conduct which constitutes or
117 demonstrates bad faith, incompetency or untrustworthiness,
118 or dishonest, fraudulent or improper dealing;

119 (38) Induces any person to alter, modify or change an-
120 other licensee's fee or commission for brokerage services,
121 without that licensee's prior written consent;

122 (39) Negotiates a real estate transaction directly with any
123 person that is represented exclusively by another broker,
124 unless the conduct is specifically authorized by the other
125 broker;

126 (40) Obtains, negotiates or attempts to obtain or negotiate
127 a contract whereby the broker is entitled to a commission
128 only to the extent that the sales price exceeds a given amount,
129 commonly referred to as a net listing;

130 (41) Fails or refuses, on demand, to furnish copies of a
131 document to a person whose signature is affixed to the docu-
132 ment;

133 (42) In the case of an associate broker or salesperson,
134 represents or attempts to represent a broker other than his or
135 her employing broker;

136 (43) Fails to reduce a bona fide offer to writing;

137 (44) Guarantees, or authorizes or permits another li-
138 censee to guarantee, future profits which may result from a
139 real estate transaction;

140 (45) Is disciplined by another jurisdiction if at least one
141 of the grounds for that discipline is the same as or equivalent
142 to one of the grounds for discipline in this article; or

143 (46) Engages in any other act or omission in violation of
144 professional conduct requirements of licensees established by
145 legislative rule of the commission.

146 (b) The provisions of this section shall be liberally con-
147 strued in order to carry out the objectives and purposes of this
148 article.

149 (c) As used in this section:

150 (1) The words "convicted in a court of competent juris-
151 diction" mean a plea of guilty or nolo contendere entered by
152 a person or a verdict of guilt returned against a person at the
153 conclusion of a trial;

154 (2) A certified copy of a conviction order entered in a
155 court is sufficient evidence to demonstrate a person has been
156 convicted in a court of competent jurisdiction.

157 (d) Every person licensed by the commission has an af-
158 firmative duty to report, in a timely manner, any known or
159 observed violation of this article or the rules, orders or final
160 decisions of the commission.

161 (e) The revocation of a broker's license shall automati-
162 cally suspend the license of every associate broker and sales-
163 person employed by the broker: *Provided*, That the commis-
164 sion shall issue a replacement license for any licensee so
165 affected to a new employing broker, without charge, if a

166 proper application is submitted to the commission during the
167 same license term.

168 (f) A licensee whose license has been revoked shall be
169 ineligible to apply for a new license until after the expiration
170 of two years from the date of revocation.

§30-40-20. Complaints; investigation.

1 (a) The commission may upon its own motion and shall
2 upon the verified complaint in writing of any person filing a
3 complaint setting forth a cause of action under this article or
4 the rules promulgated thereunder, ascertain the facts and if
5 warranted hold a hearing for the suspension or revocation of
6 a license, or the imposition of sanctions against a licensee.

7 (b) The commission shall consider complaints which are
8 submitted in writing and set forth the details of the transac-
9 tion.

10 (c) Upon initiation or receipt of the complaint, the com-
11 mission shall provide a copy of the complaint to the licensee
12 for his or her response to the allegations contained in the
13 complaint. The accused party shall file an answer within
14 twenty days of the date of service. Failure of the licensee to
15 file a timely response may be considered an admission of the
16 allegations in the complaint: *Provided*, That nothing con-
17 tained herein shall prohibit the accused party from obtaining
18 an extension of time to file a response, if the commission, its
19 executive director or other authorized representative permits
20 the extension.

21 (d) The commission may cause an investigation to be
22 made into the facts and circumstances giving rise to the com-
23 plaint and any person licensed by the commission has an
24 affirmative duty to assist the commission, or its authorized
25 representative, in the conduct of its investigation.

26 (e) After receiving the licensee's response and reviewing
27 any information obtained through investigation, the commis-
28 sion shall determine if probable cause exists that the licensee
29 has violated any provision of this article or the rules.

30 (f) If a determination that probable cause exists for disci-
31 plinary action, the commission may hold a hearing in compli-
32 ance with section twenty-one of this article or may dispose of
33 the matter informally through a consent agreement or other-
34 wise.

§30-40-21. Hearings; judicial review; cost of proceedings.

1 (a) Hearings shall be conducted in accordance with the
2 provisions of article five, chapter twenty-nine-a of this code
3 and the commission's rules.

4 (b) Hearings shall be held at a time and place determined
5 by the commission, but in no event less than thirty days after
6 the notice of hearing is given.

7 (c) Any member has the authority to administer oaths and
8 to examine any person under oath.

9 (d) If, after hearing, the commission determines the li-
10 censee has violated any provision of this article, or the com-
11 mission's rules, a formal decision shall be prepared which
12 contains findings of fact, conclusions of law and specifically
13 lists the disciplinary actions imposed.

14 (e) The commission may elect to have an administrative
15 law judge or hearing examiner conduct the hearing. If the
16 commission makes this election, the administrative law judge
17 or hearing examiner, at the conclusion of a hearing, shall
18 prepare a proposed order which shall contain findings of fact
19 and conclusions of law. The commission may request that
20 disciplinary actions imposed be a part of the proposed order,

21 or may reserve this obligation for its consideration. The com-
22 mission may accept, reject or modify the decision of the ad-
23 ministrative law judge or hearing examiner.

24 (f) Any person adversely affected by any decision or final
25 order made by the commission, after a hearing, is entitled to
26 judicial review by the circuit court of the county where the
27 hearing was held.

28 (g) In addition to any other sanction imposed, the com-
29 mission may require a licensee to pay the costs of the pro-
30 ceeding.

§30-40-22. Penalties for violations.

1 (a) Any person violating a provision of this article or the
2 commission's rules is guilty of a misdemeanor. Any person
3 convicted of a first violation shall be fined not less than one
4 thousand dollars nor more than two thousand dollars, or con-
5 fined in the county or regional jail not more than ninety days,
6 or both fined and imprisoned;

7 (b) Any person convicted of a second or subsequent vio-
8 lation shall be fined not less than two thousand dollars nor
9 more than five thousand dollars, or confined in the county or
10 regional jail for a term not to exceed one year, or both fined
11 and imprisoned;

12 (c) Any corporation, association or partnership convicted
13 of a first violation of this article or the commission's rules,
14 shall be fined not less than two thousand dollars nor more
15 than five thousand dollars;

16 (d) Any corporation, association or partnership convicted
17 of a second or subsequent violation, shall be fined not less
18 than five thousand dollars nor more than ten thousand dol-
19 lars;

20 (e) Any officer, member, employee or agent of a corpora-
21 tion, association or partnership, shall be subject to the penal-
22 ties herein prescribed for individuals;

23 (f) Each and every day a violation of this article contin-
24 ues shall constitute a separate offense;

25 (g) In addition to the penalties herein provided, if any
26 person receives compensation for acts or services performed
27 in violation of this article, he or she shall also be subject to a
28 penalty of not less than the value of the compensation re-
29 ceived nor more than three times the value of the compensa-
30 tion received, as may be determined by a court of competent
31 jurisdiction. Any penalty may be recovered by a person ag-
32 grieved as a result of a violation of this article.

§30-40-23. Single act evidence of practice.

1 One act by any person in consideration of receiving com-
2 pensation, or with the expectation or intention of receiving
3 such compensation, or upon the promise of receiving com-
4 pensation for any act or service contained in this article shall
5 constitute and consider the person a broker, associate broker
6 or salesperson subject to the provisions of this article.

§30-40-24. Injunctions; criminal proceedings.

1 (a) Whenever the commission or other interested person
2 believes that any person has engaged, is engaging or is about
3 to engage in any act that constitutes a violation of this article,
4 the commission or other interested person may make applica-
5 tion to any court of competent jurisdiction for an order en-
6 joining the acts or services. Upon a showing that the person
7 has engaged in or is about to engage in any act which violates
8 this article, an injunction, restraining order or another appro-
9 priate order may be granted by the court without bond.

10 (b) Whenever the commission, its executive director or
11 its authorized representative has reason to believe that any
12 person has knowingly violated a provision of this article, the
13 commission or its authorized representative may bring its
14 information to the prosecuting attorney in the county where
15 the violation has occurred who shall cause appropriate criminal
16 proceedings to be brought.

17 (c) Whenever any other interested person has reason to
18 believe that any person has knowingly violated a provision of
19 this article, such person may bring its information to the attention
20 of the appropriate law-enforcement officer who may
21 cause an investigation to be made in order for appropriate
22 criminal proceedings to be brought.

§30-40-25. Collection of compensation.

1 No person may bring or maintain any action in any court
2 of this state for the recovery of compensation for the performance
3 of any act or service for which a broker's license is
4 required, without alleging and proving that he or she was the
5 holder of a valid broker's license at all times during the performance
6 or rendering of any act or service: *Provided*, That
7 an associate broker or salesperson shall have the right to
8 institute suit in his or her own name for the recovery of compensation
9 from his or her employing broker for acts or services performed while
10 in the employ of said employing broker.
11 ker.

§30-40-26. Duties of licensees.

1 Every broker, associate broker and salesperson owes
2 certain inherent duties to the consumer which are required by
3 virtue of the commission granting a license under this article.
4 The duties include, but are not limited to:

5 (a) At the time of securing any contract whereby the
6 broker is obligated to represent a principal to a real estate
7 transaction, every licensee shall supply a true legible copy of
8 the contract to each person signing the contract.

9 (b) Any contract in which a broker is obligated to repre-
10 sent a principal to a real estate transaction shall contain a
11 definite expiration date, and no provision may be included in
12 any contract whereby the principal is required to notify the
13 broker of his or her intention to cancel the contract after the
14 definite expiration date.

15 (c) No provision may be inserted in any contract for rep-
16 resentation that would obligate the person signing the con-
17 tract to pay a fee, commission or other valuable consideration
18 to the broker, after the contract's expiration date, if the per-
19 son subsequently enters into a contract for representation
20 with a different broker.

21 (d) Every licensee shall disclose in writing, on the notice
22 of agency relationship form promulgated by the commission,
23 whether the licensee represents the seller, the buyer or both.
24 The disclosure shall be made prior to any person signing any
25 contract for representation by a licensee or a contract for the
26 sale or purchase of real estate.

27 (e) Every licensee shall promptly deliver to his or her
28 principal, every written offer received.

29 (f) Every licensee shall make certain that all the terms
30 and conditions of a real estate transaction are contained in
31 any contract prepared by the licensee.

32 (g) At the time of securing the signature of any party to a
33 contract, the licensee shall deliver a true copy of the contract
34 to the person whose signature was obtained.

35 (h) Upon the final acceptance or ratification of any con-
36 tract, the licensee shall promptly deliver a true copy to each
37 party that has signed the contract.

§30-40-27. Duration of existing licenses.

1 Any valid license issued by the commission to a broker,
2 associate broker or salesperson pursuant to the provisions of
3 article twelve, chapter forty-seven of this code prior to the
4 effective date of this article shall continue to be valid until
5 the thirtieth day of June, two thousand two.

§30-40-28. Continuation of commission.

1 The real estate commission shall continue to exist until
2 the first day of July, two thousand four, pursuant to the provi-
3 sions of article ten, chapter four of this code, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 246

(Com. Sub. for S. B. 115 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elimination of the twenty-year service cap on granting incremental salary increases to eligible state employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

1 (a) Every eligible employee with three or more years of
2 service shall receive an annual salary increase equal to fifty
3 dollars times the employee's years of service. In each fiscal
4 year and on the first day of July, each eligible employee shall
5 receive an annual increment increase of fifty dollars for that
6 fiscal year.

7 (b) Every employee becoming newly eligible as a result
8 of meeting the three years of service minimum requirement
9 on the first day of July in any fiscal year, is entitled to the
10 annual salary increase equal to fifty dollars times the em-
11 ployee's years of service, where he or she has not in a previ-
12 ous fiscal year received the benefit of an increment computa-
13 tion. Thereafter, the employee shall receive a single annual
14 increment increase of fifty dollars for each subsequent fiscal
15 year.

16 (c) These incremental increases are in addition to any
17 across-the-board, cost-of-living or percentage salary in-
18 creases which may be granted in any fiscal year by the Legis-
19 lature.

20 (d) This section shall not be construed to prohibit other
21 pay increases based on merit, seniority, promotion or other
22 reason, if funds are available for the other pay increases:
23 *Provided*, That the executive head of each spending unit shall

24 first grant the mandated increase in compensation in this
25 section to all eligible employees prior to the consideration of
26 any increases based on merit, seniority, promotion or other
27 reason.

CHAPTER 247

(S. B. 639 — By Senators Unger, Fanning, Redd, Kessler, Caldwell, Helmick, Anderson, McCabe, Snyder, Ross, Love, Hunter, Rowe, Burnette, Facemyer, Boley, Minear, Sprouse, Mitchell, Edgell, Prezioso, Plymale, Minard, Oliverio and Sharpe)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five; and to amend and reenact section six, article five-e, chapter twenty-one of said code, all relating to the expenditure of public funds to provide gender-based pay equity generally; providing for a limited gender-based pay equity salary adjustment for state employees; delaying implementation of statutory provisions prohibiting certain gender-based pay discrimination and discrepancies; and requiring equal pay commission and others to assess budgetary or other financial impact on the state if the statutory provisions are implemented and report findings and recommendations to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five; and that sec-

tion six, article five-e, chapter twenty-one 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.

21. Labor.

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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-5. Pay equity adjustment.

1 The Legislature hereby directs that a gender-based pay
2 equity salary adjustment be provided to public employees as
3 determined by the secretary of the department of administra-
4 tion, based on recommendations of the equal pay commis-
5 sion, within the limitations provided by this section. This
6 salary adjustment shall be provided from the funding appro-
7 priated to the department of administration, office of the
8 secretary, for purposes of a "pay equity reserve" in the fiscal
9 year two thousand two and may not be construed to require
10 additional appropriations from the Legislature. If any provi-
11 sion of this section conflicts with any rule, policy or provi-
12 sion of this code, the provisions of this section shall control.
13 Because the provisions of this section are rehabilitative in
14 nature, the results of the pay equity salary adjustments are not
15 subject to the provisions of article six-a, chapter twenty-nine
16 of this code. Further, it is the specific intent of the Legisla-
17 ture that no private cause of action, either express or implied,
18 is created by or otherwise arises from the enactment, provi-
19 sions or implementation of this section.

CHAPTER 21. LABOR.**ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.****§21-5E-6. Commission's duties; promulgation of rules.**

1 (a) The equal pay commission shall study both the meth-
2 odology and funding for the implementation of a gender dis-
3 crimination prohibition and shall prepare reports for submis-
4 sion to the Legislature which include:

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

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

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

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

21 (d) The Legislature finds that it has not fully assessed the
22 potential cost to the state if the provisions of sections three
23 and four of this article are implemented and that those provi-
24 sions should not be implemented until a reasonable estimate
25 of the amount of public funds that may be required for appro-
26 priation and expenditure as a result of the implementation can

27 be calculated. Accordingly, notwithstanding any other provi-
28 sions of this article to the contrary, the provisions of sections
29 three and four of this article shall not become effective until
30 enactment of general law specifically providing an effective
31 date of implementation of those sections. During the interim
32 period between the two thousand two regular session of the
33 Legislature and the two thousand three regular session of the
34 Legislature, the equal pay commission shall, in the manner
35 prescribed by the joint committee on government and fi-
36 nance, meet and consult with the joint standing committee on
37 the judiciary, the joint committee on finance and others as
38 may be prescribed for the purposes of conducting a joint
39 assessment of budgetary or other financial impact on the state
40 if the provisions of sections three and four of this article are
41 implemented. Prior to the two thousand three regular session
42 of the Legislature, those directed to conduct the joint assess-
43 ment shall report their findings to the joint committee on
44 government and finance and, if warranted, report any recom-
45 mendations for the passage of legislation that would effec-
46 tively lessen or eliminate the cost of implementation of sec-
47 tions three and four of this article in a manner that is consis-
48 tent with achieving the purposes for which this article was
49 initially enacted.

CHAPTER 248

(S. B. 592 — By Senator Plymale)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to the definition of the word “plan” in the public employees insurance act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) “Agency” means the public employees insurance
5 agency created by this article.

6 (2) “Director” means the director of the public employees
7 insurance agency created by this article.

8 (3) “Employee” means any person, including elected
9 officers, who works regularly full time in the service of the
10 state of West Virginia and, for the purpose of this article
11 only, the term “employee” also means any person, including
12 elected officers, who works regularly full time in the service
13 of a county board of education; a county, city or town in the
14 state; any separate corporation or instrumentality established
15 by one or more counties, cities or towns, as permitted by law;
16 any corporation or instrumentality supported in most part by
17 counties, cities or towns; any public corporation charged by
18 law with the performance of a governmental function and
19 whose jurisdiction is coextensive with one or more counties,
20 cities or towns; any comprehensive community mental health
21 center or comprehensive mental retardation facility estab-

22 lished, operated or licensed by the secretary of health and
23 human resources pursuant to section one, article two-a, chap-
24 ter twenty-seven of this code and which is supported in part
25 by state, county or municipal funds; any person who works
26 regularly full time in the service of the university of West
27 Virginia board of trustees or the board of directors of the
28 state college system; and any person who works regularly full
29 time in the service of a combined city-county health depart-
30 ment created pursuant to article two, chapter sixteen of this
31 code. On and after the first day of January, one thousand nine
32 hundred ninety-four, and upon election by a county board of
33 education to allow elected board members to participate in
34 the public employees insurance program pursuant to this
35 article, any person elected to a county board of education
36 shall be considered to be an "employee" during the term of
37 office of the elected member: *Provided*, That the elected
38 member shall pay the entire cost of the premium if he or she
39 elects to be covered under this article. Any matters of doubt
40 as to who is an employee within the meaning of this article
41 shall be decided by the director.

42 On or after the first day of July, one thousand nine hun-
43 dred ninety-seven, a person shall be considered an "em-
44 ployee" if that person meets the following criteria:

45 (i) Participates in a job-sharing arrangement as defined in
46 section one, article one, chapter eighteen-a of this code;

47 (ii) Has been designated, in writing, by all other partici-
48 pants in that job-sharing arrangement as the "employee" for
49 purposes of this section; and

50 (iii) Works at least one third of the time required for a
51 full-time employee.

52 (4) “Employer” means the state of West Virginia, its
53 boards, agencies, commissions, departments, institutions or
54 spending units; a county board of education; a county, city or
55 town in the state; any separate corporation or instrumentality
56 established by one or more counties, cities or towns, as per-
57 mitted by law; any corporation or instrumentality supported
58 in most part by counties, cities or towns; any public corpora-
59 tion charged by law with the performance of a governmental
60 function and whose jurisdiction is coextensive with one or
61 more counties, cities or towns; any comprehensive commu-
62 nity mental health center or comprehensive mental retarda-
63 tion facility established, operated or licensed by the secretary
64 of health and human resources pursuant to section one, article
65 two-a, chapter twenty-seven of this code and which is sup-
66 ported in part by state, county or municipal funds; and a com-
67 bined city-county health department created pursuant to arti-
68 cle two, chapter sixteen of this code. Any matters of doubt as
69 to who is an “employer” within the meaning of this article
70 shall be decided by the director. The term “employer” does
71 not include within its meaning the national guard.

72 (5) “Finance board” means the public employees insur-
73 ance agency finance board created by this article.

74 (6) “Person” means any individual, company, associa-
75 tion, organization, corporation or other legal entity, includ-
76 ing, but not limited to, hospital, medical or dental service
77 corporations; health maintenance organizations or similar
78 organization providing prepaid health benefits; or individuals
79 entitled to benefits under the provisions of this article.

80 (7) “Plan”, unless the context indicates otherwise, means
81 the medical indemnity plan, the managed care plan option or
82 the group life insurance plan offered by the agency.

83 (8) "Retired employee" means an employee of the state
84 who retired after the twenty-ninth day of April, one thousand
85 nine hundred seventy-one, and an employee of the university of
86 West Virginia board of trustees or the board of directors of the
87 state college system or a county board of education who retires
88 on or after the twenty-first day of April, one thousand nine
89 hundred seventy-two, and all additional eligible employees who
90 retire on or after the effective date of this article, meet the
91 minimum eligibility requirements for their respective state
92 retirement system and whose last employer immediately prior
93 to retirement under the state retirement system is a participating
94 employer: *Provided*, That for the purposes of this article, the
95 employees who are not covered by a state retirement system
96 shall, in the case of education employees, meet the minimum
97 eligibility requirements of the state teachers retirement system
98 and in all other cases, meet the minimum eligibility require-
99 ments of the public employees retirement system.

CHAPTER 249

**(H. B. 4136 — By Delegates Douglas, Kuhn, Butcher,
Flanigan, Manchin, Border and Walters)**

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and twenty-seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public employees insurance agency; deleting outdated language concerning advisory board; deleting severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of public employees insurance agency; 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.

§5-16-27. Continuation.

§5-16-3. Composition of public employees insurance agency; 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.

1 (a) The public employees insurance agency consists of the
2 director, the finance board, the advisory board and any employ-
3 ees who may be authorized by law. The director shall be
4 appointed by the governor, with the advice and consent of the
5 Senate. He or she shall serve at the will and pleasure of the
6 governor, unless earlier removed from office for cause as
7 provided by law. The director shall have at least three years'
8 experience in health insurance administration prior to appoint-
9 ment as director. The director shall receive actual expenses
10 incurred in the performance of official business. The director
11 shall employ such administrative, technical and clerical
12 employees that are required for the proper administration of the
13 insurance programs provided for in this article. The director
14 shall perform the duties that are required of him or her under
15 the provisions of this article and is the chief administrative
16 officer of the public employees insurance agency. The director
17 may employ a deputy director.

18 (b) All positions in the agency, except for the director, his
19 or her personal secretary, the deputy director and the chief
20 financial officer shall be included in the classified service of the
21 civil service system pursuant to article six, chapter twenty-nine

22 of this code. Any person required to be included in the classi-
23 fied service by the provisions of this subsection who was
24 employed in any of the positions included in this subsection on
25 or after the effective date of this article shall not be required to
26 take and pass qualifying or competitive examinations upon or
27 as a condition to being added to the classified service: *Pro-*
28 *vided*, That no person required to be included in the classified
29 service by the provisions of this subsection who was employed
30 in any of the positions included in this subsection as of the
31 effective date of this section shall be thereafter severed,
32 removed or terminated in his or her employment prior to his or
33 her entry into the classified service except for cause as if the
34 person had been in the classified service when severed, re-
35 moved or terminated.

36 (c) The director is responsible for the administration and
37 management of the public employees insurance agency as
38 provided for in this article and in connection with his or her
39 responsibility may make all rules necessary to effectuate the
40 provisions of this article. Nothing in section four or five of this
41 article limits the director's ability to manage on a day-to-day
42 basis the group insurance plans required or authorized by this
43 article, including, but not limited to, administrative contracting,
44 studies, analyses and audits, eligibility determinations, utiliza-
45 tion management provisions and incentives, provider negotia-
46 tions, provider contracting and payment, designation of covered
47 and noncovered services, offering of additional coverage
48 options or cost containment incentives, pursuit of coordination
49 of benefits and subrogation, or any other actions which would
50 serve to implement the plan or plans designed by the finance
51 board.

§5-16-27. Continuation.

1 The public employees insurance agency shall continue to
2 exist, pursuant to article ten, chapter four of this code, until the
3 first day of July, two thousand three, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 250

(S. B. 738 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the permissible appropriation of moneys from the public employees insurance reserve fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. FINANCE DIVISION.

§5A-2-14a. Reserves for the public employees insurance programs.

1 (a) There is hereby continued a special revenue account in
2 the state treasury, designated the "Public Employees Insurance
3 Reserve Fund", which is an interest-bearing account and may
4 be invested in accordance with the provisions of article six,
5 chapter twelve of this code, with the interest income a proper
6 credit to the fund.

7 (b) The fund shall consist of moneys appropriated by the
8 Legislature and moneys transferred annually pursuant to the
9 provisions of subsection (c) of this section. These moneys shall
10 be held in reserve and appropriated by the Legislature only for
11 the support of the programs provided by the public employees

12 insurance agency: *Provided*, That in only the fiscal year
13 beginning the first day of July, two thousand two, and in each
14 of the next two fiscal years thereafter, and ending on the
15 thirtieth day of June, two thousand five, the moneys held in the
16 fund may be appropriated to the bureau of medical services of
17 the department of health and human resources.

18 (c) Annually each state agency, except for the higher
19 education central office created in article four, chapter eight-
20 teen-b of this code; the higher education governing boards as
21 defined in articles two and three of said chapter; and the state
22 institutions of higher education as defined in section two, article
23 one of said chapter shall transfer one percent of its annualized
24 expenditures from state funds, excluding federal funds based on
25 filled full-time equivalents as determined by the state budget
26 office as of the first day of April for that fiscal year, to the
27 public employees insurance reserve fund. The secretary may
28 exempt that transfer only upon a showing by the requesting
29 agency that the continued operation of that agency is dependent
30 upon receipt of the exemption.

31 (d) Annually the secretary shall provide a report to the
32 governor and the Legislature on the amount of reserves estab-
33 lished pursuant to the provisions of this section, the number of
34 exemptions granted and the agencies receiving those exemp-
35 tions.

CHAPTER 251

(Com. Sub. for H. B. 4012 — By Mr. Speaker,
Mr. Kiss, and Delegate Michael)

[Passed February 12, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring all new employees of the state, a state institution of higher education or the higher education policy commission and others hired after a certain date to be paid one pay cycle in arrears.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; new employees paid in arrears; effective date.

1 All full-time and part-time salaried and hourly officials,
2 officers and employees of the state, state institutions of higher
3 education and the higher education policy commission shall be
4 paid twice per month, and under the same procedures and in the
5 same manner as the state auditor currently pays agencies:
6 *Provided*, That on and after the first day of July, two thousand
7 two, all new officials, officers and employees of the state, a
8 state institution of higher education and the higher education
9 policy commission, statutory officials, contract educators with
10 higher education and any exempt official who does not earn
11 annual and sick leave, except elected officials, shall be paid one
12 pay cycle in arrears. The term new employee does not include
13 an employee who transfers from one state agency, a state
14 institution of higher education or the higher education policy
15 commission to another state agency, another state institution of
16 higher education or the higher education policy commission
17 without a break in service. Nothing contained in this section is
18 intended to increase or diminish the salary or wages of any
19 official, officer or employee.

CHAPTER 252

(Com. Sub. for S. B. 409 — By Senators Chafin, Redd and Fanning)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the chief inspector, pursuant to his or her statutory supervision of local government offices in the state, to transfer an amount not to exceed four hundred thousand dollars to the special operating fund in the securities division of the auditor's office; and establishing a date certain by which such amount or amounts must be transferred.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 (a) The cost of any service or act performed by the chief
2 inspector under the provisions of this article as to any county or
3 district office, officer or institution shall be paid by the county
4 commission of the county; the cost of any service or act to any
5 board of education shall be paid by the board; the cost of any
6 service or act to any municipal corporation shall be paid by the
7 authorities of the municipal corporation: *Provided*, That in

8 municipalities in which the total revenue from all taxes does not
9 exceed the sum of two thousand dollars annually, the cost
10 including the per diem and all actual costs and expenses of the
11 services shall not exceed the sum of sixty dollars. The cost of
12 this service shall be the actual cost and expense of the service
13 performed, including transportation, hotel, meals, materials, per
14 diem compensation of deputies, assistants, clerical help and the
15 other costs that are necessary to enable them to perform the
16 services required, but the costs shall not exceed the sum of two
17 thousand dollars for services rendered to a Class III or a Class
18 IV municipality: *Provided, however,* That the chief inspector
19 may charge up to an additional two thousand dollars for costs
20 incurred for each service or act performed for a utility or park
21 system owned by a Class III or Class IV municipality: *Provided*
22 *further,* That if a municipality is required to undergo a single
23 audit by the federal agency or agencies making a grant, the cost
24 limitations of this subsection do not apply: *And provided*
25 *further,* That the chief inspector shall provide a written quote
26 for all costs in advance for all services required by this article.
27 The chief inspector shall render to the agency liable for the cost
28 a statement of the cost as soon after the cost was incurred as
29 practicable and the agency shall allow the cost and cause it to
30 be paid promptly in the manner that other claims and accounts
31 are allowed and paid and the total amount constitutes a debt
32 against the local agency due the state. Whenever there is in the
33 state treasury a sum of money due any county commission,
34 board of education or municipality from any source, upon the
35 application of the chief inspector, the sum shall be at once
36 applied on the debt against the county commission, board of
37 education or municipality and the fact of the application of the
38 fund shall be reported by the auditor to the county commission,
39 board of education or municipality, which report shall be a
40 receipt for the amount named in the report. All money received
41 by the chief inspector from this source shall be paid into the
42 state treasury, shall be deposited to the credit of an account to

43 be known as chief inspector's fund and shall be expended only
44 for the purpose of covering the cost of the services, unless
45 otherwise directed by the Legislature. The cost of any examina-
46 tion, service or act by the chief inspector made necessary, or the
47 part thereof that was made necessary, by the willful fault of any
48 officer or employee, may be recovered by the chief inspector
49 from that person, on motion, on ten days' notice in any court
50 having jurisdiction.

51 (b) For the purpose of permitting payments to be made at
52 definite periods to deputy inspectors and assistants for per diem
53 compensation and expenses, there is hereby created a revolving
54 fund for the chief inspector's office. The fund shall be accumu-
55 lated and administered as follows:

56 (1) There shall be appropriated from the state general
57 revenue fund the sum of twenty-five thousand dollars to be
58 transferred to this fund to create a revolving fund which,
59 together with other payments into this fund as provided in this
60 article, shall constitute a fund to defray the cost of this service;

61 (2) Payments received for the cost of services of the chief
62 inspector's office and interest earned on the invested balance of
63 the chief inspector's revolving fund shall be deposited into this
64 revolving fund, which shall be known as the chief inspector's
65 fund;

66 (3) Any appropriations made to this fund may not be
67 considered to have expired at the end of any fiscal period; and

68 (4) The chief inspector may transfer an amount not to
69 exceed four hundred thousand dollars from the chief inspector's
70 fund to the special operating fund created in article four,
71 chapter thirty-two of this code: *Provided*, That any transfers
72 shall be completed prior to the first day of July, two thousand
73 three.

CHAPTER 253

(Com. Sub. for S. B. 561 — By Senators Oliverio, Unger,
Anderson, Burnette, Craigo, Kessler, McCabe,
Redd, Ross, Sharpe, Boley and Deem)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia small business linked deposit program; providing for linked deposit loans of not more than one percent above the prime interest rate; providing for linked deposits of not less than one percent; suggesting that guaranteed loans be used; and requiring the program to be marketed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

- §12-1A-1. Definitions.
- §12-1A-2. Legislative findings.
- §12-1A-3. Limitations on investment in linked deposits.
- §12-1A-4. Applications for loan priority; loan package; counseling.
- §12-1A-5. Acceptance or rejection of loan package; deposit agreement for linked deposits.
- §12-1A-6. Certification and monitoring of compliance; accountability and reporting.
- §12-1A-7. Liability of state.
- §12-1A-8. Penalties for violation of article.
- §12-1A-9. Effective dates.

§12-1A-1. Definitions.

1 (a) “Treasurer” means the West Virginia treasurer’s office.

2 (b) “Eligible small business” means any business that: (1)
3 Employs fifty or fewer employees and has gross annual receipts
4 of five million dollars or less; (2) is headquartered in this state;
5 (3) is organized for profit; and (4) complies with the terms and
6 conditions of this article regarding eligibility.

7 (c) “Eligible lending institution” means a financial institu-
8 tion that is eligible to make commercial loans, is a public
9 depository of state funds and agrees to participate in the linked
10 deposit program and comply with its terms and conditions.

11 (d) “Linked deposit” means a certificate of deposit placed
12 by the treasurer with an eligible lending institution that agrees
13 to lend a linked deposit loan to an eligible small business. The
14 amount of the certificate of deposit is equal to the amount of the
15 linked deposit loan at an interest rate of three percent below the
16 current market rate as determined and calculated by the
17 treasurer, but in no event may the interest rate on the certificate
18 of deposit be less than one percent. The linked deposit may be
19 placed with the eligible lending institution for up to four years
20 depending upon whether the small business remains eligible for
21 the program. On an annual date, as determined by the treasurer,
22 the rate paid to the treasurer shall be recomputed based upon
23 the current market rate.

24 (e) “Linked deposit loan” means a loan between an eligible
25 lending institution and an eligible small business for an amount
26 not to exceed one hundred fifty thousand dollars at a rate of not
27 more than one percent above the prime interest rate as pub-
28 lished by the wall street journal on the date the eligible lending
29 institution submits the loan package to the treasurer. In ex-
30 change for providing this reduced rate loan, the eligible lending
31 institution receives a linked deposit. On an annual date, as

32 determined by the treasurer, the rate charged to the eligible
33 small business may be recomputed but shall not exceed the
34 prime interest rate plus one percent. The linked deposit loan
35 may be part of a comprehensive loan package, including
36 guaranteed loans by the United States small business adminis-
37 tration, or other federal or state agency providing a partial or
38 full guarantee against loss to the eligible lending institution.

39 (f) “Small business development center” means the West
40 Virginia small business development center, a division of the
41 West Virginia development office.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses through-
2 out the state are experiencing economic stagnation or decline,
3 that high interest rates have caused small businesses in this state
4 to suffer disproportionately in profitability and competition and
5 that high interest rates have fostered a serious increase in
6 unemployment. The linked deposit program provided for by
7 this article is intended to provide a statewide availability of
8 lower cost funds for lending purposes that will materially
9 contribute to the economic revitalization of this state. Accord-
10 ingly, it is declared to be the public policy of the state through
11 the small business linked deposit program in conjunction with
12 various guaranteed loan programs to create an availability of
13 lower-cost funds to inject needed capital into the small business
14 community, sustain or improve business profitability, provide
15 greater incentives to lending institutions to lend funds to small
16 businesses and protect the jobs of citizens of this state. The
17 Legislature further finds that the involvement of both the
18 treasurer in facilitating the deposit of funds for the program and
19 the small business development center in determining which
20 businesses meet the eligibility requirements of the linked
21 deposit program is necessary in order for state funds to be used
22 in the most effective manner possible in assisting small

23 businesses throughout the state and thereby maximizing the
24 impact of the program.

§12-1A-3. Limitations on investment in linked deposits.

1 The treasurer shall invest in linked deposits. The total
2 amount deposited at any one time shall not exceed, in the
3 aggregate, twenty million dollars.

4 When deciding how much to invest in linked deposits, the
5 treasurer shall give priority to the investment, liquidity and cash
6 flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

1 (a) An eligible lending institution that desires to participate
2 in the linked deposit program shall accept and review loan
3 applications from eligible small businesses that have been
4 prepared with the advice of the small business development
5 center. The lending institution shall apply all usual lending
6 standards to determine the credit worthiness of each eligible
7 small business and whether the loan application meets the
8 criteria established in this article.

9 (b) An eligible small business shall certify on its loan
10 application that: (1) The small business is in good standing with
11 the state tax division and the bureau of employment programs
12 as of the date of the application; (2) the linked deposit loan will
13 be used to create new jobs or preserve existing jobs and
14 employment opportunities; and (3) the linked deposit loan shall
15 not be used to refinance an existing debt.

16 (c) In considering which eligible small businesses should
17 receive linked deposit loans, the eligible lending institution

18 shall give priority to the economic needs of the area in which
19 the business is located, the number of jobs to be created and
20 preserved by the receipt of the loan, the reasonable ability of the
21 small business to repay the loan and other factors considered
22 appropriate by the eligible financial institution.

23 (d) A small business receiving a linked deposit loan shall
24 receive supervision and counseling provided by the small
25 business development center when applying for the loan. The
26 services available from the small business development center
27 include eligibility certification, business planning, quarterly
28 financial statement review and loan application assistance. The
29 state tax division and the bureau of employment programs shall
30 provide the small business development center with information
31 as to the standing of each small business loan applicant. The
32 small business development center shall include these certifica-
33 tions with the loan application.

34 (e) The eligible financial institution shall forward to the
35 treasurer a linked deposit loan package, in the form and manner
36 prescribed by the treasurer. The treasurer shall forward notice
37 of approval of the loan to the small business development
38 center at the same time it is furnished to the eligible financial
39 institution.

**§12-1A-5. Acceptance or rejection of loan package; deposit
agreement for linked deposits.**

1 (a) The treasurer may accept or reject a linked deposit loan
2 package or any portion of a package based on the criteria
3 prescribed by this article.

4 (b) Upon acceptance of the linked deposit loan package, the
5 treasurer shall place a linked deposit with the lending institu-
6 tion.

7 (c) The eligible lending institution shall enter into a deposit
8 agreement with the treasurer in a form prescribed by the
9 treasurer and in compliance with the requirements of this
10 article.

**§12-1A-6. Certification and monitoring of compliance; account-
ability and reporting.**

1 (a) Upon the placement of a linked deposit with an eligible
2 lending institution, the institution shall lend the funds to the
3 approved eligible small business listed in the linked deposit
4 loan package. A certification of compliance with this section
5 shall be sent to the small business development center and the
6 treasurer by the eligible lending institution.

7 (b) As a condition of remaining in good standing with the
8 lending institution and the state and as a condition of having the
9 loan renewed for up to four years, the loan recipient shall
10 receive supervision and counseling provided by the small
11 business development center. Eligible small businesses shall
12 also grant the lending institution the right to provide informa-
13 tion on the status of the loan to the small business development
14 center so as to assist the small business.

15 (c) The small business development center and the treasurer
16 shall take any and all steps necessary to implement, advertise
17 and monitor compliance with the linked deposit program.

18 (d) By the thirty-first day of January of each year, the small
19 business development center shall report on the linked deposit

20 program for the preceding calendar year to the West Virginia
21 development office, which shall then report to the joint commit-
22 tee on government and finance. The reports shall set forth the
23 name of the small business, terms, delinquency and default
24 rates, job growth, gross income evaluation and amounts of the
25 loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

1 The state, the treasurer and the small business development
2 center are not liable to any eligible lending institution in any
3 manner for payment of the principal or interest on the loan to an
4 eligible small business. Any delay in payment or default on the
5 part of an eligible small business does not in any manner affect
6 the deposit agreement between the eligible lending institution
7 and the treasurer.

§12-1A-8. Penalties for violation of article.

1 (a) Any person who knowingly makes a false statement
2 concerning an application or violates another provision of this
3 article is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than one hundred nor more than five
5 hundred dollars or confined in the county or regional jail not
6 less than one month nor more than one year.

7 (b) In addition to the criminal penalties provided in this
8 section, no person who is convicted of a violation of subsection
9 (a) of this section is eligible to participate in the linked deposit
10 program.

§12-1A-9. Effective dates.

1 This article shall be effective from the first day of July, two
2 thousand one, through the first day of July, two thousand six.

CHAPTER 254

(S. B. 413 — By Senator Sharpe)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-d, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that interest or other return earned be deposited in the special revenue revolving fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10d. Purchasing card fund created; expenditures.

1 All money received by the state pursuant to any agreement
2 with vendors providing purchasing charge cards, and any
3 interest or other return earned on the money, shall be deposited
4 in a special revenue revolving fund, designated the “Purchasing
5 Card Administration Fund”, in the state treasury to be adminis-
6 tered by the auditor. All expenses by the auditor in the imple-
7 mentation and operation of the purchasing card program shall
8 be paid from the fund. Expenditures from the fund shall be
9 made in accordance with appropriations by the Legislature
10 pursuant to the provisions of article three, chapter twelve of this
11 code and upon fulfillment of the provisions of article two,
12 chapter five-a of this code.

CHAPTER 255

(H. B. 3034 — By Mr. Speaker, Mr. Kiss, and
Delegates Michael and Trump)

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-f, relating to requiring that a state spending unit submit a receiving report to the state auditor when issuing a requisition on the auditor in payment of a claim for commodities.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twelve 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-f, to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10f. Receiving report required for commodities received.

1 A receiving report shall be submitted to the state auditor
2 verifying the receipt of commodities by a state spending unit.
3 The receiving report shall be an internally-generated document,
4 either written or prepared using electronic media, that identifies
5 commodities received. Commodities as defined in this section
6 include, but are not limited to, the following: Materials,
7 equipment, supplies, printing and automated data processing
8 hardware and software.

9 The state officer or employee acting as head of each
10 spending unit is responsible for the completion and timely

11 submission of the receiving reports, which shall be prepared at
12 the original point of receipt of the commodities at the spending
13 unit by employees designated by the head of the spending unit
14 to receive the commodities and prepare the receiving reports.
15 The receiving reports shall include, but not be limited to, the
16 following information: Vendor name, description and quantity
17 of commodities received, date commodities are received,
18 whether commodities are acceptable for payment, and a signed
19 acknowledgment of receipt by the employees receiving the
20 commodities. The receiving reports required by this section
21 shall be prepared within twenty-four hours of the receipt of the
22 commodities.

23 The head of a spending unit may not issue a requisition on
24 the state auditor in payment of a claim for commodities
25 received by the spending unit unless the receiving report
26 required by this section accompanies the claim for payment.
27 The spending unit is liable for a debt improperly incurred or for
28 a payment improperly made if the receiving report was not filed
29 with the state auditor as set forth in this section.

30 The state auditor shall propose rules for legislative approval
31 in accordance with provisions of article three, chapter
32 twenty-nine-a of this code, to implement the provisions of this
33 section.

34 No provision of this section shall apply to the West
35 Virginia Legislature.

CHAPTER 256

**(S. B. 737 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Anderson, Edgell,
Unger, McCabe, Boley and Minear)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the secretary of administration to pay travel expenses for visitors; and authorizing the payment of moving expenses for new and transferred employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concerning travel expenses; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.

1 (a) The governor shall promulgate rules concerning
2 out-of-state travel by state officials and employees, except those
3 in the legislative and judicial branches of the state government
4 and except for the attorney general, auditor, secretary of state,
5 treasurer, board of investments, commissioner of agriculture
6 and their employees, the higher education policy commission
7 and the higher education governing boards and institutions
8 under their jurisdiction. The Legislature, supreme court of
9 appeals, attorney general, auditor, secretary of state, treasurer,
10 board of investments, commissioner of agriculture, higher
11 education policy commission and the higher education govern-
12 ing boards shall promulgate rules concerning out-of-state travel
13 for their respective branches and departments of state govern-
14 ment. Copies of the rules shall be filed with the auditor and the

15 secretary of state. It is unlawful for the auditor to issue a
16 warrant in payment of any claim for out-of-state travel expenses
17 incurred by a state officer or employee unless the claim meets
18 all the requirements of the rules filed.

19 (b) Payment for dues or membership in annual or other
20 voluntary organizations shall be made from the proper item or
21 appropriation after an itemized schedule of the organizations,
22 together with the amount of the dues or membership, has been
23 submitted to the budget director and approved by the governor.

24 (c) The secretary of the department of administration, the
25 higher education policy commission or a higher education
26 governing board may authorize the payment of traveling
27 expenses incurred by any person invited to visit a state agency,
28 the campus of any state institution of higher education or any
29 other facility under control of a higher education governing
30 board or the higher education policy commission to be inter-
31 viewed concerning his or her possible employment by a state
32 agency, a higher education governing board, the higher educa-
33 tion policy commission or agent thereof.

34 (d) The secretary of the department of administration, the
35 higher education policy commission or a higher education
36 governing board may authorize payment of: (1) All or part of
37 the reasonable expense incurred by a person newly employed
38 by a state agency, a higher education governing board or the
39 higher education policy commission in moving his or her
40 household furniture, effects and immediate family to his or her
41 place of employment; and (2) all or part of the reasonable
42 expense incurred by an employee of a state agency, a higher
43 education governing board or the higher education policy
44 commission in moving his or her household furniture, effects
45 and immediate family as a result of a reassignment of the
46 employee which is considered desirable, advantageous to and
47 in the best interest of the state: *Provided*, That no part of the
48 moving expenses of any one employee shall be paid more
49 frequently than once in twelve months.

CHAPTER 257

(S. B. 566 — By Senators Tomblin, Mr. President, and Craigo)

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to state funds and accounts; requiring the state treasurer to transfer amounts required by the Legislature from statutorily created funds or accounts; authorizing the treasurer to monitor all state funds and accounts created by the Legislature; and requiring the treasurer to report to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-16. Transfer of specified excess funds.

- 1 (a) The treasurer has authority to monitor all state funds and
- 2 accounts created by the Legislature. The treasurer shall transfer,
- 3 using the state's accounting system, the appropriate amount of
- 4 excess funds whenever the Legislature has:

5 (1) Created a fund or account and provided that only a
6 specified amount is allowed to remain in the fund or account
7 from one fiscal year to another, or other specified period; and

8 (2) Required that excess amounts are to revert or be
9 deposited into the general revenue fund, school fund or other
10 specified fund or account.

11 (b)(1) If a statutory provision provides that only a specified
12 amount is allowed to remain in a fund from one fiscal year to
13 another, the treasurer shall transfer the excess amount, as of the
14 date specified by the provision, no later than the fifteenth day
15 of August of each year and give written notice of the transfer to
16 all spending units that are authorized to use the fund or account.

17 (2) If a statutory provision provides for the transfer of
18 excess amounts at a time other than the end of a fiscal year, the
19 treasurer shall transfer the specified excess amounts within
20 fifteen days of the time provided.

21 (c) The treasurer shall file quarterly reports with the joint
22 committee on government and finance setting forth the accounts
23 and funds from which excess funds were transferred and the
24 amounts transferred.

CHAPTER 258

**(Com. Sub. for H. B. 4021 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article eight, chapter twelve of said code; and to amend and reenact section five of said article, all relating to repealing the requirement for a judicial determination that the issuance of bonds under the pension liability redemption act and the provisions of the act are in compliance with the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article eight, chapter twelve be amended and reenacted; and that section five of said article be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

- 1 (a) Notwithstanding any other provision of this code and
- 2 pursuant to section four, article ten of the constitution of West
- 3 Virginia, the governor shall have the power, as provided by this
- 4 article, to issue the bonds authorized in this section at a time or
- 5 times as provided by a resolution adopted by the Legislature to
- 6 redeem a previous liability of the state by funding all or a
- 7 portion of the unfunded actuarial accrued liability, such bonds

8 to be payable from and secured by moneys deposited in the
9 pension liability redemption fund. Any bonds issued pursuant
10 to this article, other than refunding bonds, shall be issued no
11 later than five years after the date of adoption of the resolution
12 of the Legislature authorizing the issuance of the bonds referred
13 to in this section.

14 (b) The aggregate principal amount of bonds issued
15 pursuant to the provisions of this article is limited to no more
16 than the lesser of the following: (1) The principal amount
17 necessary, after deduction of costs, underwriter's discount and
18 original issue discount, if any, to fund not in excess of one
19 hundred percent of the unfunded actuarial accrued liability of
20 the death, disability and retirement fund of the department of
21 public safety established in article two, chapter fifteen of this
22 code, one hundred percent of the unfunded actuarial accrued
23 liability of the judges' retirement system established in article
24 nine, chapter fifty-one of this code, and ninety-five percent of
25 the unfunded actuarial accrued liability of the teachers retire-
26 ment system established in article seven-a, chapter eighteen of
27 this code, as certified by the consolidated public retirement
28 board to the department of administration pursuant to subsec-
29 tion (e) of this section; or (2) three billion nine hundred million
30 dollars; but in no event shall the aggregate principal amount of
31 bonds issued exceed the principal amount necessary, after
32 deduction of costs, underwriter's discount and original issue
33 discount, if any, to fund not in excess of the total unfunded
34 actuarial accrued liability, as certified by the consolidated
35 public retirement board to the department of administration
36 pursuant to subsection (e) of this section.

37 (c) The costs of issuance, excluding fees for bond insur-
38 ance, credit enhancements and liquidity facilities, plus under-

39 writer's discount and any other costs associated with the
40 issuance shall not exceed, in the aggregate, the sum of one
41 percent of the aggregate principal amount of bonds issued. All
42 such costs shall be subject to the review and approval of a
43 majority of the members of a review committee. The review
44 committee shall consist of two members appointed by the
45 governor from a list of three persons submitted by the president
46 of the Senate; two members appointed by the governor from a
47 list of three persons submitted by the speaker of the House of
48 Delegates; the state treasurer; and four persons having skill and
49 experience in bond issuance, appointed by the governor.

50 (d) The limitation on the aggregate principal amount of
51 bonds provided in this section shall not preclude the issuance of
52 bonds from time to time or in one or more series.

53 (e) No later than ten days after receipt of a request from the
54 department of administration, the consolidated public retire-
55 ment board shall provide the department of administration with
56 a certified statement of the amount of each pension system's
57 unfunded actuarial accrued liability calculated in an actuarial
58 valuation report that establishes the amount of the unfunded
59 actuarial accrued liability as of a date specified by the depart-
60 ment of administration, based upon each pension system's most
61 recent actuarial valuation.

62 (f) No later than fifteen days after receipt of a request from
63 the governor, the department of administration shall provide the
64 governor with a certification of the maximum aggregate
65 principal amount of bonds that may be issued at that time
66 pursuant to subsection (b) of this section.

67 (g) Prior to any request of the governor that the Legislature
68 prepare and consider a resolution authorizing the issuance of
69 bonds, the bonds shall be authorized by a majority of the

70 members of the review committee described in subsection (c)
71 of this section.

**§12-8-5. Method of bond issuance; manner of sale of bonds;
authority of department of administration.**

1 (a) The governor shall, by executive message, request the
2 Legislature prepare and consider a resolution authorizing the
3 issuance of bonds described in section four of this article. The
4 executive message shall specify the maximum costs associated
5 with the issue. Upon the adoption of a resolution by the
6 Legislature authorizing the issuance of the bonds in the amount
7 and upon the terms specified in the resolution, the bonds shall
8 be authorized by an executive order issued by the governor. The
9 executive order shall be received by the secretary of state and
10 filed in the state register pursuant to section three, article two,
11 chapter twenty-nine-a of this code. The governor, either in the
12 executive order authorizing the issuance of the bonds or by the
13 execution and delivery by the governor of a trust indenture or
14 agreement authorized in such executive order, shall stipulate the
15 form of the bonds, whether the bonds are to be issued in one or
16 more series, the date or dates of issue, the time or times of
17 maturity, which shall not exceed the longest remaining term of
18 the current amortization schedules for the unfunded actuarial
19 accrued liability, the rate or rates of interest payable on the
20 bonds, which may be at fixed rates or variable rates and which
21 interest may be current interest or may accrue, the denomina-
22 tion or denominations in which the bonds are issued, the
23 conversion or registration privileges applicable to some or all
24 of the bonds, the sources and medium of payment and place or
25 places of payment, the terms of redemption, any privileges of
26 exchangeability or interchangeability applicable to the bonds,
27 and the entitlement of obligation holders to priorities of
28 payment or security in the amounts deposited in the pension

29 liability redemption fund. Bonds shall be signed by the gover-
30 nor and attested by the secretary of state, by either manual or
31 facsimile signatures. The governor shall not sign the bonds
32 unless he shall first make a written finding, which shall be
33 transmitted to the state treasurer, the secretary of state, the
34 speaker of the House of Delegates and the president of the
35 Senate, that: (i) The true interest cost of the bonds is at least
36 thirty basis points less than the assumed actuarial interest rate
37 used to calculate the unfunded actuarial accrued liability; and
38 (ii) that the issuance of the bonds will not in any manner cause
39 a down grade or reduction in the state's general obligation
40 credit rating by standard bond rating agencies.

41 (b) The bonds may be sold at public or private sale at a
42 price or prices determined by the governor. The governor is
43 authorized to enter into any agreements necessary or desirable
44 to effectuate the purposes of this section, including agreements
45 to sell bonds to any person and to comply with the laws of any
46 jurisdiction relating thereto.

47 (c) The governor, in the executive order authorizing the
48 issuance of bonds or by the execution and delivery by the
49 governor of a trust indenture or agreement authorized in such
50 executive order, may covenant as to the use and disposition of
51 or pledge of funds made available for pension liability redemp-
52 tion payments or any reserve funds established pursuant to such
53 executive order or established pursuant to any indenture
54 authorized by such executive order. All costs may be paid by or
55 upon the order of the governor from amounts received from the
56 proceeds of the bonds and from amounts received pursuant to
57 section eight of this article.

58 (d) Bonds may be issued by the governor upon resolution
59 adopted by the Legislature authorizing the same.

60 (e) Neither the governor, the secretary of state, nor any
61 other person executing or attesting the bonds or any agreement
62 authorized in this article shall be personally liable with respect
63 to payment of any pension liability redemption payments.

64 (f) Notwithstanding any other provision of this code, and
65 subject to the approval of the review committee, the department
66 of administration, in the department's discretion: (i) Shall
67 select, employ and compensate one or more persons or firms to
68 serve as bond counsel or cobond counsel who shall be responsi-
69 ble for the issuance of a final approving opinion regarding the
70 legality of the bonds issued pursuant to this article; (ii) may
71 select, employ and compensate one or more persons or firms to
72 serve as underwriter or counderwriter for any issuance of bonds
73 pursuant to this article; and (iii) may select, employ and
74 compensate one or more fiduciaries, financial advisors and
75 experts, other legal counsel, placement agents, appraisers,
76 actuaries and such other advisors, consultants and agents as
77 may be necessary to effectuate the purposes of this article.
78 Notwithstanding the provisions of article three, chapter five of
79 this code, bond counsel may represent the state in court, render
80 advice and provide other legal services as may be requested by
81 the governor or the department of administration regarding any
82 bond issuance pursuant to this article and all other matters
83 relating to the bonds.

84 (g) Notwithstanding any other provision of this code, and
85 subject to the approval of the review committee, the state
86 treasurer, in the state treasurer's discretion shall select, employ
87 and compensate an independent person or firm to serve as
88 special counsel to the state treasurer to advise the state treasurer
89 with respect to the state treasurer's duties pursuant to this
90 article.

CHAPTER 259

(H. B. 4511 — By Delegates Douglas, Kuhn, Butcher and Perdue)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of protective services; defining certification requirements of members of the division; and eliminating certain rule-making requirements of the director.

Be it enacted by the Legislature of West Virginia:

That section three, article two-d, 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 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and supervi-
2 sion of the division. The director and any officer of the division
3 specified by the director may carry designated weapons and
4 have the same powers of arrest and law enforcement in
5 Kanawha County as members of the West Virginia state police
6 as set forth in subsections (b) and (d), section twelve, article
7 two of this chapter.

8 (b) Any officer of the division shall be certified as a law-
9 enforcement officer by the governor's committee on crime,
10 delinquency and correction or may be conditionally employed

11 as a law-enforcement officer until certified in accordance with
12 the provisions of section five, article twenty-nine, chapter thirty
13 of the code of West Virginia, one thousand nine hundred thirty-
14 one, as amended.

15 (c) The director may:

16 (1) Employ necessary personnel, all of whom shall be
17 classified exempt, assign them the duties necessary for the
18 efficient management and operation of the division, and specify
19 members who may carry, without license, weapons designated
20 by the director;

21 (2) Contract for security and other services;

22 (3) Purchase equipment as necessary to maintain security
23 at the capitol complex and other state facilities as may be
24 determined by the secretary of the department of military affairs
25 and public safety;

26 (4) Establish and provide standard uniforms, arms, weapons
27 and other enforcement equipment authorized for use by
28 members of the division and shall provide for the periodic
29 inspection of the uniforms and equipment. All uniforms, arms,
30 weapons and other property furnished to members of the
31 division by the state of West Virginia is and remains the
32 property of the state;

33 (5) Appoint security officers to provide security on pre-
34 mises owned or leased by the state of West Virginia;

35 (6) Upon request by the superintendent of the West Virginia
36 state police, provide security for the speaker of the West
37 Virginia House of Delegates, the president of the West Virginia
38 Senate, the governor, or a justice of the West Virginia supreme
39 court of appeals;

40 (7) Gather information from a broad base of employees at
41 and visitors to the capitol complex to determine their security
42 needs and develop a comprehensive plan to maintain and
43 improve security at the capitol complex based upon those
44 needs; and

45 (8) Assess safety and security needs and make recommen-
46 dations for safety and security at any proposed or existing state
47 facility as determined by the secretary of the department of
48 military affairs and public safety, upon request of the secretary
49 of the department to which the facility is or will be assigned.

50 (d) The director shall:

51 (1) On or before the first day of July, one thousand nine
52 hundred ninety-nine, propose legislative rules for promulgation
53 in accordance with the provisions of article three, chapter
54 twenty-nine-a of this code. The rules shall, at a minimum
55 establish ranks and the duties of officers within the membership
56 of the division.

57 (2) On or before the first day of July, one thousand nine
58 hundred ninety-nine, enter into an interagency agreement with
59 the secretary of the department of military affairs and public
60 safety and the secretary of the department of administration,
61 which delineates their respective rights and authorities under
62 any contracts or subcontracts for security personnel. A copy of
63 the interagency agreement shall be delivered to the governor,
64 the president of the West Virginia Senate and the speaker of the
65 West Virginia House of Delegates, and a copy shall be filed in
66 the office of the secretary of state and shall be a public record.

67 (3) Deliver a monthly status report to the speaker of the
68 West Virginia House of Delegates and the president of the West
69 Virginia Senate.

CHAPTER 260

(S. B. 736 — By Senators Craigo, Sharpe, Jackson, Prezioso, Plymale, Love, Helmick, Anderson, Edgell, Unger, McCabe, Boley and Minear)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, 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 four, relating generally to the powers of the public service commission; setting forth legislative findings; authorizing the public service commission to acquire certain properties in its own name; authorizing the public service commission to enter into agreements with other entities concerning the financing and use of the acquisitions; and authorizing the public service commission to use excess moneys from its special revenue funds to pay for the acquisitions.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 four, to read as follows:

ARTICLE 7. HEADQUARTERS.

§24-7-4. Legislative findings; authority to acquire further properties.

- 1 (a) The Legislature hereby finds that the public service
- 2 commission should be authorized to acquire and manage further

3 properties contiguous with its existing property at 201 Brooks
4 street in Charleston, West Virginia, and to make improvements
5 on the property necessary to ensure the efficient operations of
6 the commission's business. Furthermore, the Legislature finds
7 that the public service commission should be given the neces-
8 sary authority to enter into agreements with other entities
9 concerning financing and use of the acquisitions. The Legisla-
10 ture further finds that the commission should be allowed to pay
11 for the acquisitions using excess funds from the special
12 revenues received by the commission pursuant to section six,
13 article three of this chapter and from funds received by the use
14 of the properties.

15 (b) The public service commission may contract to acquire,
16 lease, rent, purchase, own, hold, construct, equip, maintain,
17 operate, sell, encumber and assign rights of any property, real
18 or personal, contiguous with its existing property at 201 Brooks
19 street in Charleston, West Virginia, consistent with the objec-
20 tives of the commission as set forth in this chapter.

21 (c) The public service commission may enter into contracts,
22 agreements or other undertakings with other appropriate entities
23 concerning the financing and use of property acquisitions.

24 (d) The public service commission may pay for property
25 acquisitions and related activities from excess funds obtained
26 from the commission's assessments upon utility gross revenue
27 and property as provided for in section six, article three of this
28 chapter. Furthermore, the commission may receive funds from
29 other entities through the use and management of its properties
30 and use those funds for the payment of the property acquisi-
31 tions. The authority granted to the public service commission
32 by the provision of this section shall expire the thirty-first day
33 of December, two thousand four.

34 (e) Expenditures for any purpose set forth in this section
35 may be made only pursuant to legislative appropriation ex-
36 pressly authorizing by line item expenditure for the specific
37 purpose. Notwithstanding any provision of section eighteen,
38 article two, chapter five-a of this code to the contrary, no
39 increase in the amount of the appropriation may be authorized.

CHAPTER 261

(Com. Sub. for S. B. 608 — By Senator Plymale)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-seven-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-seven-d; to amend and reenact section two, article ten-b of said chapter; to amend and reenact section seven, article ten-d of said chapter; to amend and reenact sections two-a and nine-c, article fourteen-d, chapter seven of said code; to further amend said article by adding thereto a new section, designated section nine-d; to amend article two, chapter fifteen of said code by adding thereto a new section, designated section twenty-five-a; to amend and reenact section forty-six of said article; to amend and reenact sections two and six-c, article two-a of said chapter; to further amend said article by adding thereto a new section, designated section six-d; to amend and reenact sections three and twenty-eight-c, article seven-a, chapter eighteen of said code; to further amend said article by adding thereto a new section, designated section twenty-eight-d; to amend and reenact sections

two and thirteen-b, article seven-b of said chapter; to further amend said article by adding thereto a new section, designated section eleven-a; to amend and reenact sections one-a and twelve-c, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to amending the definition of internal revenue code for the public retirement systems administered by the consolidated public retirement board to comply with federal tax law amendments; increasing the limitation on compensation for benefits or contributions to qualified state retirement systems in accordance with changes in federal limitations; incorporating changes to the direct rollover rules as required by federal law for the public retirement systems which are qualified under Section 401(a) of the Internal Revenue Code; permitting the use of rollovers from IRAs, 401(a) and 457 plans and trustee to trustee transfers from 401(a) plans to the teachers' defined contribution retirement system to repay cashed-out or withdrawn contributions; and permitting the use of rollovers and trustee to trustee transfers to the teachers retirement system, the public employees retirement system, the deputy sheriff retirement system, the judges' retirement system and the state police retirement system from IRA's, 401(a), 403(b) and 457 plans to purchase service credit or repay contributions previously withdrawn which resulted in forfeited service.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-seven-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-seven-d; that section two, article ten-b of said chapter be amended and reenacted; that section seven, article ten-d of said chapter be amended and reenacted; that sections two-a and nine-c, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated

section nine-d; that article two, chapter fifteen of said code be amended by adding thereto a new section, designated section twenty-five-a; that section forty-six of said article be amended and reenacted; that sections two and six-c, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-d; that sections three and twenty-eight-c, article seven-a, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-eight-d; that sections two and thirteen-b, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-a; that sections one-a and twelve-c, article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-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.**
- 7. **County Commissions and Officers.**
- 15. **Public Safety.**
- 18. **Education.**
- 51. **Courts and Their Officers.**

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

Article

- 10. **West Virginia Public Employees Retirement Act.**
- 10B. **Government Employees Deferred Compensation Plans.**
- 10D. **Consolidated Public Retirement Board.**

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

§5-10-27c. Direct rollovers.

§5-10-27d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the
2 context, the following words and phrases as used in this article,
3 have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West Virginia,
12 a county, city or town in the state; a school corporation or
13 corporate unit; any separate corporation or instrumentality
14 established by one or more counties, cities or towns, as permit-
15 ted by law; any corporation or instrumentality supported in
16 most part by counties, cities or towns; and any public corpora-
17 tion charged by law with the performance of a governmental
18 function and whose jurisdiction is coextensive with one or more
19 counties, cities or towns: *Provided*, That any mental health
20 agency participating in the public employees retirement system
21 before the first day of July, one thousand nine hundred
22 ninety-seven, is considered a political subdivision solely for the
23 purpose of permitting those employees who are members of the
24 public employees retirement system to remain members and
25 continue to participate in the retirement system at their option
26 after the first day of July, one thousand nine hundred
27 ninety-seven: *Provided, however*, That the regional community

28 policing institute which participated in the public employees
29 retirement system before the first day of July, two thousand, is
30 considered a political subdivision solely for the purpose of
31 permitting those employees who are members of the public
32 employees retirement system to remain members and continue
33 to participate in the public employees retirement system after
34 the first day of July, two thousand;

35 (5) "Participating public employer" means the state of West
36 Virginia, any board, commission, department, institution or
37 spending unit, and includes any agency created by rule of the
38 supreme court of appeals having full-time employees, which for
39 the purposes of this article is considered a department of state
40 government; and any political subdivision in the state which has
41 elected to cover its employees, as defined in this article, under
42 the West Virginia public employees retirement system;

43 (6) "Employee" means any person who serves regularly as
44 an officer or employee, full time, on a salary basis, whose
45 tenure is not restricted as to temporary or provisional appoint-
46 ment, in the service of, and whose compensation is payable, in
47 whole or in part, by any political subdivision, or an officer or
48 employee whose compensation is calculated on a daily basis
49 and paid monthly or on completion of assignment, including
50 technicians and other personnel employed by the West Virginia
51 national guard whose compensation, in whole or in part, is paid
52 by the federal government: *Provided*, That members of the
53 Legislature, the clerk of the House of Delegates, the clerk of the
54 Senate, employees of the Legislature whose term of employ-
55 ment is otherwise classified as temporary and who are em-
56 ployed to perform services required by the Legislature for its
57 regular sessions or during the interim between regular sessions
58 and who have been or are employed during regular sessions or
59 during the interim between regular sessions in seven consecu-
60 tive calendar years, as certified by the clerk of the house in
61 which the employee served, members of the legislative body of

62 any political subdivision and judges of the state court of claims
63 are considered to be employees, anything contained in this
64 article to the contrary notwithstanding. In any case of doubt as
65 to who is an employee within the meaning of this article, the
66 board of trustees shall decide the question;

67 (7) "Member" means any person who is included in the
68 membership of the retirement system;

69 (8) "Retirant" means any member who retires with an
70 annuity payable by the retirement system;

71 (9) "Beneficiary" means any person, except a retirant, who
72 is entitled to, or will be entitled to, an annuity or other benefit
73 payable by the retirement system;

74 (10) "Service" means personal service rendered to a
75 participating public employer by an employee, as defined in this
76 article, of a participating public employer;

77 (11) "Prior service" means service rendered prior to the first
78 day of July, one thousand nine hundred sixty-one, to the extent
79 credited a member as provided in this article;

80 (12) "Contributing service" means service rendered by a
81 member within this state and for which the member made
82 contributions to a public retirement system account of this state,
83 to the extent credited him or her as provided by this article. This
84 revised definition is retroactive and applicable to the first day
85 of April, one thousand nine hundred eighty-eight, and thereaf-
86 ter;

87 (13) "Credited service" means the sum of a member's prior
88 service credit and contributing service credit standing to his or
89 her credit as provided in this article;

90 (14) "Limited credited service" means service by employ-
91 ees of the West Virginia educational broadcasting authority, in
92 the employment of West Virginia university, during a period
93 when the employee made contributions to another retirement
94 system, as required by West Virginia university, and did not
95 make contributions to the public employees retirement system:
96 *Provided*, That while limited credited service can be used for
97 the formula set forth in subsection (e), section twenty-one of
98 this article, it may not be used to increase benefits calculated
99 under section twenty-two of this article;

100 (15) "Compensation" means the remuneration paid a
101 member by a participating public employer for personal
102 services rendered by him or her to the participating public
103 employer. In the event a member's remuneration is not all paid
104 in money, his or her participating public employer shall fix the
105 value of the portion of his or her remuneration which is not paid
106 in money;

107 (16) "Final average salary" means either:

108 (A) The average of the highest annual compensation
109 received by a member (including a member of the Legislature
110 who participates in the retirement system in the year one
111 thousand nine hundred seventy-one or thereafter) during any
112 period of three consecutive years of his or her credited service
113 contained within his or her ten years of credited service
114 immediately preceding the date his or her employment with a
115 participating public employer last terminated; or

116 (B) If he or she has less than five years of credited service,
117 the average of the annual rate of compensation received by him
118 or her during his or her total years of credited service; and in
119 determining the annual compensation, under either paragraph
120 (A) or (B) of this subdivision, of a member of the Legislature
121 who participates in the retirement system as a member of the

122 Legislature in the year one thousand nine hundred seventy-one
123 or in any year thereafter, his or her actual legislative compensa-
124 tion (the total of all compensation paid under sections two,
125 three, four and five, article two-a, chapter four of this code) in
126 the year one thousand nine hundred seventy-one or in any year
127 thereafter, plus any other compensation he or she receives in
128 any year from any other participating public employer including
129 the state of West Virginia, without any multiple in excess of
130 one times his or her actual legislative compensation and other
131 compensation, shall be used: *Provided*, That “final average
132 salary” for any former member of the Legislature or for any
133 member of the Legislature in the year one thousand nine
134 hundred seventy-one who, in either event, was a member of the
135 Legislature on the thirtieth day of November, one thousand nine
136 hundred sixty-eight, or the thirtieth day of November, one
137 thousand nine hundred sixty-nine, or the thirtieth day of
138 November, one thousand nine hundred seventy, or on the
139 thirtieth day of November in any one or more of those three
140 years and who participated in the retirement system as a
141 member of the Legislature in any one or more of those years
142 means: (i) Either (notwithstanding the provisions of this
143 subdivision preceding this proviso) one thousand five hundred
144 dollars multiplied by eight, plus the highest other compensation
145 the former member or member received in any one of the three
146 years from any other participating public employer including
147 the state of West Virginia; or (ii) “final average salary”
148 determined in accordance with paragraph (A) or (B) of this
149 subdivision, whichever computation produces the higher final
150 average salary (and in determining the annual compensation
151 under (ii) of this proviso, the legislative compensation of the
152 former member shall be computed on the basis of one thousand
153 five hundred dollars multiplied by eight, and the legislative
154 compensation of the member shall be computed on the basis set
155 forth in the provisions of this subdivision immediately preced-
156 ing this proviso or on the basis of one thousand five hundred

157 dollars multiplied by eight, whichever computation as to the
158 member produces the higher annual compensation);

159 (17) "Accumulated contributions" means the sum of all
160 amounts deducted from the compensations of a member and
161 credited to his or her individual account in the members'
162 deposit fund, together with regular interest on the contributions;

163 (18) "Regular interest" means the rate or rates of interest
164 per annum, compounded annually, as the board of trustees
165 adopts from time to time;

166 (19) "Annuity" means an annual amount payable by the
167 retirement system throughout the life of a person. All annuities
168 shall be paid in equal monthly installments, using the upper
169 cent for any fraction of a cent;

170 (20) "Annuity reserve" means the present value of all
171 payments to be made to a retirant or beneficiary of a retirant on
172 account of any annuity, computed upon the basis of mortality
173 and other tables of experience, and regular interest, adopted by
174 the board of trustees from time to time;

175 (21) "Retirement" means a member's withdrawal from the
176 employ of a participating public employer with an annuity
177 payable by the retirement system;

178 (22) "Actuarial equivalent" means a benefit of equal value
179 computed upon the basis of a mortality table and regular
180 interest adopted by the board of trustees from time to time;

181 (23) "Retroactive service" means: (1) Service an employee
182 was entitled to, but which the employer has not withheld or paid
183 for; or (2) that service from the first day of July, one thousand
184 nine hundred sixty-one, and the date an employer decides to
185 become a participating member of the public employees
186 retirement system; or (3) service prior to the first day of July,

187 one thousand nine hundred sixty-one, for which the employee
188 is not entitled to prior service at no cost in accordance with 162
189 CSR 5.16;

190 (24) "Required beginning date" means the first day of April
191 of the calendar year following the later of: (A) The calendar
192 year in which the member attains age seventy and one-half; or
193 (B) the calendar year in which the member ceases providing
194 service covered under this system to a participating employer;

195 (25) "Internal Revenue Code" means the Internal Revenue
196 Code of 1986, as it has been amended; and

197 (26) "Plan year" means the same as referenced in section
198 forty-two of this article.

§5-10-27c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or

19 for a specified period of ten years or more; (ii) any distribution
20 to the extent the distribution is required under Section 401(a)(9)
21 of the Internal Revenue Code; (iii) the portion of any distribu-
22 tion that is not includable in gross income determined without
23 regard to the exclusion for net unrealized appreciation with
24 respect to employer securities; (iv) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue
26 Code; and (v) any other distribution or distributions reasonably
27 expected to total less than two hundred dollars during a year.
28 For distributions after the thirty-first day of December, two
29 thousand one, a portion of a distribution shall not fail to be an
30 eligible rollover distribution merely because the portion
31 consists of after-tax employee contributions which are not
32 includable in gross income. However, this portion may be paid
33 only to an individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or to a
35 qualified defined contribution plan described in Section 401(a)
36 or 403(a) of the Internal Revenue Code that agrees to separately
37 account for amounts transferred, including separately account-
38 ing for the portion of the distribution which is includable in
39 gross income and the portion of the distribution which is not
40 includable.

41 (2) "Eligible retirement plan" means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code or a
46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code that accepts the distributee's eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan also means an
53 annuity contract described in Section 403(b) of the Internal

54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) "Distributee" means an employee or former employee.
61 In addition, the employee's or former employee's surviving
62 spouse and the employee's or former employee's spouse or
63 former spouse who is the alternate payee under a qualified
64 domestic relations order, as defined in Section 414(p) of the
65 Internal Revenue Code with respect to governmental plans, are
66 distributees with regard to the interest of the spouse or former
67 spouse.

68 (4) "Direct rollover" means a payment by the retirement
69 system to an eligible retirement plan.

70 (b) Nothing in this section may be construed as permitting
71 rollovers into this system or any other system administered by
72 the retirement board.

**§5-10-27d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of
4 this article to the contrary that would otherwise prohibit or limit
5 rollovers and plan transfers to this system, the retirement
6 system shall accept the following rollovers and plan transfers
7 on behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn or
10 refunded contributions, in whole or in part, with respect to a
11 previous forfeiture of service credit as otherwise provided in

12 this article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of the
15 Internal Revenue Code or from an individual retirement annuity
16 described in Section 408(b) of the Internal Revenue Code; (ii)
17 one or more rollovers described in Section 402(c) of the
18 Internal Revenue Code from a retirement plan that is qualified
19 under Section 401(a) of the Internal Revenue Code or from a
20 plan described in Section 403(b) of the Internal Revenue Code;
21 (iii) one or more rollovers described in Section 457(e)(16) of
22 the Internal Revenue Code from a governmental plan described
23 in Section 457 of the Internal Revenue Code; or (iv) direct
24 trustee-to-trustee transfers or rollovers from a plan that is
25 qualified under Section 401(a) of the Internal Revenue Code,
26 from a plan described in Section 403(b) of the Internal Revenue
27 Code or from a governmental plan described in Section 457 of
28 the Internal Revenue Code: *Provided*, That any rollovers or
29 transfers pursuant to this section shall be accepted by the
30 system only if made in cash or other asset permitted by the
31 board and only in accordance with policies, practices and
32 procedures established by the board from time to time. For
33 purposes of this section, the following definitions apply:

34 (1) "Permissive service credit" means service credit which
35 is permitted to be purchased under the terms of the retirement
36 system by voluntary contributions in an amount which does not
37 exceed the amount necessary to fund the benefit attributable to
38 the period of service for which the service credit is being
39 purchased, all as defined in Section 415(n)(3)(A) of the Internal
40 Revenue Code.

41 (2) "Repayment of withdrawn or refunded contributions"
42 means the payment into the retirement system of the funds
43 required pursuant to this article for the reinstatement of service
44 credit previously forfeited on account of any refund or with-

45 drawal of contributions permitted in this article, as set forth in
46 Section 415(k)(3) of the Internal Revenue Code.

47 (b) Nothing in this section shall be construed as permitting
48 rollovers or transfers into this system or any other system
49 administered by the retirement board other than as specified in
50 this section and no rollover or transfer shall be accepted into the
51 system in an amount greater than the amount required for the
52 purchase of permissive service credit or repayment of with-
53 drawn or refunded contributions.

54 (c) Nothing in this section shall be construed as permitting
55 the purchase of service credit or repayment of withdrawn or
56 refunded contributions except as otherwise permitted in this
57 article.

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSA-
TION PLANS.**

§5-10B-2. Definitions.

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

3 (a) "Board" means the consolidated public retirement board
4 provided for in article ten of this chapter.

5 (b) "Deferred compensation plan" means a trust whereby
6 the state of West Virginia, as the public employer, or a public
7 employer agrees with an employee for the voluntary reduction
8 in employee compensation for the payment of benefits by the
9 state employer or the public employer to the employee at a later
10 date pursuant to this article and the federal laws and regulations
11 relating to eligible state deferred compensation plans as
12 described in Section 457 of the Internal Revenue Code.

13 (c) "Employee" means any person, whether appointed,
14 elected, or under contract, providing services for the state
15 employer or public employer for which compensation is paid.

16 (d) "Public employer" means counties, municipalities or
17 political subdivisions of those governmental bodies which meet
18 the definition of "state" as described in Internal Revenue Code
19 Section 457 (d)(1), but which do not meet the definition of
20 "state employer" as used in this article.

21 (e) "State employer" means the state of West Virginia and
22 any state agency or instrumentality of the state.

23 (f) "Internal Revenue Code" means the Internal Revenue
24 Code of 1986, as it has been amended.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-7. Compensation limitations; effective dates.

1 (a) Effective for plan years beginning after the thirty-first
2 day of December, one thousand nine hundred ninety-five, and
3 prior to the first day of January, two thousand two, the annual
4 compensation of a participant taken into account in determining
5 benefits or contributions under any of the public retirement
6 plans administered by the board and which are qualified plans
7 under Section 401(a) of the Internal Revenue Code may not
8 exceed one hundred fifty thousand dollars, as indexed in
9 accordance with the provisions of Section 401(a)(17) of the
10 Internal Revenue Code. Effective for plan years beginning on
11 or after the first day of January, two thousand two, the annual
12 compensation of each participant taken into account in deter-
13 mining allocations for any plan year beginning on or after the
14 first day of January, two thousand two, shall not exceed two
15 hundred thousand dollars as adjusted for cost-of-living in-
16 creases in accordance with Section 401(a)(17)(B) of the Internal
17 Revenue Code. In determining benefit accruals in plan years
18 beginning after the thirty-first day of December, two thousand

19 one, the annual compensation limit for determination periods
20 beginning before the first day of January, two thousand two,
21 shall be two hundred thousand dollars. Annual compensation
22 means compensation during the plan year or any other consecu-
23 tive twelve-month period over which compensation is otherwise
24 determined (the determination period). The cost-of-living
25 adjustment in effect for a calendar year applies to annual
26 compensation for the determination period that begins with or
27 within that calendar year. This provision applies notwithstand-
28 ing any other provision to the contrary in this code and notwith-
29 standing any provisions of any legislative rule.

30 (b) In applying the limitations of subsection (a) of this
31 section, the consolidated public retirement board may: (1)
32 Adopt policies or procedures that may be necessary or appropri-
33 ate in applying the compensation limitations of Section
34 401(a)(17) to participants, including, without limitation, the
35 adoption and application of any transitional rules to implement
36 the compensation limitations; and (2) to take any actions that
37 may at any time be required by the internal revenue service
38 regarding compliance with the requirements of Section
39 401(a)(17), including, without limitation, distributions, credits,
40 set-asides or other adjustments.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM.

§7-14D-2a. Meaning of terms.

§7-14D-9c. Direct rollovers.

§7-14D-9d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§7-14D-2a. Meaning of terms.

1 Any term used in this article has the same meaning as when
2 used in a comparable context in the laws of the United States,
3 unless a different meaning is clearly required. Any reference in

4 this article to the Internal Revenue Code means the Internal
5 Revenue Code of 1986, as it has been amended.

§7-14D-9c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 plan, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent the distribution is required under Section 401(a)(9)
21 of the Internal Revenue Code; (iii) the portion of any distribu-
22 tion that is not includable in gross income determined without
23 regard to the exclusion for net unrealized appreciation with
24 respect to employer securities; (iv) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 reasonably expected to total less than two hundred dollars
28 during a year. For distributions after the thirty-first day of
29 December, two thousand one, a portion of a distribution shall
30 not fail to be an eligible rollover distribution merely because

31 the portion consists of after-tax employee contributions which
32 are not includable in gross income. However, this portion may
33 be paid only to an individual retirement account or annuity
34 described in Section 408(a) or (b) of the Internal Revenue Code,
35 or to a qualified defined contribution plan described in Section
36 401(a) or 403(a) of the Internal Revenue Code that agrees to
37 separately account for amounts transferred, including separately
38 accounting for the portion of the distribution which is
39 includable in gross income and the portion of the distribution
40 which is not includable.

41 (2) "Eligible retirement plan" means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code or a
46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code that accepts the distributee's eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan also means an
53 annuity contract described in Section 403(b) of the Internal
54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) "Distributee" means an employee or former employee.
61 In addition, the employee's or former employee's surviving
62 spouse and the employee's or former employee's spouse or
63 former spouse who is the alternate payee under a qualified
64 domestic relations order, as defined in Section 414(p) of the

65 Internal Revenue Code with respect to governmental plans, are
66 distributees with regard to the interest of the spouse or former
67 spouse.

68 (4) "Direct rollover" means a payment by the plan to the
69 eligible retirement plan.

70 (b) Nothing in this section shall be construed as permitting
71 rollovers to this plan or any other retirement system adminis-
72 tered by the board.

**§7-14D-9d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of
4 this article to the contrary that would otherwise prohibit or limit
5 rollovers and plan transfers to this system, the retirement
6 system shall accept the following rollovers and plan transfers
7 on behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn or
10 refunded contributions, in whole and in part, with respect to a
11 previous forfeiture of service credit as otherwise provided in
12 this article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of the
15 Internal Revenue Code or from an individual retirement annuity
16 described in Section 408(b) of the Internal Revenue Code; (ii)
17 one or more rollovers described in Section 402(c) of the
18 Internal Revenue Code from a retirement plan that is qualified
19 under Section 401(a) of the Internal Revenue Code or from a
20 plan described in Section 403(b) of the Internal Revenue Code;
21 (iii) one or more rollovers described in Section 457(e)(16) of
22 the Internal Revenue Code from a governmental plan described

23 in Section 457 of the Internal Revenue Code; or (iv) direct
24 trustee-to-trustee transfers or rollovers from a plan that is
25 qualified under Section 401(a) of the Internal Revenue Code,
26 from a plan described in Section 403(b) of the Internal Revenue
27 Code or from a governmental plan described in Section 457 of
28 the Internal Revenue Code: *Provided*, That any rollovers or
29 transfers pursuant to this section shall be accepted by the
30 system only if made in cash or other asset permitted by the
31 board and only in accordance with such policies, practices and
32 procedures established by the board from time to time. For
33 purposes of this section, the following definitions apply:

34 (1) "Permissive service credit" means service credit which
35 is permitted to be purchased under the terms of the retirement
36 system by voluntary contributions in an amount which does not
37 exceed the amount necessary to fund the benefit attributable to
38 the period of service for which the service credit is being
39 purchased, all as defined in Section 415(n)(3)(A) of the Internal
40 Revenue Code.

41 (2) "Repayment of withdrawn or refunded contributions"
42 means the payment into the retirement system of the funds
43 required pursuant to this article for the reinstatement of service
44 credit previously forfeited on account of any refund or with-
45 drawal of contributions permitted in this article, as set forth in
46 Section 415(k)(3) of the Internal Revenue Code.

47 (b) Nothing in this section shall be construed as permitting
48 rollovers or transfers into this system or any other system
49 administered by the retirement board other than as specified in
50 this section and no rollover or transfer shall be accepted into the
51 system in an amount greater than the amount required for the
52 purchase of permissive service credit or repayment of with-
53 drawn or refunded contributions.

54 (c) Nothing in this section shall be construed as permitting
55 the purchase of service credit or repayment of withdrawn or
56 refunded contributions except as otherwise permitted in this
57 article.

CHAPTER 15. PUBLIC SAFETY.

Article

2. West Virginia State Police.

2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25a. Meaning of terms.

§15-2-46. Direct rollovers.

§15-2-25a. Meaning of terms.

1 Any term used in this article relating to the death, disability
2 and retirement fund shall have the same meaning as when used
3 in a comparable context of the laws of the United States, unless
4 a different meaning as clearly required. Any reference in this
5 article to the Internal Revenue Code means the Internal
6 Revenue Code, as it has been amended.

§15-2-46. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 fund, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) “Eligible rollover distribution” means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee’s designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent the distribution is required under Section 401(a)(9)
21 of the Internal Revenue Code; (iii) the portion of any distribu-
22 tion that is not includable in gross income determined without
23 regard to the exclusion for net unrealized appreciation with
24 respect to employer securities; (iv) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) [26 USCS
26 §401(k)(2)(B)(i)(iv)] of the Internal Revenue Code; and (v) any
27 other distribution or distributions that are reasonably expected
28 to total less than two hundred dollars during a year. For
29 distributions after the thirty-first day of December, two thou-
30 sand one, a portion of a distribution shall not fail to be an
31 eligible rollover distribution merely because the portion
32 consists of after-tax employee contributions which are not
33 includable in gross income. However, this portion may be paid
34 only to an individual retirement account or annuity described in
35 Section 408(a) or (b) of the Internal Revenue Code, or to a
36 qualified defined contribution plan described in Section 401(a)
37 or 403(a) of the Internal Revenue Code that agrees to separately
38 account for amounts transferred, including separately account-
39 ing for the portion of the distribution which is includable in
40 gross income and the portion of the distribution which is not
41 includable.

42 (2) “Eligible retirement plan” means an individual retire-
43 ment account described in Section 408(a) of the Internal
44 Revenue Code, an individual retirement annuity described in
45 Section 408(b) of the Internal Revenue Code, an annuity plan

46 described in Section 403(a) of the Internal Revenue Code, or a
47 qualified plan described in Section 401(a) of the Internal
48 Revenue Code, that accepts the distributee's eligible rollover
49 distribution: *Provided*, That in the case of an eligible rollover
50 distribution to the surviving spouse, an eligible retirement plan
51 is an individual retirement account or individual retirement
52 annuity. For distributions after the thirty-first day of December,
53 two thousand one, an eligible retirement plan also means an
54 annuity contract described in Section 403(b) of the Internal
55 Revenue Code and an eligible plan under Section 457(b) of the
56 Internal Revenue Code which is maintained by a state, political
57 subdivision of a state, or any agency or instrumentality of a
58 state or political subdivision of a state and which agrees to
59 separately account for amounts transferred into the plan from
60 this system.

61 (3) "Distributee" means a member. In addition, the mem-
62 ber's surviving spouse and the member's spouse or former
63 spouse who is the alternate payee under a qualified domestic
64 relations order, as defined in Section 414(p) of the Internal
65 Revenue Code with respect to governmental plans, are
66 distributees with regard to the interest of the spouse or former
67 spouse.

68 (4) "Direct rollover" means a payment by the system to the
69 eligible retirement plan.

70 (b) Nothing in this section may be construed as permitting
71 rollovers into this fund or any other retirement system adminis-
72 tered by the board.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

§15-2A-6c. Direct rollovers.

§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§15-2A-2. Definitions.

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

3 (1) “Active military duty” means full-time active duty with
4 the armed forces of the United States, namely, the United States
5 air force, army, coast guard, marines or navy; and service with
6 the national guard or reserve military forces of any of the armed
7 forces when the member has been called to active full-time duty
8 and has received no compensation during the period of that duty
9 from any person other than the armed forces.

10 (2) “Base salary” means compensation paid to a member
11 without regard to any overtime pay.

12 (3) “Board” means the consolidated public retirement board
13 created pursuant to article ten-d, chapter five of this code.

14 (4) “Division” means the division of public safety.

15 (5) “Final average salary” means the average of the highest
16 annual compensation received for employment with the
17 division, including compensation paid for overtime service,
18 received by the member during any five years within the
19 member’s last ten years of service.

20 (6) “Fund” means the West Virginia state police retirement
21 fund created pursuant to section four of this article.

22 (7) “Member” or “employee” means a person regularly
23 employed in the service of the division of public safety after the
24 effective date of this article.

25 (8) “Salary” means the compensation of a member,
26 excluding any overtime payments.

27 (9) "Internal Revenue Code" means the Internal Revenue
28 Code of 1986, as it has been amended.

29 (10) "Plan year" means the twelve-month period commenc-
30 ing on the first day of July of any designated year and ending
31 the following thirtieth day of June.

32 (11) "Required beginning date" means the first day of April
33 of the calendar year following the later of: (a) The calendar year
34 in which the member attains age seventy and one-half; or (b)
35 the calendar year in which he or she retires or otherwise
36 separates from service with the department.

37 (12) "Retirement system" or "system" means the West
38 Virginia state police retirement system created and established
39 by this article.

§15-2A-6c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of

18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 expected to total less than two hundred dollars during a year.
28 For distributions after the thirty-first day of December, two
29 thousand one, a portion of a distribution shall not fail to be an
30 eligible rollover distribution merely because the portion
31 consists of after-tax employee contributions which are not
32 includable in gross income. However, this portion may be paid
33 only to an individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or to a
35 qualified defined contribution plan described in Section 401(a)
36 or 403(a) of the Internal Revenue Code that agrees to separately
37 account for amounts transferred, including separately account-
38 ing for the portion of the distribution which is includable in
39 gross income and the portion of the distribution which is not
40 includable.

41 (2) "Eligible retirement plan" means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code or a
46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code that accepts the distributee's eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan also means an

53 annuity contract described in Section 403(b) of the Internal
54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) "Distributee" means an employee or former employee.
61 In addition, the employee's or former employee's surviving
62 spouse and the employee's or former employee's spouse or
63 former spouse who is the alternate payee under a qualified
64 domestic relations order, as defined in Section 414(p) of the
65 Internal Revenue Code with respect to governmental plans, are
66 distributees with regard to the interest of the spouse or former
67 spouse.

68 (4) "Direct rollover" means a payment by the system to the
69 eligible retirement plan.

70 (b) Nothing in this section may be construed as permitting
71 rollovers into this system or any other retirement system
72 administered by the board.

**§15-2A-6d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of
4 this article to the contrary that would otherwise prohibit or limit
5 rollovers and plan transfers to this system, the retirement
6 system shall accept the following rollovers and plan transfers
7 on behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole and in part, as otherwise
9 provided in this article or for the repayment of withdrawn or
10 refunded contributions, in whole and in part, with respect to a

11 previous forfeiture of service credit as otherwise provided in
12 this article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of the
15 Internal Revenue Code or from an individual retirement annuity
16 described in Section 408(b) of the Internal Revenue Code; (ii)
17 one or more rollovers described in Section 402(c) of the
18 Internal Revenue Code from a retirement plan that is qualified
19 under Section 401(a) of the Internal Revenue Code or from a
20 plan described in Section 403(b) of the Internal Revenue Code;
21 (iii) one or more rollovers described in Section 457(e)(16) of
22 the Internal Revenue Code from a governmental plan described
23 in Section 457 of the Internal Revenue Code; or (iv) direct
24 trustee-to-trustee transfers or rollovers from a plan that is
25 qualified under Section 401(a) of the Internal Revenue Code,
26 from a plan described in Section 403(b) of the Internal Revenue
27 Code or from a governmental plan described in Section 457 of
28 the Internal Revenue Code: *Provided*, That any rollovers or
29 transfers pursuant to this section shall be accepted by the
30 system only if made in cash or other asset permitted by the
31 board and only in accordance with the policies, practices and
32 procedures established by the board from time to time. For
33 purposes of this section, the following definitions apply:

34 (1) "Permissive service credit" means service credit which
35 is permitted to be purchased under the terms of the retirement
36 system by voluntary contributions in an amount which does not
37 exceed the amount necessary to fund the benefit attributable to
38 the period of service for which the service credit is being
39 purchased, all as defined in Section 415(n)(3)(A) of the Internal
40 Revenue Code.

41 (2) "Repayment of withdrawn or refunded contributions"
42 means the payment into the retirement system of the funds
43 required pursuant to this article for the reinstatement of service
44 credit previously forfeited on account of any refund or with-

45 drawal of contributions permitted in this article, as set forth in
46 Section 415(k)(3) of the Internal Revenue Code.

47 (b) Nothing in this section shall be construed as permitting
48 rollovers or transfers into this system or any other system
49 administered by the retirement board other than as specified in
50 this section and no rollover or transfer shall be accepted into the
51 system in an amount greater than the amount required for the
52 purchase of permissive service credit or repayment of with-
53 drawn or refunded contributions.

54 (c) Nothing in this section shall be construed as permitting
55 the purchase of service credit or repayment of withdrawn or
56 refunded contributions except as otherwise permitted in this
57 article.

CHAPTER 18. EDUCATION.

Article

7A. State Teachers Retirement System.

7B. Teachers' Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

§18-7A-28c. Direct rollovers.

§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§18-7A-3. Definitions.

1 "Teacher member" means the following persons, if regu-
2 larly employed for full-time service: (a) Any person employed
3 for instructional service in the public schools of West Virginia;
4 (b) principals; (c) public school librarians; (d) superintendents
5 of schools and assistant county superintendents of schools; (e)
6 any county school attendance director holding a West Virginia
7 teacher's certificate; (f) the executive secretary of the retire-
8 ment board; (g) members of the research, extension, administra-

9 tive or library staffs of the public schools; (h) the state superin-
10 tendent of schools, heads and assistant heads of the divisions
11 under his or her supervision, or any other employee under the
12 state superintendent performing services of an educational
13 nature; (i) employees of the state board of education who are
14 performing services of an educational nature; (j) any person
15 employed in a nonteaching capacity by the state board of
16 education, the West Virginia board of regents [abolished], any
17 county board of education, the state department of education or
18 the teachers retirement board, if that person was formerly
19 employed as a teacher in the public schools; (k) all classroom
20 teachers, principals and educational administrators in schools
21 under the supervision of the division of corrections, the division
22 of health or the division of human services; and (l) employees
23 of the state board of school finance, if that person was formerly
24 employed as a teacher in the public schools.

25 “Nonteaching member” means any person, except a teacher
26 member, who is regularly employed for full-time service by: (a)
27 Any county board of education; (b) the state board of education;
28 (c) the West Virginia board of regents [abolished]; or (d) the
29 teachers retirement board.

30 “Members of the administrative staff of the public schools”
31 means deans of instruction, deans of men, deans of women, and
32 financial and administrative secretaries.

33 “Members of the extension staff of the public schools”
34 means every agricultural agent, boys’ and girls’ club agent and
35 every member of the agricultural extension staff whose work is
36 not primarily stenographic, clerical or secretarial.

37 “Retirement system” means the state teachers retirement
38 system provided for in this article.

39 “Present teacher” means any person who was a teacher
40 within the thirty-five years beginning the first day of July, one

41 thousand nine hundred thirty-four, and whose membership in
42 the retirement system is currently active.

43 “New entrant” means a teacher who is not a present teacher.

44 “Regularly employed for full-time service” means employ-
45 ment in a regular position or job throughout the employment
46 term regardless of the number of hours worked or the method
47 of pay. “Employment term” means employment for at least ten
48 months, a month being defined as twenty employment days.

49 “Present member” means a present teacher who is a
50 member of the retirement system.

51 “Total service” means all service as a teacher while a
52 member of the retirement system since last becoming a member
53 and, in addition thereto, credit for prior service, if any.

54 “Prior service” means all service as a teacher completed
55 prior to the first day of July, one thousand nine hundred
56 forty-one, and all service of a present member who was
57 employed as a teacher, and did not contribute to a retirement
58 account because he or she was legally ineligible for member-
59 ship during the service.

60 “Pick-up service” means service that a member was entitled
61 to, but which the employer has not withheld or paid for.

62 “Average final salary” means the average of the five
63 highest fiscal year salaries earned as a member within the last
64 fifteen fiscal years of total service credit, including military
65 service as provided in this article, or if total service is less than
66 fifteen years, the average annual salary for the period on which
67 contributions were made.

68 “Accumulated contributions” means all deposits and all
69 deductions from the earnable compensation of a contributor

70 minus the total of all supplemental fees deducted from his or
71 her compensation.

72 “Regular interest” means interest at four percent com-
73 pounded annually, or a higher earnable rate if set forth in the
74 formula established in legislative rules, series seven of the
75 consolidated public retirement board.

76 “Refund interest” means interest compounded, according to
77 the formula established in legislative rules, series seven of the
78 consolidated public retirement board.

79 “Employer” means the agency of and within the state which
80 has employed or employs a member.

81 “Contributor” means a member of the retirement system
82 who has an account in the teachers accumulation fund.

83 “Beneficiary” means the recipient of annuity payments
84 made under the retirement system.

85 “Refund beneficiary” means the estate of a deceased
86 contributor or a person he or she has nominated as beneficiary
87 of his or her contributions by written designation duly executed
88 and filed with the retirement board.

89 “Earnable compensation” means the full compensation
90 actually received by members for service as teachers whether
91 or not a part of the compensation is received from other funds,
92 federal or otherwise, than those provided by the state or its
93 subdivisions. Allowances from employers for maintenance of
94 members shall be considered a part of earnable compensation
95 for those members whose allowances were approved by the
96 teachers retirement board and contributions to the teachers
97 retirement system were made, in accordance therewith, on or
98 before the first day of July, one thousand nine hundred eighty.

99 “Annuities” means the annual retirement payments for life
100 granted beneficiaries in accordance with this article.

101 “Member” means a member of the retirement system.

102 “Public schools” means all publicly supported schools,
103 including normal schools, colleges and universities in this state.

104 “Deposit” means a voluntary payment to his or her account
105 by a member.

106 “Plan year” means the twelve-month period commencing
107 on the first day of July and ending the following thirtieth day of
108 June of any designated year.

109 “Internal Revenue Code” means the Internal Revenue Code
110 of 1986, as it has been amended.

111 “Required beginning date” means the first day of April of
112 the calendar year following the later of: (a) The calendar year
113 in which the member attains age seventy and one-half; or (b)
114 the calendar year in which the member retires or ceases covered
115 employment under the system.

116 The masculine gender shall be construed so as to include
117 the feminine.

118 Age in excess of seventy years shall be considered to be
119 seventy years.

§18-7A-28c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee’s election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible

7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) “Eligible rollover distribution” means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee’s designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution reasonably or
27 distributions expected to total less than two hundred dollars
28 during a year. For distributions after the thirty-first day of
29 December, two thousand one, a portion of a distribution shall
30 not fail to be an eligible rollover distribution merely because
31 the portion consists of after-tax employee contributions which
32 are not includable in gross income. However, this portion may
33 be paid only to an individual retirement account or annuity
34 described in Section 408(a) or (b) of the Internal Revenue Code,
35 or to a qualified defined contribution plan described in Section
36 401(a) or 403(a) of the Internal Revenue Code that agrees to
37 separately account for amounts transferred, including separately
38 accounting for the portion of the distribution which is
39 includable in gross income and the portion of the distribution
40 which is not includable.

41 (2) “Eligible retirement plan” means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code, or a
46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code, that accepts the distributee’s eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan also means an
53 annuity contract described in Section 403(b) of the Internal
54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) “Distributee” means an employee or former employee.
61 In addition, the employee’s or former employee’s surviving
62 spouse and the employee’s or former employee’s spouse or
63 former spouse who is the alternate payee under a qualified
64 domestic relations order, as defined in Section 414(p) of the
65 Internal Revenue Code, as applicable to governmental plans,
66 are distributees with regard to the interest of the spouse or
67 former spouse.

68 (4) “Direct rollover” means a payment by the system to the
69 eligible retirement plan.

70 (b) Nothing in this section may be construed as permitting
71 rollovers into this system or any other retirement system
72 administered by the board.

§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of
4 this article to the contrary that would otherwise prohibit or limit
5 rollovers and plan transfers to this system, the retirement
6 system shall accept the following rollovers and plan transfers
7 on behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn or
10 refunded contributions, in whole or in part, with respect to a
11 previous forfeiture of service credit as otherwise provided in
12 this article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of the
15 Internal Revenue Code or from an individual retirement annuity
16 described in Section 408(b) of the Internal Revenue Code; (ii)
17 one or more rollovers described in Section 402(c) of the
18 Internal Revenue Code from a retirement plan that is qualified
19 under Section 401(a) of the Internal Revenue Code or from a
20 plan described in Section 403(b) of the Internal Revenue Code;
21 (iii) one or more rollovers described in Section 457(e)(16) of
22 the Internal Revenue Code from a governmental plan described
23 in Section 457 of the Internal Revenue Code; or (iv) direct
24 trustee-to-trustee transfers or rollovers from a plan that is
25 qualified under Section 401(a) of the Internal Revenue Code,
26 from a plan described in Section 403(b) of the Internal Revenue
27 Code or from a governmental plan described in Section 457 of
28 the Internal Revenue Code: *Provided*, That any rollovers or
29 transfers pursuant to this section shall be accepted by the
30 system only if made in cash or other asset permitted by the
31 board and only in accordance with the policies, practices and
32 procedures established by the board from time to time. For
33 purposes of this section, the following definitions apply:

34 (1) "Permissive service credit" means service credit which
35 is permitted to be purchased under the terms of the retirement
36 system by voluntary contributions in an amount which does not
37 exceed the amount necessary to fund the benefit attributable to
38 the period of service for which the service credit is being
39 purchased, all as defined in Section 415(n)(3)(A) of the Internal
40 Revenue Code.

41 (2) "Repayment of withdrawn or refunded contributions"
42 means the payment into the retirement system of the funds
43 required pursuant to this article for the reinstatement of service
44 credit previously forfeited on account of any refund or with-
45 drawal of contributions permitted in this article, as set forth in
46 Section 415(k)(3) of the Internal Revenue Code.

47 (b) Nothing in this section shall be construed as permitting
48 rollovers or transfers into this system or any other system
49 administered by the retirement board other than as specified in
50 this section and no rollover or transfer shall be accepted into the
51 system in an amount greater than the amount required for the
52 purchase of permissive service credit or repayment of with-
53 drawn or refunded contributions.

54 (c) Nothing in this section shall be construed as permitting
55 the purchase of service credit or repayment of withdrawn or
56 refunded contributions except as otherwise permitted in this
57 article.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

§18-7B-11a. Rollovers and transfers to repay cashed-out or withdrawn contribu-
tions.

§18-7B-13b. Direct rollovers.

§18-7B-2. Definitions.

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

3 (1) "Defined contribution system" or "system" means the
4 teachers' defined contribution retirement system created and
5 established by this article;

6 (2) "Existing retirement system" means the state teachers
7 retirement system established in article seven-a of this chapter;

8 (3) "Existing employer" means any employer who em-
9 ployed or employs a member of the existing retirement system;

10 (4) "Consolidated board" or "board" means the consoli-
11 dated public retirement board created and established pursuant
12 to article ten-d, chapter five of this code;

13 (5) "Member" or "employee" means the following persons,
14 if regularly employed for full-time service: (a) Any person
15 employed for instructional service in the public schools of West
16 Virginia; (b) principals; (c) public school librarians; (d)
17 superintendents of schools and assistant county superintendents
18 of schools; (e) any county school attendance director holding a
19 West Virginia teacher's certificate; (f) the executive secretary
20 of the retirement board; (g) members of the research, extension,
21 administrative or library staffs of the public schools; (h) the
22 state superintendent of schools, heads and assistant heads of the
23 divisions under his or her supervision, or any other employee
24 under the state superintendent performing services of an
25 educational nature; (i) employees of the state board of educa-
26 tion who are performing services of an educational nature; (j)
27 any person employed in a nonteaching capacity by the state
28 board of education, any county board of education, the state
29 department of education or the teachers retirement board, if that
30 person was formerly employed as a teacher in the public
31 schools; (k) all classroom teachers, principals and educational
32 administrators in schools under the supervision of the division

33 of corrections and the department of health and human re-
34 sources; (l) any person who is regularly employed for full-time
35 service by any county board of education, the state board of
36 education or the teachers retirement board; and (m) the admin-
37 istrative staff of the public schools including deans of instruc-
38 tion, deans of men and deans of women, and financial and
39 administrative secretaries;

40 (6) "Regularly employed for full-time service" means
41 employment in a regular position or job throughout the employ-
42 ment term regardless of the number of hours worked or the
43 method of pay;

44 (7) "Year of employment service" means employment for
45 at least ten months, a month being defined as twenty employ-
46 ment days: *Provided*, That no more than one year of service
47 may be accumulated in any twelve-month period;

48 (8) "Employer" means the agency of and within the state
49 which has employed or employs a member;

50 (9) "Compensation" means the full compensation actually
51 received by members for service whether or not a part of the
52 compensation is received from other funds, federal or other-
53 wise, than those provided by the state or its subdivisions;

54 (10) "Public schools" means all publicly supported schools,
55 including normal schools, colleges and universities in this state;

56 (11) "Member contribution" means an amount reduced
57 from the employee's regular pay periods, and deposited into the
58 member's individual annuity account within the defined
59 contribution retirement system;

60 (12) "Employer contribution" means an amount deposited
61 into the member's individual annuity account on a periodic

62 basis coinciding with the employee's regular pay period by an
63 employer from its own funds;

64 (13) "Annuity account" or "annuity" means an account
65 established for each member to record the deposit of member
66 contributions and employer contributions and interest, divi-
67 dends or other accumulations credited on behalf of the member;

68 (14) "Retirement" means a member's withdrawal from the
69 active employment of a participating employer and completion
70 of all conditions precedent to retirement;

71 (15) "Permanent, total disability" means a mental or
72 physical incapacity requiring the absence from employment
73 service for at least six months: *Provided*, That the incapacity is
74 shown by an examination by a physician or physicians selected
75 by the board;

76 (16) "Plan year" means the twelve-month period commenc-
77 ing on the first day of July of any designated year and ending on
78 the following thirtieth day of June;

79 (17) "Required beginning date" means the first day of April
80 of the calendar year following the later of: (a) The calendar year
81 in which the member attains age seventy-one and one-half; or
82 (b) the calendar year in which the member retires or otherwise
83 ceases employment with a participating employer; and

84 (18) "Internal Revenue Code" means the Internal Revenue
85 Code of 1986, as it has been amended.

**§18-7B-11a. Rollovers and transfers to repay cashed-out or
withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of

4 this article to the contrary that would otherwise prohibit or limit
5 rollovers and plan transfers to this system, the defined contribu-
6 tion system shall accept the following rollovers and plan
7 transfers on behalf of a member solely for the purpose of
8 repayment of cashed-out or withdrawn contributions, in whole
9 or in part, as otherwise provided in this article or the rules
10 applicable to the defined contribution system: (i) One or more
11 rollovers within the meaning of Section 408(d)(3) of the
12 Internal Revenue Code from an individual retirement account
13 described in Section 408(a) of the Internal Revenue Code or
14 from an individual retirement annuity described in Section
15 408(b) of the Internal Revenue Code; (ii) one or more rollovers
16 described in Section 402(c) of the Internal Revenue Code from
17 a retirement plan that is qualified under Section 401(a) of the
18 Internal Revenue Code or from a plan described in Section
19 403(b) of the Internal Revenue Code; (iii) one or more rollovers
20 described in Section 457(e)(16) of the Internal Revenue Code
21 from a governmental plan described in Section 457 of the
22 Internal Revenue Code; or (iv) direct trustee-to-trustee transfers
23 or rollovers from a plan that is qualified under Section 401(a)
24 of the Internal Revenue Code: *Provided*, That any rollovers or
25 transfers pursuant to this section shall be accepted by the
26 system only if made in cash or other asset permitted by the
27 board and only in accordance with the policies established by
28 the board from time to time.

29 (b) Nothing in this section shall be construed as permitting
30 rollovers or transfers into this system or any other system
31 administered by the retirement board other than as specified in
32 this section and no rollover or transfer shall be accepted into the
33 system in an amount greater than the amount required for the
34 repayment of cashed-out or withdrawn contributions.

35 (c) Nothing in this section shall be construed as permitting
36 the repayment of cashed-out or withdrawn contributions except

37 as otherwise permitted in this article or the rules applicable to
38 the defined contribution system.

§18-7B-13b. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee's designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 reasonably expected to total less than two hundred dollars
28 during a year. For distributions after the thirty-first day of
29 December, two thousand one, a portion of a distribution shall
30 not fail to be an eligible rollover distribution merely because

31 the portion consists of after-tax employee contributions which
32 are not includable in gross income. However, this portion may
33 be paid only to an individual retirement account or annuity
34 described in Section 408(a) or (b) of the Internal Revenue Code,
35 or to a qualified defined contribution plan described in Section
36 401(a) or 403(a) of the Internal Revenue Code that agrees to
37 separately account for amounts transferred, including separately
38 accounting for the portion of the distribution which is
39 includable in gross income and the portion of the distribution
40 which is not includable.

41 (2) "Eligible retirement plan" means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code or a
46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code that accepts the distributee's eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan shall also mean an
53 annuity contract described in Section 403(b) of the Internal
54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) "Distributee" means an employee or former employee.
61 In addition, the employee's or former employee's surviving
62 spouse and the employee's or former employee's spouse or
63 former spouse who is the alternate payee under a qualified
64 domestic relations order, as defined in Section 414(p) of the

65 Internal Revenue Code with respect to governmental plans, are
66 distributees with regard to the interest of the spouse or former
67 spouse.

68 (4) "Direct rollover" means a payment by the system to the
69 eligible retirement plan.

70 (b) Nothing in this section may be construed as permitting
71 rollovers into this retirement system or any other retirement
72 system administered by the board.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

§51-9-12c. Direct rollovers.

§51-9-12d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§51-9-1a. Definitions.

1 (a) As used in this article, the term "judge", "judge of any
2 court of record" or "judge of any court of record of this state"
3 means, refers to and includes judges of the several circuit courts
4 and justices of the supreme court of appeals. For purposes of
5 this article, the terms do not mean, refer to or include family
6 court judges.

7 (b) "Beneficiary" means any person, except a member, who
8 is entitled to an annuity or other benefit payable by the retire-
9 ment system.

10 (c) "Board" means the consolidated public retirement board
11 created pursuant to article ten-d, chapter five of this code.

12 (d) "Internal Revenue Code" means the Internal Revenue
13 Code of 1986, as it has been amended.

14 (e) "Member" means a judge participating in this system.

15 (f) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending
16 the following thirtieth day of June.
17

18 (g) "Required beginning date" means the first day of April
19 of the calendar year following the later of: (a) The calendar year
20 in which the member attains age seventy and one-half; or (b)
21 the calendar year in which the member retires or otherwise
22 separates from covered employment.

23 (h) "Retirement system" or "system" means the judges
24 retirement system created and established by this article.
25 Notwithstanding any other provision of law to the contrary, the
26 provisions of this article are applicable only to circuit judges
27 and justices of the supreme court of appeals in the manner
28 specified in this article. No service as a family court judge may
29 be construed to qualify a person to participate in the judges
30 retirement system or used in any manner as credit toward
31 eligibility for retirement benefits under the judges retirement
32 system.

§51-9-12c. Direct rollovers.

1 (a) This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution that is equal to at least five hundred dollars
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this section, the
10 following definitions apply:

11 (1) “Eligible rollover distribution” means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does not
14 include any of the following: (i) Any distribution that is one of
15 a series of substantially equal periodic payments not less
16 frequently than annually made for the life or life expectancy of
17 the distributee or the joint lives or the joint life expectancies of
18 the distributee and the distributee’s designated beneficiary, or
19 for a specified period of ten years or more; (ii) any distribution
20 to the extent such distribution is required under Section
21 401(a)(9) of the Internal Revenue Code; (iii) the portion of any
22 distribution that is not includable in gross income determined
23 without regard to the exclusion for net unrealized appreciation
24 with respect to employer securities; (iv) any hardship distribu-
25 tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code; and (v) any other distribution or distributions
27 expected to total less than two hundred dollars during a year.
28 For distributions after the thirty-first day of December, two
29 thousand one, a portion of a distribution shall not fail to be an
30 eligible rollover distribution merely because the portion
31 consists of after-tax employee contributions which are not
32 includable in gross income. However, this portion may be paid
33 only to an individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or to a
35 qualified defined contribution plan described in Section 401(a)
36 or 403(a) of the Internal Revenue Code that agrees to separately
37 account for amounts transferred, including separately account-
38 ing for the portion of the distribution which is includable in
39 gross income and the portion of the distribution which is not
40 includable.

41 (2) “Eligible retirement plan” means an individual retire-
42 ment account described in Section 408(a) of the Internal
43 Revenue Code, an individual retirement annuity described in
44 Section 408(b) of the Internal Revenue Code, an annuity plan
45 described in Section 403(a) of the Internal Revenue Code, or a

46 qualified plan described in Section 401(a) of the Internal
47 Revenue Code, that accepts the distributee's eligible rollover
48 distribution: *Provided*, That in the case of an eligible rollover
49 distribution to the surviving spouse, an eligible retirement plan
50 is an individual retirement account or individual retirement
51 annuity. For distributions after the thirty-first day of December,
52 two thousand one, an eligible retirement plan also means an
53 annuity contract described in Section 403(b) of the Internal
54 Revenue Code and an eligible plan under Section 457(b) of the
55 Internal Revenue Code which is maintained by a state, political
56 subdivision of a state, or any agency or instrumentality of a
57 state or political subdivision of a state and which agrees to
58 separately account for amounts transferred into the plan from
59 this system.

60 (3) "Distributee" means a judge or former judge. In
61 addition, the judge's or former judge's surviving spouse and the
62 judge's or former judge's spouse or former spouse who is the
63 alternate payee under a qualified domestic relations order, as
64 defined in Section 414(p) of the Internal Revenue Code, with
65 respect to governmental plans, are distributees with regard to
66 the interest of the spouse or former spouse.

67 (4) "Direct rollover" means a payment by the system to the
68 eligible retirement plan.

69 (b) Nothing in this section may be construed as permitting
70 rollovers into this system or any other system administered by
71 the board.

**§51-9-12d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after the first day of
3 January, two thousand two. Notwithstanding any provision of
4 this article to the contrary that would otherwise prohibit or limit

5 rollovers and plan transfers to this system, the retirement
6 system shall accept the following rollovers and plan transfers
7 on behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole and in part, as otherwise
9 provided in this article or for the repayment of withdrawn or
10 refunded contributions, in whole and in part, with respect to a
11 previous forfeiture of service credit as otherwise provided in
12 this article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of the
15 Internal Revenue Code or from an individual retirement annuity
16 described in Section 408(b) of the Internal Revenue Code; (ii)
17 one or more rollovers described in Section 402(c) of the
18 Internal Revenue Code from a retirement plan that is qualified
19 under Section 401(a) of the Internal Revenue Code or from a
20 plan described in Section 403(b) of the Internal Revenue Code;
21 (iii) one or more rollovers described in Section 457(e)(16) of
22 the Internal Revenue Code from a governmental plan described
23 in Section 457 of the Internal Revenue Code; or (iv) direct
24 trustee-to-trustee transfers or rollovers from a plan that is
25 qualified under Section 401(a) of the Internal Revenue Code,
26 from a plan described in Section 403(b) of the Internal Revenue
27 Code or from a governmental plan described in Section 457 of
28 the Internal Revenue Code: *Provided*, That any rollovers or
29 transfers pursuant to this section shall be accepted by the
30 system only if made in cash or other asset permitted by the
31 board and only in accordance with policies, practices and
32 procedures established by the board from time to time. For
33 purposes of this section, the following definitions apply:

34 (1) "Permissive service credit" means service credit which
35 is permitted to be purchased under the terms of the retirement
36 system by voluntary contributions in an amount which does not
37 exceed the amount necessary to fund the benefit attributable to
38 the period of service for which the service credit is being
39 purchased, all as defined in Section 415(n)(3)(A) of the Internal
40 Revenue Code.

41 (2) “Repayment of withdrawn or refunded contributions”
42 means the payment into the retirement system of the funds
43 required pursuant to this article for the reinstatement of service
44 credit previously forfeited on account of any refund or with-
45 drawal of contributions permitted in this article, as set forth in
46 Section 415(k)(3) of the Internal Revenue Code.

47 (b) Nothing in this section shall be construed as permitting
48 rollovers or transfers into this system or any other system
49 administered by the retirement board other than as specified in
50 this section and no rollover or transfer shall be accepted into the
51 system in an amount greater than the amount required for the
52 purchase of permissive service credit or repayment of with-
53 drawn or refunded contributions.

54 (c) Nothing in this section shall be construed as permitting
55 the purchase of service credit or repayment of withdrawn or
56 refunded contributions except as otherwise permitted in this
57 article.

CHAPTER 262

**(H. B. 4658 — By Delegates Campbell,
J. Smith, Keener and Browning)**

[Passed March 17, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, twenty-two-c and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article seven-a, chapter eighteen of said code, all relating generally to public employee’s and state teachers retirement; extending the time frame for claiming service credit for having worked under the comprehensive employment and training act; requiring due diligence to notify affected

employees of the extension of time; allowing certain legislative employees who have been employed during regular sessions for thirteen consecutive years to receive a service credit of twelve months for each regular session served; setting forth eligibility criteria; increasing the amount of compensation a retirant may earn from temporary state employment; setting forth legislative findings and definitions; providing for limitations upon the reemployment of retired persons by the Legislature required by federal law; relating to reemployment after retirement of certain legislative employees; setting forth limitations on reemployment of former legislative employees; providing for granting of service credit in the teachers retirement system for certain former members of the state police death, disability and retirement system and setting forth requirements to be met for this service credit.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, twenty-two-c and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seventeen, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.

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

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT
ACT.**

§5-10-14. Service credit; retroactive provisions.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon rules adopted by the board of trustees and
4 based upon the following:

5 (1) In no event may less than ten days of service rendered
6 by a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the state Legislature
8 whose term of employment is otherwise classified as temporary
9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim
11 between regular sessions and who have been or are so em-
12 ployed during regular sessions or during the interim between
13 regular sessions in seven consecutive calendar years, service
14 credit of one month shall be awarded for each ten days em-
15 ployed in the interim between regular sessions, which interim
16 days shall be cumulatively calculated so that any ten days,
17 regardless of calendar month or year, shall be calculated toward
18 any award of one month of service credit;

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: *Provided*, That no more than one year of
22 service may be credited to any member for all service rendered
23 by him or her in any calendar year and no days may be carried
24 over by a member from one calendar year to another calendar
25 year where the member has received a full-year credit for that
26 year; and

27 (3) Service may be credited to a member who was em-
28 ployed by a political subdivision if his or her employment
29 occurred within a period of thirty years immediately preceding
30 the date the political subdivision became a participating public
31 employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the clerk of the House of
34 Delegates and the clerk of the state Senate, or to any former and
35 present member of the state teachers retirement system who
36 have been contributing members for more than three years, for
37 service previously credited by the state teachers retirement
38 system and shall require the transfer of the member's contribu-
39 tions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to
41 the member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 state auditor, may receive prior service credit for time served in
46 that capacity.

47 (d) Active members who previously worked in CETA
48 (Comprehensive Employment and Training Act) may receive
49 service credit for time served in that capacity: *Provided*, That
50 in order to receive service credit under the provisions of this
51 subsection the following conditions must be met: (1) The
52 member must have moved from temporary employment with
53 the participating employer to permanent full-time employment
54 with the participating employer within one hundred twenty days
55 following the termination of the member's CETA employment;
56 (2) the board must receive evidence that establishes to a
57 reasonable degree of certainty as determined by the board that
58 the member previously worked in CETA; and (3) the member
59 shall pay to the board an amount equal to the employer and
60 employee contribution plus interest at the amount set by the
61 board for the amount of service credit sought pursuant to this

62 subsection: *Provided, however,* That the maximum service
63 credit that may be obtained under the provisions of this subsec-
64 tion is two years: *Provided further,* That a member must apply
65 and pay for the service credit allowed under this subsection and
66 provide all necessary documentation by the thirty-first day of
67 March, two thousand three: *And provided further,* That the
68 board shall exercise due diligence to notify affected employees
69 of the provisions of this subsection.

70 (e) Employees of the state Legislature whose terms of
71 employment are otherwise classified as temporary and who are
72 employed to perform services required by the Legislature for its
73 regular sessions or during the interim time between regular
74 sessions shall receive service credit for the time served in that
75 capacity in accordance with the following. For purposes of this
76 section, the term "regular session" means day one through day
77 sixty of a sixty-day legislative session or day one through day
78 thirty of a thirty-day legislative session. Employees of the state
79 Legislature whose term of employment is otherwise classified
80 as temporary and who are employed to perform services
81 required by the Legislature for its regular sessions or during the
82 interim time between regular sessions and who have been or are
83 employed during regular sessions or during the interim time
84 between regular sessions in seven consecutive calendar years,
85 as certified by the clerk of the houses in which the employee
86 served, shall receive service credit of six months for all regular
87 sessions served, as certified by the clerk of the houses in which
88 the employee served, or shall receive service credit of three
89 months for each regular thirty-day session served prior to one
90 thousand nine hundred seventy-one: *Provided,* That employees
91 of the state Legislature whose term of employment is otherwise
92 classified as temporary and who are employed to perform
93 services required by the Legislature for its regular sessions and
94 who have been or are employed during the regular sessions in
95 thirteen consecutive calendar years as either temporary employ-
96 ees or full-time employees or a combination thereof, as certified
97 by the clerk of the houses in which the employee served, shall

98 receive a service credit of twelve months for each regular
99 session served, as certified by the clerk of the houses in which
100 the employee served: *Provided, however,* That the amendments
101 made to this subsection during the two thousand two regular
102 session of the Legislature only apply to employees of the
103 Legislature who are employed by the Legislature as either
104 temporary employees or full-time employees as of the first day
105 of January, two thousand two, or who become employed by the
106 Legislature as temporary or full-time employees for the first
107 time after the first day of January, two thousand two. Employ-
108 ees of the state Legislature whose terms of employment are
109 otherwise classified as temporary and who are employed to
110 perform services required by the Legislature during the interim
111 time between regular sessions shall receive service credit of one
112 month for each ten days served during the interim between
113 regular sessions, which interim days shall be cumulatively
114 calculated so that any ten days, regardless of calendar month or
115 year, shall be calculated toward any award of one month of
116 service credit: *Provided further,* That no more than one year of
117 service may be credited to any temporary legislative employee
118 for all service rendered by that employee in any calendar year
119 and no days may be carried over by a temporary legislative
120 employee from one calendar year to another calendar year
121 where the member has received a full year credit for that year.
122 Service credit awarded for legislative employment pursuant to
123 this section shall be used for the purpose of calculating that
124 member's retirement annuity, pursuant to section twenty-two of
125 this article, and determining eligibility as it relates to credited
126 service, notwithstanding any other provision of this section.
127 Certification of employment for a complete legislative session
128 and for interim days shall be determined by the clerk of the
129 houses in which the employee served, based upon employment
130 records. Service of fifty-five days of a regular session consti-
131 tutes an absolute presumption of service for a complete
132 legislative session and service of twenty-seven days of a thirty-
133 day regular session occurring prior to one thousand nine
134 hundred seventy-one constitutes an absolute presumption of

135 service for a complete legislative session. Once a legislative
136 employee has been employed during regular sessions for seven
137 consecutive years or has become a full-time employee of the
138 Legislature, that employee shall receive the service credit
139 provided in this section for all regular and interim sessions and
140 interim days worked by that employee, as certified by the clerk
141 of the houses in which the employee served, regardless of when
142 the session or interim legislative employment occurred: *And*
143 *provided further*, That regular session legislative employment
144 for seven consecutive years may be served in either or both
145 houses of the Legislature.

146 (f) Any employee may purchase retroactive service credit
147 for periods of employment in which contributions were not
148 deducted from the employee's pay. In the purchase of service
149 credit for employment prior to the year one thousand nine
150 hundred eighty-nine in any department, including the Legisla-
151 ture, which operated from the general revenue fund and which
152 was not expressly excluded from budget appropriations in
153 which blanket appropriations were made for the state's share of
154 public employees' retirement coverage in the years prior to the
155 year one thousand nine hundred eighty-nine, the employee shall
156 pay the employee's share. Other employees shall pay the state's
157 share and the employee's share to purchase retroactive service
158 credit. Where an employee purchases service credit for employ-
159 ment which occurred after the year one thousand nine hundred
160 eighty-eight, that employee shall pay for the employee's share
161 and the employer shall pay its share for the purchase of
162 retroactive service credit: *Provided*, That no legislative em-
163 ployee and no current or former member of the Legislature may
164 be required to pay any interest or penalty upon the purchase of
165 retroactive service credit in accordance with the provisions of
166 this section where the employee was not eligible to become a
167 member during the years he or she is purchasing retroactive
168 credit for or had the employee attempted to contribute to the
169 system during the years he or she is purchasing retroactive
170 service credit for and such contributions would have been
171 refused by the board: *Provided, however*, That a legislative

172 employee purchasing retroactive credit under this section does
173 so within twenty-four months of becoming a member of the
174 system or no later than the last day of December, two thousand
175 five, whichever occurs last: *Provided further*, That once a
176 legislative employee becomes a member of the retirement
177 system, he or she may purchase retroactive service credit for
178 any time he or she was employed by the Legislature and did not
179 receive service credit. Any service credit purchased shall be
180 credited as six months for each sixty-day session worked, three
181 months for each thirty-day session worked or twelve months for
182 each sixty-day session for legislative employees who have been
183 employed during regular sessions in thirteen consecutive
184 calendar years, as certified by the clerk of the houses in which
185 the employee served, and credit for interim employment as
186 provided in this subsection: *And provided further*, That this
187 legislative service credit shall also be used for months of
188 service in order to meet the sixty-month requirement for the
189 payments of a temporary legislative employee member's
190 retirement annuity: *And provided further*, That no legislative
191 employee may be required to pay for any service credit beyond
192 the actual time he or she worked regardless of the service credit
193 which is credited to him or her pursuant to this section: *And*
194 *provided further*, That any legislative employee may request a
195 recalculation of his or her credited service to comply with the
196 provisions of this section at any time.

197 (g) Notwithstanding any provision to the contrary, the
198 seven consecutive calendar years requirement and the thirteen
199 consecutive calendar years requirement and the service credit
200 requirements set forth in this section shall be applied retroac-
201 tively to all periods of legislative employment prior to the
202 passage of this section, including any periods of legislative
203 employment occurring before the seven and thirteen consecu-
204 tive calendar years referenced in this section: *Provided*, That
205 the employee has not retired prior to the effective date of the

206 amendments made to this section in the two thousand two
207 regular session of the Legislature.

208 (h) The board of trustees shall grant service credit to any
209 former or present member of the state police death, disability
210 and retirement fund who has been a contributing member of this
211 system for more than three years for service previously credited
212 by the state police death, disability and retirement fund if the
213 member transfers all of his or her contributions to the state
214 police death, disability and retirement fund to the system
215 created in this article, including repayment of any amounts
216 withdrawn any time from the state police death, disability and
217 retirement fund by the member seeking the transfer allowed in
218 this subsection: *Provided*, That there shall be added by the
219 member to the amounts transferred or repaid under this subsec-
220 tion an amount which shall be sufficient to equal the contribu-
221 tions he or she would have made had the member been under
222 the public employees retirement system during the period of his
223 or her membership in the state police death, disability and
224 retirement fund plus interest at a rate determined by the board.

**§5-10-22c. Temporary early retirement incentives program;
legislative declaration and finding of compelling
state interest and public purpose; specifying
eligible and ineligible members for incentives
program; options, conditions, and exceptions;
certain positions abolished; special rule of eighty;
effective, termination, and notice dates.**

1 The Legislature hereby finds and declares that a compelling
2 state interest exists in providing a temporary early retirement
3 incentives program for encouraging the early, voluntary
4 retirement of those public employees who were current, active
5 contributing members of this retirement system on the first day
6 of April, one thousand nine hundred eighty-eight, in the
7 reduction of the number of such employees and in reduction of

8 governmental costs therefor; that such program constitutes a
9 public purpose; and that the special classifications and differen-
10 tiations provided in respect of such program are reasonable and
11 equitable ones for the accomplishment of such purpose and
12 program as enacted in Enrolled Committee Substitute for H. B.
13 No. 4672, regular session, one thousand nine hundred
14 eighty-eight, and as clarified and supplemented herein, retroac-
15 tive to such beginning date, aforesaid. The Legislature further
16 finds that maintaining an actuarially sound retirement fund is a
17 necessity and that the reemployment of persons who retire
18 under this section in any manner, including reemployment on
19 a contract basis, is contrary to the intent of the early retirement
20 program and severely threatens the fiscal integrity of the
21 retirement fund.

22 (a) For the purposes of this section: (1) "Contract" means
23 any personal service agreement, not involving the sale of
24 commodities, that cannot be performed within sixty days or that
25 exceeds two thousand five hundred dollars in any twelve-month
26 period. The term "contract" does not include any agreement
27 obtained by a retirant through a bidding process and which is
28 for the furnishing of any commodity to a government agency
29 and that term does not include any person who retired under
30 this section who works as a contract employee for the Legisla-
31 ture when such employment commences after the thirty-first
32 day of December, one thousand nine hundred ninety-nine:
33 *Provided*, That such employment may not exceed one hundred
34 ten days; (2) "governmental entity" means the state of West
35 Virginia; a constitutional branch or office of the state govern-
36 ment, or any subdivision thereof; a county, city or town in the
37 state; a county board of education; a separate corporation or
38 instrumentality established pursuant to a state statute; any other
39 entity currently permitted to participate in any state public
40 retirement system or the public employees insurance agency; or
41 any officer or official of any entity listed above who is acting
42 in his or her official capacity; (3) "part-time elected or ap-

43 pointed office” means any elected or appointed office that pays
44 annual compensation of less than two thousand five hundred
45 dollars or requires less than sixty days of service in any
46 twelve-month period; (4) “substitute teacher” means a teacher,
47 public school librarian, registered professional nurse employed
48 by the county board of education or any other person employed
49 for counseling or instructional purposes in a public school in
50 this state who is temporarily fulfilling the duties of an existing
51 real person employed in a specific position who is temporarily
52 absent from that specified position.

53 (b) Beginning on the first day of April, one thousand nine
54 hundred eighty-eight, and continuing through the thirty-first day
55 of December, one thousand nine hundred eighty-eight (or as
56 extended by eligibility qualification requirement, as hereinafter
57 specified), eligible members, being those active, contributing
58 members actually and currently employed on such beginning
59 date, retiring pursuant to this section, and from any state,
60 county or municipal position, covered under the two divisions
61 of this retirement system (the state division and the public
62 employer, nonstate division) including those so employed on
63 said beginning date and leaving the system during the incentive
64 period and who are eligible for taking deferred retirement (but
65 not disability retirees) may elect to participate in this incentive
66 program and may elect any one of the three following incentive
67 options:

68 (1) Retirement incentive option one:

69 For the purpose of computing the member’s annuity, the
70 normal final average salary shall be computed and one-eighth
71 thereof shall be added thereto in arriving at the true final
72 average salary for use in actual computation of retirement
73 benefit.

74 (2) Retirement incentive option two:

75 A member may elect a lump sum payment, in addition to
76 his or her regular retirement annuity, equal to ten percent of his
77 final average salary not to exceed five thousand dollars, and in
78 the case of a deferred retirement electing this option, such lump
79 sum payment shall be receivable and deferred to the time of
80 receipt of such deferred retirement annuity.

81 (3) Retirement incentive option three:

82 A person shall be credited with an additional two years of
83 contributing service and an additional two years of age. The
84 years credited under this option shall in no way add to a
85 member's final average salary factor of computation.

86 Active, contributing members who desire to retire under
87 this section but who are unable to retire by the thirty-first day
88 of December, one thousand nine hundred eighty-eight, and
89 make use of the incentive retirement program because an
90 element of eligibility for retirement, such as age or other
91 element, will not be met until a date after the thirty-first day of
92 December, one thousand nine hundred eighty-eight, and before
93 the first day of July, one thousand nine hundred eighty-nine,
94 shall be permitted to postpone actual retirement until the date
95 of fulfilling such element of eligibility and shall retire on such
96 date, before the temporary retirement incentive program ends
97 on the thirtieth day of June, one thousand nine hundred
98 eighty-nine, with proper credit to be granted for such extended
99 period: *Provided*, That they shall have made application for
100 retirement, including choice of their respective option, and
101 given notice to their respective employer by the thirty-first day
102 of December, one thousand nine hundred eighty-eight, although
103 postponing actual retirement, as aforesaid.

104 (c) Any member participating in this retirement incentive
105 program is not eligible to accept further employment or accept,
106 directly or indirectly, work on a contract basis from any

107 governmental entity: *Provided*, That nothing in this section
108 shall affect any contract entered into prior to the effective date
109 of this section: *Provided, however*, That the executive director
110 may approve, upon written request and for good cause shown,
111 an exception allowing a retirant to perform work on a contract
112 basis. The executive director shall report all approved excep-
113 tions to the board of trustees: *Provided further*, That a person
114 may retire under this section and thereafter serve in an elective
115 office: *And provided further*, That he or she shall not receive an
116 incentive option under this section during the term of service in
117 said office, but shall receive his or her annuity calculated on
118 regular basis, as if originally taken not under this section but on
119 such regular basis. At the end of such term and cessation of
120 service in such office during which the member shall rejoin and
121 reenter the retirement system and pay contributions therefor,
122 such regular annuity shall be recalculated and an increased
123 annuity due to such additional employment shall be granted and
124 computed on regular basis and in similar manner as under
125 section forty-eight of this article. In respect of an appointive
126 office, as distinguished from an elective office, any person
127 retiring under this section and thereafter serving in such
128 appointive office shall not receive an incentive option under
129 this section during the term of service in said office, but the
130 same shall be suspended during such period: *And provided*
131 *further*, That at the end of such term and cessation of service in
132 such appointive office the incentive option provided for under
133 this section shall be resumed: *And provided further*, That any
134 person elected or appointed to office by the state or any of its
135 political subdivisions who waives whatever salary, wage or per
136 diem compensation he or she may be entitled to by virtue of
137 service in such office and who does not receive any income
138 therefrom except such reimbursement of out-of-pocket costs
139 and expenses as may be permitted by the statutes governing
140 such office shall continue to receive an incentive option under
141 this section. Such service shall not be counted as contributed or
142 credited service for purposes of computing retirement benefits.

143 If such elected or appointed office is a part-time elected or
144 appointed office, a person electing retirement under this section
145 may serve in such elected or appointed office without a loss of
146 the benefits provided under this section.

147 Prior to the initiation or renewal of any contract entered
148 into pursuant to the provisions of this section or the acceptance
149 of any elective or appointive office by a person who has elected
150 to retire under the early retirement provisions of this article,
151 such person shall complete a disclosure and waiver statement
152 executed under oath and acknowledged by a notary public. The
153 board shall promulgate rules, pursuant to chapter twenty-nine-a
154 of this code regarding the form and contents of the disclosure
155 and waiver statement. The disclosure and waiver statement
156 shall be forwarded to the appropriate state public retirement
157 system administrator who shall take action to ensure that the
158 early retirement incentive benefits are reduced in accordance
159 with the provisions of this section. The administrator shall then
160 certify such action in writing to the appropriate governmental
161 entity.

162 In any event, an eligible member may retire under this
163 section and thereafter continue to receive his or her incentive
164 annuity and be employed as a substitute teacher or as adjunct
165 faculty.

166 Any such incentive retirants, under this section, may not
167 thereafter receive such annuity and enter or reenter any govern-
168 mental retirement system established or authorized to be
169 established by the state, notwithstanding any provision of the
170 code to the contrary, unless required by constitutional provision
171 or as hereby specifically permitted to those retiring and
172 thereafter serving in elective office, as aforesaid.

173 The additional annuity allowed for temporary early
174 retirement under these options, in respect of state division

175 retirants of this system, is intended to be paid from the retire-
176 ment incentive account hereby created as a special account in
177 the state treasury and from the funds therein established with
178 moneys required to be transferred by heads of spending units
179 from the unused portion of salary and fringe benefits in their
180 budgets accruing in respect of such positions vacated and
181 subsequently canceled under this temporary early retirement
182 program. Salary and fringe benefit moneys actually saved in a
183 particular fiscal year shall constitute the fund source for
184 payment of such additional annuity, the funds of the retirement
185 system to be used for payment of the base annuity under the
186 early retirement incentive program: *Provided*, That such
187 additional annuity shall be paid from the unused portion of both
188 salary and fringe benefits and with any remainder of any fringe
189 benefit moneys, as such, to remain with the spending unit and
190 any remainder of salary, as such, to be directed as additional
191 funding to the teachers retirement system and as a part of the
192 assets thereof. No such additional annuity shall be disallowed
193 even though initial receipts may not be sufficient, with funds of
194 the system to be applied for such purpose, as for the base
195 annuity. With respect to public employer division retirants
196 (nonstate division retirants of the system), such incentive
197 annuity shall be paid from the nonstate division funds of the
198 system.

199 (d) The executive secretary of the retirement system shall
200 provide forms for applicants. Such forms shall include a
201 detailed description of the incentive plan options.

202 The executive secretary of the retirement system shall file
203 a report to the Legislature no later than the fifteenth day of
204 February, one thousand nine hundred eighty-nine, and quarterly
205 thereafter, detailing the number of retirees who have elected to
206 accept early retirement incentive options, the dollar cost to date
207 by option selected, and the projected annual cost through the
208 year two thousand.

209 (e) Within every spending unit, department, board, corpora-
210 tion, commission, or any other agency or entity wherein two or
211 multiples of two members elect to retire either under the
212 temporary early retirement incentives set forth above, or under
213 regular, voluntary retirement, and countable on an agency-wide
214 or entity-wide basis, no more than one of such vacated positions
215 may be filled, with the second position being abolished upon
216 the effective day of the member's retirement. The vacant
217 position abolishment requirement shall not apply to elective
218 positions or appointed public officers whose positions are
219 established by state constitutional or statutory provision. The
220 retirant's employing entity shall decide as to which of the
221 vacated positions made available through special early retire-
222 ment or through regular, voluntary retirement are to be abol-
223 ished and the head of such spending unit shall immediately
224 notify the state auditor, the legislative auditor, and the commis-
225 sioner of the department of finance and administration of the
226 decisions and shall then apply and/or transfer the remaining
227 salary and fringe benefits as aforesaid: *Provided*, That this
228 vacant position abolishment provision shall not apply to any
229 county or municipal position except those under the authority
230 of a county board of education, nor to any position or positions,
231 whether designated by spending unit, department, agency,
232 commission, entity or otherwise, which the governor in respect
233 of the executive branch, or the chief justice of the supreme
234 court of appeals in respect of the judicial branch, or the presi-
235 dent of the Senate or speaker of the House of Delegates, in
236 respect of the legislative branch, may exempt or amend, under
237 such abolishment provision, upon his or her respective recom-
238 mendation that such exemption or amendment is necessary to
239 provide for continuity of governmental operation or to preserve
240 the health, welfare or safety of the people of West Virginia, and
241 with the prior concurrence of the joint committee on govern-
242 ment and finance in such recommendation, after the chairmen
243 thereof shall cause such committee to meet.

244 (f) *Special rule of eighty.* — Any active, contributing
245 member of the retirement system as of the first day of April,
246 one thousand nine hundred eighty-eight, who selects one of the
247 incentive options in this section, may retire under the special
248 early retirement provisions with full pension rights, without
249 reduction of benefits if the sum of such member's age plus
250 years of contributing service equals or exceeds eighty: *Pro-*
251 *vided,* That such person has at least twenty years of contributing
252 service; up to two years of which may be military service, or
253 prior service, or any combination thereof not exceeding an
254 aggregate of two years.

255 (g) *Termination of temporary retirement incentives pro-*
256 *gram.* — The right to elect, choose, select or use any of the
257 options, special rule of eighty, or other benefits set forth in this
258 section shall terminate on the thirtieth day of June, one thou-
259 sand nine hundred eighty-nine.

260 (h) The board shall promulgate rules and regulations in
261 accordance with the provisions of article three, chapter
262 twenty-nine of this code regarding the calculation of the amount
263 of incentive option that may be forfeited pursuant to the
264 provisions of subsection (b) of this section.

**§5-10-48. Reemployment after retirement; options for holder of
elected public office.**

1 The Legislature finds that a compelling state interest exists
2 in maintaining an actuarially sound retirement system and that
3 this interest necessitates that certain limitations be placed upon
4 an individual's ability to retire from the system and to then later
5 return to state employment as an employee with a participating
6 public employer while contemporaneously drawing an annuity
7 from the system. The Legislature hereby further finds and
8 declares that the interests of the public are served when persons
9 having retired from public employment are permitted, within

10 certain limitations, to render post-retirement employment in
11 positions of public service, either in elected or appointed
12 capacities. The Legislature further finds and declares that it has
13 the need for qualified employees and that in many cases an
14 employee of the Legislature will retire and be available to
15 return to work for the Legislature as a per diem employee. The
16 Legislature further finds and declares that in many instances
17 these employees have particularly valuable expertise which the
18 Legislature cannot find elsewhere. The Legislature further finds
19 and declares that reemploying these persons on a limited per
20 diem after they have retired is not only in the best interests of
21 this state, but has no adverse effect whatsoever upon the
22 actuarial soundness of this particular retirement system.

23 (a) For the purposes of this section: (1) "Regularly em-
24 ployed on a full-time basis" means employment of an individ-
25 ual by a participating public employer, in a position other than
26 as an elected or appointed public official, which normally
27 requires twelve months per year service and/or requires at least
28 one thousand forty hours of service per year in that position; (2)
29 "temporary full-time employment or temporary part-time
30 employment" means employment of an individual on a tempo-
31 rary or provisional basis by a participating public employer,
32 other than as an elected or appointed public official, in a
33 position which does not otherwise render the individual as
34 regularly employed; (3) "former employee of the Legislature"
35 means any person who has retired from the Legislature and who
36 has at least ten years contributing service with the Legislature;
37 and (4) "reemployed by the Legislature" means a former
38 employee of the Legislature who has been reemployed on a per
39 diem basis not to exceed one hundred seventy-five days per
40 calendar year.

41 (b) In the event a retirant becomes regularly employed on
42 a full-time basis by a participating public employer, payment of
43 his or her annuity shall be suspended during the period of his or

44 her reemployment and he or she shall become a contributing
45 member to the retirement system. If his or her reemployment is
46 for a period of one year or longer, his or her annuity shall be
47 recalculated and he or she shall be granted an increased annuity
48 due to such additional employment, said annuity to be com-
49 puted according to section twenty-two of this article. A retirant
50 may accept temporary full-time or temporary part-time employ-
51 ment from a participating employer without suspending his or
52 her retirement annuity so long as he or she does not receive
53 annual compensation in excess of fifteen thousand dollars.

54 (c) In the event a member retires and is then subsequently
55 elected to a public office or is subsequently appointed to hold
56 an elected public office, or is a former employee of the Legisla-
57 ture who has been reemployed by the Legislature, he or she has
58 the option, notwithstanding subsection (b) of this section, to
59 either:

60 (1) Continue to receive payment of his or her annuity while
61 holding such public office or during any reemployment of a
62 former employee of the Legislature on a per diem basis, in
63 addition to the salary he or she may be entitled to as such office
64 holder or as a per diem reemployed former employee of the
65 Legislature; or

66 (2) Suspend the payment of his or her annuity and become
67 a contributing member of the retirement system as provided in
68 subsection (b) of this section. Notwithstanding the provisions
69 of this subsection, a member who is participating in the system
70 as an elected public official may not retire from his or her
71 elected position and commence to receive an annuity from the
72 system and then be reappointed to the same position unless and
73 until a continuous six-month period has passed since his or her
74 retirement from the position: *Provided*, That a former employee
75 of the Legislature may not be reemployed by the Legislature on
76 a per diem basis until at least sixty days after the employee has

77 retired: *Provided, however,* That the limitation on compensation
78 provided by subsection (b) of this section does not apply to the
79 reemployed former employee: *Provided further,* That in no
80 event may reemployment by the Legislature of a per diem
81 employee exceed one hundred seventy-five days per calendar
82 year.

83 (d) A member who is participating in the system simulta-
84 neously as both a regular, full-time employee of a participating
85 public employer and as an elected or appointed member of the
86 legislative body of the state or any political subdivision may,
87 upon meeting the age and service requirements of this article,
88 elect to retire from his or her regular full-time state employment
89 and may commence to receive an annuity from the system
90 without terminating his or her position as a member of the
91 legislative body of the state or political subdivision: *Provided,*
92 That the retired member shall not, during the term of his or her
93 retirement and continued service as a member of the legislative
94 body of a political subdivision, be eligible to continue his or her
95 participation as a contributing member of the system and shall
96 not continue to accrue any additional service credit or benefits
97 in the system related to the continued service.

98 (e) Notwithstanding the provisions of section twenty-seven-
99 b of this article, any publicly elected member of the legislative
100 body of any political subdivision or of the state Legislature, the
101 clerk of the House of Delegates and the clerk of the Senate may
102 elect to commence receiving in-service retirement distributions
103 from this system upon attaining the age of seventy and one-half
104 years: *Provided,* That the member is eligible to retire under the
105 provisions of section twenty or section twenty-one of this
106 article: *Provided, however,* That the member elects to stop
107 actively contributing to the system while receiving such in-
108 service distributions.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-17. Statement and computation of teachers' service; qualified military service.**

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal Selective Service Act was in effect. For
15 purposes of this section, "armed forces" includes women's
16 army corps, women's appointed volunteers for emergency
17 service, army nurse corps, spars, women's reserve and other
18 similar units officially parts of the military service of the United
19 States. The military service is considered equivalent to public
20 school teaching, and the salary equivalent for each year of that
21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement. Notwithstand-
26 ing the preceding provisions of this subsection, contributions,
27 benefits and service credit with respect to qualified military
28 service shall be provided in accordance with Section 414(u) of
29 the Internal Revenue Code. For purposes of this section,
30 "qualified military service" has the same meaning as in Section

31 414(u) of the Internal Revenue Code. The retirement board is
32 authorized to determine all questions and make all decisions
33 relating to this section and, pursuant to the authority granted to
34 the retirement board in section one, article ten-d, chapter five of
35 this code, may promulgate rules relating to contributions,
36 benefits and service credit to comply with Section 414(u) of the
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal
39 government, or a state or territory of the United States, or a
40 governmental subdivision of that state or territory, the retire-
41 ment board shall grant credit to the member: *Provided*, That the
42 member shall pay to the system double the amount he or she
43 contributed during the first full year of current employment,
44 times the number of years for which credit is granted, plus
45 interest at a rate to be determined by the retirement board. The
46 interest shall be deposited in the reserve fund and service credit
47 granted at the time of retirement shall not exceed the lesser of
48 ten years or fifty percent of the member's total service as a
49 teacher in West Virginia. Any transfer of out-of-state service,
50 as provided in this article, shall not be used to establish
51 eligibility for a retirement allowance and the retirement board
52 shall grant credit for the transferred service as additional service
53 only: *Provided, however*, That a transfer of out-of-state service
54 is prohibited if the service is used to obtain a retirement benefit
55 from another retirement system: *Provided further*, That salaries
56 paid to members for service prior to entrance into the retirement
57 system shall not be used to compute the average final salary of
58 the member under the retirement system.

59 (d) Service credit for members or retired members shall not
60 be denied on the basis of minimum income rules promulgated
61 by the teachers retirement board: *Provided*, That the member or
62 retired member shall pay to the system the amount he or she
63 would have contributed during the year or years of public

64 school service for which credit was denied as a result of the
65 minimum income rules of the teachers retirement board.

66 (e) No members shall be considered absent from service
67 while serving as a member or employee of the Legislature of
68 the state of West Virginia during any duly constituted session
69 of that body or while serving as an elected member of a county
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as
72 a teacher while serving as an officer with a statewide profes-
73 sional teaching association, or who has served in that capacity,
74 and no retired teacher, who served in that capacity while a
75 member, shall be considered to have been absent from service
76 as a teacher by reason of that service: *Provided*, That the period
77 of service credit granted for that service shall not exceed ten
78 years: *Provided, however*, That a member or retired teacher
79 who is serving or has served as an officer of a statewide
80 professional teaching association shall make deposits to the
81 teachers retirement board, for the time of any absence, in an
82 amount double the amount which he or she would have
83 contributed in his or her regular assignment for a like period of
84 time.

85 (g) The teachers retirement board shall grant service credit
86 to any former or present member of the West Virginia public
87 employees retirement system who has been a contributing
88 member for more than three years, for service previously
89 credited by the public employees retirement system and: (1)
90 Shall require the transfer of the member's contributions to the
91 teachers retirement system; or (2) shall require a repayment of
92 the amount withdrawn any time prior to the member's retire-
93 ment: *Provided*, That there shall be added by the member to the
94 amounts transferred or repaid under this subsection an amount
95 which shall be sufficient to equal the contributions he or she
96 would have made had the member been under the teachers

97 retirement system during the period of his or her membership
98 in the public employees retirement system plus interest at a rate
99 of six percent compounded annually from the date of with-
100 drawal to the date of payment. The interest paid shall be
101 deposited in the reserve fund.

102 (h) For service as a teacher in an elementary or secondary
103 parochial school, located within this state and fully accredited
104 by the West Virginia department of education, the retirement
105 board shall grant credit to the member: *Provided*, That the
106 member shall pay to the system double the amount contributed
107 during the first full year of current employment, times the
108 number of years for which credit is granted, plus interest at a
109 rate to be determined by the retirement board. The interest shall
110 be deposited in the reserve fund and service granted at the time
111 of retirement shall not exceed the lesser of ten years or fifty
112 percent of the member's total service as a teacher in the West
113 Virginia public school system. Any transfer of parochial school
114 service, as provided in this section, may not be used to establish
115 eligibility for a retirement allowance and the board shall grant
116 credit for the transfer as additional service only: *Provided*,
117 *however*, That a transfer of parochial school service is prohib-
118 ited if the service is used to obtain a retirement benefit from
119 another retirement system.

120 (i) Active members who previously worked in CETA
121 (Comprehensive Employment and Training Act) may receive
122 service credit for time served in that capacity: *Provided*, That
123 in order to receive service credit under the provisions of this
124 subsection the following conditions must be met: (1) The
125 member must have moved from temporary employment with
126 the participating employer to permanent full-time employment
127 with the participating employer within one hundred twenty days
128 following the termination of the member's CETA employment;
129 (2) the board must receive evidence that establishes to a
130 reasonable degree of certainty as determined by the board that

131 the member previously worked in CETA; and (3) the member
132 shall pay to the board an amount equal to the employer and
133 employee contribution plus interest at the amount set by the
134 board for the amount of service credit sought pursuant to this
135 subsection: *Provided, however,* That the maximum service
136 credit that may be obtained under the provisions of this subsection
137 is two years: *Provided further,* That a member must apply
138 and pay for the service credit allowed under this subsection and
139 provide all necessary documentation by the thirty-first day of
140 March, two thousand three: *And provided further,* That the
141 board shall exercise due diligence to notify affected employees
142 of the provisions of this subsection.

143 (j) If a member is not eligible for prior service credit or
144 pension as provided in this article, then his or her prior service
145 shall not be considered a part of his or her total service.

146 (k) A member who withdrew from membership may regain
147 his or her former membership rights as specified in section
148 thirteen of this article only in case he or she has served two
149 years since his or her last withdrawal.

150 (l) Subject to the provisions of subsections (a) through (l),
151 inclusive, of this section, the board shall verify as soon as
152 practicable the statements of service submitted. The retirement
153 board shall issue prior service certificates to all persons eligible
154 for the certificates under the provisions of this article. The
155 certificates shall state the length of the prior service credit, but
156 in no case shall the prior service credit exceed forty years.

157 (m) Notwithstanding any provision of this article to the
158 contrary, when a member is or has been elected to serve as a
159 member of the Legislature, and the proper discharge of his or
160 her duties of public office require that member to be absent
161 from his or her teaching or administrative duties, the time
162 served in discharge of his or her duties of the legislative office

163 are credited as time served for purposes of computing service
164 credit: *Provided*, That the board may not require any additional
165 contributions from that member in order for the board to credit
166 him or her with the contributing service credit earned while
167 discharging official legislative duties: *Provided, however*, That
168 nothing herein may be construed to relieve the employer from
169 making the employer contribution at the member's regular
170 salary rate or rate of pay from that employer on the contributing
171 service credit earned while the member is discharging his or her
172 official legislative duties. These employer payments shall
173 commence as of the first day of June, two thousand: *Provided*
174 *further*, That any member to which the provisions of this
175 subsection apply may elect to pay to the board an amount equal
176 to what his or her contribution would have been for those
177 periods of time he or she was serving in the Legislature. The
178 periods of time upon which the member paid his or her contri-
179 bution shall then be included for purposes of determining his or
180 her final average salary as well as for determining years of
181 service: *And provided further*, That a member utilizing the
182 provisions of this subsection is not required to pay interest on
183 any contributions he or she may decide to make.

184 (n) The teachers retirement board shall grant service credit
185 to any former member of the state police death, disability and
186 retirement system who has been a contributing member for
187 more than three years, for service previously credited by the
188 state police death, disability and retirement system; and: (1)
189 Shall require the transfer of the member's contributions to the
190 teachers retirement system; or (2) shall require a repayment of
191 the amount withdrawn any time prior to the member's retire-
192 ment: *Provided*, That the member shall add to the amounts
193 transferred or repaid under this paragraph an amount which is
194 sufficient to equal the contributions he or she would have made
195 had the member been under the teachers retirement system
196 during the period of his or her membership in the state police
197 death, disability and retirement system plus interest at a rate of

198 six percent compounded annually from the date of withdrawal
199 to the date of payment. The interest paid shall be deposited in
200 the reserve fund.

CHAPTER 263

(S. B. 652 — By Senator Plymale)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of contributory service required for a deferred annuity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-21. Deferred retirement and early retirement.

1 (a) Any member who has five or more years of credited
2 service in force, of which at least three years are contributing
3 service, and who leaves the employ of a participating public
4 employer prior to his or her attaining age sixty years for any
5 reason except his or her disability retirement or death, shall be
6 entitled to an annuity computed according to section
7 twenty-two of this article, as that section was in force as of the

8 date of his or her separation from the employ of a participating
9 public employer: *Provided*, That he or she does not withdraw
10 his or her accumulated contributions from the members' deposit
11 fund: *Provided, however*, That on and after the first day of July,
12 two thousand two, any person who becomes a new member of
13 this retirement system shall, in qualifying for retirement
14 hereunder, have five or more years of service, all of which
15 years shall be actual, contributory ones. His or her annuity shall
16 begin the first day of the calendar month next following the
17 month in which his or her application for same is filed with the
18 board of trustees on or after his or her attaining age sixty-two
19 years.

20 (b) Any member who qualifies for deferred retirement
21 benefits in accordance with subsection (a) of this section and
22 has ten or more years of credited service in force and who has
23 attained age fifty-five as of the date of his or her separation,
24 may, prior to the effective date of his or her retirement, but not
25 thereafter, elect to receive the actuarial equivalent of his or her
26 deferred retirement annuity as a reduced annuity commencing
27 on the first day of any calendar month between his or her date
28 of separation and his or her attainment of age sixty-two years
29 and payable throughout his or her life.

30 (c) Any member who qualifies for deferred retirement
31 benefits in accordance with subsection (a) of this section and
32 has twenty or more years of credited service in force may elect
33 to receive the actuarial equivalent of his or her deferred
34 retirement annuity as a reduced annuity commencing on the
35 first day of any calendar month between his or her fifty-fifth
36 birthday and his or her attainment of age sixty-two years and
37 payable throughout his or her life.

38 (d) Notwithstanding any of the other provisions of this
39 section or of this article, except sections twenty-seven-a and
40 twenty-seven-b of this article, and pursuant to rules promul-
41 gated by the board, any member who has thirty or more years

42 of credited service in force, at least three of which are contrib-
43 uting service, and who elects to take early retirement, which for
44 the purposes of this subsection means retirement prior to age
45 sixty, whether an active employee or a separated employee at
46 the time of application, shall be entitled to the full computation
47 of annuity according to section twenty-two of this article, as
48 that section was in force as of the date of retirement application,
49 but with the reduced actuarial equivalent of the annuity the
50 member would have received if his or her benefit had com-
51 menced at age sixty when he or she would have been entitled to
52 full computation of benefit without any reduction.

53 (e) Notwithstanding any of the other provisions of this
54 section or of this article, except sections twenty-seven-a and
55 twenty-seven-b of this article, any member of the retirement
56 system may retire with full pension rights, without reduction of
57 benefits, if he or she is at least fifty-five years of age and the
58 sum of his or her age plus years of contributing service and
59 limited credited service, as defined in section two of this article,
60 equals or exceeds eighty.

CHAPTER 264

**(S. B. 615 — By Senators Wooton, Caldwell, Fanning,
Hunter, Kessler, Minard, Mitchell, Oliverio, Redd,
Ross, Rowe, Facemyer and McKenzie)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disqualification for public retirement benefits; setoffs against unpaid benefits; and freezing

of moneys pending court resolution where theft of government moneys occurs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.

1 (a) The state of West Virginia or any of its political
2 subdivisions shall have the right of setoff against any unpaid
3 benefits which have accrued or may thereafter accrue under the
4 plan, including any contributions by the participant, for any
5 claim caused by less than honorable service by the participant.

6 (b) Notwithstanding any provision of this article to the
7 contrary, upon being notified by an agency of the state of West
8 Virginia or any of its political subdivisions that an employee
9 has been charged by criminal complaint, indictment or informa-
10 tion with an offense which constitutes less than honorable
11 service and larceny of funds or property from a state agency or
12 political subdivision, the retirement board shall withhold
13 payment or refunding of any participant contributions until it
14 receives an order from a court of competent jurisdiction
15 reflecting that the charge has been dismissed, the participant
16 found not guilty or ordering the release of all or part of the
17 funds or directing restitution to the state or political subdivi-
18 sion.

19 (c) Notwithstanding any provision of the law to the
20 contrary, any unpaid benefits which have accrued or may

21 thereafter accrue shall be subject to execution, garnishment,
22 attachment or any other legal process for collection of a
23 judgment for the recovery of loss or damages incurred by the
24 state or its political subdivision, caused by the participant's less
25 than honorable service.

CHAPTER 265

(H. B. 4484 — By Delegate Campbell)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teachers retirement system; and providing for the right of members to name a new joint annuitant upon the death of a spouse who is a joint annuitant.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the retire-
2 ment board effective before the first day of July, one thousand
3 nine hundred eighty, shall be paid the annuities which were
4 approved by the retirement board.

5 Annuities approved by the board effective after the thirtieth
6 day of June, one thousand nine hundred eighty, shall be
7 computed as provided herein.

8 Upon establishment of eligibility for a retirement allow-
9 ance, a member shall be granted an annuity which shall be the
10 sum of the following:

11 (a) Two percent of the member's average salary multiplied
12 by his or her total service credit as a teacher. In this paragraph
13 "average salary" shall mean the average of the highest annual
14 salaries received by the member during any five years con-
15 tained within his or her last fifteen years of total service credit:
16 *Provided*, That the highest annual salary used in this calculation
17 for certain members employed by the West Virginia higher
18 education policy commission under its control shall be four
19 thousand eight hundred dollars, as provided by section
20 fourteen-a of this article and chapter;

21 (b) The actuarial equivalent of the voluntary deposits of the
22 member in his or her individual account up to the time of his or
23 her retirement, with regular interest.

24 The disability annuities of all teachers retired for disability
25 shall be based upon a disability table prepared by a competent
26 actuary approved by the retirement board.

27 Upon the death of an annuitant who qualified for an annuity
28 as the surviving spouse of an active member or because of
29 permanent disability, the estate of the deceased or beneficiary
30 designated for such purpose, shall be paid the difference, if any,
31 between the member's contributions with regular interest
32 thereon, and the sum of the annuity payments. Upon the death
33 of a spouse, a retirant may elect an annuity option approved by
34 the retirement board in an amount adjusted on a fair basis to be
35 of equal actuarial value as the annuity prospectively in effect

36 relative to the surviving member at the time the new option is
37 elected.

38 All annuities shall be paid in twelve monthly payments. In
39 computing the monthly payments, fractions of a cent shall be
40 deemed a cent. The monthly payments shall cease with the
41 payment for the month within which the beneficiary dies, and
42 shall begin with the payment for the month succeeding the
43 month within which the annuitant became eligible under this
44 article for the annuity granted; in no case, however, shall an
45 annuitant receive more than four monthly payments which are
46 retroactive after the board receives his or her application for
47 annuity. Beginning with the first day of July, one thousand nine
48 hundred ninety-four, the monthly payments shall be made on
49 the twenty-fifth day of each month, except the month of
50 December, when the payment shall be made on the eighteenth
51 day of December. If the date of payment falls on a holiday,
52 Saturday or Sunday, then the payment shall be made on the
53 preceding workday.

54 In case the retirement board receives data affecting the
55 approved annuity of a retired teacher, the annuity shall be
56 changed in accordance with the data, the change being effective
57 with the payment for the month within which the board
58 received the new data.

59 Any person who has attained the age of sixty-five and who
60 has served at least twenty-five years as a teacher prior to the
61 first day of July, one thousand nine hundred forty-one, shall be
62 eligible for prior service credit and for prior service pensions as
63 prescribed in this section.

CHAPTER 266

(Com. Sub. for S. B. 279 — By Senators Ross, Love,
Anderson, McCabe, Mitchell, Burnette and Rowe)

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of the division of highways to provide family restrooms at each rest area on interstate highways in West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8. Powers, duties and responsibilities of commissioner.

1 In addition to all other duties, powers and responsibilities
2 given and assigned to the commissioner in this chapter, the
3 commissioner may:

4 (1) Exercise general supervision over the state road
5 program and the construction, reconstruction, repair and
6 maintenance of state roads and highways;

7 (2) Determine the various methods of road construction
8 best adapted to the various sections and areas of the state and
9 establish standards for the construction and maintenance of
10 roads and highways in the various sections and areas of the
11 state;

12 (3) Conduct investigations and experiments, hold hearings
13 and public meetings and attend and participate in meetings and
14 conferences within and without the state for purposes of
15 acquiring information, making findings and determining
16 courses of action and procedure relative to advancement and
17 improvement of the state road and highway system;

18 (4) Enter private lands to make inspections and surveys for
19 road and highway purposes;

20 (5) Acquire, in name of the department, by lease, grant,
21 right of eminent domain or other lawful means all lands and
22 interests and rights in lands necessary and required for roads,
23 rights-of-way, cuts, fills, drains, storage for equipment and
24 materials and road construction and maintenance in general;

25 (6) Procure photostatic copies of any or all public records
26 on file at the state capitol of Virginia which may be considered
27 necessary or proper in ascertaining the location and legal status
28 of public road rights-of-way located or established in what is
29 now the state of West Virginia, which when certified by the
30 commissioner, may be admitted in evidence, in lieu of the
31 original, in any of the courts of this state;

32 (7) Plan for and hold annually a school of good roads, of
33 not less than three or more than six days' duration, for instruc-
34 tion of his or her employees, which is held in conjunction with
35 West Virginia university and may be held at the university or at
36 any other suitable place in the state;

37 (8) Negotiate and enter in reciprocal contracts and agree-
38 ments with proper authorities of other states and of the United
39 States relating to and regulating the use of roads and highways
40 with reference to weights and types of vehicles, registration of
41 vehicles and licensing of operators, military and emergency
42 movements of personnel and supplies and all other matters of
43 interstate or national interest;

44 (9) Classify and reclassify, locate and relocate, expressway,
45 trunkline, feeder and state local service roads and designate by
46 number the routes within the state road system;

47 (10) Create, extend or establish, upon petition of any
48 interested party or parties or on the commissioner's own
49 initiative, any new road or highway found necessary and
50 proper;

51 (11) Exercise jurisdiction, control, supervision and author-
52 ity over local roads, outside the state road system, to the extent
53 determined by him or her to be expedient and practicable;

54 (12) Discontinue, vacate and close any road or highway, or
55 any part of any road or highway, the continuance and mainte-
56 nance of which are found unnecessary and improper, upon
57 petition and hearing or upon investigation initiated by the
58 commissioner;

59 (13) Close any state road while under construction or repair
60 and provide a temporary road during the time of the construc-
61 tion or repair;

62 (14) Adjust damages occasioned by construction, recon-
63 struction or repair of any state road or the establishment of any
64 temporary road;

65 (15) Establish and maintain a uniform system of road signs
66 and markers;

67 (16) Fix standard widths for road rights-of-way, bridges and
68 approaches to bridges and fix and determine grades and
69 elevations therefor;

70 (17) Test and standardize materials used in road construc-
71 tion and maintenance, either by governmental testing and
72 standardization activities or through contract by private
73 agencies;

74 (18) Allocate the cost of retaining walls and drainage
75 projects, for the protection of a state road or its right-of-way, to
76 the cost of construction, reconstruction, improvement or
77 maintenance;

78 (19) Acquire, establish, construct, maintain and operate, in
79 the name of the department, roadside recreational areas along
80 and adjacent to state roads and highways;

81 (20) Exercise general supervision over the construction and
82 maintenance of airports and landing fields under the jurisdiction
83 of the West Virginia state aeronautics commission, of which the
84 commissioner is a member, and make a study and general plan
85 of a statewide system of airports and landing fields;

86 (21) Provide traffic engineering services to municipalities
87 of the state upon request of the governing body of any munici-
88 pality and upon terms that are agreeably arranged;

89 (22) Institute complaints before the public service commis-
90 sion or any other appropriate governmental agency relating to
91 freight rates, car service and movement of road materials and
92 equipment;

93 (23) Invoke any appropriate legal or equitable remedies to
94 enforce his or her orders, to compel compliance with require-
95 ments of law and to protect and preserve the state road and
96 highway system or any part of the system;

97 (24) Make and promulgate rules for the government and
98 conduct of personnel, for the orderly and efficient administra-
99 tion and supervision of the state road program and for the
100 effective and expeditious performance and discharge of the
101 duties and responsibilities placed upon him or her by law;

102 (25) Delegate powers and duties to his or her appointees
103 and employees who shall act by and under his or her direction
104 and be responsible to him or her for their acts;

105 (26) Designate and define any construction and mainte-
106 nance districts within the state road system that is found
107 expedient and practicable;

108 (27) Contract for the construction, improvement and
109 maintenance of the roads;

110 (28) Comply with provisions of present and future federal
111 aid statutes and regulations, including execution of contracts or
112 agreements with and cooperation in programs of the United
113 States government and any proper department, bureau or
114 agency of the United States government relating to plans,
115 surveys, construction, reconstruction, improvement and
116 maintenance of state roads and highways;

117 (29) Prepare budget estimates and requests;

118 (30) Establish a system of accounting covering and includ-
119 ing all fiscal and financial matters of the department;

120 (31) Establish and advance a right-of-way acquisition
121 revolving fund, a materials revolving fund and an equipment
122 revolving fund;

123 (32) Enter into contracts and agreements with and cooper-
124 ate in programs of counties, municipalities and other govern-
125 mental agencies and subdivisions of the state relating to plans,

126 surveys, construction, reconstruction, improvement, mainte-
127 nance and supervision of highways, roads, streets and other
128 travel ways when and to the extent determined by the depart-
129 ment to be expedient and practical;

130 (33) Report, as provided by law, to the governor and the
131 Legislature;

132 (34) Purchase materials, supplies and equipment required
133 for the state road program and system;

134 (35) Dispose of all obsolete and unusable and surplus
135 supplies and materials which cannot be used advantageously
136 and beneficially by the department in the state road program by
137 transfer of the supplies and materials to other governmental
138 agencies and institutions by exchange, trade or sale of the
139 supplies and materials;

140 (36) Investigate road conditions, official conduct of
141 department personnel and fiscal and financial affairs of the
142 department and hold hearings and make findings thereon or on
143 any other matters within the jurisdiction of the department;

144 (37) Establish road policies and administrative practices;

145 (38) Fix and revise from time to time tolls for transit over
146 highway projects constructed by the division of highways after
147 the first day of May, one thousand nine hundred ninety-nine,
148 that have been authorized by the provisions of section five-b,
149 article seventeen-a of this chapter;

150 (39) Take actions necessary to alleviate any conditions as
151 the governor may declare to constitute an emergency, whether
152 or not the emergency condition affects areas normally under the
153 jurisdiction of the department of highways; and

154 (40) Provide family restrooms at all rest areas along
155 interstate highways in this state, all to be constructed in
156 accordance with federal law.

CHAPTER 267

(Com. Sub. for S. B. 690 — By Senators Bowman, Helmick,
Craig, Edgell, Jackson, Plymale, Snyder, Bailey,
Sharpe, Ross, Mitchell, Rowe and Fanning)

[Passed March 9, 2002; in effect ninety days from passage. 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; and to amend and reenact section four, article one, chapter twenty-two-c of said code, all relating generally to salary increases for public officials; and increasing the salary of members of the West Virginia racing commission and water development authority board members from five thousand dollars to twelve thousand dollars a year.

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; and that section four, article one, chapter twenty-two-c of said code be amended and reenacted, all to read as follows:

Chapter

6. Miscellaneous Provisions.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 6. MISCELLANEOUS PROVISIONS.**ARTICLE 7. COMPENSATION AND ALLOWANCES.****§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.**

1 (a) Each of the following appointive state officers named in
2 this subsection shall be appointed by the governor, by and with
3 the advice and consent of the Senate. Each of the appointive
4 state officers serves at the will and pleasure of the governor for
5 the term for which the governor was elected and until the
6 respective state officers' successors have been appointed and
7 qualified. Each of the appointive state officers are subject to the
8 existing qualifications for holding each respective office and
9 each has and is hereby granted all of the powers and authority
10 and shall perform all of the functions and services heretofore
11 vested in and performed by virtue of existing law respecting
12 each office.

13 Prior to the first day of July, two thousand one, each such
14 named appointive state officer shall continue to receive the
15 annual salaries they were receiving as of the effective date of
16 the enactment of this section in two thousand one, and thereaf-
17 ter, notwithstanding any other provision of this code to the
18 contrary, the annual salary of each named appointive state
19 officer shall be as follows:

20 Administrator, division of highways, ninety thousand
21 dollars; administrator, state tax division, sixty-five thousand
22 dollars; administrator, division of corrections, seventy-five
23 thousand dollars; administrator, division of natural resources,
24 seventy thousand dollars; superintendent, state police, seventy-
25 five thousand dollars; administrator, lottery division, seventy-
26 five thousand dollars; director, public employees insurance
27 agency, seventy-five thousand dollars; administrator, division

28 of banking, sixty thousand dollars; administrator, division of
29 insurance, sixty thousand dollars; administrator, division of
30 culture and history, fifty-five thousand dollars; administrator,
31 alcohol beverage control commission, seventy thousand dollars;
32 administrator, division of motor vehicles, seventy thousand
33 dollars; director, division of personnel, fifty-five thousand
34 dollars; adjutant general, seventy-five thousand dollars;
35 chairman, health care authority, seventy thousand dollars;
36 members, health care authority, sixty thousand dollars; director,
37 human rights commission, forty-five thousand dollars; adminis-
38 trator, division of labor, sixty thousand dollars; administrator,
39 division of veterans' affairs, forty-five thousand dollars;
40 administrator, division of emergency services, forty-five
41 thousand dollars; members, board of parole, forty-five thousand
42 dollars; members, employment security review board, seven-
43 teen thousand dollars; members, workers' compensation appeal
44 board, seventeen thousand eight hundred dollars; administrator,
45 bureau of employment programs, seventy thousand dollars;
46 administrator, bureau of commerce, seventy thousand dollars;
47 administrator, bureau of environment, seventy thousand dollars;
48 and director, office of miner's health, safety and training, sixty-
49 five thousand dollars. Secretaries of the departments shall be
50 paid an annual salary as follows: Health and human resources,
51 ninety thousand dollars; transportation, seventy-five thousand
52 dollars; tax and revenue, seventy-five thousand dollars; military
53 affairs and public safety, seventy-five thousand dollars;
54 administration, seventy-five thousand dollars; education and the
55 arts, seventy-five thousand dollars; and environmental protec-
56 tion, seventy-five thousand dollars.

57 (b) Each of the state officers named in this subsection shall
58 continue to be appointed in the manner prescribed in this code
59 and, prior to the first day of July, two thousand two, each of the
60 state officers named in this subsection shall continue to receive
61 the annual salaries he or she was receiving as of the effective
62 date of the enactment of this section in two thousand two, and

63 shall thereafter, notwithstanding any other provision of this
64 code to the contrary, be paid an annual salary as follows:

65 Administrator, division of risk and insurance management,
66 fifty-five thousand dollars; director, division of rehabilitation
67 services, sixty thousand dollars; executive director, educational
68 broadcasting authority, sixty thousand dollars; secretary, library
69 commission, sixty-seven thousand dollars; director, geological
70 and economic survey, fifty-two thousand five hundred dollars;
71 executive director, prosecuting attorneys institute, sixty
72 thousand dollars; executive director, public defender services,
73 sixty thousand dollars; commissioner, bureau of senior services,
74 seventy thousand dollars; director, state rail authority, fifty-five
75 thousand dollars; executive secretary, women's commission,
76 thirty-one thousand dollars; director, hospital finance authority,
77 twenty-six thousand dollars; member, racing commission,
78 twelve thousand dollars; chairman, public service commission,
79 seventy thousand dollars; and members, public service commis-
80 sion, seventy thousand dollars.

81 (c) No increase in the salary of any appointive state officer
82 pursuant to this section shall be paid until and unless the
83 appointive state officer has first filed with the state auditor and
84 the legislative auditor a sworn statement, on a form to be
85 prescribed by the attorney general, certifying that his or her
86 spending unit is in compliance with any general law providing
87 for a salary increase for his or her employees. The attorney
88 general shall prepare and distribute the form to the affected
89 spending units.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS
AND COMPACTS.**

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.

1 (a) The water development authority is continued. The
2 authority is a governmental instrumentality of the state and a
3 body corporate. The exercise by the authority of the powers
4 conferred by this article and the carrying out of its purposes and
5 duties are essential governmental functions and for a public
6 purpose.

7 (b) The authority is controlled, managed and operated by
8 the seven-member board known as the water development
9 board. The director of the division of environmental protection,
10 the commissioner of the bureau for public health and the state
11 officer or employee who, in the judgment of the governor, is
12 most responsible for economic or community development are
13 members ex officio of the board. The governor shall designate
14 annually the member who is the state officer or employee most
15 responsible for economic or community development. The
16 other four members of the board are appointed by the governor,
17 by and with the advice and consent of the Senate, for terms of
18 two, three, four and six years, respectively. The successor of
19 each such appointed member shall be appointed for a term of
20 six years in the same manner the original appointments were
21 made, except that any person appointed to fill a vacancy
22 occurring prior to the expiration of the term for which his or her
23 predecessor was appointed shall be appointed only for the
24 remainder of such term. Each board member serves until the
25 appointment and qualification of his or her successor. No more
26 than two of the appointed board members shall at any one time
27 belong to the same political party. Appointed board members
28 may be reappointed to serve additional terms.

29 (c) All members of the board shall be citizens of the state.
30 Each appointed member of the board, before entering upon his
31 or her duties, shall comply with the requirements of article one,
32 chapter six of this code and give bond in the sum of twenty-five
33 thousand dollars in the manner provided in article two of said
34 chapter. The governor may remove any board member for cause
35 as provided in article six of said chapter.

36 (d) Annually the board shall elect one of its appointed
37 members as chair and another as vice chair and shall appoint a
38 secretary-treasurer, who need not be a member of the board.
39 Four members of the board is a quorum and the affirmative vote
40 of four members is necessary for any action taken by vote of the
41 board. No vacancy in the membership of the board impairs the
42 rights of a quorum by such vote to exercise all the rights and
43 perform all the duties of the board and the authority. The person
44 appointed as secretary-treasurer, including a board member if
45 he or she is appointed, shall give bond in the sum of fifty
46 thousand dollars in the manner provided in article two, chapter
47 six of this code.

48 (e) The secretary of the division of environmental protec-
49 tion, the commissioner of the bureau for public health and the
50 state officer or employee most responsible for economic or
51 community development shall not receive any compensation for
52 serving as board members. Each of the four appointed members
53 of the board shall receive an annual salary of twelve thousand
54 dollars, payable in monthly installments. Each of the seven
55 board members shall be reimbursed for all reasonable and
56 necessary expenses actually incurred in the performance of his
57 or her duties as a member of the board. All expenses incurred
58 by the board are payable solely from funds of the authority or
59 from funds appropriated for that purpose by the Legislature and
60 no liability or obligation shall be incurred by the authority
61 beyond the extent to which moneys are available from funds of
62 the authority or from such appropriations.

63 (f) There shall also be a director of the authority appointed
64 by the board. The compensation of the director shall be fixed by
65 the board.

CHAPTER 268

(H. B. 4060 — By Delegates Swartzmiller,
Varner, Stemple and DeLong)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-c, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increments for deputy sheriffs; and removing the sixteen-year cap for determining years of service to calculate salary increment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17c. Salary increment.

1 Every deputy sheriff with one year or more of service shall
2 receive an annual salary increase in the sum of five dollars per
3 month for each year of service. Any incremental salary increase
4 in effect prior to the effective date of this section that is more
5 favorable to the deputy sheriffs entitled to such increase shall
6 remain in full force and effect to the exclusion of the provisions
7 of this section.

CHAPTER 269

(S. B. 164 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an increase in the annual base salary of all sworn state police personnel by eight hundred four dollars, effective on the first day of July, two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

- 1 (a) The superintendent shall establish within the West
- 2 Virginia state police a system to provide for: The promotion of
- 3 members to the supervisory ranks of sergeant, first sergeant,
- 4 second lieutenant and first lieutenant; the classification of
- 5 nonsupervisory members within the field operations force to the
- 6 ranks of trooper, senior trooper, trooper first class or corporal;
- 7 the classification of members assigned to the forensic labora-

8 tory as criminalist I-VII; and the temporary reclassification of
 9 members assigned to administrative duties as administrative
 10 support specialist I-VIII.

11 (b) The superintendent may propose legislative rules for
 12 promulgation in accordance with article three, chapter twenty-
 13 nine-a of this code for the purpose of ensuring consistency,
 14 predictability and independent review of any system developed
 15 under the provisions of this section.

16 (c) The superintendent shall provide to each member a
 17 written manual governing any system established under the
 18 provisions of this section and specific procedures shall be
 19 identified for the evaluation and testing of members for
 20 promotion or reclassification and the subsequent placement of
 21 any members on a promotional eligibility or reclassification
 22 recommendation list.

23 (d) Beginning on the first day of July, two thousand two,
 24 and continuing thereafter, members shall receive annual salaries
 25 as follows:

26 ANNUAL SALARY SCHEDULE (BASE PAY)
 27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training	\$2,106 Mo.	\$25,272
29	Cadet Trooper After Training	2,509 Mo.	30,108
30	Trooper Second Year		30,572
31	Trooper Third Year		30,944
32	Trooper Fourth & Fifth Year		31,244
33	Senior Trooper		33,332
34	Trooper First Class		35,420
35	Corporal		37,508
36	Sergeant		41,684
37	First Sergeant		43,772
38	Second Lieutenant		45,860
39	First Lieutenant		47,948

40	Captain	50,036
41	Major	52,124
42	Lieutenant Colonel	54,212

43 ANNUAL SALARY SCHEDULE (BASE PAY)
 44 ADMINISTRATION SUPPORT
 45 SPECIALIST CLASSIFICATION

46	I	31,244
47	II	33,332
48	III	35,420
49	IV	37,508
50	V	41,684
51	VI	43,772
52	VII	45,860
53	VIII	47,948

54 ANNUAL SALARY SCHEDULE (BASE PAY)
 55 CRIMINALIST CLASSIFICATION

56	I	31,244
57	II	33,332
58	III	35,420
59	IV	37,508
60	V	41,684
61	VI	43,772
62	VII	45,860

63 Each member of the West Virginia state police whose
 64 salary is fixed and specified in this annual salary schedule is
 65 entitled to the length of service increases set forth in subsection
 66 (e) of this section and supplemental pay as provided in subsec-
 67 tion (g) of this section.

68 (e) Each member of the West Virginia state police whose
 69 salary is fixed and specified pursuant to this section shall
 70 receive, and is entitled to, an increase in salary over that set

71 forth in subsection (d) of this section, for grade in rank, based
72 on length of service, including that service served before and
73 after the effective date of this section with the West Virginia
74 state police as follows: At the end of five years of service with
75 the West Virginia state police, the member shall receive a
76 salary increase of six hundred dollars to be effective during his
77 or her next three years of service and a like increase at three-
78 year intervals thereafter, with the increases to be cumulative.

79 (f) In applying the salary schedules set forth in this section
80 where salary increases are provided for length of service,
81 members of the West Virginia state police in service at the time
82 the schedules become effective shall be given credit for prior
83 service and shall be paid the salaries the same length of service
84 entitles them to receive under the provisions of this section.

85 (g) The Legislature finds and declares that because of the
86 unique duties of members of the West Virginia state police, it
87 is not appropriate to apply the provisions of state wage and hour
88 laws to them. Accordingly, members of the West Virginia state
89 police are excluded from the provisions of state wage and hour
90 law. This express exclusion shall not be construed as any
91 indication that the members were or were not covered by the
92 wage and hour law prior to this exclusion.

93 In lieu of any overtime pay they might otherwise have
94 received under the wage and hour law, and in addition to their
95 salaries and increases for length of service, members who have
96 completed basic training and who are exempt from federal Fair
97 Labor Standards Act guidelines may receive supplemental pay
98 as provided in this section.

99 The superintendent shall, within thirty days after the
100 effective date of this section, propose a legislative rule for
101 promulgation in accordance with article three, chapter
102 twenty-nine-a of this code to establish the number of hours per

103 month which constitute the standard work month for the
104 members of the West Virginia state police. The rule shall
105 further establish, on a graduated hourly basis, the criteria for
106 receipt of a portion or all of supplemental payment when hours
107 are worked in excess of the standard work month. The superin-
108 tendent shall certify monthly to the West Virginia state police's
109 payroll officer the names of those members who have worked
110 in excess of the standard work month and the amount of their
111 entitlement to supplemental payment. The supplemental
112 payment may not exceed two hundred thirty-six dollars
113 monthly. The superintendent and civilian employees of the
114 West Virginia state police are not eligible for any supplemental
115 payments.

116 (h) Each member of the West Virginia state police, except
117 the superintendent and civilian employees, shall execute, before
118 entering upon the discharge of his or her duties, a bond with
119 security in the sum of five thousand dollars payable to the state
120 of West Virginia, conditioned upon the faithful performance of
121 his or her duties, and the bond shall be approved as to form by
122 the attorney general and as to sufficiency by the governor.

123 (i) Any member of the West Virginia state police who is
124 called to perform active duty training or inactive duty training
125 in the national guard or any reserve component of the armed
126 forces of the United States annually shall be granted, upon
127 request, leave time not to exceed thirty calendar days for the
128 purpose of performing the active duty training or inactive duty
129 training and the time granted may not be deducted from any
130 leave accumulated as a member of the West Virginia state
131 police.

CHAPTER 270

(S. B. 648 — By Senators Kessler, Helmick, Edgell, Unger, Minard, Prezioso, Anderson, Fanning, Mitchell, Snyder, Plymale, Sharpe, Ross, Rowe, Hunter, Caldwell, Oliverio, Facemyer, Minear, Wooton, Jackson, Craigo, McCabe, McKenzie, Tomblin, Mr. President, Bowman, Redd, Burnette, Love and Bailey)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-a and one-c, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing salaries for conservation officers; and establishing a new pay plan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1a. Conservation officers salary increase based on length of service.

- 1 (a) Effective the first day of July, two thousand two, each
- 2 conservation officer shall receive and be entitled to an increase
- 3 in salary based on length of service, including that heretofore
- 4 and hereafter served as a conservation officer as follows: For
- 5 five years of service with the division, a conservation officer
- 6 shall receive a salary increase of six hundred dollars per year
- 7 payable during his or her next three years of service and a like

8 increase at three-year intervals thereafter, with these increases
 9 to be cumulative. A salary increase shall be based upon years of
 10 service as of the first day of July of each year and may not be
 11 recalculated until the first day of July of the following year.

12 Conservation officers in service at the time the amendment
 13 to this section becomes effective shall be given credit for prior
 14 service and shall be paid such salaries as the same length of
 15 service will entitle them to receive under the provisions hereof.

16 (b) This section does not apply to special or emergency
 17 conservation officers appointed under the authority of section
 18 one of this article.

**§20-7-1c. Conservation officers, ranks, salary schedule, base pay,
 exceptions.**

1 (a) Notwithstanding any provision of this code to the
 2 contrary, the ranks within the law-enforcement section of the
 3 division of natural resources are colonel, lieutenant colonel,
 4 major, captain, lieutenant, sergeant, corporal, conservation
 5 officer first class, senior conservation officer, conservation
 6 officer and conservation officer-in-training. Each officer while
 7 in uniform shall wear the insignia of rank as provided by the
 8 chief conservation officer.

9 (b) Beginning on the first day of July, two thousand two,
 10 and continuing thereafter, conservation officers shall be paid
 11 the minimum annual salaries based on the following schedule:

12 ANNUAL SALARY SCHEDULE (BASE PAY)
 13 SUPERVISORY AND NONSUPERVISORY RANKS

14 Conservation Officer-In-Training	
15 (first year until end of probation)	\$26,337
16 Conservation Officer (second year)	\$29,768
17 Conservation Officer (third year)	\$30,140

18	Senior Conservation Officer (fourth and fifth year)	\$30,440
19	Senior Conservation Officer First Class	
20	(after fifth year)	\$32,528
21	Senior Conservation Officer (after tenth year)	\$33,104
22	Senior Conservation Officer (after fifteenth year) . .	\$33,528
23	Corporal (after sixteenth year)	\$36,704
24	Sergeant	\$40,880
25	First Sergeant	\$42,968
26	Lieutenant	\$47,144
27	Captain	\$49,232
28	Major	\$51,320
29	Lieutenant Colonel	\$53,408
30	Colonel	

31 Conservation officers in service at the time the amendment
 32 to this section becomes effective shall be given credit for prior
 33 service and shall be paid salaries as the same length of service
 34 will entitle them to receive under the provisions of this section.

35 (c) This section does not apply to special or emergency
 36 conservation officers appointed under the authority of section
 37 one of this article.

38 (d) Nothing in this section prohibits other pay increases as
 39 provided for under section two, article five, chapter five of this
 40 code: *Provided*, That any across-the-board pay increase granted
 41 by the Legislature or the governor will be added to, and
 42 reflected in, the minimum salaries set forth in this section; and
 43 that any merit increases granted to an officer over and above the
 44 annual salary schedule listed in subsection (b) of this section
 45 are retained by an officer when he or she advances from one
 46 rank to another.

CHAPTER 271

**(S. B. 111 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the benefits of surviving spouses of certain members of the state police who die in the performance of duty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

**§15-2A-12. Awards and benefits to dependents of member -
When member dies in performance of duty, etc.;
dependent child scholarship and amount.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any member who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was or shall be engaged in the performance of his or her duties
7 as a member of the division, or the survivor of a member who
8 dies from any cause after having been retired pursuant to the

9 provisions of section nine of this article, shall be entitled to
10 receive and shall be paid from the fund benefits as follows: To
11 the surviving spouse annually, in equal monthly installments
12 during his or her lifetime, one or the other of two amounts,
13 which shall become immediately available and which shall be
14 the greater of:

15 (1) An amount equal to seven tenths of the base salary
16 received in the preceding twelve-month employment period by
17 the deceased member: *Provided*, That if the member had not
18 been employed with the division for twelve months prior to his
19 or her death, the amount of monthly salary shall be annualized
20 for the purpose of determining the benefit; or

21 (2) The sum of six thousand dollars.

22 In addition thereto, the surviving spouse shall be entitled to
23 receive and there shall be paid to such person one hundred
24 dollars monthly for each dependent child or children. If the
25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the fund a sum equal to one fourth of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: *Provided*, That when there is but one dependent
34 parent surviving, that parent is entitled to receive during his or
35 her lifetime one half the amount which both parents, if living,
36 would have been entitled to receive.

37 Any person qualifying as a surviving dependent child under
38 this section shall, in addition to any other benefits due under
39 this or other sections of this article, be entitled to receive a
40 scholarship to be applied to the career development education

41 of that person. This sum, up to but not exceeding seven thou-
42 sand five hundred dollars, shall be paid from the fund to any
43 university or college in this state or to any trade or vocational
44 school or other entity in this state approved by the board, to
45 offset the expenses of tuition, room and board, books, fees or
46 other costs incurred in a course of study at any of these institu-
47 tions so long as the recipient makes application to the board on
48 an approved form and under such rules as the board may
49 provide and maintains scholastic eligibility as defined by the
50 institution or the board. The board may by appropriate rules
51 define age requirements, physical and mental requirements,
52 scholastic eligibility, disbursement methods, institutional
53 qualifications and other requirements as necessary and not
54 inconsistent with this section.

55 Awards and benefits for a surviving spouse or dependents
56 of a member received under any section or any of the provi-
57 sions of this retirement system shall be in lieu of receipt of any
58 benefits for these persons under the provisions of any other
59 state retirement system. Receipt of benefits under any other
60 state retirement system shall be in lieu of any right to receive
61 any benefits under this retirement system, so that only a single
62 receipt of state retirement benefits shall occur.

CHAPTER 272

(H. B. 4619— By Delegate Staton)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishment of stormwater systems and associated stormwater management programs within a public service district; general purpose of districts, including authority for stormwater systems and stormwater management programs, excluding drainage easements or stormwater facilities owned or operated by the West Virginia division of highways; creation of districts by county commission; providing for contracts between a public service district and a city, town or other municipal corporation to furnish stormwater services; allowing a general manager of a municipal stormwater system or a public service district to provide professional management to another public service district purchasing services from such municipal system or district; acquisition, construction, operation and extension of stormwater systems and stormwater management programs by a public service district; right of eminent domain; service rates, fees and charges for stormwater service; authority to charge rates, fees and charges after thirty days notice of availability of a stormwater system; liens for delinquent fees; cost of properties acquired; sale, lease or rental of stormwater system; and acceptance of loans, grants and temporary advances.

Be it enacted by the Legislature of West Virginia:

That sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

- §16-13A-1c. General purpose of districts.
- §16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
- §16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- §16-13A-5. General manager of board.
- §16-13A-7. Acquisition and operation of district properties.
- §16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- §16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- §16-13A-14. Items included in cost of properties.
- §16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
- §16-13A-24. Acceptance of loans, grants or temporary advances.

§16-13A-1c. General purpose of districts.

1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction or
3 acquisition by purchase or otherwise and the maintenance,
4 operation, improvement and extension of, properties supplying
5 water, sewerage or stormwater services or gas distribution
6 services or all of these within such territory, will be conducive
7 to the preservation of the public health, comfort and conve-
8 nience of such area, may be constituted a public service district
9 under and in the manner provided by this article. The words
10 “public service properties,” when used in this article, shall
11 mean and include any facility used or to be used for or in
12 connection with: (1) The diversion, development, pumping,
13 impounding, treatment, storage, distribution or furnishing of
14 water to or for the public for industrial, public, private or other
15 uses (herein sometimes referred to as “water facilities”); (2) the
16 collection, treatment, purification or disposal of liquid or solid
17 wastes, sewage or industrial wastes (herein sometimes referred
18 to as “sewer facilities” or “landfills”); (3) the distribution or the
19 furnishing of natural gas to the public for industrial, public,

20 private or other uses (herein sometimes referred to as “gas
21 utilities or gas system”); or (4) the collection, control or
22 disposal of stormwater (herein sometimes referred to as
23 “stormwater system” or “stormwater systems”), or (5) the
24 management, operation, maintenance and control of stormwater
25 and stormwater systems (herein sometimes referred to as
26 “stormwater management program” or “stormwater manage-
27 ment programs”). As used in this article “stormwater system”
28 or “stormwater systems” means a stormwater system in its
29 entirety or any integral part thereof used to collect, control or
30 dispose of stormwater, and includes all facilities, structures and
31 natural water courses used for collecting and conducting
32 stormwater to, through and from drainage areas to the points of
33 final outlet including, but not limited to, any and all of the
34 following: Inlets, conduits, outlets, channels, ponds, drainage
35 easements, water quality facilities, catch basins, ditches,
36 streams, gulches, flumes, culverts, siphons, retention or
37 detention basins, dams, floodwalls, pipes, flood control
38 systems, levies and pumping stations: *Provided*, That the term
39 “stormwater system” or “stormwater systems” does not include
40 highways, road and drainage easements, or stormwater facilities
41 constructed, owned or operated by the West Virginia division
42 of highways. As used in this article “stormwater management
43 program” or “stormwater management programs” means those
44 activities associated with the management, operation, mainte-
45 nance and control of stormwater and stormwater systems, and
46 includes, but is not limited to, public education, stormwater and
47 surface runoff water quality improvement, mapping, planning,
48 flood control, inspection, enforcement and any other activities
49 required by state and federal law: *Provided, however*, That the
50 term “stormwater management program” or “stormwater
51 management programs” does not include those activities
52 associated with the management, operation, maintenance and
53 control of highways, road and drainage easements, or storm-
54 water facilities constructed, owned or operated by the West

55 Virginia division of highways without the express agreement of
56 the commissioner of highways.

§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

1 (a) The county commission of any county may propose the
2 creation, enlargement, reduction, merger, dissolution, or
3 consolidation of a public service district by any of the following
4 methods: (1) On its own motion by order duly adopted, (2)
5 upon the recommendation of the public service commission, or
6 (3) by petition of twenty-five percent of the registered voters
7 who reside within the limits of the proposed public service
8 district within one or more counties. The petition shall contain
9 a description, including metes and bounds, sufficient to identify
10 the territory to be embraced therein and the name of such
11 proposed district: *Provided*, That after the effective date of this
12 section, no new public service district shall be created, en-
13 larged, reduced, merged, dissolved or consolidated under this
14 section without the written consent and approval of the public
15 service commission, which approval and consent shall be in
16 accordance with rules promulgated by the public service
17 commission and may only be requested after consent is given
18 by the appropriate county commission or commissions pursuant
19 to this section. Any territory may be included regardless of
20 whether or not the territory includes one or more cities,
21 incorporated towns or other municipal corporations which own
22 and operate any public service properties and regardless of
23 whether or not it includes one or more cities, incorporated
24 towns or other municipal corporations being served by privately
25 owned public service properties: *Provided, however*, That the
26 same territory shall not be included within the boundaries of
27 more than one public service district except where the territory

28 or part thereof is included within the boundaries of a separate
29 public service district organized to supply water, sewerage
30 services, stormwater services or gas facilities not being fur-
31 nished within such territory or part thereof: *Provided further,*
32 That no city, incorporated town or other municipal corporation
33 shall be included within the boundaries of the proposed district
34 except upon the adoption of a resolution of the governing body
35 of the city, incorporated town or other municipal corporation
36 consenting.

37 (b) The petition shall be filed in the office of the clerk of
38 the county commission of the county in which the territory to
39 constitute the proposed district is situated, and if the territory is
40 situated in more than one county, then the petition shall be filed
41 in the office of the clerk of the county commission of the
42 county in which the major portion of the territory extends, and
43 a copy thereof (omitting signatures) shall be filed with each of
44 the clerks of the county commission of the other county or
45 counties into which the territory extends. The clerk of the
46 county commission receiving such petition shall present it to
47 the county commission of the county at the first regular meeting
48 after the filing or at a special meeting called for the consider-
49 ation thereof.

50 (c) When the county commission of any county enters an
51 order on its own motion proposing the creation, enlargement,
52 reduction, merger, dissolution or consolidation of a public
53 service district, as aforesaid, or when a petition for the creation
54 is presented, as aforesaid, the county commission shall at the
55 same session fix a date of hearing in the county on the creation,
56 enlargement, reduction, merger, dissolution or consolidation of
57 the proposed public service district, which date so fixed shall be
58 not more than forty days nor less than twenty days from the
59 date of the action. If the territory proposed to be included is
60 situated in more than one county, the county commission, when
61 fixing a date of hearing, shall provide for notifying the county

62 commission and clerk thereof of each of the other counties into
63 which the territory extends of the date so fixed. The clerk of the
64 county commission of each county in which any territory in the
65 proposed public service district is located shall cause notice of
66 the hearing and the time and place thereof, and setting forth a
67 description of all of the territory proposed to be included
68 therein to be given by publication as a Class I legal advertise-
69 ment in compliance with the provisions of article three, chapter
70 fifty-nine of this code, and the publication area for the publica-
71 tion shall be by publication in each city, incorporated town or
72 municipal corporation if available in each county in which any
73 territory in the proposed public service district is located. The
74 publication shall be at least ten days prior to the hearing.

75 (d) In all cases where proceedings for the creation, enlarge-
76 ment, reduction, merger, dissolution or consolidation of the
77 public service districts are initiated by petition as aforesaid, the
78 person filing the petition shall advance or satisfactorily indem-
79 nify the payment of the cost and expenses of publishing the
80 hearing notice, and otherwise the costs and expenses of the
81 notice shall be paid in the first instance by the county commis-
82 sion out of contingent funds or any other funds available or
83 made available for that purpose. In addition to the notice
84 required herein to be published, there shall also be posted in at
85 least five conspicuous places in the proposed public service
86 district, a notice containing the same information as is con-
87 tained in the published notice. The posted notices shall be
88 posted not less than ten days before the hearing.

89 (e) All persons residing in or owning or having any interest
90 in property in the proposed public service district shall have an
91 opportunity to be heard for and against its creation, enlarge-
92 ment, reduction, merger, dissolution or consolidation. At the
93 hearing the county commission before which the hearing is
94 conducted shall consider and determine the feasibility of the
95 creation, enlargement, reduction, merger, dissolution or

96 consolidation of the proposed district. If the county commission
97 determines that the construction or acquisition by purchase or
98 otherwise and maintenance, operation, improvement and
99 extension of public service properties by the public service
100 district will be conducive to the preservation of public health,
101 comfort and convenience of such area, the county commission
102 shall by order create, enlarge, reduce, merge, dissolve or
103 consolidate such public service district. If the county commis-
104 sion, after due consideration, determines that the proposed
105 district will not be conducive to the preservation of public
106 health, comfort or convenience of the area or that the creation,
107 enlargement, reduction, merger, dissolution or consolidation of
108 the proposed district as set forth and described in the petition or
109 order is not feasible, it may refuse to enter an order creating the
110 district or it may enter an order amending the description of the
111 proposed district and create, enlarge, reduce, merge, dissolve or
112 consolidate the district as amended.

113 (f) If the county commission determines that any other
114 public service district or districts can adequately serve the area
115 of the proposed public service district, whether by enlargement,
116 reduction, merger, dissolution or consolidation, it shall refuse
117 to enter the order, but shall enter an order creating, enlarging,
118 reducing, merging, dissolving or consolidating the area with an
119 existing public service district, in accordance with rules adopted
120 by the public service commission for such purpose: *Provided,*
121 That no enlargement of a public service district may occur if the
122 present or proposed physical facilities of the public service
123 district are determined by the appropriate county commission
124 or the public service commission to be inadequate to provide
125 such enlarged service. The clerk of the county commission of
126 each county into which any part of such district extends shall
127 retain in his office an authentic copy of the order creating,
128 enlarging, reducing, merging, dissolving or consolidating the
129 district: *Provided, however,* That within ten days after the entry
130 of an order creating, enlarging, reducing, merging, dissolving

131 or consolidating a district, such order must be filed for review
132 and approval by the public service commission. The public
133 service commission shall provide a hearing in the affected
134 county on the matter and may approve, reject or modify the
135 order of the county commission if it finds it is in the best
136 interests of the public to do so. The public service commission
137 shall adopt rules relating to such filings and the approval,
138 disapproval or modification of county commission orders for
139 creating, enlarging, merging, dissolving or consolidating
140 districts. The provisions of this section shall not apply to the
141 implementation by a county commission of an order issued by
142 the public service commission pursuant to this section and
143 section one-b, of this article.

144 (g) The county commission may, if in its discretion it
145 deems it necessary, feasible and proper, enlarge the district to
146 include additional areas, reduce the area of the district, where
147 facilities, equipment, service or materials have not been
148 extended, or dissolve the district if inactive or create or consoli-
149 date two or more such districts. If consolidation of districts is
150 not feasible, the county commission may consolidate and
151 centralize management and administration of districts within its
152 county or multi-county area to achieve efficiency of operations:
153 *Provided*, That where the county commission determines on its
154 own motion by order entered of record, or there is a petition to
155 enlarge the district, merge and consolidate districts, or the
156 management and administration thereof, reduce the area of the
157 district or dissolve the district if inactive, all of the applicable
158 provisions of this article providing for hearing, notice of
159 hearing and approval by the public service commission shall
160 apply. The commission shall at all times attempt to bring about
161 the enlargement or merger of existing public service districts in
162 order to provide increased services and to eliminate the need for
163 creation of new public service districts in those areas which are
164 not currently serviced by a public service district: *Provided*,
165 *however*, That where two or more public service districts are

166 consolidated pursuant to this section, any rate differentials may
167 continue for the period of bonded indebtedness incurred prior
168 to consolidation. The districts may not enter into any agree-
169 ment, contract or covenant that infringes upon, impairs,
170 abridges or usurps the duties, rights or powers of the county
171 commission, as set forth in this article, or conflicts with any
172 provision of this article.

173 (h) A list of all districts and their current board members
174 shall be filed by the county commission with the secretary of
175 state and the public service commission by the first day of July
176 of each year.

**§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; public service
boards.**

1 From and after the date of the adoption of the order creating
2 any public service district, it is a public corporation and
3 political subdivision of the state, but without any power to levy
4 or collect ad valorem taxes. Each district may acquire, own and
5 hold property, both real and personal, in its corporate name, and
6 may sue, may be sued, may adopt an official seal and may enter
7 into contracts necessary or incidental to its purposes, including
8 contracts with any city, incorporated town or other municipal
9 corporation located within or without its boundaries for
10 furnishing wholesale supply of water for the distribution system
11 of the city, town or other municipal corporation, or for furnish-
12 ing stormwater services for the city, town or other municipal
13 corporation, and contract for the operation, maintenance,
14 servicing, repair and extension of any properties owned by it or
15 for the operation and improvement or extension by the district
16 of all or any part of the existing municipally owned public
17 service properties of any city, incorporated town or other
18 municipal corporation included within the district: *Provided,*
19 That no contract shall extend beyond a maximum of forty years,

20 but provisions may be included therein for a renewal or
21 successive renewals thereof and shall conform to and comply
22 with the rights of the holders of any outstanding bonds issued
23 by the municipalities for the public service properties.

24 The powers of each public service district shall be vested in
25 and exercised by a public service board consisting of not less
26 than three members, who shall be persons residing within the
27 district, who possess certain educational, business or work
28 experience which will be conducive to operating a public
29 service district. Each board member shall, within six months of
30 taking office, successfully complete the training program to be
31 established and administered by the public service commission
32 in conjunction with the division of environmental protection
33 and the bureau of public health. Board members shall not be or
34 become pecuniarily interested, directly or indirectly, in the
35 proceeds of any contract or service, or in furnishing any
36 supplies or materials to the district nor shall a former board
37 member be hired by the district in any capacity within a
38 minimum of twelve months after board member's term has
39 expired or such board member has resigned from the district
40 board. The members shall be appointed in the following
41 manner:

42 Each city, incorporated town or other municipal corporation
43 having a population of more than three thousand but less than
44 eighteen thousand is entitled to appoint one member of the
45 board, and each city, incorporated town or other municipal
46 corporation having a population in excess of eighteen thousand
47 shall be entitled to appoint one additional member of the board
48 for each additional eighteen thousand population. The members
49 of the board representing such cities, incorporated towns or
50 other municipal corporations shall be residents thereof and shall
51 be appointed by a resolution of the governing bodies thereof
52 and upon the filing of a certified copy or copies of the resolu-
53 tion or resolutions in the office of the clerk of the county

54 commission which entered the order creating the district, the
55 persons so appointed become members of the board without any
56 further act or proceedings. If the number of members of the
57 board so appointed by the governing bodies of cities, incorpo-
58 rated towns or other municipal corporations included in the
59 district equals or exceeds three, then no further members shall
60 be appointed to the board and the members so appointed are the
61 board of the district except in cases of merger or consolidation
62 where the number of board members may equal five.

63 If no city, incorporated town or other municipal corporation
64 having a population of more than three thousand is included
65 within the district, then the county commission which entered
66 the order creating the district shall appoint three members of the
67 board, who are persons residing within the district and residing
68 within the state of West Virginia, which three members become
69 members of the board of the district without any further act or
70 proceedings except in cases of merger or consolidation where
71 the number of board members may equal five.

72 If the number of members of the board appointed by the
73 governing bodies of cities, incorporated towns or other munici-
74 pal corporations included within the district is less than three,
75 then the county commission which entered the order creating
76 the district shall appoint such additional member or members
77 of the board, who are persons residing within the district, as is
78 necessary to make the number of members of the board equal
79 three except in cases of merger or consolidation where the
80 number of board members may equal five, and the member or
81 members appointed by the governing bodies of the cities,
82 incorporated towns or other municipal corporations included
83 within the district and the additional member or members
84 appointed by the county commission as aforesaid, are the board
85 of the district. A person may serve as a member of the board in
86 one or more public service districts.

87 The population of any city, incorporated town or other
88 municipal corporation, for the purpose of determining the
89 number of members of the board, if any, to be appointed by the
90 governing body or bodies thereof, is the population stated for
91 such city, incorporated town or other municipal corporation in
92 the last official federal census.

93 Notwithstanding any provision of this code to the contrary,
94 whenever a district is consolidated or merged pursuant to
95 section two of this article, the terms of office of the existing
96 board members shall end on the effective date of the merger or
97 consolidation. The county commission shall appoint a new
98 board according to rules promulgated by the public service
99 commission. Whenever districts are consolidated or merged no
100 provision of this code prohibits the expansion of membership
101 on the new board to five.

102 The respective terms of office of the members of the first
103 board shall be fixed by the county commission and shall be as
104 equally divided as may be, that is approximately one third of
105 the members for a term of two years, a like number for a term
106 of four years, the term of the remaining member or members
107 for six years, from the first day of the month during which the
108 appointments are made. The first members of the board
109 appointed as aforesaid shall meet at the office of the clerk of the
110 county commission which entered the order creating the district
111 as soon as practicable after the appointments and shall qualify
112 by taking an oath of office: *Provided*, That any member or
113 members of the board may be removed from their respective
114 office as provided in section three-a of this article.

115 Any vacancy shall be filled for the unexpired term within
116 thirty days, otherwise successor members of the board shall be
117 appointed for terms of six years and the terms of office shall
118 continue until successors have been appointed and qualified.
119 All successor members shall be appointed in the same manner

120 as the member succeeded was appointed. The district shall
121 provide to the public service commission, within thirty days of
122 the appointment, the following information: The new board
123 member's name, home address, home and office phone num-
124 bers, date of appointment, length of term, who the new member
125 replaces and if the new appointee has previously served on the
126 board. The public service commission shall notify each new
127 board member of the legal obligation to attend training as
128 prescribed in this section.

129 The board shall organize within thirty days following the
130 first appointments and annually thereafter at its first meeting
131 after the first day of January of each year by selecting one of its
132 members to serve as chair and by appointing a secretary and a
133 treasurer who need not be members of the board. The secretary
134 shall keep a record of all proceedings of the board which shall
135 be available for inspection as other public records. Duplicate
136 records shall be filed with the county commission and shall
137 include the minutes of all board meetings. The treasurer is
138 lawful custodian of all funds of the public service district and
139 shall pay same out on orders authorized or approved by the
140 board. The secretary and treasurer shall perform other duties
141 appertaining to the affairs of the district and shall receive
142 salaries as shall be prescribed by the board. The treasurer shall
143 furnish bond in an amount to be fixed by the board for the use
144 and benefit of the district.

145 The members of the board, and the chair, secretary and
146 treasurer thereof, shall make available to the county commis-
147 sion, at all times, all of its books and records pertaining to the
148 district's operation, finances and affairs, for inspection and
149 audit. The board shall meet at least monthly.

§16-13A-5. General manager of board.

1 The board may employ a general manager to serve a term
2 of not more than five years and until his or her successor is
3 employed, and his or her compensation shall be fixed by
4 resolution of the board. Such general manager shall devote all
5 or the required portion of his or her time to the affairs of the
6 district and may employ, discharge and fix the compensation of
7 all employees of the district, except as in this article otherwise
8 provided, and he or she shall perform and exercise such other
9 powers and duties as may be conferred upon him or her by the
10 board.

11 Such general manager shall be chosen without regard to his
12 or her political affiliations and upon the sole basis of his or her
13 administrative and technical qualifications to manage public
14 service properties and affairs of the district and he or she may
15 be discharged only upon the affirmative vote of two thirds of
16 the board. Such general manager need not be a resident of the
17 district at the time he or she is chosen. Such general manager
18 may not be a member of the board but shall be an employee of
19 the board.

20 The board of any public service district which purchases
21 water, sewer or stormwater service from a municipal water,
22 sewer or stormwater system or another public service district
23 may, as an alternative to hiring its own general manager, elect
24 to permit the general manager of the municipal water, sewer or
25 stormwater system or public service district from which such
26 water, sewer or stormwater service is purchased provide
27 professional management to the district, if the appropriate
28 municipality or public service board agrees to provide such
29 assistance. The general manager shall receive reasonable
30 compensation for such service.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired or constructed
3 by the district, and shall have the power, and it shall be its duty,
4 to maintain, operate, extend and improve the same, including,
5 but not limited to, those activities necessary to comply with all
6 federal and state requirements, including water quality im-
7 provement activities. All contracts involving the expenditure by
8 the district of more than fifteen thousand dollars for construc-
9 tion work or for the purchase of equipment and improvements,
10 extensions or replacements, shall be entered into only after
11 notice inviting bids shall have been published as a Class I legal
12 advertisement in compliance with the provision of article three,
13 chapter fifty-nine of this code, and the publication area for such
14 publication shall be as specified in section two of this article in
15 the county or counties in which the district is located. The
16 publication shall not be less than ten days prior to the making
17 of any such contract. To the extent allowed by law, in-state
18 contractors shall be given first priority in awarding public
19 service district contracts. It shall be the duty of the board to
20 ensure that local in-state labor shall be utilized to the greatest
21 extent possible when hiring laborers for public service district
22 construction or maintenance repair jobs. It shall further be the
23 duty of the board to encourage contractors to use American
24 made products in their construction to the extent possible. Any
25 obligations incurred of any kind or character shall not in any
26 event constitute or be deemed an indebtedness within the
27 meaning of any of the provisions or limitations of the constitu-
28 tion, but all such obligations shall be payable solely and only
29 out of revenues derived from the operation of the public service
30 properties of the district or from proceeds of bonds issued as
31 hereinafter provided. No continuing contract for the purchase
32 of materials or supplies or for furnishing the district with
33 electrical energy or power shall be entered into for a longer
34 period than fifteen years.

**§16-13A-8. Acquisition and purchase of public service properties;
right of eminent domain; extraterritorial powers.**

1 The board may acquire any publicly or privately owned
2 public service properties located within the boundaries of the
3 district regardless of whether or not all or any part of such
4 properties are located within the corporate limits of any city,
5 incorporated town or other municipal corporation included
6 within the district and may purchase and acquire all rights and
7 franchises and any and all property within or outside the district
8 necessary or incidental to the purpose of the district.

9 The board may construct any public service properties
10 within or outside the district necessary or incidental to its
11 purposes and each such district may acquire, construct, main-
12 tain and operate any such public service properties within the
13 corporate limits of any city, incorporated town or other municip-
14 al corporation included within the district or in any unincorpo-
15 rated territory within ten miles of the territorial boundaries of
16 the district: *Provided*, That if any incorporated city, town or
17 other municipal corporation included within the district owns
18 and operates either water facilities, sewer facilities, stormwater
19 facilities or gas facilities or all of these, then the district may
20 not acquire, construct, establish, improve or extend any public
21 service properties of the same kind within such city, incorpo-
22 rated towns or other municipal corporations or the adjacent
23 unincorporated territory served by such cities, incorporated
24 towns or other municipal corporations, except upon the ap-
25 proval of the public service commission, the consent of such
26 cities, incorporated towns or other municipal corporations and
27 in conformity and compliance with the rights of the holders of
28 any revenue bonds or obligations theretofore issued by such
29 cities, incorporated towns or other municipal corporations then
30 outstanding and in accordance with the ordinance, resolution or
31 other proceedings which authorize the issuance of such revenue
32 bonds or obligations.

33 Whenever such district has constructed, acquired or
34 established water facilities, sewer facilities, a stormwater
35 system, stormwater management program or gas facilities for
36 water, sewer, stormwater or gas services within any city,
37 incorporated town or other municipal corporation included
38 within a district, then such city, incorporated town or other
39 municipal corporation may not thereafter construct, acquire or
40 establish any facilities of the same kind within such city,
41 incorporated town or other municipal corporation without the
42 consent of such district.

43 For the purpose of acquiring any public service properties
44 or lands, rights or easements deemed necessary or incidental for
45 the purposes of the district, each such district has the right of
46 eminent domain to the same extent and to be exercised in the
47 same manner as now or hereafter provided by law for such right
48 of eminent domain by cities, incorporated towns and other
49 municipal corporations: *Provided*, That the power of eminent
50 domain provided in this section does not extend to highways,
51 road and drainage easements, or stormwater facilities con-
52 structed, owned or operated by the West Virginia division of
53 highways without the express agreement of the commissioner
54 of highways: *Provided, however*, That such board may not
55 acquire all or any substantial part of a privately owned water-
56 works system unless and until authorized so to do by the public
57 service commission of West Virginia, and that this section shall
58 not be construed to authorize any district to acquire through
59 condemnation proceedings either in whole or substantial part an
60 existing privately owned waterworks plant or system or gas
61 facilities located in or furnishing water or gas service within
62 such district or extensions made or to be made by it in territory
63 contiguous to such existing plant or system, nor may any such
64 board construct or extend its public service properties to supply
65 its services into areas served by or in competition with existing
66 waterworks or gas facilities or extensions made or to be made

67 in territory contiguous to such existing plant or system by the
68 owner thereof.

**§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections;
lien for delinquent fees.**

1 The board may make, enact and enforce all needful rules in
2 connection with the acquisition, construction, improvement,
3 extension, management, maintenance, operation, care, protec-
4 tion and the use of any public service properties owned or
5 controlled by the district, and the board shall establish rates,
6 fees and charges for the services and facilities it furnishes,
7 which shall be sufficient at all times, notwithstanding the
8 provisions of any other law or laws, to pay the cost of mainte-
9 nance, operation and depreciation of such public service
10 properties and principal of and interest on all bonds issued,
11 other obligations incurred under the provisions of this article
12 and all reserve or other payments provided for in the proceed-
13 ings which authorized the issuance of any bonds hereunder. The
14 schedule of such rates, fees and charges may be based upon
15 either (a) the consumption of water or gas on premises con-
16 nected with such facilities, taking into consideration domestic,
17 commercial, industrial and public use of water and gas; or (b)
18 the number and kind of fixtures connected with such facilities
19 located on the various premises; or (c) the number of persons
20 served by such facilities; or (d) any combination thereof; or (e)
21 may be determined on any other basis or classification which
22 the board may determine to be fair and reasonable, taking into
23 consideration the location of the premises served and the nature
24 and extent of the services and facilities furnished. However, no
25 rates, fees or charges for stormwater services may be assessed
26 against highways, road and drainage easements, or stormwater
27 facilities constructed, owned or operated by the West Virginia
28 division of highways. Where water, sewer, stormwater or gas
29 services, or any combination thereof, are all furnished to any

30 premises, the schedule of charges may be billed as a single
31 amount for the aggregate thereof. The board shall require all
32 users of services and facilities furnished by the district to
33 designate on every application for service whether the applicant
34 is a tenant or an owner of the premises to be served. If the
35 applicant is a tenant, he or she shall state the name and address
36 of the owner or owners of the premises to be served by the
37 district. All new applicants for service shall deposit a minimum
38 of fifty dollars with the district to secure the payment of service
39 rates, fees and charges in the event they become delinquent as
40 provided in this section. In any case where a deposit is forfeited
41 to pay service rates, fees and charges which were delinquent at
42 the time of disconnection or termination of service, no
43 reconnection or reinstatement of service may be made by the
44 district until another minimum deposit of fifty dollars has been
45 remitted to the district. Whenever any rates, fees, rentals or
46 charges for services or facilities furnished remain unpaid for a
47 period of thirty days after the same become due and payable,
48 the property and the owner thereof, as well as the user of the
49 services and facilities provided are delinquent and the owner,
50 user and property are liable at law until such time as all such
51 rates, fees and charges are fully paid: *Provided*, That the
52 property owner shall be given notice of any said delinquency by
53 certified mail, return receipt requested. The board may, under
54 reasonable rules promulgated by the public service commission,
55 shut off and discontinue water or gas services to all delinquent
56 users of either water or gas facilities, or both: *Provided*,
57 *however*, That upon written request of the owner or owners of
58 the premises, the board shall shut off and discontinue water and
59 gas services where any rates, fees, rentals, or charges for
60 services or facilities remain unpaid by the user of the premises
61 for a period of sixty days after the same became due and
62 payable.

63 In the event that any publicly or privately owned utility,
64 city, incorporated town, other municipal corporation or other

65 public service district included within the district owns and
66 operates separately either water facilities or sewer facilities, and
67 the district owns and operates the other kind of facilities, either
68 water or sewer, as the case may be, then the district and such
69 publicly or privately owned utility, city, incorporated town or
70 other municipal corporation or other public service district shall
71 covenant and contract with each other to shut off and discon-
72 tinue the supplying of water service for the nonpayment of
73 sewer service fees and charges: *Provided*, That any contracts
74 entered into by a public service district pursuant to this section
75 shall be submitted to the public service commission for
76 approval. Any public service district providing water and sewer
77 service to its customers has the right to terminate water service
78 for delinquency in payment of either water or sewer bills.
79 Where one public service district is providing sewer service and
80 another public service district or a municipality included within
81 the boundaries of the sewer district is providing water service,
82 and the district providing sewer service experiences a delin-
83 quency in payment, the district or the municipality included
84 within the boundaries of the sewer district that is providing
85 water service, upon the request of the district providing sewer
86 service to the delinquent account, shall terminate its water
87 service to the customer having the delinquent sewer account:
88 *Provided, however*, That any termination of water service must
89 comply with all rules and orders of the public service commis-
90 sion.

91 Any district furnishing sewer facilities within the district
92 may require, or may by petition to the circuit court of the
93 county in which the property is located, compel or may require
94 the bureau of public health to compel all owners, tenants or
95 occupants of any houses, dwellings and buildings located near
96 any such sewer facilities, where sewage will flow by gravity or
97 be transported by such other methods approved by the bureau
98 of public health including, but not limited to, vacuum and
99 pressure systems, approved under the provisions of section

100 nine, article one, chapter sixteen of this code, from such houses,
101 dwellings or buildings into such sewer facilities, to connect
102 with and use such sewer facilities, and to cease the use of all
103 other means for the collection, treatment and disposal of sewage
104 and waste matters from such houses, dwellings and buildings
105 where there is such gravity flow or transportation by such other
106 methods approved by the bureau of public health including, but
107 not limited to, vacuum and pressure systems, approved under
108 the provisions of section nine, article one, chapter sixteen of
109 this code, and such houses, dwellings and buildings can be
110 adequately served by the sewer facilities of the district, and it
111 is hereby found, determined and declared that the mandatory
112 use of such sewer facilities provided for in this paragraph is
113 necessary and essential for the health and welfare of the
114 inhabitants and residents of such districts and of the state:
115 *Provided*, That if the public service district determines that the
116 property owner must connect with the sewer facilities even
117 when sewage from such dwellings may not flow to the main
118 line by gravity and the property owner must incur costs for any
119 changes in the existing dwellings' exterior plumbing in order to
120 connect to the main sewer line, the public service district board
121 shall authorize the district to pay all reasonable costs for such
122 changes in the exterior plumbing, including, but not limited to,
123 installation, operation, maintenance and purchase of a pump, or
124 any other method approved by the bureau of public health;
125 maintenance and operation costs for such extra installation
126 should be reflected in the users charge for approval of the
127 public service commission. The circuit court shall adjudicate
128 the merits of such petition by summary hearing to be held not
129 later than thirty days after service of petition to the appropriate
130 owners, tenants or occupants.

131 Whenever any district has made available sewer facilities
132 to any owner, tenant or occupant of any house, dwelling or
133 building located near such sewer facility, and the engineer for
134 the district has certified that such sewer facilities are available

135 to and are adequate to serve such owner, tenant or occupant,
136 and sewage will flow by gravity or be transported by such other
137 methods approved by the bureau of public health from such
138 house, dwelling or building into such sewer facilities, the
139 district may charge, and such owner, tenant or occupant shall
140 pay the rates and charges for services established under this
141 article only after thirty-day notice of the availability of the
142 facilities has been received by the owner.

143 Whenever any district has made available a stormwater
144 system to any owner, tenant or occupant of any real property
145 located near such stormwater system, and where stormwater
146 from such real property affects or drains into such stormwater
147 system, it is hereby found, determined and declared that such
148 owner, tenant or occupant is being served by such stormwater
149 system, and it is further hereby found, determined and declared
150 that the mandatory use of such stormwater system is necessary
151 and essential for the health and welfare of the inhabitants and
152 residents of such district and of the state. The district may
153 charge, and such owner, tenant or occupant shall pay the rates,
154 fees and charges for stormwater services established under this
155 article only after thirty-day notice of the availability of the
156 stormwater system has been received by the owner.

157 All delinquent fees, rates and charges of the district for
158 either water facilities, sewer facilities, stormwater systems or
159 stormwater management systems or gas facilities are liens on
160 the premises served of equal dignity, rank and priority with the
161 lien on such premises of state, county, school and municipal
162 taxes. In addition to the other remedies provided in this section,
163 public service districts are hereby granted a deferral of filing
164 fees or other fees and costs incidental to the bringing and
165 maintenance of an action in magistrate court for the collection
166 of delinquent water, sewer, stormwater or gas bills. If the
167 district collects the delinquent account, plus reasonable costs,
168 from its customer or other responsible party, the district shall

169 pay to the magistrate the normal filing fee and reasonable costs
170 which were previously deferred. In addition, each public service
171 district may exchange with other public service districts a list
172 of delinquent accounts.

173 Anything in this section to the contrary notwithstanding,
174 any establishment, as defined in section three, article eleven,
175 chapter twenty-two, now or hereafter operating its own sewage
176 disposal system pursuant to a permit issued by the division of
177 environmental protection, as prescribed by section eleven,
178 article eleven, chapter twenty-two of this code, is exempt from
179 the provisions of this section.

§16-13A-14. Items included in cost of properties.

1 The cost of any public service properties acquired under the
2 provisions of this article shall be deemed to include the cost of
3 the acquisition or construction thereof, the cost of all property
4 rights, easements and franchises deemed necessary or conve-
5 nient therefor and for the improvements and extensions thereto;
6 for stormwater systems and associated stormwater management
7 programs, those activities which include, but are not limited to,
8 water quality improvement activities necessary to comply with
9 all federal and state requirements; interest upon bonds prior to
10 and during construction or acquisition and for six months after
11 completion of construction or of acquisition of the improve-
12 ments and extensions; engineering, fiscal agents and legal
13 expenses; expenses for estimates of cost and of revenues,
14 expenses for plans, specifications and surveys; other expenses
15 necessary or incident to determining the feasibility or practica-
16 bility of the enterprise, administrative expense, and such other
17 expenses as may be necessary or incident to the financing
18 herein authorized, and the construction or acquisition of the
19 properties and the placing of same in operation, and the
20 performance of the things herein required or permitted, in
21 connection with any thereof.

§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

1 In any case where a public service district owns a water,
2 sewer, stormwater or gas system, and a majority of not less than
3 sixty percent of the members of the public service board thereof
4 deem it for the best interests of the district to sell, lease or rent
5 such water, sewer, stormwater or gas system to any municipal-
6 ity or privately-owned water, sewer, stormwater or gas system,
7 or to any water, sewer, stormwater or gas system owned by an
8 adjacent public service district, the board may so sell, lease or
9 rent such water, sewer, stormwater or gas system upon such
10 terms and conditions as said board, in its discretion, considers
11 in the best interests of the district: *Provided*, That such sale,
12 leasing or rental may be made only upon: (1) The publication
13 of notice of a hearing before the board of the public service
14 district, as a Class I legal advertisement in compliance with the
15 provisions of article three, chapter fifty-nine of this code, in a
16 newspaper published and of general circulation in the county or
17 counties wherein the district is located, such publication to be
18 made not earlier than twenty days and not later than seven days
19 prior to the hearing; (2) approval by the county commission or
20 commissions of the county or counties in which the district
21 operates; and (3) approval by the public service commission of
22 West Virginia.

23 In the event of any such sale, the proceeds thereof, if any,
24 remaining after payment of all outstanding bonds and other
25 obligations of the district, shall be ratably distributed to any
26 persons who have made contributions in aid of construction of
27 such water, sewer, stormwater or gas system, such distribution
28 not to exceed the actual amount of any such contribution,
29 without interest, and any balance of funds thereafter remaining
30 shall be paid to the county commission of the county in which
31 the major portion of such water, sewer, stormwater or gas

32 system is located to be placed in the general funds of such
33 county commission.

§16-13A-24. Acceptance of loans, grants or temporary advances.

1 Any public service district created pursuant to the provi-
2 sions of this article is authorized and empowered to accept
3 loans or grants and procure loans or temporary advances
4 evidenced by notes or other negotiable instruments issued in the
5 manner, and subject to the privileges and limitations, set forth
6 with respect to bonds authorized to be issued under the provi-
7 sions of this article, for the purpose of paying part or all of the
8 cost of construction or acquisition of water systems, sewage
9 systems, stormwater systems or stormwater management
10 systems or gas facilities, or all of these, and the other purposes
11 herein authorized, from any authorized agency or from the
12 United States of America or any federal or public agency or
13 department of the United States or any private agency, corpora-
14 tion or individual, which loans or temporary advances, includ-
15 ing the interest thereon, may be repaid out of the proceeds of
16 the bonds authorized to be issued under the provisions of this
17 article, the revenues of the said water system, sewage system,
18 stormwater system or associated stormwater management
19 system or gas facilities, or grants to the public service district
20 from any authorized agency or from the United States of
21 America or any federal or public agency or department of the
22 United States or from any private agency, corporation or
23 individual or from any combination of such sources of payment,
24 and to enter into the necessary contracts and agreements to
25 carry out the purposes hereof with any authorized agency or the
26 United States of America or any federal or public agency or
27 department of the United States, or with any private agency,
28 corporation or individual. Any other provisions of this article
29 to the contrary notwithstanding, interest on any such loans or
30 temporary advances may be paid from the proceeds thereof
31 until the maturity of such notes or other negotiable instrument.

CHAPTER 273

(S. B. 471 — By Senators Bowman, Bailey, Burnette, Jackson,
Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six, all relating to continuing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.

§4-8-6. Continuation of commission.

§4-8-1. Creation; composition; qualifications.

1 There is a capitol building commission, hereinafter referred
2 to as the commission, which is composed of five members who
3 are appointed by the governor, with the advice and consent of
4 the Senate, plus the secretary of the department of administra-
5 tion who shall be a nonvoting member. No more than three
6 members may be of the same political party. One member shall

7 be an architect selected from three persons recommended by the
8 board of architects, one member shall be a registered profes-
9 sional engineer selected from three persons recommended by
10 the board of engineers, one member shall be the commissioner
11 of the division of culture and history who is chairman of the
12 commission and two members shall be selected from the public
13 at large.

§4-8-6. Continuation of commission.

1 Pursuant to the provisions of article ten of this chapter, the
2 capitol building commission shall continue to exist until the
3 first day of July, two thousand four, unless sooner terminated,
4 continued or reestablished by act of the Legislature.

CHAPTER 274

(H. B. 4662 — By Delegates Douglas, Kuhn, Varner,
Butcher, Prunty, Leggett and Border)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five, five-a and five-b, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, changing agency termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a full perfor-
3 mance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand three: Division of
5 culture and history; division of motor vehicles; division of
6 environmental protection; division of natural resources;
7 department of health and human resources; purchasing division
8 within the department of administration; investment manage-
9 ment board; and school building authority.

10 (2) On the first day of July, two thousand four: Division of
11 personnel; division of rehabilitation services; division of labor;
12 and workers' compensation.

13 (3) On the first day of July, two thousand five: Parkways,
14 economic development and tourism authority; department of
15 tax and revenue; division of highways; division of corrections;
16 West Virginia public land corporation; office of insurance
17 commissioner; James 'Tiger' Morton catastrophic illness
18 commission; and tourism functions within the development
19 office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a full perfor-
5 mance evaluation:

6 (1) On the first day of July, two thousand three: Office of
7 judges in workers' compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a preliminary
3 performance review has been conducted upon the agency:

4 (1) On the first day of July, one thousand nine hundred
5 ninety-six: Juvenile facilities review panel.

6 (2) On the first day of July, one thousand nine hundred
7 ninety-seven: Public employees insurance agency advisory
8 board; cable television advisory board.

9 (3) On the first day of July, one thousand nine hundred
10 ninety-nine: Tree fruit industry self-improvement assessment
11 program.

12 (4) On the first day of July, two thousand: Terms of family
13 law master and family law master system.

14 (5) On the first day of July, two thousand three: Driver's
15 licensing advisory board; West Virginia commission for
16 national and community service; West Virginia's membership
17 in the southern regional education board; bureau of senior

18 services; public employees insurance agency finance board;
19 state police; oil and gas inspector's examining board; advisory
20 council on public health; office of explosives and blasting;
21 office of coalfield community development; workers' compen-
22 sation appeal board; holocaust education commission; gover-
23 nors' office of fiscal analysis and management; marketing and
24 development division of the department of agriculture; manu-
25 factured housing construction and safety board; records
26 management and preservation board; public energy authority
27 and public energy authority board; and environmental quality
28 board.

29 (6) On the first day of July, two thousand four: Meat
30 inspection program of the department of agriculture; state board
31 of risk and insurance management; real estate commission;
32 rural health advisory panel; state fire commission; motorcycle
33 safety awareness board; motor vehicle dealers advisory board;
34 interstate commission on uniform state laws; design-build
35 board; center for professional development board; parks section
36 and parks functions of the division of natural resources; office
37 of water resources of the division of environmental protection;
38 division of protective services; state rail authority; care home
39 advisory board; steel advisory commission and steel futures
40 program; children's health policy board; capitol building
41 commission; public defender services; and interstate commis-
42 sion on the Potomac River basin.

43 (7) On the first day of July, two thousand five: Board of
44 banking and financial institutions; lending and credit rate board;
45 governor's cabinet on children and families; oil and gas
46 conservation commission; health care authority; educational
47 broadcasting authority; clean coal technology council; racing
48 commission; and emergency medical services advisory council.

49 (8) On the first day of July, two thousand six: Family
50 protection services board; medical services fund advisory
51 council; West Virginia stream partners program; Ohio River
52 valley water sanitation commission; state lottery commission;

53 whitewater commission within the division of natural resources;
54 unemployment compensation; women's commission; and soil
55 conservation committee.

56 (9) On the first day of July, two thousand seven: Human
57 rights commission.

58 (10) On the first day of July, two thousand eight: Ethics
59 commission.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a preliminary
5 performance review:

6 (1) On the first day of July, two thousand: State building
7 commission.

8 (2) On the first day of July, two thousand three: Commis-
9 sion for the deaf and hard-of-hearing; state geological and
10 economic survey; public employees insurance agency; West
11 Virginia contractor licensing board; personal assistance service
12 program; and public service commission.

13 (3) On the first day of July, two thousand four: Office of the
14 environmental advocate; and veterans' council.

15 (4) On the first day of July, two thousand five: Bureau for
16 child support enforcement.

§4-10-5b. Termination of boards created to regulate professions and occupations.

1 (a) The legislative auditor shall evaluate each board created
2 under chapter thirty of this code to regulate professions and
3 occupations, at least once every twelve years. The evaluation
4 shall assess whether the board complies with the policies and
5 provisions of chapter thirty of this code and other applicable
6 laws and rules, whether the board follows a disciplinary
7 procedure which observes due process rights and protects the
8 public interest, and whether the public interest requires that the
9 board be continued.

10 (b) The following boards terminate on the date indicated,
11 but no board terminates under this section unless a regulatory
12 board evaluation has been conducted upon the board:

13 (1) On the first day of July, two thousand one: Board of
14 licensed dietitians.

15 (2) On the first day of July, two thousand three: Board of
16 pharmacy; board of dental examiners; board of osteopathy;
17 board of examiners of psychologists; and massage therapy
18 licensure board.

19 (3) On the first day of July, two thousand four: Board of
20 examiners of land surveyors; board of landscape architects;
21 board of architects; and board of registration for foresters.

22 (4) On the first day of July, two thousand five: Board of
23 social work examiners; board of accountancy; board of veteri-
24 nary medicine; acupuncture board; and board of medicine.

25 (5) On the first day of July, two thousand six: Board of
26 examiners in counseling.

27 (6) On the first day of July, two thousand seven: Board of
28 registration for sanitarians; board of embalmers and funeral
29 directors; board of optometry; and board of respiratory care
30 practitioners.

31 (7) On the first day of July, two thousand eight: Nursing
32 home administrators board; board of hearing aid dealers; and
33 board of barbers and cosmetologists.

34 (8) On the first day of July, two thousand nine: Board of
35 physical therapy; board of chiropractic examiners; and board of
36 occupational therapy.

37 (9) On the first day of July, two thousand ten: Board of
38 registration for professional engineers; board of examiners for
39 registered professional nurses; board of examiners for licensed
40 practical nurses; board of examiners for speech language
41 pathology and audiology; and radiologic technology board of
42 examiners.

CHAPTER 275

**(S. B. 468 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe and Snyder)**

[Passed February 15, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of purchasing within the department of administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Continuation of the division of purchasing.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the division of purchasing within the department of
3 administration shall continue to exist until the first day of July,
4 two thousand three, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 276

(S. B. 472 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-a, all relating to continuing the records management and preservation board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION
ACT.**

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

§5A-8-15a. Continuation of board.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

1 The Legislature finds that the use of electronic technology
2 and other procedures to manage and preserve public records by
3 counties should be uniform throughout the state where possible.

4 (a) The governing body and the chief elected official of any
5 unit of each county, hereinafter referred to as a county govern-
6 ment entity, whether organized and existing under a charter or
7 under general law, shall promote the principles of efficient
8 records management and preservation of local records. Such
9 county governing entity may, as far as practical, follow the
10 program established for the uniform management and preserva-
11 tion of county records as set out in a rule or rules proposed for
12 legislative approval in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code as proposed by the
14 records management and preservation board established herein.

15 (b) In the event any such governing body or the chief
16 elected official of a unit of a county government entity decides
17 to destroy or otherwise dispose of a county record, the govern-
18 ing body or such chief elected official may, prior to destruction
19 or disposal thereof, offer the record to the director of the section
20 of archives and history of the division of culture and history for

21 preservation of the record as a document of historical value.
22 Unless authorized by the supreme court of appeals, the records
23 of courts of record and magistrate courts are not affected by the
24 provisions of this section.

25 (c) A preservation duplicate of a county government entity
26 record may be stored in any format, approved by the board as
27 hereinafter established, where the image of the original record
28 is preserved in a form, including CD-ROM and optical image
29 storage media, in which the image thereof is incapable of
30 erasure or alteration and from which a reproduction of the
31 stored record may be retrieved which truly and accurately
32 depicts the image of the original county government record.

33 Except for those formats, processes and systems used for
34 the storage of records on the effective date of this section, no
35 alternate format for the storage of county government entity
36 records described in this section is authorized for the storage of
37 county government entity records unless the particular format
38 has been approved pursuant to a legislative rule promulgated by
39 the board as herein created in accordance with the provisions of
40 chapter twenty-nine-a of this code. The board as herein estab-
41 lished may prohibit the use of any format, process or system
42 used for the storage of records upon its determination that the
43 same is not reasonably adequate to preserve the records from
44 destruction, alteration or decay.

45 Upon creation of a preservation duplicate which stores an
46 original county government entity record in an approved format
47 in which the image thereof is incapable of erasure or alteration
48 and from which a reproduction of the stored record may be
49 retrieved which truly and accurately depicts the image of the
50 original record, the county government entity may destroy or
51 otherwise dispose of the original in accordance with the
52 provisions of section seven-c, article one, chapter fifty-seven of
53 this code.

54 (d) There is hereby created a records management and
55 preservation board for county government entities, to be
56 composed of nine members.

57 (1) Three members shall serve ex officio. One member
58 shall be the commissioner of the division of culture and history
59 who shall be the chairman of the board. One member shall be
60 the administrator of the supreme court of appeals. One member
61 shall be the administrator of the governor's office of technology
62 or his or her designee.

63 (2) The governor shall appoint six members of the board
64 with the advice and consent of the Senate. Not more than five
65 appointments to the board may be from the same political party
66 and not more than three members may be appointed from the
67 same congressional district. Of the six members appointed by
68 the governor: (i) Three appointments shall be county elected
69 officials, one of whom shall be a clerk of the county commis-
70 sion, one of whom shall be a circuit court clerk and one of
71 whom shall be a county commissioner, to be selected from a list
72 of nine names, including the names of three clerks of county
73 commissions and three circuit court clerks submitted to the
74 governor by the West Virginia association of counties and the
75 names of three county commissioners submitted to the governor
76 jointly by the West Virginia association of counties and the
77 West Virginia county commissioners association; (ii) one
78 appointment shall be a county prosecuting attorney to be
79 selected from a list of three names submitted by the West
80 Virginia prosecuting attorneys institute; (iii) one appointment
81 shall be an attorney licensed in West Virginia and in good
82 standing as a member of the state bar with experience in real
83 estate and mineral title examination, to be selected from a list
84 of three names submitted by the state bar; and (iv) one appoint-
85 ment shall be a representative of a local historical or genealogi-
86 cal society.

87 (e) The members of the board shall serve without compen-
88 sation but shall be reimbursed for all reasonable and necessary
89 expenses actually incurred in the performance of their duties as
90 members of the board. In the event the expenses are paid, or are
91 to be paid, by a third party, the member shall not be reimbursed
92 by the state.

93 (f) The staff of the board shall consist of the director of the
94 archives and history section of the division of culture and
95 history and such staff as he or she may designate to assist him
96 or her.

97 (g) On or before the first day of July, two thousand one, the
98 board shall propose rules for legislative approval in accordance
99 with the provisions of article three, chapter twenty-nine-a of
100 this code to establish a system of records management and
101 preservation for county governments: *Provided*, That, for the
102 retention and disposition of records of courts of record and
103 magistrate courts, the implementation of the rule is subject to
104 action of the West Virginia supreme court of appeals. The
105 proposed rule or rules shall include provisions for establishing
106 a program of grants to county governments for making records
107 management and preservation uniform throughout the state. The
108 board is not authorized to propose or promulgate emergency
109 rules under the provisions of this section.

110 (h) On or before the first day of April, two thousand two,
111 the board, in cooperation with the administrator and state
112 executive agencies under the general authority of the governor,
113 shall conduct a study of the records management and preserva-
114 tion needs of state executive agencies. Should the board
115 determine a need for a uniform records management and
116 preservation system for such agencies, it shall recommend that
117 the administrator propose rules for legislative approval in
118 accordance with the provisions of article three, chapter twenty-
119 nine-a of this code to provide for the implementation of a

120 uniform records management and preservation system for state
121 executive agencies.

122 (i) In addition to the fees charged by the clerk of the county
123 commission under the provisions of section ten, article one,
124 chapter fifty-nine of this code, the clerk shall charge and collect
125 an additional one-dollar fee for every document containing less
126 than ten pages filed for recording and an additional one-dollar
127 fee for each additional ten pages of such document filed for
128 recording. At the end of each month, the clerk of the county
129 commission shall deposit into the special public records and
130 preservation account as herein established in the state treasury
131 all fees collected: *Provided*, That the clerk may retain not more
132 than ten percent of such fees for costs associated with the
133 collection of the fees. Clerks shall be responsible for accounting
134 for the collection and deposit in the state treasury of all fees
135 collected by such clerk under the provisions of this section.

136 There is hereby created in the state treasury a special
137 account entitled the "public records and preservation revenue
138 account". The account shall consist of all fees collected under
139 the provisions of this section, legislative appropriations, interest
140 earned from fees, investments, gifts, grants or contributions
141 received by the board. Expenditures from the account shall be
142 for the purposes set forth in this article and are not authorized
143 from collections but are to be made only in accordance with
144 appropriation by the Legislature and in accordance with the
145 provisions of article three, chapter twelve of this code and upon
146 the fulfillment of the provisions set forth in article two, chapter
147 five-a of this code: *Provided*, That for the fiscal year ending the
148 thirtieth day of June, two thousand one, expenditures are
149 authorized from collections rather than pursuant to an appropri-
150 ation by the Legislature.

151 Subject to the above provision, the board may expend the
152 funds in the account to implement the provisions of this article.
153 In expending funds from the account, the board shall allocate
154 not more than fifty percent of such funds for grants to counties

155 for records management, access and preservation purposes. The
156 board shall provide for applications, set guidelines and establish
157 procedures for distributing grants to counties including a
158 process for appealing an adverse decision on a grant applica-
159 tion. Expenditures from the account shall be for the purposes
160 set forth in this section, including the cost of additional staff of
161 the division of archives and history.

§5A-8-15a. Continuation of board.

1 The records management and preservation board shall
2 continue to exist until the first day of July, two thousand three,
3 pursuant to the provisions of article ten, chapter four of this
4 code, unless sooner terminated, continued or reestablished
5 pursuant to the provisions of that article.

CHAPTER 277

(S. B. 241 — By Senators Bowman, Bailey, Jackson, Kessler,
Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

[Passed February 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the ethics commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-11. Continuation of commission.

1 Pursuant to the provisions of article ten, chapter four of this
 2 code, the West Virginia ethics commission shall continue to
 3 exist until the first day of July, two thousand eight, unless
 4 sooner terminated, continued or reestablished pursuant to that
 5 article.

CHAPTER 278

(H. B. 4256 — By Delegates Kuhn, Varner, Prunty,
 Flanigan, Manchin, Yeager and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
 AND OFFICE OF COMMISSIONER OF HUMAN SER-**

**VICES; POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

**§9-2-1a. Continuation of the department of health and human
resources.**

1 The department of health and human resources shall be
2 charged with the administration of this chapter. The department
3 of health and human resources shall continue to exist pursuant
4 to the provisions of article ten, chapter four of this code, until
5 the first day of July, two thousand three, unless sooner termi-
6 nated, continued or reestablished pursuant to that article.

CHAPTER 279

**(S. B. 473 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe and Snyder)**

[Passed February 15, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to continuing the veterans' council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-2. Veterans' council; administration of division.

§9A-1-2a. Continuation of council.

§9A-1-2. Veterans' council; administration of division.

1 There shall be a "veterans' council" which shall consist of
2 seven members who shall be citizens and residents of this state
3 who have served in and been honorably discharged or separated
4 under honorable conditions from the armed forces of the United
5 States and whose service was within a time of war as defined by
6 the laws of the United States, either Public Law No. 2 — 73rd
7 Congress or Public Law No. 346 — 78th Congress, and any and
8 all amendments thereto. At least one member of the council
9 shall be a veteran of World War II, at least one member of the
10 council shall be a veteran of the Korean Conflict and at least
11 two members of the council shall be veterans of the Vietnam
12 era. The members of the veterans' council shall be selected with
13 special reference to their ability and fitness to effectuate the
14 purposes of this article.

15 The West Virginia division of veterans' affairs shall be
16 administered by a director and such veterans' affairs officers,
17 assistants and employees as may be deemed advisable.

§9A-1-2a. Continuation of council.

1 The veterans' council is continued until the first day of
2 July, two thousand four, pursuant to the provisions of article
3 ten, chapter four of this code, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 280

(H. B. 4099 — By Delegates Douglas, Kuhn, Brown,
Butcher, Flanigan, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter ten 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, all relating to continuing the West Virginia educational broadcasting authority.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter ten 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, to read as follows:

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

§10-5-6. Continuation of educational broadcasting authority.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

1 The West Virginia educational broadcasting authority,
2 heretofore created, is hereby continued as a public benefit
3 corporation. It shall consist of eleven voting members, who
4 shall be residents of the state, of whom one shall be the state

5 superintendent of schools, one shall be a member of the West
6 Virginia board of education to be selected by it annually, one
7 shall be a member of the university of West Virginia board of
8 trustees to be selected by it annually, and one shall be a member
9 of the board of directors of the state college system to be
10 selected by it annually. The other seven members shall be
11 appointed by the governor by and with the advice and consent
12 of the Senate for overlapping terms of seven years, one term
13 expiring each year, except that the appointment to fill the
14 membership position for the term expiring in the year one
15 thousand nine hundred eighty-three, shall be for a term of six
16 years. Not less than one appointive member shall come from
17 each congressional district. Employees of noncommercial
18 broadcasting stations in West Virginia are not eligible for
19 appointment to the authority. The present members of the
20 authority shall continue to serve out the terms to which they
21 were appointed. Any vacancy among the appointive members
22 shall be filled by the governor by appointment for the unexpired
23 term.

24 The chairperson and vice chairperson of the authority as of
25 the effective date of this section shall continue in their respec-
26 tive offices until their successors are elected. Thereafter, at its
27 annual meeting in each year the authority shall elect one of its
28 members as chairperson and one as vice chairperson. The
29 authority is authorized to select an executive director and such
30 other personnel as may be necessary to perform its duties and
31 to fix the compensation of such personnel to be paid out of
32 moneys appropriated for this purpose. The executive director
33 shall keep a record of the proceedings of the authority and shall
34 perform such other duties as it may prescribe. The authority is
35 authorized to establish such office or offices as may be neces-
36 sary for the proper performance of its duties.

37 The authority shall hold an annual meeting and may meet
38 at such other times and places as may be necessary, such
39 meetings to be held upon its own resolution or at the call of the
40 chairperson of the authority. The members shall serve without

41 compensation but may be reimbursed for actual expenses
42 incident to the performance of their duties upon presentation to
43 the chairperson of an itemized sworn statement thereof.

§10-5-6. Continuation of educational broadcasting authority.

1 The West Virginia educational broadcasting authority shall
2 continue to exist until the first day of July, two thousand five,
3 pursuant to the provisions of article ten, chapter four of this
4 code, unless sooner terminated, continued or reestablished
5 pursuant to the provisions of that article.

CHAPTER 281

(H. B. 4510 — By Delegates Douglas, Kuhn, Varner,
Butcher, Prunty, Leggett and Border)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Continuation of board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia investment management board shall
3 continue to exist until the first day of July, two thousand three,
4 unless sooner terminated, continued or reestablished pursuant
5 to the provisions of that article.

CHAPTER 282

(H. B. 4299 — By Delegates Kuhn, Varner, Butcher,
Ennis, Manchin, Prunty and Azinger)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section six, all relating to continuing the division of protective services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-2. Division established; purpose; appointment and qualifications of director.

§15-2D-6. Continuation of the division.

§15-2D-2. Division established; purpose; appointment and qualifications of director.

1 (a) The state facilities protection division within the
2 department of military affairs and public safety shall hereafter
3 be designated the division of protective services. The purpose
4 of the division is to provide safety and security at the capitol
5 complex and other state facilities.

6 (b) The governor shall appoint, with the advice and consent
7 of the Senate, the director of the division whose qualifications
8 shall include at least ten years of service as a law-enforcement
9 officer with at least three years in a supervisory law-enforce-
10 ment position, the successful completion of supervisory and
11 management training, and the professional training required for
12 police officers at the West Virginia state police academy or an
13 equivalent professional law-enforcement training at another
14 state, federal or United States military institution.

§15-2D-6. Continuation of the division.

1 The division of protective services shall terminate on the
2 first day of July, two thousand four, pursuant to the provisions
3 of article ten, chapter four of this code, unless sooner termi-
4 nated, continued or reestablished pursuant to the provisions of
5 that article.

CHAPTER 283

**(S. B. 238 — By Senators Bowman, Bailey, Jackson, Kessler, Minard,
Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)**

[Passed February 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-a, chapter
seventeen 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 one-a, all relating to continuing the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

§17-2A-1a. Continuation of the division.

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

1 The office of state road commissioner heretofore existing
 2 is hereby continued in all respects as heretofore constituted, but
 3 is hereby designated as the West Virginia division of highways.
 4 All duties and responsibilities heretofore imposed upon the
 5 state road commissioner and the powers exercised by him are
 6 hereby transferred to the West Virginia division of highways
 7 and such duties and responsibilities shall be performed by said
 8 division and the powers may be exercised thereby through the
 9 West Virginia commissioner of highways who shall be the chief
 10 executive officer of the division.

11 There is hereby continued the office of West Virginia
 12 commissioner of highways who shall be appointed by the
 13 governor, by and with the advice and consent of the Senate,

14 subject to the provisions of section two-a, article seven, chapter
15 six of this code.

§17-2A-1a. Continuation of the division.

1 The division of highways shall be continued until the first
2 day of July, two thousand five, pursuant to the provisions of
3 article ten, chapter four of this code, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 284

(H. B. 4321 — By Delegates Douglas, Kuhn, Varner,
Butcher, DeLong, Manchin and Leggett)

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Continuation of the racing commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the racing commission shall continue to exist until the
3 first day of July, two thousand five, unless sooner terminated,
4 continued or reestablished by act of the Legislature.

CHAPTER 285

(S. B. 353 — By Senators Bowman, Bailey, Burnette, Kessler,
Minard, Redd, Rowe, Snyder, Boley, Minear and Sprouse)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-one; and to amend article five of said chapter by adding thereto a new section, designated section twenty, all relating to continuing the parks section of the division of natural resources; and continuing the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Organization and Administration.**
5. **Parks and Recreation.**

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established.

§20-1-21. Continuation of the division of natural resources.

§20-1-3. Division of natural resources, office of director and commission established.

1 A division of natural resources, the office of director of the
2 division of natural resources and a natural resources commis-
3 sion are hereby created and established in the state government
4 with jurisdiction, powers, functions, services and enforcement
5 processes as provided in this chapter and elsewhere by law.

§20-1-21. Continuation of the division of natural resources.

1 The division of natural resources shall continue to exist
2 until the first day of July, two thousand three, pursuant to the
3 provisions of article ten, chapter four of this code, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

ARTICLE 5. PARKS AND RECREATION.**§20-5-20. Continuation of the parks section of division of natural resources.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the parks section and parks functions of the division of
3 natural resources shall continue to exist within the division of
4 natural resources until the first day of July, two thousand four,
5 unless sooner terminated, continued or reestablished pursuant
6 to the provisions of that article.

CHAPTER 286

**(S. B. 354 — By Senators Bowman, Bailey, Burnette, Kessler,
Minard, Redd, Rowe, Snyder, Boley, Minear and Sprouse)**

[Passed February 13, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to continuing the public land corporation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-9. Continuing the public land corporation.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the public land corporation shall continue to exist until
3 the first day of July, two thousand five, unless sooner termi-
4 nated, continued or reestablished by act of the Legislature.

CHAPTER 287

(H. B. 4100 — By Delegates Douglas, Kuhn, Varner,
Butcher, Prunty, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-f, relating to continuing the whitewater commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23f. Continuing the whitewater commission.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the whitewater commission shall continue to exist until
- 3 the first day of July, two thousand six, unless sooner termi-
- 4 nated, continued or reestablished by act of the Legislature.

CHAPTER 288

(S. B. 469 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of labor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF LABOR.

§21-1-5. Continuation of division.

1 Pursuant to article ten, chapter four of this code, the
2 division of labor shall continue to exist until the first day of
3 July, two thousand four, unless sooner terminated, continued or
4 reestablished pursuant to that article.

CHAPTER 289

**(S. B. 470 — By Senators Bowman, Bailey, Burnette,
Jackson, Kessler, Minard, Redd, Rowe and Snyder)**

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia contractor licensing board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-19. Continuation of board.

- 1 The West Virginia contractor licensing board shall continue
- 2 to exist pursuant to the provisions of article ten, chapter four of
- 3 this code, until the first day of July, two thousand three, unless
- 4 sooner terminated, continued or reestablished pursuant to that
- 5 article.

CHAPTER 290

(H. B. 4368 — By Delegates Kuhn, Varner, Butcher,
Flanigan, Martin, Prunty and Border)

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of authority of commissioner to administer the bureau of employment programs.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter twenty-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 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-9. Continuation of authority of commissioner to administer unemployment compensation.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the commissioner shall continue to administer this article
3 until the first day of July, two thousand six, unless the authority
4 to so administer is sooner terminated, continued or reestab-
5 lished pursuant to that article.

CHAPTER 291

**(S. B. 351 — By Senators Bowman, Bailey, Burnette, Kessler,
Minard, Redd, Rowe, Snyder, Boley, Minear and Sprouse)**

[Passed February 13, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the office of water resources.

Be it enacted by the Legislature of West Virginia:

That section seven-a, 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.

§22-1-7a. Continuation of office of water resources.

1 The office of water resources shall continue to exist until
2 the first day of July, two thousand four, pursuant to the provi-
3 sions of article ten, chapter four of this code unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 292

(H. B. 4298 — By Delegates Douglas, Butcher, Flanigan,
Manchin, Prunty, Tucker and Overington)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.**

§25-1-2. Continuation of the division of corrections.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the division of corrections shall continue to exist until the
3 first day of July, two thousand five, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 293

(S. B. 352 — By Senators Bowman, Bailey, Burnette, Kessler,
Minard, Redd, Rowe, Snyder, Boley, Minear and Sprouse)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten, all relating to continuing the West Virginia state geological and economic survey; and establishing requirements for appointment as director.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey director; qualifications for appointment; administrative powers and duties.

§29-2-10. Continuation.

§29-2-4. State geological and economic survey director; qualifications for appointment; administrative powers and duties.

1 The governor shall appoint as director of the survey a
2 geologist of established reputation. At the time of his or her

3 initial appointment, the director must be at least thirty years of
4 age and must be selected with special reference and consider-
5 ation given to his or her administrative experience and ability
6 and to his or her demonstrated interest in the effective and
7 responsible management of the state geological and economic
8 survey. The director must have a master's degree in geology or
9 in a related field and at least three years of experience in a
10 position of responsible charge in at least one discipline relating
11 to the duties and responsibilities for which the director will be
12 responsible upon assumption of the office. The director may not
13 be a candidate for or hold any other public office, may not be a
14 member of any political party committee and shall immediately
15 forfeit and vacate his or her office as director in the event he or
16 she becomes a candidate for or accepts appointment to any
17 other public office or political party committee.

18 The director may employ such assistants and employees as
19 he may deem necessary. He shall also determine the compensa-
20 tion of all persons employed by the survey and may remove
21 them at pleasure.

22 The director may set such reasonable fees as may be
23 necessary to recover additional costs incurred in performing
24 geological and analytical analyses. These fees shall be depos-
25 ited in the state treasury in a special revenue account to be
26 known as the "Geological and Analytical Services Fund". The
27 director is hereby authorized to expend such funds, as are
28 appropriated by the Legislature, from this fund for the purpose
29 of defraying said costs.

§29-2-10. Continuation.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the state geological and economic survey shall continue
3 to exist until the first day of July, two thousand three.

CHAPTER 294

**(H. B. 4454 — By Delegates Douglas, Flanigan,
Manchin, Prunty, Stephens, Leggett and Ellem)**

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-24. Continuation of state rail authority.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the West Virginia state rail authority shall continue to
- 3 exist until the first day of July, two thousand four, unless sooner
- 4 terminated, continued or reestablished by act of the Legislature.

CHAPTER 295

(H. B. 4121 — By Delegates Douglas, Kuhn, Brown,
Hatfield, Marshall, Yeager and Leggett)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, relating to continuing the women's commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses.

§29-20-7. Continuation of commission.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses.

1 The West Virginia commission on the status of women is
2 hereby abolished, and there is hereby continued within the
3 department of health and human resources the West Virginia
4 women's commission, to consist of eighteen members, seven of

5 whom shall be ex officio members, not entitled to vote: The
6 attorney general, the state superintendent of schools, the
7 commissioner of labor, the commissioner of the bureau of
8 human resources of the department of health and human
9 resources, the director of the human rights commission, the
10 director of the division of personnel and the chancellor of the
11 board of directors of the state college system. Each ex officio
12 member may designate one representative employed by his or
13 her department to meet with the commission in his or her
14 absence. The governor shall appoint the additional eleven
15 members, by and with the advice and consent of the Senate,
16 from among the citizens of the state. The governor shall
17 designate the chairman and vice chairman of the commission
18 and the commission may elect such other officers as it deems
19 necessary. The members shall serve a term beginning the first
20 day of July, one thousand nine hundred seventy-seven, three to
21 serve for a term of one year, four to serve for a term of two
22 years and the remaining four to serve for a term of three years.
23 The successors of the members initially appointed as provided
24 herein shall be appointed for a term of three years each in the
25 same manner as the members initially appointed under this
26 article, except that any person appointed to fill a vacancy
27 occurring prior to the expiration of the term for which his or her
28 predecessor was appointed shall be appointed for the remainder
29 of such term. Each member shall serve until the appointment
30 and qualification of his or her successor.

31 No member may receive any salary for his or her services,
32 but each may be reimbursed for actual and necessary expenses
33 incurred in the performance of his or her duties out of funds
34 received by the commission under section four of this article,
35 except that in the event the expenses are paid, or are to be paid,
36 by a third party, the members shall not be reimbursed by the
37 commission.

§29-20-7. Continuation of commission.

- 1 The women's commission is continued until the first day of
- 2 July, two thousand six, pursuant to the provisions of article ten,
- 3 chapter four of this code, unless sooner terminated, continued
- 4 or reestablished pursuant to the provisions of that article.

CHAPTER 296

(H. B. 4320 — By Delegates Douglas, Butcher, Flanigan,
Manchin, Perdue, Prunty and Border)

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-a, relating to continuing public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services.

§29-21-3a. Continuation of public defender services.

§29-21-3. Establishment of public defender services.

1 There is hereby created an executive agency known as
2 public defender services. The agency shall administer, coordi-
3 nate and evaluate programs by which the state provides legal
4 representation to indigent persons, monitor the progress of
5 various delivery systems and recommend improvements. The
6 agency shall maintain its office at the state capitol.

§29-21-3a. Continuation of public defender services.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, public defender services shall continue to exist until the
3 first day of July, two thousand four, unless sooner terminated,
4 continued or reestablished by act of the Legislature.

CHAPTER 297

**(S. B. 239 — By Senators Bowman, Bailey, Jackson, Kessler, Minard,
Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)**

[Passed February 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for licensed practical nurses; and deleting severability language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. PRACTICAL NURSES.**§30-7A-12. Continuation of board.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the board of examiners for licensed practical nurses shall
3 continue to exist until the first day of July, two thousand ten,
4 unless sooner terminated, continued or reestablished pursuant
5 to that article.

CHAPTER 298

(H. B. 4122 — By Delegates Douglas, Kuhn, Varner,
Flanigan, Angotti, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of architects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.**§30-12-15. Continuation of board.**

1 The board of architects shall terminate on the first day of
2 July, two thousand four, pursuant to the provisions of article

3 ten, chapter four of this code, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 299

(S. B. 240 — By Senators Bowman, Bailey, Jackson, Kessler, Minard,
Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

[Passed February 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for speech-language pathology and audiology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-22. Continuation of board.

1 The West Virginia board of examiners for speech-language
2 pathology and audiology shall be terminated pursuant to the
3 provisions of article ten, chapter four of this code on the first
4 day of July, two thousand ten, unless sooner terminated or
5 unless continued or reestablished pursuant to that article.

CHAPTER 300

(H. B. 4255 — By Delegates Douglas, Kuhn,
Prunty, Manchin, McGraw, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred one, article eighteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section one hundred thirty-four, all relating to continuing the bureau for child support enforcement.

Be it enacted by the Legislature of West Virginia:

That section one hundred one, article eighteen, 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 one hundred thirty-four, all to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services.

§48-18-134. Continuation of bureau.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the depart-
3 ment of health and human resources the bureau for child
4 support enforcement. The bureau is under the immediate
5 supervision of the commissioner, who is responsible for the
6 exercise of the duties and powers assigned to the bureau under
7 the provisions of this chapter. The bureau is designated as the
8 single and separate organizational unit within this state to
9 administer the state plan for child and spousal support accord-
10 ing to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate with the
12 bureau for child support enforcement. At a minimum, such
13 cooperation shall require that the division of human services:

14 (1) Notify the bureau for child support enforcement when
15 the division of human services proposes to terminate or provide
16 public assistance payable to any obligee;

17 (2) Receive support payments made on behalf of a former
18 or current recipient to the extent permitted by Title IV-D, Part
19 D of the Social Security Act; and

20 (3) Accept the assignment of the right, title or interest in
21 support payments and forward a copy of the assignment to the
22 bureau for child support enforcement.

§48-18-134. Continuation of bureau.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the bureau for child support enforcement shall continue
3 to exist until the first day of July, two thousand five, unless
4 sooner terminated, continued or reestablished by act of the
5 Legislature.

CHAPTER 301

**(Com. Sub. for S. B. 244 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to tax increment financing; making legislative findings; stating legislative purpose; defining certain terms and phrases; imposing public bid and prevailing wage rate requirements and exceptions thereto; providing certain powers to county commissions relating to implementation of tax increment financing plan; requiring notice and public hearing on proposal to create a development or redevelopment area; requiring approval of plan by director of West Virginia development office; establishing and providing for distribution of tax revenues and the tax increment portion thereof; providing restrictions on implementation of plan; providing for modification of plan; providing certain requirements for plan; providing for valuation of property in development or redevelopment project area; providing for distribution of payment in lieu of taxes receipts; authorizing issuance of tax increment obligation instruments; providing terms and conditions of obligations issued; providing for payment of obligations; providing tax exemption for obligations; providing for distribution of excess funds received; providing for computation of local share for support of schools; and providing effective date for provisions of act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

- §7-11B-1. Short title.
- §7-11B-2. Findings and legislative purpose.
- §7-11B-3. Definitions.
- §7-11B-4. Powers generally.
- §7-11B-5. Powers supplemental.
- §7-11B-6. Application for development or redevelopment plan.
- §7-11B-7. Creation of a development or redevelopment project area or district.
- §7-11B-8. Project plan – Approval.
- §7-11B-9. Project plan – Amendment.
- §7-11B-10. Termination of development or redevelopment project area or district.
- §7-11B-11. Costs of formation of development or redevelopment project area or district.
- §7-11B-12. Overlapping districts prohibited.
- §7-11B-13. Conflicts of interest; required disclosures and abstention.
- §7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.
- §7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority.
- §7-11B-16. Valuation of real property.
- §7-11B-17. Division of ad valorem real property tax revenue.
- §7-11B-18. Payments in lieu of taxes and other revenues.
- §7-11B-19. Tax increment obligations generally.
- §7-11B-20. Tax increment financing obligations — Authority to issue.
- §7-11B-21. Tax increment financing obligations — Authorizing resolution.
- §7-11B-22. Tax increment financing obligations — Terms, conditions.
- §7-11B-23. Tax increment financing obligations — Security – marketability.
- §7-11B-24. Tax increment financing obligations — Special fund for repayment.
- §7-11B-25. Tax increment financing obligations — Tax exemption.
- §7-11B-26. Excess funds.

§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

§7-11B-28. Effective date.

§7-11B-1. Short title.

- 1 This article may be known and cited as “The West Virginia
- 2 Tax Increment Financing Act”.

§7-11B-2. Findings and legislative purpose.

1 (a) It is found and declared to be the policy of this state to
2 promote and facilitate the orderly development and economic
3 stability of its communities. County commissions need the
4 ability to raise revenue to finance public improvements that are
5 designed to encourage economic growth and development in
6 geographic areas characterized by high levels of unemploy-
7 ment, stagnate employment, slow income growth, contaminated
8 property or inadequate infrastructure. The construction of
9 necessary public improvements in accordance with local
10 economic development plans will encourage investing in job-
11 producing private development and expand the public tax base.

12 (b) It is also found and declared that capital improvements
13 or facilities in any area that result in the increase in the value of
14 property located in the area or encourage increased employment
15 within the area will serve a public purpose for each taxing unit
16 possessing the authority to impose ad valorem taxes in the area.

17 (c) It is the purpose of this article:

18 (1) To encourage local levying bodies to cooperate in the
19 allocation of future tax revenues that are used to finance public
20 improvements designed to encourage private development in
21 selected areas; and

22 (2) To assist local governments that have a competitive
23 disadvantage in their ability to attract business, private invest-
24 ment or commercial development due to their location; to
25 encourage remediation of contaminated property; to prevent or
26 arrest the decay of selected areas due to the inability of existing
27 financing methods to provide public improvements; and to
28 encourage private investment designed to promote and facilitate
29 the orderly development or redevelopment of selected areas.

§7-11B-3. Definitions.

1 (a) *General.* -- When used in this article, words and phrases
2 defined in this section shall have the meanings ascribed to them
3 in this section, unless a different meaning is clearly required
4 either by the context in which the word or phrase is used or by
5 specific definition in this article.

6 (b) *Words and phrases defined.* —

7 (1) “Agency” includes a municipality, a county or municipi-
8 pal development agency established pursuant to authority
9 granted in section one, article twelve of this chapter, a port
10 authority, an airport authority or any other entity created by this
11 state or an agency or instrumentality of this state that engages
12 in economic development activity.

13 (2) “Base assessed value” means:

14 (A) The taxable assessed value of real and tangible personal
15 property of a project developer having a tax situs within a
16 development or redevelopment project area or district as shown
17 upon the landbook and personal property records of the assessor
18 on the first day of July of the year preceding the effective date
19 of the order authorizing the tax increment financing plan; or

20 (B) The taxable assessed value of all real and tangible
21 personal property having a tax situs within a development or
22 redevelopment project area or district as shown upon the
23 landbooks and personal property books of the assessor on the
24 first day of July preceding the formation of the development or
25 redevelopment project area or district.

26 (3) "Blighted area" means an area in which the structures,
27 buildings or improvements, by reason of dilapidation, deteriora-
28 tion, age or obsolescence, inadequate provision for access,
29 ventilation, light, air, sanitation, or open spaces, high density of
30 population and overcrowding or the existence of conditions
31 which endanger life or property, are detrimental to the public
32 health, safety, morals or welfare. "Blighted area" includes any
33 area which, by reason of the presence of a substantial number
34 of substandard, slum, deteriorated or deteriorating structures,
35 predominance of defective or inadequate street layout, faulty lot
36 layout in relation to size, adequacy, accessibility, or usefulness,
37 unsanitary or unsafe conditions, deterioration of site or other
38 improvements, diversity of ownership, defective or unusual
39 conditions of title, or the existence of conditions which endan-
40 ger life or property by fire and other causes, or any combination
41 of such factors, substantially impairs or arrests the sound
42 growth of a municipality, retards the provision of housing
43 accommodations, or constitutes an economic or social liability
44 and is a menace to the public health, safety, morals or welfare
45 in its present condition and use, or any area which is predomi-
46 nantly open and which because of lack of accessibility, obsolete
47 platting, diversity of ownership, deterioration of structures or of
48 site improvements, or otherwise, substantially impairs or arrests
49 the sound growth of the community.

50 (4) "Conservation area" means any improved area within
51 the boundaries of a development or redevelopment project area
52 or district located within the territorial limits of a municipality
53 or county in which fifty percent or more of the structures in the
54 area have an age of thirty-five years or more. A conservation
55 area is not yet a blighted area but is detrimental to the public
56 health, safety, morals or welfare and may become a blighted
57 area because of any one or more of the following factors:
58 Dilapidation; obsolescence; deterioration; illegal use of
59 individual structures; presence of structures below minimum
60 code standards; abandonment; excessive vacancies; overcrowd-
61 ing of structures and community facilities; lack of ventilation,
62 light or sanitary facilities; inadequate utilities; excessive land
63 coverage; deleterious land use or layout; depreciation of
64 physical maintenance; and lack of community planning. A
65 conservation area shall meet at least three of the factors
66 provided in this subdivision.

67 (5) "County commission" means the governing body of a
68 county of this state and, for purposes of this article only,
69 includes the governing body of a Class I or II municipality in
70 this state.

71 (6) "Current assessed value" means:

72 (A) The annual taxable assessed value of all real and
73 tangible personal property of a project developer having a tax
74 situs within a development project area as shown upon the
75 landbook and personal property records of the assessor; or

76 (B) The annual taxable assessed value of real and tangible
77 personal property having a tax situs within a development or
78 redevelopment project area or district as shown upon the
79 landbook and personal property records of the assessor.

80 (7) “Development office” means the West Virginia devel-
81 opment office created in section one, article two, chapter five-b
82 of this code.

83 (8) “Development project” or “redevelopment project”
84 means a project undertaken by a county commission or the
85 governing body of a municipality in a development or redevel-
86 opment project area or district for eliminating or preventing the
87 development or spread of slums or deteriorated, deteriorating or
88 blighted areas, for discouraging the loss of commerce, industry
89 or employment, for increasing employment, or for any combi-
90 nation thereof in accordance with a tax increment financing
91 plan. A development or redevelopment project may include one
92 or more of the following:

93 (A) The acquisition of land and improvements, if any
94 within the development or redevelopment project area and
95 clearance of the land so acquired; or

96 (B) The development, redevelopment, revitalization or
97 conservation of the project area whenever necessary to provide
98 land for needed public facilities, public housing, or industrial or
99 commercial development or revitalization, to eliminate un-
100 healthful unsanitary or unsafe conditions, to lessen density,
101 mitigate or eliminate traffic congestion, reduce traffic hazards,
102 eliminate obsolete or other uses detrimental to public welfare,
103 or otherwise remove or prevent the spread of blight or deterio-
104 ration;

105 (C) The financial or other assistance in the relocation of
106 persons and organizations displaced as a result of carrying out
107 the development or redevelopment project and other improve-
108 ments necessary for carrying out the project plan, together with
109 those site improvements that are necessary for the preparation

110 of any sites and making any land or improvements acquired in
111 the project area available, by sale or lease, for public housing or
112 for development, redevelopment or rehabilitation by private
113 enterprise for commercial or industrial uses in accordance with
114 the plan;

115 (D) The construction of capital improvements within a
116 development or redevelopment project area or district designed
117 to increase or enhance the development of commerce, industry
118 or housing within the development project area; or

119 (E) Any other projects the county commission or the
120 agency deems appropriate to carry out the purposes of this
121 article.

122 (9) "Development or redevelopment project area or district"
123 means an area proposed by one or more agencies as a develop-
124 ment or redevelopment project area or district, which may
125 include one or more counties, one or more municipalities or any
126 combination thereof, that has been approved by the county
127 commission of each county in which the project area is located
128 if the project is located outside the corporate limits of a
129 municipality, or by the governing body of a municipality if the
130 project area is located within a municipality, or by both the
131 county commission and the governing body of the municipality
132 when the development or redevelopment project area or district
133 is located both within and without a municipality.

134 (10) "Economic development area" means any area or
135 portion of an area located within the territorial limits of a
136 municipality or county that does not meet the requirements of
137 subdivisions (3) and (4) of this subsection and for which the
138 county commission finds that development or redevelopment
139 will not be solely used for development of commercial busi-

140 nesses that will unfairly compete in the local economy and that
141 development or redevelopment is in the public interest because
142 it will:

143 (A) Discourage commerce, industry or manufacturing from
144 moving their operations to another state;

145 (B) Result in increased employment in the municipality or
146 county, whichever is applicable; or

147 (C) Result in preservation or enhancement of the tax base
148 of the county or municipality.

149 (11) "Governing body of a municipality" means the city
150 council of a Class I or Class II municipality in this state.

151 (12) "Incremental value," for any development or redevel-
152 opment project area or district, means the difference between
153 the base assessed value and the current assessed value. The
154 incremental value will be positive if the current value exceeds
155 the base value, and the incremental value will be negative if the
156 current value is less than the base assessed value.

157 (13) "Includes" and "including" when used in a definition
158 contained in this article shall not be deemed to exclude other
159 things otherwise within the meaning of the term being defined.

160 (14) "Local levying body" means the county board of
161 education, and the county commission and includes the
162 governing bodies of a municipality when the development or
163 redevelopment project area or district is located, in whole or in
164 part, within the boundaries of the municipality.

165 (15) "Obligations" or "tax increment financing obligations"
166 means bonds, loans, debentures, notes, special certificates, or

167 other evidences of indebtedness issued by a county commission
168 or municipality pursuant to this article to carry out a develop-
169 ment or redevelopment project or to refund outstanding
170 obligations under this article.

171 (16) "Order" means an order of the county commission
172 adopted in conformity with the provisions of this article and as
173 provided in chapter seven of this code.

174 (17) "Ordinance" means a law adopted by the governing
175 body of a municipality in conformity with the provisions of this
176 article and as provided in chapter eight of this code.

177 (18) "Payment in lieu of taxes" means those estimated
178 revenues from real property and tangible personal property
179 having a tax situs in the area selected for a development or
180 redevelopment project, which revenues according to the
181 development or redevelopment project or plan are to be used for
182 a private use, which levying bodies would have received had a
183 county or municipality not adopted one or more tax increment
184 financing plans, and which would result from levies made after
185 the date of adoption of a tax increment financing plan during
186 the time the current assessed value of all taxable real and
187 tangible personal property in the area selected for the develop-
188 ment or redevelopment project exceeds the total base assessed
189 value of all taxable real and tangible personal property in the
190 development or redevelopment project area or district until the
191 designation is terminated as provided in this article.

192 (19) "Person" means any natural person, and any corpora-
193 tion, association, partnership, limited partnership, limited
194 liability company or other entity, regardless of its form,
195 structure or nature, other than a government agency or instru-
196 mentality.

197 (20) “Private project” means any project that is subject to
198 ad valorem property taxation in this state or to a payment in lieu
199 of tax agreement that is undertaken by a project developer in
200 accordance with a tax increment financing plan in a develop-
201 ment or redevelopment project area or district.

202 (21) “Project” means any facility requiring an investment
203 of capital, including extensions, additions or improvements to
204 existing facilities including water or wastewater facilities, and
205 the remediation of contaminated property as provided for in
206 article twenty-two, chapter twenty-two of this code, but does
207 not include performance of any governmental service by a
208 county or municipal government.

209 (22) “Project costs” means expenditures made in prepara-
210 tion of the development or redevelopment project plan and
211 made, or estimated to be made, or monetary obligations
212 incurred, or estimated to be incurred, by the county commission
213 which are listed in the project plan as costs of public works or
214 improvements within a development or redevelopment project
215 area or district, plus any costs incidental thereto. “Project costs”
216 include, but are not limited to:

217 (A) Capital costs, including, but not limited to, the actual
218 costs of the construction of public works or improvements, new
219 buildings, structures and fixtures, the demolition, alteration,
220 remodeling, repair or reconstruction of existing buildings,
221 structures and fixtures, environmental remediation, parking and
222 landscaping, the acquisition of equipment, and site clearing,
223 grading and preparation;

224 (B) Financing costs, including, but not limited to, an
225 interest paid to holders of evidences of indebtedness issued to

226 pay for project costs, all costs of issuance and any redemption
227 premiums, credit enhancement or other related costs;

228 (C) Real property assembly costs, meaning any deficit
229 incurred resulting from the sale or lease as lessor by the county
230 commission of real or personal property having a tax situs
231 within a development or redevelopment project area or district
232 for consideration that is less than its cost to the county commis-
233 sion;

234 (D) Professional service costs, including, but not limited to,
235 those costs incurred for architectural planning, engineering and
236 legal advice and services;

237 (E) Imputed administrative costs, including, but not limited
238 to, reasonable charges for time spent by county employees or
239 municipal employees in connection with the implementation of
240 a project plan;

241 (F) Relocation costs, including, but not limited to, those
242 relocation payments made following condemnation and job
243 training and retraining;

244 (G) Organizational costs, including, but not limited to, the
245 costs of conducting environmental impact and other studies,
246 and the costs of informing the public with respect to the
247 creation of a project development area and the implementation
248 of project plans;

249 (H) Payments made, in the discretion of the county com-
250 mission or the governing body of a municipality, which are
251 found to be necessary or convenient to creation of development
252 or redevelopment project areas or districts or the implementa-
253 tion of project plans; and

254 (I) That portion of costs related to the construction of
255 environmental protection devices, storm or sanitary sewer lines,
256 water lines, amenities or streets or the rebuilding or expansion
257 of streets, or the construction, alteration, rebuilding or expansion
258 of which is necessitated by the project plan for a develop-
259 ment or redevelopment project area or district, whether or not
260 the construction, alteration, rebuilding or expansion is within
261 the area or on land contiguous thereto.

262 (23) "Project developer" means any person who engages in
263 the development of projects in the state.

264 (24) "Project development or redevelopment area" means
265 a contiguous geographic area within a county, or within two
266 contiguous counties, in which a development or redevelopment
267 project will be undertaken, as defined and created by order of
268 the county commission, or county commissions in the case of
269 an area located in two counties.

270 (25) "Project plan" means the plan for a development or
271 redevelopment project that is adopted by a county commission
272 or governing body of a municipality in conformity with the
273 requirements of this article and chapter seven or eight of this
274 code.

275 (26) "Real property" means all lands, including improve-
276 ments and fixtures on them and property of any nature appurte-
277 nant to them or used in connection with them and every estate,
278 interest, and right, legal or equitable, in them, including terms
279 of years and liens by way of judgment, mortgage or otherwise,
280 and indebtedness secured by the liens.

281 (27) "Redevelopment area" means an area designated by a
282 county commission, or the governing body of a municipality, in

283 respect to which the commission or governing body has made
284 a finding that there exist conditions which cause the area to be
285 classified as a blighted area, a conservation area, an economic
286 development area or a combination thereof, which area includes
287 only those parcels of real property directly and substantially
288 benefited by the proposed redevelopment project located within
289 the development or redevelopment project area or district, or
290 land contiguous thereto.

291 (28) "Redevelopment plan" means the comprehensive
292 program under this article of a county or municipality for
293 redevelopment intended by the payment of redevelopment costs
294 to reduce or eliminate those conditions, the existence of which
295 qualified the redevelopment project area or district as a blighted
296 area, conservation area, economic development area or combi-
297 nation thereof, and to thereby enhance the tax bases of the
298 levying bodies which extend into the redevelopment project
299 area or district. Each redevelopment plan shall conform to the
300 requirements of this article.

301 (29) "Tax increment" means:

302 (A) The amount of regular levy property taxes attributable
303 to the amount by which the current assessed value of a private
304 project in a development or redevelopment project area or
305 district exceeds the base assessed value, if any, of the private
306 project; or

307 (B) The amount of regular levy property taxes attributable
308 to the amount by which the current assessed value of real and
309 tangible personal property having a tax situs in a development
310 or redevelopment project area or district exceeds the base
311 assessed value of the property.

312 (30) "Tax increment financing fund" means a separate fund
313 for a development or redevelopment project or for a develop-
314 ment or redevelopment project area or district established by
315 the county commission, or governing body of the municipality,
316 that issues tax increment financing obligations into which all
317 tax increment revenues and other pledged revenues are depos-
318 ited and from which projected project costs, debt service and
319 other expenditures authorized by this article are paid.

320 (31) "This code" means the code of West Virginia, one
321 thousand nine hundred thirty-one, as amended by the Legisla-
322 ture.

323 (32) "Total ad valorem property tax regular levy rate"
324 means the aggregate levy rate of all levying bodies on all
325 taxable property having a tax situs within a development or
326 redevelopment project area or district in a tax year but does not
327 include excess levies, levies for general obligation bonded
328 indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

1 In addition to any other powers conferred by law, a county
2 commission or governing body of a Class I or II municipality
3 may exercise any powers necessary and convenient to carry out
4 the purpose of this article, including the power to:

5 (1) Create development and redevelopment areas or
6 districts and to define the boundaries of those areas or districts;

7 (2) Cause project plans to be prepared, to approve the
8 project plans, and to implement the provisions and effectuate
9 the purposes of the project plans;

10 (3) Issue tax increment financing obligations and pledge tax
11 increments and other revenues for repayment of the obligations;

12 (4) Deposit moneys into the tax increment financing fund
13 for any development or redevelopment project area or district,
14 or project;

15 (5) Enter into any contracts or agreements, including
16 agreements with bondholders, determined by the county
17 commission to be necessary or convenient to implement the
18 provisions and effectuate the purposes of project plans;

19 (6) Receive from the federal government or the state loans
20 and grants for, or in aid of, a development or redevelopment
21 project and to receive contributions from any other source to
22 defray project costs;

23 (7) Exercise the right of eminent domain to condemn
24 property for the purposes of implementing the project plan. The
25 rules and procedures set forth in chapter fifty-four of this code
26 shall govern all condemnation proceedings authorized in this
27 article;

28 (8) Make relocation payments to those persons, businesses,
29 or organizations that are displaced as a result of carrying out the
30 development or redevelopment project;

31 (9) Clear and improve property acquired by the county
32 commission pursuant to the project plan and construct public
33 facilities on it or contract for the construction, development,
34 redevelopment, rehabilitation, remodeling, alteration or repair
35 of the property;

36 (10) Cause parks, playgrounds or water, sewer or drainage
37 facilities, or any other public improvements, including, but not
38 limited to, fire stations, community centers and other public
39 buildings, which the county commission is otherwise authorized
40 to undertake, to be laid out, constructed, or furnished in
41 connection with the development or redevelopment project.
42 When the public improvement of the county commission is to
43 be located, in whole or in part, within the corporate limits of a
44 municipality, the county commission shall consult with the
45 mayor and the governing body of the municipality regarding the
46 public improvement and shall pay for the cost of the public
47 improvement from the tax increment financing fund;

48 (11) Lay out and construct, alter, relocate, change the grade
49 of, make specific repairs upon, or discontinue public ways and
50 construct sidewalks in, or adjacent to, the development or
51 redevelopment project: *Provided*, That when the public way or
52 sidewalk is located within a municipality, the governing body
53 of the municipality shall consent to the same and if the public
54 way is a state road, the consent of the commissioner of high-
55 ways shall be necessary;

56 (12) Cause private ways, sidewalks, ways for vehicular
57 travel, playgrounds or water, sewer or drainage facilities and
58 similar improvements to be constructed within the development
59 or redevelopment project for the particular use of the develop-
60 ment or redevelopment project area or district, or those dwell-
61 ing or working in it;

62 (13) Construct any capital improvements of a public nature;

63 (14) Construct capital improvements to be leased or sold to
64 private entities in connection with the goals of the development
65 or redevelopment project;

66 (15) Designate one or more official or employee of the
67 county commission to make decisions and handle the affairs of
68 development and redevelopment project areas or districts
69 created by the county commission pursuant to this article;

70 (16) Adopt orders, ordinances or bylaws or repeal or
71 modify such ordinances or bylaws or establish exceptions to
72 existing ordinances and bylaws regulating the design, construc-
73 tion, and use of buildings within the development or redevelop-
74 ment project area or district created by a county commission or
75 governing body of a municipality under this article;

76 (17) Enter orders, adopt bylaws or repeal or modify such
77 orders or bylaws or establish exceptions to existing orders and
78 bylaws regulating the design, construction, and use of buildings
79 within the development or redevelopment project area or
80 district created by a county commission or governing body of
81 a municipality under this article;

82 (18) Sell, mortgage, lease, transfer, or dispose of any
83 property or interest therein, acquired by it pursuant to the
84 project plan for development, redevelopment or rehabilitation
85 in accordance with the project plan;

86 (19) Expend project revenues as provided in this article;
87 and

88 (20) Do all things necessary or convenient to carry out the
89 powers granted in this article.

§7-11B-5. Powers supplemental.

1 The powers conferred by this article are in addition and
2 supplemental to the powers conferred upon county commis-

3 sions and municipalities by the Legislature relating to the
4 issuance of industrial and commercial development bonds and
5 refunding bonds.

§7-11B-6. Application for development or redevelopment plan.

1 (a) An agency or a project developer may apply to a county
2 commission or the governing body of a municipality for
3 adoption of a development or redevelopment plan with respect
4 to a development or redevelopment project to be developed in
5 conjunction with a private project of a project developer. The
6 application shall state the project's economic impact, viability,
7 estimated revenues and potential for job creation and such other
8 information as the county commission or the governing body of
9 the municipality may require.

10 (b) Copies of the application shall be made available to the
11 public in the county clerk's office, or the municipal recorder's
12 office when the application is filed with the governing body of
13 a municipality.

**§7-11B-7. Creation of a development or redevelopment project
area or district.**

1 (a) County commissions and the governing bodies of Class
2 I and II municipalities, upon their own initiative or upon
3 application of an agency or a developer, may propose creation
4 of a development or redevelopment project area or district and
5 designate the boundaries of the area or district: *Provided*, That
6 an area or district may not include noncontiguous land.

7 (b) The county commission or municipality proposing
8 creation of a development or redevelopment area or district
9 shall then hold a public hearing at which interested parties are

10 afforded a reasonable opportunity to express their views on the
11 proposed creation of a development or redevelopment project
12 area or district and its proposed boundaries.

13 (1) Notice of the hearing shall be published once each week
14 for three successive weeks immediately preceding the public
15 hearing as a Class III legal advertisement in accordance with
16 section two, article three, chapter fifty-nine of this code.

17 (2) The notice shall include the time, place and purpose of
18 the public hearing, describe in sufficient detail the tax incre-
19 ment financing plan, the proposed boundaries of the develop-
20 ment or redevelopment project area or district and the proposed
21 tax increment financing obligations to be issued to finance the
22 development or redevelopment project costs.

23 (3) Prior to the first day of publication, a copy of the notice
24 shall be sent by first-class mail to the chief executive officer of
25 all other local levying bodies having the power to levy taxes on
26 property located within the proposed development or redevelop-
27 ment project area or district.

28 (4) All parties who appear at the hearing shall be afforded
29 an opportunity to express their views on the proposal to
30 undertake and finance the project.

31 (c) After the public hearing, the county commission, or the
32 governing body of the municipality, shall finalize the develop-
33 ment or redevelopment project plan and the boundaries of the
34 development or redevelopment project area or district and
35 submit it to the director of the development office for his or her
36 review and approval. The director, within sixty days after
37 receipt of the plan, shall approve the plan as submitted, reject
38 the plan, or return the plan to the county commission or

39 governing body of the municipality for further development or
40 review in accordance with instructions of the director of the
41 development office. A plan may not be adopted by the county
42 commission or the governing body of a municipality until after
43 it has been approved by the executive director of the develop-
44 ment office.

45 (d) Upon approval of the development or redevelopment
46 plan by the development office, the county commission may
47 enter an order, and the governing body of the municipality
48 proposing the plan may adopt an ordinance, that:

49 (1) Describes the boundaries of a development or redevelop-
50 ment project area or district sufficiently to identify with
51 ordinary and reasonable certainty the territory included in the
52 area or district, which boundaries shall create a contiguous area
53 or district;

54 (2) Creates the development or redevelopment project area
55 or district as of a date provided in the order or ordinance;

56 (3) Assigns a name to the development or redevelopment
57 project area or district for identification purposes.

58 (A) The name may include a geographic or other designa-
59 tion, shall identify the county or municipality authorizing the
60 area or district, and shall be assigned a number, beginning with
61 the number one.

62 (B) Each subsequently created area or district in the county
63 or municipality shall be assigned the next consecutive number;

64 (4) Contains findings that the real property within the
65 development or redevelopment project area or district will be

66 benefited by eliminating or preventing the development or
67 spread of slums or blighted, deteriorated or deteriorating areas,
68 discouraging the loss of commerce, industry or employment,
69 increasing employment, or any combination thereof;

70 (5) Approves the development or redevelopment plan;

71 (6) Establishes a tax increment financing fund as a separate
72 fund into which all tax increment revenues and other revenues
73 designated by the county commission, or governing body of the
74 municipality, for the benefit of the development or redevelop-
75 ment project area or district shall be deposited, and from which
76 all project costs shall be paid, which may be assigned to and
77 held by a trustee for the benefit of bondholders if tax increment
78 financing obligations are issued by the county commission, or
79 the governing body of the municipality; and

80 (7) Provides that ad valorem property taxes on real and
81 tangible personal property having a tax situs in the development
82 or redevelopment project area or district shall be assessed,
83 collected and allocated in the following manner for so long as
84 any tax increment financing obligations payable from the tax
85 increment financing fund, hereinafter authorized, are outstand-
86 ing and unpaid:

87 (A) For each tax year, the county assessor shall record in
88 the land and personal property books both the base assessed
89 value and the current assessed value of the real and tangible
90 personal property having a tax situs in the development or
91 redevelopment project area or district;

92 (B) Ad valorem taxes collected from regular levies upon
93 real and tangible personal property having a tax situs in the area
94 or district that are attributable to the lower of the base assessed

95 value or the current assessed value of real and tangible personal
96 property located in the development project area shall be
97 allocated to the levying bodies in the same manner as applicable
98 to the tax year in which the development or redevelopment
99 project plan is adopted by order of the county commission or by
100 ordinance adopted by the governing body of the municipality;

101 (C) The tax increment with respect to real and tangible
102 personal property in the development or redevelopment project
103 area or district shall be allocated and paid into the tax increment
104 financing fund and shall be used to pay the principal of and
105 interest on tax increment financing obligations issued to finance
106 the costs of the development or redevelopment projects in the
107 development or redevelopment project area or district. Any
108 levying body having a development or redevelopment project
109 area or district within its taxing jurisdiction shall not receive
110 any portion of the annual tax increment except as otherwise
111 provided in this article; and

112 (D) In no event shall the tax increment include any taxes
113 collected from excess levies, levies for general obligation
114 bonded indebtedness or any levies other than the regular levies
115 provided for in article eight, chapter eleven of this code.

116 (e) Proceeds from tax increment financing obligations
117 issued under this article may only be used to pay for costs of
118 development and redevelopment projects to foster economic
119 development in the development or redevelopment project area
120 or district, or land contiguous thereto, including infrastructure
121 and other public improvements prerequisite to private improve-
122 ments, when such development or redevelopment project or
123 projects would not reasonably be expected to occur without tax
124 increment financing.

125 (f) Notwithstanding subsection (e) of this section, a county
126 commission may not enter an order approving a development
127 or redevelopment project plan unless the county commission
128 expressly finds and states in the order that the primary develop-
129 ment or redevelopment project is not reasonably expected to
130 occur without the use of tax increment financing.

131 (g) Notwithstanding subsection (e) of this section, the
132 governing body of a municipality may not adopt an ordinance
133 approving a development or redevelopment project plan unless
134 the governing body expressly finds and states in the ordinance
135 that the primary development or redevelopment project is not
136 reasonably expected to occur without the use of tax increment
137 financing.

138 (h) No county commission shall establish a development or
139 redevelopment project area or district any portion of which is
140 within the boundaries of a municipality without the formal
141 consent of the governing body of the municipality.

142 (i) A tax increment financing plan that has been approved
143 by a county commission or the governing body of a municipal-
144 ity may be amended by following the procedures set forth in
145 this article for adoption of a new development or redevelop-
146 ment project plan.

147 (j) The county commission may modify the boundaries of
148 the development or redevelopment project area or district from
149 time to time by entry of an order modifying the order creating
150 the development or redevelopment project area or district.

151 (k) The governing body of a municipality may modify the
152 boundaries of the development or redevelopment project area

153 or district from time to time by amending the ordinance
154 establishing the boundaries of the area or district.

155 (l) Before a county commission or the governing body of a
156 municipality may enter such an order or amend the ordinance,
157 the county commission or municipality shall give the public
158 notice, hold a public hearing and obtain the approval of the
159 director of the development office, following the procedures for
160 establishing a new development or redevelopment project area
161 or district. In the event any tax increment financing obligations
162 are outstanding with respect to the development or redevelop-
163 ment project area or district, any change in the boundaries shall
164 not reduce the amount of tax increment available to secure the
165 outstanding tax increment financing obligations.

§7-11B-8. Project plan – Approval.

1 (a) Upon the creation of the development or redevelopment
2 area or district, the county commission or municipality creating
3 the area or district shall cause the preparation of a project plan
4 for each development or redevelopment area or district, and the
5 project plan shall be adopted by order of the county commis-
6 sion, or ordinance adopted by the governing body of the
7 municipality, after it is approved by the executive director of
8 the development office. This process shall conform to the
9 procedures set forth in this section.

10 (b) Each project plan shall include:

11 (1) A statement listing the kind, number, and location of all
12 proposed public works or other improvements within the area
13 or district and on land outside but contiguous to the area or
14 district;

15 (2) A cost-benefit analysis showing the economic impact of
16 the plan on each levying body that is at least partially within the
17 boundaries of the development or redevelopment project area
18 or district. This analysis shall show the impact on the economy
19 if the project is not built, and is built pursuant to the develop-
20 ment or redevelopment plan under consideration. The cost-
21 benefit analysis shall include a fiscal impact study on every
22 affected levying body, and sufficient information from the
23 developer for the agency, if any proposing the plan, the county
24 commission be asked to approve the project and the develop-
25 ment office to evaluate whether the project as proposed is
26 financially feasible;

27 (3) An economic feasibility study;

28 (4) A detailed list of estimated project costs;

29 (5) A description of the methods of financing all estimated
30 project costs, including the issuance of tax increment obliga-
31 tions, and the time when the costs or monetary obligations
32 related thereto are to be incurred;

33 (6) A certification by the county assessor of the base
34 assessed value of real and tangible personal property having a
35 tax situs in a development or redevelopment project area or
36 district;

37 (7) The type and amount of any other revenues that are
38 expected to be deposited to the tax increment financing fund of
39 the development or redevelopment project area or district;

40 (8) A map showing existing uses and conditions of real
41 property in the development or redevelopment project area or
42 district;

43 (9) A map of proposed improvements and uses in the area
44 or district;

45 (10) Proposed changes of zoning ordinances, if any;

46 (11) Appropriate cross-references to any master plan, map,
47 building codes, and municipal ordinances or county commis-
48 sion orders affected by the project plan;

49 (12) A list of estimated nonproject costs; and

50 (13) A statement of the proposed method for the relocation
51 of any persons, businesses or organizations to be displaced.

52 (c) If the project plan is to include tax increment financing,
53 the tax increment financing portion of the plan shall set forth:

54 (1) The amount of indebtedness to be incurred pursuant to
55 this article;

56 (2) An estimate of the tax increment to be generated as a
57 result of the project;

58 (3) The method for calculating the tax increment, which
59 shall be in conformance with the provisions of this article,
60 together with any provision for adjustment of the method of
61 calculation;

62 (4) Any other revenues, such as payment in lieu of tax
63 revenues, to be used to secure the tax increment financing; and

64 (5) Any other provisions as may be deemed necessary in
65 order to carry out any tax increment financing to be used for the
66 development or redevelopment project.

67 (d) If less than all of the tax increment is to be used to fund
68 a development or redevelopment project or to pay project costs
69 or retire tax increment financing, the project plan shall set forth
70 the portion of the tax increment to be deposited in the tax
71 increment financing fund of the development or redevelopment
72 project area or district, and provide for the distribution of the
73 remaining portion of the tax increment to the levying bodies in
74 whose jurisdiction the area or district lies.

75 (e) The county commission or governing body of the
76 municipality that established the tax increment financing fund
77 shall hold a public hearing at which interested parties shall be
78 afforded a reasonable opportunity to express their views on the
79 proposed project plan being considered by the county commis-
80 sion or the governing body of the municipality.

81 (1) Notice of the hearing shall be published in a newspaper
82 of general circulation in the county or the municipality, if the
83 development or redevelopment project is located in a munici-
84 pality, at least fifteen days prior to the hearing.

85 (2) Prior to this publication, a copy of the notice shall be
86 sent by first-class mail to the chief executive officer of all other
87 levying bodies having the power to levy taxes on property
88 located within the proposed development or redevelopment area
89 or district.

90 (f) Approval by the county commission of a development
91 or redevelopment project plan must be within one year after the
92 date of the county assessor's certification required by subdivi-
93 sion (5), subsection (b) of this section. The approval shall be by
94 order of the county commission or ordinance of the municipal-
95 ity, which shall contain a finding that the plan is economically
96 feasible.

§7-11B-9. Project plan – Amendment.

1 (a) The county commission may by order, or the governing
2 body of a municipality by ordinance, adopt an amendment to a
3 project plan.

4 (b) Adoption of an amendment to a project plan shall be
5 preceded by a public hearing held by the county commission,
6 or governing body of the municipality, at which interested
7 parties shall be afforded a reasonable opportunity to express
8 their views on the amendment.

9 (1) Notice of the hearing shall be published in a newspaper
10 of general circulation in the county or municipality in which the
11 project is to be located once a week for three consecutive weeks
12 prior to the date of the public hearing.

13 (2) Prior to publication, a copy of the notice shall be sent by
14 first-class mail to the chief executive officer of all other local
15 levying bodies having the power to levy taxes on property
16 within the development or redevelopment project area or
17 district.

18 (3) Copies of the proposed plan amendments shall be made
19 available to the public at the county clerk's office, or municipal
20 clerk's office, at least fifteen days prior to the hearing.

21 (c) One or more existing development or redevelopment
22 areas or districts may be combined pursuant to lawfully adopted
23 amendments to the original plans for each area or district:
24 *Provided*, That the county commission, or governing body of
25 the municipality, finds that the combination of the areas or
26 districts will not impair the security for any tax increment
27 financing obligations previously issued pursuant to this article.

§7-11B-10. Termination of development or redevelopment project area or district.

1 (a) No development or redevelopment project area or
2 district may be in existence for a period longer than thirty years
3 and no tax increment financing obligations may have a final
4 maturity date later than the termination date of the area or
5 district.

6 (b) The county commission or governing body of the
7 municipality creating the development or redevelopment area
8 or district may set a shorter period for the existence of the area
9 or district. In this event, no tax increment financing obligations
10 may have a final maturity date later than the termination date of
11 the area or district.

12 (c) Upon termination of the area or district, no further ad
13 valorem tax revenues shall be distributed to the tax increment
14 financing fund of the area or district.

15 (d) The county commission shall adopt, upon the expiration
16 of the time periods set forth in this section, an order terminating
17 the development or redevelopment project area or district
18 created by the county commission: *Provided*, That no area or
19 district shall be terminated so long as bonds with respect to the
20 area or district remain outstanding.

21 (e) The governing body of county commission shall repeal,
22 upon the expiration of the time periods set forth in this section,
23 the ordinance establishing the development or redevelopment
24 project area or district: *Provided*, That no area or district shall
25 be terminated so long as bonds with respect to the area or
26 district remain outstanding.

§7-11B-11. Costs of formation of development or redevelopment project area or district.

1 (a) The county commission, or the governing body of a
2 municipality, may pay, but shall have no obligation to pay, the
3 costs of preparing the project plan or forming the development
4 or redevelopment project area or district created by them.

5 (b) If the county commission, or the governing body of the
6 municipality, elects not to incur those costs, they shall be made
7 project costs of the area or district and reimbursed from bond
8 proceeds or other financing, or may be paid by developers,
9 property owners or other persons interested in the success of the
10 development or redevelopment project.

§7-11B-12. Overlapping districts prohibited.

1 The boundaries of any development and redevelopment
2 project areas or districts shall not overlap with any other
3 development or redevelopment project area or district.

§7-11B-13. Conflicts of interest; required disclosures and abstention.

1 (a) If any member of the governing body of the agency
2 applying for a development or redevelopment project or a
3 development or redevelopment project plan, a member of the
4 county commission considering the application, a member of
5 the governing body of a municipality considering the applica-
6 tion, or an employee or consultant of the agency, county
7 commission or municipality involved in the planning and
8 preparation of a development or redevelopment plan, or a
9 development or redevelopment project for a development or
10 redevelopment project area or district, or a proposed develop-

11 ment or redevelopment project area or district, owns or controls
12 an interest, direct or indirect, in any property included in any
13 development or redevelopment project area or district, or a
14 proposed development or redevelopment project area or district,
15 he or she shall disclose the same in writing to the clerk of the
16 county commission, or to recorder of the municipality if he or
17 she is an official or employee of the municipality, and shall also
18 so disclose the dates, terms, and conditions of any disposition
19 of any such interest, which disclosures shall be acknowledged
20 by county commission, or the governing body of the municipal-
21 ity if he or she is an official or employee of the municipality,
22 and entered upon the minutes books of the county commission,
23 or the governing body of the municipality, acknowledging the
24 disclosure.

25 (b) If an individual holds or held an interest required to be
26 disclosed under subsection (a) of this section, then that individ-
27 ual shall refrain from any further official involvement in regard
28 to the development or redevelopment plan, the development or
29 redevelopment project or the development or redevelopment
30 project area or district, shall abstain from voting on any matter
31 pertaining to the development or redevelopment plan, the
32 development or redevelopment project or the development or
33 redevelopment project area or district, and shall abstain from
34 communicating with other members concerning any matter
35 pertaining to that plan, project or area.

36 (c) Additionally, no member of the county commission or
37 governing body of a municipality considering a project or plan,
38 no member of the governing body of an agency proposing a
39 project or plan, or any employee of the county, municipality or
40 agency shall acquire any interest, direct or indirect, in any
41 property in a development or redevelopment project area or

42 district, or a proposed development or redevelopment project
43 area or district, after either: (1) The individual obtains knowl-
44 edge of the plan or project; or (2) the first published public
45 notice of the plan, project or area, whichever first occurs.

**§7-11B-14. Projects financed by tax increment financing consid-
ered to be public improvements subject to prevail-
ing wage, local labor preference and competitive
bid requirements.**

1 (a) Any project acquired, constructed or financed, in whole
2 or in part, by a county commission or municipality under this
3 article shall be considered to be a “public improvement” within
4 the meaning of the provisions of articles one-c and five-a,
5 chapter twenty-one of this code.

6 (b) The county commission or municipality shall, except as
7 provided in subsection (c) of this section, solicit or require
8 solicitation of competitive bids and require the payment of
9 prevailing wage rates as provided in article five-a, chapter
10 twenty-one of this code and compliance with article one-c of
11 said chapter for every project or infrastructure project funded
12 pursuant to this article exceeding twenty-five thousand dollars
13 in total cost.

14 (c) Following the solicitation of the bids, the construction
15 contract shall be awarded to the lowest qualified responsible
16 bidder, who shall furnish a sufficient performance and payment
17 bond: *Provided*, That the county commission, municipality or
18 other person soliciting the bids may reject all bids and solicit
19 new bids on the project.

20 (d) This section does not:

21 (1) Apply to work performed on construction projects not
22 exceeding a total cost of fifty thousand dollars by regular full-
23 time employees of the county commission or the municipality:
24 *Provided*, That no more than fifty thousand dollars shall be
25 expended on an individual project in a single location in a
26 twelve-month period;

27 (2) Prevent students enrolled in vocational educational
28 schools from being used in construction or repair projects when
29 such use is a part of the students' training program;

30 (3) Apply to emergency repairs to building components and
31 systems: *Provided*, That the term "emergency repairs" means
32 repairs that, if not made immediately, will seriously impair the
33 use of the building components and systems or cause danger to
34 those persons using the building components and systems; or

35 (4) Apply to any situation where the county commission or
36 municipality comes to an agreement with volunteers, or a
37 volunteer group, by which the governmental body will provide
38 construction or repair materials, architectural, engineering,
39 technical or any other professional services and the volunteers
40 will provide the necessary labor without charge to, or liability
41 upon, the governmental body: *Provided*, That the total cost of
42 the construction or repair projects does not exceed fifty
43 thousand dollars.

44 (e) The provisions of subsection (b) of this section apply to
45 privately owned projects or infrastructure projects constructed
46 on lands not owned by the county commission, a municipality
47 or a government agency or instrumentality when the owner or
48 the owner's agent or person financing the owner's project
49 receives money from the tax increment financing fund for the
50 owner's project.

§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority; development office to provide manual and assistance.

1 (a) Each year, the county commission, or its designee, and
2 the governing body of a municipality, or its designee, that has
3 approved a development or redevelopment project plan shall
4 prepare a report giving the status of each plan and each devel-
5 opment and redevelopment project included in the plan and file
6 it with the executive director of the development office by the
7 first day of October each year. The report shall include the
8 following information:

9 (1) The aggregate amount and the amount by source of
10 revenue in the tax increment financing fund;

11 (2) The amount and purpose of expenditures from the tax
12 increment financing fund;

13 (3) The amount of any pledge of revenues, including
14 principal and interest on any outstanding tax increment financ-
15 ing indebtedness;

16 (4) The base assessed value of the development or redevelop-
17 opment project, or the development or redevelopment project
18 area or district, as appropriate;

19 (5) The assessed value for the current tax year of the
20 development or redevelopment project property, or of the
21 taxable property having a tax situs in the development or
22 redevelopment project area or district, as appropriate;

23 (6) The assessed value added to base assessed value of the
24 development or redevelopment project, or the taxable property
25 having a tax situs in the development or redevelopment area or
26 district, as the case may be;

27 (7) Payments made in lieu of taxes received and expended;

28 (8) Reports on contracts made incidental to the implementa-
29 tion and furtherance of a development or redevelopment plan or
30 project;

31 (9) A copy of any development or redevelopment plan,
32 which shall include the required findings and cost-benefit
33 analysis;

34 (10) The cost of any property acquired, disposed of,
35 rehabilitated, reconstructed, repaired or remodeled;

36 (11) The number of parcels of land acquired by or through
37 initiation of eminent domain proceedings;

38 (12) The number and types of jobs projected by the project
39 developer to be created, if any, and the estimated annualized
40 wages and benefits paid or to be paid to persons filling those
41 jobs;

42 (13) The number, type and duration of the jobs created, if
43 any, and the annualized wages and benefits paid;

44 (14) The amount of disbursements from the tax increment
45 financing fund during the most recently completed fiscal year,
46 in the aggregate and in such detail as the executive director of
47 the development office may require;

48 (15) An annual statement showing payments made in lieu
49 of taxes received and expended during the fiscal year;

50 (16) The status of the development or redevelopment plan
51 and projects therein;

52 (17) The amount of outstanding tax increment financing
53 obligations; and

54 (18) Any additional information the county commission or
55 the municipality preparing the report deems necessary or that
56 the executive director of the development office may by
57 procedural rule require.

58 (b) Data contained in the report required by subsection (a)
59 of this section shall be deemed a public record, as defined in
60 article one, chapter twenty-nine-b of this code.

61 (1) The county commission's annual report shall be
62 published on its web site, if it has a web site. If the county does
63 not have a web site, the annual report shall be published on the
64 web site of the development office.

65 (2) The municipality's annual report shall be published on
66 its web site, if it has a web site. If the municipality does not
67 have a web site, the annual report shall be published on the web
68 site of the development office.

69 (c) After the close of the fiscal year, but on or before the
70 first day of October each year, the county commission and the
71 governing body of a municipality that approved a development
72 or redevelopment plan shall publish in a newspaper of general
73 circulation in the county or municipality, as appropriate, an
74 annual statement showing for each development or redevelop-

75 ment project or plan for which tax increment financing obliga-
76 tions have been issued:

77 (1) A summary of receipts and disbursements, by major
78 category, of moneys in the tax increment financing fund during
79 that fiscal year;

80 (2) A summary of the status of the development or redevelop-
81 ment plan and each project therein;

82 (3) The amount of tax increment financing principal
83 outstanding as of the close of the fiscal year; and

84 (4) Any additional information the county commission or
85 municipality deems necessary or appropriate to publish.

86 (d) Five years after the establishment of a development or
87 redevelopment plan, and every five years thereafter, the county
88 commission or municipality that approved the plan shall hold
89 a public hearing regarding that development or redevelopment
90 plan and the projects created or to be created in the develop-
91 ment or redevelopment project area or district pursuant to this
92 article.

93 (1) The purpose of the public hearing is to determine if the
94 development or redevelopment plan and the proposed project or
95 projects are making satisfactory progress under the proposed
96 time schedule contained within the approved plans for comple-
97 tion of the projects.

98 (2) Notice of this public hearing shall be given in a newspa-
99 per of general circulation in the county, or in the municipality
100 for a municipal plan, once each week for four successive weeks
101 immediately prior to the hearing.

102 (3) Public hearings on development and redevelopment
103 plans and projects may be held as part of a regular or special
104 meeting of the county commission, or governing body of the
105 municipality, that adopted the plan.

106 (e) The executive director of the development office shall
107 submit a report to the governor, the speaker of the House of
108 Delegates and the president of the Senate no later than February
109 first of each year. The report shall contain a summary of all
110 information received by the executive director pursuant to this
111 section.

112 (f) For the purpose of facilitating and coordinating the
113 reports required by this section, the executive director of the
114 development office may promulgate procedural rules in the
115 manner provided in article three, chapter twenty-nine-a of this
116 code, to ensure compliance with this section.

117 (g) The executive director of the development office shall
118 provide information and technical assistance, as requested by a
119 county commission or the governing body of a municipality, on
120 the requirements of this article. The information and technical
121 assistance shall be provided in the form of a manual, written in
122 an easy-to-follow manner, and through consultations with staff
123 of the development office.

124 (h) By the first day of October each year, each agency that
125 proposed a development or redevelopment plan that was
126 approved by a county commission, or the governing body of a
127 municipality, and each county commission, or governing body
128 of a municipality, that approved a development or redevelop-
129 ment plan that was not proposed by an agency shall report to
130 the executive director of the development office the name,
131 address, phone number and primary line of business of any

132 business that relocates to the development or redevelopment
133 project area or district during the immediately preceding fiscal
134 year of the state. The executive director shall compile and
135 report the same to the governor, the speaker of the House of
136 Delegates and the president of the Senate by the first day of
137 February of the next calendar year.

§7-11B-16. Valuation of real property.

1 (a) Upon and after the effective date of the creation of a
2 development or redevelopment project area or district, the
3 county assessor of the county in which the area or district is
4 located shall transmit to the county clerk a certified statement
5 of the base value, total ad valorem regular levy rate, total
6 general obligation bond debt service ad valorem rate, and total
7 excess levy rate applicable for the development or redevelop-
8 ment area or district.

9 (1) The assessor shall undertake, upon request of the county
10 commission, or the governing body of the municipality,
11 creating the development or redevelopment project area or
12 district, an investigation, examination and inspection of the
13 taxable real and tangible personal property having a tax situs in
14 the area or district and shall reaffirm or revalue the base value
15 for assessment of the property in accordance with the findings
16 of the investigation, examination and inspection.

17 (2) The county assessor shall determine, according to his or
18 her best judgment from all sources available to him or her, the
19 full aggregate assessed value of the taxable property in the area
20 or district, which aggregate assessed valuation, upon certifica-
21 tion thereof by the assessor to the clerk, constitutes the base
22 value of the development or redevelopment project area or
23 district.

24 (b) The county assessor shall give notice annually to the
25 designated finance officer of each levying body having the
26 power to levy taxes on property within each area or district of
27 the current value and the incremental value of the property in
28 the development or redevelopment project area or district.

29 (c) The assessor shall also determine the tax increment by
30 applying the applicable ad valorem regular levy rates to the
31 incremental value.

32 (d) The notice shall also explain that the entire amount of
33 the tax increment allocable to property within the development
34 or redevelopment project area or district will be paid to the tax
35 increment financing fund of the development or redevelopment
36 project area or district until it is terminated.

37 (e) The assessor shall identify upon the landbooks those
38 parcels of property that are within each existing development or
39 redevelopment project area or district, specifying on landbooks
40 the name of each area or district.

§7-11B-17. Division of ad valorem real property tax revenue.

1 (a) For so long as the development or redevelopment
2 project area or district exists, the county sheriff shall divide the
3 ad valorem tax revenue collected, with respect to taxable
4 property in the area or district, as follows:

5 (1) The assessor shall determine for each tax year:

6 (A) The amount of ad valorem property tax revenue that
7 should be generated by multiplying the assessed value of the
8 property for the then current tax year by the aggregate of
9 applicable levy rates for the tax year;

10 (B) The amount of ad valorem tax revenue that should be
11 generated by multiplying the base assessed value of the
12 property by the applicable regular ad valorem levy rates for the
13 tax year;

14 (C) The amount of ad valorem tax revenue that should be
15 generated by multiplying the assessed value of the property for
16 the current tax year by the applicable levy rates for general
17 obligation bond debt service for the tax year;

18 (D) The amount of ad valorem property tax revenue that
19 should be generated by multiplying the assessed value of the
20 property for the current tax year by the applicable excess levy
21 rates for the tax year; and

22 (E) The amount of ad valorem property tax revenue that
23 should be generated by multiplying the incremental value by
24 the applicable regular levy rates for the tax year.

25 (2) The sheriff shall determine from the calculations set
26 forth in subdivision (1), subsection (a) of this section the
27 percentage share of total ad valorem revenue for each levying
28 body according to paragraphs (B) through (D), subdivision (1),
29 subsection (a) of this section, by dividing each of such amounts
30 by the total ad valorem revenue figure determined by the
31 calculation in paragraph (A), subdivision (1), subsection (a) of
32 this section; and

33 (3) On each date on which ad valorem tax revenue is to be
34 distributed to the levying bodies, such revenue shall be distrib-
35 uted by:

36 (A) Applying the percentage share determined according to
37 paragraph (B), subdivision (1), subsection (a) of this section to

38 the revenues received and distributing such share to the levying
39 bodies entitled to such distribution pursuant to current law;

40 (B) Applying the percentage share determined according to
41 paragraph (C), subdivision (1), subsection (a) of this section to
42 the revenues received and distributing such share to the levying
43 bodies entitled to such distribution by reason of having general
44 obligation bonds outstanding;

45 (C) Applying the percentage share determined according to
46 paragraph (D), subdivision (1), subsection (a) of this section to
47 the revenues received and distributing such share to the levying
48 bodies entitled to such distribution by reason of having excess
49 levies in effect for the tax year; and

50 (D) Applying the percentage share determined according to
51 paragraph (E), subdivision (1), subsection (a) of this section to
52 the revenues received and distributing such share to the tax
53 increment financing fund of the development or redevelopment
54 project area or district.

55 (b) In each year for which there is a positive tax increment,
56 the county sheriff shall remit to the tax increment financing
57 fund of the development or redevelopment project area or
58 district that portion of the ad valorem property taxes collected
59 that consists of the tax increment.

60 (c) Any additional moneys appropriated to the development
61 or redevelopment project area or district pursuant to an appro-
62 priation by the county commission that created the district and
63 any additional moneys dedicated to the fund from other sources
64 shall be deposited to the tax increment financing fund for the
65 development or redevelopment project area or district by the
66 sheriff.

67 (d) Any funds deposited into the tax increment financing
68 fund of the development or redevelopment project area or
69 district may be used to pay project costs, principal and interest
70 on bonds, and the cost of any other improvements in the
71 development or redevelopment project area or district deemed
72 proper by the county commission.

73 (e) Unless otherwise directed pursuant to any agreement
74 with the holders of tax increment financing obligations, moneys
75 in the tax increment financing fund may be temporarily
76 invested in the same manner as other funds of the county
77 commission, or the municipality, that established the fund.

78 (f) If less than all of the tax increment is to be used for
79 project costs or pledged to secure tax increment financing as
80 provided in the plan for the development or redevelopment
81 project area or district, the sheriff shall account for that fact in
82 distributing the ad valorem property tax revenues.

§7-11B-18. Payments in lieu of taxes and other revenues.

1 (a) The county commission or municipality that created the
2 development or redevelopment project area or district shall
3 deposit in the tax increment financing fund of the development
4 or redevelopment project area or district all payments in lieu of
5 taxes on tax exempt property located within the development or
6 redevelopment project area or district.

7 (b) As a condition of receiving tax increment financing, the
8 lessee of property that is exempt from property taxes because
9 it is owned by this state, a political subdivision of this state or
10 an agency or instrumentality thereof, the lessee shall execute a
11 payment in lieu of tax agreement that shall remain in effect
12 until the tax increment financing obligations are paid, during

13 which period of time the lessee agrees to pay to the county
14 sheriff an amount equal to the amount of ad valorem property
15 taxes that would have been levied against the assessed value of
16 the property were it owned by the lessee rather than a tax
17 exempt entity. The portion of the payment in lieu of taxes
18 attributable to the incremental value shall be deposited in the
19 tax increment financing fund. The remaining portion of the in
20 lieu payment shall be distributed among the levying bodies as
21 follows:

22 (1) The portion of the in lieu tax payment attributable to the
23 base value of the property shall be distributed to the levying
24 bodies in the same manner as taxes attributable to the base
25 value of other property in the area or district are distributed; and

26 (2) The portions of the in lieu tax payment attributable to
27 levies for bonded indebtedness and excess levies shall be
28 distributed in the same manner as those levies on other property
29 in the area or district are distributed.

30 (c) Other revenues to be derived from the development or
31 redevelopment project area or district may also be deposited in
32 the tax increment financing fund at the direction of the county
33 commission.

§7-11B-19. Tax increment obligations generally.

1 (a) Tax increment obligations may be issued by a county
2 commission, or the governing body of the municipality, to pay
3 project costs for projects included in the development or
4 redevelopment plan approved by the development office and
5 adopted by the county commission, or the governing body of
6 the municipality, that are located in a development or redevel-

7 opment project area or district, or on land not in the district that
8 is contiguous to the area or district.

9 (1) Tax increment financing obligations may be issued for
10 project costs, as defined in section three of this article, which
11 may include interest prior to and during the carrying out of a
12 project and for a reasonable time thereafter, with such reserves
13 as may be required by any agreement securing the obligations
14 and all other expenses incidental to planning, carrying out and
15 financing the project.

16 (2) The proceeds of tax increment financing obligations
17 may also be used to reimburse the costs of any interim financ-
18 ing entered on behalf of projects in the development or redevel-
19 opment project area or district.

20 (b) Tax increment financing obligations issued under this
21 article shall be payable solely from the tax increment or other
22 revenues deposited to the credit of the tax increment financing
23 fund of the development or redevelopment project area or
24 district.

25 (c) Under no event shall tax increment financing obliga-
26 tions be secured or be deemed to be secured by the full faith
27 and credit of the county commission or the municipality issuing
28 the tax increment financing obligations.

29 (d) Every tax increment financing bond, note or other
30 obligation issued under this article shall recite on its face that
31 it is a special obligation payable solely from the tax increment
32 and other revenues pledged for its repayment.

**§7-11B-20. Tax increment financing obligations — Authority to
issue.**

1 For the purpose of paying project costs, or for the purpose
2 of refunding notes issued under this article for the purpose of
3 paying project costs, the county commission or municipality
4 creating the development or redevelopment project area or
5 district may issue tax increment financing obligations payable
6 out of positive tax increments and other revenues deposited to
7 the tax increment financing fund of the development or
8 redevelopment project area or district.

§7-11B-21. Tax increment financing obligations — Authorizing resolution.

1 (a) Issuance of tax increment financing obligations shall be
2 authorized by order of the county commission, or resolution of
3 the municipality, that created the development or redevelop-
4 ment project area or district.

5 (b) The order, or resolution, shall state the name of the
6 development or redevelopment project area or district, the
7 amount of tax increment financing obligations authorized, the
8 type of obligation authorized, and the interest rate to be borne
9 by the bonds, notes or other tax increment financing obliga-
10 tions.

11 (c) The order or ordinance may prescribe the terms, form,
12 and content of the tax increment financing obligations and other
13 particulars or information the county commission, or governing
14 body of the municipality, issuing the obligations deems useful,
15 or it may include by reference the terms and conditions set forth
16 in a trust indenture or other document securing the development
17 or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — Terms, conditions.

1 (a) Tax increment financing obligations may not be issued
2 in an amount exceeding the estimated aggregate project costs,
3 including all costs of issuance of the tax increment financing
4 obligations.

5 (b) Tax increment financing obligations shall not be
6 included in the computation of the constitutional debt limitation
7 of the county commission or municipality issuing the tax
8 increment financing obligations.

9 (c) Tax increment financing obligations shall mature over
10 a period not exceeding thirty years from the date of entry of the
11 county commission's order, or the effective date of the municipi-
12 pal ordinance, creating the development or redevelopment
13 project area or district and approving the development or
14 redevelopment plan, or a period terminating with the date of
15 termination of the development or redevelopment project area
16 or district, whichever period terminates earlier.

17 (d) Tax increment financing obligations may contain a
18 provision authorizing their redemption, in whole or in part, at
19 stipulated prices, at the option of the county commission or
20 municipality issuing the obligations, on any interest payment
21 date and, if so, the obligations shall provide the method of
22 selecting the tax increment financing obligations to be re-
23 deemed.

24 (e) The principal and interest on tax increment financing
25 obligations may be payable at any place set forth in the resolu-
26 tion, trust indenture, or other document governing the obliga-
27 tions.

28 (f) Bonds or notes shall be issued in registered form.

- 29 (g) Bonds or notes may be issued in any denomination.
- 30 (h) Each tax increment financing obligation issued under
31 this article is declared to be a negotiable instrument.
- 32 (i) The tax increment financing obligations may be sold at
33 public or private sale.
- 34 (j) Insofar as they are consistent with subdivision (1),
35 subsection (a) and subsections (b) and (c) of this section, the
36 procedures for issuance, form, contents, execution, negotiation,
37 and registration of county and municipal industrial or commer-
38 cial revenue bonds set forth in article two-c, chapter thirteen of
39 this code are incorporated by reference herein.
- 40 (k) The bonds may be refunded or refinanced and refunding
41 bonds may be issued in any principal amount: *Provided*, That
42 the last maturity of the refunding bonds shall not be later than
43 the last maturity of the bonds being refunded.

**§7-11B-23. Tax increment financing obligations – Security –
marketability.**

1 To increase the security and marketability of tax increment
2 financing obligations, the county commission or municipality
3 issuing the obligations may:

4 (1) Create a lien for the benefit of the holders of the
5 obligations upon any public improvements or public works
6 financed by the obligations; or

7 (2) Make such covenants and do any and all such actions,
8 not inconsistent with the constitution of this state, which may
9 be necessary, convenient or desirable in order to additionally
10 secure the obligations, or which tend to make the obligations

11 more marketable according to the best judgment of the county
12 commission or municipality issuing the tax increment financing
13 obligations.

**§7-11B-24. Tax increment financing obligations — Special fund
for repayment.**

1 (a) Tax increment financing obligations issued by a county
2 commission or municipality are payable out of the tax incre-
3 ment financing fund created for each development and redevel-
4 opment project area or district created under this article.

5 (b) The county commission or municipality issuing the tax
6 increment financing obligations shall irrevocably pledge all or
7 part of the tax increment financing fund to the payment of the
8 obligations. The tax increment financing fund, or the designated
9 part thereof, may thereafter be used only for the payment of the
10 obligations and their interest until they have been fully paid.

11 (c) A holder of the tax increment financing obligations shall
12 have a lien against the tax increment financing fund for
13 payment of the obligations and interest on them and may bring
14 suit to enforce the lien.

§7-11B-25. Tax increment financing obligations – Tax exemption.

1 Tax increment financing obligations issued under this
2 article, together with the interest and income therefrom, shall be
3 exempt from all state income taxes, whether imposed on
4 individuals, corporations or other persons, from state business
5 franchise taxes and from ad valorem property taxes.

§7-11B-26. Excess funds.

1 (a) Moneys received in the tax increment financing fund of
2 the development or redevelopment project area or district in
3 excess of amounts needed to pay project costs and debt service
4 may be used by the county commission or municipality that
5 created the development or redevelopment project area or
6 district for other projects within the area or district, or distrib-
7 uted to the levying bodies as provided in this article.

8 (b) Upon termination of the area or district, all amounts in
9 the tax increment financing fund of the area or district shall be
10 paid over to the levying bodies in the same proportion that ad
11 valorem property taxes on the base value was paid over to those
12 levying bodies for the tax year in which the area or district is
13 terminated.

§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

1 For purposes of any computation made in accordance with
2 the provisions of section eleven, article nine-a, chapter eighteen
3 of this code, for a county in which there is tax increment
4 financing in effect pursuant to this article, the assessed value
5 shall be the current assessed value minus the amount of
6 assessed value used to determine the tax increment amount,
7 minus any other adjustments allowed by section eleven of said
8 article.

§7-11B-28. Effective date.

1 Notwithstanding the effective date of this act of the
2 Legislature, this article shall not become operational and shall
3 have no force and effect until the day the people ratify an
4 amendment to the constitution of this state authorizing tax
5 increment financing secured by ad valorem property taxes.

CHAPTER 302

(Com. Sub. for S. B. 578 — By Senators Craigo, Kessler, Deem, Plymale, Snyder, McCabe, Unger, Anderson, Prezioso, Helmick, Fanning, Sharpe, Ross, Hunter, Rowe, Burnette, Sprouse, McKenzie, Chafin and Minard)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax commissioner to share confidential property tax returns, maps and geographic information and property tax audit information with the West Virginia geological and economic survey; and providing that any representative of the West Virginia geological and economic survey who discloses confidential information is guilty of a misdemeanor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.

1 (a) All information provided by or on behalf of a natural
2 resources property owner or by or on behalf of an owner of an
3 interest in natural resources property to any state or county
4 representative, including property tax returns, maps and
5 geological information and property tax audit information
6 provided to the West Virginia geological and economic survey,
7 for use in the valuation or assessment of natural resources
8 property or for use in the development or maintenance of a
9 legislatively funded mineral mapping or geographic information
10 system is confidential. The information is exempt from
11 disclosure under section four, article one, chapter twenty-nine-b
12 of this code, and shall be kept, held and maintained confidential
13 except to the extent the information is needed by the state tax
14 commissioner to defend an appraisal challenged by the owner
15 or lessee of the natural resources property subject to the
16 appraisal: *Provided*, That this section may not be construed to
17 prohibit the publication or release of information generated as
18 a part of the minerals mapping or geographic information
19 system, whether in the form of aggregated statistics, maps,
20 articles, reports, professional talks or otherwise, presented in
21 accordance with generally accepted practices and in a manner
22 so as to preclude the identification or determination of informa-
23 tion about particular property owners: *Provided, however*, That
24 the tax commissioner may disclose return information described
25 in this article to the West Virginia geological and economic
26 survey.

27 (b) Any state or county representative, or representative of
28 the West Virginia geological and economic survey, who
29 violates this section by disclosing confidential information is
30 guilty of a misdemeanor and, upon conviction thereof, shall be
31 fined not more than one thousand dollars or confined in the
32 county or regional jail for not more than one year, or both fined
33 and confined, and shall be assessed the cost of prosecution. As
34 used in this section, the term “state or county representative”
35 includes any current or former state or county employee,

- 36 officer, commission or board member and any state or county
37 agency, institution, organization, contractor or subcontractor
38 and any principal, officer, agent or employee thereof.

CHAPTER 303

**(Com. Sub. for H. B. 4305 — By Mr. Speaker, Mr. Kiss, and Delegates
Douglas, Coleman, Ennis, Hrutkay, Varner and Armstead)**

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, eight, nine, nine-a, ten, fourteen and seventeen, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto three new sections, designated sections ten-a, twenty-three and twenty-four; and to amend said chapter by adding thereto a new article, designated article ten-a, all relating to tax administration and hearing procedures; requiring filing of new petitions and transferring certain pending petitions to office of tax appeals; requiring tax commissioner to issue certain decisions; authorizing tax commissioner to acquiesce or not acquiesce; increasing amount of interest charged on underpayments of taxes; requiring establishment of alternative dispute resolution mechanisms; requiring tax commissioner to study need for taxpayer resolution program and report to Legislature; stating legislative finding and purpose; defining certain terms; creating office of tax appeals; requiring principal office at state capital; allowing hearings at other locations; requiring a seal; providing for appointment, term, vacancy, qualification, compensation and removal of chief administrative law judge and prohibiting conflicts of interest; setting forth powers and duties of chief administrative law judge;

requiring certain employees be members of classified service; setting forth qualifications of administrative law judges; authorizing transfer of current employees; stating jurisdiction of office of tax appeals; requiring filing of petition and answer to initiate proceedings; setting forth hearing procedures; authorizing small claims hearings; specifying powers to decide matters; authorizing the issuance of subpoenas and stating procedures; requiring certain hearings be recorded; transcript; providing for appearances before the office of tax appeals; requiring all decisions to be in writing and certain decisions be published; requiring service of notice of decisions; establishing finality of decisions; providing for judicial review; requiring rules of practice and procedure; defining timely filing; setting forth time for performance of act when last day falls on weekend or legal holiday; and confidentiality.

Be it enacted by the Legislature of West Virginia:

That sections four, eight, nine, nine-a, ten, fourteen and seventeen, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections ten-a, twenty-three and twenty-four; and that said chapter be amended by adding thereto a new article, designated, ten-a, all to read as follows:

Article

10. Procedure and Administration.

10A. West Virginia Office of Tax Appeals.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-4. Definitions.

§11-10-8. Notice of assessment; petition for reassessment or payment of assessment within sixty days; finality of assessment; payment of final assessment; effective date.

§11-10-9. Hearing procedure.

§11-10-9a. Small claims procedure; disputes involving \$10,000 or less.

§11-10-10. Appeals.

- §11-10-10a. Commissioner allowed to acquiesce or not acquiesce in decisions of office of tax appeals or circuit court.
- §11-10-14. Overpayments; credits; refunds and limitations.
- §11-10-17. Interest.
- §11-10-23. Alternative dispute resolution of tax disputes.
- §11-10-24. Commissioner to review taxpayer problem resolution procedures; report to Legislature.

§11-10-4. Definitions.

- 1 For the purpose of this article, the term:
- 2 (a) “Officer or employee of this state” shall include, but is
3 not limited to, any former officer or employee of the state of
4 West Virginia.
- 5 (b) “Office of tax appeals” means the West Virginia office
6 of tax appeals created by section three, article ten-a of this
7 chapter.
- 8 (c) “Person” shall include, but is not limited to, any
9 individual, firm, partnership, limited partnership, copartnership,
10 joint venture, association, corporation, municipal corporation,
11 organization, receiver, estate, trust, guardian, executor, admin-
12 istrator, and also any officer, employee or member of any of the
13 foregoing who, as an officer, employee or member, is under a
14 duty to perform or is responsible for the performance of an act
15 prescribed by the provisions of this article and the provisions of
16 any of the other articles of this chapter which impose taxes
17 administered by the tax commissioner, unless the intention to
18 give a more limited or broader meaning is disclosed by the
19 context of this article or any of the other articles of this chapter
20 which impose taxes administered by the tax commissioner.
- 21 (d) “State” means any state of the United States or the
22 District of Columbia.

23 (e) "Tax" or "taxes" includes within the meaning thereof
24 taxes specified in section three of this article, additions to tax,
25 penalties and interest, unless the intention to give the same a
26 more limited meaning is disclosed by the context.

27 (f) "Tax commissioner" or "commissioner" means the tax
28 commissioner of the state of West Virginia or his or her
29 delegate.

30 (g) "Taxpayer" means any person required to file a return
31 for any tax administered under this article, or any person liable
32 for the payment of any tax administered under this article.

33 (h) "Tax administered under this article" means any tax to
34 which this article applies as set forth in section three of this
35 article.

36 (i) "This code" means the code of West Virginia, one
37 thousand nine hundred thirty-one, as amended.

38 (j) "This state" means the state of West Virginia.

**§11-10-8. Notice of assessment; petition for reassessment or
payment of assessment within sixty days; finality
of assessment; payment of final assessment;
effective date.**

1 (a) *Notice of assessment.* — The tax commissioner shall
2 give the taxpayer written notice of any assessment or amended
3 or supplemental assessment made pursuant to this article. The
4 assessment or amended or supplemental assessment, as the case
5 may be, shall become final and conclusive of the liability of the
6 taxpayer and not subject to either administrative or judicial
7 review under the provisions of sections nine or nine-a, and ten
8 of this article, or under the provisions of sections ten or eleven,
9 and nineteen of article ten-a of this chapter, unless the taxpayer
10 to whom a notice of assessment or amended or supplemental

11 assessment, is given, shall within sixty days after service
12 thereof (except in the case of jeopardy assessments, as to which
13 the time for filing a petition is specified in section seven of this
14 article) either:

15 (1) *Petition for reassessment.* — Personally or by certified
16 mail, files with the tax commissioner a petition in writing,
17 verified under oath by the taxpayer or his or her duly authorized
18 agent, having knowledge of the facts, setting forth with
19 particularity the items of the assessment objected to, together
20 with the reasons for the objections: *Provided*, That for all
21 assessments received after the thirty-first day of December, two
22 thousand two, the taxpayer shall file the petition with the office
23 of tax appeals in accordance with the provisions of section nine,
24 article ten-a of this chapter; or

25 (2) *Payment of assessment.* — Personally or by certified
26 mail, remits to the tax commissioner the total amount of the
27 assessment or amended or supplemental assessment, including
28 the additions to tax and penalties as may have been assessed
29 and the amount of interest due.

30 (b) *Finality of assessment.* — The amount of an assessment
31 or amended or supplemental assessment shall be due and
32 payable on the day following the date upon which the assess-
33 ment or amended or supplemental assessment becomes final.
34 Payment of the amount of the assessment, or amended or
35 supplemental assessment, as provided in subdivision (2),
36 subsection (a) of this section, within sixty days after service of
37 notice of the assessment does not prohibit or otherwise bar the
38 taxpayer from filing a claim for refund or credit under the
39 provisions of section fourteen of this article within the time
40 prescribed therein for the filing of a claim for refund or credit.

41 (c) *Payment of assessment after petition filed.* — A tax-
42 payer who has timely filed a petition for reassessment may, at

43 any time prior to issuance of the administrative decision under
44 section nine or nine-a of this article, or under sections ten or
45 eleven, article ten-a of this chapter, pay under protest the
46 amount of the assessment. Upon payment, the contested case
47 shall thereafter be treated for all purposes as a petition for
48 refund: *Provided*, That if payment is made after the administra-
49 tive hearing under section nine or nine-a of this article or under
50 section ten or eleven, article ten-a of this chapter, has com-
51 menced or concluded, a new hearing may not be held, but the
52 record shall be properly amended to show that the amount
53 assessed has been paid under protest by the taxpayer and that
54 the petition for reassessment previously filed under this section
55 or under section nine, article ten-a of this chapter is now to be
56 treated as a petition for refund filed under section fourteen of
57 this article.

§11-10-9. Hearing procedure.

1 (a) When a petition for reassessment provided for in section
2 eight of this article, or a petition for refund or credit provided
3 for in section fourteen of this article, is filed within the time
4 prescribed for filing, or a hearing is requested pursuant to the
5 provisions of any other article of this chapter which is adminis-
6 tered under this article, the tax commissioner shall assign a time
7 and place for a hearing upon the same and shall notify the
8 petitioner of the hearing by written notice at least twenty days
9 in advance thereof. The hearing shall be held within ninety days
10 from the date of filing the petition or other written request for
11 hearing unless continued by agreement of the parties or by the
12 tax commissioner for good cause.

13 The hearing shall be informal and shall be conducted in an
14 impartial manner by the tax commissioner or a hearing exam-
15 iner designated by him or her. If the hearing is on a petition for
16 reassessment the burden of proof shall be upon the taxpayer to
17 show the assessment is incorrect and contrary to law, either in

18 whole or in part. If the hearing is on a petition for refund or
19 credit, the petitioner shall also have the burden of proof.

20 After the hearing, the tax commissioner shall, within a
21 reasonable time, give notice in writing of his or her decision.
22 Unless an appeal from the decision of the tax commissioner
23 rendered in any hearing is taken, pursuant to the provisions of
24 section ten of this article, within sixty days after service of the
25 notice, the tax commissioner's decision shall become final and
26 conclusive and not subject to either administrative or judicial
27 review. The amount, if any, due the state under the decision
28 shall be due and payable on the day following the date upon
29 which the decision becomes final. The amount, if any, due the
30 taxpayer under the decision shall be promptly refunded, or the
31 same may be credited pursuant to section fourteen of this
32 article.

33 (b) All petitions which are on the tax commissioner's
34 docket on the thirty-first day of December, two thousand two,
35 for which no administrative hearing has been held, shall be
36 transferred by the tax commissioner to the office of tax appeals
37 no later than the thirty-first day of January, two thousand three;
38 and thereafter, the petition shall, for all purposes except
39 timeliness of filing, be treated as if it had been filed with the
40 office of tax appeals.

41 (c) All petitions which are on the tax commissioner's
42 docket on the thirty-first day of December, two thousand two,
43 for which an administrative hearing has been held prior to that
44 date, shall remain on the tax commissioner's docket and the tax
45 commissioner shall issue an administrative decision no later
46 than the thirty-first day of March, two thousand three.

§11-10-9a. Small claims procedure; disputes involving \$10,000 or less.

1 (a) *In general.* — Notwithstanding the provisions of section
2 nine of this article, if the amount in dispute in any petition for
3 reassessment filed under section eight or in any petition for
4 refund or credit filed under section fourteen does not exceed ten
5 thousand dollars for any one taxable year, then, at the option of
6 the taxpayer and concurred in by the tax commissioner before
7 the hearing of the case, proceedings in the case shall be
8 conducted under this section. The proceedings shall be con-
9 ducted in an informal manner and in accordance with the rules
10 of evidence and rules of procedure as the tax commissioner may
11 prescribe. A decision, together with a brief summary of the
12 reasons therefor shall be issued by the tax commissioner.

13 (1) All small claims petitions which are on the tax commis-
14 sioner's docket on the thirty-first day of December, two
15 thousand two, for which no administrative hearing has been
16 held, shall be transferred by the tax commissioner to the office
17 of tax appeals no later than the thirty-first day of January, two
18 thousand three; and thereafter, the petition shall, for all pur-
19 poses except timeliness of filing, be treated as if it had been
20 filed with the office of tax appeals.

21 (2) All small claims petitions which are on the tax commis-
22 sioner's docket on the thirty-first day of December, two
23 thousand two, for which an administrative hearing has been
24 held prior to that date, shall remain on the tax commissioner's
25 docket and the tax commissioner shall issue an administrative
26 decision no later than the thirty-first day of March, two thou-
27 sand three.

28 (b) *Finality of decision.* — A decision entered in any case
29 in which proceedings are conducted under this section is not
30 subject to review, administrative or judicial, and may not be
31 treated as precedent for any other case.

32 (c) *Discontinuance of proceedings.* — At any time before
33 commencement of the hearing held under this section, the

34 taxpayer may unilaterally withdraw its election made under
35 subsection (a); and at any time before a decision is issued under
36 this section, the taxpayer may request or the tax commissioner,
37 on his or her own motion, may order that further proceedings
38 under this section be discontinued because there are reasonable
39 grounds for believing that the amount in dispute exceeds the
40 amount described in subsection (a) of this section. Upon any
41 discontinuance, or change of election, a hearing shall be held in
42 the same manner as other cases to which section nine of this
43 article applies.

44 (d) *Amount of deficiency in dispute.* — For purposes of this
45 section, the amount in dispute includes tax, additions to tax,
46 additional amounts and penalties. It excludes interest.

§11-10-10. Appeals.

1 (a) *Right of appeal.* —

2 (1) A taxpayer may appeal the administrative decision of
3 the tax commissioner issued under section nine or fourteen of
4 this article, by taking an appeal to the circuit courts of this state
5 within sixty days after being served with notice of the adminis-
6 trative decision.

7 (2) A taxpayer may appeal the administrative decision of
8 the office of tax appeals in accordance with the provisions of
9 section nineteen, article ten-a of this chapter.

10 (b) *Venue.* — The appeal may be taken in the circuit court
11 of any county:

12 (1) Wherein the activity taxed was engaged in; or

13 (2) Wherein the taxpayer resides; or

14 (3) Wherein the will of the decedent was probated or letters
15 of administration granted; or

16 (4) To the circuit court of Kanawha County.

17 (c) *Petition for appeal.* — The appeal proceeding shall be
18 instituted by filing a petition with the circuit court, or the judge
19 thereof in vacation, within the sixty-day period prescribed in
20 subsection (a) of this section. The clerk of the circuit court
21 shall, within ten days after date the petition is filed, serve the
22 tax commissioner with a copy of the same by registered or
23 certified mail. This petition shall be in writing, verified under
24 oath by the taxpayer, or his or her duly authorized agent, having
25 knowledge of the facts, set forth with particularity the items of
26 the administrative decision or the assessment objected to,
27 together with the reasons for the objections.

28 (d) *Appeal bond.* — If the appeal is of any assessment for
29 additional taxes (except a jeopardy assessment for which
30 security in the amount thereof was previously filed with the tax
31 commissioner), then within ninety days after the petition for
32 appeal is filed, or sooner if ordered by the circuit court, the
33 taxpayer shall file with the clerk of the circuit court a cash bond
34 or a corporate surety bond approved by the clerk. The surety
35 must be qualified to do business in this state. These bonds shall
36 be conditioned that the taxpayer shall perform the orders of the
37 court. The penalty of this bond shall be not less than the total
38 amount of tax, additions to tax, penalties and interest for which
39 the taxpayer was found liable in the administrative decision of
40 the tax commissioner. Notwithstanding the foregoing and in
41 lieu of the bond, the tax commissioner, in his or her discretion
42 upon the terms as he or she may prescribe, may upon a suffi-
43 cient showing by the taxpayer, certify to the clerk of the circuit
44 court that the assets of the taxpayer subject to the lien imposed
45 by section twelve of this article, or other indemnification, are
46 adequate to secure performance of the orders of the court:
47 *Provided,* That if the tax commissioner refuses to certify that
48 the assets of the taxpayer or other indemnification are adequate

49 to secure performance of the orders of the court, then the
50 taxpayer may apply to the circuit court for the certification.

51 (e) *Hearing of appeal.* — The court shall hear the appeal
52 and determine anew all questions submitted to it on appeal from
53 the determination of the tax commissioner. In the appeal a
54 certified copy of the tax commissioner's notice of assessment
55 or amended or supplemental assessment and administrative
56 decision thereon shall be admissible and shall constitute prima
57 facie evidence of the tax due under the provisions of those
58 articles of this chapter to which this article is applicable. The
59 court shall render its decree thereon and a certified copy of the
60 decree shall be filed by the clerk of the court with the tax
61 commissioner who shall then correct the assessment in accor-
62 dance with the decree. An appeal may be taken by the taxpayer
63 or the tax commissioner to the supreme court of appeals of this
64 state.

**§11-10-10a. Commissioner allowed to acquiesce or not acquiesce
in decisions of office of tax appeals or circuit
court.**

1 (a) The commissioner may state and periodically publish
2 the tax division's acquiescence or nonacquiescence to indicate
3 its position on an adverse decision of the office of tax appeals
4 or a circuit court.

5 (b) Acquiescence in a decision means acceptance by the
6 commissioner of the conclusion reached, but does not necessar-
7 ily mean acceptance and approval of any or all of the reasons
8 assigned by the office of tax appeals or circuit court for its
9 conclusion.

10 (c) Nonacquiescence means that the commissioner does not
11 accept one or more of the adverse conclusions reached by the
12 office of tax appeals or the circuit court even though no appeal
13 is taken from the decision. The decision is binding on the

14 commissioner in the case not appealed but is not binding in any
15 other case.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds of credits of overpayments.* — In the case of
2 overpayment of any tax (or fee), additions to tax, penalties or
3 interest imposed by this article, or any of the other articles of
4 this chapter, or of this code, to which this article is applicable,
5 the tax commissioner shall, subject to the provisions of this
6 article, refund to the taxpayer the amount of the overpayment
7 or, if the taxpayer so elects, apply the same as a credit against
8 the taxpayer's liability for the tax for other periods. The refund
9 or credit shall include any interest due the taxpayer under the
10 provisions of section seventeen of this article.

11 (b) *Refunds or credits of gasoline and special fuel excise*
12 *tax or motor carrier road tax.* — Any person who seeks a
13 refund or credit of gasoline and special fuel excise taxes under
14 the provisions of section ten, eleven or twelve, article fourteen
15 of this chapter, or section nine or eleven, article fourteen-a of
16 this chapter, shall file his or her claim for refund or credit in
17 accordance with the provisions of the applicable sections. The
18 ninety-day time period for determination of claims for refund
19 or credit provided in subsection (d) of this section does not
20 apply to these claims for refund or credit.

21 (c) *Claims for refund or credit.* — No refund or credit shall
22 be made unless the taxpayer has timely filed a claim for refund
23 or credit with the tax commissioner. A person against whom an
24 assessment or administrative decision has become final is not
25 entitled to file a claim for refund or credit with the tax commis-
26 sioner as prescribed herein. The tax commissioner shall
27 determine the taxpayer's claim and notify the taxpayer in
28 writing of his or her determination.

29 (d) *Petition for refund or credit; hearing.* --

30 (1) If the taxpayer is not satisfied with the tax commis-
31 sioner's determination of taxpayer's claim for refund or credit,
32 or if the tax commissioner has not determined the taxpayer's
33 claim within ninety days after the claim was filed, or six
34 months in the case of claims for refund or credit of the taxes
35 imposed by articles twenty-one, twenty-three and twenty-four
36 of this chapter, after the filing thereof, the taxpayer may file,
37 with the tax commissioner, either personally or by certified
38 mail, a petition for refund or credit: *Provided*, That no petition
39 for refund or credit may be filed more than sixty days after the
40 taxpayer is served with notice of denial of taxpayer's claim:
41 *Provided, however*, That after the thirty-first day of December,
42 two thousand two, the taxpayer shall file the petition with the
43 office of tax appeals in accordance with the provisions of
44 section nine, article ten-a of this chapter.

45 (2) The petition for refund or credit shall be in writing,
46 verified under oath by the taxpayer, or by taxpayer's duly
47 authorized agent having knowledge of the facts, and shall set
48 forth with particularity the items of the determination objected
49 to, together with the reasons for the objections.

50 (3) When a petition for refund or credit is properly filed, the
51 procedures for hearing and for decision applicable when a
52 petition for reassessment is timely filed shall be followed.

53 (e) *Appeal*. — An appeal from the tax commissioner's
54 administrative decision upon the petition for refund or credit
55 may be taken by the taxpayer in the same manner and under the
56 same procedure as that provided for judicial review of an
57 administrative decision on a petition for reassessment, but no
58 bond shall be required of the taxpayer. An appeal from the
59 administrative decision of the office of tax appeals on a petition
60 for refund or credit, if taken by the taxpayer, shall be taken as
61 provided in section nineteen, article ten-a of this chapter.

62 (f) *Decision of the court.* — Where the appeal is to review
63 an administrative decision on a petition for refund or credit, the
64 court may determine the legal rights of the parties but in no
65 event shall it enter a judgment for money.

66 (g) *Refund made or credit established.* — The tax commis-
67 sioner shall promptly issue his or her requisition on the treasury
68 or establish a credit, as requested by the taxpayer, for any
69 amount finally administratively or judicially determined to be
70 an overpayment of any tax (or fee) administered under this
71 article. The auditor shall issue his or her warrant on the trea-
72 surer for any refund requisitioned under this subsection payable
73 to the taxpayer entitled to the refund, and the treasurer shall pay
74 the warrant out of the fund into which the amount so refunded
75 was originally paid: *Provided*, That refunds of personal income
76 tax may also be paid out of the fund established pursuant to
77 section ninety-three, article twenty-one of this chapter.

78 (h) *Forms for claim for refund or a credit; where return*
79 *shall constitute claim.* — The tax commissioner may prescribe
80 by rule or regulation the forms for claims for refund or credit.
81 Notwithstanding the foregoing, where the taxpayer has overpaid
82 the tax imposed by article twenty-one, twenty-three or
83 twenty-four of this chapter, a return signed by the taxpayer
84 which shows on its face that an overpayment of tax has been
85 made shall constitute a claim for refund or credit.

86 (i) *Remedy exclusive.* — The procedure provided by this
87 section shall constitute the sole method of obtaining any refund,
88 or credit, or any tax (or fee) administered under this article, it
89 being the intent of the Legislature that the procedure set forth
90 in this article shall be in lieu of any other remedy, including the
91 uniform declaratory judgments act embodied in article thirteen,
92 chapter fifty-five of this code, and the provisions of section
93 two-a, article one of this chapter.

94 (j) *Applicability of this section.* — The provisions of this
95 section shall apply to refunds or credits of any tax (or fee),
96 additions to tax, penalties or interest imposed by this article, or
97 any article of this chapter, or of this code, to which this article
98 is applicable.

99 (k) *Erroneous refund or credit.* — If the tax commissioner
100 believes that an erroneous refund has been made or an errone-
101 ous credit has been established, he or she may proceed to
102 investigate and make an assessment or institute civil action to
103 recover the amount of the refund or credit, within two years
104 from the date the erroneous refund was paid or the erroneous
105 credit was established, except that the assessment may be issued
106 or civil action brought within five years from the date if it
107 appears that any portion of the refund or credit was induced by
108 fraud or misrepresentation of a material fact.

109 (1) *Limitation on claims for refund or credit.* —

110 (1) *General rule.* — Whenever a taxpayer claims to be
111 entitled to a refund or credit of any tax (or fee), additions to tax,
112 penalties or interest imposed by this article, or any article of
113 this chapter, or of this code, administered under this article,
114 paid into the treasury of this state, the taxpayer shall, except as
115 provided in subsection (d) of this section, file a claim for
116 refund, or credit, within three years after the due date of the
117 return in respect of which the tax (or fee) was imposed,
118 determined by including any authorized extension of time for
119 filing the return, or within two years from the date the tax, (or
120 fee), was paid, whichever of the periods expires the later, or if
121 no return was filed by the taxpayer, within two years from the
122 time the tax (or fee) was paid, and not thereafter.

123 (2) *Extensions of time for filing claim by agreement.* — The
124 tax commissioner and the taxpayer may enter into a written
125 agreement to extend the period within which the taxpayer may

126 file a claim for refund or credit, which period may not exceed
127 two years. The period so agreed upon may be extended for
128 additional periods not in excess of two years each by subse-
129 quent agreements in writing made before expiration of the
130 period previously agreed upon.

131 (3) *Special rule where agreement to extend time for making*
132 *an assessment.* — Notwithstanding the provisions of subdivi-
133 sions (1) and (2) of this subsection, if an agreement is made
134 under the provisions of section fifteen of this article extending
135 the time period in which an assessment of tax can be made, then
136 the period for filing a claim for refund or credit for overpay-
137 ment of the same tax made during the periods subject to
138 assessment under the extension agreement shall also be
139 extended for the period of the extension agreement plus ninety
140 days.

141 (4) *Overpayment of federal tax.* — Notwithstanding the
142 provisions of subdivisions (1) and (2) of this subsection, in the
143 event of a final determination by the United States Internal
144 Revenue Service or other competent authority of an overpay-
145 ment in the taxpayer's federal income or estate tax liability, the
146 period of limitation upon claiming a refund reflecting the final
147 determination in taxes imposed by articles eleven, twenty-one
148 and twenty-four of this chapter may not expire until six months
149 after the determination is made by the United States Internal
150 Revenue Service or other competent authority.

151 (5) *Tax paid to the wrong state.* — Notwithstanding the
152 provisions of subdivisions (1) and (2) of this subsection, when
153 an individual, or the fiduciary of an estate, has in good faith
154 erroneously paid personal income tax, estate tax or sales tax, to
155 this state on income or a transaction which was lawfully taxable
156 by another state and, therefore, not taxable by this state, and no
157 dispute exists as to the jurisdiction to which the tax should have
158 been paid, then the time period for filing a claim for refund, or

159 credit, for the tax erroneously paid to this state does not expire
160 until ninety days after the tax is lawfully paid to the other state.

161 (6) *Exception for gasoline and special fuel excise tax and*
162 *motor carrier road tax.* — This subsection does not apply to
163 refunds of gasoline and special fuel excise tax or motor carrier
164 road tax sought under the provisions of article fourteen or
165 fourteen-a of this chapter.

166 (m) *Effective date.* — This section, as amended in the year
167 one thousand nine hundred ninety-six, shall apply to claims for
168 refund or credit filed on or after the first day of July, one
169 thousand nine hundred ninety-six.

§11-10-17. Interest.

1 (a) *Underpayments.* — If any amount of a tax administered
2 under this article is not paid on or before the last date pre-
3 scribed for payment, interest on the amount at the rate of eight
4 percent per annum shall be paid for the period from the last date
5 to the date paid: *Provided,* That on and after the first day of
6 July, one thousand nine hundred eighty-six, interest on under
7 payments shall be paid at the annual rate established under
8 section seventeen-a of this article, from the period beginning on
9 the first day of July, or from the last day prescribed for pay-
10 ment, whichever is the later, to the date paid, regardless of
11 when liability for the tax arose: *Provided, however,* That on and
12 after the first day of July, two thousand two, interest on
13 underpayments shall be paid at an annual rate of one and one-
14 half percent above the annual rate established under section
15 seventeen-a of this article, from the period beginning on the
16 first day of July, or from the last day prescribed for payment,
17 whichever is the later, to the date paid, regardless of when
18 liability for the tax arose. For purposes of this subsection, the
19 last date prescribed for payment shall be the due date of the

20 return and shall be determined without regard to any extension
21 of time for payment.

22 (b) *Last date for payment not otherwise prescribed.* — In
23 the case of taxes payable by stamp or other indicia of tax
24 payment and in all other cases in which the last day for payment
25 is not otherwise prescribed, the last date for payment shall be
26 considered to be the date the liability for tax arises and in no
27 event shall be later than the date notice and demand for
28 payment of the tax is made by the tax commissioner.

29 (c) *Erroneous refund or credit.* — If any refund is made or
30 credit is established upon an erroneous claim for refund or
31 credit, interest on the amount refunded or credited at the annual
32 rate established under section seventeen-a of this article, shall
33 be paid by the claimant from the date the refund was made or
34 the credit was taken to the date the amount is recovered.

35 (d) *Overpayments.* — Interest shall be allowed and paid at
36 the annual rate of eight percent per annum upon any amount
37 which has been finally administratively or judicially determined
38 to be an overpayment in respect of each tax administered under
39 this article except the taxes imposed by articles twelve, fourteen
40 and fourteen-a of this chapter: *Provided*, That on and after the
41 first day of July, one thousand nine hundred eighty-six, interest
42 on overpayments shall be paid at the annual rate established
43 under section seventeen-a of this article, from the first day of
44 July, or the date the claim for refund or credit is filed, which-
45 ever is the later, regardless of when the tax was paid. The
46 interest shall be allowed and paid for the period commencing
47 with the date of the filing by the taxpayer of a claim for refund
48 or credit with the tax commissioner and ending with the date of
49 a final administrative or judicial determination of overpayment.
50 The tax commissioner shall, within thirty days after the
51 determination of entitlement to refund, issue his or her requisition
52 or establish a credit as requested by the taxpayer. When-

53 ever the tax commissioner fails or refuses to issue any requisi-
54 tion or establish the credit within said thirty-day period, the
55 interest provided herein shall commence to accrue until
56 performance by the tax commissioner. The acceptance of the
57 refund check or credit shall be without prejudice to any right of
58 the taxpayer to claim any additional overpayment and interest
59 thereon.

60 (e) *Applicable rules.* — For purposes of this section:

61 (1) *No interest payable on tax refunded or credited within*
62 *ninety days after claim for refund or credit is filed.* — In the
63 event of the overpayment of any tax administered under this
64 article, except the tax imposed by articles twenty-one and
65 twenty-four of this chapter, where the tax commissioner issues
66 his or her requisition or establishes a credit as requested by the
67 taxpayer within ninety days after the date of the filing by the
68 taxpayer of a claim for refund or credit, no interest shall be
69 allowed under this section.

70 (2) *No interest payable where personal income tax and*
71 *corporation net income tax refunded or credited within six*
72 *months after claim for refund or credit is filed.* — In the event
73 of the overpayment of the tax imposed by articles twenty-one
74 and twenty-four of this chapter, where the tax commissioner
75 issues his or her requisition or establishes a credit as requested
76 by the taxpayer within six months after the date of the filing by
77 the taxpayer of a claim for refund or credit, no interest shall be
78 allowed under this section.

79 (3) *Interest treated as tax.* — Interest prescribed under this
80 section on any tax shall be collected and paid in the same
81 manner as taxes.

82 (4) *No interest on interest.* — No interest under this section
83 shall be imposed on the interest provided by this section prior
84 to the first day of July, one thousand nine hundred eighty-six.

85 (5) *Interest on penalties or additions to tax.* — Interest shall
86 be imposed under subsection (a) of this section on any
87 assessable penalty or additions to tax only if the penalty or
88 additions to tax is not paid within fifteen days from the date of
89 notice and demand therefor, and in that case, interest shall be
90 imposed only for the period from the date of the notice and
91 demand to the date of payment.

92 (6) *Payments made within fifteen days after notice and*
93 *demand.* — If notice and demand is made for payment of any
94 amount, and if the amount is paid within fifteen days after the
95 date of the notice and demand, interest under this section on the
96 amount so paid may not be imposed for the period after the date
97 of the notice and demand.

98 (7) *Limitation on collection.* — Interest prescribed under
99 this section on any tax may be collected at any time during the
100 period within which the tax to which the interest relates may be
101 collected.

102 (8) *Exception as to estimated tax.* — This section does not
103 apply to any failure to pay any estimated tax required to be paid
104 under articles thirteen, thirteen-a, thirteen-b, twenty-one,
105 twenty-three or twenty-four of this chapter.

§11-10-23. Alternative dispute resolution of tax disputes.

1 On or before the thirty-first day of December, two thou-
2 sand two, the tax commissioner shall propose rules for legisla-
3 tive approval in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code which adopt and implement
5 alternative dispute resolution mechanisms which offer taxpay-
6 ers voluntary and cost-effective methods of resolving tax
7 disputes in order to encourage voluntary settlements and
8 minimize the number of disputes that require litigation to
9 resolve the controversy.

§11-10-24. Commissioner to review taxpayer problem resolution procedures; report to Legislature.

1 The commissioner shall review the procedures utilized to
2 resolve taxpayer complaints and problems to determine whether
3 taxpayer complaints and problems are being remedied promptly
4 and to assure that taxpayer rights are safeguarded and protected
5 during tax determination and collection processes. The commis-
6 sioner shall, on or before the first day of October, two thousand
7 four, report the findings of the review to the joint committee on
8 government and finance with recommendations on the need for
9 legislation to implement a taxpayer resolution program.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

- §11-10A-1. Legislative finding; purpose.
- §11-10A-2. Definitions.
- §11-10A-3. Office of tax appeals created.
- §11-10A-4. Principal office; place for hearings; county commission to provide facilities.
- §11-10A-5. Seal; authenticating records; judicial notice.
- §11-10A-6. Chief administrative law judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.
- §11-10A-7. Powers and duties of chief administrative law judge; all employees, except chief administrative law judge members of classified service; qualifications of administrative law judges; closure of tax division office of hearings and appeals and transfer of employees to office of tax appeals.
- §11-10A-8. Jurisdiction of office of tax appeals.
- §11-10A-9. Appeal to office of tax appeals; petition; answer.
- §11-10A-10. Hearing procedures.
- §11-10A-11. Small claims hearing.
- §11-10A-12. Powers of the office of tax appeals.
- §11-10A-13. Subpoenas; service; cost; fees; relief; disobedience; oath.
- §11-10A-14. Recording hearings; notice; record; transcripts; costs.
- §11-10A-15. Appearances before the office of tax appeals.
- §11-10A-16. Decisions and orders of the office of tax appeals; publication.
- §11-10A-17. Service of notice of final decisions and orders.

- §11-10A-18. Finality of decision by the office of tax appeals; amount due payable; prompt refunds.
- §11-10A-19. Judicial review of office of tax appeals decisions.
- §11-10A-20. Rules required.
- §11-10A-21. Timely filing.
- §11-10A-22. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.
- §11-10A-23. Confidentiality.

§11-10A-1. Legislative finding; purpose.

1 The Legislature finds that there is a need for an independent
2 quasi-judicial agency separate and apart from the tax division
3 to resolve disputes between the tax commissioner and taxpayers
4 in order to maintain public confidence in the state tax system.
5 The Legislature does therefore declare that the purpose of this
6 article is to create the West Virginia office of tax appeals to
7 resolve disputes between the tax commissioner and taxpayers
8 and to prescribe the powers and duties of the office of tax
9 appeals.

§11-10A-2. Definitions.

- 1 (a) "Division" means the tax division of the West Virginia
2 department of tax and revenue.
- 3 (b) "Tax commissioner" or "commissioner" means the tax
4 commissioner of the state of West Virginia or his or her
5 authorized designee.
- 6 (c) "Office of tax appeals" means the West Virginia office
7 of tax appeals created by this article.

§11-10A-3. Office of tax appeals created.

1 There is hereby created the West Virginia office of tax
2 appeals, a quasi-judicial agency which, for administrative
3 purposes only, is in the department of tax and revenue.

§11-10A-4. Principal office; place for hearings; county commission to provide facilities.

1 The principal office shall be at the state capital, but the
2 office of tax appeals may hold hearings at any place within this
3 state. A county commission, upon request by the office of tax
4 appeals, shall provide it with suitable rooms and facilities for
5 hearings it holds in that county at times convenient to the
6 county commission and the office of tax appeals.

§11-10A-5. Seal; authenticating records; judicial notice.

1 The office of tax appeals shall have a seal. The seal shall
2 have the following words engraved thereon: "West Virginia
3 Office of Tax Appeals." The office of tax appeals shall authen-
4 ticate all of its orders, records and proceedings with the seal;
5 and the courts of this state shall take judicial notice of the seal.

§11-10A-6. Chief administrative law judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.

1 (a) The governor, with the advice and consent of the Senate,
2 shall appoint the chief administrative law judge from a list of
3 three qualified nominees submitted to the governor by the board
4 of governors of the West Virginia state bar for a six-year term.
5 An appointment to fill a vacancy in the position shall be for the
6 unexpired term.

7 (b) Prior to appointment, the chief administrative law judge
8 shall be a citizen of the United States and a resident of this state
9 who is admitted to the practice of law in this state and who has
10 five years of full-time or equivalent part-time experience as an
11 attorney with federal or state tax law expertise or as a judge of
12 a court of record.

13 (c) The salary of the chief administrative law judge shall be
14 set by the secretary of the department of tax and revenue
15 created in section two, article one, chapter five-f of this code.
16 The salary shall be within the salary range for comparable chief
17 administrative law judges as determined by the state personnel
18 board created by section six, article six, chapter twenty-nine of
19 this code.

20 (d) The chief administrative law judge, during his or her
21 term shall:

22 (1) Devote his or her full time to the duties of the position;

23 (2) Not otherwise engage in the active practice of law or be
24 associated with any group or entity which is itself engaged in
25 the active practice of law: *Provided*, That nothing in this
26 paragraph may be construed to prohibit the chief administrative
27 law judge from being a member of a national, state or local bar
28 association or committee, or of any other similar type group or
29 organization, or to prohibit the chief administrative law judge
30 from engaging in the practice of law by representing himself,
31 herself or his or her immediate family in their personal affairs
32 in matters not subject to this article.

33 (3) Not engage directly or indirectly in any activity,
34 occupation or business interfering or inconsistent with his or
35 her duties as chief administrative law judge;

36 (4) Not hold any other appointed public office or any
37 elected public office or any other position of public trust; and

38 (5) Not be a candidate for any elected public office, or
39 serve on or under any committee of any political party.

40 (e) The governor may remove the chief administrative law
41 judge only for incompetence, neglect of duty, official miscon-
42 duct or violation of subsection (d) of this section, and removal

43 shall be in the same manner as that specified for removal of
44 elected state officials in section six, article six, chapter six of
45 this code.

**§11-10A-7. Powers and duties of chief administrative law judge;
all employees, except chief administrative law
judge members of classified service; qualifications
of administrative law judges; closure of tax divi-
sion office of hearings and appeals and transfer of
employees to office of tax appeals.**

1 (a) The chief administrative law judge is the chief executive
2 officer of the office of tax appeals and he or she may employ up
3 to two administrative law judges, no more than one person to
4 serve as executive director, no more than one staff attorney and
5 other clerical personnel as necessary for the proper administra-
6 tion of this article. The chief administrative law judge may
7 delegate administrative duties to other employees, but the chief
8 administrative law judge shall be responsible for all official
9 delegated acts.

10 (1) All employees of the office of tax appeals, except the
11 chief administrative law judge, shall be in the classified service
12 and shall be governed by the provisions of the statutes, rules
13 and policies of the classified service in accordance with the
14 provisions of article six, chapter twenty-nine of this code.

15 (2) Prior to employment by the office of tax appeals, all
16 administrative law judges shall be admitted to the practice of
17 law in this state and have at least two years of full-time or
18 equivalent part-time experience as an attorney with federal or
19 state tax law expertise.

20 (3) The chief administrative law judge and all administra-
21 tive law judges shall be members of the public employees
22 retirement system and do not qualify as participants in the

23 judicial retirement system during their tenure with the office of
24 tax appeals.

25 (4) Notwithstanding any provisions of this code to the
26 contrary, the chief administrative law judge shall employ any
27 person not a temporary or probationary employee employed
28 full-time and in good standing by the tax division in its hearings
29 office applying for a position with the office of tax appeals. A
30 former tax division employee employed by the office of tax
31 appeals under the provisions of this subdivision shall retain his
32 or her classified service classification, salary and benefits:
33 *Provided*, That if an employee is currently classified as a chief
34 administrative law judge, he or she may not retain that classifi-
35 cation and must be reclassified as determined by the secretary
36 of the department of tax and revenue.

37 (b) The chief administrative law judge shall:

38 (1) Direct and supervise the work of the legal staff;

39 (2) Make hearing assignments;

40 (3) Maintain the records of the office of tax appeals;

41 (4) Review and approve decisions of administrative law
42 judges as to legal accuracy, clarity and other requirements;

43 (5) Publish decisions in accordance with the provisions of
44 section sixteen of this article;

45 (6) Submit to the Legislature, on or before the fifteenth day
46 of February, an annual report summarizing the office of tax
47 appeals' activities since the end of the last report period,
48 including a statement of the number and type of matters
49 handled by the office of tax appeals during the preceding fiscal
50 year and the number of matters pending at the end of the year;
51 and

52 (7) Perform the other duties necessary and proper to carry
53 out the purposes of this article.

§11-10A-8. Jurisdiction of office of tax appeals.

1 The office of tax appeals has exclusive and original
2 jurisdiction to hear and determine all:

3 (1) Appeals from tax assessments issued by the tax com-
4 missioner pursuant to article ten of this chapter;

5 (2) Appeals from decisions or orders of the tax commis-
6 sioner denying refunds or credits for all taxes administered in
7 accordance with the provisions of article ten of this chapter;

8 (3) Appeals from orders of the tax commissioner denying,
9 suspending, revoking, refusing to renew any license or impos-
10 ing any civil money penalty for violating the provisions of any
11 licensing law administered by the tax commissioner;

12 (4) Questions presented when a hearing is requested
13 pursuant to the provisions of any article of this chapter which
14 is administered by the provisions of article ten of this chapter;

15 (5) Matters which the tax division is required by statute or
16 legislatively approved rules to hear, except employee griev-
17 ances filed pursuant to article six-a, chapter twenty-nine of this
18 code; and

19 (6) Other matters which may be conferred on the office of
20 tax appeals by statute or legislatively approved rules.

§11-10A-9. Appeal to office of tax appeals; petition; answer.

1 (a) A proceeding before the office of tax appeals appealing
2 a tax assessment, a denial of a tax refund or credit or any other
3 order of the tax commissioner, or requesting a hearing pursuant
4 to the provisions of any article of this chapter which is adminis-

5 tered pursuant to article ten of this chapter, shall be initiated by
6 a person timely filing a written petition that succinctly states:

7 (1) The nature of the case;

8 (2) The facts on which the appeal is based; and

9 (3) Each question presented for review by the office of tax
10 appeals.

11 (b) A petition filed pursuant to subsection (a) of this section
12 is timely filed if postmarked or hand delivered to the office of
13 tax appeals within sixty days of the date a person received
14 written notice of an assessment, denial of a refund or credit,
15 order or other decision of the tax commissioner.

16 (c) The office of tax appeals shall, within five days of
17 receipt of a timely petition filed pursuant to subsection (a) of
18 this article, provide the tax commissioner with a copy of the
19 petition. The tax commissioner shall submit a written answer to
20 the petition within forty days of his or her receipt of the
21 petition. The answer shall succinctly state:

22 (1) The nature of the case;

23 (2) The facts relied upon by the commissioner;

24 (3) An answer to each question presented for review.

25 (d) A proceeding before the office of tax appeals in other
26 matters conferred by statute or legislatively approved rules shall
27 be initiated by filing a petition with the office of tax appeals in
28 accordance with the provisions of the applicable statute or rule.

§11-10A-10. Hearing procedures.

1 (a) The office of tax appeals shall assign a date, time and
2 place for a hearing on a petition and shall notify the parties to

3 the hearing by written notice at least twenty days in advance of
4 the hearing date. The hearing shall be held within forty-five
5 days of the due date of the commissioner's answer unless
6 continued by order of the office of tax appeals for good cause.

7 (b) A hearing before the office of tax appeals shall be heard
8 *de novo* and conducted pursuant to the provisions of the
9 contested case procedure set forth in article five, chapter
10 twenty-nine-a of this code to the extent not inconsistent with the
11 provisions of this article. In case of conflict, the provisions of
12 this article shall govern. The provisions of section five, article
13 five, chapter twenty-nine-a of this code are not applicable to a
14 hearing before the office of tax appeals.

15 (c) The office of tax appeals is not bound by the rules of
16 evidence as applied in civil cases in the circuit courts of this
17 state. The office of tax appeals may admit and give probative
18 effect to evidence of a type commonly relied upon by a
19 reasonably prudent person in the conduct of his or her affairs.

20 (d) All testimony shall be given under oath.

21 (e) Except as otherwise provided by this code or legislative
22 rules, the taxpayer or petitioner has the burden of proof.

23 (f) The administrative law judge may ask for proposed
24 findings of fact and conclusions of law from the parties prior to
25 the issuance by the office of tax appeals of the decision in the
26 matter.

27 (g) Hearings shall be exempt from the requirements of
28 article nine-a, chapter six and article one, chapter twenty-nine-b
29 of this code.

§11-10A-11. Small claims hearing.

1 (a) If the amount in dispute in any petition filed with the
2 office of tax appeals does not exceed ten thousand dollars for
3 any one taxable year, then, at the option of the taxpayer and
4 with the concurrence of the office of tax appeals, the hearing
5 shall be conducted under this section. Notwithstanding the
6 provisions of section fourteen of this article, a hearing under
7 this section shall be conducted in an informal manner and in
8 accordance with the rules of practice and procedure as the
9 office of tax appeals may prescribe.

10 (b) At any time before commencement of the hearing held
11 under this section, the petitioner may unilaterally withdraw the
12 election made under subsection (a) of this section. Upon a
13 change of election, a hearing shall be held in the same manner
14 as other contested matters to which this article applies.

15 (c) A decision entered in any hearing conducted under this
16 section is not subject to administrative or judicial review under
17 this article, article ten of this chapter or article five, chapter
18 twenty-nine-a of this code, and may not be treated as precedent
19 for any other contested matter. The amount, if any, owed by the
20 taxpayer to the state shall be paid within thirty days after notice
21 of the decision is served on the taxpayer. The amount, if any, of
22 overpayment by the taxpayer shall be promptly refunded or
23 credited to the taxpayer.

24 (d) For purposes of this section, the amount in dispute
25 includes tax, additions to tax and penalties, but excludes
26 interest.

§11-10A-12. Powers of the office of tax appeals.

1 In determining the outcome of a case, the office of tax
2 appeals may affirm, reverse, modify or vacate an assessment of
3 tax; may order the payment of or deny a refund, in whole or
4 part; may authorize or deny a credit, in whole or part; or may
5 grant other relief necessary or appropriate to dispose of the
6 matter.

§11-10A-13. Subpoenas; service; cost; fees; relief; disobedience; oath.

1 (a) The office of tax appeals has the power to issue subpoe-
2 nas and subpoenas duces tecum requiring the attendance of
3 witnesses and the production of books, papers, records, docu-
4 ments and testimony at the time and place specified. The office
5 of tax appeals may exercise the power upon the request of any
6 person who is a party to a hearing before the office of tax
7 appeals.

8 (b) Every subpoena and subpoena duces tecum must be
9 served at least five days before the return date thereof, by either
10 personal service made by any person over eighteen years of age,
11 or by registered or certified mail, but a return receipt signed by
12 the person to whom subpoena or subpoena duces tecum is
13 directed shall be required to prove service by registered or
14 certified mail. Any party requesting a subpoena or subpoena
15 duces tecum is responsible for service thereof and payment of
16 any fee for service. Any person who serves any subpoena or
17 subpoena duces tecum shall be entitled to the same fee as
18 sheriffs who serve witness subpoenas for the circuit courts of
19 this state.

20 (c) Fees for the attendance of witnesses subpoenaed shall be
21 the same as for witnesses before the circuit courts of this state.
22 All fees related to any subpoena or subpoena duces tecum
23 issued at the request of a party to an administrative hearing
24 shall be paid by the party who requested the subpoena or
25 subpoena duces tecum be issued. All requests by parties for
26 issuance of subpoena or subpoena duces tecum shall be in
27 writing and shall contain a statement acknowledging that the
28 requesting party agrees to pay the fees.

29 (d) Upon motion made promptly, and in any event before
30 the time specified in a subpoena or subpoena duces tecum for
31 compliance therewith, the circuit court of the county in which

32 the hearing is to be held or the circuit court of the county in
33 which the person upon whom any subpoena or subpoena duces
34 tecum was served resides, has his, her or its principal place of
35 business or is employed, or the circuit court of the county in
36 which any subpoena or subpoena duces tecum was served, or
37 the judge of any circuit court in vacation, may grant any relief
38 with respect to the subpoena or subpoena duces tecum which
39 any circuit court, under the West Virginia rules of civil proce-
40 dure, could grant, and for any of the same reasons, with respect
41 to any subpoena or subpoena duces tecum issued from any
42 circuit court.

43 (e) In case of disobedience to or neglect of any subpoena or
44 subpoena duces tecum served on any person, or the refusal of
45 any witness to testify to any matter regarding which he or she
46 may be lawfully interrogated, the circuit court of the county in
47 which the hearing is being held, or the circuit court of Kanawha
48 County or of the county in which the person resides, has his, her
49 or its principal place of business or is employed, or the judge
50 thereof in vacation, upon application of the chief administrative
51 law judge of the office of tax appeals, may compel obedience
52 by attachment proceedings for contempt as in the case of
53 disobedience of the requirements of a subpoena or subpoena
54 duces tecum issued from the circuit court for a refusal to testify
55 therein.

56 (f) Witnesses subpoenaed under this section shall testify
57 under oath or affirmation.

**§11-10A-14. Recording hearings; notice; record; transcripts;
costs.**

1 (a) Except in the small claims division, all hearings before
2 the office of tax appeals shall be recorded by means acceptable
3 for use in courts of this state. All parties shall receive notice

4 that the hearing will be recorded and that each is entitled to
5 receive a copy of the recording at cost.

6 (b) A copy of the written exhibits made part of the record
7 shall be available to any party upon request and payment of a
8 reasonable fee.

9 (c) Upon appeal to circuit court, a verbatim transcript and
10 copy of written exhibits shall be prepared for submission to the
11 circuit court with the cost paid by the party taking the appeal:
12 *Provided*, That if both parties appeal, the cost of the transcript
13 shall be shared equally by the two parties.

§11-10A-15. Appearances before the office of tax appeals.

1 (a) A person may appear before the office of tax appeals in
2 his or her own behalf, or may be represented by an attorney or
3 by any other person as he or she may choose.

4 (b) Nothing in this section may be construed to permit the
5 unauthorized practice of law as defined by the West Virginia
6 supreme court of appeals.

**§11-10A-16. Decisions and orders of the office of tax appeals;
publication.**

1 (a) Every final decision or order of the office of tax appeals
2 shall be in writing and shall include a concise statement of the
3 material facts and conclusions of law.

4 (b) All final decisions or orders of the office of tax appeals
5 shall be issued within a reasonable time, not to exceed six
6 months, from the date the petition is filed or from the date the
7 hearing record is closed, whichever is later.

8 (c) All final decisions and orders, except small claims
9 decisions, shall be published in the state register after having
10 been redacted to maintain confidentiality. The office of tax
11 appeals may also post its redacted decisions on the internet.

§11-10A-17. Service of notice of final decisions and orders.

1 (a) Notice of final decisions and orders of the office of tax
2 appeals shall be served upon the parties either by personal or
3 substituted service, or by certified mail.

4 (1) Service of notice by personal or substituted service is
5 valid if made by any method authorized by the rules of the West
6 Virginia rules of civil procedure.

7 (2) Service of notice by certified mail is valid if accepted
8 by the party, or if addressed to and mailed to the party's usual
9 place of business or usual place of abode or last known address
10 and accepted by any person.

11 (b) Any notice addressed and mailed in the manner speci-
12 fied in subsection (a), which is refused or not claimed, may then
13 be served by first-class mail, postage prepaid, to the same
14 address and the date of posting in the United States mail is the
15 date of service.

**§11-10A-18. Finality of decision by the office of tax appeals;
amount due payable; prompt refunds.**

1 Unless an appeal from the decision of the office of tax
2 appeals is taken pursuant to section nineteen of this article,
3 within sixty days after service of notice of the decision, the
4 office of tax appeals's decision shall become final and conclu-
5 sive and not subject to either administrative or judicial review.
6 The amount, if any, owed by the taxpayer shall be due and
7 payable to the tax commissioner on the day following the date
8 upon which the decision became final. The amount of overpay-
9 ment by the taxpayer, if any, shall be promptly refunded or
10 credited to the taxpayer.

§11-10A-19. Judicial review of office of tax appeals decisions.

1 (a) Either the taxpayer or the commissioner, or both, may
2 appeal the final decision or order of the office of tax appeals by
3 taking an appeal to the circuit courts of this state within sixty
4 days after being served with notice of the final decision or
5 order.

6 (b) The office of tax appeals may not be made a party in
7 any judicial review of a decision or order it issued.

8 (c)(1) If the taxpayer appeals, the appeal may be taken in
9 the circuit court of Kanawha County or any county:

10 (A) Wherein the activity sought to be taxed was engaged in;

11 (B) Wherein the taxpayer resides; or

12 (C) Wherein the will of the decedent was probated or letters
13 of administration granted.

14 (2) If the tax commissioner appeals, the appeal may be
15 taken in Kanawha County: *Provided*, That the taxpayer shall
16 have the right to remove the appeal to the county:

17 (A) Wherein the activity sought to be taxed was engaged in;

18 (B) Wherein the taxpayer resides; or

19 (C) Wherein the will of the decedent was probated or letters
20 of administration granted.

21 (3) In the event both parties appeal to different circuit
22 courts, the appeals shall be consolidated. In the absence of
23 agreement by the parties, the appeal shall be consolidated in the
24 circuit court of the county in which the taxpayer filed the
25 petition for appeal.

26 (d) The appeal proceeding shall be instituted by filing a
27 petition for appeal with the circuit court, or the judge thereof in

28 vacation, within the sixty-day period prescribed in subsection
29 (a) of this section. A copy of the petition for appeal shall be
30 served on all parties appearing of record, other than the party
31 appealing, by registered or certified mail. The petition for
32 appeal shall state whether the appeal is taken on questions of
33 law or questions of fact, or both, and set forth with particularity
34 the items of the decision objected to, together with the reasons
35 for the objections.

36 (e) If the appeal is of an assessment, except a jeopardy
37 assessment for which security in the amount thereof was
38 previously filed with the tax commissioner, then within ninety
39 days after the petition for appeal is filed, or sooner if ordered by
40 the circuit court, the petitioner shall file with the clerk of the
41 circuit court a cash bond or a corporate surety bond approved
42 by the clerk. The surety must be qualified to do business in this
43 state. These bonds shall be conditioned upon the petitioner
44 performing the orders of the court. The penalty of this bond
45 shall be not less than the total amount of tax or revenue plus
46 additions to tax, penalties and interest for which the taxpayer
47 was found liable in the administrative decision of the office of
48 tax appeals. Notwithstanding the foregoing and in lieu of the
49 bond, the tax commissioner, upon application of the petitioner,
50 may upon a sufficient showing by the taxpayer, certify to the
51 clerk of the circuit court that the assets of the taxpayer are
52 adequate to secure performance of the orders of the court:
53 *Provided*, That if the tax commissioner refuses to certify that
54 the assets of the taxpayer or other indemnification are adequate
55 to secure performance of the orders of the court, then the
56 taxpayer may apply to the circuit court for the certification. No
57 bond may be required of the tax commissioner.

58 (f) The circuit court shall hear the appeal as provided in
59 section four, article five, chapter twenty-nine-a of this code:
60 *Provided*, That when the appeal is to review a decision or order
61 on a petition for refund or credit, the court may determine the

62 legal rights of the parties, but in no event shall it enter a
63 judgment for money.

64 (g) Unless the tax commissioner appeals an adverse court
65 decision, the commissioner, upon receipt of the certified order
66 of the court, shall promptly correct his or her assessment or
67 issue his or her requisition on the treasury or establish a credit
68 for the amount of an overpayment.

69 (h) Either party may appeal to the supreme court of appeals
70 as provided in article six, chapter twenty-nine-a of this code.

§11-10A-20. Rules required.

1 The office of tax appeals shall adopt rules of practice and
2 procedure in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code no later than the thirty-first
4 day of March, two thousand three.

§11-10A-21. Timely filing.

1 (a) Any petition, statement or other document required to
2 be filed within a prescribed period or on or before a prescribed
3 date under authority of this article is timely filed if it is deliv-
4 ered in person on or before the date to the office of tax appeals
5 at its office during normal business hours.

6 (b) Any petition, statement or other document required to
7 be filed within a prescribed period or on or before a prescribed
8 date under authority of this article that is delivered by the
9 United States mail to the office of tax appeals is timely filed if
10 the date of the United States postmark stamped on the envelope
11 is within the prescribed period or on or before the prescribed
12 date for filing, and the envelope was deposited in the United
13 States mail, postage prepaid and properly addressed to the
14 office of tax appeals.

15 (c) The last date for timely filing includes any extension of
16 time authorized by law or rule and any extension of time
17 granted in writing by the office of tax appeals.

**§11-10A-22. Time for performance of acts where last day falls on
Saturday, Sunday or legal holiday.**

1 When the last day prescribed under authority of this article
2 for performing any act falls on Saturday, Sunday or a legal
3 holiday, the performance of the act is considered timely if it is
4 performed on the next succeeding day which is not a Saturday,
5 Sunday or a legal holiday. For purposes of this section, the last
6 day for the performance of any act shall be determined by
7 including any authorized extension of time. The term “legal
8 holiday” means a legal holiday in this state.

§11-10A-23. Confidentiality.

1 The provisions of section five-d, article ten of this chapter,
2 to the extent not inconsistent with the provisions of this article,
3 are applicable to all employees of the office of tax appeals.

CHAPTER 304

(Com. Sub. for S. B. 290 — By Senator Bowman)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to specifying information to be provided to local governments and tax returns and return information obtained from the tax commissioner pursuant to an exchange

of information agreement or otherwise pursuant to the provisions of subsections (d) through (n), inclusive, of said section which is in the possession of any officer, employee, agent or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in said article; and specifying that unlawful disclosure of such information by any officer, employee or agent of any local, municipal or governmental subdivision is subject to the sanctions set forth in said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* — Except when required in an official
2 investigation by the tax commissioner into the amount of tax
3 due under any article administered under this article or in any
4 proceeding in which the tax commissioner is a party before a
5 court of competent jurisdiction to collect or ascertain the
6 amount of such tax and except as provided in subsections (d)
7 through (n), inclusive, of this section, it shall be unlawful for
8 any officer, employee or agent of this state or of any county,
9 municipality or governmental subdivision to divulge or make
10 known in any manner the tax return, or any part thereof, of any
11 person or disclose information concerning the personal affairs
12 of any individual or the business of any single firm or corpora-
13 tion, or disclose the amount of income, or any particulars set
14 forth or disclosed in any report, declaration or return required
15 to be filed with the tax commissioner by any article of this
16 chapter imposing any tax administered under this article or by
17 any rule or regulation of the tax commissioner issued thereun-
18 der, or disclosed in any audit or investigation conducted under

19 this article. For purposes of this article, tax returns and return
20 information obtained from the tax commissioner pursuant to an
21 exchange of information agreement or otherwise pursuant to the
22 provisions of subsections (d) through (n), inclusive, of this
23 section which is in the possession of any officer, employee,
24 agent or representative of any local or municipal governmental
25 entity or other governmental subdivision is subject to the
26 confidentiality and disclosure restrictions set forth in this
27 article: *Provided*, That such officers, employees or agents may
28 disclose the information in an official investigation, by a local
29 or municipal governmental authority or agency charged with
30 the duty and responsibility to administer the tax laws of the
31 jurisdiction, into the amount of tax due under any lawful local
32 or municipal tax administered by that authority or agency, or in
33 any proceeding in which the local or municipal governmental
34 subdivision, authority or agency is a party before a court of
35 competent jurisdiction to collect or ascertain the amount of the
36 tax. Unlawful disclosure of the information by any officer,
37 employee or agent of any local, municipal or governmental
38 subdivision is subject to the sanctions set forth in this article.

39 (b) *Definitions.* — For purposes of this section:

40 (1) *Background file document.* — The term “background
41 file document”, with respect to a written determination,
42 includes the request for that written determination, any written
43 material submitted in support of the request and any communi-
44 cation (written or otherwise) between the state tax department
45 and any person outside the state tax department in connection
46 with the written determination received before issuance of the
47 written determination.

48 (2) *Disclosure.* — The term “disclosure” means making
49 known to any person in any manner whatsoever a return or
50 return information.

51 (3) *Inspection.* — The terms “inspection” and “inspected”
52 means any examination of a return or return information.

53 (4) *Return*. — The term “return” means any tax or informa-
54 tion return or report, declaration of estimated tax, claim or
55 petition for refund or credit or petition for reassessment that is
56 required by, or provided for, or permitted under the provisions
57 of this article (or any article of this chapter administered under
58 this article) which is filed with the tax commissioner by, on
59 behalf of, or with respect to any person and any amendment or
60 supplement thereto, including supporting schedules, attach-
61 ments or lists which are supplemental to, or part of, the return
62 so filed.

63 (5) *Return information*. — The term “return information”
64 means:

65 (A) A taxpayer’s identity; the nature, source or amount of
66 his or her income, payments, receipts, deductions, exemptions,
67 credits, assets, liabilities, net worth, tax liability, tax withheld,
68 deficiencies, overassessments or tax payments, whether the
69 taxpayer’s return was, is being, or will be examined or subject
70 to other investigation or processing, or any other data received
71 by, recorded by, prepared by, furnished to or collected by the
72 tax commissioner with respect to a return or with respect to the
73 determination of the existence, or possible existence, of liability
74 (or the amount thereof) or by any person under the provisions
75 of this article (or any article of this chapter administered under
76 this article) for any tax, additions to tax, penalty, interest, fine,
77 forfeiture or other imposition or offense; and

78 (B) Any part of any written determination or any back-
79 ground file document relating to such written determination.
80 “Return information” does not include, however, data in a form
81 which cannot be associated with or otherwise identify, directly
82 or indirectly, a particular taxpayer. Nothing in the preceding
83 sentence, or in any other provision of this code, shall be
84 construed to require the disclosure of standards used or to be
85 used for the selection of returns for examination or data used or
86 to be used for determining such standards.

87 (6) *Tax administration.* — The term “tax administration”
88 means:

89 (A) The administration, management, conduct, direction
90 and supervision of the execution and application of the tax laws
91 or related statutes of this state and the development and
92 formulation of state and local tax policy relating to existing or
93 proposed state and local tax laws and related statutes of this
94 state; and

95 (B) Includes assessment, collection, enforcement, litigation,
96 publication and statistical gathering functions under the laws of
97 this state and of local governments.

98 (7) *Taxpayer identity.* — The term “taxpayer identity”
99 means the name of a person with respect to whom a return is
100 filed, his or her mailing address, his or her taxpayer identifying
101 number or a combination thereof.

102 (8) *Taxpayer return information.* — The term “taxpayer
103 return information” means return information as defined in
104 subdivision (5) of this subsection which is filed with, or
105 furnished to, the tax commissioner by or on behalf of the
106 taxpayer to whom such return information relates.

107 (9) *Written determination.* — The term “written determina-
108 tion” means a ruling, determination letter, technical advice
109 memorandum or letter or administrative decision issued by the
110 tax commissioner.

111 (c) *Criminal penalty.* — Any officer, employee or agent (or
112 former officer, employee or agent) of this state or of any
113 county, municipality or governmental subdivision who violates
114 this section shall be guilty of a misdemeanor and, upon convic-
115 tion thereof, shall be fined not more than one thousand dollars
116 or imprisoned for not more than one year, or both, together with
117 costs of prosecution.

118 (d) *Disclosure to designee of taxpayer.* — Any person
119 protected by the provisions of this article may, in writing, waive
120 the secrecy provisions of this section for such purpose and such
121 period as he shall therein state. The tax commissioner may,
122 subject to such requirements and conditions as he or she may
123 prescribe, thereupon release to designated recipients such
124 taxpayer's return or other particulars filed under the provisions
125 of the tax articles administered under the provisions of this
126 article, but only to the extent necessary to comply with a
127 request for information or assistance made by the taxpayer to
128 such other person. However, return information shall not be
129 disclosed to such person or persons if the tax commissioner
130 determines that such disclosure would seriously impair admin-
131 istration of this state's tax laws.

132 (e) *Disclosure of returns and return information for use in*
133 *criminal investigations.* —

134 (1) *In general.* — Except as provided in subdivision (3) of
135 this subsection, any return or return information with respect to
136 any specified taxable period or periods shall, pursuant to and
137 upon the grant of an ex parte order by a federal district court
138 judge, federal magistrate or circuit court judge of this state,
139 under subdivision (2) of this subsection, be open (but only to
140 the extent necessary as provided in such order) to inspection by,
141 or disclosure to, officers and employees of any federal agency,
142 or of any agency of this state, who personally and directly
143 engaged in:

144 (A) Preparation for any judicial or administrative proceed-
145 ing pertaining to the enforcement of a specifically designated
146 state or federal criminal statute to which this state, the United
147 States or such agency is or may be a party;

148 (B) Any investigation which may result in such a proceed-
149 ing; or

150 (C) Any state or federal grand jury proceeding pertaining to
151 enforcement of such a criminal statute to which this state, the
152 United States or such agency is or may be a party.

153 Such inspection or disclosure shall be solely for the use of
154 such officers and employees in such preparation, investigation
155 or grand jury proceeding.

156 (2) *Application of order.* — Any United States attorney,
157 any special prosecutor appointed under Section 593 of Title 28,
158 United States Code, or any attorney in charge of a United States
159 justice department criminal division organized crime strike
160 force established pursuant to Section 510 of Title 28, United
161 States Code, may authorize an application to a circuit court
162 judge or magistrate, as appropriate, for the order referred to in
163 subdivision (1) of this subsection. Any prosecuting attorney of
164 this state may authorize an application to a circuit court judge
165 of this state for the order referred to in said subdivision. Upon
166 the application, the judge or magistrate may grant such order if
167 he determines on the basis of the facts submitted by the
168 applicant that:

169 (A) There is reasonable cause to believe, based upon
170 information believed to be reliable, that a specific criminal act
171 has been committed;

172 (B) There is reasonable cause to believe that the return or
173 return information is or may be relevant to a matter relating to
174 the commission of such act; and

175 (C) The return or return information is sought exclusively
176 for use in a state or federal criminal investigation or proceeding
177 concerning such act and the information sought to be disclosed
178 cannot reasonably be obtained, under the circumstances, from
179 another source.

180 (3) The tax commissioner may not disclose any return or
181 return information under subdivision (1) of this subsection if he
182 determines and certifies to the court that the disclosure would

183 identify a confidential informant or seriously impair a civil or
184 criminal tax investigation.

185 (f) *Disclosure to person having a material interest.* — The
186 tax commissioner may, pursuant to legislative regulations
187 promulgated by him or her, and upon such terms as he or she
188 may require, disclose a return or return information to a person
189 having a material interest therein: *Provided*, That such disclo-
190 sure shall only be made if the tax commissioner determines, in
191 his or her discretion, that the disclosure would not seriously
192 impair administration of this state's tax laws.

193 (g) *Statistical use.* — This section shall not be construed to
194 prohibit the publication or release of statistics so classified as
195 to prevent the identification of particular returns and the items
196 thereof.

197 (h) *Disclosure of amount of outstanding lien.* — If notice of
198 lien has been recorded pursuant to section twelve of this article,
199 the amount of the outstanding obligation secured by such lien
200 may be disclosed to any person who furnishes written evidence
201 satisfactory to the tax commissioner that such person has a right
202 in the property subject to the lien or intends to obtain a right in
203 such property.

204 (i) *Reciprocal exchange.* — The tax commissioner may,
205 pursuant to written agreement, permit the proper officer of the
206 United States, or the District of Columbia or any other state, or
207 any political subdivision of this state, or his authorized repre-
208 sentative, who is charged by law with responsibility for
209 administration of a similar tax, to inspect reports, declarations
210 or returns filed with the tax commissioner or may furnish to
211 such officer or representative a copy of any document, provided
212 any other jurisdiction grants substantially similar privileges to
213 the tax commissioner or to the attorney general of this state.
214 The disclosure shall be only for the purpose of, and only to the
215 extent necessary in, the administration of tax laws: *Provided*,
216 That the information may not be disclosed to the extent that the

217 tax commissioner determines that such disclosure would
218 identify a confidential informant or seriously impair any civil
219 or criminal tax investigation.

220 (j) *Exchange with municipalities.* — The tax commissioner
221 shall, upon the written request of the mayor or governing body
222 of any West Virginia municipality, allow the duly authorized
223 agent of the municipality to inspect and make copies of the state
224 business and occupation tax return filed by taxpayers of the
225 municipality and any other state tax returns (including, but not
226 limited to, consumers sales and services tax return information
227 and health care provider tax return information) as may be
228 reasonably requested by the municipality. Such inspection or
229 copying shall include disclosure to the authorized agent of the
230 municipality for tax administration purposes of all available
231 return information from files of the tax department relating to
232 taxpayers who transact business within the municipality. The
233 tax commissioner shall be permitted to inspect or make copies
234 of any tax return and any return information or other informa-
235 tion related thereto in the possession of any municipality or its
236 employees, officers, agents or representatives that has been
237 submitted to or filed with the municipality by any person for
238 any tax including, but not limited to, the municipal business and
239 occupation tax, public utility tax, municipal license tax, tax on
240 purchases of intoxicating liquors, license tax on horse racing or
241 dog racing and municipal amusement tax.

242 (k) *Release of administrative decisions.* — The tax commis-
243 sioner shall release to the public his administrative decisions, or
244 a summary thereof: *Provided*, That unless the taxpayer appeals
245 the administrative decision to circuit court or waives in writing
246 his rights to confidentiality, any identifying characteristics or
247 facts about the taxpayer shall be omitted or modified to an
248 extent so as to not disclose the name or identity of the taxpayer.

249 (l) *Release of taxpayer information.* —

250 (1) If the tax commissioner believes that enforcement of the
251 tax laws administered under this article will be facilitated and
252 enhanced thereby, he shall disclose, upon request, the names
253 and address of persons:

254 (A) Who have a current business registration certificate.

255 (B) Who are licensed employment agencies.

256 (C) Who are licensed collection agencies.

257 (D) Who are licensed to sell drug paraphernalia.

258 (E) Who are distributors of gasoline or special fuel.

259 (F) Who are contractors.

260 (G) Who are transient vendors.

261 (H) Who are authorized by law to issue a sales or use tax
262 exemption certificate.

263 (I) Who are required by law to collect sales or use taxes.

264 (J) Who are foreign vendors authorized to collect use tax.

265 (K) Whose business registration certificate has been
266 suspended or canceled or not renewed by the tax commissioner.

267 (L) Against whom a tax lien has been recorded under
268 section twelve of this article (including any particulars stated in
269 the recorded lien).

270 (M) Against whom criminal warrants have been issued for
271 a criminal violation of this state's tax laws.

272 (N) Who have been convicted of a criminal violation of this
273 state's tax laws.

274 (m) *Disclosure of return information to child support*
275 *enforcement division.* —

276 (1) *State return information.* — The tax commissioner may,
277 upon written request, disclose to the child support enforcement
278 division created by article two, chapter forty-eight-a of this
279 code:

280 (A) Available return information from the master files of
281 the tax department relating to the social security account
282 number, address, filing status, amounts and nature of income
283 and the number of dependents reported on any return filed by,
284 or with respect to, any individual with respect to whom child
285 support obligations are sought to be enforced; and

286 (B) Available state return information reflected on any state
287 return filed by, or with respect to, any individual described in
288 paragraph (A) of this subdivision relating to the amount of the
289 individual's gross income, but only if such information is not
290 reasonably available from any other source.

291 (2) *Restrictions on disclosure.* — The tax commissioner
292 shall disclose return information under subdivision (1) of this
293 subsection only for purposes of, and to the extent necessary in,
294 collecting child support obligations from and locating individu-
295 als owing such obligations.

296 (n) *Disclosure of names and addresses for purposes of jury*
297 *selection.* —

298 The tax commissioner shall, at the written request of a
299 circuit court or the chief judge thereof, provide to the circuit
300 court within thirty calendar days a list of the names and
301 addresses of individuals residing in the county or counties
302 comprising the circuit who have filed a state personal income
303 tax return for the preceding tax year. The list provided shall set
304 forth names and addresses only. The request shall be limited to
305 counties within the jurisdiction of the requesting court.

306 The court, upon receiving the list or lists, shall direct the
307 jury commission of the appropriate county to merge the names
308 and addresses with other lists used in compiling a master list of
309 residents of the county from which prospective jurors are to be
310 chosen. Immediately after the master list is compiled, the jury
311 commission shall cause the list provided by the tax commis-
312 sioner and all copies thereof to be destroyed and shall certify to
313 the circuit court and to the tax commissioner that the lists have
314 been destroyed.

CHAPTER 305

(Com. Sub. for S. B. 661 — By Senators Ross,
Mitchell, Sharpe and Rowe)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article one, chapter forty-four of said code, all relating to estate taxes; phasing out state estate tax in accordance with the provisions of the federal estate tax; providing that nonprobate inventory form be submitted to the tax commissioner by clerk of county commission, together with appraisal form; providing that nonprobate inventory form shall be confidential tax information; and eliminating requirement that certain forms be mailed to heirs and beneficiaries.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-2. Definitions.

§11-11-7. Nonprobate inventory of estates; penalties.

§11-11-2. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-
2 tration of this article, terms defined in subsection (b) shall have
3 the meanings ascribed to them by this section, unless a different
4 meaning is clearly required by either the context in which the
5 term is used, or by specific definition.

6 (b) Terms defined.

7 (1) *Alien.* — The term “alien” means a decedent who, at the
8 time of his or her death, was not domiciled in this state or any
9 other state of the United States and was not a citizen of the
10 United States.

11 (2) *Decedent or transferor.* — The terms “decedent” or
12 “transferor” are used herein interchangeably and mean a
13 deceased natural person by or from whom a transfer is made;
14 and include any testator, intestate grantor, bargainor, vendor,
15 assignor, donor, joint tenant or insured.

16 (3) *Delegate*. — The term “delegate” in the phrase “or his
17 or her delegate,” when used in reference to the tax commis-
18 sioner, means any officer or employee of the state tax depart-
19 ment duly authorized by the tax commissioner directly, or
20 indirectly by one or more redelegations of authority, to perform
21 the function or functions mentioned or described in the context.

22 (4) *Estate or property*. — The terms “estate” or “property”
23 mean the real or personal property or interest therein of a
24 decedent or transferor and includes all the following:

25 (A) All intangible personal property of a resident decedent
26 within or without this state or subject to the jurisdiction of this
27 state.

28 (B) All intangible personal property in this state belonging
29 to a deceased nonresident of the United States, including all
30 stock of a corporation organized under the laws of this state, or
31 which has its principal place of business or does the major part
32 of its business in this state, or of a federal corporation or
33 national bank which has its principal place of business or does
34 the major part of its business in this state, excluding, however,
35 savings accounts and savings and loan associations operating
36 under the authority of the state banking commissioner or the
37 federal home loan bank board, and bank deposits, unless those
38 deposits are held and used in connection with a business
39 conducted or operated, in whole or in part, in this state.

40 (5) *Federal credit*. — The term “federal credit” means the
41 maximum amount of the credit for state death taxes allowable
42 by Section 2011, credit against federal estate tax (or Section
43 2102 in the case of an alien) and Section 2602, credit against
44 the federal tax on generation-skipping transfers of the United
45 States Internal Revenue Code of 1954, as amended or renum-
46 bered, or in successor provisions of the laws of the United
47 States, in respect to a decedent’s taxable estate. The term

48 “maximum amount” shall be construed so as to take full
49 advantage of such credit as the laws of the United States may
50 allow: *Provided*, That in no event shall such amount be less
51 than the federal credit allowable by Sections 2011, 2102 and
52 2602 of the Internal Revenue Code, as it existed on January
53 one, one thousand nine hundred eighty-five: *Provided, however*,
54 That for estates of decedents dying after the thirty-first day of
55 December, two thousand one, such amount may in no event be
56 less than the federal credit allowable by Sections 2011, 2102,
57 and 2604 of the Internal Revenue Code, as amended by the
58 estate, gift and generation - skipping transfer tax provisions of
59 Public Law 107-16, the Economic Growth and Tax Relief
60 Reconciliation Act of 2001.

61 (6) *Gross estate*. — The term “gross estate” means the
62 gross estate of the decedent as defined in Section 2031 (or
63 Section 2103 in the case of an alien) of the United States
64 Internal Revenue Code of 1954, as amended or renumbered, or
65 in successor provisions of the laws of the United States.

66 (7) *Includes and including*. — The words “includes” and
67 “including” when used in a definition contained in this article
68 shall not be deemed to exclude other things otherwise within
69 the meaning of the term being defined.

70 (8) *Intangible personal property*. — The term “intangible
71 personal property” means incorporeal personal property
72 including deposits in banks, negotiable instruments, mortgages,
73 debts, receivables, shares of stock, bonds, notes, credits,
74 evidences of an interest in personal property, evidences of debt
75 and chooses in action generally.

76 (9) *Internal revenue code*. — The term “Internal Revenue
77 Code” means the United States Internal Revenue Code of 1954,
78 as amended and in effect on the first day of January, one
79 thousand nine hundred eighty-five, including all changes to

80 such code enacted subsequent to such date, that are similar to
81 or a replacement of the section cited or referred to.

82 (10) *Net estate*. — The term “net estate” means the net
83 estate of the decedent as defined in Section 2051 of the United
84 States Internal Revenue Code of 1954, as amended or renum-
85 bered, or in successor provisions of the laws of the United
86 States.

87 (11) *Nonresident*. — The term “nonresident” means a
88 decedent who was a citizen of the United States, but was
89 domiciled outside the state of West Virginia at the time of his
90 or her death.

91 (12) *Notice*. — The term “notice” means a written notice
92 sent to the last known address of the addressee and shall be
93 effective upon mailing.

94 (13) *Other state*. — The term “other state” means any state
95 of the fifty states in the United States (other than this state) and
96 includes the District of Columbia and any possession or
97 territory of the United States.

98 (14) *Person*. — The term “person” includes natural person,
99 corporation, society, association, partnership, joint venture,
100 syndicate, estate, trust or other entity under which business or
101 other activities may be conducted.

102 (15) *Person required to file*. — The phrase “person required
103 to file” means any person, including a personal representative,
104 qualified heir, distributee or trustee required or permitted to file
105 a federal estate tax return, or a West Virginia estate tax return,
106 pursuant to the provisions of the Internal Revenue Code or this
107 article.

108 (16) *Personal representative.* — The terms “personal
109 representative” and “fiduciary” are used interchangeably and mean:

110 (A) The personal representative of the estate of the dece-
111 dent, appointed, qualified and acting within this state; or

112 (B) If there is no personal representative appointed,
113 qualified and acting within this state, then any person in actual
114 or constructive possession of the West Virginia gross estate of
115 the decedent. The term “personal representative” includes the
116 executor of a will, the administrator of the estate of a deceased
117 person, the administrator of such estate with the will annexed,
118 the administrator de bonis non of such estate, whether there be
119 a will or not, the sheriff or other officer lawfully charged with
120 the administration of the estate of a deceased person, and every
121 other curator or committee of a decedent’s estate for or against
122 whom suits may be brought for causes of action which accrued
123 to or against such decedent.

124 (17) *Real property situated in this state.* — The phrase “real
125 property situated in this state” means any and all interests in
126 real property located in this state, including leasehold interests,
127 royalty interests, production payments and working interests in
128 coal, oil, gas and other natural resources.

129 (18) *Resident.* — The term “resident” means a decedent
130 who was domiciled in the state of West Virginia at the time of
131 his or her death.

132 (19) *State.* — The term “state” means any state, territory or
133 possession of the United States and the District of Columbia.

134 (20) *Tangible personal property.* — The term “tangible
135 personal property” means corporeal personal property including
136 money.

137 (21) *Tax*. — The term “tax” means the tax imposed by this
138 article, and includes any additions to tax, penalties and interest
139 imposed by this article or article ten of this chapter.

140 (22) *Tax commissioner*. — The term “tax commissioner”
141 means the tax commissioner of the state of West Virginia or his
142 or her delegate.

143 (23) *Taxable estate*. — The term “taxable estate” means the
144 taxable estate of the decedent as defined in Section 2051 (or
145 Section 2106 in the case of an alien) of the United States
146 Internal Revenue Code of 1954, as amended or renumbered, or
147 in successor provisions of the laws of the United States.

148 (24) *Taxpayer*. — The term “taxpayer” means any person
149 required to file a return for the tax imposed by this article and
150 any person liable for payment of the tax imposed by this article.

151 (25) *This code*. — The term “this code” means the code of
152 West Virginia, one thousand nine hundred thirty-one, as
153 amended.

154 (26) *This state*. — The term “this state” means the state of
155 West Virginia.

156 (27) *Transfer*. — The term “transfer” means “transfer” as
157 defined in Sections 2001, 2101, 2601 of the United States
158 Internal Revenue Code of 1954, as amended or renumbered, or
159 in successor provisions of the laws of the United States. It
160 includes the passage of any property, or any interest therein, or
161 income therefrom, in possession or enjoyment, present or
162 future, in trust or otherwise, whether by inheritance, descent,
163 devise, succession, bequest, grant, deed, bargain, sale, gift or
164 appointment.

165 (28) *Transferee*. — The term “transferee” means any
166 person to whom a transfer is made and includes any legatee,

167 devisee, heir, next of kin, grantee, donee, vendee, assignee,
168 successor, survivor or beneficiary.

169 (29) *United States*. — The term “United States”, when used
170 in a geographical sense, includes only the fifty states and the
171 District of Columbia.

172 (30) *Value*. — The term “value” means the value of
173 property, the value of the gross estate or the value of the taxable
174 estate as finally determined for federal estate tax purposes
175 under the laws of the United States relating to federal estate
176 taxes.

177 (c) Any term used in this article shall have the same
178 meaning as when used in a comparable context in the laws of
179 the United States relative to estate taxes, unless a different
180 meaning is clearly required by the provisions of this article.
181 Any reference in this article to the laws of the United States
182 relating to federal estate taxes shall mean the provisions of the
183 Internal Revenue Code of 1954, and amendments thereto, and
184 other provisions of the laws of the United States relating to
185 federal estate taxes, as the same may be or become effective at
186 any time or from time to time.

§11-11-7. Nonprobate inventory of estates; penalties.

1 (a) The personal representative of every resident decedent
2 who owned or had an interest in any nonprobate personal
3 property, and the personal representative of every nonresident
4 decedent who owned or had an interest in any nonprobate
5 personal property which is a part of the taxable estate located in
6 West Virginia, shall, under oath, list and appraise on a
7 nonprobate inventory form prescribed by the tax commissioner,
8 all tangible and intangible nonprobate personal property owned
9 by the decedent or in which the decedent had an interest, at its
10 fair market value on the date of the decedent’s death. The

11 nonprobate personal property to be included on the nonprobate
12 inventory form includes, but is not limited to, the following:

13 (1) Personalty held as joint tenants with right of
14 survivorship with one or more third parties;

15 (2) Personalty payable on the death of the decedent to one
16 or more third parties;

17 (3) Personalty held by the decedent as a life tenant;

18 (4) Insurance on the decedent's life payable to beneficiaries
19 other than the executor or administrator of the decedent's
20 estate;

21 (5) Powers of appointment;

22 (6) Annuities;

23 (7) Transfers during the decedent's life in which any
24 beneficial interest passes by trust or otherwise to another person
25 by reason of the death of the decedent;

26 (8) Revocable transfers in trust or otherwise;

27 (9) Taxable gifts under section 2503 of the United States
28 Internal Revenue Code of 1986; and

29 (10) All other nonprobate personalty included in the federal
30 gross estate of the decedent.

31 (b) For purposes of this section, "nonprobate personal
32 property" means all property which does not pass by operation
33 of the decedent's will or by the laws of intestate descent and
34 distribution or is otherwise not subject to administration in a
35 decedent's estate at common law.

36 (c) The personal representative shall prepare the nonprobate
37 inventory form and file it, together with the appraisement form
38 required by section fourteen, article one, chapter forty-four of
39 this code for estates of decedents dying on or after the thirteenth
40 day of July, two thousand one, with the clerk of the county
41 commission or the fiduciary supervisor within ninety days of
42 the date of qualification of the personal representative in this
43 state: *Provided*, That for estates of decedents dying on or after
44 the said thirteenth day of July but before the date the amend-
45 ments to this section become effective, the requirement to file
46 the nonprobate inventory form with the clerk or supervisor shall
47 apply only if that form has not already been filed with tax
48 commissioner.

49 (d) Any personal representative who fails to comply with
50 the provisions of this section, without reasonable cause, is
51 guilty of a misdemeanor and, upon conviction thereof, shall be
52 fined not less than twenty-five dollars nor more than five
53 hundred dollars.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

***§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition of appraise- ment and inventory forms; and hiring of experts.**

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and personal
3 probate property, or any real estate or personal probate property
4 in which the deceased person had an interest at the time of his
5 or her death, as provided in this section.

***Clerk's Note:** This section was also amended by S. B. 474 (Chapter 142) which passed subsequent to this act.

6 (b) After having taken the appropriate oath, the personal
7 representative shall, on the appraisal form prescribed by the
8 tax commissioner, list the following items owned by the
9 decedent or in which the decedent had an interest and the fair
10 market value of the items at the date of the decedent's death:

11 (1) All probate and nonprobate real estate including, but not
12 limited to, real estate owned by the decedent, as a joint tenant
13 with right of survivorship with one or more parties, as a life
14 estate, subject to a power of appointment of the decedent, or in
15 which any beneficial interest passes by trust or otherwise to
16 another person by reason of the death of the decedent; and

17 (2) All probate personal property, whether tangible or
18 intangible, including, but not limited to, stocks and bonds, bank
19 accounts, mortgages, notes, cash, life insurance payable to the
20 executor or administrator of the decedent's estate and all other
21 items of probate personal property.

22 (c) Any real estate or interest in real estate so appraised
23 must be identified with particularity and description. The
24 personal representative shall identify the source of title in the
25 decedent and the location of the realty for purposes of real
26 property ad valorem taxation.

27 (d) For purposes of this section, the term "probate personal
28 property" means all property which passes by or under the
29 decedent's will or by the laws of intestate descent and distribu-
30 tion or is otherwise subject to administration in a decedent's
31 estate under common law.

32 (e) The personal representative shall complete, under oath,
33 a questionnaire included in the appraisal form designed by
34 the tax commissioner for the purpose of reporting to the tax
35 commissioner whether the estate of the decedent is subject to
36 estate tax as provided in article eleven, chapter eleven of this
37 code and whether the decedent owned or had an interest in any
38 nonprobate personal property.

39 (f) The appraisal form must be executed and signed by
40 the personal representative. The original appraisal form and
41 two copies thereof, together with the completed and notarized
42 nonprobate inventory form required by section seven, article
43 eleven, chapter eleven of this code, shall be returned to the
44 clerk of the county commission by whom the personal represen-
45 tative was appointed or to the fiduciary supervisor within ninety
46 days of the date of qualification of the personal representative.
47 The clerk or supervisor shall inspect the appraisal form to
48 determine whether it is in proper form. If the appraisal form
49 is returned to a fiduciary supervisor, within ten days after being
50 received and approved, the supervisor shall deliver the docu-
51 ments to the clerk of the county commission. Upon receipt of
52 the appraisal form, the clerk of the county commission
53 shall record it with the certificate of approval of the supervisor
54 and mail a certified copy of the appraisal form, together
55 with the unrecorded nonprobate inventory form, to the tax
56 commissioner. The date of return of an appraisal form must
57 be entered by the clerk of the county commission in his or her
58 record of fiduciaries. The nonprobate inventory form shall be
59 considered confidential tax return information subject to the
60 provisions of section five-d, article ten, chapter eleven of this
61 code and may not be disclosed by the clerk of the county
62 commission and his or her officers and employees or former
63 officers and employees, except to the tax commissioner as
64 provided in this section. Nothing in this section shall be
65 construed to hinder, abrogate, or prevent disclosure of informa-
66 tion as authorized in section thirty-five, article eleven of said
67 chapter.

68 (g) An executed and signed appraisal form is prima
69 facie evidence:

70 (1) Of the value of the property listed;

71 (2) That the property is subject to administration; and

72 (3) That the property was received by the personal repre-
73 sentative.

74 (h) Any personal representative who refuses or declines,
75 without reasonable cause, to comply with the provisions of this
76 section is guilty of a misdemeanor and, upon conviction
77 thereof, shall be fined not less than twenty-five dollars nor more
78 than five hundred dollars.

79 (i) Every personal representative has authority to retain the
80 services of an expert as may be appropriate to assist and advise
81 him or her concerning his or her duties in appraising any asset
82 or property pursuant to the provisions of this section. An expert
83 so retained shall be compensated a reasonable sum by the
84 personal representative from the assets of the estate. The
85 compensation and its reasonableness is subject to review and
86 approval by the county commission, upon recommendation of
87 the fiduciary supervisor.

88 (j) Except as specifically provided in subdivision (1),
89 subsection (b) of this section and in section seven, article
90 eleven, chapter eleven of this code, the personal representative
91 is not required to list and appraise nonprobate real estate or
92 nonprobate personal property of the decedent on the forms
93 required in this section or section seven of said article.

CHAPTER 306

**(Com. Sub. for S. B. 651 — By Senators Redd, Anderson, Snyder,
Chafin, Mitchell, Love, Caldwell, Facemyer, Hunter, Rowe, Kessler,
Helmick, Fanning, Edgell, Minard, Unger, Sharpe and Sprouse)**

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to explicitly eliminating community care services from the severance tax definition of “certain health care services”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of tax or privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

1 (a) *Imposition of tax.* — Upon every person exercising the
2 privilege of engaging or continuing within this state in the
3 business of severing, extracting, reducing to possession and
4 producing for sale, profit or commercial use coal, limestone or
5 sandstone, or in the business of furnishing certain health care
6 services, there is hereby levied and shall be collected from
7 every person exercising such privilege an annual privilege tax.

8 (b) *Rate and measure of tax.* — The tax imposed in
9 subsection (a) of this section shall be five percent of the gross
10 value of the natural resource produced or the health care service
11 provided, as shown by the gross income derived from the sale
12 or furnishing thereof by the producer or the provider of the
13 health care service, except as otherwise provided in this article.
14 In the case of coal, this five percent rate of tax includes the
15 thirty-five one hundredths of one percent additional severance

16 tax on coal imposed by the state for the benefit of counties and
17 municipalities as provided in section six of this article.

18 (c) *“Certain health care services” defined.* — For purposes
19 of this section, the term “certain health care services” means,
20 and is limited to, behavioral health services.

21 (d) *Tax in addition to other taxes.* — The tax imposed by
22 this section shall apply to all persons severing or processing (or
23 both severing and processing) in this state natural resources
24 enumerated in subsection (a) of this section and to all persons
25 providing certain health care services in this state as enumer-
26 ated in subsection (c) of this section and shall be in addition to
27 all other taxes imposed by law.

28 (e) *Effective date.* — This section, as amended in the year
29 one thousand nine hundred ninety-three, shall apply to gross
30 proceeds derived after the thirty-first day of May of such year.
31 The language of this section, as in effect on the first day of
32 January of such year, shall apply to gross proceeds derived
33 prior to the first day of June of such year and, with respect to
34 such gross proceeds, shall be fully and completely preserved.

35 (f) *Reduction of severance tax rate.* — For tax years
36 beginning after the effective date of this subsection, any person
37 exercising the privilege of engaging within this state in the
38 business of severing coal for the purposes provided in subsec-
39 tion (a) of this section shall be allowed a reduced rate of tax on
40 coal mined by underground methods in accordance with the
41 following:

42 (i) For coal mined by underground methods from seams
43 with an average thickness of thirty-seven inches to forty-five
44 inches, the tax imposed in subsection (a) of this section shall be
45 two percent of the gross value of the coal produced. For coal
46 mined by underground methods from seams with an average
47 thickness of less than thirty-seven inches, the tax imposed in

48 subsection (a) of this section shall be one percent of the gross
49 value of the coal produced. Gross value is determined from the
50 sale of the mined coal by the producer. This rate of tax includes
51 the thirty-five one hundredths of one percent additional
52 severance tax imposed by the state for the benefit of counties
53 and municipalities as provided in section six of this article.

54 (ii) This reduced rate of tax applies to any new underground
55 mine producing coal after the effective date of this subsection,
56 from seams of less than forty-five inches in average thickness
57 or any existing mine that has not produced coal from seams
58 forty-five inches or less in thickness in the one hundred eighty
59 days immediately preceding the effective date of this subsec-
60 tion.

61 (iii) The seam thickness shall be based on the weighted
62 average isopach mapping of actual coal thickness by mine as
63 certified by a professional engineer.

CHAPTER 307

**(S. B. 731 — By Senators Wooton, Caldwell, Hunter, Kessler,
Minard, Mitchell, Redd, Ross, Rowe, Snyder, Deem and Facemyer)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the tax commissioner to develop a single form for reporting oil and gas production to all government agencies; setting forth legislative findings; and requiring that reports be accessible in other formats.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; tax commissioner to develop a uniform reporting form.

1 (a) *Imposition of tax.* — For the privilege of engaging or
2 continuing within this state in the business of severing natural
3 gas or oil for sale, profit or commercial use, there is hereby
4 levied and shall be collected from every person exercising such
5 privilege an annual privilege tax: *Provided*, That effective for
6 all taxable periods beginning on or after the first day of January,
7 two thousand, there is an exemption from the imposition of the
8 tax provided for in this article on the following: (1) Free natural
9 gas provided to any surface owner; (2) natural gas produced
10 from any well which produced an average of less than five
11 thousand cubic feet of natural gas per day during the calendar
12 year immediately preceding a given taxable period; (3) oil
13 produced from any oil well which produced an average of less
14 than one-half barrel of oil per day during the calendar year
15 immediately preceding a given taxable period; and (4) for a
16 maximum period of ten years, all natural gas or oil produced
17 from any well which has not produced marketable quantities of
18 natural gas or oil for five consecutive years immediately
19 preceding the year in which a well is placed back into produc-
20 tion and thereafter produces marketable quantities of natural
21 gas or oil.

22 (b) *Rate and measure of tax.* — The tax imposed in
23 subsection (a) of this section shall be five percent of the gross
24 value of the natural gas or oil produced, as shown by the gross
25 proceeds derived from the sale thereof by the producer, except
26 as otherwise provided in this article.

27 (c) *Tax in addition to other taxes.* — The tax imposed by
28 this section shall apply to all persons severing gas or oil in this
29 state, and shall be in addition to all other taxes imposed by law.

30 (d) (1) The Legislature finds that in addition to the produc-
31 tion reports and financial records which must be filed by oil and
32 gas producers with the state tax commissioner in order to
33 comply with this section, oil and gas producers are required to
34 file other production reports with other agencies, including, but
35 not limited to, the office of oil and gas, the public service
36 commission and county assessors. The reports required to be
37 filed are largely duplicative, the compiling of the information
38 in different formats is unnecessarily time consuming and costly,
39 and the filing of one report or the sharing of information by
40 agencies of government would reduce the cost of compliance
41 for oil and gas producers.

42 (2) On or before the first day of July, two thousand three,
43 the tax commissioner shall design a common form that may be
44 used for each of the reports regarding production that are
45 required to be filed by oil and gas producers, which form shall
46 readily permit a filing without financial information when such
47 information is unnecessary. The commissioner shall also design
48 such forms so as to permit filings in different formats, includ-
49 ing, but not limited to, electronic formats.

CHAPTER 308

(S. B. 285 — By Senators Bailey and Wooton)

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an exemption from the consumers sales tax for the service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia bureau for public health or both.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption
3 set forth in this subsection may, in lieu of paying the tax
4 imposed by this article and filing a claim for refund, execute a
5 certificate of exemption, in the form required by the tax
6 commissioner, and deliver it to the vendor of the property or
7 service, in the manner required by the tax commissioner.

8 However, the tax commissioner may, by rule, specify those
9 exemptions authorized in this subsection for which exemptions
10 certificates are not required. The following sales of tangible
11 personal property and services are exempt as provided in this
12 subsection:

13 (1) Sales of gas, steam and water delivered to consumers
14 through mains or pipes and sales of electricity;

15 (2) Sales of textbooks required to be used in any of the
16 schools of this state or in any institution in this state which
17 qualifies as a nonprofit or educational institution subject to the
18 West Virginia department of education and the arts, the board
19 of trustees of the university system of West Virginia or the
20 board of directors for colleges located in this state;

21 (3) Sales of property or services to this state, its institutions
22 or subdivisions, governmental units, institutions or subdivisions
23 of other states: *Provided*, That the law of the other state
24 provides the same exemption to governmental units or subdivi-
25 sions of this state and to the United States, including agencies
26 of federal, state or local governments for distribution in public
27 welfare or relief work;

28 (4) Sales of vehicles which are titled by the division of
29 motor vehicles and which are subject to the tax imposed by
30 section four, article three, chapter seventeen-a of this code or
31 like tax;

32 (5) Sales of property or services to churches which make no
33 charge whatsoever for the services they render: *Provided*, That
34 the exemption granted in this subdivision applies only to
35 services, equipment, supplies, food for meals and materials
36 directly used or consumed by these organizations and does not
37 apply to purchases of gasoline or special fuel;

38 (6) Sales of tangible personal property or services to a
39 corporation or organization which has a current registration
40 certificate issued under article twelve of this chapter, which is
41 exempt from federal income taxes under Section 501(c)(3) or
42 (c)(4) of the Internal Revenue Code of 1986, as amended, and
43 which is:

44 (A) A church or a convention or association of churches as
45 defined in Section 170 of the Internal Revenue Code of 1986,
46 as amended;

47 (B) An elementary or secondary school which maintains a
48 regular faculty and curriculum and has a regularly enrolled
49 body of pupils or students in attendance at the place in this state
50 where its educational activities are regularly carried on;

51 (C) A corporation or organization which annually receives
52 more than one half of its support from any combination of gifts,
53 grants, direct or indirect charitable contributions or membership
54 fees;

55 (D) An organization which has no paid employees and its
56 gross income from fund raisers, less reasonable and necessary
57 expenses incurred to raise the gross income (or the tangible
58 personal property or services purchased with the net income),
59 is donated to an organization which is exempt from income
60 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue
61 Code of 1986, as amended;

62 (E) A youth organization, such as the girl scouts of the
63 United States of America, the boy scouts of America or the
64 YMCA Indian guide/princess program and the local affiliates
65 thereof, which is organized and operated exclusively for
66 charitable purposes and has as its primary purpose the
67 nonsectarian character development and citizenship training of
68 its members;

69 (F) For purposes of this subsection:

70 (i) The term “support” includes, but is not limited to:

71 (I) Gifts, grants, contributions or membership fees;

72 (II) Gross receipts from fund raisers which include receipts
73 from admissions, sales of merchandise, performance of services
74 or furnishing of facilities in any activity which is not an
75 unrelated trade or business within the meaning of Section 513
76 of the Internal Revenue Code of 1986, as amended;

77 (III) Net income from unrelated business activities, whether
78 or not the activities are carried on regularly as a trade or
79 business;

80 (IV) Gross investment income as defined in Section 509(e)
81 of the Internal Revenue Code of 1986, as amended;

82 (V) Tax revenues levied for the benefit of a corporation or
83 organization either paid to or expended on behalf of the
84 organization; and

85 (VI) The value of services or facilities (exclusive of
86 services or facilities generally furnished to the public without
87 charge) furnished by a governmental unit referred to in Section
88 170(c)(1) of the Internal Revenue Code of 1986, as amended,
89 to an organization without charge. This term does not include
90 any gain from the sale or other disposition of property which
91 would be considered as gain from the sale or exchange of a
92 capital asset, or the value of an exemption from any federal,
93 state or local tax or any similar benefit;

94 (ii) The term “charitable contribution” means a contribution
95 or gift to or for the use of a corporation or organization,
96 described in Section 170(c)(2) of the Internal Revenue Code of
97 1986, as amended; and

98 (iii) The term “membership fee” does not include any
99 amounts paid for tangible personal property or specific services
100 rendered to members by the corporation or organization;

101 (G) The exemption allowed by this subdivision does not
102 apply to sales of gasoline or special fuel or to sales of tangible
103 personal property or services to be used or consumed in the
104 generation of unrelated business income as defined in Section
105 513 of the Internal Revenue Code of 1986, as amended. The
106 provisions of this subdivision apply to sales made after the
107 thirtieth day of June, one thousand nine hundred eighty-nine:
108 *Provided*, That the exemption granted in this subdivision
109 applies only to services, equipment, supplies and materials used
110 or consumed in the activities for which the organizations
111 qualify as tax exempt organizations under the Internal Revenue
112 Code and does not apply to purchases of gasoline or special
113 fuel;

114 (7) An isolated transaction in which any taxable service or
115 any tangible personal property is sold, transferred, offered for
116 sale or delivered by the owner of the property or by his or her
117 representative for the owner’s account, the sale, transfer, offer
118 for sale or delivery not being made in the ordinary course of
119 repeated and successive transactions of like character by the
120 owner or on his or her account by the representative: *Provided*,
121 That nothing contained in this subdivision may be construed to
122 prevent an owner who sells, transfers or offers for sale tangible
123 personal property in an isolated transaction through an auction-
124 eer from availing himself or herself of the exemption provided
125 in this subdivision, regardless of where the isolated sale takes
126 place. The tax commissioner may propose a legislative rule for
127 promulgation pursuant to article three, chapter twenty-nine-a of
128 this code which he or she considers necessary for the efficient
129 administration of this exemption;

130 (8) Sales of tangible personal property or of any taxable
131 services rendered for use or consumption in connection with the
132 commercial production of an agricultural product the ultimate
133 sale of which is subject to the tax imposed by this article or
134 which would have been subject to tax under this article:
135 *Provided*, That sales of tangible personal property and services
136 to be used or consumed in the construction of or permanent
137 improvement to real property and sales of gasoline and special
138 fuel are not exempt: *Provided, however*, That nails and fencing
139 may not be considered as improvements to real property;

140 (9) Sales of tangible personal property to a person for the
141 purpose of resale in the form of tangible personal property:
142 *Provided*, That sales of gasoline and special fuel by distributors
143 and importers is taxable except when the sale is to another
144 distributor for resale: *Provided, however*, That sales of building
145 materials or building supplies or other property to any person
146 engaging in the activity of contracting, as defined in this article,
147 which is to be installed in, affixed to or incorporated by that
148 person or his or her agent into any real property, building or
149 structure is not exempt under this subdivision;

150 (10) Sales of newspapers when delivered to consumers by
151 route carriers;

152 (11) Sales of drugs dispensed upon prescription and sales
153 of insulin to consumers for medical purposes;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a

161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services:

164 (A) For purposes of this subdivision, the term “casual and
165 occasional sales not conducted in a repeated manner or in the
166 ordinary course of repetitive and successive transactions of like
167 character” means sales of tangible personal property or services
168 at fund raisers sponsored by a corporation or organization
169 which is exempt, under subdivision (6) of this subsection, from
170 payment of the tax imposed by this article on its purchases,
171 when the fund raisers are of limited duration and are held no
172 more than six times during any twelve-month period and
173 “limited duration” means no more than eighty-four consecutive
174 hours; and

175 (B) The provisions of this subdivision apply to sales made
176 after the thirtieth day of June, one thousand nine hundred
177 eighty-nine;

178 (15) Sales of property or services to a school which has
179 approval from the board of trustees of the university system of
180 West Virginia or the board of directors of the state college
181 system to award degrees, which has its principal campus in this
182 state, and which is exempt from federal and state income taxes
183 under Section 501(c)(3) of the Internal Revenue Code of 1986,
184 as amended: *Provided*, That sales of gasoline and special fuel
185 are taxable;

186 (16) Sales of mobile homes to be used by purchasers as
187 their principal year-round residence and dwelling: *Provided*,
188 That these mobile homes are subject to tax at the three-percent
189 rate;

190 (17) Sales of lottery tickets and materials by licensed
191 lottery sales agents and lottery retailers authorized by the state

192 lottery commission, under the provisions of article twenty-two,
193 chapter twenty-nine of this code;

194 (18) Leases of motor vehicles titled pursuant to the provi-
195 sions of article three, chapter seventeen-a of this code to lessees
196 for a period of thirty or more consecutive days. This exemption
197 applies to leases executed on or after the first day of July, one
198 thousand nine hundred eighty-seven, and to payments under
199 long-term leases executed before that date for months of the
200 lease beginning on or after that date;

201 (19) Notwithstanding the provisions of section eighteen of
202 this article or any other provision of this article to the contrary,
203 sales of propane to consumers for poultry house heating
204 purposes, with any seller to the consumer who may have prior
205 paid the tax in his or her price, to not pass on the same to the
206 consumer, but to make application and receive refund of the tax
207 from the tax commissioner pursuant to rules which are promul-
208 gated after being proposed for legislative approval in accor-
209 dance with chapter twenty-nine-a of this code by the tax
210 commissioner;

211 (20) Any sales of tangible personal property or services
212 purchased after the thirtieth day of September, one thousand
213 nine hundred eighty-seven, and lawfully paid for with food
214 stamps pursuant to the federal food stamp program codified in
215 7 U.S.C. §2011, *et seq.*, as amended, or with drafts issued
216 through the West Virginia special supplement food program for
217 women, infants and children codified in 42 U.S.C. §1786;

218 (21) Sales of tickets for activities sponsored by elementary
219 and secondary schools located within this state;

220 (22) Sales of electronic data processing services and related
221 software: *Provided*, That, for the purposes of this subdivision,
222 “electronic data processing services” means: (A) The process-
223 ing of another’s data, including all processes incident to

224 processing of data such as keypunching, keystroke verification,
225 rearranging or sorting of previously documented data for the
226 purpose of data entry or automatic processing and changing the
227 medium on which data is sorted, whether these processes are
228 done by the same person or several persons; and (B) providing
229 access to computer equipment for the purpose of processing
230 data or examining or acquiring data stored in or accessible to
231 the computer equipment;

232 (23) Tuition charged for attending educational summer
233 camps;

234 (24) Dispensing of services performed by one corporation,
235 partnership or limited liability company for another corpora-
236 tion, partnership or limited liability company when the entities
237 are members of the same controlled group or are related
238 taxpayers as defined in Section 267 of the Internal Revenue
239 Code. "Control" means ownership, directly or indirectly, of
240 stock, equity interests or membership interests possessing fifty
241 percent or more of the total combined voting power of all
242 classes of the stock of a corporation, equity interests of a
243 partnership or membership interests of a limited liability
244 company entitled to vote or ownership, directly or indirectly, of
245 stock, equity interests or membership interests possessing fifty
246 percent or more of the value of the corporation, partnership or
247 limited liability company;

248 (25) Food for the following are exempt:

249 (A) Food purchased or sold by a public or private school,
250 school-sponsored student organizations or school-sponsored
251 parent-teacher associations to students enrolled in the school or
252 to employees of the school during normal school hours; but not
253 those sales of food made to the general public;

254 (B) Food purchased or sold by a public or private college or
255 university or by a student organization officially recognized by

256 the college or university to students enrolled at the college or
257 university when the sales are made on a contract basis so that
258 a fixed price is paid for consumption of food products for a
259 specific period of time without respect to the amount of food
260 product actually consumed by the particular individual contract-
261 ing for the sale and no money is paid at the time the food
262 product is served or consumed;

263 (C) Food purchased or sold by a charitable or private
264 nonprofit organization, a nonprofit organization or a govern-
265 mental agency under a program to provide food to low-income
266 persons at or below cost;

267 (D) Food sold by a charitable or private nonprofit organiza-
268 tion, a nonprofit organization or a governmental agency under
269 a program operating in West Virginia for a minimum of five
270 years to provide food at or below cost to individuals who
271 perform a minimum of two hours of community service for
272 each unit of food purchased from the organization;

273 (E) Food sold in an occasional sale by a charitable or
274 nonprofit organization, including volunteer fire departments
275 and rescue squads, if the purpose of the sale is to obtain revenue
276 for the functions and activities of the organization and the
277 revenue obtained is actually expended for that purpose;

278 (F) Food sold by any religious organization at a social or
279 other gathering conducted by it or under its auspices, if the
280 purpose in selling the food is to obtain revenue for the functions
281 and activities of the organization and the revenue obtained from
282 selling the food is actually used in carrying on those functions
283 and activities: *Provided*, That purchases made by the organiza-
284 tions are not exempt as a purchase for resale;

285 (26) Sales of food by little leagues, midget football leagues,
286 youth football or soccer leagues, band boosters or other school
287 or athletic booster organizations supporting activities for grades

288 kindergarten through twelve and similar types of organizations,
289 including scouting groups and church youth groups, if the
290 purpose in selling the food is to obtain revenue for the functions
291 and activities of the organization and the revenues obtained
292 from selling the food is actually used in supporting or carrying
293 on functions and activities of the groups: *Provided*, That the
294 purchases made by the organizations are not exempt as a
295 purchase for resale;

296 (27) Charges for room and meals by fraternities and
297 sororities to their members: *Provided*, That the purchases made
298 by a fraternity or sorority are not exempt as a purchase for
299 resale;

300 (28) Sales of or charges for the transportation of passengers
301 in interstate commerce;

302 (29) Sales of tangible personal property or services to any
303 person which this state is prohibited from taxing under the laws
304 of the United States or under the constitution of this state;

305 (30) Sales of tangible personal property or services to any
306 person who claims exemption from the tax imposed by this
307 article or article fifteen-a of this chapter pursuant to the
308 provision of any other chapter of this code;

309 (31) Charges for the services of opening and closing a
310 burial lot;

311 (32) Sales of livestock, poultry or other farm products in
312 their original state by the producer of the livestock, poultry or
313 other farm products or a member of the producer's immediate
314 family who is not otherwise engaged in making retail sales of
315 tangible personal property; and sales of livestock sold at public
316 sales sponsored by breeders or registry associations or livestock
317 auction markets: *Provided*, That the exemptions allowed by this
318 subdivision apply to sales made on or after the first day of July,

319 one thousand nine hundred ninety, and may be claimed without
320 presenting or obtaining exemption certificates: *Provided,*
321 *however,* That the farmer shall maintain adequate records;

322 (33) Sales of motion picture films to motion picture
323 exhibitors for exhibition if the sale of tickets or the charge for
324 admission to the exhibition of the film is subject to the tax
325 imposed by this article and sales of coin-operated video arcade
326 machines or video arcade games to a person engaged in the
327 business of providing the machines to the public for a charge
328 upon which the tax imposed by this article is remitted to the tax
329 commissioner: *Provided,* That the exemption provided in this
330 subdivision applies to sales made on or after the first day of
331 July, one thousand nine hundred ninety, and may be claimed by
332 presenting to the seller a properly executed exemption certifi-
333 cate;

334 (34) Sales of aircraft repair, remodeling and maintenance
335 services when the services are to an aircraft operated by a
336 certified or licensed carrier of persons or property, or by a
337 governmental entity, or to an engine or other component part of
338 an aircraft operated by a certificated or licensed carrier of
339 persons or property, or by a governmental entity and sales of
340 tangible personal property that is permanently affixed or
341 permanently attached as a component part of an aircraft owned
342 or operated by a certificated or licensed carrier of persons or
343 property, or by a governmental entity, as part of the repair,
344 remodeling or maintenance service and sales of machinery,
345 tools or equipment, directly used or consumed exclusively in
346 the repair, remodeling or maintenance of aircraft, aircraft
347 engines or aircraft component parts, for a certificated or
348 licensed carrier of persons or property, or for a governmental
349 entity;

350 (35) Charges for memberships or services provided by
351 health and fitness organizations relating to personalized fitness
352 programs;

353 (36) Sales of services by individuals who baby-sit for a
354 profit: *Provided*, That the gross receipts of the individual from
355 the performance of baby-sitting services do not exceed five
356 thousand dollars in a taxable year;

357 (37) Sales of services after the thirtieth day of June, one
358 thousand nine hundred ninety-seven, by public libraries or by
359 libraries at academic institutions or by libraries at institutions
360 of higher learning;

361 (38) Commissions received after the thirtieth day of June,
362 one thousand nine hundred ninety-seven, by a manufacturer's
363 representative;

364 (39) Sales of primary opinion research services after the
365 thirtieth day of June, one thousand nine hundred ninety-seven,
366 when:

367 (A) The services are provided to an out-of-state client;

368 (B) The results of the service activities, including, but not
369 limited to, reports, lists of focus group recruits and compilation
370 of data are transferred to the client across state lines by mail,
371 wire or other means of interstate commerce, for use by the
372 client outside the state of West Virginia; and

373 (C) The transfer of the results of the service activities is an
374 indispensable part of the overall service.

375 For the purpose of this subdivision, the term "primary
376 opinion research" means original research in the form of
377 telephone surveys, mall intercept surveys, focus group research,
378 direct mail surveys, personal interviews and other data collec-

379 tion methods commonly used for quantitative and qualitative
380 opinion research studies;

381 (40) Sales of property or services after the thirtieth day of
382 June, one thousand nine hundred ninety-seven, to persons
383 within the state when those sales are for the purposes of the
384 production of value-added products: *Provided*, That the
385 exemption granted in this subdivision applies only to services,
386 equipment, supplies and materials directly used or consumed by
387 those persons engaged solely in the production of value-added
388 products: *Provided, however*, That this exemption may not be
389 claimed by any one purchaser for more than five consecutive
390 years, except as otherwise permitted in this section.

391 For the purpose of this subdivision, the term “value-added
392 product” means the following products derived from processing
393 a raw agricultural product, whether for human consumption or
394 for other use: For purposes of this subdivision, the following
395 enterprises qualify as processing raw agricultural products into
396 value-added products: Those engaged in the conversion of:

397 (A) Lumber into furniture, toys, collectibles and home
398 furnishings;

399 (B) Fruits into wine;

400 (C) Honey into wine;

401 (D) Wool into fabric;

402 (E) Raw hides into semifinished or finished leather prod-
403 ucts;

404 (F) Milk into cheese;

405 (G) Fruits or vegetables into a dried, canned or frozen
406 product;

407 (H) Feeder cattle into commonly accepted slaughter
408 weights;

409 (I) Aquatic animals into a dried, canned, cooked or frozen
410 product; and

411 (J) Poultry into a dried, canned, cooked or frozen product;

412 (41) After the thirtieth day of June, one thousand nine
413 hundred ninety-seven, sales of music instructional services by
414 a music teacher and artistic services or artistic performances of
415 an entertainer or performing artist pursuant to a contract with
416 the owner or operator of a retail establishment, restaurant, inn,
417 bar, tavern, sports or other entertainment facility or any other
418 business location in this state in which the public or a limited
419 portion of the public may assemble to hear or see musical
420 works or other artistic works be performed for the enjoyment of
421 the members of the public there assembled when the amount
422 paid by the owner or operator for the artistic service or artistic
423 performance does not exceed three thousand dollars: *Provided,*
424 That nothing contained herein may be construed to deprive
425 private social gatherings, weddings or other private parties from
426 asserting the exemption set forth in this subdivision. For the
427 purposes of this exemption, artistic performance or artistic
428 service means and is limited to the conscious use of creative
429 power, imagination and skill in the creation of aesthetic
430 experience for an audience present and in attendance and
431 includes, and is limited to, stage plays, musical performances,
432 poetry recitations and other readings, dance presentation,
433 circuses and similar presentations and does not include the
434 showing of any film or moving picture, gallery presentations of
435 sculptural or pictorial art, nude or strip show presentations,
436 video games, video arcades, carnival rides, radio or television
437 shows or any video or audio taped presentations or the sale or
438 leasing of video or audio tapes, airshows, or any other public
439 meeting, display or show other than those specified herein:

440 *Provided, however,* That nothing contained herein may be
441 construed to exempt the sales of tickets from the tax imposed in
442 this article. The state tax commissioner shall propose a legisla-
443 tive rule pursuant to article three, chapter twenty-nine-a of this
444 code establishing definitions and eligibility criteria for asserting
445 this exemption which is not inconsistent with the provisions set
446 forth herein: *Provided further,* That nude dancers or strippers
447 may not be considered as entertainers for the purposes of this
448 exemption;

449 (42) After the thirtieth day of June, one thousand nine
450 hundred ninety-seven, charges to a member by a membership
451 association or organization which is exempt from paying
452 federal income taxes under Section 501(c)(3) or (c)(6) of the
453 Internal Revenue Code of 1986, as amended, for membership
454 in the association or organization, including charges to mem-
455 bers for newsletters prepared by the association or organization
456 for distribution primarily to its members, charges to members
457 for continuing education seminars, workshops, conventions,
458 lectures or courses put on or sponsored by the association or
459 organization, including charges for related course materials
460 prepared by the association or organization or by the speaker or
461 speakers for use during the continuing education seminar,
462 workshop, convention, lecture or course, but not including any
463 separate charge or separately stated charge for meals, lodging,
464 entertainment or transportation taxable under this article:
465 *Provided,* That the association or organization pays the tax
466 imposed by this article on its purchases of meals, lodging,
467 entertainment or transportation taxable under this article for
468 which a separate or separately stated charge is not made. A
469 membership association or organization which is exempt from
470 paying federal income taxes under Section 501(c)(3) or (c)(6)
471 of the Internal Revenue Code of 1986, as amended, may elect
472 to pay the tax imposed under this article on the purchases for
473 which a separate charge or separately stated charge could apply
474 and not charge its members the tax imposed by this article or

475 the association or organization may avail itself of the exemption
476 set forth in subdivision (9) of this subsection relating to
477 purchases of tangible personal property for resale and then
478 collect the tax imposed by this article on those items from its
479 member;

480 (43) Sales of governmental services or governmental
481 materials after the thirtieth day of June, one thousand nine
482 hundred ninety-seven, by county assessors, county sheriffs,
483 county clerks or circuit clerks in the normal course of local
484 government operations;

485 (44) Direct or subscription sales by the division of natural
486 resources of the magazine currently entitled "Wonderful West
487 Virginia" and by the division of culture and history of the
488 magazine currently entitled "Goldenseal" and the journal
489 currently entitled "West Virginia History";

490 (45) Sales of soap to be used at car wash facilities;

491 (46) Commissions received by a travel agency from an
492 out-of-state vendor; and

493 (47) The service of providing technical evaluations for
494 compliance with federal and state environmental standards
495 provided by environmental and industrial consultants who have
496 formal certification through the West Virginia department of
497 environmental protection or the West Virginia bureau for public
498 health or both. For purposes of this exemption, the service of
499 providing technical evaluations for compliance with federal and
500 state environmental standards includes those costs of tangible
501 personal property directly used in providing such services that
502 are separately billed to the purchaser of such services, and on
503 which the tax imposed by this article has previously been paid
504 by the service provider.

505 (b) *Refundable exemptions.* — Any person having a right or
506 claim to any exemption set forth in this subsection shall first
507 pay to the vendor the tax imposed by this article and then apply
508 to the tax commissioner for a refund or credit, or as provided in
509 section nine-d of this article, give to the vendor his or her West
510 Virginia direct pay permit number. The following sales of
511 tangible personal property and services are exempt from tax as
512 provided in this subsection:

513 (1) Sales of property or services to bona fide charitable
514 organizations who make no charge whatsoever for the services
515 they render: *Provided*, That the exemption granted in this
516 subdivision applies only to services, equipment, supplies, food,
517 meals and materials directly used or consumed by these
518 organizations and does not apply to purchases of gasoline or
519 special fuel;

520 (2) Sales of services, machinery, supplies and materials
521 directly used or consumed in the activities of manufacturing,
522 transportation, transmission, communication, production of
523 natural resources, gas storage, generation or production or
524 selling electric power, provision of a public utility service or the
525 operation of a utility service or the operation of a utility
526 business, in the businesses or organizations named in this
527 subdivision and does not apply to purchases of gasoline or
528 special fuel;

529 (3) Sales of property or services to nationally chartered
530 fraternal or social organizations for the sole purpose of free
531 distribution in public welfare or relief work: *Provided*, That
532 sales of gasoline and special fuel are taxable;

533 (4) Sales and services, firefighting or station house equip-
534 ment, including construction and automotive, made to any
535 volunteer fire department organized and incorporated under the

536 laws of the state of West Virginia: *Provided*, That sales of
537 gasoline and special fuel are taxable; and

538 (5) Sales of building materials or building supplies or other
539 property to an organization qualified under Section 501(c)(3) or
540 (c)(4) of the Internal Revenue Code of 1986, as amended,
541 which are to be installed in, affixed to or incorporated by the
542 organization or its agent into real property or into a building or
543 structure which is or will be used as permanent low-income
544 housing, transitional housing, an emergency homeless shelter,
545 a domestic violence shelter or an emergency children and youth
546 shelter if the shelter is owned, managed, developed or operated
547 by an organization qualified under Section 501(c)(3) or (c)(4)
548 of the Internal Revenue Code of 1986, as amended.

CHAPTER 309

(Com. Sub. for H. B. 4017 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-g, relating generally to consumers sales and service tax; creating new exemption for purchases of back-to-school clothing and school supplies by consumers during a three-day period in August, two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand two.

1 (a) The sale of an article of clothing or footwear designed
2 to be worn on or about the human body and the sale of school
3 supplies, such as pens, pencils, binders, notebooks, reference
4 books, book bags, lunch boxes, computers, computer accesso-
5 ries and calculators, is exempted from the taxes imposed by this
6 article if:

7 (1) The sales price of the article or school supply, except
8 for a computer or computer accessory, is less than one hundred
9 dollars;

10 (2) The sales price of a computer or computer accessory is
11 less than one hundred dollars after credit for any manufacturer's
12 rebate; and

13 (3) The sale takes place during a period beginning at 12:01
14 a.m. eastern daylight time on the first Friday in August, two
15 thousand two, and ending at 12 midnight eastern daylight time
16 on the following Sunday in August, two thousand two.

17 (b) This section does not apply to:

18 (1) Any special clothing or footwear that is primarily
19 designed for athletic activity or protective use and that is not
20 normally worn except when used for the athletic activity or
21 protective use for which it is designed;

- 22 (2) Accessories, including jewelry, handbags, luggage,
23 umbrellas, wallets, watches, and similar items carried on or
24 about the human body, without regard to whether worn on the
25 body in a manner characteristic of clothing;
- 26 (3) The rental of clothing, footwear or school supplies;
- 27 (4) Furniture; and
- 28 (5) Tangible personal property for use in a trade or busi-
29 ness.

CHAPTER 310

**(S. B. 245 — By Senators Helmick, Anderson, Love, Minear, Ross,
Sharpe, Fanning, Minard, Rowe, Mitchell and Hunter)**

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-b, relating to authorizing state participation in review and amendment of a multistate streamlined sales and use tax agreement; providing definitions; authorizing tax commissioner to enter into the agreement when the agreement requires each cooperating state to abide by certain requirements; authorizing tax commissioner to establish certain standards and take other actions; limitations on the effect of the agreement; and limitations on liability of sellers, certified service providers and certified automated system providers.

Be it enacted by the Legislature of West Virginia:

That chapter eleven 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-b, to read as follows:

ARTICLE 15B. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-1. Title.

§11-15B-2. Definitions.

§11-15B-3. Legislative finding.

§11-15B-4. Authority to participate in multistate negotiations.

§11-15B-5. Authority to enter agreement.

§11-15B-6. Relationship to state law.

§11-15B-7. Agreement requirements.

§11-15B-8. Cooperating sovereigns.

§11-15B-9. Limited binding and beneficial effect.

§11-15B-10. Seller and third party liability.

§11-15B-1. Title.

1 The provisions of this article shall be known as and referred
2 to as the “Simplified Sales and Use Tax Administration Act”.

§11-15B-2. Definitions.

1 As used in this article:

2 (1) “Agreement” means the streamlined sales and use tax
3 agreement.

4 (2) “Certified automated system” means software certified
5 jointly by the states that are signatories to the agreement to
6 calculate the tax imposed by each jurisdiction on a transaction,
7 determine the amount of tax to remit to the appropriate state
8 and maintain a record of the transaction.

9 (3) “Certified service provider” means an agent certified
10 jointly by the states that are signatories to the agreement to
11 perform all of the seller’s sales tax functions.

12 (4) "Person" means an individual, trust, estate, fiduciary,
13 partnership, limited liability company, limited liability partner-
14 ship, corporation or any other legal entity.

15 (5) "Sales tax" means the tax levied under article fifteen of
16 this chapter.

17 (6) "Seller" means any person making sales, leases or
18 rentals of personal property or services.

19 (7) "State" means any state of the United States and the
20 District of Columbia.

21 (8) "Use tax" means the tax levied under article fifteen-a of
22 this chapter.

§11-15B-3. Legislative finding.

1 The Legislature finds that a simplified sales and use tax
2 system will reduce and over time eliminate the burden and cost
3 for all vendors to collect this state's sales and use tax. The
4 Legislature further finds that this state should participate in
5 multistate discussions to review and/or amend the terms of the
6 agreement to simplify and modernize sales and use tax adminis-
7 tration in order to substantially reduce the burden of tax
8 compliance for all sellers and for all types of commerce.

§11-15B-4. Authority to participate in multistate negotiations.

1 For the purposes of reviewing and/or amending the agree-
2 ment embodying the simplification requirements as contained
3 in section seven of this article, the state shall enter into
4 multistate discussions. For purposes of such discussions, the
5 state shall be represented by no more than four delegates, two
6 of whom shall be appointed by the president of the Senate and
7 the speaker of the House of Delegates. The other two delegates
8 shall be the secretary of tax and revenue and the tax commis-
9 sioner, or their respective designees.

§11-15B-5. Authority to enter agreement.

1 Subject to approval of the Legislature, by concurrent
2 resolution or general law, the tax commissioner is authorized
3 and directed to enter into the streamlined sales and use tax
4 agreement with one or more states to simplify and modernize
5 sales and use tax administration in order to substantially reduce
6 the burden of tax compliance for all sellers and for all types of
7 commerce. In furtherance of the agreement, the tax commis-
8 sioner is authorized to act jointly with other states that are
9 members of the agreement to establish standards for certifica-
10 tion of a certified service provider and certified automated
11 system and establish performance standards for multistate
12 sellers. The tax commissioner is further authorized to take other
13 actions reasonably required to implement the provisions set
14 forth in this article. Other actions authorized by this section
15 include, but are not limited to, the adoption of rules and the
16 joint procurement, with other member states, of goods and
17 services in furtherance of the cooperative agreement. The tax
18 commissioner or the commissioner's designee is authorized to
19 represent this state before the other states that are signatories to
20 the agreement.

§11-15B-6. Relationship to state law.

1 No provision of the agreement authorized by this article, in
2 whole or part, invalidates or amends any provision of the law of
3 this state. Adoption of the agreement by this state does not
4 amend or modify any law of this state. Implementation of any
5 condition of the agreement in this state, whether adopted
6 before, at or after membership of this state in the agreement,
7 must be by the action of this state.

§11-15B-7. Agreement requirements.

1 The tax commissioner may not enter into the streamlined
2 sales and use tax agreement unless the agreement requires each
3 state to abide by the following requirements:

4 (1) *Simplified state rate.* — The agreement must set
5 restrictions to limit over time the number of state rates.

6 (2) *Uniform standards.* — The agreement must establish
7 uniform standards for the following:

8 (A) The sourcing of transactions to taxing jurisdictions;

9 (B) The administration of exempt sales; and

10 (C) Sales and use tax returns and remittances.

11 (3) *Central registration.* — The agreement must provide a
12 central electronic registration system that allows a seller to
13 register to collect and remit sales and use taxes for all signatory
14 states.

15 (4) *No nexus attribution.* — The agreement must provide
16 that registration with the central registration system and the
17 collection of sales and use taxes in the signatory states will not
18 be used as a factor in determining whether the seller has nexus
19 with a state for any tax.

20 (5) *Local sales and use taxes.* — The agreement must
21 provide for reduction of the burdens of complying with local
22 sales and use taxes through the following:

23 (A) Restricting variances between the state and local tax
24 bases;

25 (B) Requiring states to administer any sales and use taxes
26 levied by local jurisdictions within the state so that sellers
27 collecting and remitting these taxes will not have to register or
28 file returns with, remit funds to or be subject to independent
29 audits from local taxing jurisdictions;

30 (C) Restricting the frequency of changes in the local sales
31 and use tax rates and setting effective dates for the application

32 of local jurisdictional boundary changes to local sales and use
33 taxes; and

34 (D) Providing notice of changes in local sales and use tax
35 rates and of changes in the boundaries of local taxing jurisdic-
36 tions.

37 (6) *Monetary allowances.* — The agreement must outline
38 any monetary allowances that are to be provided by the states
39 to sellers or certified service providers.

40 (7) *State compliance.* — The agreement must require each
41 state to certify compliance with the terms of the agreement
42 prior to joining and to maintain compliance, under the laws of
43 the member state, with all provisions of the agreement while a
44 member.

45 (8) *Consumer privacy.* — The agreement must require each
46 state to adopt a uniform policy for certified service providers
47 that protects the privacy of consumers and maintains the
48 confidentiality of tax information.

49 (9) *Advisory councils.* — The agreement must provide for
50 the appointment of an advisory council of private sector
51 representatives and an advisory council of nonmember state
52 representatives to consult with in the administration of the
53 agreement.

§11-15B-8. Cooperating sovereigns.

1 The agreement authorized by this article is an accord
2 among individual cooperating sovereigns in furtherance of their
3 governmental functions. The agreement provides a mechanism
4 among the member states to establish and maintain a coopera-
5 tive, simplified system for the application and administration of
6 sales and use taxes under the duly adopted law of each member
7 state.

§11-15B-9. Limited binding and beneficial effect.

1 (a) The agreement authorized by this article binds and
2 inures only to the benefit of this state and the other member
3 states. No person, other than a member state, is an intended
4 beneficiary of the agreement. Any benefit to a person other than
5 a state is established by the law of this state and the other
6 member states and not by the terms of the agreement.

7 (b) Consistent with subsection (a) of this section, no person
8 shall have any cause of action or defense under the agreement
9 or by virtue of this state's approval of the agreement. No person
10 may challenge, in any action brought under any provision of
11 law, any action or inaction by any department, agency or other
12 instrumentality of this state, or any political subdivision of this
13 state on the ground that the action or inaction is inconsistent
14 with the agreement.

15 (c) No law of this state, or the application thereof, may be
16 declared invalid as to any person or circumstance on the ground
17 that the provision or application is inconsistent with the
18 agreement.

§11-15B-10. Seller and third party liability.

1 (a) (1) A certified service provider is the agent of a seller,
2 with whom the certified service provider has contracted, for the
3 collection and remittance of sales and use taxes. As the seller's
4 agent, the certified service provider is liable for sales and use
5 tax due each member state on all sales transactions it processes
6 for the seller except as set out in this section.

7 (2) A seller that contracts with a certified service provider
8 is not liable to the state for sales or use tax due on transactions
9 processed by the certified service provider unless the seller
10 misrepresented the type of items it sells or committed fraud. In
11 the absence of probable cause to believe that the seller has
12 committed fraud or made a material misrepresentation, the

13 seller is not subject to audit on the transactions processed by the
14 certified service provider. A seller is subject to audit for
15 transactions not processed by the certified service provider. The
16 member states acting jointly may perform a system check of the
17 seller and review the seller's procedures to determine if the
18 certified service provider's system is functioning properly and
19 the extent to which the seller's transactions are being processed
20 by the certified service provider.

21 (b) A person that provides a certified automated system is
22 responsible for the proper functioning of that system and is
23 liable to the state for underpayments of tax attributable to errors
24 in the functioning of the certified automated system. A seller
25 that uses a certified automated system remains responsible and
26 is liable to the state for reporting and remitting tax.

27 (c) A seller that has a proprietary system for determining
28 the amount of tax due on transactions and has signed an
29 agreement establishing a performance standard for that system
30 is liable for the failure of the system to meet the performance
31 standard.

CHAPTER 311

**(S. B. 140 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act

by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 two thousand, but prior to the first day of January, two thousand
11 two, shall be given effect in determining the taxes imposed by
12 this article to the same extent those changes are allowed for
13 federal income tax purposes, whether the changes are retroac-
14 tive or prospective, but no amendment to the laws of the United
15 States made on or after the first day of January, two thousand
16 two, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Employer
21 contributions to a medical savings account established pursuant
22 to said sections, are not “wages” for purposes of withholding
23 under section seventy-one of this article.

24 (c) *Surtax*. — The term “surtax” means the twenty percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code and the twenty percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter
30 which are collected by the tax commissioner as tax collected
31 under this article.

32 (d) *Effective date*. — The amendments to this section
33 enacted in the year two thousand two are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that begin prior to the first day of January, two
36 thousand one, the law in effect for each of those years shall be
37 fully preserved as to that year, except as provided in this
38 section.

CHAPTER 312

(S. B. 713 — By Senators Hunter, Edgell, Bailey,
Caldwell, Minard, Oliverio, Boley and Deem)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting the first twenty thousand dollars in benefits derived from military retirement from personal income tax obligations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross income
2 of a resident individual means his or her federal adjusted gross
3 income as defined in the laws of the United States for the
4 taxable year with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross income.*
6 — There shall be added to federal adjusted gross income unless
7 already included therein the following items:

8 (1) Interest income on obligations of any state other than
9 this state or of a political subdivision of any other state unless
10 created by compact or agreement to which this state is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from federal
14 income tax but not from state income taxes;

15 (3) Any deduction allowed when determining federal
16 adjusted gross income for federal income tax purposes for the
17 taxable year that is not allowed as a deduction under this article
18 for the taxable year;

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from
21 which is exempt from tax under this article, to the extent
22 deductible in determining federal adjusted gross income;

23 (5) Interest on a depository institution tax-exempt savings
24 certificate which is allowed as an exclusion from federal gross
25 income under Section 128 of the Internal Revenue Code, for the
26 federal taxable year;

27 (6) The amount of a lump sum distribution for which the
28 taxpayer has elected under Section 402(e) of the Internal
29 Revenue Code of 1986, as amended, to be separately taxed for
30 federal income tax purposes; and

31 (7) Amounts withdrawn from a medical savings account
32 established by or for an individual under section twenty, article
33 fifteen, chapter thirty-three of this code or section fifteen,
34 article sixteen of said chapter, that are used for a purpose other
35 than payment of medical expenses, as defined in those sections.

36 (c) *Modifications reducing federal adjusted gross income.*
37 — There shall be subtracted from federal adjusted gross income
38 to the extent included therein:

39 (1) Interest income on obligations of the United States and
40 its possessions to the extent includable in gross income for
41 federal income tax purposes;

42 (2) Interest or dividend income on obligations or securities
43 of any authority, commission or instrumentality of the United
44 States or of the state of West Virginia to the extent includable
45 in gross income for federal income tax purposes but exempt
46 from state income taxes under the laws of the United States or
47 of the state of West Virginia, including federal interest or
48 dividends paid to shareholders of a regulated investment
49 company, under Section 852 of the Internal Revenue Code for
50 taxable years ending after the thirtieth day of June, one thou-
51 sand nine hundred eighty-seven;

52 (3) Any amount included in federal adjusted gross income
53 for federal income tax purposes for the taxable year that is not

54 included in federal adjusted gross income under this article for
55 the taxable year;

56 (4) The amount of any refund or credit for overpayment of
57 income taxes imposed by this state, or any other taxing jurisdic-
58 tion, to the extent properly included in gross income for federal
59 income tax purposes;

60 (5) Annuities, retirement allowances, returns of contribu-
61 tions and any other benefit received under the West Virginia
62 public employees retirement system, the West Virginia state
63 teachers retirement system and all forms of military retirement,
64 including regular armed forces, reserves and national guard,
65 including any survivorship annuities derived therefrom, to the
66 extent includable in gross income for federal income tax
67 purposes: *Provided*, That notwithstanding any provisions in this
68 code to the contrary this modification shall be limited to the
69 first two thousand dollars of benefits received under the West
70 Virginia public employees retirement system, the West Virginia
71 state teachers retirement system and, including any survivorship
72 annuities derived therefrom, to the extent includable in gross
73 income for federal income tax purposes for taxable years
74 beginning after the thirty-first day of December, one thousand
75 nine hundred eighty-six; and the first two thousand dollars of
76 benefits received under any federal retirement system to which
77 Title 4 U. S. C. §111 applies: *Provided, however*, That the total
78 modification under this paragraph shall not exceed two thou-
79 sand dollars per person receiving retirement benefits and this
80 limitation shall apply to all returns or amended returns filed
81 after the last day of December, one thousand nine hundred
82 eighty-eight;

83 (6) Retirement income received in the form of pensions and
84 annuities after the thirty-first day of December, one thousand
85 nine hundred seventy-nine, under any West Virginia police,
86 West Virginia firemen's retirement system or the West Virginia

87 state police death, disability and retirement fund, the West
88 Virginia state police retirement system or the West Virginia
89 deputy sheriff retirement system, including any survivorship
90 annuities derived from any of these programs, to the extent
91 includable in gross income for federal income tax purposes;

92 (7) (A) For taxable years beginning after the thirty-first day
93 of December, two thousand, and ending prior to the first day of
94 January, two thousand three, an amount equal to two percent
95 multiplied by the number of years of active duty in the armed
96 forces of the United States of America with the product thereof
97 multiplied by the first thirty thousand dollars of military
98 retirement income, including retirement income from the
99 regular armed forces, reserves and national guard paid by the
100 United States or by this state after the thirty-first day of
101 December, two thousand, including any survivorship annuities,
102 to the extent included in gross income for federal income tax
103 purposes for the taxable year.

104 (B) For taxable years beginning after the thirty-first day of
105 December, two thousand two, the first twenty thousand dollars
106 of military retirement income, including retirement income
107 from the regular armed forces, reserves and national guard paid
108 by the United States or by this state after the thirty-first day of
109 December, two thousand two, including any survivorship
110 annuities, to the extent included in gross income for federal
111 income tax purposes for the taxable year.

112 (C) In the event that any of the provisions of this subdivi-
113 sion are found by a court of competent jurisdiction to violate
114 either the constitution of this state or of the United States, or is
115 held to be extended to persons other than specified in this
116 subdivision, this subdivision shall become null and void by
117 operation of law.

118 (8) Federal adjusted gross income in the amount of eight
119 thousand dollars received from any source after the thirty-first
120 day of December, one thousand nine hundred eighty-six, by any
121 person who has attained the age of sixty-five on or before the
122 last day of the taxable year, or by any person certified by proper
123 authority as permanently and totally disabled, regardless of age,
124 on or before the last day of the taxable year, to the extent
125 includable in federal adjusted gross income for federal tax
126 purposes: *Provided*, That if a person has a medical certification
127 from a prior year and he or she is still permanently and totally
128 disabled, a copy of the original certificate is acceptable as proof
129 of disability. A copy of the form filed for the federal disability
130 income tax exclusion is acceptable: *Provided, however*, That:

131 (i) Where the total modification under subdivisions (1), (2),
132 (5), (6) and (7) of this subsection is eight thousand dollars per
133 person or more, no deduction shall be allowed under this
134 subdivision; and

135 (ii) Where the total modification under subdivisions (1),
136 (2), (5), (6) and (7) of this subsection is less than eight thousand
137 dollars per person, the total modification allowed under this
138 subdivision for all gross income received by that person shall
139 be limited to the difference between eight thousand dollars and
140 the sum of modifications under subdivisions (1), (2), (5), (6)
141 and (7) of this subsection;

142 (9) Federal adjusted gross income in the amount of eight
143 thousand dollars received from any source after the thirty-first
144 day of December, one thousand nine hundred eighty-six, by the
145 surviving spouse of any person who had attained the age of
146 sixty-five or who had been certified as permanently and totally
147 disabled, to the extent includable in federal adjusted gross
148 income for federal tax purposes: *Provided*, That:

149 (i) Where the total modification under subdivisions (1), (2),
150 (5), (6), (7) and (8) of this subsection is eight thousand dollars
151 or more, no deduction shall be allowed under this subdivision;
152 and

153 (ii) Where the total modification under subdivisions (1),
154 (2), (5), (6), (7) and (8) of this subsection is less than eight
155 thousand dollars per person, the total modification allowed
156 under this subdivision for all gross income received by that
157 person shall be limited to the difference between eight thousand
158 dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8)
159 of this subsection;

160 (10) Contributions from any source to a medical savings
161 account established by or for the individual pursuant to section
162 twenty, article fifteen, chapter thirty-three of this code or
163 section fifteen, article sixteen of said chapter, plus interest
164 earned on the account, to the extent includable in federal
165 adjusted gross income for federal tax purposes: *Provided*, That
166 the amount subtracted pursuant to this subdivision for any one
167 taxable year may not exceed two thousand dollars plus interest
168 earned on the account. For married individuals filing a joint
169 return, the maximum deduction is computed separately for each
170 individual; and

171 (11) Any other income which this state is prohibited from
172 taxing under the laws of the United States.

173 (d) *Modification for West Virginia fiduciary adjustment.* —
174 There shall be added to or subtracted from federal adjusted
175 gross income, as the case may be, the taxpayer's share, as
176 beneficiary of an estate or trust, of the West Virginia fiduciary
177 adjustment determined under section nineteen of this article.

178 (e) *Partners and S corporation shareholders.* — The
179 amounts of modifications required to be made under this
180 section by a partner or an S corporation shareholder, which

181 relate to items of income, gain, loss or deduction of a partner-
182 ship or an S corporation, shall be determined under section
183 seventeen of this article.

184 (f) *Husband and wife.* — If husband and wife determine
185 their federal income tax on a joint return but determine their
186 West Virginia income taxes separately, they shall determine
187 their West Virginia adjusted gross incomes separately as if their
188 federal adjusted gross incomes had been determined separately.

189 (g) *Effective date.* — (1) Changes in the language of this
190 section enacted in the year two thousand shall apply to taxable
191 years beginning after the thirty-first day of December, two
192 thousand.

193 (2) Changes in the language of this section enacted in the
194 year two thousand two shall apply to taxable years beginning
195 after the thirty-first day of December, two thousand two.

CHAPTER 313

(H. B. 2372 — By Delegates Michael,
Leach, Warner, Hall and Anderson)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ninety-three, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the procedures by which moneys are deposited into the fund reserved for the payment of income tax refunds; redesignating the fund as the personal income tax reserve fund; clarifying that the fund be administered by the secretary of

administration; specifying purpose for which the moneys of the fund may be expended; clarifying legislative intent that the moneys of the fund are not part of the general revenue fund of the state treasury; and clarifying that amounts in the fund which exceed amounts needed for the purpose of the fund may be transferred by appropriation of the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-93. Personal income tax reserve fund.

1 (a) Of the revenue collected under this article the state
2 treasurer shall credit the amount as the tax commissioner may
3 determine to be necessary for refunds to which taxpayers shall
4 be entitled under this article to the personal income tax reserve
5 fund described in subsection (b) of this section. The state
6 treasurer shall credit all remaining interest, penalties and taxes
7 collected under this article to the general revenue fund of the
8 state treasury.

9 (b) The fund established by the prior enactment of this
10 section is hereby reestablished as an account in the state
11 treasury designated the "personal income tax reserve fund".
12 The fund shall be administered by the secretary of administra-
13 tion and expended only for the purpose specified in subsection
14 (c) of this section. Notwithstanding any provision of section
15 two, article two, chapter twelve of this code to the contrary, the
16 moneys of the fund are not part of the general revenue fund of
17 the state treasury.

18 (c) The moneys of the personal income tax reserve fund
19 must be expended to make timely refunds of moneys to which
20 taxpayers may be entitled under this article as certified by the
21 tax commissioner. Amounts in the fund which are found from
22 time to time to exceed funds needed for the purposes set forth
23 in this section may be transferred to other accounts or funds and
24 redesignated for other purposes by appropriation of the Legisla-
25 ture.

CHAPTER 314

(S. B. 114 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 two thousand, but prior to the first day of January, two thousand
12 two, shall be given effect in determining the taxes imposed by
13 this article to the same extent those changes are allowed for
14 federal income tax purposes, whether the changes are retroac-
15 tive or prospective, but no amendment to the laws of the United
16 States made on or after the first day of January, two thousand
17 two, shall be given any effect.

18 (b) The term “Internal Revenue Code of 1986” means the
19 Internal Revenue Code of the United States enacted by the
20 Federal Tax Reform Act of 1986 and includes the provisions of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the Federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the
24 Federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year two thousand two are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that begin prior to the first day of January, two

35 thousand one, the law in effect for each of those years shall be
36 fully preserved as to that year, except as provided in this
37 section.

CHAPTER 315

(S. B. 431 — By Senators Helmick, Love, Ross, Anderson and Rowe)

[Passed February 28, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six and seven, article one-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-a, all relating to timbering operations and the licensure thereof; establishing modified notification requirements and supervisory requirements for timbering operations; establishing criminal penalties for certain violations of said article; and providing for the enforcement thereof by the division of forestry.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

19-1B-12a. Criminal penalties.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

1 (a) No person may conduct timbering operations, purchase
2 timber or buy logs for resale until he or she has obtained the
3 license pursuant to this article from the division and met all
4 other requirements pertaining to his or her timbering operation
5 or other wood product business contained in this article:
6 *Provided*, That a person who severs or removes, or hires or
7 contracts with another to sever or remove, standing trees from
8 his or her own land is specifically exempted from the timbering
9 operations licensure requirement of this section during any
10 calendar year in which all trees severed or removed by or for
11 this owner have an aggregate stumpage value that does not
12 exceed fifteen thousand five hundred twenty-eight dollars:
13 *Provided, however*, That a person hired or contracted to sever
14 or remove standing trees from the land of another is specifically
15 exempted from the timbering operations licensure requirement
16 of this section during any calendar year in which all trees
17 severed or removed by this hired or contracted person have an
18 aggregate stumpage value that does not exceed fifteen thousand
19 five hundred twenty-eight dollars.

20 (b) An applicant for a license shall submit an application on
21 a form to be designed and provided by the director. A fee of
22 fifty dollars shall be submitted with each application and with
23 each annual renewal of the license. The application shall, at a
24 minimum, contain the following information:

25 (1) Name, address and telephone number of the applicant
26 and if the applicant is a business entity other than a sole

27 proprietor, the names and addresses of the principals, officers
28 and resident agent of the business entity;

29 (2) The applicant's West Virginia business registration
30 number or a copy of the current West Virginia business
31 registration certificate. The division of forestry shall submit this
32 information and a list of all applicants to the tax commissioner
33 each quarter of the calendar year to ensure compliance with
34 payment of severance, income withholding and all other
35 applicable state taxes; and

36 (3) Any other information required by the director.

37 (c) The director shall promulgate legislative rules pursuant
38 to the provisions of article three, chapter twenty-nine-a of this
39 code which provide procedures by which a license may be
40 acquired, suspended or revoked under this article. The Legisla-
41 ture expressly finds that these legislative rules are the proper
42 subject of emergency legislative rules which may be promul-
43 gated in accordance with the provision of section fifteen, article
44 three, section twenty-nine-a of this code.

45 (d) The director shall prescribe a form providing the
46 contents and manner of posting notice at the timbering opera-
47 tion. The notice shall include, at a minimum, the operator's
48 name and license number.

**§19-1B-6. Notification of duration of timbering operations or
harvesting of timber for sale; requirements
thereof.**

1 (a) In addition to any other requirement of this article, no
2 person may conduct timbering operations and no person may
3 sever trees for sale unless the person notifies the director of the
4 specific location on which the timbering operations or harvest-
5 ing of timber are to be conducted. The notification shall be
6 made in a manner designated by the director.

7 (1) All persons who conduct timbering operations or who
8 harvest timber for sale, including those persons who are
9 specifically exempted from the licensure requirements of
10 section four of this article, shall provide to the director of the
11 division notification of harvesting of timber, which shall
12 include:

13 (A) The name and address of the harvester of timber;

14 (B) The name and addresses of the owner or owners of the
15 property upon which the timber is located;

16 (C) The business tax number or social security number of
17 the harvester of timber; and

18 (D) An acknowledgment that the harvester of timber will
19 conduct the harvest according to best management practices.

20 (2) In addition to the requirements of subdivision (1) of this
21 subsection, persons who are subject to the licensure require-
22 ments of section four of this article shall provide to the director
23 of the division notification of timbering operations, which shall
24 include, at a minimum, the following:

25 (A) The specific topographic location where the timbering
26 operations are to be conducted;

27 (B) The approximate dates that the timbering operation will
28 begin and end;

29 (C) The approximate acreage over which timbering
30 operations are contemplated;

31 (D) The names and addresses of the owner or owners of the
32 timber to be harvested and, if different, the names and addresses
33 of the owner or owners of the property upon which the timber
34 is located;

35 (E) A sketch map of the proposed logging operation,
36 including haul roads, landings and stream crossings;

37 (F) A description of the sediment control practices to be
38 used by the logger during the timber harvesting operation;

39 (G) An acknowledgment that the operator will conduct the
40 operations in compliance with the provisions of this article and
41 any applicable rules promulgated pursuant to this article;

42 (H) A certification satisfactory to the director that all
43 permits required under state law have been obtained or applied
44 for and that all pertinent requirements for obtaining any permit
45 applied for, but not yet obtained, have been complied with; and

46 (I) The name or names of the person or persons who will be
47 supervising the timbering operations at the site of the operations
48 and his or her logger certification numbers.

49 (b) The notification shall be made within at least three days
50 of the beginning of the operation.

51 (c) Further notice shall be given if the operation is to be, for
52 any reason, closed more than seven days before the estimated
53 date for closing provided under paragraph (B), subdivision (2),
54 subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

1 (a) Any individual supervising any licensed timbering
2 operation, or any individual supervising any timbering operation
3 that is not exempted from the licensing requirements set
4 forth in section four of this article, must be certified pursuant to
5 this section.

6 (b) The director is responsible for the development of
7 standards and criteria for establishment of a regularly scheduled
8 program of education, training and examination that all persons
9 must successfully complete in order to be certified to supervise
10 any timbering operation. The program for certified loggers shall
11 provide, at a minimum, for education and training in the safe
12 conduct of timbering operations, in first aid procedures and in
13 the use of best management practices to prevent, insofar as
14 possible, soil erosion on timbering operations. The goals of this
15 program will be to assure that timbering operations are con-
16 ducted in accordance with applicable state and federal safety
17 regulations in a manner that is safest for the individuals
18 conducting the operations and that they are performed in an
19 environmentally sound manner.

20 (c) The director shall provide for such programs by using
21 the resources of the division, other appropriate state agencies,
22 educational systems and other qualified persons. Each inspector
23 under the jurisdiction of the chief shall attend a certification
24 program free of charge and complete the certification require-
25 ments of this section.

26 (d) The director shall promulgate legislative rules in
27 accordance with article three, chapter twenty-nine-a of this
28 code, which provide the procedure by which certification
29 pursuant to this article may be obtained and shall require the
30 payment of an application fee and an annual renewal fee of fifty
31 dollars.

32 (e) Upon a person's successful completion of the certifica-
33 tion requirements, the director shall provide that person with
34 proof of the completion by issuing a numbered certificate and
35 a wallet-sized card to that person. The division shall maintain
36 a record of each certificate issued and the person to whom it
37 was issued.

38 (f) A certification granted pursuant to this section is
39 renewable only for two succeeding years. For the third renewal
40 and every third renewal thereafter, the licensee shall first attend
41 a program designed by the director to update the training.

42 (g) Every timbering operation that is required to be licensed
43 under section four of this article must have at least one person
44 certified pursuant to this section supervising the operation at
45 any time the timbering operation is being conducted and all
46 timbering operators shall be guided by the West Virginia forest
47 practice standards and the West Virginia silvicultural best
48 management practices in selecting practices appropriate and
49 adequate for reducing sediment movement during a timber
50 operation.

51 (h) The director shall, at no more than three-year intervals
52 after the effective date of this article, convene a committee to
53 review the best management practices so as to ensure that they
54 reflect and incorporate the most current technologies. The
55 committee shall, at a minimum, include a person doing research
56 in the field of silvicultural best management practices, a person
57 doing research in the field of silviculture, two loggers certified
58 under this article, a representative of the office of water
59 resources of the division of environmental protection and a
60 representative of an environmentally active organization. The
61 director shall chair the committee and may adjust the then
62 current best management practices according to the suggestions
63 of the committee in time for the next certification cycle.

§19-1B-12a. Criminal penalties.

1 (a) After the first day of July, two thousand two, any person
2 who knowingly or willingly commits one of the following
3 violations is guilty of a misdemeanor and, upon conviction

4 thereof, shall be fined not less than two hundred fifty dollars
5 and not more than five hundred dollars for each violation:

6 (1) Conducts timbering operations or purchases timber or
7 buys logs for resale in this state without holding a valid license
8 from the director of the division of forestry, as required by
9 subsection (a), section four of this article;

10 (2) Conducts timbering operations or severs trees for sale
11 at a location in this state, without providing the director of the
12 division of forestry with notice of the location where the
13 timbering or harvesting operations are to be conducted, as
14 required by section six of this article;

15 (3) Conducts a timbering operation in this state that is not
16 supervised by a certified logger who holds a valid certificate
17 from the director of the division of forestry, as required by
18 section seven of this article; or

19 (4) Continues to conduct timbering or logging operations in
20 violation of an existing suspension or revocation order that has
21 been issued by the director of the division of forestry or a
22 conference panel under section five, ten or eleven of this article.

23 (b) For the purposes of this section, each day that a person
24 conducts logging or timbering operations in this state without
25 a license that is required by this article, without the supervision
26 of a certified logger as required by this article, without provid-
27 ing notice of the location to the director of forestry as required
28 by this article, or in violation of an outstanding suspension or
29 revocation order shall constitute a separate offense.

30 (c) In addition to any other law-enforcement agencies that
31 have jurisdiction over criminal violations, any forester or forest
32 ranger employed by the division of forestry, who, as a part of
33 his or her official duties is authorized or designated by the
34 director of the division of forestry to inspect logging or

35 timbering activities, is hereby authorized to issue citations for
36 any of the listed violations set forth above that he or she has
37 personally witnessed. The limited authority granted by this
38 section to employees of the division of forestry to issue
39 citations to enforce the provisions of this section does not
40 include the power to place any individual or person under
41 arrest.

CHAPTER 316

(Com. Sub. for S. B. 497 — By Senator Unger)

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen and twenty-eight, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to eligibility for unemployment compensation; clarifying the eligibility for benefits of certain members of the state national guard and the air national guard; and excluding appointed election officials from eligibility for benefits.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-eight, article one-a, chapter twenty-one-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 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

§21A-1A-28. Wages.

§21A-1A-17. Exclusions from employment.

1 The term “employment” does not include:

2 (1) Service performed in the employ of the United States or
3 any instrumentality of the United States exempt under the
4 constitution of the United States from the payments imposed by
5 this law, except that to the extent that the Congress of the
6 United States permits states to require any instrumentalities of
7 the United States to make payments into an unemployment fund
8 under a state unemployment compensation law, all of the
9 provisions of this law are applicable to the instrumentalities and
10 to service performed for the instrumentalities in the same
11 manner, to the same extent and on the same terms as to all other
12 employers, employing units, individuals and services: *Provided,*
13 That if this state is not certified for any year by the secretary of
14 labor under 26 U.S.C. §3404, subsection (c), the payments
15 required of the instrumentalities with respect to the year shall
16 be refunded by the commissioner from the fund in the same
17 manner and within the same period as is provided in section
18 nineteen, article five of this chapter with respect to payments
19 erroneously collected;

20 (2) Service performed with respect to which unemployment
21 compensation is payable under the Railroad Unemployment
22 Insurance Act and service with respect to which unemployment
23 benefits are payable under an unemployment compensation
24 system for maritime employees established by an act of
25 Congress. The commissioner may enter into agreements with
26 the proper agency established under an act of Congress to
27 provide reciprocal treatment to individuals who, after acquiring
28 potential rights to unemployment compensation under an act of
29 Congress or who have, after acquiring potential rights to
30 unemployment compensation under an act of Congress,
31 acquired rights to benefit under this chapter. Such agreement

32 shall become effective ten days after the publications which
33 shall comply with the general rules of the department;

34 (3) Service performed by an individual in agricultural labor,
35 except as provided in subdivision (12), section sixteen of this
36 article, the definition of "employment". For purposes of this
37 subdivision, the term "agricultural labor" includes all services
38 performed:

39 (A) On a farm, in the employ of any person, in connection
40 with cultivating the soil, or in connection with raising or
41 harvesting any agricultural or horticultural commodity, includ-
42 ing the raising, shearing, feeding, caring for, training and
43 management of livestock, bees, poultry and fur-bearing animals
44 and wildlife;

45 (B) In the employ of the owner or tenant or other operator
46 of a farm, in connection with the operation, management,
47 conservation, improvement or maintenance of the farm and its
48 tools and equipment, or in salvaging timber or clearing land of
49 brush and other debris left by a hurricane, if the major part of
50 the service is performed on a farm;

51 (C) In connection with the production or harvesting of any
52 commodity defined as an agricultural commodity in section
53 fifteen (g) of the Agricultural Marketing Act, as amended, as
54 codified in 12 U.S.C. §1141j, subsection (g), or in connection
55 with the ginning of cotton, or in connection with the operation
56 or maintenance of ditches, canals, reservoirs or waterways, not
57 owned or operated for profit, used exclusively for supplying
58 and storing water for farming purposes;

59 (D) (i) In the employ of the operator of a farm in handling,
60 planting, drying, packing, packaging, processing, freezing,
61 grading, storing or delivering to storage or to market or to a
62 carrier for transportation to market, in its unmanufactured state,
63 any agricultural or horticultural commodity; but only if the

64 operator produced more than one half of the commodity with
65 respect to which the service is performed; or (ii) in the employ
66 of a group of operators of farms (or a cooperative organization
67 of which the operators are members) in the performance of
68 service described in subparagraph (i) of this paragraph, but only
69 if the operators produced more than one half of the commodity
70 with respect to which the service is performed; but the provi-
71 sions of subparagraphs (i) and (ii) of this paragraph are not
72 applicable with respect to service performed in connection with
73 commercial canning or commercial freezing or in connection
74 with any agricultural or horticultural commodity after its
75 delivery to a terminal market for distribution for consumption;

76 (E) On a farm operated for profit if the service is not in the
77 course of the employer's trade or business or is domestic
78 service in a private home of the employer. As used in this
79 subdivision, the term "farm" includes stock, dairy, poultry,
80 fruit, fur-bearing animals, truck farms, plantations, ranches,
81 greenhouses, ranges and nurseries, or other similar land areas
82 or structures used primarily for the raising of any agricultural
83 or horticultural commodities;

84 (4) Domestic service in a private home except as provided
85 in subdivision (13), section sixteen of this article, the definition
86 of "employment";

87 (5) Service performed by an individual in the employ of his
88 or her son, daughter or spouse;

89 (6) Service performed by a child under the age of eighteen
90 years in the employ of his or her father or mother;

91 (7) Service as an officer or member of a crew of an Ameri-
92 can vessel, performed on or in connection with the vessel, if the
93 operating office, from which the operations of the vessel
94 operating on navigable waters within or without the United

95 States are ordinarily and regularly supervised, managed,
96 directed and controlled, is without this state;

97 (8) Service performed by agents of mutual fund broker-
98 dealers or insurance companies, exclusive of industrial insur-
99 ance agents, or by agents of investment companies, who are
100 compensated wholly on a commission basis;

101 (9) Service performed: (A) In the employ of a church or
102 convention or association of churches, or an organization which
103 is operated primarily for religious purposes and which is
104 operated, supervised, controlled or principally supported by a
105 church or convention or association of churches; or (B) by a
106 duly ordained, commissioned or licensed minister of a church
107 in the exercise of his or her ministry or by a member of a
108 religious order in the exercise of duties required by the order;
109 or (C) by an individual receiving rehabilitation or remunerative
110 work in a facility conducted for the purpose of carrying out a
111 program of either: (i) Rehabilitation for individuals whose
112 earning capacity is impaired by age or physical or mental
113 deficiency or injury; or (ii) providing remunerative work for
114 individuals who because of their impaired physical or mental
115 capacity cannot be readily absorbed in the competitive labor
116 market: *Provided*, That this exemption does not apply to
117 services performed by individuals if they are not receiving
118 rehabilitation or remunerative work on account of their im-
119 paired capacity; or (D) as part of an unemployment work-relief
120 or work-training program assisted or financed, in whole or in
121 part, by any federal agency or an agency of a state or political
122 subdivision thereof, by an individual receiving the work relief
123 or work training; or (E) by an inmate of a custodial or penal
124 institution;

125 (10) Service performed in the employ of a school, college
126 or university, if the service is performed: (A) By a student who
127 is enrolled and is regularly attending classes at the school,

128 college or university; or (B) by the spouse of a student, if the
129 spouse is advised, at the time the spouse commences to perform
130 the service, that: (i) The employment of the spouse to perform
131 the service is provided under a program to provide financial
132 assistance to the student by the school, college or university;
133 and (ii) the employment will not be covered by any program of
134 unemployment insurance;

135 (11) Service performed by an individual who is enrolled at
136 a nonprofit or public educational institution which normally
137 maintains a regular faculty and curriculum and normally has a
138 regularly organized body of students in attendance at the place
139 where its educational activities are carried on as a student in a
140 full-time program, taken for credit at the institution, which
141 combines academic instruction with work experience, if the
142 service is an integral part of the program and the institution has
143 so certified to the employer, except that this subdivision does
144 not apply to service performed in a program established for or
145 on behalf of an employer or group of employers;

146 (12) Service performed in the employ of a hospital, if the
147 service is performed by a patient of the hospital, as defined in
148 this article;

149 (13) Service in the employ of a governmental entity
150 referred to in subdivision (9), section sixteen of this article, the
151 definition of "employment", if the service is performed by an
152 individual in the exercise of duties: (A) As an elected official;
153 (B) as a member of a legislative body, or a member of the
154 judiciary, of a state or political subdivision; (C) as a member of
155 the state national guard or air national guard, except as provided
156 in section twenty-eight of this article; (D) as an employee
157 serving on a temporary basis in case of fire, storm, snow,
158 earthquake, flood or similar emergency; (E) in a position which,
159 under or pursuant to the laws of this state, is designated as: (i)
160 A major nontenured policymaking or advisory position; or (ii)

161 a policymaking or advisory position the performance of the
162 duties of which ordinarily does not require more than eight
163 hours per week; or (F) as any election official appointed to
164 serve during any municipal, county or state election;

165 (14) Service performed by a bona fide partner of a partner-
166 ship for the partnership; and

167 (15) Service performed by a person for his or her own sole
168 proprietorship.

169 Notwithstanding the foregoing exclusions from the defini-
170 tion of "employment", services, except agricultural labor and
171 domestic service in a private home, are in employment if with
172 respect to the services a tax is required to be paid under any
173 federal law imposing a tax against which credit may be taken
174 for contributions required to be paid into a state unemployment
175 compensation fund, or which as a condition for full tax credit
176 against the tax imposed by the federal Unemployment Tax Act
177 are required to be covered under this chapter.

§21A-1A-28. Wages.

1 (a) "Wages" means all remuneration for personal service,
2 including commissions, gratuities customarily received by an
3 individual in the course of employment from persons other than
4 the employing unit, as long as such gratuities equal or exceed
5 an amount of not less than twenty dollars each month and which
6 are required to be reported to the employer by the employee,
7 bonuses, and the cash value of all remuneration in any medium
8 other than cash except for agricultural labor and domestic
9 service. The term wages includes remuneration for service
10 rendered to the state as a member of the state national guard or
11 air national guard only when serving on a temporary basis
12 pursuant to a call made by the governor under sections one and
13 two, article one-d, chapter fifteen of this code.

14 (b) The term "wages" does not include:

15 (1) That part of the remuneration which, after remuneration
16 equal to eight thousand dollars is paid during a calendar year to
17 an individual by an employer or his or her predecessor with
18 respect to employment during any calendar year, is paid to such
19 individual by such employer during such calendar year unless
20 that part of the remuneration is subject to a tax under a federal
21 law imposing a tax against which credit may be taken for
22 contributions required to be paid into a state unemployment
23 fund. For the purposes of this section, the term “employment”
24 includes service constituting employment under any unemploy-
25 ment compensation law of another state; or which as a condi-
26 tion for full tax credit against the tax imposed by the federal
27 Unemployment Tax Act is required to be covered under this
28 chapter; and, except that for the purposes of sections one, ten,
29 eleven and thirteen, article six of this chapter, all remuneration
30 earned by an individual in employment shall be credited to the
31 individual and included in his or her computation of base period
32 wages: *Provided*, That the remuneration paid to an individual
33 by an employer with respect to employment in another state or
34 other states upon which contributions were required of and paid
35 by such employer under an unemployment compensation law
36 of such other state or states shall be included as a part of the
37 remuneration equal to the amounts of eight thousand dollars
38 herein referred to. In applying such limitation on the amount of
39 remuneration that is taxable, an employer shall be accorded the
40 benefit of all or any portion of such amount which may have
41 been paid by its predecessor or predecessors: *Provided*,
42 *however*, That if the definition of the term “wages” as contained
43 in Section 3306(b) of the Internal Revenue Code of 1954, as
44 amended, is amended to include remuneration in excess of eight
45 thousand dollars, paid to an individual by an employer under
46 the federal Unemployment Tax Act during any calendar year,
47 wages for the purposes of this definition shall include remuner-
48 ation paid in a calendar year to an individual by an employer
49 subject to this chapter or his or her predecessor with respect to
50 employment during any calendar year up to an amount equal to

51 the amount of remuneration taxable under the federal Unem-
52 ployment Tax Act;

53 (2) The amount of any payment made (including any
54 amount paid by an employer for insurance or annuities, or into
55 a fund, to provide for any such payment) to, or on behalf of, an
56 individual in its employ or any of his or her dependents, under
57 a plan or system established by an employer which makes
58 provision for individuals in its employ generally (or for such
59 individuals and their dependents), or for a class or classes of
60 such individuals (or for a class or classes of such individuals
61 and their dependents) on account of: (A) Retirement; or (B)
62 sickness or accident disability payments made to an employee
63 under an approved state workers' compensation law; or (C)
64 medical or hospitalization expenses in connection with sickness
65 or accident disability; or (D) death;

66 (3) Any payment made by an employer to an individual in
67 its employ (including any amount paid by an employer for
68 insurance or annuities, or into a fund, to provide for any such
69 payment) on account of retirement;

70 (4) Any payment made by an employer on account of
71 sickness or accident disability, or medical or hospitalization
72 expenses in connection with sickness or accident disability to,
73 or on behalf of, an individual in its employ after the expiration
74 of six calendar months following the last calendar month in
75 which such individual worked for such employer;

76 (5) Any payment made by an employer to, or on behalf of,
77 an individual in its employ or his or her beneficiary: (A) From
78 or to a trust described in Section 401(a) which is exempt from
79 tax under Section 501(a) of the federal Internal Revenue Code
80 at the time of such payments unless such payment is made to
81 such individual as an employee of the trust as remuneration for
82 services rendered by such individual and not as a beneficiary of
83 the trust; or (B) under or to an annuity plan which, at the time

84 of such payment, is a plan described in Section 403(a) of the
85 federal Internal Revenue Code;

86 (6) The payment by an employer of the tax imposed upon
87 an employer under Section 3101 of the federal Internal Revenue
88 Code with respect to remuneration paid to an employee for
89 domestic service in a private home or the employer of agricul-
90 tural labor;

91 (7) Remuneration paid by an employer in any medium other
92 than cash to an individual in its employ for service not in the
93 course of the employer's trade or business;

94 (8) Any payment (other than vacation or sick pay) made by
95 an employer to an individual in its employ after the month in
96 which he or she attains the age of sixty-five, if he or she did not
97 work for the employer in the period for which such payment is
98 made;

99 (9) Payments, not required under any contract of hire, made
100 to an individual with respect to his or her period of training or
101 service in the armed forces of the United States by an employer
102 by which such individual was formerly employed; and

103 (10) Vacation pay, severance pay or savings plans received
104 by an individual before or after becoming totally or partially
105 unemployed but earned prior to becoming totally or partially
106 unemployed: *Provided*, That the term totally or partially
107 unemployed does not include: (A) Employees who are on
108 vacation by reason of the request of the employees or their duly
109 authorized agent, for a vacation at a specific time, and which
110 request by the employees or their agent is acceded to by their
111 employer; (B) employees who are on vacation by reason of the
112 employer's request provided they are so informed at least
113 ninety days prior to such vacation; or (C) employees who are on
114 vacation by reason of the employer's request where such
115 vacation is in addition to the regular vacation and the employer

116 compensates such employee at a rate equal to or exceeding their
117 regular daily rate of pay during the vacation period.

118 (c) The reasonable cash value of remuneration in any
119 medium other than cash shall be estimated and determined in
120 accordance with rules prescribed by the commissioner, except
121 for remuneration other than cash for services performed in
122 agricultural labor and domestic service.

CHAPTER 317

(Com. Sub. for S. B. 484 — By Senators Snyder,
Caldwell, Fanning, Minard, Unger and Minear)

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the uniform disclaimer of property interests act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

- §42-6-1. Short title.
- §42-6-2. Definitions.
- §42-6-3. Scope.
- §42-6-4. Article supplemented by other law.
- §42-6-5. Power to disclaim; general requirements; when irrevocable.

- §42-6-6. Disclaimer of interest property.
- §42-6-7. Disclaimer of right of survivorship in jointly held property with right of survivorship.
- §42-6-8. Disclaimer of interest by trustee.
- §42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.
- §42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.
- §42-6-11. Disclaimer of power held in fiduciary capacity.
- §42-6-12. Delivery of disclaimer.
- §42-6-13. When disclaimer barred or limited.
- §42-6-14. Tax qualified disclaimer.
- §42-6-15. Recording of disclaimers; failure to record.
- §42-6-16. Application to existing relationships.
- §42-6-17. Uniformity of application and construction.
- §42-6-18. Severability clause.
- §42-6-19. Effective date.

§42-6-1. Short title.

- 1 This article may be cited as the “Uniform Disclaimer of
- 2 Property Interests Act”.

§42-6-2. Definitions.

- 1 In this article:
- 2 (1) “Disclaimant” means the person to whom a disclaimed
- 3 interest or power would have passed had the disclaimer not
- 4 been made.
- 5 (2) “Disclaimed interest” means the interest that would
- 6 have passed to the disclaimant had the disclaimer not been
- 7 made.
- 8 (3) “Disclaimer” means the refusal to accept an interest in
- 9 or power over property.
- 10 (4) “Fiduciary” means a personal representative, trustee,
- 11 agent acting under a power of attorney or other person autho-

12 rized to act as a fiduciary with respect to the property of another
13 person.

14 (5) "Jointly held property with right of survivorship" means
15 property held in the name of two or more persons under an
16 arrangement in which all holders have concurrent interests and
17 under which the last surviving holder is entitled to the whole of
18 the property.

19 (6) "Person" means an individual, corporation, business
20 trust, estate, trust, partnership, limited liability company,
21 association, joint venture, government; governmental subdivi-
22 sion, agency or instrumentality; public corporation or any other
23 legal or commercial entity.

24 (7) "State" means a state of the United States, the District
25 of Columbia, Puerto Rico, the United States Virgin Islands or
26 any territory or insular possession subject to the jurisdiction of
27 the United States. The term includes an Indian tribe or band, or
28 Alaskan native village, recognized by federal law or formally
29 acknowledged by a state.

30 (8) "Trust" means:

31 (A) An express trust, charitable or noncharitable, with
32 additions thereto, whenever and however created; and

33 (B) A trust created pursuant to a statute, judgment or decree
34 which requires the trust to be administered in the manner of an
35 express trust.

§42-6-3. Scope.

1 This article applies to disclaimers of any interest in or
2 power over property whenever created.

§42-6-4. Article supplemented by other law.

1 (a) Unless displaced by a provision of this article, the
2 principles of law and equity supplement this article.

3 (b) This article does not limit any right of a person to
4 waive, release, disclaim or renounce an interest in or power
5 over property under a law other than this article.

§42-6-5. Power to disclaim; general requirements; when irrevocable.

1 (a) A person may disclaim, in whole or part, any interest in
2 or power over property, including a power of appointment. A
3 person may disclaim the interest or power even if its creator
4 imposed a spendthrift provision or similar restriction on transfer
5 or a restriction or limitation on the right to disclaim.

6 (b) Except to the extent a fiduciary's right to disclaim is
7 expressly restricted or limited by another statute of this state or
8 by the instrument creating the fiduciary relationship, a fiduciary
9 may disclaim, in whole or part, any interest in or power over
10 property, including a power of appointment, whether acting in
11 a personal or representative capacity. A fiduciary may disclaim
12 the interest or power even if its creator imposed a spendthrift
13 provision or similar restriction on transfer or a restriction or
14 limitation on the right to disclaim, or an instrument other than
15 the instrument that created the fiduciary relationship imposed
16 a restriction or limitation on the right to disclaim.

17 (c) To be effective, a disclaimer must be in writing, declare
18 the disclaimer, describe the interest or power disclaimed, be
19 signed by the person making the disclaimer, be acknowledged
20 in such a manner as would authorize a deed to be admitted of
21 record and be delivered or filed in the manner provided in
22 section twelve of this article.

23 (d) A partial disclaimer may be expressed as a fraction,
24 percentage, monetary amount, term of years, limitation of a
25 power or any other interest or estate in the property.

26 (e) A disclaimer becomes irrevocable when it is delivered,
27 filed or recorded pursuant to the provisions of section twelve of
28 this article or when it becomes effective as provided in sections
29 six through eleven, inclusive, of this article, whichever occurs
30 later.

31 (f) A disclaimer made under this article is not a transfer,
32 assignment or release and relates back for all purposes to the
33 time the disclaimer takes effect pursuant to the provisions of
34 section six of this article.

§42-6-6. Disclaimer of interest property.

1 (a) In this section:

2 (1) "Time of distribution" means the time when a dis-
3 claimed interest would have taken effect in possession or
4 enjoyment.

5 (2) "Future interest" means an interest that takes effect in
6 possession or enjoyment, if at all, later than the time of its
7 creation.

8 (b) Except for a disclaimer governed by section seven or
9 eight of this article, the following rules apply to a disclaimer of
10 an interest in property:

11 (1) The disclaimer takes effect as of the time the instrument
12 creating the interest becomes irrevocable or, if the interest arose
13 under the law of intestate succession, as of the time of the
14 intestate's death.

15 (2) The disclaimed interest passes according to any
16 provision in the instrument creating the interest providing for
17 the disposition of the interest, should it be disclaimed, or of
18 disclaimed interests in general.

19 (3) If the instrument does not contain a provision described
20 in subdivision (2) of this subsection, the following rules apply:

21 (A) If the disclaimant is an individual, the disclaimed
22 interest passes as if the disclaimant had died immediately
23 before the time of distribution. However, if, by law or under the
24 instrument, the descendants of the disclaimant would share in
25 the disclaimed interest by any method of representation had the
26 disclaimant died before the time of distribution, the disclaimed
27 interest passes only to the descendants of the disclaimant who
28 survive the time of distribution.

29 (B) If the disclaimant is not an individual, the disclaimed
30 interest passes as if the disclaimant did not exist.

31 (4) Upon the disclaimer of a preceding interest, a future
32 interest held by a person other than the disclaimant takes effect
33 as if the disclaimant had died or ceased to exist immediately
34 before the time of distribution, but a future interest held by the
35 disclaimant is not accelerated in possession or enjoyment.

§42-6-7. Disclaimer of right of survivorship in jointly held property with right of survivorship.

1 (a) Upon the death of a holder of jointly held property with
2 right of survivorship, a surviving holder may disclaim, in whole
3 or part, the greater of:

4 (1) A fractional share of the property determined by
5 dividing the number one by the number of joint holders alive
6 immediately before the death of the holder to whose death the
7 disclaimer relates; or

8 (2) All of the property except that part of the value of the
9 entire interest attributable to the contribution furnished by the
10 disclaimant.

11 (b) A disclaimer under subsection (a) of this section takes
12 effect as of the death of the holder of jointly held property to
13 whose death the disclaimer relates.

14 (c) An interest in jointly held property with right of
15 survivorship disclaimed by a surviving holder of the property
16 passes as if the disclaimant predeceased the holder to whose
17 death the disclaimer relates.

§42-6-8. Disclaimer of interest by trustee.

1 If a trustee disclaims an interest in property that otherwise
2 would have become trust property, the interest does not become
3 trust property.

§42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.

1 If a holder disclaims a power of appointment or other
2 power not held in a fiduciary capacity, the following rules
3 apply:

4 (1) If the holder has not exercised the power, the disclaimer
5 takes effect as of the time the instrument creating the power
6 becomes irrevocable.

7 (2) If the holder has exercised the power and the disclaimer
8 is of a power other than a presently exercisable general power
9 of appointment, the disclaimer takes effect immediately after
10 the last exercise of the power.

11 (3) The instrument creating the power is construed as if the
12 power expired when the disclaimer became effective.

§42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.

1 (a) A disclaimer of an interest in property by an appointee
2 of a power of appointment takes effect as of the time the
3 instrument by which the holder exercises the power becomes
4 irrevocable.

5 (b) A disclaimer of an interest in property by an object or
6 taker in default of an exercise of a power of appointment takes
7 effect as of the time the instrument creating the power becomes
8 irrevocable.

§42-6-11. Disclaimer of power held in fiduciary capacity.

1 (a) If a fiduciary disclaims a power held in a fiduciary
2 capacity which has not been exercised, the disclaimer takes
3 effect as of the time the instrument creating the power becomes
4 irrevocable.

5 (b) If a fiduciary disclaims a power held in a fiduciary
6 capacity which has been exercised, the disclaimer takes effect
7 immediately after the last exercise of the power.

8 (c) A disclaimer under this section is effective as to another
9 fiduciary if the disclaimer so provides and the fiduciary
10 disclaiming has the authority to bind the estate, trust or other
11 person for whom the fiduciary is acting.

§42-6-12. Delivery of disclaimer.

1 (a) In this section, "beneficiary designation" means an
2 instrument, other than an instrument creating a trust, naming the
3 beneficiary of:

4 (1) An annuity or insurance policy;

5 (2) An account with a designation for payment on death;

6 (3) A security registered in beneficiary form;

7 (4) A pension, profit-sharing, retirement or other
8 employment-related benefit plan; or

9 (5) Any other nonprobate transfer at death.

10 (b) Subject to subsections (c) through (l), inclusive, of this
11 section, delivery of a disclaimer may be effected by personal
12 delivery, first-class mail or any other method likely to result in
13 its receipt.

14 (c) In the case of an interest created under the law of
15 intestate succession or an interest created by will, other than an
16 interest in a testamentary trust:

17 (1) A disclaimer must be delivered to the personal represen-
18 tative of the decedent's estate; or

19 (2) If no personal representative is then serving, it must be
20 filed in the office of the clerk of the county commission of the
21 county in which proceedings for the administration of the estate
22 of the deceased owner or deceased donee of the power have
23 been commenced.

24 (d) In the case of an interest in a testamentary trust:

25 (1) A disclaimer must be delivered to the trustee then
26 serving or, if no trustee is then serving, to the personal repre-
27 sentative of the decedent's estate; or

28 (2) If no trustee is then serving, it must be filed in the office
29 of the clerk of the county commission of the county in which
30 proceedings for the administration of the estate of the deceased
31 owner or deceased donee of the power have been commenced.

32 (e) In the case of an interest in an inter vivos trust:

33 (1) A disclaimer must be delivered to the trustee then
34 serving;

35 (2) If no trustee is then serving, it must be filed in the office
36 of the clerk of the county commission of the county having in
37 rem jurisdiction over the corpus of the trust; or

38 (3) If the disclaimer is made before the time the instrument
39 creating the trust becomes irrevocable, it must be delivered to
40 the settlor of a revocable trust or the transferor of the interest.

41 (f) In the case of an interest created by a beneficiary
42 designation made before the time the designation becomes
43 irrevocable, a disclaimer must be delivered to the person
44 making the beneficiary designation.

45 (g) In the case of an interest created by a beneficiary
46 designation made after the time the designation becomes
47 irrevocable, a disclaimer must be delivered to the person
48 obligated to distribute the interest.

49 (h) In the case of a disclaimer by a surviving holder of
50 jointly held property with right of survivorship, the disclaimer
51 must be delivered to the person to whom the disclaimed interest
52 passes.

53 (i) In the case of a disclaimer by an object or taker in
54 default of exercise of a power of appointment at any time after
55 the power was created:

56 (1) The disclaimer must be delivered to the holder of the
57 power or to the fiduciary acting under the instrument that
58 created the power; or

59 (2) If no fiduciary is then serving, it must be filed in the
60 office of the clerk of the county commission of the county

61 having in rem jurisdiction over the assets subject to the power
62 of appointment.

63 (j) In the case of a disclaimer by an appointee of a
64 nonfiduciary power of appointment:

65 (1) The disclaimer must be delivered to the holder, the
66 personal representative of the holder's estate or to the fiduciary
67 under the instrument that created the power; or

68 (2) If no fiduciary is then serving, it must be filed in the
69 office of the clerk of the county commission of the county
70 having in rem jurisdiction over assets subject to the power of
71 appointment.

72 (k) In the case of a disclaimer by a fiduciary of a power
73 over a trust or estate, the disclaimer must be delivered as
74 provided in subsection (c), (d) or (e) of this section, as if the
75 power disclaimed were an interest in property.

76 (l) In the case of a disclaimer of a power by an agent, the
77 disclaimer must be delivered to the principal or the principal's
78 representative.

§42-6-13. When disclaimer barred or limited.

1 (a) A disclaimer is barred by a written waiver of the right
2 to disclaim.

3 (b) A disclaimer of an interest in property is barred if any
4 of the following events occur before the disclaimer becomes
5 effective:

6 (1) The disclaimant accepts the interest sought to be
7 disclaimed;

8 (2) The disclaimant voluntarily assigns, conveys, encum-
9 bers, pledges or transfers the interest sought to be disclaimed or
10 contracts to do so; or

11 (3) A judicial sale of the interest sought to be disclaimed
12 occurs.

13 (c) A disclaimer, in whole or part, of the future exercise of
14 a power held in a fiduciary capacity is not barred by its previous
15 exercise.

16 (d) A disclaimer, in whole or part, of the future exercise of
17 a power not held in a fiduciary capacity is not barred by its
18 previous exercise unless the power is exercisable in favor of the
19 disclaimant.

20 (e) A disclaimer of a power over property which is barred
21 by this section is ineffective as a disclaimer: *Provided*, That a
22 disclaimer of an interest in property which is barred by this
23 section takes effect as a transfer or conveyance of the interest
24 disclaimed to the persons who would have taken the interest
25 under this article had the disclaimer not been barred.

§42-6-14. Tax qualified disclaimer.

1 Notwithstanding any other provision of this article, if as a
2 result of a disclaimer or transfer the disclaimed or transferred
3 interest is treated pursuant to the provisions of Title 26 of the
4 United States Code, as now or hereafter amended, or any
5 successor statute thereto, and the regulations promulgated
6 thereunder, as never having been transferred to the disclaimant,
7 then the disclaimer or transfer is effective as a disclaimer under
8 this article.

§42-6-15. Recording of disclaimers; failure to record.

1 (a) A duly executed and acknowledged original or duplicate
2 of the disclaimer may be recorded with the office of the clerk
3 of county commission having jurisdiction to appoint the
4 personal representative of the decedent, in which the trust is
5 located or the trustee resides, in which the person making the
6 beneficiary designation resides, in which the person obligated
7 to distribute the interest resides or in which any of the property
8 or interest disclaimed is located, as the case may be.

9 (b) If real property or an interest therein is disclaimed, in
10 addition to delivery or filing as provided in section twelve of
11 this article, a fully executed and acknowledged original or
12 duplicate of the disclaimer shall be recorded in the deed books
13 in the office of the clerk of the county commission of the
14 county in which the real property or interest therein disclaimed
15 is located.

16 (c) Failure to record a disclaimer does not affect its validity
17 as between the disclaimant and persons to whom the property
18 interest or power passes by reason of the disclaimer.

§42-6-16. Application to existing relationships.

1 Except as otherwise provided in section thirteen of this
2 article, an interest in or power over property existing on the
3 effective date of this article as to which the time for delivering,
4 filing or recording a disclaimer under law superseded by this
5 article has not expired may be disclaimed after the effective
6 date of this article.

§42-6-17. Uniformity of application and construction.

1 In applying and construing this uniform article, consider-
2 ation must be given to the need to promote uniformity of the
3 law with respect to its subject matter among states that enact it.

§42-6-18. Severability clause.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application and,
5 to this end, the provisions of this article are severable.

§42-6-19. Effective date.

1 This article takes effect on the first day of July, two
2 thousand two.

CHAPTER 318

**(S. B. 485 — By Senators Snyder, Caldwell,
Fanning, Minard, Rowe, Unger and Minear)**

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interstate family support act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

§48-16-101. Short title.

§48-16-102. Definitions.

§48-16-103. Tribunal of state.

§48-16-104. Remedies cumulative.

§48-16-201. Basis for jurisdiction over nonresident.

- §48-16-202. Duration of personal jurisdiction.
- §48-16-203. Initiating and responding tribunal of state.
- §48-16-204. Simultaneous proceedings.
- §48-16-205. Continuing, exclusive jurisdiction to modify child support order.
- §48-16-206. Continuing jurisdiction to enforce child support order.
- §48-16-207. Determination of controlling child support order.
- §48-16-208. Child support orders for two or more obligees.
- §48-16-209. Credit for payments.
- §48-16-210. Application of article to nonresident subject to personal jurisdiction.
- §48-16-211. Continuing, exclusive jurisdiction to modify spousal support order.
- §48-16-301. Proceedings under article.
- §48-16-302. Proceeding by minor parent.
- §48-16-303. Application of law of state.
- §48-16-304. Duties of initiating tribunal.
- §48-16-305. Duties and powers of responding tribunal.
- §48-16-306. Inappropriate tribunal.
- §48-16-307. Duties of support enforcement agency.
- §48-16-308. Duty of West Virginia support enforcement commission.
- §48-16-309. Private counsel.
- §48-16-310. Duties of state information agency.
- §48-16-311. Pleading and accompanying documents.
- §48-16-312. Nondisclosure of information in exceptional circumstances.
- §48-16-313. Costs and fees.
- §48-16-314. Limited immunity of petitioner.
- §48-16-315. Nonparentage as defense.
- §48-16-316. Special rules of evidence and procedure.
- §48-16-317. Communications between tribunals.
- §48-16-318. Assistance with discovery.
- §48-16-319. Receipt and disbursement of payments.
- §48-16-401. Petition to establish support order.
- §48-16-501. Employer's receipt of income withholding order of another state.
- §48-16-502. Employer's compliance with income withholding order of another state.
- §48-16-503. Employer's compliance with two or more income withholding orders.
- §48-16-504. Immunity from civil liability.
- §48-16-505. Penalties for noncompliance.
- §48-16-506. Contest by obligor.
- §48-16-507. Administrative enforcement of orders.
- §48-16-601. Registration of order for enforcement.
- §48-16-602. Procedure to register order for enforcement.
- §48-16-603. Effect of registration for enforcement.
- §48-16-604. Choice of law.
- §48-16-605. Notice of registration of order.

- §48-16-606. Procedure to contest validity or enforcement of registered order.
- §48-16-607. Contest of registration or enforcement.
- §48-16-608. Confirmed order.
- §48-16-609. Procedure to register child support order of another state for modification.
- §48-16-610. Effect of registration for modification.
- §48-16-611. Modification of child support order of another state.
- §48-16-612. Recognition of order modified in another state.
- §48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.
- §48-16-614. Notice to issuing tribunal of modification.
- §48-16-615. Jurisdiction to modify child support order of foreign country or political subdivision.
- §48-16-701. Proceeding to determine parentage.
- §48-16-801. Grounds for rendition.
- §48-16-802. Conditions of rendition.
- §48-16-901. Uniformity of application and construction.
- §48-16-902. Severability clause.
- §48-16-903. Effective date.

PART I. GENERAL PROVISIONS.

§48-16-101. Short title.

- 1 This article may be cited as the uniform interstate family
- 2 support act.

§48-16-102. Definitions.

- 1 As used in this article:
 - 2 (1) “Child” means an individual, whether over or under the
 - 3 age of majority, who is or is alleged to be owed a duty of
 - 4 support by the individual’s parent or who is or is alleged to be
 - 5 the beneficiary of a support order directed to the parent.
 - 6 (2) “Child support order” means a support order for a child,
 - 7 including a child who has attained the age of majority under the
 - 8 law of the issuing state.

9 (3) “Duty of support” means an obligation imposed or
10 imposable by law to provide support for a child, spouse or
11 former spouse, including an unsatisfied obligation to provide
12 support.

13 (4) “Home state” means the state in which a child lived
14 with a parent or a person acting as parent for at least six
15 consecutive months immediately preceding the time of filing of
16 a petition or comparable pleading for support and, if a child is
17 less than six months old, the state in which the child lived from
18 birth with any of them. A period of temporary absence of any
19 of them is counted as part of the six-month or other period.

20 (5) “Income” includes earnings or other periodic
21 entitlements to money from any source and any other property
22 subject to withholding for support under the law of this state.

23 (6) “Income-withholding order” means an order or other
24 legal process directed to an obligor’s source of income as
25 defined by section 1-240 of this chapter to withhold support
26 from the income of the obligor.

27 (7) “Initiating state” means a state from which a proceeding
28 is forwarded or in which a proceeding is filed for forwarding to
29 a responding state under this article or a law or procedure
30 substantially similar to this article.

31 (8) “Initiating tribunal” means the authorized tribunal in an
32 initiating state.

33 (9) “Issuing state” means the state in which a tribunal issues
34 a support order or renders a judgment determining parentage.

35 (10) “Issuing tribunal” means the tribunal that issues a
36 support order or renders a judgment determining parentage.

37 (11) "Law" includes decisional and statutory law and rules
38 having the force of law.

39 (12) "Obligee" means:

40 (A) An individual to whom a duty of support is or is alleged
41 to be owed or in whose favor a support order has been issued or
42 a judgment determining parentage has been rendered;

43 (B) A state or political subdivision to which the rights
44 under a duty of support or support order have been assigned or
45 which has independent claims based on financial assistance
46 provided to an individual obligee; or

47 (C) An individual seeking a judgment determining parent-
48 age of the individual's child.

49 (13) "Obligor" means an individual or the estate of a
50 decedent:

51 (A) Who owes or is alleged to owe a duty of support;

52 (B) Who is alleged but has not been adjudicated to be a
53 parent of a child; or

54 (C) Who is liable under a support order.

55 (14) "Person" means an individual, corporation, business
56 trust, estate, trust, partnership, limited liability company,
57 association, joint venture, government; governmental subdivi-
58 sion, agency or instrumentality; public corporation; or any other
59 legal or commercial entity.

60 (15) "Record" means information that is inscribed on a
61 tangible medium or that is stored in an electronic or other
62 medium and is retrievable in perceivable form.

63 (16) "Register" means to record a support order or judg-
64 ment determining parentage in the registry of foreign support
65 orders.

66 (17) "Registering tribunal" means a tribunal in which a
67 support order is registered.

68 (18) "Responding state" means a state in which a proceed-
69 ing is filed or to which a proceeding is forwarded for filing
70 from an initiating state under this article or a law or procedure
71 substantially similar to this article.

72 (19) "Responding tribunal" means the authorized tribunal
73 in a responding state.

74 (20) "Spousal support order" means a support order for a
75 spouse or former spouse of the obligor.

76 (21) "State" means a state of the United States, the District
77 of Columbia, Puerto Rico, the United States Virgin Islands or
78 any territory or insular possession subject to the jurisdiction of
79 the United States. The term includes:

80 (A) An Indian tribe; and

81 (B) A foreign country or political subdivision that:

82 (i) Has been declared to be a foreign reciprocating country
83 or political subdivision under federal law;

84 (ii) Has established a reciprocal arrangement for child
85 support with this state as provided in section 308; or

86 (iii) Has enacted a law or established procedures for
87 issuance and enforcement of support orders which are substan-
88 tially similar to the procedures under this article.

89 (22) "Support enforcement agency" means a public official
90 or agency authorized to seek:

91 (A) Enforcement of support orders or laws relating to the
92 duty of support;

93 (B) Establishment or modification of child support;

94 (C) Determination of parentage;

95 (D) Location of obligors or their assets; or

96 (E) Determination of the controlling child support order.

97 (23) "Support order" means a judgment, decree, order, or
98 directive, whether temporary, final or subject to modification,
99 issued by a tribunal for the benefit of a child, a spouse or a
100 former spouse which provides for monetary support, health
101 care, arrearages or reimbursement and may include related costs
102 and fees, interest, income withholding, attorney's fees and other
103 relief.

104 (24) "Tribunal" means a court, administrative agency or
105 quasijudicial entity authorized to establish, enforce or modify
106 support orders or to determine parentage.

§48-16-103. Tribunal of state.

1 The family court is the tribunal of this state.

§48-16-104. Remedies cumulative.

1 (a) Remedies provided by this article are cumulative and do
2 not affect the availability of remedies under other law, includ-
3 ing the recognition of a support order of a foreign country or
4 political subdivision the basis of comity.

5 (b) This article does not:

6 (1) Provide the exclusive method of establishing or
7 enforcing a support order under the law of this state; or

8 (2) Grant a tribunal of this state jurisdiction to render
9 judgment or issue an order relating to child custody or visitation
10 in proceeding under this article.

PART II. JURISDICTION.

§48-16-201. Basis for jurisdiction over nonresident.

1 (a) In a proceeding to establish or enforce a support order
2 or to determine parentage, a tribunal of this state may exercise
3 personal jurisdiction over a nonresident individual or the
4 individual's guardian or conservator if:

5 (1) The individual is personally served with notice within
6 this state;

7 (2) The individual submits to the jurisdiction of this state by
8 consent, by entering a general appearance, or by filing a
9 responsive document having the effect of waiving any contest
10 to personal jurisdiction;

11 (3) The individual resided with the child in this state;

12 (4) The individual resided in this state and provided
13 prenatal expenses or support for the child;

14 (5) The child resides in this state as a result of the acts or
15 directives of the individual;

16 (6) The individual engaged in sexual intercourse in this
17 state and the child may have been conceived by that act of
18 intercourse;

19 (7) The individual has committed a tortious act by failing
20 to support a child resident in this state; or

21 (8) There is any other basis consistent with the constitutions
22 of this state and the United States for the exercise of personal
23 jurisdiction.

24 (b) The basis of personal jurisdiction set forth in subsection
25 (a) or in any other law of this state may not be used to acquire
26 personal jurisdiction for a tribunal of the state to modify a child
27 support order of another state unless the requirements of
28 sections 611 or 615 are met.

§48-16-202. Duration of personal jurisdiction.

1 Personal jurisdiction acquired by a tribunal of this state in
2 a proceeding under this article or other law of this state relating
3 to a support order continues as long as a tribunal of this state
4 has continuing, exclusive jurisdiction to modify its order or
5 continuing jurisdiction to enforce its order as provided by
6 sections 205, 206 and 211.

§48-16-203. Initiating and responding tribunal of state.

1 Under this article, a tribunal of this state may serve as an
2 initiating tribunal to forward proceedings to another state and
3 as a responding tribunal for proceedings initiated in another
4 state.

§48-16-204. Simultaneous proceedings.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable pleading
3 is filed after a petition or comparable pleading is filed in
4 another state only if:

5 (1) The petition or comparable pleading in this state is filed
6 before the expiration of the time allowed in the other state for
7 filing a responsive pleading challenging the exercise of jurisdic-
8 tion by the other state;

9 (2) The contesting party timely challenges the exercise of
10 jurisdiction in the other state; and

11 (3) If relevant, this state is the home state of the child.

12 (b) A tribunal of this state may not exercise jurisdiction to
13 establish a support order if the petition or comparable pleading
14 is filed before a petition or comparable pleading is filed in
15 another state if:

16 (1) The petition or comparable pleading in the other state is
17 filed before the expiration of the time allowed in this state for
18 filing a responsive pleading challenging the exercise of jurisdic-
19 tion by this state;

20 (2) The contesting party timely challenges the exercise of
21 jurisdiction in this state; and

22 (3) If relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction to modify child support order.

1 (a) A tribunal of this state that has issued a support order
2 consistent with the law of this state has and shall exercise
3 continuing, exclusive jurisdiction to modify its child support
4 order if the order is the controlling order and:

5 (1) At the time of the filing of a request for modification
6 this state is the residence of the obligor, the individual obligee
7 or the child for whose benefit the support order is issued; or

8 (2) Even if this state is not the residence of the obligor, the
9 individual obligee, or the child for whose benefit the support
10 order is issued, the parties consent in a record or in open court
11 that the tribunal of this state may continue to exercise jurisdic-
12 tion to modify its order.

13 (b) A tribunal of this state that has issued a child support
14 order consistent with the law of this state may not exercise
15 continuing, exclusive jurisdiction to modify the order if:

16 (1) All of the parties who are individuals file consent in a
17 record with the tribunal of this state that a tribunal of another
18 state that has jurisdiction over at least one of the parties who is
19 an individual or that is located in the state of residence of the
20 child may modify the order and assume continuing, exclusive
21 jurisdiction; or

22 (2) Its order is not the controlling order.

23 (c) If a tribunal of another state has issued a child support
24 order pursuant to the uniform interstate family support act or a
25 law substantially similar to that article which modifies a child
26 support order of a tribunal of this state, tribunals of this state
27 shall recognize the continuing, exclusive jurisdiction of the
28 tribunal of the other state.

29 (d) A tribunal of this state that lacks continuing, exclusive
30 jurisdiction to modify a child support order may serve as an
31 initiating tribunal to request a tribunal of another state to
32 modify a support order issued in that state.

33 (e) A temporary support order issued ex parte or pending
34 resolution of a jurisdictional conflict does not create continuing,
35 exclusive jurisdiction in the issuing tribunal.

**§48-16-206. Continuing jurisdiction to enforce child support
order.**

1 (a) A tribunal of this state that has issued a child support
2 order consistent with the law of this state may serve as an
3 initiating tribunal to request a tribunal of another state to
4 enforce:

5 (1) The order if the order is the controlling order and has
6 not been modified by a tribunal of another state that assumed
7 jurisdiction pursuant to the uniform family support act; or

8 (2) A money judgment for arrears of support and interest on
9 the order accrued before a determination that an order of
10 another state is the controlling order.

11 (b) A tribunal of this state having continuing, jurisdiction
12 over a support order may act as a responding tribunal to enforce
13 the order.

§48-16-207. Determination of controlling child support order.

1 (a) If a proceeding is brought under this article and only one
2 tribunal has issued a child support order, the order of that
3 tribunal is controlling and must be recognized.

4 (b) If a proceeding is brought under this article, and two or
5 more child support orders have been issued by tribunals of this
6 state or another state with regard to the same obligor and same
7 child, a tribunal of this state having personal jurisdiction over
8 both the obligor and individual obligee shall apply the follow-
9 ing rules and by order shall determine which order controls:

10 (1) If only one of the tribunals would have continuing,
11 exclusive jurisdiction under this article, the order of that
12 tribunal is controlling and must be recognized.

13 (2) If more than one of the tribunals would have continuing,
14 exclusive jurisdiction under this article:

15 (A) An order issued by a tribunal in the current home state
16 of the child; but

17 (B) If an order has not been issued in the current home state
18 of the child, the order most recently issued controls.

19 (3) If none of the tribunals would have continuing, exclu-
20 sive jurisdiction under this article, the tribunal of this state shall
21 issue a child support order which controls.

22 (c) If two or more child support orders have been issued for
23 the same obligor and same child, upon request of a party who
24 is an individual or a support enforcement agency, a tribunal of
25 this state having personal jurisdiction over both the obligor and
26 the obligee who is an individual shall determine which order
27 controls under subsection (b) of this section. The request may
28 be filed with a registration for enforcement or registration for
29 modification pursuant to article six or may be filed as a separate
30 proceeding.

31 (d) A request to determine which is the controlling order
32 must be accompanied by a copy of every child support order in
33 effect and the applicable record of payments. The requesting
34 party shall give notice of the request to each party whose rights
35 may be affected by the determination.

36 (e) The tribunal that issued the order that must be recog-
37 nized as controlling under subsection (a), (b) or (c) has continu-
38 ing jurisdiction to the extent provided in section 16-205 or 206.

39 (f) A tribunal of this state that determines by order which
40 is the controlling child support order under subdivisions (1) and
41 (2) of subsection (b) or subsection (c) or that issued a new
42 controlling child support order under subdivision (3) of
43 subsection shall state in that order:

44 (1) The basis upon which the tribunal made its determina-
45 tion;

46 (2) The amount of prospective support, if any; and

47 (3) The total amount of consolidated arrears and accrued
48 interest, if any, under all of the orders after all payments made
49 are credited as provided by section 209.

50 (g) Within thirty days after issuance of the order determin-
51 ing which is the controlling order, the party obtaining that order
52 shall file a certified copy of it in each tribunal that had issued
53 or registered an earlier order of child support. A party or
54 support enforcement agency obtaining the order that fails to file
55 a certified copy is subject to appropriate sanctions by a tribunal
56 in which the issue of failure to file arises. The failure to file
57 does not affect the validity or enforceability of the controlling
58 order.

59 (h) An order that has been determined to be the controlling
60 order, or a judgment for consolidated arrears of support and
61 interest, if any, made pursuant to this section must be recog-
62 nized in proceedings under this article.

§48-16-208. Child support orders for two or more obligees.

1 In responding to registrations or petitions for enforcement
2 of two or more child support orders in effect at the same time
3 with regard to the same obligor and different individual
4 obligees, at least one of which was issued by a tribunal of
5 another state, a tribunal of this state shall enforce those orders
6 in the same manner as if the orders had been issued by a
7 tribunal of this state.

§48-16-209. Credit for payments.

1 A tribunal of this state shall credit amounts collected for a
2 particular period pursuant to any child support order against the
3 amounts owed for the same period under any other child
4 support order for support of the same child issued by a tribunal
5 of this or another state.

§48-16-210. Application of article to nonresident subject to personal jurisdiction.

1 A tribunal of this state exercising personal jurisdiction over
2 a nonresident in a proceeding under this article, under other law
3 of this state relating to a support order, or recognizing a support
4 order of a foreign country or political subdivision on the basis
5 of comity may receive evidence from another state pursuant to
6 section 316, communication with a tribunal or another state
7 pursuant to section 317, and obtain discovery through a tribunal
8 of another state pursuant to section 318. In all other respects,
9 articles 3 through 7, inclusive, of this chapter do not apply and
10 the tribunal shall apply the procedural and substantive law of
11 this state.

§48-16-211. Continuing, exclusive jurisdiction to modify spousal support order.

1 (a) A tribunal of this state issuing a spousal support order
2 consistent with the law of this state has continuing, exclusive
3 jurisdiction to modify the spousal support order throughout the
4 existence of the support obligation.

5 (b) A tribunal of this state may not modify a spousal
6 support order issued by a tribunal of another state having
7 continuing, exclusive jurisdiction over that order under the law
8 of that state.

9 (c) A tribunal of this state that has continuing, exclusive
10 jurisdiction over a spousal support order may serve as:

11 (1) An initiating tribunal to request a tribunal of another
12 state to enforce the spousal support order issued in this state; or

13 (2) A responding tribunal to enforce or modify its own
14 spousal support order.

PART III. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceedings under article.

1 (a) Except as otherwise provided in this article, this part
2 applies to all proceedings under this article.

3 (b) An individual petitioner or a support enforcement
4 agency may commence a proceeding authorized under this
5 article by filing a petition in an initiating tribunal for forward-
6 ing to a responding tribunal or by filing a petition or a compara-
7 ble pleading directly in a tribunal of another state which has or
8 can obtain personal jurisdiction over the respondent.

§48-16-302. Proceeding by minor parent.

1 A minor parent, or a guardian or other legal representative
2 of a minor parent, may maintain a proceeding on behalf of or
3 for the benefit of the minor's child.

§48-16-303. Application of law of state.

1 Except as otherwise provided in this article, a responding
2 tribunal of this state shall:

3 (1) Apply the procedural and substantive law generally
4 applicable to similar proceedings originating in this state and
5 may exercise all powers and provide all remedies available in
6 those proceedings; and

7 (2) Determine the duty of support and the amount payable
8 in accordance with the law and support guidelines of this state.

§48-16-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this article,
2 an initiating tribunal of this state shall forward the petition and
3 its accompanying documents:

4 (1) To the responding tribunal or appropriate support
5 enforcement agency in the responding state; or

6 (2) If the identity of the responding tribunal is unknown, to
7 the state information agency of the responding state with a
8 request that they be forwarded to the appropriate tribunal and
9 that receipt be acknowledged.

10 (b) If requested by the responding tribunal, a tribunal of this
11 state shall issue a certificate or other document and make
12 findings required by the law of the responding state. If the
13 responding state is a foreign country or political subdivision,
14 upon request, the tribunal shall specify the amount of support
15 sought, convert that amount into the equivalent amount in the
16 foreign currency under applicable official or market exchange
17 rate as publicly reported and provide any other documents
18 necessary to satisfy the requirements of the responding state.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribunal or
3 directly pursuant to subsection (b), section 16-301, it shall
4 cause the petition or pleading to be filed and notify the peti-
5 tioner where and when it was filed.

6 (b) A responding tribunal of this state, to the extent not
7 prohibited by other law, may do one or more of the following:

8 (1) Issue or enforce a support order, modify a child support
9 order, or determine the controlling child support order to
10 determine parentage;

11 (2) Order an obligor to comply with a support order,
12 specifying the amount and the manner of compliance;

13 (3) Order income withholding;

14 (4) Determine the amount of any arrearages and specify a
15 method of payment;

16 (5) Enforce orders by civil contempt;

17 (6) Set aside property for satisfaction of the support order;

18 (7) Place liens and order execution on the obligor's
19 property;

20 (8) Order an obligor to keep the tribunal informed of the
21 obligor's current residential address, telephone number,
22 employer, address of employment and telephone number at the
23 place of employment;

24 (9) Issue a *capias* for an obligor who has failed after proper
25 notice to appear at a hearing ordered by the tribunal and enter
26 the *capias* in any local and state computer systems for criminal
27 warrants;

28 (10) Order the obligor to seek appropriate employment by
29 specified methods;

30 (11) Award reasonable attorney's fees and other fees and
31 costs; and

32 (12) Grant any other available remedy.

33 (c) A responding tribunal of this state shall include in a
34 support order issued under this article or, in the documents
35 accompanying the order, the calculations on which the support
36 order is based.

37 (d) A responding tribunal of this state may not condition the
38 payment of a support order issued under this article upon
39 compliance by a party with provisions for visitation.

40 (e) If a responding tribunal of this state issues an order
41 under this article, the tribunal shall send a copy of the order to

42 the petitioner and the respondent and to the initiating tribunal,
43 if any.

44 (f) If requested to enforce a support order, arrears, or
45 judgment or modify a support order stated in a foreign cur-
46 rency, a responding tribunal of this state shall convert the
47 amount stated in the foreign currency to the equivalent amount
48 in dollars under the applicable official or market exchange rate
49 as publicly reported.

§48-16-306. Inappropriate tribunal.

1 If a petition or comparable pleading is received by an
2 inappropriate tribunal of this state, the tribunal shall forward the
3 pleading and accompanying documents to an appropriate
4 tribunal in this state or another state and notify the petitioner
5 where and when the pleading was sent.

§48-16-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon
2 request, shall provide services to a petitioner in a proceeding
3 under this article.

4 (b) A support enforcement agency of this state that is
5 providing services to the petitioner shall:

6 (1) Take all steps necessary to enable an appropriate
7 tribunal in this state or another state to obtain jurisdiction over
8 the respondent;

9 (2) Request an appropriate tribunal to set a date, time and
10 place for a hearing;

11 (3) Make a reasonable effort to obtain all relevant informa-
12 tion, including information as to income and property of the
13 parties;

14 (4) Within two days, exclusive of Saturdays, Sundays and
15 legal holidays, after receipt of a written notice from an initiat-
16 ing, responding or registering tribunal, send a copy of the notice
17 to the petitioner;

18 (5) Within two days, exclusive of Saturdays, Sundays and
19 legal holidays, after receipt of a written communication from
20 the respondent or the respondent's attorney, send a copy of the
21 communication to the petitioner; and

22 (6) Notify the petitioner if jurisdiction over the respondent
23 cannot be obtained.

24 (c) A support enforcement agency of this state that requests
25 registration of a child support order in this state for enforcement
26 or for modification shall make reasonable efforts:

27 (1) To ensure that the order to be registered is the control-
28 ling order; or

29 (2) If two or more child support orders exist and the identity
30 of the controlling order has not been determined, to ensure that
31 a request for such a determination is made in a tribunal having
32 jurisdiction to do so.

33 (d) A support enforcement agency of this state that requests
34 registration and enforcement of a support order, arrears or
35 judgment stated in a foreign currency shall convert the amounts
36 stated in the foreign currency into the equivalent amounts in
37 dollars under the applicable official or market exchange rate as
38 publicly reported.

39 (e) A support enforcement agency of this state shall request
40 a tribunal of this state to issue a child support order and an
41 income withholding order that redirect payment of current
42 support, arrears and interest if requested to do so by a support

43 enforcement agency of another state pursuant to section 319 of
44 the uniform interstate family support act.

45 (f) This article does not create or negate a relationship of
46 attorney and client or other fiduciary relationship between a
47 support enforcement agency or the attorney for the agency and
48 the individual being assisted by the agency.

**§48-16-308. Duty of West Virginia support enforcement commis-
sion.**

1 (a) If the West Virginia support enforcement commission
2 determines that the support enforcement agency is neglecting
3 or refusing to provide services to an individual, the commission
4 may order the agency to perform its duties under this article or
5 may provide those services directly to the individual.

6 (b) The West Virginia support enforcement commission
7 may determine that a foreign country or political subdivision
8 has established a reciprocal arrangement for child support with
9 this state and take appropriate action for notification of the
10 determination.

§48-16-309. Private counsel.

1 An individual may employ private counsel to represent the
2 individual in proceedings authorized by this article.

§48-16-310. Duties of state information agency.

1 (a) The bureau for child support enforcement is the state
2 information agency under this article.

3 (b) The state information agency shall:

4 (1) Compile and maintain a current list, including ad-
5 dresses, of the tribunals in this state which have jurisdiction
6 under this article and any support enforcement agencies in this

7 state and transmit a copy to the state information agency of
8 every other state;

9 (2) Maintain a register of names and addresses tribunals and
10 support enforcement agencies received from other states;

11 (3) Forward to the appropriate tribunal in the county in this
12 state in which the obligee who is an individual or the obligor
13 resides, or in which the obligor's property is believed to be
14 located, all documents concerning a proceeding under this
15 article received from an initiating tribunal or the state informa-
16 tion agency of the initiating state; and

17 (4) Obtain information concerning the location of the
18 obligor and the obligor's property within this state not exempt
19 from execution, by such means as postal verification and
20 federal or state locator services, examination of telephone
21 directories, requests for the obligor's address from employers
22 and examination of governmental records, including, to the
23 extent not prohibited by other law, those relating to real
24 property, vital statistics, law enforcement, taxation, motor
25 vehicles, driver's licenses and social security.

§48-16-311. Pleadings and accompanying documents.

1 (a) In a proceeding under this article, a petitioner seeking
2 to establish a support order, to determine parentage or to
3 register and modify a support order of another state must file a
4 petition. Unless otherwise ordered under section 16-312, the
5 petition or accompanying documents must provide, so far as
6 known, the name, residential address and social security
7 numbers of the obligor and the obligee or the parent and alleged
8 parent and the name, sex, residential address, social security
9 number and date of birth of each child for whose benefit
10 support is sought or whose parentage is to be determined.
11 Unless filed at the time of registration, the petition must be
12 accompanied by a copy of any support order known to have

13 been issued by another tribunal. The petition may include any
14 other information that may assist in locating or identifying the
15 respondent.

16 (b) The petition must specify the relief sought. The petition
17 and accompanying documents must conform substantially with
18 the requirements imposed by the forms mandated by federal
19 law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

1 If a party alleges in an affidavit or a pleading under oath
2 that the health, safety or liberty of a party or child would be
3 jeopardized by disclosure of specific identifying information,
4 that information must be sealed and may not be disclosed to the
5 other party or the public. After a hearing in which a tribunal
6 takes into consideration the health, safety or liberty of the party
7 or child, the tribunal may order disclosure of information that
8 the tribunal determines to be in the interest of justice.

§48-16-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing fee or
2 other costs.

3 (b) If an obligee prevails, a responding tribunal may assess
4 against an obligor filing fees, reasonable attorney's fees, other
5 costs and necessary travel and other reasonable expenses
6 incurred by the obligee and the obligee's witnesses. The
7 tribunal may not assess fees, costs or expenses against the
8 obligee or the support enforcement agency of either the
9 initiating or the responding state, except as provided by other
10 law. Attorney's fees may be taxed as costs and may be ordered
11 paid directly to the attorney, who may enforce the order in the
12 attorney's own name. Payment of support owed to the obligee
13 has priority over fees, costs and expenses.

14 (c) The tribunal shall order the payment of costs and
15 reasonable attorney's fees if it determines that a hearing was
16 requested primarily for delay. In a proceeding under part 16-
17 601, *et seq.*, a hearing is presumed to have been requested
18 primarily for delay if a registered support order is confirmed or
19 enforced without change.

§48-16-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding under this
2 article before a responding tribunal, whether in person, by
3 private attorney, or through services provided by the support
4 enforcement agency, does not confer personal jurisdiction over
5 the petitioner in another proceeding.

6 (b) A petitioner is not amenable to service of civil process
7 while physically present in this state to participate in a proceed-
8 ing under this article.

9 (c) The immunity granted by this section does not extend to
10 civil litigation based on acts unrelated to a proceeding under
11 this article committed by a party while present in this state to
12 participate in the proceeding.

§48-16-315. Nonparentage as defense.

1 A party whose parentage of a child has been previously
2 determined by or pursuant to law may not plead nonparentage
3 as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

1 (a) The physical presence of a nonresident party who is an
2 individual in a tribunal of this state is not required for the
3 establishment, enforcement or modification of a support order
4 or the rendition of a judgment determining parentage.

5 (b) An affidavit, document substantially complying with
6 federally mandated forms or a document incorporated by
7 reference in any of them, which would not be excluded under
8 the hearsay rule if given in person, is admissible in evidence if
9 given under penalty of perjury by a party or witness residing in
10 another state.

11 (c) A copy of the record of child support payments certified
12 as a true copy of the original by the custodian of the record may
13 be forwarded to a responding tribunal. The copy is evidence of
14 facts asserted in it and is admissible to show whether payments
15 were made.

16 (d) Copies of bills for testing for parentage and for prenatal
17 and postnatal health care of the mother and child, furnished to
18 the adverse party at least ten days before trial, are admissible in
19 evidence to prove the amount of the charges billed and that the
20 charges were reasonable, necessary and customary.

21 (e) Documentary evidence transmitted from another state
22 to a tribunal of this state by telephone, telecopier or other
23 means that do not provide an original record may not be
24 excluded from evidence on an objection based on the means of
25 transmission.

26 (f) In a proceeding under this article, a tribunal of this state
27 shall permit a party or witness residing in another state to be
28 deposed or to testify by telephone, audiovisual means or other
29 electronic means at a designated tribunal or other location in
30 that state. A tribunal of this state shall cooperate with tribunals
31 of other states in designating an appropriate location for the
32 deposition or testimony. The supreme court of appeals shall
33 promulgate new rules or amend the rules of practice and
34 procedure for family law to establish procedures pertaining to
35 the exercise of cross examination in those instances involving

36 the receipt of testimony by means other than direct or personal
37 testimony.

38 (g) If a party called to testify at a civil hearing refuses to
39 answer on the ground that the testimony may be self-incriminat-
40 ing, the trier of fact may draw an adverse inference from the
41 refusal.

42 (h) A privilege against disclosure of communications
43 between spouses does not apply in a proceeding under this
44 article.

45 (i) The defense of immunity based on the relationship of
46 husband and wife or parent and child does not apply in a
47 proceeding under this article.

48 (j) A voluntary acknowledgment or paternity, certified as a
49 true copy is admissible to establish parentage of the child.

§48-16-317. Communications between tribunals.

1 A tribunal of this state may communicate with a tribunal of
2 another state or foreign country or political subdivision in a
3 record, or by telephone or other means, to obtain information
4 concerning the laws, the legal effect of a judgment, decree, or
5 order of that tribunal and the status of a proceeding in the other
6 state or foreign country or political subdivision. A tribunal of
7 this state may furnish similar information by similar means to
8 a tribunal of another state or foreign country or political
9 subdivision.

§48-16-318. Assistance with discovery.

1 A tribunal of this state may:

2 (1) Request a tribunal of another state to assist in obtaining
3 discovery; and

4 (2) Upon request, compel a person over whom it has
5 jurisdiction to respond to a discovery order issued by a tribunal
6 of another state.

§48-16-319. Receipt and disbursement of payments.

1 (a) A support enforcement agency or tribunal of this state
2 shall disburse promptly any amounts received pursuant to a
3 support order, as directed by the order. The agency or tribunal
4 shall furnish to a requesting party or tribunal of another state a
5 certified statement by the custodian of the record of the
6 amounts and dates of all payments received.

7 (b) If neither the obligor, nor the obligee who is an individ-
8 ual, nor the child resides in this state, upon request from the
9 support enforcement agency of this state or another state, a
10 tribunal of this state shall:

11 (1) Direct that the support payment be made to the support
12 enforcement agency in the state in which the obligee is receiv-
13 ing services; and

14 (2) Issue and send to the obligor's employer a conforming
15 income withholding order or an administrative notice of change
16 of payee, reflecting the redirected payments.

17 (c) The support enforcement agency of this state receiving
18 redirected payments from another state pursuant to a law
19 similar to subsection (b) of this section shall furnish to a
20 requesting party or tribunal of the other state a certified
21 statement by the custodian of the record of the amount and
22 dates of all payments received.

PART IV. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

1 (a) If a support order entitled to recognition under this
2 article has not been issued, a responding tribunal of this state
3 may issue a support order if:

4 (1) The individual seeking the order resides in another state;
5 or

6 (2) The support enforcement agency seeking the order is
7 located in another state.

8 (b) The tribunal may issue a temporary child support order
9 if the tribunal determines that such an order is appropriate and
10 the individual ordered to pay is:

11 (1) A presumed father of the child;

12 (2) Petitioning to have his paternity adjudicated;

13 (3) Identified as the father of the child through genetic
14 testing;

15 (4) An alleged father who has declined to submit to genetic
16 testing;

17 (5) Shown by clear and convincing evidence to be the father
18 of the child;

19 (6) An acknowledged father as provided by applicable state
20 law;

21 (7) The mother of the child; or

22 (8) An individual who has been ordered to pay child
23 support in a previous proceeding and the order has not been
24 reversed or vacated.

25 (c) Upon finding, after notice and opportunity to be heard,
26 that an obligor owes a duty of support, the tribunal shall issue
27 a support order directed to the obligor and may issue other
28 orders pursuant to section 16-305.

PART V. DIRECT ENFORCEMENT OF ORDER OF
ANOTHER STATE WITHOUT REGISTRATION.

§48-16-501. Employer's receipt of income withholding order of another state.

1 An income withholding order issued in another state may
2 be sent by or on behalf of the obligee, or by the support
3 enforcement agency, to the person defined as the obligor's
4 source of income under section 1-241 of this chapter without
5 first filing a petition or comparable pleading or registering the
6 order with a tribunal of this state.

§48-16-502. Employer's compliance with income withholding order of another state.

1 (a) Upon receipt of the order, the obligor's employer shall
2 immediately provide a copy of the order to the obligor.

3 (b) The employer shall treat an income withholding order
4 issued in another state which appears regular on its face as if it
5 had been issued by a tribunal of this state.

6 (c) Except as provided by subsection (d) and section 16-
7 503, the employer shall withhold and distribute the funds as
8 directed in the withholding order by complying with the terms
9 of the order, as applicable, that specify:

10 (1) The duration and the amount of periodic payments of
11 current child support, stated as a sum certain;

12 (2) The person designated to receive payments and the
13 address to which the payments are to be forwarded;

14 (3) Medical support, whether in the form of periodic cash
15 payment, stated as a sum certain, or ordering the obligor to
16 provide health insurance coverage for the child under a policy
17 available through the obligor's employment;

18 (4) The amount of periodic payments of fees and costs for
19 a support enforcement agency, the issuing tribunal and the
20 obligee's attorney, stated as sums certain; and

21 (5) The amount of periodic payments of arrears and interest
22 on arrears, stated as sums certain.

23 (d) The employer shall comply with the law of the state of
24 the obligor's principal place of employment for withholding
25 from income with respect to:

26 (1) The employer's fee for processing an income withhold-
27 ing order;

28 (2) The maximum amount permitted to be withheld from
29 the obligor's income;

30 (3) The time periods within which the employer must
31 implement the withholding order and forward the child support
32 payment.

**§48-16-503. Employer's compliance with two or more income
withholding orders.**

1 If an obligor's employer receives two or more income
2 withholding orders with respect to the earnings of the same
3 obligor, the employer satisfies the terms of the orders if the
4 employer complies with the law of the state of the obligor's
5 principal place of employment to establish the priorities for

6 withholding and allocating income withheld for two or more
7 child support obligees.

§48-16-504. Immunity from civil liability.

1 An employer who complies with an income withholding
2 order issued in another state in accordance with this article is
3 not subject to civil liability to any individual or agency with
4 regard to the employer's withholding of child support from the
5 obligor's income.

§48-16-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an income
2 withholding order issued by another state and received for
3 enforcement is subject to the same penalties that may be
4 imposed for noncompliance with an order issued by a tribunal
5 of this state.

§48-16-506. Contest by obligor.

1 (a) An obligor may contest the validity or enforcement of
2 an income withholding order issued in another state and
3 received directly by an employer in this state by registering the
4 order in a tribunal of this state and filing a contest to that order
5 as provided in article six, or otherwise contesting the order in
6 the same manner as if the order had been issued by a tribunal of
7 this state. Section 604 applies to the contest.

8 (b) The obligor shall give notice of the contest to:

9 (1) A support enforcement agency providing services to the
10 obligee;

11 (2) Each employer which has directly received an income
12 withholding order relating to the obligor; and

13 (3) The person designated to receive payments in the
14 income withholding order, or if no person is designated, to the
15 obligee.

§48-16-507. Administrative enforcement of orders.

1 (a) A party or support enforcement agency seeking to
2 enforce a support order or an income withholding order, or
3 both, issued by a tribunal of another state may send the docu-
4 ments required for registering the order to a support enforce-
5 ment agency of this state.

6 (b) Upon receipt of the documents, the support enforcement
7 agency, without initially seeking to register the order, shall
8 consider and, if appropriate, use any administrative procedure
9 authorized by the law of this state to enforce a support order or
10 an income withholding order, or both. If the obligor does not
11 contest administrative enforcement, the order need not be
12 registered. If the obligor contests the validity or administrative
13 enforcement of the order, the support enforcement agency shall
14 register the order pursuant to this article.

PART VI. REGISTRATION, ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER.

§48-16-601. Registration of order for enforcement.

1 A support order or an income withholding order issued by
2 a tribunal of another state may be registered in this state for
3 enforcement.

§48-16-602. Procedure to register order for enforcement.

1 (a) A support order or income withholding order of another
2 state may be registered in this state by sending the following
3 records and information to the state information agency who
4 shall forward the order to the appropriate tribunal:

5 (1) A letter of transmittal to the tribunal requesting registra-
6 tion and enforcement;

7 (2) Two copies, including one certified copy, of the order
8 to be registered, including any modification of the order;

9 (3) A sworn statement by the person requesting registration
10 or a certified statement by the custodian of the records showing
11 the amount of any arrearage;

12 (4) The name of the obligor and, if known:

13 (A) The obligor's address and social security number;

14 (B) The name and address of the obligor's employer and
15 any other source of income of the obligor; and

16 (C) A description and the location of property of the obligor
17 in this state not exempt from execution; and

18 (5) Except as otherwise provided in section 312, the name
19 and address of the obligee and, if applicable, the person to
20 whom support payments are to be remitted.

21 (b) On receipt of a request for registration, the clerk of the
22 court shall cause the order to be filed as a foreign judgment,
23 together with one copy of the documents and information,
24 regardless of their form.

25 (c) A petition or comparable pleading seeking a remedy that
26 must be affirmatively sought under other law of this state may
27 be filed at the same time as the request for registration or later.
28 The pleading must specify the grounds for the remedy sought.

29 (d) If two or more orders are in effect, the person requesting
30 registration shall:

31 (1) Furnish to the tribunal a copy of every support order
32 asserted to be in effect in addition to the documents specified in
33 this section;

34 (2) Specify the order alleged to be the controlling order, if
35 any; and

36 (3) Specify the amount of consolidated arrears, if any.

37 (e) A request for a determination of which is the controlling
38 order may be filed separately or with a request for registration
39 and enforcement or for registration and modification. The
40 person requesting registration shall give notice of the request to
41 each party whose rights may be affected by the determination.

§48-16-603. Effect of registration for enforcement.

1 (a) A support order or income withholding order issued in
2 another state is registered when the order is filed in the register-
3 ing tribunal of this state.

4 (b) A registered order issued in another state is enforceable
5 in the same manner and is subject to the same procedures as an
6 order issued by a tribunal of this state.

7 (c) Except as otherwise provided in this article, a tribunal
8 of this state shall recognize and enforce, but may not modify, a
9 registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

1 (a) Except as otherwise provided in subsection (d) of this
2 section, the law of the issuing state governs:

3 (1) The nature, extent, amount and duration of current
4 payments under a registered support order;

5 (2) The computation and payment of arrearages and accrual
6 of interest on the arrearages under the support order; and

7 (3) The existence and satisfaction of other obligations under
8 the support order.

9 (b) In a proceeding for arrears under a registered support
10 order, the statute of limitation of this state or of the issuing
11 state, whichever is longer, applies.

12 (c) A responding tribunal of this state shall apply the
13 procedures and remedies of this state to enforce current support
14 and collect arrears and interest due on a support order of
15 another state registered in this state.

16 (d) After a tribunal of this or another state determines
17 which is the controlling order and issues an order consolidating
18 arrears, if any, a tribunal of this state shall prospectively apply
19 the law of the state issuing the controlling order, including its
20 law on interest on arrears, on current and future support and on
21 consolidated arrears.

§48-16-605. Notice of registration of order.

1 (a) When a support order or income withholding order
2 issued in another state is registered, the clerk of the court shall
3 notify the nonregistering party. The notice must be accompa-
4 nied by a copy of the registered order and the documents and
5 relevant information accompanying the order.

6 (b) A notice must inform the nonregistering party:

7 (1) That a registered order is enforceable as of the date of
8 registration in the same manner as an order issued by a tribunal
9 of this state;

10 (2) That a hearing to contest the validity or enforcement of
11 the registered order must be requested within twenty days after
12 notice;

13 (3) That failure to contest the validity or enforcement of the
14 registered order in a timely manner will result in confirmation
15 of the order and enforcement of the order and the alleged
16 arrearages and precludes further contest of that order with
17 respect to any matter that could have been asserted; and

18 (4) Of the amount of any alleged arrearages.

19 (c) If the registering party asserts that two or more orders
20 are in effect, a notice must also:

21 (1) Identify the two or more orders and the order alleged by
22 the registering person to be the controlling order and the
23 consolidated arrears, if any;

24 (2) Notify the nonregistering party of the right to a determi-
25 nation of which is the controlling order;

26 (3) State the procedures provided in subsection (b) of this
27 section apply to the determination of which is the controlling
28 order; and

29 (4) State that failure to contest the validity or enforcement
30 of the order alleged to be the controlling order in a timely
31 manner may result in confirmation that the order is the control-
32 ling order.

33 (d) Upon registration of an income withholding order for
34 enforcement, the registering tribunal shall notify the obligor's
35 source of income pursuant to part 14-401, *et seq.*, of this
36 chapter.

§48-16-606. Procedure to contest validity or enforcement of registered order.

1 (a) A nonregistering party seeking to contest the validity or
2 enforcement of a registered order in this state shall request a
3 hearing within twenty days after the date of mailing or personal
4 service of notice of the registration. The nonregistering party
5 may seek to vacate the registration, to assert any defense to an
6 allegation of noncompliance with the registered order, or to
7 contest the remedies being sought or the amount of any alleged
8 arrearages pursuant to section 16-607.

9 (b) If the nonregistering party fails to contest the validity or
10 enforcement of the registered order in a timely manner, the
11 order is confirmed by operation of law.

12 (c) If a nonregistering party requests a hearing to contest
13 the validity or enforcement of the registered order, the register-
14 ing tribunal shall schedule the matter for hearing and give
15 notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered order or seeking to vacate the registration has the
3 burden of proving one or more of the following defenses:

4 (1) The issuing tribunal lacked personal jurisdiction over
5 the contesting party;

6 (2) The order was obtained by fraud;

7 (3) The order has been vacated, suspended or modified by
8 a later order;

9 (4) The issuing tribunal has stayed the order pending
10 appeal;

11 (5) There is a defense under the law of this state to the
12 remedy sought;

13 (6) Full or partial payment has been made;

14 (7) The statute of limitation under section 16-604 precludes
15 enforcement of some or all of the alleged arrearages; or

16 (8) The alleged controlling order is not the controlling
17 order.

18 (b) If a party presents evidence establishing a full or partial
19 defense under subsection (a), a tribunal may stay enforcement
20 of the registered order, continue the proceeding to permit
21 production of additional relevant evidence, and issue other
22 appropriate orders. An uncontested portion of the registered
23 order may be enforced by all remedies available under the law
24 of this state.

25 (c) If the contesting party does not establish a defense under
26 subsection (a) to the validity or enforcement of the order, the
27 registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

1 Confirmation of a registered order, whether by operation of
2 law or after notice and hearing, precludes further contest of the
3 order with respect to any matter that could have been asserted
4 at the time of registration.

**§48-16-609. Procedure to register child support order of another
state for modification.**

1 A party or support enforcement agency seeking to modify
2 or to modify and enforce a child support order issued in another
3 state shall register that order in this state in the same manner
4 provided in part 1 if the order has not been registered. A

5 petition for modification may be filed at the same time as a
6 request for registration or later. The pleading must specify the
7 grounds for modification.

§48-16-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support order of
2 another state registered for purposes of modification, in the
3 same manner as if the order had been issued by a tribunal of
4 this state, but the registered order may be modified only if the
5 requirements of section 16-611 have been met.

§48-16-611. Modification of child support order of another state.

1 (a) If section 613 does not apply, except as otherwise
2 provided in section 615, upon petition a tribunal of this state
3 may modify a child support order issued in another state which
4 is registered in this state if, after notice and hearing, the tribunal
5 finds that:

6 (1) The following requirements are met:

7 (A) Neither the child, the obligee who is an individual nor
8 the obligor resides in the issuing state;

9 (B) A petitioner who is a nonresident of this state seeks
10 modification; and

11 (C) The respondent is subject to the personal jurisdiction of
12 the tribunal of this state; or

13 (2) This state is the state of residence of the child or a party
14 who is an individual is subject to the personal jurisdiction of the
15 tribunal of this state and all of the parties who are individuals
16 have filed consents in a record in the issuing tribunal for a
17 tribunal of this state to modify the support order and assume
18 continuing, exclusive jurisdiction.

19 (b) Modification of a registered child support order is
20 subject to the same requirements, procedures and defenses that
21 apply to the modification of an order issued by a tribunal of this
22 state and the order may be enforced and satisfied in the same
23 manner.

24 (c) Except as otherwise provided in section 615, a tribunal
25 of this state may not modify any aspect of a child support order
26 that may not be modified under the law of the issuing state,
27 including the duration of the obligation of support. If two or
28 more tribunals have issued child support orders for the same
29 obligor and child, the order that controls and must be so
30 recognized under section 16-207 establishes the aspects of the
31 support order which are nonmodifiable.

32 (d) In a proceeding to modify a child support order, the law
33 of the state that is determined to have issued the initial control-
34 ling order governs the duration of the obligation of support. The
35 obligor's fulfillment of the duty of support established by that
36 order precludes imposition of a further obligation of support by
37 a tribunal of this state.

38 (e) On issuance of an order by a tribunal of this state
39 modifying a child support order issued in another state, the
40 tribunal of this state becomes the tribunal of continuing,
41 exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

1 If a child support order issued by a tribunal of this state is
2 modified by a tribunal of another state which assumed jurisdic-
3 tion pursuant to the uniform interstate family support act, a
4 tribunal of this state:

5 (1) May enforce its order that was modified only as to
6 arrears and interest accruing before the modification;

7 (2) May provide appropriate relief for violations of its order
8 which occurred before the effective date of the modification;
9 and

10 (3) Shall recognize the modifying order of the other state,
11 upon registration, for the purpose of enforcement.

**§48-16-613. Jurisdiction to modify support order of another state
when individual parties reside in this state.**

1 (a) If all of the individual parties reside in this state and the
2 child does not reside in the issuing state, a tribunal of this state
3 has jurisdiction to enforce and to modify the issuing state's
4 child support order in a proceeding to register that order.

5 (b) A tribunal of this state exercising jurisdiction as
6 provided in this section shall apply the provisions of parts 1 and
7 2 and this part to the enforcement or modification proceeding.
8 Parts 3 through 5, inclusive, and parts 7 and 8 do not apply and
9 the tribunal shall apply the procedural and substantive law of
10 this state.

§48-16-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child
2 support order, the party obtaining the modification shall file a
3 certified copy of the order with the issuing tribunal which had
4 continuing, exclusive jurisdiction over the earlier order and in
5 each tribunal in which the party knows that earlier order has
6 been registered. Failure of the party obtaining the order to file
7 a certified copy as required subjects that party to appropriate
8 sanctions by a tribunal in which the issue of failure to file
9 arises, but that failure has no effect on the validity or
10 enforceability of the modified order of the new tribunal of
11 continuing, exclusive jurisdiction.

§48-16-615. Jurisdiction to modify child support order of foreign country or political subdivision.

1 (a) If a foreign country or political subdivision that is a
2 state will not or may not modify its order pursuant to its laws,
3 a tribunal of this state may assume jurisdiction to modify the
4 child support order and bind all individuals subject to the
5 personal jurisdiction of the tribunal whether or not the consent
6 to modification of a child support order otherwise required of
7 the individual pursuant to section 611 has been given or
8 whether the individual seeking modification is a resident of this
9 state or of the foreign country or political subdivision.

10 (b) An order issued pursuant to this section is the control-
11 ling order.

PART VII. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

1 A court of this state authorized to determine parentage of a
2 child may serve as a responding tribunal in a proceeding to
3 determine parentage brought under this article or a law substan-
4 tially similar to this article.

PART VIII. INTERSTATE RENDITION.

§48-16-801. Grounds for rendition.

1 (a) For purposes of this article, "governor" includes an
2 individual performing the functions of governor or the execu-
3 tive authority of a state covered by this article.

4 (b) The governor of this state may:

5 (1) Demand that the governor of another state surrender an
6 individual found in the other state who is charged criminally in

7 this state with having failed to provide for the support of an
8 obligee; or

9 (2) On the demand by the governor of another state,
10 surrender an individual found in this state who is charged
11 criminally in the other state with having failed to provide for
12 the support of an obligee.

13 (c) A provision for extradition of individuals not inconsis-
14 tent with this article applies to the demand even if the individ-
15 ual whose surrender is demanded was not in the demanding
16 state when the crime was allegedly committed and has not fled
17 therefrom.

§48-16-802. Conditions of rendition.

1 (a) Before making demand that the governor of another
2 state surrender an individual charged criminally in this state
3 with having failed to provide for the support of an obligee, the
4 governor of this state may require a prosecutor of this state to
5 demonstrate that at least sixty days previously the obligee had
6 initiated proceedings for support pursuant to this article or that
7 the proceeding would be of no avail.

8 (b) If, under this article or a law substantially similar to this
9 article, the governor of another state makes a demand that the
10 governor of this state surrender an individual charged crimi-
11 nally in that state with having failed to provide for the support
12 of a child or other individual to whom a duty of support is
13 owed, the governor may require a prosecutor to investigate the
14 demand and report whether a proceeding for support has been
15 initiated or would be effective. If it appears that a proceeding
16 would be effective but has not been initiated, the governor may
17 delay honoring the demand for a reasonable time to permit the
18 initiation of a proceeding.

19 (c) If a proceeding for support has been initiated and the
20 individual whose rendition is demanded prevails, the governor
21 may decline to honor the demand. If the petitioner prevails and
22 the individual whose rendition is demanded is subject to a
23 support order, the governor may decline to honor the demand
24 if the individual is complying with the support order.

PART IX. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

1 In applying and construing this Uniform Act consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48-16-902. Severability clause.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application and
5 to this end the provisions of this article are severable.

§48-16-903. Effective date.

1 The provisions of this article originally enacted during the
2 regular session of the Legislature in the year one thousand nine
3 hundred ninety-seven were effective on the first day of January,
4 one thousand nine hundred ninety-eight. The provisions of this
5 article enacted during the regular session of the Legislature in
6 the year two thousand two take effect on the first day of July,
7 two thousand two.

CHAPTER 319

(Com. Sub. for S. B. 475 — By Senators Wooton and Craig)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred one, two hundred two and two hundred four, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four hundred one, four hundred six and four hundred seven, article four of said chapter, all relating to revising the uniform securities act generally; eliminating requirement that investment advisers must also be registered as a broker-dealers without the imposition of certain restrictions; requiring applicants for registration as broker-dealer or agent to be registered in securities business in state where principal place of business is located; providing for a waiver in certain instances upon written application to the commissioner; exempting certain investment advisers from requirement that federal-covered advisers must file certain documents with the commissioner; clarifying time limitations on filing certain civil actions; authorizing commissioner to place conditions upon a license; setting forth certain acts which constitute dishonest or unethical practices of broker-dealers and agents; setting forth further acts which constitute dishonest or unethical practices of agents; expanding authority of commissioner over applicants or registrants who have engaged in certain conduct; defining term “branch office”; increasing amount required to be on deposit in the operating fund before a transfer is made to the general revenue fund; and expanding authority of the commissioner to appoint special investigators.

Be it enacted by the Legislature of West Virginia:

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

Article

- 2. Registration of Broker-Dealers, and Agents; Registration and Notice Filing for Investment Advisers.**
- 4. General Provisions.**

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AND AGENTS;
REGISTRATION AND NOTICE FILING FOR INVEST-
MENT ADVISERS.**

§32-2-201. Registration requirement.

§32-2-202. Registration and notice filing procedure.

§32-2-204. Denial, revocation, suspension, otherwise condition, cancellation and withdrawal of registration.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business in this
2 state as a broker-dealer or agent unless he or she is registered
3 under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to employ
5 an agent unless the agent is registered. The registration of an
6 agent is not effective during any period when he or she is not
7 associated with a particular broker-dealer registered under this
8 chapter or a particular issuer. When an agent begins or termi-
9 nates a connection with a broker-dealer or issuer, or begins or
10 terminates those activities which make him or her an agent, the
11 agent as well as the broker-dealer or issuer shall promptly
12 notify the commissioner.

13 (c) It is unlawful for any person to transact business in this
14 state as an investment adviser unless: (1) He or she is so
15 registered under this chapter; (2) he or she is a federal-covered
16 adviser except that, until the tenth day of October, one thousand
17 nine hundred ninety-nine, a federal-covered adviser for which
18 a nonpayment or underpayment of a fee has not been promptly
19 remedied following written notification to the adviser of such
20 nonpayment or underpayment shall be required to register under
21 this article; or (3) he or she has no place of business in this state
22 and: (A) His or her only clients in this state are investment
23 companies as defined in the Investment Company Act of 1940,
24 other investment advisers, federal-covered advisers, broker-
25 dealers, banks, trust companies, savings and loan associations,
26 insurance companies, employee benefit plans with assets of not
27 less than one million dollars and governmental agencies or
28 instrumentalities, whether acting for themselves or as trustees
29 with investment control, or other institutional investors as are
30 designated by rule or order of the commissioner; or (B) during
31 any period of twelve consecutive months he or she does not
32 have more than five clients who are residents of this state, other
33 than those specified in this subsection, whether or not he or she
34 or any of the clients who are residents of this state is then
35 present in the state.

36 (d) Every registration or notice filing expires one year from
37 its effective date unless renewed. The commissioner by rule or
38 order may prepare an initial schedule for renewals of registra-
39 tions or notice filings so that subsequent renewals of registra-
40 tions or notice filings effective on the effective date of this
41 chapter may be staggered by calendar months. For this purpose
42 the commissioner by rule may reduce the registration or notice
43 filing fee proportionately.

44 (e) It is unlawful for any:

45 (1) Person required to be registered as an investment
46 adviser under this article to employ an investment adviser
47 representative unless the investment adviser representative is
48 registered under this article: *Provided*, That the registration of
49 an investment adviser representative is not effective during any
50 period when he or she is not employed by an investment adviser
51 registered under this article; or

52 (2) Federal-covered adviser to employ, supervise or
53 associate with an investment adviser representative having a
54 place of business located in this state, unless such investment
55 adviser representative is registered under this article or is
56 exempt from registration. When an investment adviser repre-
57 sentative begins or terminates employment with an investment
58 adviser, the investment adviser (in the case of 401 (g)), or the
59 investment adviser representative (in the case of 401 (f)), shall
60 promptly notify the commissioner.

61 (f) Except with respect to advisers whose only clients are
62 those described in subdivision (3), subsection (c) of this section,
63 it is unlawful for any federal-covered adviser to conduct
64 advisory business in this state unless such person complies with
65 the provisions of subsection (b), section two hundred two of
66 this article.

67 (g) An applicant must be registered or qualified in the
68 securities business in the state of the applicant's principal place
69 of business. The commissioner may waive this requirement
70 upon a finding that the applicant is registered with the securities
71 and exchange commission or any other national securities
72 exchange or national securities association registered under the
73 Securities Exchange Act of 1934. A request to waive this
74 requirement must be made upon written application to the
75 commissioner which includes documentation upon which the
76 applicant relies in requesting the waiver.

§32-2-202. Registration and notice filing procedure.

1 (a) A broker-dealer, agent or investment adviser may obtain
2 an initial or renewal registration by filing with the commis-
3 sioner an application together with a consent to service of
4 process pursuant to subsection (g), section four hundred
5 fourteen, article four of this chapter. The application shall
6 contain whatever information the commissioner by rule requires
7 concerning matters such as: (1) The applicant's firm and place
8 of organization; (2) the applicant's proposed method of doing
9 business; (3) the qualifications and business history of the
10 applicant and in the case of a broker-dealer or investment
11 adviser, the qualifications and business history of any partner,
12 officer or director, any person occupying a similar status or
13 performing similar functions or any person, directly or indi-
14 rectly, controlling the broker-dealer or investment adviser and,
15 in the case of an investment adviser, the qualifications and
16 business history of any employee; (4) any injunction or
17 administrative order or conviction of a misdemeanor involving
18 a security or any aspect of the securities business and any
19 conviction of a felony; and (5) subject to the limitations of
20 §15(h)(1) of the Securities Exchange Act of 1934, the appli-
21 cant's financial condition and history. The commissioner may
22 by rule or order require an applicant for initial registration to
23 publish an announcement of the application as a Class I legal
24 advertisement in compliance with the provisions of article
25 three, chapter fifty-nine of this code and the publication area or
26 areas for the publication shall be specified by the commis-
27 sioner. If no denial order is in effect and no proceeding is
28 pending under section two hundred four of this article, registra-
29 tion becomes effective at noon of the thirtieth day after an
30 application is filed. The commissioner may by rule or order
31 specify an earlier effective date and he or she may by order
32 defer the effective date until noon of the thirtieth day after the
33 filing of any amendment to an application. Registration of a
34 broker-dealer automatically constitutes registration of any agent

35 who is a partner, officer or director, or a person occupying a
36 similar status or performing similar functions, as designated by
37 the broker-dealer in writing to the commissioner and approved
38 in writing by the commissioner. Registration of an investment
39 adviser automatically constitutes registration of any investment
40 adviser representative who is a partner, officer or director or a
41 person occupying a similar status or performing similar
42 functions as designated by the investment adviser in writing to
43 the commissioner and approved in writing by the commis-
44 sioner.

45 (b) Except with respect to federal-covered advisers whose
46 only clients are those described in paragraphs (A) and (B),
47 subdivision (3), subsection (c), section two hundred one of this
48 article, a federal-covered adviser shall file with the commis-
49 sioner, prior to acting as a federal-covered adviser in this state,
50 such documents as have been filed with the securities and
51 exchange commissioner as the commissioner, by rule or order,
52 may require along with notice filing fees under subsection (c)
53 of this section.

54 (c) Every applicant for initial or renewal registration shall
55 pay a filing fee of two hundred fifty dollars in the case of a
56 broker-dealer and the agent of an issuer, fifty-five dollars in the
57 case of an agent, one hundred seventy dollars in the case of an
58 investment adviser and fifty dollars for each investment advisor
59 representative. When an application is denied or withdrawn, the
60 commissioner shall retain all of the fee.

61 (d) A registered broker-dealer or investment adviser may
62 file an application for registration of a successor, whether or not
63 the successor is then in existence, for the unexpired portion of
64 the year. A filing fee of twenty dollars shall be paid.

65 (e) The commissioner may, by rule or order, require a
66 minimum capital for registered broker-dealers, subject to the

67 limitations of section fifteen of the Securities Exchange Act of
68 1934 and establish minimum financial requirements for
69 investment advisers, subject to the limitations of section 222 of
70 the Investment Advisers Act of 1940, which may include
71 different requirements for those investment advisers who
72 maintain custody of clients' funds or securities or who have
73 discretionary authority over same and those investment advisers
74 who do not.

75 (f) The commissioner may, by rule or order, require
76 registered broker-dealers, agents and investment advisers who
77 have custody of or discretionary authority over client funds or
78 securities to post surety bonds in amounts as the commissioner
79 may prescribe, by rule or order, subject to the limitations of
80 section fifteen of the Securities Exchange Act of 1934 (for
81 broker-dealers) and section 222 of the Investment Advisers Act
82 of 1940 (for investment advisers), up to twenty-five thousand
83 dollars and may determine their conditions. Any appropriate
84 deposit of cash or securities shall be accepted in lieu of any
85 bond so required. No bond may be required of any registrant
86 whose net capital, or, in the case of an investment adviser,
87 whose minimum financial requirements, which may be defined
88 by rule, exceeds the amounts required by the commissioner.
89 Every bond shall provide for suit thereon by any person who
90 has a cause of action under section four hundred ten, article four
91 of this chapter and, if the commissioner by rule or order
92 requires, by any person who has a cause of action not arising
93 under this chapter. Every bond shall provide that no suit may be
94 maintained to enforce any liability on the bond unless brought
95 within the time limitations set forth in subsection (e), section
96 four hundred ten, article four of this chapter.

97 (g) Every applicant, whether registered under this chapter
98 or not, shall pay a fifty dollar fee for each name or address
99 change.

100 (h) Every broker-dealer and investment advisor registered
101 under this chapter shall pay an annual fifty dollar fee for each
102 branch office located in West Virginia.

103 (i) Each agent, representative and associated person of a
104 broker-dealer or investment advisor when applying for an initial
105 license under section two hundred two of this article or chang-
106 ing employers shall pay a compliance assessment of twenty-five
107 dollars. Each agent, representative and associated person, when
108 applying for a renewal license under section two hundred two
109 of this article, shall pay a compliance assessment of ten dollars.

**§32-2-204. Denial, revocation, suspension, otherwise condition,
cancellation and withdrawal of registration.**

1 (a) The commissioner may by order deny, suspend,
2 otherwise condition or revoke any registration if he or she finds:
3 (1) That the order is in the public interest; and (2) that the
4 applicant or registrant or, in the case of a broker-dealer or
5 investment adviser, any partner, officer or director, any person
6 occupying a similar status or performing similar functions, or
7 any person directly or indirectly controlling the broker-dealer
8 or investment adviser:

9 (A) Has filed an application for registration which as of its
10 effective date, or as of any date after filing in the case of an
11 order denying effectiveness, was incomplete in any material
12 respect or contained any statement which was, in light of the
13 circumstances under which it was made, false or misleading
14 with respect to any material fact;

15 (B) Has willfully violated or willfully failed to comply with
16 any provision of this chapter or a predecessor act or any rule or
17 order under this chapter or a predecessor act;

18 (C) Has been convicted, within the past ten years, of any
19 misdemeanor involving a security or any aspect of the securities
20 business or any felony;

21 (D) Is permanently or temporarily enjoined by any court of
22 competent jurisdiction from engaging in or continuing any
23 conduct or practice involving any aspect of the securities
24 business;

25 (E) Is the subject of an order of the commissioner denying,
26 suspending or revoking registration as a broker-dealer, agent or
27 investment adviser;

28 (F) Is the subject of an order entered within the past five
29 years by the securities administrator of any other state or by the
30 securities and exchange commission denying or revoking
31 registration as a broker-dealer, agent or investment adviser, or
32 the substantial equivalent of those terms as defined in this
33 chapter, or is the subject of an order of the securities and
34 exchange commission suspending or expelling him or her from
35 a national securities exchange or national securities association
36 registered under the Securities Exchange Act of 1934, or is the
37 subject of a United States post-office-fraud order; but: (i) The
38 commissioner may not institute a revocation or suspension
39 proceeding under this subdivision more than one year from the
40 date of the order relied on; and (ii) he or she may not enter an
41 order under this subdivision on the basis of an order under
42 another state act unless that order was based on facts which
43 would currently constitute a ground for an order under this
44 section;

45 (G) Has engaged in dishonest or unethical practices in the
46 securities business.

47 (H) Is insolvent, either in the sense that his or her liabilities
48 exceed his or her assets or in the sense that he or she cannot
49 meet his or her obligations as they mature; but the commis-

50 sioner may not enter an order against a broker-dealer or
51 investment adviser under this subdivision without a finding of
52 insolvency as to the broker-dealer or investment adviser; or

53 (I) Is not qualified on the basis of such factors as training,
54 experience and knowledge of the securities business, except as
55 otherwise provided in subsection (b).

56 The commissioner may by order deny, suspend or revoke
57 any registration if he or she finds: (1) That the order is in the
58 public interest; and (2) that the applicant or registrant:

59 (J) Has failed reasonably to supervise his or her agents if he
60 or she is a broker-dealer or his or her employees if he or she is
61 an investment adviser; or

62 (K) Has failed to pay the proper filing fee; but the commis-
63 sioner may enter only a denial order under this subdivision and
64 he or she shall vacate any such order when the deficiency has
65 been corrected.

66 The commissioner may not institute a suspension or
67 revocation proceeding on the basis of a fact or transaction
68 known to him or her when registration became effective unless
69 the proceeding is instituted within the next thirty days.

70 (b) With regard to broker-dealers and agents, dishonest or
71 unethical practices in the securities business includes, but is not
72 limited to:

73 (1) Causing any unreasonable and unjustifiable delay or
74 engaging in a pattern of unreasonable and unjustifiable delays,
75 in the delivery of securities purchased by any of the customers
76 or in the payment upon request of free credit balances reflecting
77 completed transactions of any of the customers;

78 (2) Inducing trading in a customer's account which is
79 excessive in size or frequency in view of the financial resources
80 and character of the account;

81 (3) Recommending to a customer the purchase, sale or
82 exchange of any security without reasonable grounds to believe
83 that the transaction or recommendation is suitable for the
84 customer based upon reasonable inquiry concerning the
85 customer's investment objectives, financial situation and needs
86 and any other relevant information known by the broker-dealer
87 and/or agent;

88 (4) Executing a transaction on behalf of a customer without
89 authorization;

90 (5) Exercising any discretionary power in effecting a
91 transaction for a customer's account without first obtaining
92 written authority from the customer, unless the discretionary
93 power relates solely to the time and/or price for the execution
94 of orders;

95 (6) Extending, arranging for or participating in arranging
96 for credit to a customer in violation of the regulations of the
97 securities and exchange commission or the regulations of the
98 federal reserve board;

99 (7) Executing any transaction in a margin account without
100 obtaining from the customer a written margin agreement prior
101 to settlement date for the initial transaction in the account;

102 (8) Failing to segregate customers' free securities or
103 securities in safekeeping;

104 (9) Hypothecating a customer's securities without having
105 a lien thereon unless a properly executed written consent of the
106 customer is first obtained, except as otherwise permitted by
107 rules of the securities and exchange commission;

108 (10) Charging unreasonable and inequitable fees for
109 services performed, including miscellaneous services such as
110 collection of moneys due for principal, dividends or interest,
111 exchange or transfer of securities, appraisals, safekeeping or
112 custody of securities and other services related to its securities
113 business;

114 (11) Entering into a transaction for its own account with a
115 customer in a security at a price not reasonably related to the
116 current market price of the security, or charging a commission
117 which is not reasonable;

118 (12) Entering into a transaction with or for a customer at a
119 price not reasonably related to the current market price of the
120 security or receiving an unreasonable or indeterminate commis-
121 sion or profit;

122 (13) Executing orders for the purchase by a customer of
123 securities not registered under the provisions of this chapter,
124 unless the securities or transaction are exempt from registration
125 under this chapter;

126 (14) Engaging in a course of conduct constituting an
127 egregious violation of the rules of a national securities associa-
128 tion of which the broker-dealer is a member with respect to any
129 customer, transaction or business;

130 (15) Introducing customer transactions on a fully disclosed
131 basis to another broker-dealer or agent that is not registered
132 under section 32-2-201 unless the customer is a person de-
133 scribed in section 32-4-402(b)(8);

134 (16) Unreasonably or unjustifiably failing to furnish to a
135 customer purchasing securities in an offering, no later than the
136 date of confirmation of the transaction, either a final prospectus
137 or a preliminary prospectus and an additional document, which
138 together include all information set forth in the final prospectus;

139 (17) Offering to buy from or sell to any person any security
140 at a stated price unless the broker-dealer or agent is prepared to
141 purchase or sell, as the case may be, at the price and under the
142 conditions as are stated at the time of the offer to buy or sell;

143 (18) Representing that a security is being offered to a
144 customer “at the market” or for a price relevant to the market
145 price unless such broker-dealer or agent knows or has reason-
146 able grounds to believe that a market for the security exists
147 other than that made, created or controlled by the broker-dealer
148 or agent, or by any person for whom he or she is acting or with
149 whom he or she is associated in the distribution, or any person
150 controlled by, controlling or under common control with the
151 broker-dealer or agent;

152 (19) Effecting any transaction in, or inducing the purchase
153 or sale of, any security by means of any manipulative, deceptive
154 or fraudulent device, practice, plan, program, design or contriv-
155 ance, which may include, but is not limited to: (A) Effecting
156 any transaction in a security which involves no change in the
157 beneficial ownership; (B) entering an order or orders for the
158 purchase or sale of any security with the knowledge that an
159 order or orders of substantially the same size, at substantially
160 the same time and substantially the same price, for sale of any
161 security, has been or will be entered by or for the same or
162 different parties for the purpose of creating a false or mislead-
163 ing appearance with respect to the market for the security:
164 *Provided*, That nothing in this paragraph prohibits a broker-
165 dealer or agent from entering into a bona fide agency cross
166 transaction for its customers; and (C) effecting, alone or with
167 one or more other persons, a series of transactions in any
168 security creating actual or apparent active trading in the security
169 or raising or depressing the price of the security, for the purpose
170 of inducing the purchase or sale of the security by others;

171 (20) Guaranteeing a customer against market loss in any
172 securities account of the customer carried by the broker-dealer
173 or agent or in any securities transaction effected by the bro-
174 ker-dealer or agent with or for the customer;

175 (21) Publishing or circulating, or causing to be published or
176 circulated, any notice, circular, advertisement, newspaper
177 article, investment service or communication of any kind which
178 purports to report any transaction as a purchase or sale of any
179 security unless the broker-dealer or agent believes that the
180 transaction was a bona fide purchase or sale of the security, or
181 which purports to quote the bid price or asked price for any
182 security, unless the broker-dealer or agent believes the quota-
183 tion represents a bona fide bid for or offer of the security;

184 (22) Using any advertising or sales presentation which is
185 deceptive or misleading, such as the distribution of any nonfac-
186 tual data, material or presentation based on conjecture, un-
187 founded or unrealistic claims or assertions in any brochure,
188 flyer or display by works, pictures, graphs or otherwise
189 designed to supplement, detract from, supersede or defeat the
190 purpose or effect of any prospectus or disclosure;

191 (23) Failing to disclose to the customer that the bro-
192 ker-dealer or agent is controlled by, affiliated with or under
193 common control with the issuer of any contract with or for a
194 customer for the purchase or sale of the security and if the
195 disclosure is not made in writing, it shall be supplemented by
196 the giving or sending of written disclosure at or before the
197 completion of the transaction;

198 (24) Failing to make a bona fide public offering of all of the
199 securities allotted to a broker-dealer or agent for distribution,
200 whether acquired as an underwriter, a selling group member, or
201 from a member participating in the distribution as an under-
202 writer or selling group member;

203 (25) Failing or refusing to furnish a customer, upon
204 reasonable request, information to which he or she is entitled,
205 or to respond to a formal written request or complaint;

206 (26) Establishing, maintaining or operating an account
207 under fictitious name or containing fictitious information;

208 (27) Sharing directly or indirectly in profits or losses in the
209 account of any customer without the written authorization of
210 the customer;

211 (28) Utilizing an agent or subagent in effecting or attempt-
212 ing to effect purchases or sales of securities where the agent or
213 subagent is not registered as an agent pursuant to section 32-2-
214 201;

215 (29) Associating, affiliating or entering into any arrange-
216 ment with any person not registered as a broker-dealer or agent
217 pursuant to section 32-2-201 for the purpose of engaging in the
218 business of effecting transactions in securities, where the
219 employees of such person assisting the broker-dealer or agent
220 in effecting the transactions in securities are not either regis-
221 tered as an agent of the broker-dealer or the activities of the
222 employees are not limited to duties that are exclusively clerical
223 in nature for which the broker-dealer or agent has provided
224 adequate supervision including instruction, training and
225 safeguards against a violation of this chapter;

226 (30) Associating, affiliating or entering into any arrange-
227 ment with any person not registered as a broker-dealer or agent
228 pursuant to section 32-2-201 for the purpose of engaging in the
229 business of effecting transactions in securities, where the person
230 fails to conspicuously disclose to all customers in any advertise-
231 ment or literature published or distributed by the person: (A)
232 The identity of the registered broker-dealer or agency; (B) that
233 a person is not subject to regulation by the securities commis-
234 sioner of the state of West Virginia; and (C) the manner, form

235 and amount of compensation, commission or remuneration to
236 be received by the person;

237 (31) Representing the availability of financial or investment
238 capabilities when the representation does not accurately
239 describe the nature of the services offered, the qualifications of
240 the person offering the services and method of compensation
241 for the services;

242 (32) Engaging in any act or a course of conduct which
243 resulted in the issuance by a securities agency or administrator
244 of any state of an order to cease and desist the violation of the
245 provisions of any state's securities laws or rules (or the equiva-
246 lent of any such order); or

247 (33) Engaging in any other act or practice which the
248 commissioner determines to constitute dishonest or unethical
249 practices in the securities business.

250 (c) With regard to agents, dishonest or unethical practices
251 in the securities business also includes, but is not limited to:

252 (1) Borrowing or engaging in the practice of borrowing
253 money or securities from a customer (other than any institution
254 or organization whose normal business activities include
255 lending of moneys), or lending or engaging in the practice of
256 lending money or securities to a customer;

257 (2) Acting as a custodian for money, securities or an
258 executed stock power of a customer;

259 (3) Effecting securities transactions with a customer not
260 recorded on the regular books or records of a broker-dealer
261 which an agent represents, unless the transactions are disclosed
262 to and authorized in writing by the broker-dealer prior to
263 execution of the transactions;

264 (4) Establishing, maintaining or operating an account under
265 a fictitious name or which contains fictitious information;

266 (5) Sharing directly or indirectly in profits or losses in the
267 account of any customer without the written authorization of
268 the customer and broker-dealer which the agent represents;

269 (6) Dividing or otherwise splitting commissions, profits or
270 other compensation from the purchase or sale of securities in
271 this state with any person not also registered as an agent for the
272 same broker-dealer, or for a broker-dealer under direct or
273 indirect common control;

274 (7) Entering into a transaction for agent's own account with
275 a customer in which a commission is charged;

276 (8) Entering in a course of conduct constituting an egre-
277 gious violation of the rules of a national securities exchange or
278 national securities association of which the agent is a member
279 with respect to any customer, transaction or business; and

280 (9) Holding oneself out as representing any person other
281 than the broker-dealer for whom the agent is registered and, in
282 the case of an agent whose normal place of business is not on
283 the premises of the broker-dealer, failing to conspicuously
284 disclose the name of the broker-dealer for whom the agent is
285 registered, when representing the broker-dealer in effecting or
286 attempting to effect purchases or sales of securities.

287 (d) The commissioner may deny, suspend, otherwise
288 condition or revoke the registration of an applicant or registrant
289 or take any other action authorized by the provisions of this
290 chapter if the commissioner determines the person has engaged
291 in the conduct of forgery, embezzlement, nondisclosure,
292 incomplete disclosure or misstatement of material facts or
293 manipulative or fraudulent practices.

294 (e) The following provisions govern the application of
295 section 204(a)(2)(I):

296 (1) The commissioner may not enter an order against a
297 broker-dealer on the basis of the lack of qualification of any
298 person other than: (A) The broker-dealer himself or herself if he
299 or she is an individual; or (B) an agent of the broker-dealer.

300 (2) The commissioner may not enter an order against an
301 investment adviser on the basis of the lack of qualification of
302 any person other than: (A) The investment adviser himself or
303 herself if he or she is an individual; or (B) any other person who
304 represents the investment adviser in doing any of the acts which
305 may make him or her an investment adviser.

306 (3) The commissioner may not enter an order solely on the
307 basis of lack of experience if the applicant or registrant is
308 qualified by training or knowledge or both.

309 (4) The commissioner shall consider that an agent who will
310 work under the supervision of a registered broker-dealer need
311 not have the same qualifications as a broker-dealer.

312 (5) The commissioner shall consider that an investment
313 adviser is not necessarily qualified solely on the basis of
314 experience as a broker-dealer or agent. When he or she finds
315 that an applicant for initial or renewal registration as a broker-
316 dealer is not qualified as an investment adviser, he or she may
317 by order condition the applicant's registration as a broker-
318 dealer upon his or her not transacting business in this state as an
319 investment adviser.

320 (6) The commissioner may by rule provide for an examina-
321 tion, which may be written or oral or both, to be taken by any
322 class of or all applicants, as well as persons who represent or
323 will represent an investment adviser in doing any of the acts
324 which make him or her an investment adviser.

325 (f) The commissioner may by order summarily postpone or
326 suspend registration pending final determination of any
327 proceeding under this section. Upon the entry of the order, the
328 commissioner shall promptly notify the applicant or registrant,
329 as well as the employer or prospective employer if the applicant
330 or registrant is an agent, that it has been entered and of the
331 reasons therefor and that within fifteen days after the receipt of
332 a written request the matter will be set down for hearing. If no
333 hearing is requested and none is ordered by the commissioner,
334 the order will remain in effect until it is modified or vacated by
335 the commissioner. If a hearing is requested or ordered, the
336 commissioner, after notice of and opportunity for hearing, may
337 modify or vacate the order or extend it until final determination.

338 (g) If the commissioner finds that any registrant or appli-
339 cant for registration is no longer in existence or has ceased to do
340 business as a broker-dealer, agent or investment adviser, or is
341 subject to an adjudication of mental incompetence or to the
342 control of a committee, conservator or guardian, or cannot be
343 located after reasonable search, the commissioner may by order
344 cancel the registration or application.

345 (h) Withdrawal from registration as a broker-dealer, agent
346 or investment adviser becomes effective thirty days after receipt
347 of an application to withdraw or within such shorter period of
348 time as the commissioner may determine, unless a revocation
349 or suspension proceeding is pending when the application is
350 filed or a proceeding to revoke or suspend or to impose
351 conditions upon the withdrawal is instituted within thirty days
352 after the application is filed. If a proceeding is pending or
353 instituted, withdrawal becomes effective at a time and upon the
354 conditions as the commissioner by order determines. If no
355 proceeding is pending or instituted and withdrawal automati-
356 cally becomes effective, the commissioner may nevertheless
357 institute a revocation or suspension proceeding under section
358 204(a)(2)(B) within one year after withdrawal became effective

359 and enter a revocation or suspension order as of the last date on
360 which registration was effective.

361 (i) No order may be entered under any part of this section
362 except the first sentence of subsection (f) without: (1) Appropri-
363 ate prior notice to the applicant or registrant (as well as the
364 employer or prospective employer if the applicant or registrant
365 is an agent); (2) opportunity for hearing; and (3) written
366 findings of fact and conclusions of law.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

§32-4-406. Administration of chapter; operating fund for securities department.

§32-4-407. Sworn investigator, investigations and subpoenas.

§32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise
2 requires:

3 (a) "Commissioner" means the auditor of the state of West
4 Virginia.

5 (b) "Agent" means any individual other than a broker-
6 dealer who represents a broker-dealer or issuer in effecting or
7 attempting to effect purchases or sales of securities. "Agent"
8 does not include an individual who represents an issuer in: (1)
9 Effecting transactions in a security exempted by subdivision
10 (1), (2), (3), (10) or (11), subsection (a), section four hundred
11 two of this article; (2) effecting transactions exempted by
12 subsection (b), section four hundred two of this article; (3)
13 effecting transactions in a covered security as described in
14 section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of
15 1933; (4) effecting transactions with existing employees,
16 partners or directors of the issuer if no commission or other
17 remuneration is paid or given, directly or indirectly, for
18 soliciting any person in this state; or (5) effecting transactions

19 in this state limited to those transactions described in section
20 15(h)(2) of the Securities Exchange Act of 1934. A partner,
21 officer or director of a broker-dealer or issuer, or a person
22 occupying a similar status or performing similar functions, is an
23 agent only if he or she otherwise comes within this definition.

24 (c) “Broker-dealer” means any person engaged in the
25 business of effecting transactions in securities for the account
26 of others or for his or her own account. “Broker-dealer” does
27 not include: (1) An agent; (2) an issuer; (3) a bank, savings
28 institution or trust company; or (4) a person who has no place
29 of business in this state if: (A) He or she effects transactions in
30 this state exclusively with or through: (i) The issuers of the
31 securities involved in the transactions; (ii) other broker-dealers;
32 or (iii) banks, savings institutions, trust companies, insurance
33 companies, investment companies as defined in the Investment
34 Company Act of 1940, pension or profit-sharing trusts or other
35 financial institutions or institutional buyers, whether acting for
36 themselves or as trustees; or (B) during any period of twelve
37 consecutive months he or she does not direct more than fifteen
38 offers to sell or buy into this state in any manner to persons
39 other than those specified in subparagraph (A), paragraph (4) of
40 this subdivision, whether or not the offeror or any of the
41 offerees is then present in this state.

42 (d) “Fraud”, “deceit” and “defraud” are not limited to
43 common-law deceit.

44 (e) “Guaranteed” means guaranteed as to payment of
45 principal, interest or dividends.

46 (f) “Federal-covered adviser” means a person who is: (1)
47 Registered under section 203 of the Investment Advisers Act of
48 1940 or (2) is excluded from the definition of “investment
49 advisor” under section two hundred two-a (11) of the Invest-
50 ment Advisers Act of 1940.

51 (g) “Investment adviser” means any person who, for
52 compensation, engages in the business of advising others, either
53 directly or through publications or writings, as to the value of
54 securities or as to the advisability of investing in, purchasing or
55 selling securities or who, for compensation and as a part of a
56 regular business, issues or promulgates analyses or reports
57 concerning securities. “Investment adviser” also includes
58 financial planners and other persons who, as an integral
59 component of other financially related services, provide the
60 foregoing investment advisory services to others for compensa-
61 tion and as part of a business or who hold themselves out as
62 providing the foregoing investment advisory services to others
63 for compensation. “Investment adviser” does not include: (1) A
64 bank, savings institution or trust company; (2) a lawyer,
65 accountant, engineer or teacher whose performance of those
66 services is solely incidental to the practice of his or her profes-
67 sion; (3) a broker-dealer whose performance of these services
68 is solely incidental to the conduct of his or her business as a
69 broker-dealer and who receives no special compensation for
70 them; (4) a publisher, employee or columnist of a newspaper,
71 news magazine or business or financial publication or an owner,
72 operator, producer or employee of a cable, radio or television
73 network, station or production facility if, in either case, the
74 financial or business news published or disseminated is made
75 available to the general public and the content does not consist
76 of rendering advice on the basis of the specific investment
77 situation of each client; (5) a person whose advice, analyses or
78 reports relate only to securities exempted by subdivision (1),
79 subsection (a), section four hundred two of this article; (6) a
80 person who has no place of business in this state if: (A) His or
81 her only clients in this state are other investment advisers,
82 broker-dealers, banks, savings institutions, trust companies,
83 insurance companies, investment companies as defined in the
84 Investment Company Act of 1940, pension or profit-sharing
85 trusts or other financial institutions or institutional buyers,
86 whether acting for themselves or as trustees; or (B) during any

87 period of twelve consecutive months he or she does not have
88 more than five clients who are residents of this state other than
89 those specified in subparagraph (A), paragraph (6), of this
90 subdivision, whether or not he or she or any of the persons to
91 whom the communications are directed is then present in this
92 state; (7) an investment adviser representative; (8) a “federal-
93 covered adviser”; or (9) such other persons not within the intent
94 of this paragraph as the commissioner may by rule or order
95 designate.

96 (h) “Investment adviser representative” means any partner,
97 officer, director of or a person occupying a similar status or
98 performing similar functions or other individual, except clerical
99 or ministerial personnel, who is employed by or associated with
100 an investment adviser that is registered or required to be
101 registered under this chapter or who has a place of business
102 located in this state and is employed by or associated with a
103 federal-covered adviser; and including clerical or ministerial
104 personnel, who does any of the following: (1) Makes any
105 recommendations or otherwise renders advice regarding
106 securities; (2) manages accounts or portfolios of clients; (3)
107 determines which recommendation or advice regarding securi-
108 ties should be given; (4) solicits, offers or negotiates for the sale
109 of or sells investment advisory services unless the person is
110 registered as an agent pursuant to this article; or (5) supervises
111 employees who perform any of the foregoing unless the person
112 is registered as an agent pursuant to this article.

113 (i) “Issuer” means any person who issues or proposes to
114 issue any security, except that: (1) With respect to certificates
115 of deposit, voting-trust certificates or collateral-trust certificates
116 or with respect to certificates of interest or shares in an unincor-
117 porated investment trust not having a board of directors or
118 persons performing similar functions or of the fixed, restricted
119 management or unit type, the term “issuer” means the person or
120 persons performing the acts and assuming the duties of deposi-

121 tor or manager pursuant to the provisions of the trust or other
122 agreement or instrument under which the security is issued; and
123 (2) with respect to certificates of interest or participation in oil,
124 gas or mining titles or leases or in payments out of production
125 under such titles or leases, there is not considered to be any
126 “issuer”.

127 (j) “Nonissuer” means not, directly or indirectly, for the
128 benefit of the issuer.

129 (k) “Person” means an individual, a corporation, a partner-
130 ship, an association, a joint-stock company, a trust where the
131 interests of the beneficiaries are evidenced by a security, an
132 unincorporated organization, a government or a political
133 subdivision of a government.

134 (l) (1) “Sale” or “sell” includes every contract of sale of,
135 contract to sell, or disposition of a security or interest in a
136 security for value;

137 (2) “Offer” or “offer to sell” includes every attempt or offer
138 to dispose of, or solicitation of an offer to buy, a security or
139 interest in a security for value;

140 (3) Any security given or delivered with, or as a bonus on
141 account of, any purchase of securities or any other thing is
142 considered to constitute part of the subject of the purchase and
143 to have been offered and sold for value;

144 (4) A purported gift of assessable stock is considered to
145 involve an offer and sale;

146 (5) Every sale or offer of a warrant or right to purchase or
147 subscribe to another security of the same or another issuer, as
148 well as every sale or offer of a security which gives the holder
149 a present or future right or privilege to convert into another

150 security of the same or another issuer, is considered to include
151 an offer of the other security;

152 (6) The terms defined in this subdivision do not include:
153 (A) Any bona fide pledge or loan; (B) any stock dividend,
154 whether the corporation distributing the dividend is the issuer
155 of the stock or not, if nothing of value is given by stockholders
156 for the dividend other than the surrender of a right to a cash or
157 property dividend when each stockholder may elect to take the
158 dividend in cash or property or in stock; (C) any act incident to
159 a class vote by stockholders, pursuant to the certificate of
160 incorporation or the applicable corporation statute, on a merger,
161 consolidation, reclassification of securities or sale of corporate
162 assets in consideration of the issuance of securities of another
163 corporation; or (D) any act incident to a judicially approved
164 reorganization in which a security is issued in exchange for one
165 or more outstanding securities, claims or property interests, or
166 partly in such exchange and partly for cash.

167 (m) “Securities Act of 1933”, “Securities Exchange Act of
168 1934”, “Public Utility Holding Company Act of 1935” and
169 “Investment Company Act of 1940” mean the federal statutes
170 of those names as amended before the effective date of this
171 chapter. The National Securities Markets Improvement Act of
172 1996 (“NSMIA”) means the federal statute which makes certain
173 amendments to the Securities Act of 1933, the Securities
174 Exchange Act of 1934, the Investment Company Act of 1940
175 and the Investment Advisers Act of 1940.

176 (n) “Security” means any note; stock; treasury stock; bond;
177 debenture; evidence of indebtedness; certificate of interest or
178 participation in any profit-sharing agreement; collateral-trust
179 certificate; preorganization certificate or subscription; transfer-
180 able share; investment contract; voting-trust certificate;
181 certificate of deposit for a security; viatical settlement contract;
182 certificate of interest or participation in an oil, gas or mining

183 title or lease or in payments out of production under such a title
184 or lease; or, in general, any interest or instrument commonly
185 known as a “security” or any certificate of interest or participa-
186 tion in, temporary or interim certificate for, receipt for, guaran-
187 tee of or warrant or right to subscribe to or purchase any of the
188 foregoing. “Security” does not include any insurance or
189 endowment policy or annuity contract under which an insurance
190 company promises to pay money either in a lump sum or
191 periodically for life or some other specified period: *Provided*,
192 That “security” does include insurance or endowment policies
193 or annuity contracts that are viatical settlement contracts or
194 agreements for the purchase, sale, assignment, transfer, devise
195 or bequest of any portion of a death benefit or ownership of a
196 life insurance policy or certificate that is less than the expected
197 death benefit of the life insurance policy or certificate.

198 (o) “Federal-covered security” means any security that is a
199 covered security under section 18(b) of the Securities Act of
200 1933, as amended by the National Securities Markets Improve-
201 ment Act of 1996, or rules promulgated thereunder.

202 (p) “State” means any state, territory or possession of the
203 United States, the District of Columbia and Puerto Rico.

204 (q) “Branch office” means any location other than the main
205 office, identified to the public, customers or clients as a location
206 where a broker-dealer or investment adviser or federal-covered
207 adviser conducts a securities or investment adviser business.
208 Branch office does not include:

209 (1) A location identified solely in a telephone directory line
210 listing or on a business card or letterhead if: (A) The listing,
211 card or letterhead also includes the address and telephone
212 number of the broker-dealer or investment adviser or federal
213 covered adviser where the individuals conducting business from
214 the location are directly supervised; and (B) no more than one

215 agent or investment adviser representative transacts business on
216 behalf of the broker-dealer or investment adviser or federal-
217 covered adviser from an identified location; or

218 (2) Any other location as the commissioner may determine.

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the auditor of this
2 state and he or she is hereby designated, and shall be, the
3 commissioner of securities of this state. He or she has the power
4 and authority to appoint or employ such assistants as are
5 necessary for the administration of this chapter.

6 (b) The auditor shall set up a special operating fund for the
7 securities division in his or her office. The auditor shall pay into
8 the fund twenty percent of all fees collected as provided for in
9 this chapter. If, at the end of any fiscal year, the balance in the
10 operating fund exceeds three hundred fifty thousand dollars, the
11 excess shall be withdrawn from the special fund and transferred
12 to the general revenue fund.

13 The special operating fund shall be used by the auditor to
14 fund the operation of the securities division located in his or her
15 office. The special operating fund shall be appropriated by line
16 item by the Legislature.

17 (c) Moneys payable for assessments established by section
18 four hundred seven-a of this article shall be collected by the
19 commissioner and deposited into the general revenue fund.

20 (d) It is unlawful for the commissioner or any of his or her
21 officers or employees to use for personal benefit any informa-
22 tion which is filed with or obtained by the commissioner and
23 which is not made public. No provision of this chapter autho-
24 rizes the commissioner or any of his or her officers or employ-

25 ees to disclose any information except among themselves or
 26 when necessary or appropriate in a proceeding or investigation
 27 under this chapter. No provision of the chapter either creates or
 28 derogates from any privilege which exists at common law or
 29 otherwise when documentary or other evidence is sought under
 30 a subpoena directed to the commissioner or any of his or her
 31 officers or employees.

§32-4-407. Sworn investigator, investigations and subpoenas.

1 (a) *Sworn Investigators.* –

2 (1) The commissioner may appoint special investigators to
 3 aid in investigations conducted pursuant to chapter thirty-two,
 4 thirty-two-a or thirty-two-b of this code.

5 (2) The commissioner, deputy commissioners and each
 6 investigator, prior to entering upon the discharge of his or her
 7 duties, shall take an oath before any justice of the West Virginia
 8 supreme court of appeals, circuit judge or magistrate which is
 9 to be in the following form:

10 State of West Virginia

11 County of, to wit: I,,
 12 do solemnly swear that I will support the constitution of the
 13 United States, the constitution of the state of West Virginia, and
 14 I will honestly and faithfully perform the duties imposed upon
 15 me under the provisions of law as a member of the securities
 16 commission of West Virginia to the best of my skill and
 17 judgment.

18 (Signed).....

19 Taken, subscribed and sworn to before me, this day of
 20 2

21 (3) The oaths of the commissioner, deputy commissioner or
22 commissioners and investigators of the West Virginia securities
23 commission are to be filed and preserved in the office of the
24 state auditor.

25 (b) *Investigations and subpoenas.* —

26 (1) The commissioner in his or her discretion: (A) May
27 make such public or private investigations within or outside of
28 this state as he or she considers necessary to determine whether
29 any person has violated or is about to violate any provision of
30 this chapter or any rule or order hereunder, or to aid in the
31 enforcement of this chapter or in the prescribing of rules and
32 forms hereunder; (B) may require or permit any person to file
33 a statement in writing, under oath or otherwise as the commis-
34 sioner determines, as to all the facts and circumstances concern-
35 ing the matter to be investigated; and (C) may publish informa-
36 tion concerning any violation of this chapter or any rule or
37 order hereunder.

38 (2) For the purpose of any investigation or proceeding
39 under this chapter, the commissioner, deputy commissioner or
40 commissioners, if any, and special investigators appointed
41 pursuant to this section may administer oaths and affirmations,
42 subpoena witnesses, compel attendance of witnesses, take and
43 store evidence in compliance with the policies and procedures
44 of the West Virginia state police and require the production of
45 any books, papers, correspondence, memoranda, agreements or
46 other documents or records which the commissioner finds
47 relevant or material to the inquiry.

48 (3) In case of contumacy by, or refusal to obey a subpoena
49 issued to, any person, the circuit court of Kanawha County,
50 upon application by the commissioner, may issue to the person
51 an order requiring him or her to appear before the commis-
52 sioner, or the officer designated by him or her, to produce

53 documentary evidence if so ordered or to give evidence
54 touching the matter under investigation or in question. Failure
55 to obey the order of the court may be punished by the court as
56 a contempt of court.

57 (4) No person is excused from attending and testifying or
58 from producing any document or record before the commis-
59 sioner, or in obedience to the subpoena of the commissioner or
60 any officer designated by him or her, or in any proceeding
61 instituted by the commissioner on the ground that the testimony
62 or evidence (documentary or otherwise) required of him or her
63 may tend to incriminate him or her or subject him or her to a
64 penalty or forfeiture; but no individual may be prosecuted or
65 subjected to any penalty or forfeiture for or on account of any
66 transaction, matter or thing concerning which he or she is
67 compelled, after claiming his or her privilege against self-
68 incrimination to testify or produce evidence (documentary or
69 otherwise), except that the individual testifying is not exempt
70 from prosecution and punishment for perjury or contempt
71 committed in testifying.

72 (5) Civil and criminal investigations undertaken by the
73 West Virginia securities commission are not subject to the
74 requirements of article nine-a, chapter six of this code and
75 chapter twenty-nine-b of this code.

76 (6) Nothing in this chapter may be construed to authorize
77 the commissioner, a deputy commissioner, a special investiga-
78 tor appointed pursuant to this section or any other employee of
79 the state auditor to carry or use a hand gun or other firearm in
80 the discharge of his or her duties under this article.

81 (7) Nothing in this chapter limits the power of the state to
82 punish any person for any conduct which constitutes a crime.

CHAPTER 320

**(S. B. 428 — By Senators Bowman, Bailey,
Minear, Plymale and Prezioso)**

[Passed February 14, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the duties and functions of the veterans' council.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter nine-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. DIVISION OF VETERANS' AFFAIRS.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

1 It is the duty and function of the veterans' council to advise
 2 the director on the general administrative policies of the
 3 division, to select, at their first meeting in each fiscal year
 4 commencing on the first day of July, a chairman to serve one
 5 year, to advise the director on rules as may be necessary, to
 6 advise the governor and the Legislature with respect to legisla-
 7 tion affecting the interests of veterans, their widows, depend-
 8 ents and orphans and to make annual reports to the governor
 9 respecting the service of the division. The director has the same
 10 eligibility and qualifications prescribed for members of the
 11 veterans' council. The governor shall appoint a director for a

12 term of six years, by and with the advice and consent of the
13 Senate. Before making the appointment, the governor shall
14 request the council of the West Virginia division of veterans'
15 affairs to furnish a full and complete report concerning the
16 qualifications and suitability of the proposed appointee. The
17 director may only be removed by the governor for cause, but
18 shall have upon his or her own request an open hearing before
19 the governor on the complaints or charges lodged against him
20 or her. The action of the governor shall be final. The director ex
21 officio shall be the executive secretary of the veterans' council,
22 keep the minutes of each meeting and be in charge of all
23 records of the division.

CHAPTER 321

(H. B. 4553 — By Delegates Michael and Givens)

[Passed March 4, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article twenty-nine-a of said chapter; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating to bonds and expenditures for veterans nursing facilities; and creating a special revenue account for the payment of architectural and associated costs for the veterans nursing home.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 16. Public Health.
- 29. Miscellaneous Boards and Officers.

CHAPTER 16. PUBLIC HEALTH.

Article

- 1B. Skilled Nursing Facilities for Veterans of the United States Armed Forces.
- 29A. West Virginia Hospital Finance Authority Act.

ARTICLE 1B. SKILLED NURSING FACILITIES FOR VETERANS OF THE UNITED STATES ARMED FORCES.

§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.

1 The director shall request that revenue bonds, not exceeding
2 the principal amount of ten million dollars, be issued by the
3 West Virginia hospital finance authority under provisions of
4 section seven, article twenty-nine-a of this chapter. Net profit
5 from the veterans lottery instant scratch-off game as authorized
6 by section nine-a, article twenty-two, chapter twenty-nine of
7 this code and other revenues that the Legislature may from time
8 to time appropriate shall pay the principal and interest obliga-
9 tions of the bonds and the architectural and other project costs
10 associated with the construction, reconstruction, renovation and
11 maintenance of one or more skilled nursing facilities that will
12 only serve the skilled nursing needs of West Virginia veterans
13 who have performed active duty in an active component of the

14 armed forces or performed active service in a reserve compo-
15 nent of the armed forces.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-7. Bonds and notes.

1 (a) The authority periodically may issue its negotiable
2 bonds and notes in a principal amount which, in the opinion of
3 the authority, shall be necessary to provide sufficient funds for
4 the making of hospital loans, including temporary loans during
5 the construction of hospital facilities, for the payment of
6 interest on bonds and notes of the authority during construction
7 of hospital facilities for which the hospital loan was made and
8 for a reasonable time thereafter and for the establishment of
9 reserves to secure those bonds and notes.

10 (b) The authority periodically may issue renewal notes, may
11 issue bonds to pay notes and, if it considers refunding expedi-
12 ent, to refund or to refund in advance bonds or notes issued by
13 the authority by the issuance of new bonds pursuant to the
14 requirements of section thirteen of this article.

15 (c) The authority may, upon concurrent resolution passed
16 by the Legislature, authorize the issuance of negotiable bonds
17 and notes in a principal amount which are necessary to provide
18 sufficient funds for the construction, reconstruction, renovation
19 and maintenance of one or more skilled nursing facilities that
20 will only serve the skilled nursing needs of West Virginia
21 veterans who have performed active duty in an active compo-
22 nent of the armed forces or performed active service in a
23 reserve component of the armed forces. These bonds issued by
24 the authority may not exceed ten million dollars. The revenues
25 pledged for the repayment of principal and interest of these
26 bonds shall include the net profit of the veterans instant lottery
27 scratch-off game authorized by section nine-a, article
28 twenty-two, chapter twenty-nine of this code excluding all

29 architectural fees and associated project costs transferred
30 pursuant to that section.

31 (d) Except as may otherwise be expressly provided by the
32 authority, every issue of its notes or bonds shall be special
33 obligations of the authority, payable solely from the property,
34 revenues or other sources of or available to the authority
35 pledges therefor.

36 (e) The bonds and the notes shall be authorized by resolu-
37 tion of the authority, shall bear the date and shall mature at time
38 or times, in the case of any such note or any renewals thereof,
39 not exceeding seven years from the date of issue of the original
40 note and in the case of any bond not exceeding fifty years from
41 the date of issue, as the resolution may provide. The bonds and
42 notes shall bear interest at rate or rates, be in a denomination,
43 be in a form, either coupon or registered, carry registration
44 privileges, be payable in the medium of payment and at place
45 or places and be subject to the terms of redemption as the
46 authority may authorize. The bonds and notes of the authority
47 may be sold by the authority, at public or private sale, at or not
48 less than the price the authority determines. The bonds and
49 notes are executed by the chairman and vice chairman of the
50 board, both of whom may use facsimile signatures. The official
51 seal of the authority or a facsimile thereof shall be affixed to or
52 printed on each bond and note and attested, manually or by
53 facsimile signature, by the secretary-treasurer of the board, and
54 any coupons attached to any bond or note shall bear the
55 signature or facsimile signature of the chairman of the board. In
56 case any officer whose signature, or a facsimile of whose
57 signature, appears on any bonds, notes or coupons ceases to be
58 an officer before delivery of the bonds or notes, the signature or
59 facsimile is nevertheless sufficient for all purposes the same as
60 if he or she had remained in office until the delivery; and, in
61 case the seal of the authority has been changed after a facsimile

62 has been imprinted on the bonds or notes, the facsimile seal will
63 continue to be sufficient for all purposes.

64 (f) A resolution authorizing bonds or notes or an issue of
65 bonds or notes under this article may contain provisions, which
66 are a part of the contract with the holders of the bonds or notes,
67 as to any or all of the following:

68 (1) Pledging and creating a lien on all or any part of the fees
69 and charges made or received or to be received by the authority,
70 all or any part of the moneys received in payment of hospital
71 loans and interest on hospital loans and all or any part of other
72 moneys received or to be received, to secure the payment of the
73 bonds or notes or of any issue of bonds or notes, subject to
74 those agreements with bondholders or noteholders which then
75 exist;

76 (2) Pledging and creating a lien on all or any part of the
77 assets of the authority, including notes, deeds of trust and
78 obligations securing the assets, to secure the payment of the
79 bonds or notes or of any issue of bonds or notes, subject to
80 those agreements with bondholders or note holders which then
81 exist;

82 (3) Pledging and creating a lien on any loan, grant or
83 contribution to be received from the federal, state or local
84 government or other source;

85 (4) The use and disposition of the income from hospital
86 loans owned by the authority and payment of the principal of
87 and interest on hospital loans owned by the authority;

88 (5) The setting aside of reserves or sinking funds and the
89 regulation and disposition thereof;

90 (6) Limitations on the purpose to which the proceeds of sale
91 of bonds or notes may be applied and pledging the proceeds to

92 secure the payment of the bonds or notes or of any issue of the
93 bonds or notes;

94 (7) Limitations on the issuance of additional bonds or notes
95 and the terms upon which additional bonds or notes may be
96 issued and secured;

97 (8) The procedure by which the terms of a contract with the
98 bondholders or noteholders may be amended or abrogated, the
99 amount of bonds or notes the holders of which must consent
100 thereto and the manner in which the consent may be given; and

101 (9) Vesting in a trustee or trustees the property, rights,
102 powers, remedies and duties which the authority considers
103 necessary or convenient.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

1 (a) Beginning the first day of September, two thousand, the
2 commission shall establish an instant lottery scratch-off game
3 designated as the veterans benefit game, which is offered by the
4 lottery.

5 (b) Notwithstanding the provisions of section eighteen of
6 this article, and subject to the provisions of subsection (c) of
7 this section, all net profits received from the sale of veterans
8 benefit game lottery tickets, materials and games are deposited
9 with the state treasurer into the veterans lottery fund created
10 under this section, and upon the effective date of the enactment
11 of this section in two thousand two, the Legislature may make
12 appropriations from this fund for architectural and other project
13 costs associated with construction, and for payment of principal

14 and interest for revenue bonds issued under provisions of
15 section seven, article twenty-nine-a, chapter sixteen of this
16 code: *Provided*, That once the payment of the principal and
17 interest and architectural and other project costs associated with
18 construction are paid in full for the construction of the initial
19 veterans skilled nursing facility, the Legislature may appropri-
20 ate from the fund created under this section moneys for the
21 construction, including the architectural fees and other associ-
22 ated costs, equipping and operation of additional skilled nursing
23 facilities for veterans of the armed forces of the United States
24 military: *Provided, however*, That after the payment of the
25 above-mentioned items, the Legislature may appropriate any
26 excess funds to the general revenue fund.

27 (c) Before appropriation of any of the net profits derived
28 from the veterans benefit game for the uses set forth in this
29 section, the Legislature shall first determine that the state has
30 met all debt obligations for which lottery profits have been
31 pledged for that fiscal year.

32 (d) There is hereby created in the state treasury a special
33 revenue fund designated and known as the veterans lottery fund
34 which shall consist of all revenues derived from the veterans
35 benefit game, any appropriations to the fund by the Legislature
36 and all interest earned from investment of the fund and any
37 gifts, grants or contributions received by the fund. Revenues
38 received by the veterans lottery fund shall be deposited in the
39 West Virginia consolidated investment pool with the West
40 Virginia investment management board, with the interest
41 income a proper credit to all these funds.

42 (e) There is hereby created in the state treasury a special
43 revenue fund designated and known as the veterans nursing
44 home fund which shall consist of all funds for the architectural
45 and other project costs related to the construction of the
46 veteran's nursing home. These funds shall be transferred from

47 the veterans lottery fund to the veterans nursing home fund
48 upon written request of the director of the division of veterans
49 affairs to the investment management board and the state
50 treasurer. Following the selection of the architect, the director
51 shall certify the estimated total cost of the architect and
52 associated costs to the joint committee on government and
53 finance prior to the transfer of funds. If funds transferred
54 exceed the estimated costs certified to the joint committee, the
55 director shall certify the additional costs to the joint committee.

56 (f) The commission shall change the design or theme of the
57 veterans benefit game regularly so that the game remains
58 competitive with the other instant lottery scratch-off games
59 offered by the commission. The tickets for the instant lottery
60 game created in this section shall clearly state that the profits
61 derived from the game are being used to benefit veterans in this
62 state.

CHAPTER 322

**(Com. Sub. for S. B. 682 — By Senators Wooton, Ross, McCabe,
Kessler, Fanning, Edgell, McKenzie, Jackson, Snyder, Facemyer,
Bowman, Minard, Sprouse, Boley, Tomblin, Mr. President, Hunter,
Chafin, Sharpe, Anderson, Helmick, Prezioso, Unger, Bailey,
Oliverio, Mitchell, Love, Rowe, Redd, Plymale and Minear)**

[Passed March 4, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and thirty, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections sixty-five and sixty-six; and to further amend said

chapter by adding thereto a new article, designated article ten-a, all relating to the definition of wheelchair and electric personal assistive mobility device, and the operation and equipment standards that are to be required for said devices; and establishing penalties for violations of article ten-a.

Be it enacted by the Legislature of West Virginia:

That sections two, three and thirty, article one, chapter seventeen-c 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 two new sections, designated sections sixty-five and sixty-six; and that said chapter be further amended by adding thereto a new article, designated article ten-a, all to read as follows:

Article

1. Words and Phrases Defined.

10A. Operation of Electric Personal Assistive Mobility Devices.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-2. Vehicle.

§17C-1-3. Motor vehicle.

§17C-1-30. Pedestrian.

§17C-1-65. Wheelchair.

§17C-1-66. Electric personal assistive mobility device.

§17C-1-2. Vehicle.

1 "Vehicle" means every device in, upon or by which any
 2 person or property is or may be transported or drawn upon a
 3 highway, except devices moved by human power or used
 4 exclusively upon stationary rails or tracks or wheelchairs.

§17C-1-3. Motor vehicle.

1 "Motor vehicle" means every vehicle which is self-pro-
 2 pelled and every vehicle which is propelled by electric power

- 3 obtained from overhead trolley wires, but not operated upon
- 4 rails, except motorized wheelchairs.

§17C-1-30. Pedestrian.

- 1 “Pedestrian” means any person afoot or any person using a
- 2 wheelchair.

§17C-1-65. Wheelchair.

- 1 “Wheelchair” means a motorized or nonmotorized wheeled
- 2 device designed for, and used by, a person with disabilities that
- 3 is incapable of a speed in excess of eight miles per hour.

§17C-1-66. Electric personal assistive mobility device.

- 1 “Electric personal assistive mobility device” or “EPAMD”
- 2 means a self-balancing, two nontandem-wheeled device,
- 3 designed to transport only one person, with an electric propul-
- 4 sion system with average power of seven hundred fifty watts
- 5 (one horse power), whose maximum speed on a paved level
- 6 surface, when powered solely by such a propulsion system
- 7 while ridden by an operator who weighs one hundred seventy
- 8 pounds, is less than twenty miles per hour.

ARTICLE 10A. OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

§17C-10A-1. Definitions.

§17C-10A-2. Equipment requirements and operating standards for electric personal assistive mobility devices; applicability of motor vehicle code; penalties.

§17C-10A-1. Definitions.

- 1 For purposes of this article, the definition of an “electric
- 2 personal assistive mobility device” is the same definition as
- 3 previously set forth in section sixty-six, article one of this

4 chapter, and “operator” shall refer to the operator of an electric
5 personal assistive mobility device.

**§17C-10A-2. Equipment requirements and operating standards
for electric personal assistive mobility devices;
applicability of motor vehicle code; penalties.**

1 (a) An electric personal assistive mobility device shall be
2 equipped with:

3 (1) Front, rear and side reflectors;

4 (2) A braking system that enables the operator to bring the
5 device to a controlled stop; and

6 (3) If operated at any time from one-half hour after sunset
7 to one-half hour before sunrise, a lamp that emits a white light
8 that sufficiently illuminates the area in front of the device.

9 (b) An operator of an electric personal assistive mobility
10 device traveling on a sidewalk, roadway or bicycle path shall
11 have the rights and duties of a pedestrian and shall exercise due
12 care to avoid colliding with pedestrians. An operator shall yield
13 the right of way to pedestrians.

14 (c) Except as provided in this section, no other provisions
15 of the motor vehicle code shall apply to electric personal
16 assistive mobility devices.

17 (d) An operator who violates a provision of subsection (a)
18 or (b) of this section shall receive a warning for the first
19 offense. For a second or subsequent offense, the operator shall
20 be punished by a fine of no less than ten dollars and no greater
21 than one hundred dollars.

CHAPTER 323

(Com. Sub. for H. B. 2465 — By Delegates Fleischauer,
Mahan, Susman, Schadler, Coleman, Wills and Faircloth)

[Passed March 9, 2002; 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 fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the “White Cane Law”; updating terms and definitions; removing requirements for certification or accreditation of service animals; and providing a certified trainer of service animals with the same rights, privileges and responsibilities afforded to persons who are blind or deaf or have a disability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WHITE CANE LAW.

§5-15-2. Policy.

§5-15-3. Definitions

§5-15-4. Equal right to use public facilities; service animals and trainers.

§5-15-5. Standard of care to be exercised by and with respect to persons who are blind or who have a disability.

§5-15-6. Annual proclamation of white cane day.

§5-15-7. Policy of the state on employment of persons who are blind or persons with disabilities.

§5-15-8. Interference with rights hereunder; penalties.

§5-15-2. Policy.

1 It is the policy of this state to encourage and enable persons
2 who are blind or otherwise visually impaired or who have a
3 disability to participate fully in the social and economic life of
4 the state and to engage in remunerative employment.

§5-15-3. Definitions.

1 For the purpose of this article:

2 (a) A “person who is blind” means a person whose central
3 visual acuity does not exceed twenty/two hundred in the better
4 eye with correcting lenses, or whose visual acuity is greater
5 than twenty/two hundred but is occasioned by a limitation in the
6 fields of vision such that the widest diameter of the visual field
7 subtends an angle no greater than twenty degrees.

8 (b) A “person with a disability” means any person who has
9 a physical or mental impairment that substantially limits one or
10 more of the major life activities of the individual; who has a
11 record of such an impairment or who is regarded as having such
12 an impairment.

13 (c) A “service animal” means any guide dog, signal dog or
14 other animal individually trained to do work or perform tasks
15 for the benefit of an individual with a disability, including, but
16 not limited to, guiding individuals with impaired vision,
17 alerting individuals with impaired hearing to intruders or
18 sounds, providing minimal protection or rescue work, pulling
19 a wheelchair or fetching dropped items.

§5-15-4. Equal right to use public facilities; service animals and trainers.

1 (a) A person who is blind or is a person with a disability
2 shall have the same rights as other persons to the full and free

3 use of the highways, roads, streets, sidewalks, walkways, public
4 buildings, public facilities and other public places.

5 (b) Any person who is blind and any person with a disabil-
6 ity is entitled to full and equal accommodations, advantages,
7 facilities and privileges of all common carriers, airplanes, motor
8 vehicles, railroad trains, motor buses, streetcars, boats or any
9 other public conveyances or modes of transportation, hotels,
10 lodging places, restaurants, professional offices for health or
11 legal services, hospitals, other places of public accommodation,
12 amusement or resort, and other places, including places of
13 employment, to which the general public is invited, subject only
14 to the conditions and limitations established by law and
15 applicable alike to all persons.

16 (c) Every person who is blind, every person with a hearing
17 impairment and every person with a disability shall have the
18 right to be accompanied by a service animal in any of the
19 places, accommodations or conveyances specified in subsection
20 (b) of this section without being required to pay an extra charge
21 for the admission of the service animal. The person who is
22 blind, deaf or has a disability shall be liable for any damage
23 done by the service animal to the premises or facilities or to
24 persons using such premises or facilities: *Provided*, That the
25 person who is blind, deaf or has a disability shall not be liable
26 for any damage done by the service animal to any person or the
27 property of a person who has contributed to or caused the
28 service animal's behavior by inciting or provoking such
29 behavior. A service animal shall not occupy a seat in any public
30 conveyance and shall be upon a leash while using the facilities
31 of a common carrier.

32 (d) The rights, privileges and responsibilities provided by
33 this section also apply to any person who is certified as a trainer
34 of a service animal while he or she is engaged in the training.

35 (e) A service animal as defined by section three of this
36 article is not required to be licensed or certified by a state or
37 local government, nor shall there be any requirement for the
38 specific signage or labeling of a service animal.

§5-15-5. Standard of care to be exercised by and with respect to persons who are blind or who have a disability.

1 (a) A person who is blind or who has a disability shall
2 exercise that degree of care for his or her own safety in any of
3 the places, accommodations or conveyances specified in section
4 four of this article which an ordinarily prudent person would
5 exercise under similar circumstances.

6 (b) The driver of a vehicle approaching a pedestrian who is
7 blind or who has a disability and who knows, or in the exercise
8 of reasonable care should know, that the pedestrian is blind
9 because the pedestrian is carrying a cane predominantly white
10 or metallic in color, with or without a red tip, or is using a
11 service animal or otherwise, shall exercise care commensurate
12 with the situation to avoid injuring the pedestrian or the service
13 animal.

§5-15-6. Annual proclamation of white cane day.

1 Each year the governor shall take suitable public notice of
2 the fifteenth day of October as white cane day. The governor
3 shall issue a proclamation that:

4 (a) Comments upon the significance of the white cane;

5 (b) Calls upon the citizens of the state to observe the
6 provisions of the white cane law and to take precautions
7 necessary for the safety of persons who are blind;

8 (c) Reminds the citizens of the state of the policies with
9 respect to persons who are blind herein declared and urges the
10 citizens to cooperate in giving effect to them;

11 (d) Emphasizes the need of the citizens to be aware of the
12 presence of persons who are blind or visually impaired in the
13 community and to keep safe for persons who are blind or
14 visually impaired the highways, roads, streets, sidewalks,
15 walkways, public buildings, public facilities, other public
16 places, places of public accommodation, amusement and resort
17 and other places to which the public is invited, and to offer
18 assistance to persons who are blind upon appropriate occasions.

**§5-15-7. Policy of the state on employment of persons who are
blind or persons with disabilities.**

1 It is the policy of this state that persons who are blind or
2 visually impaired and persons with disabilities shall be em-
3 ployed in the state service, the service of the political subdivi-
4 sions of the state, in the public schools and in all other employ-
5 ment supported, in whole or in part, by public funds on the
6 same terms and conditions as any other person, unless it is
7 shown that the blindness or disability prevents the performance
8 of the work involved.

§5-15-8. Interference with rights hereunder; penalties.

1 Any person, firm or corporation, or the agent of any person,
2 firm or corporation, who denies or interferes with admittance to
3 or enjoyment of the places, accommodations or conveyances
4 specified in section four of this article or otherwise interferes
5 with the rights of a person who is blind or visually impaired or
6 a person with a disability under the provisions of this article
7 shall be guilty of a misdemeanor and, upon conviction thereof,
8 shall be fined an amount not to exceed fifty dollars.

CHAPTER 324

(Com. Sub. for H. B. 4083 — By Delegates Mezzatesta,
Cann, Stalnaker, Givens and Frederick)

[Passed February 22, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to workforce investment; providing definitions; creating the West Virginia workforce investment council; establishing the membership of the council; setting meeting and quorum requirements; defining duties of the council; requiring certain state agencies to provide certain information to the council; providing for the administration of the council; creating the legislative oversight commission on workforce investment for economic development; establishing the powers and duties of the commission; allowing the commission to require disclosure of information through the use of subpoenas; and requiring memoranda of understanding between state agencies, the development office and local workforce investment boards.

Be it enacted by the Legislature of West Virginia:

That chapter five-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 two-b, to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-1. Short title.

§5B-2B-2. Definitions.

§5B-2B-3. West Virginia workforce investment council; membership of board; meetings; quorum requirements.

§5B-2B-4. Duties of the workforce investment council.

§5B-2B-5. State agencies.

§5B-2B-6. Administration of council.

§5B-2B-7. Legislative oversight commission on workforce investment for economic development.

§5B-2B-8. Powers and duties of the commission.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the executive director of the West Virginia development office.

§5B-2B-1. Short title.

1 This article shall be known and may be cited as the “West
2 Virginia Workforce Investment Act”.

§5B-2B-2. Definitions.

1 As used in this article, the following terms have the
2 following meanings, unless the context clearly indicates
3 otherwise:

4 (1) “Commission” or “legislative oversight commission”
5 means the legislative oversight commission on workforce
6 investment for economic development created pursuant to
7 section seven of this article.

8 (2) “Council” means the West Virginia workforce invest-
9 ment council.

§5B-2B-3. West Virginia workforce investment council; membership of board; meetings; quorum requirements.

1 (a) The West Virginia workforce investment council is
2 hereby created and shall serve as the state’s workforce invest-
3 ment board, as required by the federal Workforce Investment
4 Act, 29 U.S.C. § 2801 et seq. The council shall make general

5 recommendations regarding workforce investment in the state
6 to the governor and the Legislature.

7 (b) The council may consist of no more than thirty-nine
8 members, including ex officio members.

9 (c) The governor shall appoint, with the advice and consent
10 of the Senate, members to the council according to the follow-
11 ing criteria:

12 (1) Representatives of business in the state, including at
13 least one representing the tourism industry;

14 (2) No more than two members who are members of the
15 council for community and technical college education;

16 (3) Two members who are members of the West Virginia
17 council for community and economic development;

18 (4) Two members who are chief elected officials represent-
19 ing cities and counties;

20 (5) Two members who represent individuals and organiza-
21 tions having experience and expertise in the delivery of
22 workforce investment programs, including one chief executive
23 officer of a community and technical college and one chief
24 executive officer of a community-based organization operating
25 in the state;

26 (6) Two members who represent individuals and organiza-
27 tions having experience in youth activities, including at least
28 one youth from a post-secondary education institution; and

29 (7) Two members who represent labor organizations in the
30 state who have been nominated by state labor federations.

31 (d) The following shall serve on the council as ex officio
32 members:

33 (1) The governor, or his or her designee;

34 (2) The superintendent of the department of education, or
35 his or her designee;

36 (3) The director of the division of rehabilitation services, or
37 his or her designee: *Provided*, That the designee has policy-
38 making authority over a workforce investment program within
39 the division of rehabilitation services;

40 (4) The commissioner of the bureau of senior services, or
41 his or her designee: *Provided*, That the designee has policy-
42 making authority over a workforce investment program within
43 the bureau of senior services;

44 (5) The commissioner of the bureau of employment
45 programs, or his or her designee: *Provided*, That the designee
46 has policy-making authority over a workforce investment
47 program within the bureau of employment programs;

48 (6) The director of the division of veterans' affairs, or his
49 or her designee: *Provided*, That the designee has policy-making
50 authority over a workforce investment program within the
51 division of veterans' affairs;

52 (7) The executive director of the West Virginia develop-
53 ment office; and

54 (8) The secretary of the department of health and human
55 resources, or his or her designee: *Provided*, That the designee
56 has policy-making authority over a workforce investment
57 program within the department of health and human resources.

58 (e) The speaker of the House of Delegates shall appoint two
59 members of the House of Delegates to serve on the council.

60 (f) The president of the Senate shall appoint two members
61 of the Senate to serve on the council.

62 (g) The governor shall appoint a chair and vice-chair for the
63 council from among the members appointed pursuant to
64 subdivision (1), subsection (c) of this section.

65 (h) Initial terms for appointed members of the council are
66 for up to three years as determined by the governor. All
67 subsequent terms are for three years.

68 (i) The council shall meet at least quarterly and appointed
69 members of the council may be reimbursed for reasonable
70 expenses incurred within the scope of their service on the
71 council.

72 (j) A majority of the members of the council constitute a
73 quorum: *Provided*, That a majority of the members making the
74 quorum are members appointed pursuant to subdivision (1),
75 subsection (c) of this section.

76 (k) The council may create subcommittees to carry out any
77 of its duties. Quorum requirements required by subsection (j) of
78 this section also apply to subcommittees.

79 (l) No member of the council may:

80 (1) Vote on a matter under consideration by the council:

81 (A) Regarding the provision of services by the member or
82 by an entity that the member represents; or

83 (B) That would provide direct financial benefit to the
84 member or the immediate family of the member; or

85 (2) Engage in any other activity determined by the governor
86 to constitute a conflict of interest as specified in the strategic
87 five-year state workforce investment plan.

§5B-2B-4. Duties of the workforce investment council.

1 (a) The council shall assist the governor in the:

2 (1) Development and revision of a strategic five-year state
3 workforce investment plan;

4 (2) Development and continuous improvement of a
5 statewide system of workforce investment activities including:

6 (A) Development of linkages in order to assure coordina-
7 tion and nonduplication of services and activities of workforce
8 investment programs conducted by various entities in the state;
9 and

10 (B) The review of strategic plans created and submitted by
11 local workforce investment boards;

12 (3) Commenting at least annually on the measures taken by
13 the state pursuant to the Carl D. Perkins Vocational and Applied
14 Technology Education Act, 20 U.S.C. § 2323;

15 (4) Designation and revision of local workforce investment
16 areas;

17 (5) Development and revision of allocation formulas for the
18 distribution of funds for adult employment and training
19 activities and youth activities to local areas;

20 (6) Development and continuous improvement of compre-
21 hensive state performance measures, including state adjusted
22 levels of performance, to assess the effectiveness of the
23 workforce investment activities in the state;

24 (7) Preparation of the annual report to the secretary of labor
25 as required by the Workforce Investment Act, 29 U.S.C. §
26 2871;

27 (8) Development and continued improvement of a statewide
28 employment statistics system; and

29 (9) Development and revision of an application for
30 workforce investment incentive grants.

31 (b) The council shall make a report to the legislative
32 oversight commission on or before the first day of September
33 of each year detailing: (1) All the publicly funded workforce
34 investment programs operating in the state, including the
35 amount of federal and state funds expended by each program,
36 how the funds are spent and the resulting improvement to the
37 workforce; (2) its recommendations concerning future use of
38 funds for workforce investment programs; (3) its analysis of
39 operations of local workforce investment programs; and (4) any
40 other information the commission may require.

§5B-2B-5. State agencies.

1 On or before the first day of August, any state agency that
2 receives federal or state funding that may be used for workforce
3 investment activities shall provide to the council a report,
4 detailing the source and amount of federal, state or other funds
5 received; the purposes for which the funds were provided; the
6 services provided in each regional workforce investment area;
7 the measures used to evaluate program performance, including
8 current and baseline performance data; and any other informa-
9 tion requested by the council. All reports submitted pursuant to
10 this section are to be in a form approved by the council.

§5B-2B-6. Administration of council.

1 (a) The West Virginia development office shall provide
2 administrative and other services to the council as the council
3 requires.

4 (b) The West Virginia development office shall facilitate
5 the coordination of council activities and local workforce
6 investment activities, including holding meetings with the
7 executive directors of each local workforce investment board at
8 least monthly. Any executive director of a local workforce
9 investment board who participates in a meeting held pursuant
10 to this subsection shall report to his or her board and the county
11 commission of each county represented by the board regarding
12 the meeting.

13 (c) The development office shall make an annual report on
14 or before the first day of October to the legislative oversight
15 commission detailing the status of one-stop system operations
16 in the state. The development office shall include with the
17 report all memoranda of understanding entered into by the one-
18 stop partners and local workforce investment boards. Each local
19 workforce investment board shall report annually to the
20 development office on or before the first day of September on
21 the status of one-stop centers within the region they represent,
22 attaching all memoranda of understanding entered into with
23 one-stop partners.

**§5B-2B-7. Legislative oversight commission on workforce invest-
ment for economic development.**

1 (a) There is hereby created a joint commission of the
2 Legislature known as the legislative oversight commission on
3 workforce investment for economic development.

4 (b) The commission is to be composed of four members of
5 the Senate appointed by the president of the Senate from the
6 members of the joint commission on economic development

7 and four members of the House of Delegates appointed by the
8 speaker of the House of Delegates from the members of the
9 joint commission on economic development. No more than
10 three of the four members appointed by the president of the
11 Senate and the speaker of the House of Delegates, respectively,
12 may be members of the same political party. The president of
13 the Senate and the speaker of the House of Delegates shall each
14 appoint a chairperson from their respective houses. The
15 members shall serve until their successors have been appointed.

16 (c) Members of the commission may receive compensation
17 and expenses as provided in article two-a, chapter four of this
18 code. Expenses, including those incurred in the employment of
19 legal, technical, investigative, clerical, stenographic, advisory
20 and other personnel, are to be approved by the joint committee
21 on government and finance and paid from legislative appropri-
22 ations.

23 (d) The commission may meet at any time both during
24 sessions of the Legislature and in the interim or as often as may
25 be necessary.

§5B-2B-8. Powers and duties of the commission.

1 (a) The commission shall make a continued investigation,
2 study and review of the practices, policies and procedures of the
3 workforce investment strategies and programs implemented in
4 the state.

5 (b) The commission has the authority to conduct or cause
6 to be conducted performance audits upon local workforce
7 investment boards.

8 (c) For purposes of carrying out its duties, the commission
9 is hereby empowered and authorized to examine witnesses and
10 to subpoena persons, books, records, documents, papers or any

11 other tangible things it believes should be examined to make a
12 complete investigation. All witnesses appearing before the
13 commission shall testify under oath or affirmation, and any
14 member of the commission may administer oaths or affirma-
15 tions to witnesses. To compel the attendance of witnesses at
16 hearings or the production of any books, records, documents,
17 papers or any other tangible things, the commission is hereby
18 empowered and authorized to issue subpoenas, signed by one
19 of the chairpersons, in accordance with section five, article one,
20 chapter four of this code. Subpoenas are to be served by any
21 person authorized by law to serve and execute legal process and
22 service is to be made without charge. Witnesses subpoenaed to
23 attend hearings are to be allowed the same mileage and per
24 diem as are allowed witnesses before any petit jury in this state.
25 If any person subpoenaed to appear at any hearing refuses to
26 appear or to answer inquiries there propounded, or fails or
27 refuses to produce books, records, documents, papers or other
28 tangible things within his or her control when they are de-
29 manded, the commission shall report the facts to the circuit
30 court of Kanawha County or any other court of competent
31 jurisdiction and the court may compel obedience to the sub-
32 poena as though the subpoena had been issued by the court in
33 the first instance.

**§5B-2B-9. Coordination between agencies providing workforce
investment programs, local workforce investment
boards and the executive director of the West
Virginia development office.**

1 (a) Beginning the first day of January, two thousand three,
2 in order to lawfully continue any workforce investment
3 activities, any agency subject to the reporting provisions of
4 section five of this article shall enter into a memorandum of
5 understanding with the executive director of the West Virginia
6 development office and any local workforce investment board

7 representing an area of this state in which the agency is engaged
8 in workforce investment activities. To the extent permitted by
9 federal law, the agreements are to maximize coordination of
10 workforce investment activities and eliminate duplication of
11 services on both state and local levels.

12 (b) No memorandum of understanding may be effective for
13 more than one year without annual reaffirmation by the parties.

14 (c) Any state agency entering a memorandum of under-
15 standing shall deliver a copy thereof to both the West Virginia
16 workforce investment council and the legislative oversight
17 commission.

CHAPTER 325

(S. B. 171 — By Senator Snyder)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing a county commission or the governing body of a municipality to place a proposed zoning ordinance before the voters for approval or rejection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.

PART XII. SAME — ELECTION ON ZONING ORDINANCE.

§8-24-48. Election on zoning ordinance; form of ballots or ballot labels; procedure.

1 (a) The governing body of a municipality or the county
 2 commission may submit a proposed zoning ordinance to the
 3 qualified voters residing within the jurisdiction of that govern-
 4 ing body for approval or rejection at any regular primary
 5 election, general election or special election. Notice of the
 6 election shall be provided and the ballots shall be printed as set
 7 forth in subsection (c) of this section. The zoning ordinance
 8 shall be adopted if it is approved by a majority of the legal
 9 votes cast thereon in that jurisdiction. When a zoning ordinance
 10 has been rejected, the governing body of the municipality or
 11 county commission may not submit that zoning ordinance to the
 12 voters again until the next primary or general election.

13 (b) If, within sixty days following adoption of the zoning
 14 ordinance by the governing body of the municipality or by the
 15 county commission in which the zoning ordinance was not
 16 submitted to the voters, a petition is filed with the recorder or
 17 the clerk of the county commission praying for submission of
 18 such zoning ordinance for approval or rejection to the qualified
 19 voters residing in the area within the jurisdiction of the municipi-
 20 pal or county planning commission, the ordinance shall not take
 21 effect until the same is approved by a majority of the legal
 22 votes cast thereon at any regular primary or general election or
 23 special election called for that purpose. The petition may be in
 24 any number of counterparts but must be signed in their own
 25 handwriting by a number of qualified voters residing in the area
 26 affected by the proposed zoning equal, notwithstanding the
 27 provisions of subdivision (10), subsection (b), section two,
 28 article one of this chapter, to not less than fifteen percent of the
 29 total legal votes cast in the affected area for all candidates for
 30 governor at the last preceding general election at which a
 31 governor was elected. Only qualified voters residing in the area

32 affected by the proposed ordinance shall be eligible to vote with
33 respect thereto.

34 (c) Upon the ballots, or ballot labels where voting machines
35 are used, there shall be written or printed the following:

36 For Zoning

37 Against Zoning

38 (d) If a majority of the legal votes cast upon the question be
39 for zoning, the provisions of said zoning ordinance shall, upon
40 the date the results of an election are declared, be effective. If
41 a majority of the legal votes cast upon the question be against
42 zoning, the zoning ordinance shall not take effect but the
43 question may again be submitted to a vote at any regular
44 primary or general election in the manner herein provided.

45 (e) Subject to the provisions of subsection (d) of this
46 section, voting upon the question of zoning may be conducted
47 at any regular primary or general election or special election, as
48 the governing body of the municipality or the county commis-
49 sion in its order submitting the same to a vote may designate.

50 (f) Notice of all elections at which the question of zoning is
51 to be voted upon shall be given by publication of the order
52 calling for a vote on the question as a Class II-0 legal advertise-
53 ment in compliance with the provisions of article three, chapter
54 fifty-nine of this code and the publication area for the publica-
55 tion shall be the area in which voting on the question of zoning
56 is to be conducted.

57 (g) Any election at which the question of zoning is voted
58 upon is held at the voting precincts established for holding
59 primary or general elections. All of the provisions of the
60 general election laws of this state concerning primary, general
61 or special elections, when not in conflict with the provisions of
62 this article, shall apply to voting and elections hereunder,
63 insofar as practicable.

CHAPTER 326

(S. B. 662 — By Senators Boley, Deem and Edgell)

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Wirt County to meet as a levying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for personnel salaries, repairs and maintenance and regional jail fees from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand two.

Be it enacted by the Legislature of West Virginia:

WIRT COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Wirt County Commission to meet as levying body for election of additional levy for personnel salaries, repair and maintenance, and regional jail fees.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, to the contrary, the county commission
4 of Wirt County is hereby authorized to extend the time for its
5 meeting as a levying body and certifying its actions to the state
6 tax commissioner from between the seventh and twenty-eighth
7 days of March until the first Thursday in June, two thousand
8 two, for the purpose of submitting to the voters of Wirt County
9 an additional county levy for personnel salaries, repair and
10 maintenance and regional jail fees.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2002

CHAPTER 1

(S. B. 1001 — By Senator Craigo)

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the West Virginia board of pharmacy, fund 8537, fiscal year 2002, organization 0913, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one hundred thousand dollars from the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507.

WHEREAS, The Legislature finds that the account balance in the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507, will exceed that

which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the West Virginia board of pharmacy, fund 8537, fiscal year 2002, organization 0913, be increased by expiring to that fund one hundred thousand dollars from the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507 to be available for expenditure during the fiscal year two thousand two.

1 The purpose of this bill is to expire one hundred thousand
2 dollars from the West Virginia health care authority-health care
3 cost review authority fund, fund 5375, fiscal year 2002,
4 organization 0507 to the balance of the West Virginia board of
5 pharmacy, fund 8537, fiscal year 2002, organization 0913, for
6 the fiscal year ending the thirtieth day of June, two thousand
7 two, to be available for expenditure during the fiscal year two
8 thousand two.



CHAPTER 2

(S. B. 1002 — By Senator Craigo)

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of three million six hundred ten thousand dollars from the treasurer's office - banking service expense fund, fund 1322, organization 1300, and making supplementary appropriations of public moneys out of the

treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400; to the auditor's office-general administration, fund 0116, fiscal year 2002, organization 1200; to the department of health and human resources-division of health-central office, fund 0407, fiscal year 2002, organization 0506; to the department of military affairs and public safety-office of emergency services, fund 0443, fiscal year 2002, organization 0606; to the department of military affairs and public safety-west virginia state police, fund 0453, fiscal year 2002, organization 0612; to the department of tax and revenue-tax division, fund 0470, fiscal year 2002, organization 0702; to the department of transportation-state rail authority, fund 0506, fiscal year 2002, organization 0804, all for expenditure during the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The Legislature finds that the balance in the treasurer's office - banking service expense fund, fund 1322, organization 1300, exceeds that which is necessary for the purpose for which the fund was established; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the treasurer's office - banking service expense fund, fund 1322, organization 1300, be decreased by expiring the amount of three million six hundred ten thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0131, fiscal year 2002, organization 1400, be supplemented and amended by increasing

the total appropriation by seventy thousand dollars through creating new line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 12—Department of Agriculture

5 (WV Code Chapter 19)

6 Fund 0131 FY 2002 Org 1400

7	8	9	Act- ivity	General Revenue Fund
10	18a	West Virginia State Fair (R)		\$ 20,000
11	18b	Weston Farmers' Market (R)		50,000

12 Any unexpended balances remaining in the appropriation
13 for the West Virginia State Fair (fund 0131, activity) and the
14 Weston Farmers' Market(fund 0131, activity) at the close of
15 the fiscal year two thousand two are hereby reappropriated for
16 expenditure during the fiscal year two thousand three.

17 That an appropriation for expenditure during the fiscal year
18 ending the thirtieth day of June, two thousand two, to fund
19 0116, fiscal year 2002, organization 1200, be supplemented and
20 amended by increasing the total appropriation by six hundred
21 twenty-five thousand five hundred eighteen dollars as follows:

22 TITLE II—APPROPRIATIONS.

23 Section 1. Appropriations from general revenue.

50 Any unexpended balance remaining in the appropriation for
 51 Equipment (fund 0407, activity 070) at the close of the fiscal
 52 year two thousand two is hereby reappropriated for expenditure
 53 during the fiscal year two thousand three.

54 That the total appropriation for fiscal year ending the
 55 thirtieth day of June, two thousand two, to fund 0443, fiscal
 56 year 2002, organization 0606, be supplemented and amended
 57 by increasing the total appropriation by ten thousand six
 58 hundred sixty-six dollars in a new line item as follows:

59 TITLE II—APPROPRIATIONS.

60 **Section 1. Appropriations from general revenue.**

61 DEPARTMENT OF MILITARY AFFAIRS
 62 AND PUBLIC SAFETY

63 *59—Office of Emergency Services*

64 (WV Code Chapter 15)

65 Fund 0443 FY 2002 Org 0606

66		General
67	Act-	Revenue
68	ivity	Fund

69	10a Radiological Preparedness	
70	Program (R)	\$ 10,666

71 Any unexpended balance remaining in the appropriation for
 72 Radiological Preparedness Program (fund 0443, activity) at the
 73 close of the fiscal year two thousand two is hereby
 74 reappropriated for expenditure during the fiscal year two
 75 thousand three.

102 TITLE II—APPROPRIATIONS.

103 Section 1. Appropriations from general revenue.

104 DEPARTMENT OF TAX AND REVENUE

105 70—Tax Division

106 (WV Code Chapter 11)

107 Fund 0470 FY 2002 Org 0702

108		Act-	General
109		ivity	Revenue
110			Fund
111	4 Unclassified	099	\$ 277,000

112 And, that the total appropriation for fiscal year ending the
113 thirtieth day of June, two thousand two, to fund 0506, fiscal
114 year 2002, organization 0804, be supplemented and amended
115 by increasing the total appropriation by one million dollars as
116 follows:

117 TITLE II—APPROPRIATIONS.

118 Section 1. Appropriations from general revenue.

119 DEPARTMENT OF TRANSPORTATION

120 72—State Rail Authority

(WV Code Chapter 29)

122 Fund 0506 FY 2002 Org 0804

123		Act-	General
124		ivity	Revenue
125			Fund
126	1 Unclassified (R)	099	\$ 1,000,000

127 Any unexpended balance remaining in the appropriation for
128 Unclassified (fund 0506, activity 099) at the close of the fiscal
129 year two thousand two is hereby reappropriated for expenditure
130 during the fiscal year two thousand three.

131 The purpose of this bill is to expire the sum of three million
132 six hundred ten thousand dollars from the treasurer's office -
133 banking service expense fund, fund 1322, organization 1300; to
134 supplement the department of agriculture, fund 0131, fiscal year
135 2002, organization 1400, by adding seventy thousand dollars to
136 the existing appropriation; to supplement the auditor's office-
137 general administration, fund 0116, fiscal year 2002, organiza-
138 tion 1200, by adding six hundred twenty-five thousand five
139 hundred eighteen dollars to the existing appropriation; to
140 supplement the department of health and human resources-
141 division of health-central office, fund 0407, fiscal year 2002,
142 organization 0506 by adding eighty-five thousand dollars to the
143 existing appropriation; to supplement the department of military
144 affairs and public safety-office of emergency services, fund
145 0443, fiscal year 2002, organization 0606, by adding ten
146 thousand six hundred sixty-six dollars to the existing appropria-
147 tion; to supplement the department of military affairs and public
148 safety-West Virginia state police, fund 0453, fiscal year 2002,
149 organization 0612, by adding one million five hundred thirty-
150 five thousand four hundred fifty-two dollars to the existing
151 appropriation; to supplement the department of tax and
152 revenue-tax division, fund 0470, fiscal year 2002, organization
153 0702, by adding two hundred seventy-seven thousand dollars to
154 the existing appropriation; and to supplement the department of
155 transportation-state rail authority, fund 0506, fiscal year 2002,
156 organization 0804, by adding one million dollars to the existing
157 appropriation, all for expenditure during fiscal year two
158 thousand two.

CHAPTER 3

(S. B. 1003 — By Senator Craigo)

[Passed March 17, 2002; 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 agriculture-state soil conservation committee, fund 0132, fiscal year 2002, organization 1400; to the attorney general, fund 0150, fiscal year 2002, organization 1500; to the department of administration—office of the secretary, fund 0186, fiscal year 2002, organization 0201; to the department of health and human resources—office of the secretary, fund 0400, fiscal year 2002, organization 0501; and to the West Virginia development office, fund 0256, fiscal year 2002, organization 0307; all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the ninth day of January, two thousand two, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The governor, by executive message dated the seventh day of March, two thousand two, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, It appears from the governor’s executive budget document and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0132, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 13—Department of Agriculture—

5 State Soil Conservation Committee

6 (WV Code Chapter 19)

7 Fund 0132 FY 2002 Org 1400

8			General
9		Act-	Revenue
10		ivity	Funds

11	5	Soil Conservation		
12		Projects (R)	120	\$ 2,000,000

13 Any unexpended balance remaining in the appropriation for
14 Soil Conservation Projects (fund 0132, activity 120) at the close
15 of the fiscal year two thousand two is hereby reappropriated for
16 expenditure during the fiscal year two thousand three.

17 That the total appropriation for the fiscal year ending the
 18 thirtieth day of June, two thousand two, to fund 0150, fiscal
 19 year 2002, organization 1500, be supplemented and amended
 20 by increasing the total appropriation by one hundred twenty-
 21 five thousand dollars as follows:

22 TITLE II - APPROPRIATIONS.

23 Section 1. Appropriations from general revenue.

24 EXECUTIVE

25 16—Attorney General

26 (WV Code Chapters 5,14,46a and 47)

27 Fund 0150 FY 2002 Org 1500

28	29	30	Act- ivity	General Revenue Funds
31	5	Unclassified (R)	099	\$ 125,000

32 Any unexpended balance remaining in the appropriation for
 33 Unclassified (fund 0150, activity 099) at the close of the fiscal
 34 year two thousand two is hereby reappropriated for expenditure
 35 during the fiscal year two thousand three.

36 That the total appropriation for the fiscal year ending the
 37 thirtieth day of June, two thousand two, to fund 0186, fiscal
 38 year 2002, organization 0201, be supplemented and amended
 39 by increasing the total appropriation by four million six
 40 hundred eight thousand six hundred seventy-five dollars in a
 41 new line item as follows:

42 TITLE II - APPROPRIATIONS.

43 **Section 1. Appropriations from general revenue.**

44 **DEPARTMENT OF ADMINISTRATION**

45 *19—Department of Administration—*

46 *Office of the Secretary*

47 (WV Code Chapter 5F)

48 Fund 0186 FY 2002 Org 0201

49			General
50		Act-	Revenue
51		ivity	Funds

52	3a Lease Rental Payments	516	\$ 4,680,675
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53 That the total appropriation for the fiscal year ending the
 54 thirtieth day of June, two thousand two, to fund 0400, fiscal
 55 year 2002, organization 0501, be supplemented and amended
 56 by increasing the total appropriation by one million dollars in
 57 a new line item as follows:

58 **TITLE II - APPROPRIATIONS.**

59 **Section 1. Appropriations from general revenue.**

60 **DEPARTMENT OF HEALTH**
61 **AND HUMAN RESOURCES**

62 *50—Department of Health and Human Resources—*

63 *Office of the Secretary*

64 (WV Code Chapter 5F)

65 Fund 0400 FY 2002 Org 0501

66			General
67		Act-	Revenue
68		ivity	Funds

69	1a Rural Health Care Providers		
70	Revolving Loan Fund (R)	211	\$ 1,000,000

71 Any unexpended balance remaining in the appropriation for
 72 Rural Health Care Providers Revolving Loan Fund (fund 0400,
 73 activity 211) at the close of the fiscal year two thousand two is
 74 hereby reappropriated for expenditure during the fiscal year two
 75 thousand three.

76 That the total appropriation for the fiscal year ending the
 77 thirtieth day of June, two thousand two, to fund 0256, fiscal
 78 year 2002, organization 0307, be supplemented and amended
 79 by increasing the total appropriation by three million seven
 80 hundred fifteen thousand three hundred twenty-five dollars as
 81 follows:

82 TITLE II - APPROPRIATIONS.

83 Section 1. Appropriations from general revenue.

84 BUREAU OF COMMERCE

85 78—*West Virginia Development Office*

86 (WV Code Chapter 5B)

87 Fund 0256 FY 2002 Org 0307

88			General
89		Act-	Revenue
90		ivity	Funds

91	12 Mid-Atlantic Aerospace		
92	Complex (R)	231	\$ 590,000

93	35	Local Economic Development		
94	36	Assistance (R)	819	3,125,325

95 Any unexpended balances remaining in the appropriation
 96 for Mid-Atlantic Aerospace Complex (fund 0256, activity 231)
 97 and Local Economic Development Assistance (fund 0256,
 98 activity 819) at the close of the fiscal year two thousand two are
 99 hereby reappropriated for expenditure during the fiscal year two
 100 thousand three.

101 The purpose of this bill is to supplement the department of
 102 agriculture-state soil conservation committee, fund 0132, fiscal
 103 year 2002, organization 1400, by adding two million dollars to
 104 the existing appropriation; to supplement the attorney general,
 105 fund 0150, fiscal year 2002, organization 1500, by adding one
 106 hundred twenty-five thousand to the existing appropriation; to
 107 supplement the department of administration—office of the
 108 secretary, fund 0186, fiscal year 2002, organization 0201, by
 109 adding four million six hundred eighty thousand six hundred
 110 seventy-five dollars to the existing appropriation in a new line
 111 item for lease rental payments; to the department of health and
 112 human resources-office of the secretary, fund 0400, fiscal year
 113 2002, organization 0501 by adding one million to the existing
 114 appropriation in a new line item for rural health care providers
 115 revolving loan fund; and to supplement the West Virginia
 116 development office, fund 0256, fiscal year 2002, organization
 117 0307 by adding three million seven hundred fifteen thousand
 118 three hundred twenty-five dollars to the existing appropriation;
 119 all in the budget act for the fiscal year ending the thirtieth day
 120 of June, two thousand two, all for expenditure during the fiscal
 121 year two thousand two.



CHAPTER 4

(S. B. 1004 — By Senator Craigo)



[Passed March 17, 2002; in effect from passage. Approved by the Governor.]



AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from lottery net profits, to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from lottery net profits, to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 4. Appropriations from lottery net profits.**

3 238—*Division of Natural Resources*

4 (WV Code Chapter 20)

5 Fund 3267 FY 2002 Org 0310

6		Act-	Lottery
7		ivity	Funds

8 2 State Recreation

9	Area Improvements	307	\$ 223,000
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10	10	State Parks Repairs, Renovations,		
11	11	Maintenance and		
12	12	Life Safety Repairs (R)	911	990,000

13 And, that the items of the total appropriations from lottery
 14 net profits, to the division of natural resources, fund 3267, fiscal
 15 year 2002, organization 0310, be amended and increased in the
 16 line item as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 4. Appropriations from lottery net profits.**

19 *238—Division of Natural Resources*

20 (WV Code Chapter 20)

21 Fund 3267 FY 2002 Org 0310

22			Act-	Lottery
23			ivity	Funds
24	1	Unclassified (R)	099	\$ 1,213,000

25 The purpose of this supplementary appropriation bill is to
 26 supplement, amend, reduce and increase items of existing
 27 appropriations in the aforesaid account for the designated
 28 spending unit. The item for state recreation area improvements
 29 is reduced by two hundred twenty-three thousand dollars and the
 30 item for state parks repairs, renovations, maintenance and life
 31 safety repairs is reduced by nine hundred ninety thousand
 32 dollars. The item for unclassified is increased by one million two
 33 hundred thirteen thousand dollars for expenditure during the
 34 fiscal year two thousand two with no new money being appropri-
 35 ated.



CHAPTER 5

(S. B. 1005 — By Senator Craig)



[Passed March 17, 2002; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of commerce—division of natural resources, fund 3200, fiscal year 2002, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce—division of natural resources, fund 3200, fiscal year 2002, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3200, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by two hundred seventy thousand dollars in the line item as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 3. Appropriations from other funds.**
- 3 **BUREAU OF COMMERCE**

4 *196—Division of Natural Resources*

5 (WV Code Chapter 20)

6 Fund 3200 FY 2002 Org 0310

7	8	9	4	Unclassified	099	\$ 270,000
					Act-	Other
					ivity	Funds

10 The purpose of this supplementary appropriation bill is to
11 supplement this fund in the budget act for the fiscal year ending
12 the thirtieth day of June, two thousand two, by increasing the
13 existing appropriation for unclassified by two hundred seventy
14 thousand dollars for expenditure during the fiscal year two
15 thousand two.



CHAPTER 6

(S. B. 1006 — By Senator Craig)

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of two hundred thirty-eight thousand eight hundred ninety-eight dollars from the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the

thirtieth day of June, two thousand two, to the West Virginia state police, fund 0453, fiscal year 2002, organization 0612.

WHEREAS, The Legislature finds that the account balance in the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation, there will remain an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, be decreased by expiring the amount of two hundred thirty-eight thousand eight hundred ninety-eight dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to the West Virginia state police, fund 0453, fiscal year 2002, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 *62—West Virginia State Police*

4 (WV Code Chapter 15)

5 Fund 0453 FY 2002 Org 0612

6		General
7		Revenue
8	Act-	Fund
	ivity	
9 6	Vehicle Purchase (R)	451 \$ 238,898

10 Any unexpended balance remaining in the appropriation for
 11 Vehicle Purchase (fund 0453, activity 451) at the close of the
 12 fiscal year two thousand two is hereby reappropriated for
 13 expenditure during the fiscal year two thousand three.

14 The purpose of this supplementary appropriation bill is to
 15 expire the sum of two hundred thirty-eight thousand eight
 16 hundred ninety-eight dollars from the department of military
 17 affairs and public safety - West Virginia state police - commer-
 18 cial drivers licensing program fund, fund 6509, fiscal year
 19 2002, organization 0612, and to supplement the West Virginia
 20 state police, fund 0453, fiscal year 2002, organization 0612, in
 21 the budget act for the fiscal year ending the thirtieth day of
 22 June, two thousand two, by adding two hundred thirty-eight
 23 thousand eight hundred ninety-eight dollars to the existing
 24 appropriation for vehicle purchase for expenditure during fiscal
 25 year two thousand two.



CHAPTER 7

**(S. B. 1008 — By Senators Tomblin,
 Mr. President, and Sprouse)
 [By Request of the Executive]**

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one,
 chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 two thousand one, but prior to the fifteenth day of March, two
11 thousand two, shall be given effect in determining the taxes
12 imposed by this article to the same extent those changes are
13 allowed for federal income tax purposes, whether the changes
14 are retroactive or prospective, but no amendment to the laws of
15 the United States made on or after the fifteenth day of March,
16 two thousand two, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Employer
21 contributions to a medical savings account established pursuant

22 to said sections are not “wages” for purposes of withholding
23 under section seventy-one of this article.

24 (c) *Surtax.* — The term “surtax” means the twenty percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code and the twenty percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter
30 which are collected by the tax commissioner as tax collected
31 under this article.

32 (d) *Effective date.* — The amendments to this section
33 enacted in the year two thousand two are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that begin prior to the fifteenth day of March, two
36 thousand two, the law in effect for each of those years shall be
37 fully preserved as to that year, except as provided in this
38 section.

CHAPTER 8

(S. B. 1009 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 two thousand one, but prior to the fifteenth day of March, two
12 thousand two, shall be given effect in determining the taxes
13 imposed by this article to the same extent those changes are
14 allowed for federal income tax purposes, whether the changes
15 are retroactive or prospective, but no amendment to the laws of
16 the United States made on or after the fifteenth day of March,
17 two thousand two, shall be given any effect.

18 (b) The term "Internal Revenue Code of 1986" means the
19 Internal Revenue Code of the United States enacted by the
20 federal Tax Reform Act of 1986 and includes the provisions of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the
24 federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year two thousand two are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that begin prior to the fifteenth day of March, two
35 thousand two, the law in effect for each of those years shall be
36 fully preserved as to that year, except as provided in this
37 section.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2002

CHAPTER 1

**(Com. Sub. for S. B. 2006 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 0403, fiscal year 2003, organization 0511, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 51—Division of Human Services

6 (WV Code Chapters 9, 48 and 49)

7 Fund 0403 FY 2003 Org 0511

8		Act-	Other
9		ivity	Funds
10	Personal Services	001	\$ 22,809,759
11	Annual Increment	004	648,734
12	Employee Benefits	010	8,498,770
13	Unclassified	099	20,243,274
14	Child Care Development	144	1,454,206
15	Medical Services Contracts and		
16	Office of Managed Care	183	2,337,706
17	Medical Services	189	182,255,995
18	Women’s Commission	191	133,271
19	Social Services	195	60,105,425
20	Family Preservation Program	196	1,565,000
21	Domestic Violence Legal Services Fund	384	150,000
22	James “Tiger” Morton Catastrophic		
23	Illness Fund	455	940,000
24	Child Protective Services Case Workers	468	9,024,303
25	Medical Services Trust Fund Transfer . .	512	5,000,000
26	OSCAR and RAPIDS	515	3,499,928

27	Child Welfare System	603	2,609,058
28	Commission for the Deaf and		
29	Hard of Hearing	704	269,046
30	Child Support Enforcement	705	2,803,180
31	Medicaid Auditing	706	604,485
32	Temporary Assistance for Needy		
33	Families/Maintenance of Effort	707	23,587,807
34	Child Care—Maintenance of		
35	Effort and Match	708	4,409,643
36	Grants for Licensed Domestic Violence		
37	Programs and Statewide Prevention	750	1,000,000
38	Women’s Right to Know	546	275,000
39	WV Teaching Hospitals		
40	Tertiary/Safety Net	547	1,750,000
41	Indigent Burials (R)	851	1,274,000
42	BRIM Premium	913	<u>667,631</u>
43	Total		\$ 357,916,221

44 Any unexpended balance remaining in the appropriation for
45 Indigent Burials (fund 0403, activity 851) at the close of the
46 fiscal year two thousand two is hereby reappropriated for
47 expenditure during the fiscal year two thousand three.

48 The above appropriation for James “Tiger” Morton
49 Catastrophic Illness Fund (activity 455) shall be transferred to
50 the James “Tiger” Morton Catastrophic Illness Fund (fund
51 5454) as provided by article five-q, chapter sixteen of the code.

52 The above appropriation for Domestic Violence Legal
53 Services Fund (activity 384) shall be transferred to the Domes-
54 tic Violence Legal Services Fund (fund 5455).

55 Notwithstanding the provisions of Title I, section three of
56 this bill, the secretary of the department of health and human
57 resources shall have the authority to transfer funds within the
58 above account: *Provided*, That no more than five percent of the

59 funds appropriated to one line item may be transferred to other
60 line items: *Provided, however,* That no funds from other line
61 items shall be transferred to the personal services line item.

62 The secretary shall have authority to expend funds for the
63 educational costs of those children residing in out-of-state
64 placements, excluding the costs of special education programs.

65 The purpose of this bill is to supplement this account in the
66 budget act for the fiscal year ending the thirtieth day of June,
67 two thousand three, by amending language with no additional
68 funds being appropriated.

CHAPTER 2

**(S. B. 2008 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of seven million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the governor's office - civil contingent fund, fund 0105, fiscal year 2002, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state

will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of seven million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0105, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor’s Office—

4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 Fund 0105 FY 2002 Org 0100

			General
		Act-	Revenue
		ivity	Fund
10	1	Civil Contingent Fund - Total	
11	2	Surplus (R)	238 \$ 7,000,000

12 The purpose of this bill is to expire the sum of seven
13 million dollars from the revenue shortfall reserve fund, fund

14 2038, organization 0201, and to supplement the governor's
15 office - civil contingent fund, fund 0105, fiscal year 2002,
16 organization 0100, in the budget act for the fiscal year ending
17 the thirtieth day of June, two thousand two, by adding seven
18 million dollars to the appropriation for civil contingent fund -
19 total - surplus for expenditure during the fiscal year two
20 thousand two.

CHAPTER 3

**(S. B. 2009 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, in the amount of ninety-four thousand seven hundred ten dollars, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated surplus balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 EXECUTIVE

3 12—Department of Agriculture

4 (WV Code Chapter 19)

5 Fund 0131 FY 2002 Org 1400

6	7	8	9
	Act-		General
	ivity		Revenue
			Funds
9 16 Moorefield Agriculture			
10 Center—Surplus	648		\$94,710

11 The purpose of this supplementary appropriation bill is to
 12 supplement and increase items of appropriations in the afore-
 13 said account for the designated spending unit for expenditure
 14 during the fiscal year two thousand two.

CHAPTER 4

**(S. B. 2010 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; 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 agriculture, fund 0131, fiscal year 2003, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 0131, fiscal year 2003, organization 1400, be amended and increased in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 11—Department of Agriculture

5 (WV Code Chapter 19)

6 Fund 0131 FY 2003 Org 1400

7			General
8		Act-	Revenue
9		ivity	Funds

10	18	Moorefield Agriculture		
11		Center (R)	786	\$ 161,514

12 The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriation in the aforesaid
14 account for the designated spending unit for expenditure during
15 the fiscal year two thousand three.



CHAPTER 5

(S. B. 2011 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the joint expenses, fund 0175, fiscal year 2003, organization 2300; to the governor’s office - civil contingent fund, fund 0105, fiscal year 2003, organization 0100; from the state excess lottery revenue fund to the governor’s office - civil contingent fund, fund 1038, fiscal year 2003, organization 0100; and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to joint expenses, fund 0175, fiscal year 2003, organization 2300, be supplemented and amended by decreasing the appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE

4 3—*Joint Expenses*

5 (WV Code Chapter 4)

6 Fund 0175 FY 2003 Org 2300

7	9	Tax Reduction and Federal Funding		
8	10	Increased Compliance		
9	11	(TRAFFIC) (R)	642	\$ 5,000,000

10 That the total appropriation for the fiscal year ending the
 11 thirtieth day of June, two thousand three, to the governor’s
 12 office - civil contingent fund, fund 0105, fiscal year 2003,

13 organization 0100, be supplemented and amended by increasing
14 the appropriation and adding a new line item as follows:

15 TITLE II—APPROPRIATIONS.

16 Section 1. Appropriations from general revenue.

17 EXECUTIVE

18 8—Governor’s Office—

19 Civil Contingent Fund

20 (WV Code Chapter 5)

21 Fund 0105 FY 2003 Org 0100

22	1	Civil Contingent Fund	614	\$ 3,500,000
23	2	Business and Economic Development		
24	3	Stimulus	586	<u>1,500,000</u>

25 That the total appropriation for the fiscal year ending the
26 thirtieth day of June, two thousand three, to the governor’s
27 office - civil contingent fund, fund 1038, fiscal year 2003,
28 organization 0100, be supplemented and amended by decreas-
29 ing the appropriation as follows:

30 TITLE II—APPROPRIATIONS.

31 Sec. 5. Appropriations from state excess

32 lottery revenue fund.

33 239—Governor’s Office—

34 Civil Contingent Fund

35 (WV Code Chapter 5)

36 Fund 1038 FY 2003 Org 0100

37	1	Civil Contingent Fund (R)	114	\$ 3,500,000
38	2	Business and Economic Development		
39	3	Stimulus	586	<u>1,500,000</u>
40	4	Total		\$ 5,000,000

41 That chapter thirteen, acts of the Legislature, regular
 42 session, two thousand two, known as the budget bill, be
 43 supplemented and amended by adding to Title II, section five
 44 thereof the following:

45 TITLE II—APPROPRIATIONS.

46 **Sec. 5. Appropriations from state excess**47 **lottery revenue fund.**48 *240a—Joint Expenses*

49 (WV Code Chapter 4)

50 Fund 1735 FY 2003 Org 2300

51	1	Tax Reduction and Federal Funding		
52	2	Increased Compliance		
53	3	(TRAFFIC) - Total	620	\$ 5,000,000

54 The above appropriation for the Tax Reduction and Federal
 55 Funding Increased Compliance (TRAFFIC) - Total (fund 0175,
 56 activity 620) is intended for possible general state tax reduc-
 57 tions or the offsetting of any reductions in federal funding for
 58 state programs. It is not intended as a general appropriation for
 59 expenditure by the Legislature.

60 The purpose of this supplementary appropriation bill is to
 61 supplement, amend, reduce and increase items of appropriations
 62 in the aforesaid accounts for the designated spending units. The
 63 funds are for expenditure during the fiscal year two thousand
 64 three with no new money being appropriated.

CHAPTER 6

**(S. B. 2012 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the bureau of commerce - board of coal mine health and safety, fund 0280, fiscal year 2003, organization 0319, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the bureau of commerce - board of coal mine health and safety, fund 0280, fiscal year 2003, organization 0319, be amended and reduced in the existing line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **BUREAU OF COMMERCE**
- 4 77—*Board of Coal Mine Health and Safety*
- 5 (WV Code Chapter 22)
- 6 Fund 0280 FY 2003 Org 0319

2550		APPROPRIATIONS		[Ch. 6
7				General
8			Act-	Revenue
9			ivity	Funds
10	4	Unclassified	099	\$ 16,000

11 And, that the items of the total appropriations from the state
 12 fund, general revenue, to the bureau of commerce - board of
 13 coal mine health and safety, fund 0280, fiscal year 2003,
 14 organization 0319, be amended and increased in the line item
 15 as follows:

16 TITLE II—APPROPRIATIONS.

17 Section 1. Appropriations from general revenue.

18 BUREAU OF COMMERCE

19 *77—Board of Coal Mine Health and Safety*

20 (WV Code Chapter 22)

21 Fund 0280 FY 2003 Org 0319

22				General
23			Act-	Revenue
24			ivity	Funds
25	1	Personal Services	001	\$ 16,000

26 The purpose of this supplementary appropriation bill is to
 27 supplement, amend, reduce and increase items of existing
 28 appropriations in the aforesaid account for the designated
 29 spending units. The funds are for expenditure during the fiscal
 30 year two thousand three with no new money being appropri-
 31 ated.

CHAPTER 7

**(S. B. 2013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and reduced in the existing line item as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF MILITARY AFFAIRS**
- 4 **AND PUBLIC SAFETY**
- 5 *61—Division of Corrections—*

2552

APPROPRIATIONS

[Ch. 7

6

Correctional Units

7

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

8

Fund 0450 FY 2002 Org 0608

9

General

10

Act-

Revenue

11

ivity

Funds

12 21a Bureau of Prisons -

13 21b Federal Prison Camp 505 \$ 1,364,095

14 And, that the items of the total appropriations from the state
15 fund, general revenue, to the department of military affairs and
16 public safety - division of corrections - correctional units, fund
17 0450, fiscal year 2002, organization 0608, be amended and
18 increased in a new line item as follows:

19

TITLE II—APPROPRIATIONS.

20

Section 1. Appropriations from general revenue.

21

DEPARTMENT OF MILITARY AFFAIRS

22

AND PUBLIC SAFETY

23

61—Division of Corrections—

24

Correctional Units

25

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

26

Fund 0450 FY 2002 Org 0608

2 **Section 1. Appropriations from general revenue.**3 **DEPARTMENT OF TAX AND REVENUE**4 *65—Tax Division*

5 (WV Code Chapter 11)

6 Fund 0470 FY 2003 Org 0702

7	1	Personal Services	001	\$	11,250,978
8	2	Annual Increment	004		259,060
9	3	Employee Benefits	010		3,541,769
10	4	Unclassified (R)	099		7,690,365
11	5	Property Tax Valuation and			
12	6	Assessment System (R)	477		-0-
13	7	Remittance Processor	570		74,449
14	8	GIS Development Project	562		150,000
15	9	BRIM Premium	913		<u>5,058</u>
16	10	Total		\$	22,971,679

17 Any unexpended balances remaining in the appropriations
18 for Unclassified (fund 0470, activity 099), Unclassified -
19 Surplus (fund 0470, activity 097), Property Tax Valuation and
20 Assessment System (fund 0470, activity 477) and Automation
21 Project - Total - Surplus (fund 0470, activity 673) at the close
22 of the fiscal year two thousand two are hereby reappropriated
23 for expenditure during the fiscal year two thousand three.

24 The purpose of this bill is to supplement this account in the
25 budget act for the fiscal year ending the thirtieth day of June,
26 two thousand three, by amending language with no additional
27 funds being appropriated.

CHAPTER 9

(S. B. 2015 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the higher education policy commission - system - control account, fund 0586, fiscal year 2003, organization 0442, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 0586, fiscal year 2003, organization 0442, be supplemented and amended to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **HIGHER EDUCATION POLICY COMMISSION**
- 4 86—*Higher Education Policy Commission—*
- 5 *System—Control Account*
- 6 (WV Code Chapter 18B)
- 7 Fund 0586 FY 2003 Org 0442

8	Bluefield State College	408	\$ 2,002,368
9	Bluefield State Community and		
10	Technical College	409	5,456,232
11	Concord College	410	9,608,593
12	Eastern West Virginia Community		
13	and Technical College	412	2,034,966
14	Fairmont State College	414	13,128,072
15	Fairmont State Community and		
16	Technical College	421	7,064,695
17	Glenville State College	428	4,919,258
18	Glenville State Community and		
19	Technical College	430	2,908,427
20	Shepherd College	432	9,731,906
21	Shepherd Community and		
22	Technical College	434	2,131,072
23	West Liberty State College	439	10,016,745
24	West Virginia State College	441	11,178,647
25	West Virginia State Community and		
26	Technical College	445	2,738,868
27	Southern West Virginia Community		
28	and Technical College	446	7,403,952
29	West Virginia Northern Community		
30	and Technical College	447	5,822,498
31	Marshall University	448	46,349,693
32	Marshall Medical School	173	12,137,291
33	Marshall University Medical School		
34	BRIM Subsidy	449	627,468
35	Marshall University Community		
36	and Technical College	487	5,278,380
37	West Virginia University	459	119,376,858
38	WVU - School of Health Sciences	174	43,745,897
39	WVU School of Health Sciences -		
40	Charleston Division	175	4,173,084
41	West Virginia University School of		
42	Medicine BRIM Subsidy	460	1,239,465

43	West Virginia University -		
44	Parkersburg	471	8,359,912
45	Potomac State College of		
46	West Virginia University	475	4,592,917
47	West Virginia University Institute		
48	of Technology	479	7,197,379
49	West Virginia University Institute		
50	of Technology Community and		
51	Technical College	486	3,303,009
52	Primary Health Education Medical		
53	School Program Support	177	<u>2,200,000</u>
54	Total		\$ 354,727,652

55 Any unexpended balances remaining in the appropriations
56 for Marshall University—Southern WV Community and
57 Technical College 2+2 Program (fund 0586, activity 170),
58 Jackson’s Mill (fund 0586, activity 461), Marshall University
59 Forensic Lab (fund 0586, activity 572), Jackson’s
60 Mill—Surplus (fund 0586, activity 842) and WVU College of
61 Engineering and Mineral Resources—Diesel Study (fund 0586,
62 activity 852) at the close of fiscal year two thousand two are
63 hereby reappropriated for expenditure during the fiscal year two
64 thousand three.

65 Included in the above appropriation for West Virginia
66 University and Marshall University are \$1,015,590 and
67 \$339,500, respectively, for Graduate Medical Education which
68 may be transferred to the department of health and human
69 resources’ medical service fund (fund 5084) for the purpose of
70 matching federal or other funds to be used in support of
71 graduate medical education, subject to the approval of the vice
72 chancellor for health sciences and the secretary of the depart-
73 ment of health and human resources. If approval is denied, the

74 funds may be utilized by the respective institutions for expendi-
75 ture.

76 Included in the above appropriation for West Virginia
77 University is \$511,105 for the WVU Charleston Division
78 Poison Control Hotline, \$34,500 for the Marshall and WVU
79 Faculty and Course Development International Study Project,
80 \$246,429 for the WVU Law School—Skills Program, \$147,857
81 for the WVU Coal and Energy Research Bureau and \$19,714
82 for the WVU College of Engineering and Mineral Re-
83 sources—Diesel Training—Transfer.

84 Included in the above appropriation for Marshall University
85 is \$181,280 for the Marshall University—Southern West
86 Virginia Community and Technical College 2+2 Program,
87 \$595,597 for the Marshall University Autism Training Center,
88 \$466,286 for the Marshall University Forensic Lab and
89 \$200,000 for the Marshall University Center for Rural Health.

90 Included in the above appropriation for Southern West
91 Virginia Community and Technical College is \$373,774 for the
92 Marshall University—Southern West Virginia Community and
93 Technical College 2+2 Program.

94 The institutions operating from special revenue funds
95 and/or federal funds shall pay their proportionate share of the
96 board of risk and insurance management total insurance
97 premium cost for their respective institutions.

98 The purpose of this bill is to supplement this account in the
99 budget act for the fiscal year ending the thirtieth day of June,
100 two thousand three, by amending language with no additional
101 funds being appropriated.

CHAPTER 10

**(S. B. 2016 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; 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 a new item of appropriation designated to the department of tax and revenue - West Virginia office of tax appeals, fund 0593, fiscal year 2003, organization 0709, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be supplemented and amended by adding to Title II, section one thereof the following:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF TAX AND REVENUE

4 65a—*West Virginia Office of Tax Appeals*

5 (WV Code Chapter 11)

6 Fund 0593 FY 2003 Org 0709

7			General
8		Act-	Revenue
9		ivity	Funds

10	1	Unclassified - Total	096	\$ 420,000
----	---	--------------------------------	-----	------------

11 The purpose of this supplementary appropriation bill is to
12 supplement the budget bill by adding a new item of appropria-
13 tion for the designated spending unit for expenditure during the
14 fiscal year two thousand three.



CHAPTER 11

(S. B. 2017 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of agriculture - donated food fund, fund 1446, fiscal year 2003, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2003, organization 1400, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 1446, fiscal year 2003, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	EXECUTIVE		
4	<i>103—Department of Agriculture—</i>		
5	<i>Donated Food Fund</i>		
6	(WV Code Chapter 19)		
7	Fund <u>1446</u> FY <u>2003</u> Org <u>1400</u>		
8		Act-	Other
9		ivity	Funds
10	1	Unclassified—Total	096 \$ 983,932

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure
14 during the fiscal year two thousand three.

CHAPTER 12

**(S. B. 2018 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of two hundred thousand dollars from the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303, and in the amount of one hundred fifty thousand dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2002, organization 0708, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the department of tax and revenue - tax division, fund 0470, fiscal year 2002, organization 0702.

WHEREAS, The Legislature finds that the account balances in the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2002, organization 0708, exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303,

CHAPTER 13

**(S. B. 2019 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the lottery net profits to the West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304, and division of natural resources, fund 3267, fiscal year 2002, organization 0310, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the lottery net profits to the West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 4. Appropriations from lottery net profits.**
- 3 *237—West Virginia Development Office—*
- 4 *Division of Tourism*
- 5 (WV Code Chapter 5B)
- 6 Fund 3067 FY 2002 Org 0304

CHAPTER 14

(S. B. 2020 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of commerce - division of natural resources, fund 3200, fiscal year 2002, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce - division of natural resources, fund 3200, fiscal year 2002, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3200, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**

3

BUREAU OF COMMERCE

4

196—Division of Natural Resources

5

(WV Code Chapter 20)

6

Fund 3200 FY 2002 Org 0310

7

Act-

Other

8

ivity

Funds

9

4

Unclassified

099

\$ 100,000

10

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand two.



CHAPTER 15

**(S. B. 2021 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**



[Passed June 11, 2002; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce—division of natural resources, fund 3200, fiscal year 2003, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 3200, fiscal year 2003, organization 0310, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF COMMERCE**

4 *179—Division of Natural Resources*

5 (WV Code Chapter 20)

6 Fund 3200 FY 2003 Org 0310

7	8	9	10	11	Act- ivity	Other Funds
	1	Personal Services	001	\$ 222,360		
	3	Employee Benefits	010	46,388		
	4	Unclassified	099	232,161		

12 The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriations in the afore-
14 said account for the designated spending unit for expenditure
15 during the fiscal year two thousand three.

CHAPTER 16

**(S. B. 2022 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation to the department of tax and revenue - insurance commissioner, fund 7152, fiscal year 2003, organization 0704, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 7152, fiscal year 2003, organization 0704, be supplemented and amended to read as follows:

1		TITLE II—APPROPRIATIONS.
2		Sec. 3. Appropriations from other funds.
3		DEPARTMENT OF TAX AND REVENUE
4		<i>155—Insurance Commissioner</i>
5		(WV Code Chapter 33)
6		Fund <u>7152</u> FY <u>2003</u> Org <u>0704</u>
7	1	Personal Services 001 \$ 2,685,953
8	2	Annual Increment 004 33,950

2570	APPROPRIATIONS		[Ch. 17
9	3	Employee Benefits	010 766,382
10	4	Unclassified (R)	099 <u>1,589,722</u>
11	5	Total	\$ 5,076,007

12 Any unexpended balance remaining in the appropriation for
13 Unclassified (fund 7152, activity 099) at the close of the fiscal
14 year two thousand two is hereby reappropriated for expenditure
15 during the fiscal year two thousand three.

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

19 The purpose of this bill is to supplement this account in the
20 budget act for the fiscal year ending the thirtieth day of June,
21 two thousand three, by amending language with no additional
22 funds being appropriated.



CHAPTER 17

(S. B. 2023 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of tax and revenue - racing commission - administration and promotion, fund 7304, fiscal year 2003, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - racing commission - administration and promotion, fund 7304, fiscal year 2003, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 7304, fiscal year 2003, organization 0707, be supplemented and amended by increasing the total appropriation as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF TAX AND REVENUE		
4	<i>157—Racing Commission—</i>		
5	<i>Administration and Promotion</i>		
6	(WV Code Chapter 19)		
7	Fund <u>7304</u> FY <u>2003</u> Org <u>0707</u>		
8		Act-	Other
9		ivity	Funds
10	1 Personal Services	001	\$ 10,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure
14 during the fiscal year two thousand three.

CHAPTER 18

**(S. B. 2024 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of tax and revenue - racing commission - general administration, fund 7305, fiscal year 2003, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - racing commission - general administration, fund 7305, fiscal year 2003, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 7305, fiscal year 2003, organization 0707, be supplemented and amended by increasing the total appropriation as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 3. Appropriations from other funds.**
- 3 **DEPARTMENT OF TAX AND REVENUE**

Ch. 19]

APPROPRIATIONS

2573

4

158—Racing Commission—

5

General Administration

6

(WV Code Chapter 19)

7

Fund 7305 FY 2003 Org 0707

8

Act-

Other

9

ivity

Funds

10

4

Unclassified

099

\$ 15,000

11

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand three.

12

13

14



CHAPTER 19

**(S. B. 2025 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, in miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2002, organization 0907, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2002, organization 0907, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, fund 8520, fiscal year 2002, organization 0907, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 225-WV Board of Examiners

5 for Registered Professional Nurses

6 (WV Code Chapter 30)

7 Fund 8520 FY 2002 Org 0907

8	Act-	Other
9	ivity	Funds
10	1	Unclassified—Total 096 \$ 65,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure
14 during the fiscal year two thousand two.

CHAPTER 20

**(S. B. 2026 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of commerce - division of labor, fund 8706, fiscal year 2002, organization 0308, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8706, fiscal year 2002, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 6. Appropriations of federal funds.**
- 3 **BUREAU OF COMMERCE**

2576		APPROPRIATIONS		[Ch. 21
4		292— <i>Division of Labor</i>		
5		(WV Code Chapters 21 and 47)		
6		Fund <u>8706</u> FY <u>2002</u> Org <u>0308</u>		
7			Act-	Federal
8			ivity	Funds
9	1	Unclassified—Total	096	\$ 27,013

10 The purpose of this supplementary appropriation bill is to
11 supplement and increase items of appropriations in the afore-
12 said account for the designated spending unit for expenditure
13 during fiscal year two thousand two.



CHAPTER 21

**(S. B. 2028 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed July 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of eight million three hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the governor's office - civil contingent fund, fund 0105, fiscal year 2003, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand three; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of eight million three hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to fund 0105, fiscal year 2003, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor’s Office—

4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 Fund 0105 FY 2003 Org 0100

7			General
8		Act-	Revenue
9		ivity	Fund

10	1	Civil Contingent Fund - Total -		
11	1a	Surplus (R)	238	\$ 8,300,000

12 The purpose of this bill is to expire the sum of eight million
13 three hundred thousand dollars from the revenue shortfall
14 reserve fund, fund 2038, organization 0201, and to supplement
15 the governor's office - civil contingent fund, fund 0105, fiscal
16 year 2003, organization 0100, in the budget act for the fiscal
17 year ending the thirtieth day of June, two thousand three, by
18 adding eight million three hundred thousand dollars to the
19 appropriation for civil contingent fund - total - surplus for
20 expenditure during the fiscal year two thousand three.

CHAPTER 22

**(S. B. 2029 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed July 17, 2002; 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 bureau of commerce - division of miners' health, safety and training, fund 0277, fiscal year 2003, organization 0314, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of July, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances

forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 0277, fiscal year 2003, organization 0314, be supplemented and amended by increasing the total appropriation in a new item of appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUREAU OF COMMERCE

4 76—*Division of Miners' Health, Safety and Training*

5 (WV Code Chapter 22)

6 Fund 0277 FY 2003 Org 0314

7			General
8		Act-	Revenue
9		ivity	Funds

10 5a West Virginia Diesel

11 5b	Equipment Commission	712	\$ 62,400
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12 The purpose of this supplementary appropriation bill is to
13 supplement the budget bill by adding a new item of appropria-
14 tion for the designated spending unit for expenditure during the
15 fiscal year two thousand three.

CHAPTER 23

**(S. B. 2031 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed July 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the bureau of employment programs, fund 8835, fiscal year 2003, organization 0323, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8835, fiscal year 2003, organization 0323, be supplemented and amended to read as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 6. Appropriations of federal funds.**

3 **BUREAU OF EMPLOYMENT PROGRAMS**

4	285— <i>Bureau of Employment Programs</i>		
5	(WV Code Chapter 21A)		
6	Fund <u>8835</u> FY <u>2003</u> Org <u>0323</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified	099 \$ 512,657
10	2	Reed Act 2002-Unemployment	
11		Compensation	622 2,374,000
12	3	Reed Act 2002-Employment	
13		Services	630 <u>1,371,000</u>
14	4	Total	\$ 4,257,657

15 Pursuant to the requirements of 42 U. S. C. 1103, Section
 16 903 of the Social Security Act, as amended, and the provisions
 17 of section nine, article nine, chapter twenty-one-a of the code
 18 of West Virginia, one thousand nine hundred thirty-one, as
 19 amended, the above appropriation to Unclassified shall be used
 20 by the bureau of employment programs for the specific purpose
 21 of administration of the state’s unemployment insurance
 22 program or job service activities, subject to each and every
 23 restriction, limitation or obligation imposed on the use of the
 24 funds by those federal and state statutes.

25 The purpose of this supplementary appropriation bill is to
 26 supplement and increase items of appropriations in the afore-
 27 said account for the designated spending unit for expenditure
 28 during fiscal year two thousand three.

CHAPTER 24

(S. B. 2032 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed July 17, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be supplemented and amended by amending Title II, section nine to read as follows:

Sec. 9. Appropriations from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year two thousand three out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand two, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand two, from the fiscal year ending the thirtieth day of June, two thousand two.

In the event that surplus revenues available on the thirty-first day of July, two thousand two, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

1 *303—West Virginia Development Office*

2 (WV Code Chapter 5B)

3 Fund 0256 FY 2003 Org 0307

4 1 Southern West Virginia

5 2 Career Center - Surplus 591 \$ 300,000

6 *303a—Governor's Office*

7 (WV Code Chapter 5)

8 Fund 0101 FY 2003 Org 0100

9 1 Publication of Papers and Transition

10 2 Expenses - Surplus 359 \$ 207,975

11 *303b—Consolidated Medical Service Fund*

12 (WV Code Chapter 16)

13 Fund 0525 FY 2003 Org 0506

14 1 Behavioral Health Program -

15 2 Unclassified - Surplus 631 \$ 3,500,000

16 303c—Consolidated Medical Service Fund

17 (WV Code Chapter 16)

18 Fund 0525 FY 2003 Org 0506

19 1 Institutional Facilities

20 2 Operations - Surplus 632 \$ 1,900,000

21 303d—State Department of Education

22 Aid for Exceptional Children

23 (WV Code Chapters 18 and 18A)

24 Fund 0314 FY 2003 Org 0402

25 1 Unclassified - Surplus 097 \$ 250,000

26 1 Total TITLE II, Section 9 -

27 2 Surplus Accrued \$ 6,157,975

28 The purpose of this supplementary appropriation bill is to
29 supplement and increase items of appropriations in the afore-
30 said accounts for the designated spending units for expenditure
31 during the fiscal year two thousand three.



CHAPTER 25

**(S. B. 2004 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 10, 2002; in effect October 1, 2002. Approved by the Governor.]

AN ACT to repeal article one, 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-d, relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to business corporations generally; short title; reservation of powers; construction of chapter; filing requirements; fees; powers and duties of secretary of state; appeals; certificate of existence; criminal penalty for signing false document; venue; definitions; notice; incorporation; bylaws; powers and duties of corporation; corporate name; registered office and registered agent; service of process; shares and distributions; issuance of shares; liability of shareholders; dividends; certificates; shareholders' preemptive rights; corporation's acquisitions of its own shares; distributions; shareholders' meetings; waiver of notice; record date; voting; voting trusts and agreements; board of directors; qualifications, election, powers and duties of board; meetings and action of board; standards for conduct and liability of directors; officers; indemnification and advance of expenses; insurance; directors' conflict of interest transactions; amendment of articles of incorporation; amendment of bylaws; mergers and share exchanges; disposition of assets; right to appraisal and payment for shares; procedure for exercise of appraisal rights; judicial appraisal of shares; dissolutions; deposit of assets with state treasurer; foreign corporations - certificate of authority; service of process on foreign corporations; withdrawal of foreign corporations; revocation of certificate of authority; records and reports; inspection of records; financial statements for shareholders; transitional provisions; and operative date.

Be it enacted by the Legislature of West Virginia:

That article one, 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-d, to read as follows:

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

Article

1. **General Provisions.**
2. **Incorporation.**
3. **Purposes and Powers.**
4. **Name.**
5. **Office and Agent.**
6. **Shares and Distributions.**
7. **Shareholders.**
8. **Directors and Officers.**
9. **[RESERVED]**
10. **Amendment of Articles of Incorporation and Bylaws.**
11. **Mergers and Share Exchanges.**
12. **Disposition of Assets.**
13. **Appraisal Rights.**
14. **Dissolution.**
15. **Foreign Corporations.**
16. **Records and Reports.**
17. **Transition Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

- §31D-1-101. Short title.
- §31D-1-101a. Legislative acknowledgment.
- §31D-1-102. Reservation of powers.
- §31D-1-103. Construction of chapter.
- §31D-1-120. Filing requirements.
- §31D-1-121. Forms.
- §31D-1-122. Filing, service and copying fees.
- §31D-1-123. Effective time and date of document.
- §31D-1-124. Correcting filed document.
- §31D-1-125. Filing duty of secretary of state.
- §31D-1-126. Appeal from secretary of state's refusal to file document.
- §31D-1-127. Evidentiary effect of copy of filed document.
- §31D-1-128. Certificate of existence.
- §31D-1-129. Penalty for signing false document.
- §31D-1-130. Powers.
- §31D-1-140. Venue.
- §31D-1-150. Definitions.
- §31D-1-151. Notice.
- §31D-1-152. Number of shareholders.

PART 1. SHORT TITLE, RESERVATION OF POWERS AND
CONSTRUCTION OF CHAPTER.

§31D-1-101. Short title.

1 This chapter is and may be cited as the “West Virginia
2 Business Corporation Act”.

§31D-1-101a. Legislative acknowledgment.

1 The Legislature acknowledges the work and contribution to
2 the drafting of this chapter of the late Ann Maxey, professor of
3 law at the West Virginia university college of law.

§31D-1-102. Reservation of powers.

1 The Legislature has power to amend or repeal all or part of
2 this act at any time and all domestic and foreign corporations
3 subject to this act are governed by the amendment or repeal.

§31D-1-103. Construction of chapter.

1 In the event of any inconsistency between any of the
2 provisions of this chapter and the provisions made for particular
3 classes of corporations by chapters thirty-one, thirty-one-a or
4 thirty-three of this code, the provisions contained in said
5 chapters prevail to the extent of the inconsistency.

PART 2. FILING DOCUMENTS.

§31D-1-120. Filing requirements.

1 (a) A document must satisfy the requirements of this
2 section and any other provision of this code that adds to or
3 varies these requirements to be entitled to filing by the secretary
4 of state.

5 (b) The document to be filed must be typewritten or printed
6 or, if electronically transmitted, it must be in a format that can
7 be retrieved or reproduced in typewritten or printed form.

8 (c) The document to be filed must be in the English
9 language: *Provided*, That a corporate name is not required to be
10 in the English language if it is written in English letters or
11 Arabic or Roman numerals: *Provided, however*, That the
12 certificate of existence required of foreign corporations is not
13 required to be in the English language if it is accompanied by
14 a reasonably authenticated English translation.

15 (d) The document to be filed must be executed:

16 (1) By the chairman of the board of directors of a domestic
17 or foreign corporation, by its president, or by another of its
18 officers;

19 (2) If directors have not been selected or the corporation
20 has not been formed, by an incorporator; or

21 (3) If the corporation is in the hands of a receiver, trustee,
22 or other court-appointed fiduciary, by that fiduciary.

23 (e) The person executing the document to be filed shall sign
24 it and state beneath or opposite his or her signature his or her
25 name and the capacity in which he or she signs. The document
26 may contain a corporate seal, attestation, acknowledgment or
27 verification.

28 (f) The document to be filed must be delivered to the office
29 of the secretary of state for filing. Delivery may be made by
30 electronic transmission as permitted by the secretary of state.
31 The secretary of state may require one exact or conformed copy
32 to be delivered with the document to be filed if the document is
33 filed in typewritten or printed form and not transmitted elec-
34 tronically: *Provided*, That a document filed pursuant to section

35 five hundred three, article five of this chapter and section one
36 thousand five hundred nine, article fifteen of this chapter
37 concerning the resignation of a registered agent must be
38 accompanied by two exact or conformed copies as required by
39 those sections.

40 (g) When a document is delivered to the office of the
41 secretary of state for filing, the correct filing fee and any
42 franchise tax, license fee or penalty required by this chapter or
43 any other provision of this code must be paid or provision for
44 payment made in a manner permitted by the secretary of state.

45 (h) In the case of service of notice and process as permitted
46 by subsection (c), section five hundred four, article five of this
47 chapter and subsections (d) and (e), section one thousand five
48 hundred ten, article fifteen of this chapter, the notice and
49 process must be filed with the secretary of state as one original,
50 plus two copies for each person to be served or noticed.

§31D-1-121. Forms.

1 (a) The secretary of state may prescribe and, upon request,
2 furnish forms for documents required or permitted to be filed
3 by this chapter. Use of these forms is not mandatory.

4 (b) The secretary of state may adopt procedural rules in
5 accordance with the provisions of this article governing the
6 form for filing with, and delivery of documents to, the office of
7 the secretary of state under this chapter by electronic means,
8 including facsimile and computer transmission.

§31D-1-122. Filing, service and copying fees.

1 The secretary of state shall collect all fees required to be
2 charged and collected in accordance with the provisions of
3 section one, article twelve-c, chapter eleven of this code and
4 section two, article one, chapter fifty-nine of this code.

§31D-1-123. Effective time and date of document.

1 (a) Except as provided in subsection (b) of this section and
2 subsection (c), section one hundred twenty-four of this article,
3 a document accepted for filing is effective:

4 (1) At the date and time of filing, as evidenced by means as
5 the secretary of state may use for the purpose of recording the
6 date and time of filing; or

7 (2) At the time specified in the document as its effective
8 time on the date it is filed.

9 (b) A document may specify a delayed effective time and
10 date and if it does so, the document becomes effective at the
11 time and date specified. If a delayed effective date but no time
12 is specified, the document is effective at the close of business
13 on that date. A delayed effective date for a document may not
14 be later than the ninetieth day after the date it is filed.

§31D-1-124. Correcting filed document.

1 (a) A domestic or foreign corporation may correct a
2 document filed by the secretary of state if:

3 (1) The document contains an inaccuracy;

4 (2) The document was defectively executed, attested,
5 sealed, verified or acknowledged; or

6 (3) The electronic transmission was defective.

7 (b) A document is corrected:

8 (1) By preparing articles of correction that:

9 (A) Describe the document, including its filing date, or
10 attach a copy of the document to the articles;

- 11 (B) Specify the inaccuracy or defect to be corrected; and
- 12 (C) Correct the inaccuracy or defect; and
- 13 (2) By delivering the articles to the secretary of state for
14 filing.
- 15 (c) Articles of correction are effective on the effective date
16 of the document they correct: *Provided*, That articles of
17 correction are effective when filed as to persons who have
18 relied on the uncorrected document and have been adversely
19 affected by the correction.

§31D-1-125. Filing duty of secretary of state.

- 1 (a) If a document delivered to the office of the secretary of
2 state for filing satisfies the requirements of section one hundred
3 twenty of this article, the secretary of state shall file it.
- 4 (b) The secretary of state files a document by recording it
5 as filed on the date and time of receipt unless a delayed
6 effective time is specified in the document. After filing a
7 document, except as provided in section five hundred three,
8 article five of this chapter and section one thousand five
9 hundred nine, article fifteen of this chapter, the secretary of
10 state shall deliver to the domestic or foreign corporation or its
11 representative a receipt for the record and the fees. Upon
12 request and payment of a fee, the secretary of state shall send to
13 the requester a certified copy of the requested record.
- 14 (c) If the secretary of state refuses to file a document, he or
15 she shall return it to the domestic or foreign corporation or its
16 representative within five days after the document was deliv-
17 ered, together with a brief, written explanation of the reason for
18 his or her refusal.

19 (d) The secretary of state's duty to file documents under
20 this section is ministerial. His or her filing or refusing to file a
21 document does not:

22 (1) Affect the validity or invalidity of the document in
23 whole or in part;

24 (2) Relate to the correctness or incorrectness of information
25 contained in the document; or

26 (3) Create a presumption that the document is valid or
27 invalid or that information contained in the document is correct
28 or incorrect.

§31D-1-126. Appeal from secretary of state's refusal to file document.

1 (a) If the secretary of state refuses to file a document
2 delivered to his or her office for filing, the domestic or foreign
3 corporation may appeal the refusal to the circuit court within
4 thirty days after the return of the document to the corporation.
5 The appeal is commenced by petitioning the court to compel
6 filing the document and by attaching to the petition the docu-
7 ment and the secretary of state's explanation of his or her
8 refusal to file.

9 (b) The circuit court may summarily order the secretary of
10 state to file the document or take other action the court consid-
11 ers appropriate.

12 (c) The circuit court's final decision may be appealed to the
13 West Virginia supreme court of appeals as in other civil
14 proceedings.

§31D-1-127. Evidentiary effect of copy of filed document.

1 All courts, public offices and official bodies shall take and
2 receive copies of documents filed in the office of the secretary
3 of state and certified by him or her, in accordance with the
4 provisions of this article, as conclusive evidence that the
5 original document is on file with the secretary of state.

§31D-1-128. Certificate of existence.

1 (a) Any person may request a certificate of existence for a
2 domestic corporation or a certificate of authorization for a
3 foreign corporation from the secretary of state.

4 (b) A certificate of existence or authorization provides the
5 following information:

6 (1) The domestic corporation's corporate name or the
7 foreign corporation's corporate name used in this state;

8 (2) If the corporation is a domestic corporation, that the
9 corporation is duly incorporated under the laws of this state, the
10 date of its incorporation and the period of its duration if it is
11 less than perpetual;

12 (3) If the corporation is a foreign corporation, that the
13 corporation is authorized to transact business in this state; and

14 (4) If payment is reflected in the records of the secretary of
15 state and if nonpayment affects the existence or authorization
16 of the domestic or foreign corporation, whether all fees, taxes
17 and penalties owed to this state have been paid.

18 (c) Subject to any qualification stated in the certificate, a
19 certificate of existence or authorization issued by the secretary
20 of state may be relied upon as conclusive evidence that the

21 domestic or foreign corporation is in existence or is authorized
22 to transact business in this state.

§31D-1-129. Penalty for signing false document.

1 Any person who signs a document he or she knows is false
2 in any material respect and knows that the document is to be
3 delivered to the secretary of state for filing is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not
5 more than one thousand dollars or confined in the county or
6 regional jail not more than one year, or both.

PART 3. SECRETARY OF STATE.

§31D-1-130. Powers.

1 The secretary of state has the power reasonably necessary
2 to perform the duties required of him or her by this chapter. The
3 secretary of state has the power and authority to propose
4 legislative rules for promulgation in accordance with the
5 provisions of chapter twenty-nine-a of this code in order to
6 carry out and implement the provisions of this chapter.

PART 4. VENUE.

§31D-1-140. Venue.

1 Unless otherwise provided by any provision of this code,
2 any civil action or other proceeding brought pursuant to this
3 chapter may be initiated in the circuit court of any county of
4 this state as provided in section one, article one, chapter fifty-
5 six of this code.

PART 5. DEFINITIONS.

§31D-1-150. Definitions.

1 As used in this chapter, unless the context otherwise
2 requires a different meaning, the term:

3 (1) “Articles of incorporation” includes, but is not limited
4 to, amended and restated articles of incorporation and articles
5 of merger.

6 (2) “Authorized shares” means the shares of all classes a
7 domestic or foreign corporation is authorized to issue.

8 (3) “Conspicuous” means written so that a reasonable
9 person against whom the writing is to operate should have
10 noticed, including, but not limited to, printing in italics or
11 boldface or contrasting color, or typing in capitals or under-
12 lined.

13 (4) “Corporation” or “domestic corporation” means a
14 corporation for profit, which is not a foreign corporation,
15 incorporated under or subject to the provisions of this chapter.

16 (5) “Deliver” or “delivery” means any method of delivery
17 used in conventional commercial practice, including, but not
18 limited to, delivery by hand, mail, commercial delivery and
19 electronic transmission.

20 (6) “Distribution” means a direct or indirect transfer of
21 money or other property or incurrence of indebtedness by a
22 corporation to or for the benefit of its shareholders in respect of
23 any of its shares: *Provided*, That “distribution” does not include
24 a direct or indirect transfer of a corporation’s own shares. A
25 distribution may be in the form of a declaration or payment of
26 a dividend; a purchase, redemption or other acquisition of
27 shares; or a distribution of indebtedness.

28 (7) “Effective date of notice” means the date as determined
29 pursuant to section one hundred fifty-one of this article.

30 (8) "Electronic transmission" or "electronically transmit-
31 ted" means any process of communication not directly involv-
32 ing the physical transfer of paper that is suitable for the
33 retention, retrieval and reproduction of information by the
34 recipient.

35 (9) "Employee" includes an officer and may include a
36 director: *Provided*, That the director has accepted duties that
37 make him or her also an employee.

38 (10) "Entity" includes corporations and foreign corpora-
39 tions; nonprofit corporations; profit and nonprofit unincorpo-
40 rated associations; limited liability companies and foreign
41 limited liability companies; business trusts, estates, partner-
42 ships, trusts and two or more persons having a joint or common
43 economic interest; and state, United States and foreign govern-
44 ment.

45 (11) "Foreign corporation" means a corporation for profit
46 incorporated under a law other than the laws of this state.

47 (12) "Governmental subdivision" includes, but is not
48 limited to, authorities, counties, districts and municipalities.

49 (13) "Individual" includes, but is not limited to, the estate
50 of an incompetent or deceased individual.

51 (14) "Person" includes, but is not limited to, an individual
52 and an entity.

53 (15) "Principal office" means the office so designated in the
54 return required pursuant to section three, article twelve-c,
55 chapter eleven of this code where the principal executive
56 offices of a domestic or foreign corporation are located.

57 (16) "Proceeding" includes, but is not limited to, civil suits
58 and criminal, administrative and investigatory actions.

59 (17) "Record date" means the date established under article
60 six or seven of this chapter on which a corporation determines
61 the identity of its shareholders and their shareholdings. The
62 determinations are to be made as of the close of business on the
63 record date unless another time for doing so is specified when
64 the record date is fixed.

65 (18) "Registered agent" means the agent identified by the
66 corporation pursuant to section five hundred one, article five of
67 this chapter.

68 (19) "Registered office" means the address of the registered
69 agent for the corporation, as provided in section five hundred
70 one, article five of this chapter.

71 (20) "Secretary" means the corporate officer to whom the
72 board of directors has delegated responsibility under subsection
73 (c), section eight hundred forty, article eight of this chapter for
74 custody of the minutes of the meetings of the board of directors
75 and the meetings of the shareholders and for authenticating
76 records of the corporation.

77 (21) "Shareholder" means the person in whose name shares
78 are registered in the records of a corporation or the beneficial
79 owner of shares to the extent of the rights granted by a nominee
80 certificate on file with a corporation.

81 (22) "Shares" means the units into which the proprietary
82 interests in a corporation are divided.

83 (23) "Sign" or "signature" includes, but is not limited to,
84 any manual, facsimile, conformed or electronic signature.

85 (24) "State", when referring to a part of the United States,
86 includes a state and commonwealth and a territory and insular
87 possession of the United States and their agencies and govern-
88 mental subdivisions.

89 (25) “Subscriber” means a person who subscribes for shares
90 in a corporation, whether before or after incorporation.

91 (26) “United States” includes, but is not limited to, districts,
92 authorities, bureaus, commissions, departments and any other
93 agency of the United States.

94 (27) “Voting group” means all shares of one or more
95 classes or series that, pursuant to the articles of incorporation or
96 this chapter, are entitled to vote and be counted together
97 collectively on a matter at a meeting of shareholders. All shares
98 entitled by the articles of incorporation or this chapter to vote
99 generally on the matter are for that purpose a single voting
100 group.

101 (28) “Voting power” means the current power to vote in the
102 election of directors.

§31D-1-151. Notice.

1 (a) Notice under this chapter must be in writing unless oral
2 notice is reasonable under the circumstances. Notice by
3 electronic transmission is to be considered written notice.

4 (b) Notice may be communicated in person; by mail or
5 other method of delivery; or by telephone, voice mail or other
6 electronic means. If these forms of personal notice are impracti-
7 cable, notice may be communicated by a newspaper of general
8 circulation in the area where published, or by radio, television
9 or other form of public broadcast communication.

10 (c) Written notice by a domestic or foreign corporation to
11 its shareholder, if in a comprehensible form, is effective: (1)
12 Upon deposit in the United States mail, if mailed postpaid and
13 correctly addressed to the shareholder’s address shown in the
14 corporation’s current record of shareholders; or (2) when

15 electronically transmitted to the shareholder in a manner
16 authorized by the shareholder.

17 (d) Written notice to a domestic or foreign corporation
18 authorized to transact business in this state may be addressed to
19 its registered agent at its registered office or to the corporation
20 or its secretary at its principal office shown in its most recent
21 return required pursuant to section three, article twelve-c,
22 chapter eleven of this code or, in the case of a foreign corpora-
23 tion that has not yet delivered a return, in its application for a
24 certificate of authority.

25 (e) Except as provided in subsection (c) of this section,
26 written notice, if in a comprehensible form, is effective at the
27 earliest of the following:

28 (1) When received;

29 (2) Five days after its deposit in the United States mail, if
30 mailed postpaid and correctly addressed; or

31 (3) On the date shown on the return receipt, if sent by
32 registered or certified mail, return receipt requested, and the
33 receipt is signed by or on behalf of the addressee.

34 (f) Oral notice is effective when communicated, if commu-
35 nicated in a comprehensible manner.

36 (g) If other provisions of this chapter prescribe notice
37 requirements for particular circumstances, those requirements
38 govern. If articles of incorporation or bylaws prescribe notice
39 requirements, not inconsistent with this section or other
40 provisions of this chapter, those requirements govern.

§31D-1-152. Number of shareholders.

1 (a) For purposes of this chapter, the following, identified as
2 a shareholder in a corporation's current record of shareholders,
3 constitutes one shareholder:

4 (1) Three or fewer coowners;

5 (2) A corporation, partnership, trust, estate or other entity;
6 or

7 (3) The trustees, guardians, custodians or other fiduciaries
8 of a single trust, estate or account.

9 (b) For purposes of this chapter, shareholdings registered in
10 substantially similar names constitute one shareholder if it is
11 reasonable to believe that the names represent the same person.

ARTICLE 2. INCORPORATION.

§31D-2-201. Incorporators.

§31D-2-202. Articles of incorporation.

§31D-2-203. Incorporation.

§31D-2-204. Organization of corporation.

§31D-2-205. Bylaws.

§31D-2-206. Emergency bylaws.

§31D-2-201. Incorporators.

1 One or more persons may act as the incorporator or
2 incorporators of a corporation by delivering articles of incorpo-
3 ration to the secretary of state for filing.

§31D-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the
3 requirements of section four hundred one, article four of this
4 chapter;

5 (2) The number of shares the corporation is authorized to
6 issue, the par value of each of the shares, or a statement that all
7 shares are without par value;

8 (3) The street address of the corporation's initial registered
9 office, if any, and the name of its initial registered agent at that
10 office, if any;

11 (4) The name and address of each incorporator; and

12 (5) The purpose or purposes for which the corporation is
13 organized.

14 (b) The articles of incorporation may set forth:

15 (1) The names and addresses of the individuals who are to
16 serve as the initial directors;

17 (2) Provisions not inconsistent with law regarding:

18 (A) Managing the business and regulating the affairs of the
19 corporation;

20 (B) Defining, limiting and regulating the powers of the
21 corporation, its board of directors and shareholders; or

22 (C) The imposition of personal liability on shareholders for
23 the debts of the corporation to a specified extent and upon
24 specified conditions;

25 (3) Any provision that, under this chapter, is required or
26 permitted to be set forth in the bylaws;

27 (4) A provision eliminating or limiting the personal liability
28 of a director to the corporation or its stockholders for monetary
29 damages for breach of fiduciary duty as a director: *Provided*,
30 That a provision may not eliminate or limit the liability of a
31 director: (A) For any breach of the director's duty of loyalty to

32 the corporation or its stockholders; (B) for acts or omissions not
33 in good faith or which involve intentional misconduct or a
34 knowing violation of law; (C) under section eight hundred
35 thirty-three, article eight of this chapter for unlawful distribu-
36 tions; or (D) for any transaction from which the director derived
37 an improper personal benefit. No provision may eliminate or
38 limit the liability of a director for any act or omission occurring
39 prior to the date when that provision becomes effective; and

40 (5) A provision permitting or making obligatory indemnifi-
41 cation of a director for liability as that term is defined in section
42 eight hundred fifty, article eight of this chapter to any person
43 for any action taken, or any failure to take any action, as a
44 director except liability for: (A) Receipt of a financial benefit
45 to which he or she is not entitled; (B) an intentional infliction
46 of harm on the corporation or its shareholders; (C) a violation
47 of section eight hundred thirty-three, article eight of this chapter
48 for unlawful distributions; or (D) an intentional violation of
49 criminal law.

50 (c) The articles of incorporation need not set forth any of
51 the corporate powers enumerated in this chapter.

§31D-2-203. Incorporation.

1 (a) Unless a delayed effective date is specified, the corpo-
2 rate existence begins when the articles of incorporation are
3 filed.

4 (b) The secretary of state's filing of the articles of incorpo-
5 ration is conclusive proof that the incorporators satisfied all
6 conditions precedent to incorporation except in a proceeding by
7 the state to cancel or revoke the incorporation or involuntarily
8 dissolve the corporation.

§31D-2-204. Organization of corporation.

1 (a) After incorporation:

2 (1) If initial directors are named in the articles of incorpora-
3 tion, the initial directors shall hold an organizational meeting,
4 at the call of a majority of the directors, to complete the
5 organization of the corporation by appointing officers, adopting
6 bylaws and carrying on any other business brought before the
7 meeting; or

8 (2) If initial directors are not named in the articles, the
9 incorporator or incorporators shall hold an organizational
10 meeting at the call of a majority of the incorporators:

11 (A) To elect directors and complete the organization of the
12 corporation; or

13 (B) To elect a board of directors who shall complete the
14 organization of the corporation.

15 (b) Action required or permitted by this chapter to be taken
16 by incorporators at an organizational meeting may be taken
17 without a meeting if the action taken is evidenced by one or
18 more written consents describing the action taken and signed by
19 each incorporator.

20 (c) An organizational meeting may be held in or out of this
21 state.

§31D-2-205. Bylaws.

1 (a) The incorporators or board of directors of a corporation
2 shall adopt initial bylaws for the corporation.

3 (b) The bylaws of a corporation may contain any provision
4 for managing the business and regulating the affairs of the

5 corporation that is not inconsistent with law or the articles of
6 incorporation.

§31D-2-206. Emergency bylaws.

1 (a) Unless the articles of incorporation provide otherwise,
2 the board of directors of a corporation may adopt bylaws to be
3 effective only in an emergency defined in subsection (d) of this
4 section. The emergency bylaws, which are subject to amend-
5 ment or repeal by the shareholders, may make all provisions
6 necessary for managing the corporation during the emergency,
7 including:

8 (1) Procedures for calling a meeting of the board of
9 directors;

10 (2) Quorum requirements for the meeting; and

11 (3) Designation of additional or substitute directors.

12 (b) All provisions of the regular bylaws consistent with the
13 emergency bylaws remain effective during the emergency. The
14 emergency bylaws are not effective after the emergency ends.

15 (c) Corporate action taken in good faith in accordance with
16 the emergency bylaws:

17 (1) Binds the corporation; and

18 (2) May not be used to impose liability on a corporate
19 director, officer, employee or agent.

20 (d) An emergency exists for purposes of this section if a
21 quorum of the corporation's directors cannot readily be
22 assembled because of some catastrophic event.

ARTICLE 3. PURPOSES AND POWERS.

§31D-3-301. Purposes.

§31D-3-302. General powers.

§31D-3-303. Emergency powers.

§31D-3-304. Ultra vires.

§31D-3-301. Purposes.

1 (a) Every corporation incorporated under this chapter has
2 the purpose of engaging in any lawful business unless a more
3 limited purpose is set forth in the articles of incorporation.

4 (b) A corporation engaging in a business that is subject to
5 regulation under another statute of this state may incorporate
6 under this chapter only if permitted by, and subject to all
7 limitations of, the other statute.

§31D-3-302. General powers.

1 Unless its articles of incorporation provide otherwise, every
2 corporation has perpetual duration and succession in its
3 corporate name and has the same powers as an individual to do
4 all things necessary or convenient to carry out its business and
5 affairs, including, without limitation, power:

6 (1) To sue and be sued, complain and defend in its corpo-
7 rate name;

8 (2) To have a corporate seal, which may be altered at will,
9 and to use it, or a facsimile of it, by impressing or affixing it or
10 in any other manner reproducing it;

11 (3) To make and amend bylaws, not inconsistent with its
12 articles of incorporation or with the laws of this state, for
13 managing the business and regulating the affairs of the corpora-
14 tion;

15 (4) To purchase, receive, lease or otherwise acquire and
16 own, hold, improve, use and otherwise deal with real or

17 personal property, or any legal or equitable interest in property,
18 wherever located;

19 (5) To sell, convey, mortgage, pledge, lease, exchange and
20 otherwise dispose of all or any part of its property;

21 (6) To purchase, receive, subscribe for or otherwise acquire;
22 own, hold, vote, use, sell, mortgage, lend, pledge or otherwise
23 dispose of; and deal in and with shares or other interests in, or
24 obligations of, any other entity;

25 (7) To make contracts and guarantees; incur liabilities;
26 borrow money; issue its notes, bonds and other obligations
27 which may be convertible into or include the option to purchase
28 other securities of the corporation; and secure any of its
29 obligations by mortgage, deed of trust or pledge of any of its
30 property, franchises or income;

31 (8) To lend money, invest and reinvest its funds and receive
32 and hold real and personal property as security for repayment;

33 (9) To be a promoter, partner, member, associate or
34 manager of any partnership, joint venture, trust or other entity;

35 (10) To conduct its business, locate offices and exercise the
36 powers granted by this chapter within or without this state;

37 (11) To elect directors and appoint officers, employees and
38 agents of the corporation; define their duties; fix their compen-
39 sation; and lend them money and credit;

40 (12) To pay pensions and establish pension plans, pension
41 trusts, profit-sharing plans, share bonus plans, share option
42 plans and benefit or incentive plans for any or all of its current
43 or former directors, officers, employees and agents;

44 (13) To make donations for the public welfare or for
45 charitable, scientific or educational purposes and for other
46 purposes that further the corporate interest;

47 (14) To transact any lawful business that will aid govern-
48 mental policy; and

49 (15) To make payments or donations, or do any other act,
50 not inconsistent with law, that furthers the business and affairs
51 of the corporation.

§31D-3-303. Emergency powers.

1 (a) In anticipation of or during an emergency defined in
2 subsection (d) of this section, the board of directors of a
3 corporation may:

4 (1) Modify lines of succession to accommodate the
5 incapacity of any director, officer, employee or agent; and

6 (2) Relocate the principal office, designate alternative
7 principal offices or regional offices or authorize the officers to
8 do so.

9 (b) During an emergency defined in subsection (d) of this
10 section, unless emergency bylaws provide otherwise:

11 (1) Notice of a meeting of the board of directors need be
12 given only to those directors whom it is practicable to reach and
13 may be given in any practicable manner, including by publica-
14 tion and radio; and

15 (2) One or more officers of the corporation present at a
16 meeting of the board of directors may be deemed to be directors
17 for the meeting, in order of rank and within the same rank in
18 order of seniority, as necessary to achieve a quorum.

19 (c) Corporate action taken in good faith during an emer-
20 gency under this section to further the ordinary business affairs
21 of the corporation:

22 (1) Binds the corporation; and

23 (2) May not be used to impose liability on a corporate
24 director, officer, employee or agent.

25 (d) An emergency exists for purposes of this section if a
26 quorum of the corporation's directors cannot readily be
27 assembled because of some catastrophic event.

§31D-3-304. Ultra vires.

1 (a) Except as provided in subsection (b) of this section, the
2 validity of corporate action may not be challenged on the
3 ground that the corporation lacks or lacked power to act.

4 (b) A corporation's power to act may be challenged:

5 (1) In a proceeding by a shareholder against the corporation
6 to enjoin the act;

7 (2) In a proceeding by the corporation, directly, derivatively
8 or through a receiver, trustee or other legal representative,
9 against an incumbent or former director, officer, employee or
10 agent of the corporation; or

11 (3) In a proceeding by the attorney general under section
12 one thousand four hundred thirty, article fourteen of this
13 chapter.

14 (c) In a shareholder's proceeding under subdivision (1),
15 subsection (b) of this section to enjoin an unauthorized corpo-
16 rate act, the circuit court may enjoin or set aside the act, if
17 equitable and if all affected persons are parties to the proceed-
18 ing, and may award damages for loss, except loss of anticipated

19 profits, suffered by the corporation or another party because of
20 enjoining the unauthorized act.

ARTICLE 4. NAME.

§31D-4-401. Corporate name.

§31D-4-402. Use of the words “corporation”, “incorporated” or “limited”; prohibitions; penalties.

§31D-4-403. Reserved name.

§31D-4-404. Registered name.

§31D-4-401. Corporate name.

1 (a) A corporate name:

2 (1) Must contain the word “corporation”, “incorporated”,
3 “company” or “limited”, or the abbreviation “corp.”, “inc.”,
4 “co.” or “ltd.”, or words or abbreviations of like import in
5 another language; and

6 (2) May not contain language stating or implying that the
7 corporation is organized for a purpose other than that permitted
8 by section three hundred one, article three of this chapter and its
9 articles of incorporation.

10 (b) Except as authorized by subsections (c) and (d) of this
11 section, a corporate name must be distinguishable upon the
12 records of the secretary of state from:

13 (1) The corporate name of a corporation incorporated or
14 authorized to transact business in this state;

15 (2) A corporate name reserved or registered under section
16 four hundred three or four hundred four of this article;

17 (3) The fictitious name adopted by a foreign corporation
18 authorized to transact business in this state because its real
19 name is unavailable;

20 (4) The corporate name of a nonprofit corporation incorpo-
21 rated or authorized to transact business in this state; and

22 (5) The name of any other entity whose name is carried in
23 the records of the secretary of state.

24 (c) A corporation may apply to the secretary of state for
25 authorization to use a name that is not distinguishable upon his
26 or her records from one or more of the names described in
27 subsection (b) of this section. The secretary of state shall
28 authorize use of the name applied for if:

29 (1) The other corporation consents to the use in writing and
30 submits an undertaking in form satisfactory to the secretary of
31 state to change the name so that it is distinguishable upon the
32 records of the secretary of state from the name applied for; or

33 (2) The applicant delivers to the secretary of state a
34 certified copy of the final judgment of a court of competent
35 jurisdiction establishing the applicant's right to use the name
36 applied for in this state.

37 (d) A corporation may use the name, including the fictitious
38 name, of another domestic or foreign corporation that is used in
39 this state if the other corporation is incorporated or authorized
40 to transact business in this state and the proposed user corpora-
41 tion:

42 (1) Has merged with the other corporation;

43 (2) Has been formed by reorganization of the other corpora-
44 tion; or

45 (3) Has acquired all or substantially all of the assets,
46 including the corporate name, of the other corporation.

47 (e) This chapter does not control the use of fictitious names.

§31D-4-402. Use of the words “corporation”, “incorporated” or “limited”; prohibitions; penalties.

1 (a) No person may use the word “corporation” or “incorporated”
2 rated” or any abbreviation of these words in any trade name,
3 business or other organization name unless the name is used by
4 a domestic or foreign corporation authorized by the secretary of
5 state to transact business in West Virginia under the provisions
6 of this chapter or chapter thirty-one-e of this code.

7 (b) No person may use the word “limited” or any abbreviation
8 tion of the word “limited” in any trade name, business or other
9 organization name unless the name is used by a domestic or
10 foreign corporation authorized by the secretary of state to
11 transact business in West Virginia under the provisions of this
12 chapter, chapter thirty-one-b, thirty-one-e or forty-seven of this
13 code.

14 (c) The tax commissioner may not issue any business
15 registration certificate under the provisions of article twelve,
16 chapter eleven of this code to any business if the business name
17 includes any of the words or their abbreviations as set forth in
18 subsection (a) or (b) of this section unless the business is a
19 domestic or foreign corporation or domestic or foreign non-
20 profit corporation.

21 (d) Any person who unlawfully uses any one or more of the
22 prescribed words or their abbreviations as set forth in subsection
23 (a) or (b) of this section is to be deemed to be acting as a
24 corporation without authority of law and subject to an action in
25 quo warranto as provided in article two, chapter fifty-three of
26 this code.

27 (e) Any person who violates the provisions of this section
28 is guilty of a misdemeanor and, upon conviction thereof, shall
29 be fined not less than five hundred dollars nor more than one

30 thousand dollars or confined in the county or regional jail not
31 more than thirty days, or both.

32 (f) The provisions of this section do not apply to businesses
33 in existence prior to the first day of July, one thousand nine
34 hundred eighty-eight.

§31D-4-403. Reserved name.

1 (a) A person may reserve the exclusive use of a corporate
2 name, including a fictitious name for a foreign corporation
3 whose corporate name is not available, by delivering an
4 application to the secretary of state for filing. The application
5 must set forth the name and address of the applicant and the
6 name proposed to be reserved. If the secretary of state finds that
7 the corporate name applied for is available, he or she shall
8 reserve the name for the applicant's exclusive use for a
9 nonrenewable one hundred twenty-day period.

10 (b) The owner of a reserved corporate name may transfer
11 the reservation to another person by delivering to the secretary
12 of state a signed notice of the transfer that states the name and
13 address of the transferee.

§31D-4-404. Registered name.

1 (a) A foreign corporation may register its corporate name,
2 or its corporate name with any addition required by section one
3 thousand five hundred six, article fifteen of this chapter, if the
4 name is distinguishable upon the records of the secretary of
5 state from the corporate names that are not available under
6 subsection (b), section four hundred one of this article.

7 (b) A foreign corporation registers its corporate name, or its
8 corporate name with any addition required by section one
9 thousand five hundred six, article fifteen of this chapter, by
10 delivering to the secretary of state for filing an application:

11 (1) Setting forth its corporate name, or its corporate name
12 with any addition required by section one thousand five
13 hundred six, article fifteen of this chapter, the state or country
14 and date of its incorporation and a brief description of the
15 nature of the business in which it is engaged; and

16 (2) Accompanied by a certificate of existence, or a docu-
17 ment of similar import, from the state or country of incorpora-
18 tion.

19 (c) The name is registered for the applicant's exclusive use
20 upon the effective date of the application.

21 (d) A foreign corporation whose registration is effective
22 may renew it for successive years by delivering to the secretary
23 of state for filing a renewal application, which complies with
24 the requirements of subsection (b) of this section, between the
25 first day of October and the thirty-first day of December of the
26 preceding year. The renewal application when filed renews the
27 registration for the following calendar year.

28 (e) A foreign corporation whose registration is effective
29 may qualify as a foreign corporation under the registered name
30 or consent in writing to the use of that name by a corporation
31 incorporated under this chapter or by another foreign corpora-
32 tion authorized to transact business in this state. The registra-
33 tion terminates when the domestic corporation is incorporated
34 or the foreign corporation qualifies or consents to the qualifica-
35 tion of another foreign corporation under the registered name.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-501. Registered office and registered agent.

§31D-5-502. Change of registered office or registered agent.

§31D-5-503. Resignation of registered agent.

§31D-5-504. Service on corporation.

§31D-5-501. Registered office and registered agent.

1 Each corporation may continuously maintain in this state:

2 (1) A registered office that may be the same as any of its
3 places of business; and

4 (2) A registered agent, who may be:

5 (A) An individual who resides in this state and whose
6 business office is identical with the registered office;

7 (B) A domestic corporation or domestic nonprofit corpora-
8 tion whose business office is identical with the registered
9 office; or

10 (C) A foreign corporation or foreign nonprofit corporation
11 authorized to transact business in this state whose business
12 office is identical with the registered office.

§31D-5-502. Change of registered office or registered agent.

1 (a) A corporation may change its registered office or
2 registered agent by delivering to the secretary of state for filing
3 a statement of change that sets forth:

4 (1) The name of the corporation;

5 (2) The mailing address or description of physical location
6 of its current registered office;

7 (3) If the current registered office is to be changed, the
8 street address or description of physical location of the new
9 registered office;

10 (4) The name of its current registered agent;

11 (5) If the current registered agent is to be changed, the
12 name of the new registered agent and the new agent's written

13 consent, either on the statement or attached to it, to the appoint-
14 ment; and

15 (6) That after the change or changes are made, the mailing
16 addresses of its registered office and the business office of its
17 registered agent will be identical.

18 (b) If a registered agent changes the mailing address of his
19 or her business office, he or she may change the mailing
20 address of the registered office of any corporation for which he
21 or she is the registered agent by notifying the corporation in
22 writing of the change and signing, either manually or in
23 facsimile, and delivering to the secretary of state for filing a
24 statement that complies with the requirements of subsection (a)
25 of this section and recites that the corporation has been notified
26 of the change.

§31D-5-503. Resignation of registered agent.

1 (a) A registered agent may resign his or her agency appoint-
2 ment by signing and delivering to the secretary of state for
3 filing the signed original and two exact or conformed copies of
4 a statement of resignation. The statement may include a
5 statement that the registered office is also discontinued.

6 (b) After filing the statement, the secretary of state shall
7 mail one copy to the registered office if the registered office is
8 not discontinued and the other copy to the corporation at its
9 principal office.

10 (c) The agency appointment is terminated, and the regis-
11 tered office is discontinued if provision for its discontinuation
12 is made, on the thirty-first day after the date on which the
13 statement was filed.

§31D-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at its
8 principal office. Service is perfected under this subsection at the
9 earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on behalf
12 of the corporation; or

13 (3) Five days after its deposit in the United States mail, as
14 evidenced by the postmark, if mailed postpaid and correctly
15 addressed.

16 (c) In addition to the methods of service on a corporation
17 provided in subsections (a) and (b) of this section, the secretary
18 of state is hereby constituted the attorney-in-fact for and on
19 behalf of each corporation created pursuant to the provisions of
20 this chapter. The secretary of state has the authority to accept
21 service of notice and process on behalf of each corporation and
22 is an agent of the corporation upon whom service of notice and
23 process may be made in this state for and upon each corpora-
24 tion. No act of a corporation appointing the secretary of state as
25 attorney-in-fact is necessary. Service of any process, notice or
26 demand on the secretary of state may be made by delivering to
27 and leaving with the secretary of state the original process,
28 notice or demand and two copies of the process, notice or
29 demand for each defendant, along with the fee required by
30 section two, article one, chapter fifty-nine of this code. Immedi-

31 ately after being served with or accepting any process or notice,
32 the secretary of state shall: (1) File in his or her office a copy of
33 the process or notice, endorsed as of the time of service or
34 acceptance; and (2) transmit one copy of the process or notice
35 by registered or certified mail, return receipt requested, to: (A)
36 The corporation's registered agent; or (B) if there is no regis-
37 tered agent, to the individual whose name and address was last
38 given to the secretary of state's office as the person to whom
39 notice and process are to be sent and if no person has been
40 named, to the principal office of the corporation as that address
41 was last given to the secretary of state's office. Service or
42 acceptance of process or notice is sufficient if return receipt is
43 signed by an agent or employee of the corporation, or the
44 registered or certified mail sent by the secretary of state is
45 refused by the addressee and the registered or certified mail is
46 returned to the secretary of state, or to his or her office, showing
47 the stamp of the United States postal service that delivery has
48 been refused, and the return receipt or registered or certified
49 mail is appended to the original process or notice and filed in
50 the clerk's office of the court from which the process or notice
51 was issued. No process or notice may be served on the secretary
52 of state or accepted by him or her less than ten days before the
53 return day of the process or notice. The court may order
54 continuances as may be reasonable to afford each defendant
55 opportunity to defend the action or proceedings.

56 (d) This section does not prescribe the only means, or
57 necessarily the required means, of serving a corporation.

ARTICLE 6. SHARES AND DISTRIBUTIONS.

§31D-6-601. Authorized shares.

§31D-6-602. Terms of class or series determined by board of directors.

§31D-6-603. Issued and outstanding shares.

§31D-6-604. Fractional shares.

§31D-6-620. Subscription for shares before incorporation.

§31D-6-621. Issuance of shares.

- §31D-6-622. Liability of shareholders.
- §31D-6-623. Share dividends.
- §31D-6-624. Share options.
- §31D-6-625. Form and content of certificates.
- §31D-6-626. Shares without certificates.
- §31D-6-627. Restriction on transfer of shares and other securities.
- §31D-6-628. Expense of issue.
- §31D-6-630. Shareholders' preemptive rights.
- §31D-6-631. Corporation's acquisition of its own shares.
- §31D-6-640. Distributions to shareholders.

PART 1. SHARES.

§31D-6-601. Authorized shares.

1 (a) The articles of incorporation must prescribe the classes
2 of shares and the number of shares of each class that the
3 corporation is authorized to issue. If more than one class of
4 shares is authorized, the articles of incorporation must prescribe
5 a distinguishing designation for each class and, prior to the
6 issuance of shares of a class, the preferences, limitations and
7 relative rights of that class must be described in the articles of
8 incorporation. All shares of a class must have preferences,
9 limitations and relative rights identical with those of other
10 shares of the same class except to the extent otherwise permit-
11 ted by section six hundred two of this article.

12 (b) The articles of incorporation must authorize: (1) One or
13 more classes of shares that together have unlimited voting
14 rights; and (2) one or more classes of shares which may be the
15 same class or classes as those with voting rights that together
16 are entitled to receive the net assets of the corporation upon
17 dissolution.

18 (c) The articles of incorporation may authorize one or more
19 classes of shares that:

20 (1) Have special, conditional or limited voting rights, or no
21 right to vote, except to the extent prohibited by this chapter;

22 (2) Are redeemable or convertible as specified in the
23 articles of incorporation: (A) At the option of the corporation,
24 the shareholder or another person or upon the occurrence of a
25 designated event; (B) for cash, indebtedness, securities or other
26 property; or (C) in a designated amount or in an amount
27 determined in accordance with a designated formula or by
28 reference to extrinsic data or events;

29 (3) Entitle the holders to distributions calculated in any
30 manner, including dividends that may be cumulative,
31 noncumulative or partially cumulative; or

32 (4) Have preference over any other class of shares with
33 respect to distributions, including dividends and distributions
34 upon the dissolution of the corporation.

35 (d) The description of the designations, preferences,
36 limitations and relative rights of share classes in subsection (c)
37 of this section is not exhaustive.

**§31D-6-602. Terms of class or series determined by board of
directors.**

1 (a) If the articles of incorporation provide, the board of
2 directors may determine, in whole or in part, the preferences,
3 limitations and relative rights within the limits set forth in
4 section six hundred one of this article of: (1) Any class of
5 shares before the issuance of any shares of that class; or (2) one
6 or more series within a class before the issuance of any shares
7 of that series.

8 (b) Each series of a class must be given a distinguishing
9 designation.

10 (c) All shares of a series must have preferences, limitations
11 and relative rights identical with those of other shares of the
12 same series and, except to the extent otherwise provided in the
13 description of the series, with those of other series of the same
14 class.

15 (d) Before issuing any shares of a class or series created
16 under this section, the corporation must deliver to the secretary
17 of state for filing articles of amendment, which are effective
18 without shareholder action, that set forth:

19 (1) The name of the corporation;

20 (2) The text of the amendment determining the terms of the
21 class or series of shares;

22 (3) The date it was adopted; and

23 (4) A statement that the amendment was duly adopted by
24 the board of directors.

§31D-6-603. Issued and outstanding shares.

1 (a) A corporation may issue the number of shares of each
2 class or series authorized by the articles of incorporation.
3 Shares that are issued are outstanding shares until they are
4 reacquired, redeemed, converted or canceled.

5 (b) The reacquisition, redemption, or conversion of
6 outstanding shares is subject to the limitations of subsection (c)
7 of this section and section six hundred forty of this article.

8 (c) At all times that shares of the corporation are outstand-
9 ing, one or more shares that together have unlimited voting
10 rights and one or more shares that together are entitled to
11 receive the net assets of the corporation upon dissolution must
12 be outstanding.

§31D-6-604. Fractional shares.

1 (a) A corporation may:

2 (1) Issue fractions of a share or pay in money the value of
3 fractions of a share;

4 (2) Arrange for disposition of fractional shares by the
5 shareholders; or

6 (3) Issue scrip in registered or bearer form entitling the
7 holder to receive a full share upon surrendering enough scrip to
8 equal a full share.

9 (b) Each certificate representing scrip must be conspicu-
10 ously labeled "scrip" and must contain the information required
11 by subsection (b), section six hundred twenty-five of this
12 article.

13 (c) The holder of a fractional share is entitled to exercise
14 the rights of a shareholder, including the right to vote, to
15 receive dividends and to participate in the assets of the corpora-
16 tion upon liquidation. The holder of scrip is not entitled to any
17 of these rights unless the scrip provides for them.

18 (d) The board of directors may authorize the issuance of
19 scrip subject to any condition considered desirable, including:

20 (1) That the scrip will become void if not exchanged for full
21 shares before a specified date; and

22 (2) That the shares for which the scrip is exchangeable may
23 be sold and the proceeds paid to the scripholders.

PART 2. ISSUANCE OF SHARES.**§31D-6-620. Subscription for shares before incorporation.**

1 (a) A subscription for shares entered into before incorpora-
2 tion is irrevocable for six months unless the subscription
3 agreement provides a longer or shorter period or all the sub-
4 scribers agree to revocation.

5 (b) The board of directors may determine the payment
6 terms of subscription for shares that were entered into before
7 incorporation, unless the subscription agreement specifies them.
8 A call for payment by the board of directors must be uniform so
9 far as practicable as to all shares of the same class or series
10 unless the subscription agreement specifies otherwise.

11 (c) Shares issued pursuant to subscriptions entered into
12 before incorporation are fully paid and nonassessable when the
13 corporation receives the consideration specified in the subscrip-
14 tion agreement.

15 (d) If a subscriber defaults in payment of money or property
16 under a subscription agreement entered into before incorpora-
17 tion, the corporation may collect the amount owed as any other
18 debt. Alternatively, unless the subscription agreement provides
19 otherwise, the corporation may rescind the agreement and may
20 sell the shares if the debt remains unpaid for more than twenty
21 days after the corporation sends written demand for payment to
22 the subscriber.

23 (e) A subscription agreement entered into after incorpora-
24 tion is a contract between the subscriber and the corporation
25 subject to section six hundred twenty-one of this article.

§31D-6-621. Issuance of shares.

1 (a) The powers granted in this section to the board of
2 directors may be reserved to the shareholders by the articles of
3 incorporation.

4 (b) The board of directors may authorize shares to be issued
5 for consideration consisting of any tangible or intangible
6 property or benefit to the corporation, including cash, promis-
7 sory notes, services performed, contracts for services to be
8 performed or other securities of the corporation.

9 (c) Before the corporation issues shares, the board of
10 directors must determine that the consideration received or to
11 be received for shares to be issued is adequate. That determina-
12 tion by the board of directors is conclusive insofar as the
13 adequacy of consideration for the issuance of shares relates to
14 whether the shares are validly issued, fully paid and
15 nonassessable.

16 (d) When the corporation receives the consideration for
17 which the board of directors authorized the issuance of shares,
18 the shares issued are fully paid and nonassessable.

19 (e) The corporation may place in escrow shares issued for
20 a contract for future services or benefits or a promissory note,
21 or make other arrangements to restrict the transfer of the shares,
22 and may credit distributions in respect of the shares against
23 their purchase price until the services are performed, the note is
24 paid or the benefits received. If the services are not performed,
25 the note is not paid or the benefits are not received, the shares
26 escrowed or restricted and the distributions credited may be
27 canceled in whole or in part.

28 (f) An issuance of shares or other securities convertible into
29 or rights exercisable for shares, in a transaction or a series of
30 integrated transactions, requires approval of the shareholders at
31 a meeting at which a quorum exists consisting of at least a
32 majority of the votes entitled to be cast on the matter, if:

33 (1) The shares, other securities or rights are issued for
34 consideration other than cash or cash equivalents; and

35 (2) The voting power of shares that are issued and issuable
36 as a result of the transaction or series of integrated transactions
37 will comprise more than twenty percent of the voting power of
38 the shares of the corporation that were outstanding immediately
39 before the transaction.

40 (g) As used in subsection (f) of this section:

41 (1) For purposes of determining the voting power of shares
42 issued and issuable as a result of a transaction or series of
43 integrated transactions, the voting power of shares is the greater
44 of: (A) The voting power of the shares to be issued; or (B) the
45 voting power of the shares that would be outstanding after
46 giving effect to the conversion of convertible shares and other
47 securities and the exercise of rights to be issued.

48 (2) A series of transactions is integrated if consummation
49 of one transaction is made contingent on consummation of one
50 or more of the other transactions.

§31D-6-622. Liability of shareholders.

1 (a) A purchaser from a corporation of its own shares is not
2 liable to the corporation or its creditors with respect to the
3 shares except to pay the consideration for which the shares were
4 authorized to be issued pursuant to section six hundred twenty-
5 one of this article or specified in the subscription agreement
6 entered pursuant to section six hundred twenty of this article.

7 (b) Unless otherwise provided in the articles of incorpora-
8 tion, a shareholder of a corporation is not personally liable for
9 the acts or debts of the corporation except that he or she may
10 become personally liable by reason of his or her own acts or
11 conduct.

§31D-6-623. Share dividends.

1 (a) Unless the articles of incorporation provide otherwise,
2 shares may be issued pro rata and without consideration to the
3 corporation's shareholders or to the shareholders of one or more
4 classes or series. An issuance of shares under this subsection is
5 a share dividend.

6 (b) Shares of one class or series may not be issued as a
7 share dividend in respect of shares of another class or series
8 unless: (1) The articles of incorporation authorize; (2) a
9 majority of the votes entitled to be cast by the class or series to
10 be issued approve the issue; or (3) there are no outstanding
11 shares of the class or series to be issued.

12 (c) If the board of directors does not fix the record date for
13 determining shareholders entitled to a share dividend, it is the
14 date the board of directors authorizes the share dividend.

§31D-6-624. Share options.

1 A corporation may issue rights, options or warrants for the
2 purchase of shares of the corporation. The board of directors
3 shall determine the terms upon which the rights, options or
4 warrants are issued, their form and content, and the consider-
5 ation for which the shares are to be issued.

§31D-6-625. Form and content of certificates.

1 (a) Shares may, but need not, be represented by certificates.
2 Unless this chapter or another provision of this code expressly
3 provides otherwise, the rights and obligations of shareholders
4 are identical whether or not their shares are represented by
5 certificates.

6 (b) At a minimum each share certificate must state on its
7 face:

8 (1) The name of the issuing corporation and that it is
9 organized under the law of this state;

10 (2) The name of the person to whom issued; and

11 (3) The number and class of shares and the designation of
12 the series, if any, the certificate represents.

13 (c) If the issuing corporation is authorized to issue different
14 classes of shares or different series within a class, the designa-
15 tions, relative rights, preferences and limitations applicable to
16 each class and the variations in rights, preferences and limita-
17 tions determined for each series and the authority of the board
18 of directors to determine variations for future series must be
19 summarized on the front or back of each certificate. Alterna-
20 tively, each certificate may state conspicuously on its front or
21 back that the corporation will furnish the shareholder this
22 information on request in writing and without charge.

23 (d) Each share certificate: (1) Must be signed, either
24 manually or in facsimile, by two officers designated in the
25 bylaws or by the board of directors; and (2) may bear the
26 corporate seal or its facsimile.

27 (e) If the person who signed, either manually or in facsim-
28 ile, a share certificate no longer holds office when the certifi-
29 cate is issued, the certificate remains valid.

§31D-6-626. Shares without certificates.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, the board of directors of a corporation may authorize
3 the issue of some or all of the shares of any or all of its classes
4 or series without certificates. The authorization does not affect
5 shares already represented by certificates until they are surren-
6 dered to the corporation.

7 (b) Within a reasonable time after the issue or transfer of
8 shares without certificates, the corporation shall send the
9 shareholder a written statement of the information required on
10 certificates by subsections (b) and (c), section six hundred
11 twenty-five of this article and, if applicable, section six hundred
12 twenty-seven of this article.

§31D-6-627. Restriction on transfer of shares and other securities.

1 (a) The articles of incorporation, bylaws, an agreement
2 among shareholders or an agreement between shareholders and
3 the corporation may impose restrictions on the transfer or
4 registration of transfer of shares of the corporation. A restric-
5 tion does not affect shares issued before the restriction was
6 adopted unless the holders of the shares are parties to the
7 restriction agreement or voted in favor of the restriction.

8 (b) A restriction on the transfer or registration of transfer of
9 shares is valid and enforceable against the holder or a transferee
10 of the holder if the restriction is authorized by this section and
11 its existence is noted conspicuously on the front or back of the
12 certificate or is contained in the information statement required
13 by subsection (b), section six hundred twenty-six of this article.
14 Unless a restriction is noted as required by this subsection, a
15 restriction is not enforceable against a person without knowl-
16 edge of the restriction.

17 (c) A restriction on the transfer or registration of transfer of
18 shares is authorized:

19 (1) To maintain the corporation's status when it is depend-
20 ent on the number or identity of its shareholders;

21 (2) To preserve exemptions under federal or state securities
22 law; or

23 (3) For any other reasonable purpose.

24 (d) A restriction on the transfer or registration of transfer of
25 shares may:

26 (1) Obligate the shareholder first to offer the corporation or
27 other persons an opportunity to acquire the restricted shares;

28 (2) Obligate the corporation or other persons to acquire the
29 restricted shares;

30 (3) Require the corporation, the holders of any class of its
31 shares or another person to approve the transfer of the restricted
32 shares, if the requirement is not manifestly unreasonable; or

33 (4) Prohibit the transfer of the restricted shares to desig-
34 nated persons or classes of persons, if the prohibition is not
35 manifestly unreasonable.

36 (e) For purposes of this section, “shares” includes a security
37 convertible into or carrying a right to subscribe for or acquire
38 shares.

§31D-6-628. Expense of issue.

1 A corporation may pay the expenses of selling or under-
2 writing its shares, and of organizing or reorganizing the
3 corporation, from the consideration received for shares.

PART 3. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION.

§31D-6-630. Shareholders’ preemptive rights.

1 (a) The shareholders of a corporation do not have a preemp-
2 tive right to acquire the corporation’s unissued shares except to
3 the extent the articles of incorporation provide.

4 (b) A statement included in the articles of incorporation that
5 “the corporation elects to have preemptive rights”, or words of

6 similar import, means that the following principles apply,
7 except to the extent the articles of incorporation expressly
8 provide otherwise:

9 (1) The shareholders of the corporation have a preemptive
10 right, granted on uniform terms and conditions prescribed by
11 the board of directors to provide a fair and reasonable opportu-
12 nity to exercise the right, to acquire proportional amounts of the
13 corporation's unissued shares upon the decision of the board of
14 directors to issue them.

15 (2) A shareholder may waive his or her preemptive right. A
16 waiver evidenced by a writing is irrevocable even though it is
17 not supported by consideration.

18 (3) There is no preemptive right with respect to:

19 (A) Shares issued as compensation to directors, officers,
20 agents or employees of the corporation, its subsidiaries or
21 affiliates;

22 (B) Shares issued to satisfy conversion or option rights
23 created to provide compensation to directors, officers, agents or
24 employees of the corporation, its subsidiaries or affiliates;

25 (C) Shares authorized in articles of incorporation that are
26 issued within six months from the effective date of incorpora-
27 tion; or

28 (D) Shares sold otherwise than for money.

29 (4) Holders of shares of any class without general voting
30 rights but with preferential rights to distributions or assets have
31 no preemptive rights with respect to shares of any class.

32 (5) Holders of shares of any class with general voting rights
33 but without preferential rights to distributions or assets have no

34 preemptive rights with respect to shares of any class with
35 preferential rights to distributions or assets unless the shares
36 with preferential rights are convertible into or carry a right to
37 subscribe for or acquire shares without preferential rights.

38 (6) Shares subject to preemptive rights that are not acquired
39 by shareholders may be issued to any person for a period of one
40 year after being offered to shareholders at a consideration set by
41 the board of directors that is not lower than the consideration
42 set for the exercise of preemptive rights. An offer at a lower
43 consideration or after the expiration of one year is subject to the
44 shareholders' preemptive rights.

45 (c) For purposes of this section, "shares" includes a security
46 convertible into or carrying a right to subscribe for or acquire
47 shares.

§31D-6-631. Corporation's acquisition of its own shares.

1 (a) Subject to the provisions of chapter thirty-one-a of this
2 code and unless otherwise prohibited by law, a corporation may
3 acquire its own shares and shares so acquired constitute
4 authorized but unissued shares.

5 (b) If the articles of incorporation prohibit the reissue of the
6 acquired shares, the number of authorized shares is reduced by
7 the number of shares acquired.

PART 4. DISTRIBUTIONS.

§31D-6-640. Distributions to shareholders.

1 (a) A board of directors may authorize and the corporation
2 may make distributions to its shareholders subject to restriction
3 by the articles of incorporation and the limitation in subsection
4 (c) of this section.

5 (b) If the board of directors does not fix the record date for
6 determining shareholders entitled to a distribution, it is the date
7 the board of directors authorizes the distribution: *Provided*,
8 That this subsection does not apply to a distribution involving
9 a purchase, redemption or other acquisition of the corporation's
10 shares.

11 (c) No distribution may be made if, after giving it effect:

12 (1) The corporation would not be able to pay its debts as
13 they become due in the usual course of business; or

14 (2) The corporation's total assets would be less than the
15 sum of its total liabilities plus the amount that would be needed,
16 if the corporation were to be dissolved at the time of the
17 distribution, to satisfy the preferential rights upon dissolution
18 of shareholders whose preferential rights are superior to those
19 receiving the distribution unless the articles of incorporation
20 permit otherwise.

21 (d) The board of directors may base a determination that a
22 distribution is not prohibited under subsection (c) of this section
23 either on financial statements prepared on the basis of account-
24 ing practices and principles that are reasonable in the circum-
25 stances or on a fair valuation or other method that is reasonable
26 in the circumstances.

27 (e) Except as provided in subsection (g) of this section, the
28 effect of a distribution under subsection (c) of this section is
29 measured:

30 (1) In the case of distribution by purchase, redemption or
31 other acquisition of the corporation's shares, as of the earlier of:
32 (A) The date money or other property is transferred or debt
33 incurred by the corporation; or (B) the date the shareholder
34 ceases to be a shareholder with respect to the acquired shares;

35 (2) In the case of any other distribution of indebtedness, as
36 of the date the indebtedness is distributed; and

37 (3) In all other cases, as of: (A) The date the distribution is
38 authorized if the payment occurs within one hundred twenty
39 days after the date of authorization; or (B) the date the payment
40 is made if it occurs more than one hundred twenty days after the
41 date of authorization.

42 (f) A corporation's indebtedness to a shareholder incurred
43 by reason of a distribution made in accordance with this section
44 is at parity with the corporation's indebtedness to its general,
45 unsecured creditors except to the extent subordinated by
46 agreement.

47 (g) Indebtedness of a corporation, including indebtedness
48 issued as a distribution, is not considered a liability for purposes
49 of determinations under subsection (c) of this section if its
50 terms provide that payment of principal and interest are made
51 only if and to the extent that payment of a distribution to
52 shareholders could then be made under this section. If the
53 indebtedness is issued as a distribution, each payment of
54 principal or interest is treated as a distribution, the effect of
55 which is measured on the date the payment is actually made.

ARTICLE 7. SHAREHOLDERS.

§31D-7-701. Annual meeting.

§31D-7-702. Special meeting.

§31D-7-703. Court-ordered meeting.

§31D-7-704. Action without meeting.

§31D-7-705. Notice of meeting.

§31D-7-706. Waiver of notice.

§31D-7-707. Record date.

§31D-7-708. Conduct of the meeting.

§31D-7-720. Shareholders' list for meeting.

§31D-7-721. Voting entitlement of shares.

§31D-7-722. Proxies.

§31D-7-723. Shares held by nominees.

- §31D-7-724. Corporation's acceptance of votes.
§31D-7-725. Quorum and voting requirements for voting groups.
§31D-7-726. Action by single and multiple voting groups.
§31D-7-727. Greater quorum or voting requirements.
§31D-7-728. Voting for directors; cumulative voting.
§31D-7-729. Inspectors of election.
§31D-7-730. Voting trusts.
§31D-7-731. Voting agreements.
§31D-7-732. Shareholder agreements.

PART 1. MEETINGS.

§31D-7-701. Annual meeting.

1 (a) A corporation must hold a meeting of shareholders
2 annually at a time stated in or fixed in accordance with the
3 bylaws.

4 (b) Annual shareholders' meetings may be held in or out of
5 this state at the place stated in or fixed in accordance with the
6 bylaws. If no place is stated in or fixed in accordance with the
7 bylaws, annual meetings are to be held at the corporation's
8 principal office.

9 (c) The failure to hold an annual meeting at the time stated
10 in or fixed in accordance with a corporation's bylaws does not
11 affect the validity of any corporate action.

§31D-7-702. Special meeting.

1 (a) A corporation must hold a special meeting of sharehold-
2 ers:

3 (1) On call of its board of directors or the person or persons
4 authorized by the articles of incorporation or bylaws; or

5 (2) If the holders of at least ten percent of all the votes
6 entitled to be cast on an issue proposed to be considered at the
7 proposed special meeting sign, date and deliver to the corpora-

8 tion one or more written demands for the meeting describing
9 the purpose or purposes for which it is to be held: *Provided,*
10 That the articles of incorporation may fix a lower percentage or
11 a higher percentage not exceeding twenty-five percent of all the
12 votes entitled to be cast on any issue proposed to be considered.
13 Unless otherwise provided in the articles of incorporation, a
14 written demand for a special meeting may be revoked by a
15 writing to that effect received by the corporation prior to the
16 receipt by the corporation of demands sufficient in number to
17 require the holding of a special meeting.

18 (b) If not otherwise fixed under section seven hundred three
19 or seven hundred seven of this article, the record date for
20 determining shareholders entitled to demand a special meeting
21 is the date the first shareholder signs the demand.

22 (c) Special shareholders' meetings may be held in or out of
23 this state at the place stated in or fixed in accordance with the
24 bylaws. If no place is stated or fixed in accordance with the
25 bylaws, special meetings are to be held at the corporation's
26 principal office.

27 (d) Only business within the purpose or purposes described
28 in the meeting notice required by subsection (c), section seven
29 hundred five of this article may be conducted at a special
30 shareholders' meeting.

§31D-7-703. Court-ordered meeting.

1 (a) The circuit court may summarily order a meeting to be
2 held:

3 (1) On application of any shareholder of the corporation
4 entitled to participate in an annual meeting if an annual meeting
5 was not held within the earlier of six months after the end of the
6 corporation's fiscal year or fifteen months after its last annual
7 meeting; or

8 (2) On application of a shareholder who signed a demand
9 for a special meeting valid under section seven hundred two of
10 this article, if:

11 (A) Notice of the special meeting was not given within
12 thirty days after the date the demand was delivered to the
13 corporation's secretary; or

14 (B) The special meeting was not held in accordance with
15 the notice.

16 (b) The court may fix the time and place of the meeting;
17 determine the shares entitled to participate in the meeting;
18 specify a record date for determining shareholders entitled to
19 notice of and to vote at the meeting; prescribe the form and
20 content of the meeting notice; fix the quorum required for
21 specific matters to be considered at the meeting or direct that
22 the votes represented at the meeting constitute a quorum for
23 action on those matters; and enter other orders necessary to
24 accomplish the purpose or purposes of the meeting.

§31D-7-704. Action without meeting.

1 (a) Action required or permitted by this chapter to be taken
2 at a shareholders' meeting may be taken without a meeting if
3 the action is taken by all the shareholders entitled to vote on the
4 action. The action must be evidenced by one or more written
5 consents bearing the date of signature and describing the action
6 taken, signed by all the shareholders entitled to vote on the
7 action, and delivered to the corporation for inclusion in the
8 minutes or filing with the corporate records.

9 (b) If not otherwise fixed under section seven hundred three
10 or seven hundred seven of this article, the record date for
11 determining shareholders entitled to take action without a
12 meeting is the date the first shareholder signs the consent under
13 subsection (a) of this section. No written consent may be

14 effective to take the corporate action referred to in the consent
15 unless, within sixty days of the earliest date appearing on a
16 consent delivered to the corporation in the manner required by
17 this section, written consents signed by all shareholders entitled
18 to vote on the action are received by the corporation. A written
19 consent may be revoked by a writing to that effect received by
20 the corporation prior to receipt by the corporation of unrevoked
21 written consents sufficient in number to take corporate action.

22 (c) A consent signed under this section has the effect of a
23 meeting vote and may be described as a meeting vote in any
24 document.

25 (d) If this chapter requires that notice of proposed action be
26 given to nonvoting shareholders and the action is to be taken by
27 unanimous consent of the voting shareholders, the corporation
28 must give its nonvoting shareholders written notice of the
29 proposed action at least ten days before the action is taken. The
30 notice must contain or be accompanied by the same material
31 that, under this chapter, would have been required to be sent to
32 nonvoting shareholders in a notice of meeting at which the
33 proposed action would have been submitted to the shareholders
34 for action.

§31D-7-705. Notice of meeting.

1 (a) A corporation is to notify shareholders of the date, time
2 and place of each annual and special shareholders' meeting no
3 fewer than ten nor more than sixty days before the meeting
4 date. Unless this chapter or the articles of incorporation require
5 otherwise, the corporation is required to give notice only to
6 shareholders entitled to vote at the meeting.

7 (b) Unless this chapter, the articles of incorporation or
8 bylaws require otherwise, notice of an annual meeting need not
9 include a description of the purpose or purposes for which the
10 meeting is called.

11 (c) Notice of a special meeting must include a description
12 of the purpose or purposes for which the meeting is called.

13 (d) If not otherwise fixed under section seven hundred three
14 or seven hundred seven of this article, the record date for
15 determining shareholders entitled to notice of and to vote at an
16 annual or special shareholders' meeting is the day before the
17 first notice is delivered to shareholders.

18 (e) Unless the bylaws require otherwise, if an annual or
19 special shareholders' meeting is adjourned to a different date,
20 time or place, notice need not be given of the new date, time or
21 place if the new date, time or place is announced at the meeting
22 before adjournment. If a new record date for the adjourned
23 meeting is or must be fixed under section seven hundred seven
24 of this article, notice of the adjourned meeting must be given
25 under this section to persons who are shareholders as of the new
26 record date.

27 (f) Unless the articles of incorporation or bylaws provide
28 otherwise, any shareholder may participate in a regular or
29 special meeting by any means of communication by which all
30 shareholders participating may simultaneously hear each other
31 during the meeting. A shareholder participating in a meeting by
32 this means is deemed to be present in person at the meeting.

§31D-7-706. Waiver of notice.

1 (a) A shareholder may waive any notice required by this
2 chapter, the articles of incorporation or bylaws before or after
3 the date and time stated in the notice. The waiver must be in
4 writing, be signed by the shareholder entitled to the notice and
5 be delivered to the corporation for inclusion in the minutes or
6 filing with the corporate records.

7 (b) A shareholder's attendance at a meeting:

8 (1) Waives objection to lack of notice or defective notice of
9 the meeting, unless the shareholder at the beginning of the
10 meeting objects to holding the meeting or transacting business
11 at the meeting; and

12 (2) Waives objection to consideration of a particular matter
13 at the meeting that is not within the purpose or purposes
14 described in the meeting notice, unless the shareholder objects
15 to considering the matter when it is presented.

§31D-7-707. Record date.

1 (a) The bylaws may fix or provide the manner of fixing the
2 record date for one or more voting groups in order to determine
3 the shareholders entitled to notice of a shareholders' meeting,
4 to demand a special meeting, to vote or to take any other action.
5 If the bylaws do not fix or provide for fixing a record date, the
6 board of directors of the corporation may fix a future date as the
7 record date.

8 (b) A record date fixed under this section may not be more
9 than seventy days before the meeting or action requiring a
10 determination of shareholders.

11 (c) A determination of shareholders entitled to notice of or
12 to vote at a shareholders' meeting is effective for any adjourn-
13 ment of the meeting unless the board of directors fixes a new
14 record date, which it must do if the meeting is adjourned to a
15 date more than one hundred twenty days after the date fixed for
16 the original meeting.

17 (d) If a court orders a meeting adjourned to a date more
18 than one hundred twenty days after the date fixed for the
19 original meeting, it may provide that the original record date
20 continues in effect or it may fix a new record date.

§31D-7-708. Conduct of the meeting.

1 (a) At each meeting of shareholders, a chair shall preside.
2 The chair is to be appointed as provided in the bylaws or, in the
3 absence of a provision in the bylaws, by the board of directors.

4 (b) The chair, unless the articles of incorporation or bylaws
5 provide otherwise, shall determine the order of business and has
6 the authority to establish rules for the conduct of the meeting.

7 (c) Any rules adopted for, and the conduct of, the meeting
8 are to be fair to shareholders.

9 (d) The chair of the meeting shall announce at the meeting
10 when the polls close for each matter voted upon. If no an-
11 nouncement is made, the polls are to be deemed to have closed
12 upon the final adjournment of the meeting. After the polls close,
13 no ballots, proxies or votes nor any revocations or changes to a
14 ballot, proxy or vote may be accepted.

15 (e) If the articles of incorporation or bylaws authorize the
16 use of electronic communication for shareholders' meetings,
17 any or all of the shareholders may participate in a regular or
18 special meeting by, or conduct the meeting through the use of,
19 any means of communication by which all shareholders may
20 simultaneously hear each other during the meeting.

PART 2. VOTING.

§31D-7-720. Shareholders' list for meeting.

1 (a) After fixing a record date for a meeting, a corporation
2 must prepare an alphabetical list of the names of all its share-
3 holders who are entitled to notice of a shareholders' meeting.
4 The list must be arranged by voting group and, within each
5 voting group, by class or series of shares and show the address
6 of and number of shares held by each shareholder.

7 (b) The shareholders' list must be available for inspection
8 by any shareholder, beginning two business days after notice of
9 the meeting is given for which the list was prepared and
10 continuing through the meeting, at the corporation's principal
11 office or at a place identified in the meeting notice in the city
12 where the meeting will be held. A shareholder, his or her agent
13 or attorney is entitled on written demand to inspect and, subject
14 to the requirements of subsection (c), section one thousand six
15 hundred two, article sixteen of this chapter, to copy the list,
16 during regular business hours and at his or her expense, during
17 the period it is available for inspection.

18 (c) The corporation must make the shareholders' list
19 available at the meeting and any shareholder, his or her agent
20 or attorney is entitled to inspect the list at any time during the
21 meeting or any adjournment.

22 (d) If the corporation refuses to allow a shareholder, his or
23 her agent or attorney to inspect the shareholders' list before or
24 at the meeting, or to copy the list as permitted by subsection (b)
25 of this section, the circuit court, on application of the share-
26 holder, may summarily order the inspection or copying at the
27 corporation's expense and may postpone the meeting for which
28 the list was prepared until the inspection or copying is com-
29 plete.

30 (e) Refusal or failure to prepare or make available the
31 shareholders' list does not affect the validity of action taken at
32 the meeting.

§31D-7-721. Voting entitlement of shares.

1 (a) Except as provided in subsections (b) and (d) of this
2 section or unless the articles of incorporation provide otherwise,
3 each outstanding share, regardless of class, is entitled to one
4 vote on each matter voted on at a shareholders' meeting. Only
5 shares are entitled to vote.

6 (b) Absent special circumstances, the shares of a corpora-
7 tion are not entitled to vote if they are owned, directly or
8 indirectly, by a second corporation, domestic or foreign, and the
9 first corporation owns, directly or indirectly, a majority of the
10 shares entitled to vote for directors of the second corporation.

11 (c) Subsection (b) of this section does not limit the power
12 of a corporation to vote any shares, including its own shares,
13 held by it in a fiduciary capacity.

14 (d) Redeemable shares are not entitled to vote after notice
15 of redemption is mailed to the holders and a sum sufficient to
16 redeem the shares has been deposited with a bank, trust
17 company or other financial institution under an irrevocable
18 obligation to pay the holders the redemption price on surrender
19 of the shares.

§31D-7-722. Proxies.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, a shareholder may vote his or her shares in person or
3 by proxy.

4 (b) A shareholder or his or her agent or attorney-in-fact
5 may appoint a proxy to vote or otherwise act for the shareholder
6 by signing an appointment form or by an electronic transmis-
7 sion of the appointment. An electronic transmission must
8 contain or be accompanied by information from which one can
9 determine that the shareholder, the shareholder's agent or the
10 shareholder's attorney-in-fact authorized the electronic trans-
11 mission.

12 (c) An appointment of a proxy is effective when a signed
13 appointment form or an electronic transmission of the appoint-
14 ment is received by the inspector of election or the officer or
15 agent of the corporation authorized to tabulate votes. An

16 appointment is valid for eleven months unless a longer period
17 is expressly provided in the appointment form.

18 (d) An appointment of a proxy is revocable unless the
19 appointment form or electronic transmission states that it is
20 irrevocable and the appointment is coupled with an interest.
21 Appointments coupled with an interest include the appointment
22 of:

23 (1) A pledgee;

24 (2) A person who purchased or agreed to purchase the
25 shares;

26 (3) A creditor of the corporation who extended it credit
27 under terms requiring the appointment;

28 (4) An employee of the corporation whose employment
29 contract requires the appointment; or

30 (5) A party to a voting agreement created under section
31 seven hundred thirty-one of this article.

32 (e) The death or incapacity of the shareholder appointing a
33 proxy does not affect the right of the corporation to accept the
34 proxy's authority unless notice of the death or incapacity is
35 received by the secretary or other officer or agent authorized to
36 tabulate votes before the proxy exercises his or her authority
37 under the appointment.

38 (f) An appointment made irrevocable under subsection (d)
39 of this section is revoked when the interest with which it is
40 coupled is extinguished.

41 (g) A transferee for value of shares subject to an irrevocable
42 appointment may revoke the appointment if he or she did not
43 know of its existence when he or she acquired the shares and

44 the existence of the irrevocable appointment was not noted
45 conspicuously on the certificate representing the shares or on
46 the information statement for shares without certificates.

47 (h) Subject to section seven hundred twenty-four of this
48 article and to any express limitation on the proxy's authority
49 stated in the appointment form or electronic transmission, a
50 corporation is entitled to accept the proxy's vote or other action
51 as that of the shareholder making the appointment.

§31D-7-723. Shares held by nominees.

1 (a) A corporation may establish a procedure by which the
2 beneficial owner of shares that are registered in the name of a
3 nominee is recognized by the corporation as the shareholder.
4 The extent of this recognition may be determined in the
5 procedure.

6 (b) The procedure may set forth:

7 (1) The types of nominees to which it applies;

8 (2) The rights or privileges that the corporation recognizes
9 in a beneficial owner;

10 (3) The manner in which the procedure is selected by the
11 nominee;

12 (4) The information that must be provided when the
13 procedure is selected;

14 (5) The period for which selection of the procedure is
15 effective; and

16 (6) Other aspects of the rights and duties created.

§31D-7-724. Corporation's acceptance of votes.

1 (a) If the name signed on a vote, consent, waiver or proxy
2 appointment corresponds to the name of a shareholder, the
3 corporation if acting in good faith is entitled to accept the vote,
4 consent, waiver or proxy appointment and give it effect as the
5 act of the shareholder.

6 (b) If the name signed on a vote, consent, waiver or proxy
7 appointment does not correspond to the name of its shareholder,
8 the corporation if acting in good faith is entitled to accept the
9 vote, consent, waiver or proxy appointment and give it effect as
10 the act of the shareholder if:

11 (1) The shareholder is an entity and the name signed
12 purports to be that of an officer or agent of the entity;

13 (2) The name signed purports to be that of an administrator,
14 executor, guardian or conservator representing the shareholder
15 and, if the corporation requests, evidence of this status accept-
16 able to the corporation has been presented with respect to the
17 vote, consent, waiver or proxy appointment;

18 (3) The name signed purports to be that of a receiver or
19 trustee in bankruptcy of the shareholder and, if the corporation
20 requests, evidence of this status acceptable to the corporation
21 has been presented with respect to the vote, consent, waiver or
22 proxy appointment;

23 (4) The name signed purports to be that of a pledgee,
24 beneficial owner or attorney-in-fact of the shareholder and, if
25 the corporation requests, evidence acceptable to the corporation
26 of the signatory's authority to sign for the shareholder has been
27 presented with respect to the vote, consent, waiver or proxy
28 appointment; or

29 (5) Two or more persons are the shareholder as cotenants
30 or fiduciaries and the name signed purports to be the name of

31 at least one of the coowners and the person signing appears to
32 be acting on behalf of all the coowners.

33 (c) The corporation is entitled to reject a vote, consent,
34 waiver or proxy appointment if the secretary or other officer or
35 agent authorized to tabulate votes, acting in good faith, has
36 reasonable basis for doubt about the validity of the signature on
37 it or about the signatory's authority to sign for the shareholder.

38 (d) The corporation and its officer or agent who accepts or
39 rejects a vote, consent, waiver or proxy appointment in good
40 faith and in accordance with the standards of this section or
41 subsection (b), section seven hundred twenty-two of this article
42 are not liable in damages to the shareholder for the conse-
43 quences of the acceptance or rejection.

44 (e) Corporate action based on the acceptance or rejection of
45 a vote, consent, waiver or proxy appointment under this section
46 is valid unless a court of competent jurisdiction determines
47 otherwise.

§31D-7-725. Quorum and voting requirements for voting groups.

1 (a) Shares entitled to vote as a separate voting group may
2 take action on a matter at a meeting only if a quorum of those
3 shares exists with respect to that matter. Unless the articles of
4 incorporation or this chapter provide otherwise, a majority of
5 the votes entitled to be cast on the matter by the voting group
6 constitutes a quorum of that voting group for action on that
7 matter.

8 (b) Once a share is represented for any purpose at a
9 meeting, it is deemed present for quorum purposes for the
10 remainder of the meeting and for any adjournment of that
11 meeting unless a new record date is or must be set for that
12 adjourned meeting.

13 (c) If a quorum exists, action on a matter, other than the
14 election of directors, by a voting group is approved if the votes
15 cast within the voting group favoring the action exceed the
16 votes cast opposing the action unless the articles of incorpora-
17 tion or this chapter require a greater number of affirmative
18 votes.

19 (d) An amendment of articles of incorporation adding,
20 changing or deleting a quorum or voting requirement for a
21 voting group greater than specified in subsection (a) or (c) of
22 this section is governed by section seven hundred twenty-seven
23 of this article.

24 (e) The election of directors is governed by section seven
25 hundred twenty-eight of this article.

§31D-7-726. Action by single and multiple voting groups.

1 (a) If the articles of incorporation or this chapter provide for
2 voting by a single voting group on a matter, action on that
3 matter is taken when voted upon by that voting group as
4 provided in section seven hundred twenty-five of this article.

5 (b) If the articles of incorporation or this chapter provide
6 for voting by two or more voting groups on a matter, action on
7 that matter is taken only when voted upon by each of those
8 voting groups counted separately as provided in section seven
9 hundred twenty-five of this article. Action may be taken by one
10 voting group on a matter even though no action is taken by
11 another voting group entitled to vote on the matter.

§31D-7-727. Greater quorum or voting requirements.

1 (a) The articles of incorporation may provide for a greater
2 quorum or voting requirement for shareholders or voting groups
3 of shareholders than is provided for by this chapter.

4 (b) An amendment to the articles of incorporation that adds,
5 changes or deletes a greater quorum or voting requirement must
6 meet the same quorum requirement and be adopted by the same
7 vote and voting groups required to take action under the
8 quorum and voting requirements then in effect or proposed to
9 be adopted, whichever is greater.

§31D-7-728. Voting for directors; cumulative voting.

1 (a) Unless otherwise provided in the articles of incorpora-
2 tion, directors are elected by a plurality of the votes cast by the
3 shares entitled to vote in the election at a meeting at which a
4 quorum is present.

5 (b) Each shareholder or designated voting group of share-
6 holders holding shares having the right to vote for directors has
7 a right to cumulate his or her votes for directors.

8 (c) A statement included in the articles of incorporation that
9 “all or a designated voting group of shareholders are entitled to
10 cumulate their votes for directors”, or words of similar import,
11 means that the shareholders designated are entitled to multiply
12 the number of votes they are entitled to cast by the number of
13 directors for whom they are entitled to vote and cast the product
14 for a single candidate or distribute the product among two or
15 more candidates.

16 (d) Shares otherwise entitled to vote cumulatively may not
17 be voted cumulatively at a particular meeting unless:

18 (1) The meeting notice or proxy statement accompanying
19 the notice states conspicuously that cumulative voting is
20 authorized; or

21 (2) A shareholder who has the right to cumulate his or her
22 votes gives notice to the corporation not less than forty-eight
23 hours before the time set for the meeting of his or her intent to

24 cumulate his or her votes during the meeting and if one
25 shareholder gives this notice all other shareholders in the same
26 voting group participating in the election are entitled to
27 cumulate their votes without giving further notice.

§31D-7-729. Inspectors of election.

1 (a) A corporation having any shares listed on a national
2 securities exchange or regularly traded in a market maintained
3 by one or more members of a national or affiliated securities
4 association must, and any other corporation may, appoint one
5 or more inspectors to act at a meeting of shareholders and make
6 a written report of the inspectors' determinations. Each inspec-
7 tor shall take and sign an oath faithfully to execute the duties of
8 inspector with strict impartiality and according to the best of the
9 inspector's ability.

10 (b) The inspectors shall:

11 (1) Ascertain the number of shares outstanding and the
12 voting power of each;

13 (2) Determine the shares represented at a meeting;

14 (3) Determine the validity of proxies and ballots;

15 (4) Count all votes; and

16 (5) Determine the result.

17 (c) An inspector may be an officer or employee of the
18 corporation.

PART 3. VOTING TRUSTS AND AGREEMENTS.

§31D-7-730. Voting trusts.

1 (a) One or more shareholders may create a voting trust,
2 conferring on a trustee the right to vote or otherwise act for
3 them, by signing an agreement setting out the provisions of the
4 trust, including, but not limited to, anything consistent with its
5 purpose, and transferring their shares to the trustee. When a
6 voting trust agreement is signed, the trustee shall prepare a list
7 of the names and addresses of all owners of beneficial interests
8 in the trust, together with the number and class of shares each
9 transferred to the trust, and deliver copies of the list and
10 agreement to the corporation's principal office.

11 (b) A voting trust becomes effective on the date the first
12 shares subject to the trust are registered in the trustee's name.
13 A voting trust is valid for not more than ten years after its
14 effective date unless extended under subsection (c) of this
15 section.

16 (c) All or some of the parties to a voting trust may extend
17 it for additional terms of not more than ten years each by
18 signing written consent to the extension. An extension is valid
19 for ten years from the date the first shareholder signs the
20 extension agreement. The voting trustee must deliver copies of
21 the extension agreement and list of beneficial owners to the
22 corporation's principal office. An extension agreement binds
23 only those parties signing it.

§31D-7-731. Voting agreements.

1 (a) Two or more shareholders may provide for the manner
2 in which they will vote their shares by signing an agreement for
3 that purpose. A voting agreement created under this section is
4 not subject to the provisions of section seven hundred thirty of
5 this article.

6 (b) A voting agreement created under this section is
7 specifically enforceable.

§31D-7-732. Shareholder agreements.

1 (a) An agreement among the shareholders of a corporation
2 that complies with this section is effective among the share-
3 holders and the corporation even though it is inconsistent with
4 one or more other provisions of this chapter in that it:

5 (1) Eliminates the board of directors or restricts the
6 discretion or powers of the board of directors;

7 (2) Governs the authorization or making of distributions
8 whether or not in proportion to ownership of shares, subject to
9 the limitations in section six hundred forty, article six of this
10 chapter;

11 (3) Establishes who are to be directors or officers of the
12 corporation, or their terms of office or manner of selection or
13 removal;

14 (4) Governs, in general or in regard to specific matters, the
15 exercise or division of voting power by or between the share-
16 holders and directors or by or among any of them, including use
17 of weighted voting rights or director proxies;

18 (5) Establishes the terms and conditions of any agreement
19 for the transfer or use of property or the provision of services
20 between the corporation and any shareholder, director, officer
21 or employee of the corporation or among any of them;

22 (6) Transfers to one or more shareholders or other persons
23 all or part of the authority to exercise the corporate powers or
24 to manage the business and affairs of the corporation, including
25 the resolution of any issue about which there exists a deadlock
26 among directors or shareholders;

27 (7) Requires dissolution of the corporation at the request of
28 one or more of the shareholders or upon the occurrence of a
29 specified event or contingency; or

30 (8) Otherwise governs the exercise of the corporate powers
31 or the management of the business and affairs of the corpora-
32 tion or the relationship among the shareholders, the directors
33 and the corporation, or among any of them, and is not contrary
34 to public policy.

35 (b) An agreement authorized by this section must be:

36 (1) Set forth:

37 (A) In the articles of incorporation or bylaws and approved
38 by all persons who are shareholders at the time of the agree-
39 ment; or

40 (B) In a written agreement that is signed by all persons who
41 are shareholders at the time of the agreement and is made
42 known to the corporation;

43 (2) Subject to amendment only by all persons who are
44 shareholders at the time of the amendment, unless the agree-
45 ment provides otherwise; and

46 (3) Valid for ten years, unless the agreement provides
47 otherwise.

48 (c) The existence of an agreement authorized by this section
49 must be noted conspicuously on the front or back of each
50 certificate for outstanding shares or on the information state-
51 ment required by subsection (b), section six hundred twenty-six,
52 article six of this chapter. If at the time of the agreement the
53 corporation has shares outstanding represented by certificates,
54 the corporation must recall the outstanding certificates and
55 issue substitute certificates that comply with this subsection.

56 The failure to note the existence of the agreement on the
57 certificate or information statement does not affect the validity
58 of the agreement or any action taken pursuant to it. Any
59 purchaser of shares who, at the time of purchase, did not have
60 knowledge of the existence of the agreement is entitled to
61 rescission of the purchase. A purchaser is to be deemed to have
62 knowledge of the existence of the agreement if its existence is
63 noted on the certificate or information statement for the shares
64 in compliance with this subsection and, if the shares are not
65 represented by a certificate, the information statement is
66 delivered to the purchaser at or prior to the time of purchase of
67 the shares. An action to enforce the right of rescission autho-
68 rized by this subsection must be commenced within the earlier
69 of ninety days after discovery of the existence of the agreement
70 or two years after the time of purchase of the shares.

71 (d) An agreement authorized by this section ceases to be
72 effective when shares of the corporation are listed on a national
73 securities exchange or regularly traded in a market maintained
74 by one or more members of a national or affiliated securities
75 association. If the agreement ceases to be effective for any
76 reason, the board of directors may, if the agreement is contained
77 or referred to in the corporation's articles of incorporation or
78 bylaws, adopt an amendment to the articles of incorporation or
79 bylaws, without shareholder action, to delete the agreement and
80 any references to it.

81 (e) An agreement authorized by this section that limits the
82 discretion or powers of the board of directors relieves the
83 directors of, and imposes upon the person or persons in whom
84 the discretion or powers are vested, liability for acts or omis-
85 sions imposed by law on directors to the extent that the discre-
86 tion or powers of the directors are limited by the agreement.

87 (f) The existence or performance of an agreement autho-
88 rized by this section is not a ground for imposing personal

89 liability on any shareholder for the acts or debts of the corpora-
90 tion even if the agreement or its performance treats the corpora-
91 tion as if it were a partnership or results in failure to observe the
92 corporate formalities otherwise applicable to the matters
93 governed by the agreement.

94 (g) Incorporators or subscribers for shares may act as
95 shareholders with respect to an agreement authorized by this
96 section if no shares have been issued when the agreement is
97 made.

ARTICLE 8. DIRECTORS AND OFFICERS.

§31D-8-801. Requirement for and duties of board of directors.

§31D-8-802. Qualifications of directors.

§31D-8-803. Number and election of directors.

§31D-8-804. Election of directors by certain classes of shareholders.

§31D-8-805. Terms of directors generally.

§31D-8-806. Staggered terms for directors.

§31D-8-807. Resignation of directors.

§31D-8-808. Removal of directors by shareholders.

§31D-8-809. Removal of directors by judicial proceeding.

§31D-8-810. Vacancy on board.

§31D-8-811. Compensation of directors.

§31D-8-820. Meetings.

§31D-8-821. Action without meeting.

§31D-8-822. Notice of meeting.

§31D-8-823. Waiver of notice.

§31D-8-824. Quorum and voting.

§31D-8-825. Committees.

§31D-8-830. Standards of conduct for directors.

§31D-8-831. Standards of liability for directors.

§31D-8-832. [RESERVED]

§31D-8-833. Directors' liability for unlawful distributions.

§31D-8-840. Required officers.

§31D-8-841. Duties of officers.

§31D-8-842. Standards of conduct for officers.

§31D-8-843. Resignation and removal of officers.

§31D-8-844. Contract rights of officers.

§31D-8-850. Part definitions.

§31D-8-851. Permissible indemnification.

§31D-8-852. Mandatory indemnification.

§31D-8-853. Advance for expenses.

§31D-8-854. Circuit court-ordered indemnification and advance for expenses.

§31D-8-855. Determination and authorization of indemnification.

§31D-8-856. Indemnification of officers.

§31D-8-857. Insurance.

§31D-8-858. Variation by corporate action; application of part.

§31D-8-859. Exclusivity of part.

§31D-8-860. Directors' conflicting interest transactions.

PART 1. BOARD OF DIRECTORS.

§31D-8-801. Requirement for and duties of board of directors.

1 (a) Except as provided in section seven hundred thirty-two,
2 article seven of this chapter, each corporation must have a
3 board of directors.

4 (b) All corporate powers are to be exercised by or under the
5 authority of, and the business and affairs of the corporation
6 managed under the direction of, its board of directors subject to
7 any limitation set forth in the articles of incorporation or in an
8 agreement authorized under section seven hundred thirty-two,
9 article seven of this chapter.

§31D-8-802. Qualifications of directors.

1 The articles of incorporation or bylaws may prescribe
2 qualifications for directors. A director need not be a resident of
3 this state or a shareholder of the corporation unless the articles
4 of incorporation or bylaws require he or she to be a shareholder.

§31D-8-803. Number and election of directors.

1 (a) A board of directors must consist of one or more
2 individuals, with the number specified in or fixed in accordance
3 with the articles of incorporation or bylaws.

4 (b) If a board of directors has power to fix or change the
5 number of directors, the board may increase or decrease by
6 thirty percent or less the number of directors last approved by
7 the shareholders, but only the shareholders may increase or
8 decrease by more than thirty percent the number of directors
9 last approved by the shareholders.

10 (c) The articles of incorporation or bylaws may establish a
11 variable range for the size of the board of directors by fixing a
12 minimum and maximum number of directors. If a variable
13 range is established, the number of directors may be fixed or
14 changed, from time to time, within the minimum and maxi-
15 mum, by the shareholders or the board of directors. After shares
16 are issued, only the shareholders may change the range for the
17 size of the board or change from a fixed- to a variable-range
18 size board or change from a variable- to a fixed-range size
19 board.

20 (d) Directors are elected at the first annual shareholders'
21 meeting and at each annual meeting thereafter unless their
22 terms are staggered under section eight hundred six of this
23 article.

§31D-8-804. Election of directors by certain classes of shareholders.

1 If the articles of incorporation authorize dividing the shares
2 into classes, the articles may also authorize the election of all or
3 a specified number of directors by the holders of one or more
4 authorized classes of shares. A class or classes of shares entitled
5 to elect one or more directors is a separate voting group for
6 purposes of the election of directors.

§31D-8-805. Terms of directors generally.

1 (a) The terms of the initial directors of a corporation expire
2 at the first shareholders' meeting at which directors are elected.

3 (b) The terms of all other directors expire at the next annual
4 shareholders' meeting following their election unless their
5 terms are staggered under section eight hundred six of this
6 article.

7 (c) A decrease in the number of directors does not shorten
8 an incumbent director's term.

9 (d) The term of a director elected to fill a vacancy expires
10 at the next shareholders' meeting at which directors are elected.

11 (e) Despite the expiration of a director's term, he or she
12 continues to serve until his or her successor is elected and
13 qualifies or until there is a decrease in the number of directors.

§31D-8-806. Staggered terms for directors.

1 If there are nine or more directors, the articles of incorpora-
2 tion may provide for staggering their terms by dividing the total
3 number of directors into two or three groups, with each group
4 containing as close to one half or one third of the total number
5 of directors as possible. In that event, the terms of directors in
6 the first group expire at the first annual shareholders' meeting
7 after their election, the terms of the second group expire at the
8 second annual shareholders' meeting after their election and the
9 terms of the third group, if any, expire at the third annual
10 shareholders' meeting after their election. At each annual
11 shareholders' meeting held thereafter, directors are to be chosen
12 for a term of two years or three years to succeed those whose
13 terms expire.

§31D-8-807. Resignation of directors.

1 (a) A director may resign at any time by delivering written
2 notice to the board of directors, the chair of the board of
3 directors or to the corporation.

- 4 (b) A resignation is effective when the notice is delivered
5 unless the board of directors agree to a later effective date.

§31D-8-808. Removal of directors by shareholders.

- 1 (a) The shareholders may remove one or more directors
2 with or without cause.

- 3 (b) If a director is elected by a voting group of sharehold-
4 ers, only the shareholders of that voting group may participate
5 in the vote to remove him or her.

- 6 (c) A director may be removed only if the number of votes
7 cast to remove him or her exceeds the number of votes cast not
8 to remove him or her provided that a director may not be
9 removed if the number of votes sufficient to elect him or her
10 under cumulative voting is voted against his or her removal.

- 11 (d) A director may be removed by the shareholders only at
12 a meeting called for the purpose of removing him or her and the
13 meeting notice must state that the purpose, or one of the
14 purposes, of the meeting is removal of the director.

§31D-8-809. Removal of directors by judicial proceeding.

- 1 (a) The circuit court may remove a director of the corpora-
2 tion from office in a proceeding commenced either by the
3 corporation or by its shareholders holding at least ten percent of
4 the outstanding shares of any class if the court finds that: (1)
5 The director engaged in fraudulent or dishonest conduct or
6 gross abuse of authority or discretion with respect to the
7 corporation; and (2) removal is in the best interest of the
8 corporation.

- 9 (b) The court that removes a director may bar the director
10 from reelection for a period prescribed by the court.

11 (c) If shareholders commence a proceeding under subsec-
12 tion (a) of this section, they must make the corporation a party
13 defendant.

§31D-8-810. Vacancy on board.

1 (a) Unless the articles of incorporation provide otherwise,
2 if a vacancy occurs on a board of directors, including a vacancy
3 resulting from an increase in the number of directors:

4 (1) The shareholders may fill the vacancy;

5 (2) The board of directors may fill the vacancy; or

6 (3) If the directors remaining in office constitute fewer than
7 a quorum of the board, they may fill the vacancy by the
8 affirmative vote of a majority of all the directors remaining in
9 office.

10 (b) If the vacant office was held by a director elected by a
11 voting group of shareholders and if the vacancy is to be filled
12 by the shareholders as provided in subdivision (1), subsection
13 (a) of this section, only the holders of shares of that voting
14 group are entitled to vote to fill the vacancy.

15 (c) A vacancy that will occur at a specific later date by
16 reason of a resignation effective at a later date under subsection
17 (b), section eight hundred seven of this article or otherwise may
18 be filled before the vacancy occurs but the new director may
19 not take office until the vacancy occurs.

§31D-8-811. Compensation of directors.

1 Unless the articles of incorporation or bylaws provide
2 otherwise, the board of directors may fix the compensation of
3 directors, including reasonable allowance for expenses actually
4 incurred in connection with their duties.

PART 2. MEETINGS AND ACTION OF THE BOARD.

§31D-8-820. Meetings.

1 (a) The board of directors may hold regular or special
2 meetings in or out of this state.

3 (b) Unless the articles of incorporation or bylaws provide
4 otherwise, the board of directors may permit any or all directors
5 to participate in a regular or special meeting by, or conduct the
6 meeting through the use of, any means of communication by
7 which all directors participating may simultaneously hear each
8 other during the meeting. A director participating in a meeting
9 by this means is deemed to be present in person at the meeting.

§31D-8-821. Action without meeting.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, action required or permitted by this chapter to be
3 taken at a board of directors' meeting may be taken without a
4 meeting if the action is taken by all members of the board. The
5 action must be evidenced by one or more written consents
6 describing the action taken, signed by each director and
7 included in the minutes or filed with the corporate records
8 reflecting the action taken.

9 (b) Action taken under this section is effective when the last
10 director signs the consent, unless the consent specifies a
11 different effective date.

12 (c) A consent signed under this section has the effect of a
13 meeting vote and may be described as having the effect of a
14 meeting vote in any document.

§31D-8-822. Notice of meeting.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, regular meetings of the board of directors may be
3 held without notice of the date, time, place or purpose of the
4 meeting.

5 (b) Unless the articles of incorporation or bylaws provide
6 for a longer or shorter period, special meetings of the board of
7 directors must be preceded by at least two days' notice of the
8 date, time and place of the meeting. The notice need not
9 describe the purpose of the special meeting unless required by
10 the articles of incorporation or bylaws.

§31D-8-823. Waiver of notice.

1 (a) A director may waive any notice required by this
2 chapter, the articles of incorporation or bylaws before or after
3 the date and time stated in the notice. Except as provided by
4 subsection (b) of this section, the waiver must be in writing,
5 signed by the director entitled to the notice, and filed with the
6 minutes or corporate records.

7 (b) A director's attendance at or participation in a meeting
8 waives any required notice to him or her of the meeting unless
9 the director at the beginning of the meeting or promptly upon
10 his or her arrival objects to holding the meeting or transacting
11 business at the meeting and does not thereafter vote for or
12 assent to action taken at the meeting.

§31D-8-824. Quorum and voting.

1 (a) Unless the articles of incorporation or bylaws require a
2 greater number or unless otherwise specifically provided in this
3 chapter, a quorum of a board of directors consists of:

4 (1) A majority of the fixed number of directors if the
5 corporation has a fixed-board size; or

6 (2) A majority of the number of directors prescribed, or if
7 no number is prescribed, the number in office immediately
8 before the meeting begins if the corporation has a vari-
9 able-range size board.

10 (b) The articles of incorporation or bylaws may authorize
11 a quorum of a board of directors to consist of no fewer than one
12 third of the fixed or prescribed number of directors determined
13 under subsection (a) of this section.

14 (c) If a quorum is present when a vote is taken, the affirma-
15 tive vote of a majority of directors present is the act of the
16 board of directors unless the articles of incorporation or bylaws
17 require the vote of a greater number of directors.

18 (d) A director who is present at a meeting of the board of
19 directors or a committee of the board of directors when corpo-
20 rate action is taken is deemed to have assented to the action
21 taken unless: (1) He or she objects at the beginning of the
22 meeting or promptly upon his or her arrival to holding it or
23 transacting business at the meeting; (2) his or her dissent or
24 abstention from the action taken is entered in the minutes of the
25 meeting; or (3) he or she delivers written notice of his or her
26 dissent or abstention to the presiding officer of the meeting
27 before its adjournment. The right of dissent or abstention is not
28 available to a director who votes in favor of the action taken.

§31D-8-825. Committees.

1 (a) Unless the articles of incorporation or bylaws provide
2 otherwise, a board of directors may create one or more commit-
3 tees and appoint members of the board of directors to serve on
4 them. Each committee must have two or more members who
5 serve at the pleasure of the board of directors.

6 (b) The creation of a committee and appointment of
7 members to it must be approved by the greater of: (1) A

8 majority of all the directors in office when the action is taken;
9 or (2) the number of directors required by the articles of
10 incorporation or bylaws to take action under section eight
11 hundred twenty-four of this article.

12 (c) Sections eight hundred twenty, eight hundred twenty-
13 one, eight hundred twenty-two, eight hundred twenty-three and
14 eight hundred twenty-four of this article, which govern meet-
15 ings, action without meetings, notice and waiver of notice, and
16 quorum and voting requirements of the board of directors, apply
17 to committees and their members as well.

18 (d) To the extent specified by the board of directors or in
19 the articles of incorporation or bylaws, each committee may
20 exercise the authority of the board of directors under section
21 eight hundred one of this article.

22 (e) A committee may not, however:

23 (1) Authorize distributions;

24 (2) Approve or propose to shareholders action that this
25 chapter requires be approved by shareholders;

26 (3) Fill vacancies on the board of directors or on any of its
27 committees;

28 (4) Amend articles of incorporation pursuant to section one
29 thousand two, article ten of this chapter;

30 (5) Adopt, amend or repeal bylaws;

31 (6) Approve a plan of merger not requiring shareholder
32 approval;

33 (7) Authorize or approve reacquisition of shares, except
34 according to a formula or method prescribed by the board of
35 directors; or

36 (8) Authorize or approve the issuance or sale or contract for
37 sale of shares, or determine the designation and relative rights,
38 preferences and limitations of a class or series of shares, except
39 that the board of directors may authorize a committee or a
40 senior executive officer of the corporation to authorize or
41 approve the issuance or sale or contract for sale of shares, or
42 determine the designation and relative rights, preferences and
43 limitations of a class or series of shares within limits specifi-
44 cally prescribed by the board of directors.

45 (f) The creation of, delegation of authority to or action by
46 a committee does not alone constitute compliance by a director
47 with the standards of conduct described in section eight
48 hundred thirty of this article.

PART 3. DIRECTORS.

§31D-8-830. Standard of conduct for directors.

1 (a) Each member of the board of directors, when discharg-
2 ing the duties of a director, shall act: (1) In good faith; and (2)
3 in a manner the director reasonably believes to be in the best
4 interests of the corporation.

5 (b) The members of the board of directors or a committee
6 of the board, when becoming informed in connection with their
7 decision-making function or devoting attention to their over-
8 sight function, shall discharge their duties with the care that a
9 person in a like position would reasonably believe appropriate
10 under similar circumstances.

11 (c) In discharging board or committee duties a director,
12 who does not have knowledge that makes reliance unwarranted,
13 is entitled to rely on the performance by any of the persons
14 specified in subdivision (1) or (3), subsection (e) of this section
15 to whom the board may have delegated, formally or informally
16 by course of conduct, the authority or duty to perform one or

17 more of the board's functions that are delegable under applica-
18 ble law.

19 (d) In discharging board or committee duties a director,
20 who does not have knowledge that makes reliance unwarranted,
21 is entitled to rely on information, opinions, reports or state-
22 ments, including financial statements and other financial data,
23 prepared or presented by any of the persons specified in
24 subsection (e) of this section.

25 (e) A director is entitled to rely, in accordance with
26 subsection (c) or (d) of this section, on:

27 (1) One or more officers or employees of the corporation
28 whom the director reasonably believes to be reliable and
29 competent in the functions performed or the information,
30 opinions, reports or statements provided;

31 (2) Legal counsel, public accountants or other persons
32 retained by the corporation as to matters involving skills or
33 expertise the director reasonably believes are matters: (A)
34 Within the particular person's professional or expert compe-
35 tence; or (B) as to which the particular person merits confi-
36 dence; or

37 (3) A committee of the board of directors of which the
38 director is not a member if the director reasonably believes the
39 committee merits confidence.

§31D-8-831. Standards of liability for directors.

1 (a) A director is not liable to the corporation or its share-
2 holders for any decision to take or not to take action, or any
3 failure to take any action, as a director, unless the party
4 asserting liability in a proceeding establishes that:

5 (1) Any provision in the articles of incorporation authorized
6 by subdivision (4), subsection (b), section two hundred two,
7 article two of this chapter or the protections afforded by section
8 eight hundred sixty of this article or article seven-c, chapter
9 fifty-five of this code interposed as a bar to the proceeding by
10 the director, does not preclude liability; and

11 (2) The challenged conduct consisted or was the result of:

12 (A) Action not in good faith; or

13 (B) A decision: (i) Which the director did not reasonably
14 believe to be in the best interests of the corporation; or (ii) as to
15 which the director was not informed to an extent the director
16 reasonably believed appropriate in the circumstances; or

17 (C) A lack of objectivity due to the director's familial,
18 financial or business relationship with, or a lack of independ-
19 ence due to the director's domination or control by, another
20 person having a material interest in the challenged conduct: (i)
21 Which relationship or which domination or control could
22 reasonably be expected to have affected the director's judgment
23 respecting the challenged conduct in a manner adverse to the
24 corporation; and (ii) after a reasonable expectation has been
25 established, the director does not establish that the challenged
26 conduct was reasonably believed by the director to be in the
27 best interests of the corporation; or

28 (D) A sustained failure of the director to devote attention to
29 ongoing oversight of the business and affairs of the corporation,
30 or a failure to devote timely attention, by making or causing to
31 be made appropriate inquiry when particular facts and circum-
32 stances of significant concern materialize that would alert a
33 reasonably attentive director to the need for inquiry;

34 (E) Receipt of a financial benefit to which the director was
35 not entitled or any other breach of the director's duties to deal

36 fairly with the corporation and its shareholders that is action-
37 able under applicable law.

38 (b) The party seeking to hold the director liable:

39 (1) For money damages, has the burden of establishing that:

40 (A) Harm to the corporation or its shareholders has been
41 suffered; and

42 (B) The harm suffered was proximately caused by the
43 director's challenged conduct; or

44 (2) For other money payment under a legal remedy,
45 including compensation for the unauthorized use of corporate
46 assets, has whatever persuasion burden may be called for to
47 establish that the payment sought is appropriate in the circum-
48 stances; or

49 (3) For other money payment under an equitable remedy,
50 including profit recovery by or disgorgement to the corporation,
51 has whatever persuasion burden may be called for to establish
52 that the equitable remedy sought is appropriate in the circum-
53 stances.

54 (c) Nothing contained in this section may: (1) In any
55 instance where fairness is at issue, including consideration of
56 the fairness of a transaction to the corporation under section
57 eight hundred sixty of this article, alter the burden of proving
58 the fact or lack of fairness otherwise applicable; (2) alter the
59 fact or lack of liability of a director under another section of
60 this chapter, including the provisions governing the conse-
61 quences of an unlawful distribution under section eight hundred
62 thirty-three of this article or a transactional interest under
63 section eight hundred sixty of this article; or (3) affect any
64 rights to which the corporation or a shareholder may be entitled
65 under another provision of this code or the United States code.

§31D-8-832. [RESERVED]**§31D-8-833. Directors' liability for unlawful distributions.**

1 (a) A director who votes for or assents to a distribution in
2 excess of what may be authorized and made pursuant to
3 subsection (a), section six hundred forty, article six of this
4 chapter is personally liable to the corporation for the amount of
5 the distribution that exceeds what could have been distributed
6 without violating subsection (a), section six hundred forty,
7 article six of this chapter if the party asserting liability estab-
8 lishes that when taking the action the director did not comply
9 with section eight hundred thirty of this article.

10 (b) A director held liable under subsection (a) of this
11 section for an unlawful distribution is entitled to:

12 (1) Contribution from every other director who could be
13 held liable under subsection (a) of this section for the unlawful
14 distribution; and

15 (2) Recoupment from each shareholder of the pro rata
16 portion of the amount of the unlawful distribution the share-
17 holder accepted, knowing the distribution was made in violation
18 of subsection (a), section six hundred forty, article six of this
19 chapter.

20 (c) A proceeding to enforce:

21 (1) The liability of a director under subsection (a) of this
22 section is barred unless it is commenced within two years after
23 the date on which the effect of the distribution was measured
24 under subsection (e) or (g), section six hundred forty, article six
25 of this chapter or as of which the violation of subsection (a),
26 section six hundred forty, article six of this chapter occurred as
27 the consequence of disregard of a restriction in the articles of
28 incorporation; or

29 (2) Contribution or recoupment under subsection (b) of this
30 section is barred unless it is commenced within one year after
31 the liability of the claimant has been finally adjudicated under
32 subsection (a) of this section.

PART 4. OFFICERS.

§31D-8-840. Required officers.

1 (a) A corporation has the officers described in its bylaws or
2 appointed by the board of directors in accordance with the
3 bylaws.

4 (b) A duly appointed officer may appoint one or more
5 officers or assistant officers if authorized by the bylaws or the
6 board of directors.

7 (c) The bylaws or the board of directors must delegate to
8 one of the officers responsibility for preparing minutes of the
9 directors' and shareholders' meetings and for authenticating
10 records of the corporation.

11 (d) The same individual may simultaneously hold more
12 than one office in a corporation.

§31D-8-841. Duties of officers.

1 Each officer has the authority and shall perform the duties
2 set forth in the bylaws or, to the extent consistent with the
3 bylaws, the duties prescribed by the board of directors or by
4 direction of an officer authorized by the board of directors to
5 prescribe the duties of other officers.

§31D-8-842. Standards of conduct for officers.

1 (a) An officer, when performing in his or her official
2 capacity, shall act:

3 (1) In good faith;

4 (2) With the care that a person in a like position would
5 reasonably exercise under similar circumstances; and

6 (3) In a manner the officer reasonably believes to be in the
7 best interests of the corporation.

§31D-8-843. Resignation and removal of officers.

1 (a) An officer may resign at any time by delivering notice
2 to the corporation. A resignation is effective when the notice is
3 delivered unless the board of directors agree to a later effective
4 date. If a resignation is made effective at a later date and the
5 corporation accepts the future effective date, its board of
6 directors may fill the pending vacancy before the effective date
7 if the board of directors provides that the successor does not
8 take office until the effective date.

9 (b) A board of directors may remove any officer at any time
10 with or without cause.

§31D-8-844. Contract rights of officers.

1 (a) The appointment of an officer does not itself create
2 contract rights.

3 (b) An officer's removal does not affect the officer's
4 contract rights, if any, with the corporation. An officer's
5 resignation does not affect the corporation's contract rights, if
6 any, with the officer.

PART 5. INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§31D-8-850. Part definitions.

1 In this part:

2 (1) “Corporation” includes any domestic or foreign
3 predecessor entity of a corporation in a merger.

4 (2) “Director” or “officer” means an individual who is or
5 was a director or officer, respectively, of a corporation or who,
6 while a director or officer of the corporation, is or was serving
7 at the corporation’s request as a director, officer, partner,
8 trustee, employee or agent of another domestic or foreign
9 corporation, partnership, joint venture, trust, employee benefit
10 plan or other entity. A director or officer is considered to be
11 serving an employee benefit plan at the corporation’s request if
12 his or her duties to the corporation also impose duties on, or
13 otherwise involve services by, him or her to the plan or to
14 participants in or beneficiaries of the plan. “Director” or
15 “officer” includes, unless the context requires otherwise, the
16 estate or personal representative of a director or officer.

17 (3) “Disinterested director” means a director who, at the
18 time of a vote referred to in subsection (c), section eight
19 hundred fifty-three of this article or a vote or selection referred
20 to in subsection (b) or (c), section eight hundred fifty-five of
21 this article, is not: (A) A party to the proceeding; or (B) an
22 individual having a familial, financial, professional or employ-
23 ment relationship with the director whose indemnification or
24 advance for expenses is the subject of the decision being made,
25 which relationship would, in the circumstances, reasonably be
26 expected to exert an influence on the director’s judgment when
27 voting on the decision being made.

28 (4) “Expenses” includes counsel fees.

29 (5) “Liability” means the obligation to pay a judgment;
30 settlement; penalty; fine, including an excise tax assessed with
31 respect to an employee benefit plan; or reasonable expenses
32 incurred with respect to a proceeding.

33 (6) “Official capacity” means:

34 (A) When used with respect to a director, the office of
35 director in a corporation; and

36 (B) When used with respect to an officer, as contemplated
37 in section eight hundred fifty-six of this article, the office in a
38 corporation held by the officer. "Official capacity" does not
39 include service for any other domestic or foreign corporation or
40 any partnership, joint venture, trust, employee benefit plan or
41 other entity.

42 (7) "Party" means an individual who was, is or is threatened
43 to be made, a defendant or respondent in a proceeding.

44 (8) "Proceeding" means any threatened, pending or
45 completed action, suit or proceeding, whether civil, criminal,
46 administrative, arbitrate or investigative and whether formal
47 or informal.

§31D-8-851. Permissible indemnification.

1 (a) Except as otherwise provided in this section, a corpora-
2 tion may indemnify an individual who is a party to a proceeding
3 because he or she is a director against liability incurred in the
4 proceeding if:

5 (1) (A) He or she conducted himself or herself in good
6 faith; and

7 (B) He or she reasonably believed: (i) In the case of
8 conduct in his or her official capacity, that his or her conduct
9 was in the best interests of the corporation; and (ii) in all other
10 cases, that his or her conduct was at least not opposed to the
11 best interests of the corporation; and

12 (C) In the case of any criminal proceeding, he or she had no
13 reasonable cause to believe his or her conduct was unlawful; or

14 (2) He or she engaged in conduct for which broader
15 indemnification has been made permissible or obligatory under
16 a provision of the articles of incorporation as authorized by
17 subdivision (5), subsection (b), section two hundred two, article
18 two of this chapter.

19 (b) A director's conduct with respect to an employee
20 benefit plan for a purpose he or she reasonably believed to be
21 in the interests of the participants in, and the beneficiaries of,
22 the plan is conduct that satisfies the requirement of subpara-
23 graph (ii), paragraph (B), subdivision (1), subsection (a) of this
24 section.

25 (c) The termination of a proceeding by judgment, order,
26 settlement or conviction, or upon a plea of nolo contendere or
27 its equivalent, is not determinative that the director did not meet
28 the relevant standard of conduct described in this section.

29 (d) Unless ordered by a court under subdivision (3),
30 subsection (a), section eight hundred fifty-four of this article, a
31 corporation may not indemnify a director:

32 (1) In connection with a proceeding by or in the right of the
33 corporation, except for reasonable expenses incurred in
34 connection with the proceeding if it is determined that the
35 director has met the relevant standard of conduct under subsec-
36 tion (a) of this section; or

37 (2) In connection with any proceeding with respect to
38 conduct for which he or she was adjudged liable on the basis
39 that he or she received a financial benefit to which he or she
40 was not entitled, whether or not involving action in his or her
41 official capacity.

§31D-8-852. Mandatory indemnification.

1 A corporation must indemnify a director who was wholly
2 successful, on the merits or otherwise, in the defense of any
3 proceeding to which he or she was a party because he or she
4 was a director of the corporation against reasonable expenses
5 incurred by him or her in connection with the proceeding.

§31D-8-853. Advance for expenses.

1 (a) A corporation may, before final disposition of a
2 proceeding, advance funds to pay for or reimburse the reason-
3 able expenses incurred by a director who is a party to a pro-
4 ceeding because he or she is a director if he or she delivers to
5 the corporation:

6 (1) A written affirmation of his or her good faith belief that
7 he or she has met the relevant standard of conduct described in
8 section eight hundred fifty-one of this article or that the
9 proceeding involves conduct for which liability has been
10 eliminated under a provision of the articles of incorporation as
11 authorized by subdivision (4), subsection (b), section two
12 hundred two, article two of this chapter; and

13 (2) His or her written undertaking to repay any funds
14 advanced if he or she is not entitled to mandatory indemnifica-
15 tion under section eight hundred fifty-two of this article and it
16 is ultimately determined under section eight hundred fifty-four
17 or eight hundred fifty-five of this article that he or she has not
18 met the relevant standard of conduct described in section eight
19 hundred fifty-one of this article.

20 (b) The undertaking required by subdivision (2), subsection
21 (a) of this section must be an unlimited general obligation of the
22 director but need not be secured and may be accepted without
23 reference to the financial ability of the director to make
24 repayment.

25 (c) Authorizations under this section are to be made:

26 (1) By the board of directors:

27 (A) If there are two or more disinterested directors, by a
28 majority vote of all the disinterested directors, a majority of
29 whom constitute a quorum for this purpose, or by a majority of
30 the members of a committee of two or more disinterested
31 directors appointed by a vote; or

32 (B) If there are fewer than two disinterested directors, by
33 the vote necessary for action by the board in accordance with
34 subsection (c), section eight hundred twenty-four of this article
35 in which authorization directors who do not qualify as disinter-
36 ested directors may participate; or

37 (2) By the shareholders, but shares owned by or voted under
38 the control of a director who at the time does not qualify as a
39 disinterested director may not be voted on the authorization; or

40 (3) By special legal counsel selected in a manner in
41 accordance with subdivision (2), subsection (b), section eight
42 hundred fifty-five of this article.

**§31D-8-854. Circuit court-ordered indemnification and advance
for expenses.**

1 (a) A director who is a party to a proceeding because he or
2 she is a director may apply for indemnification or an advance
3 for expenses to the circuit court conducting the proceeding or
4 to another circuit court of competent jurisdiction. After receipt
5 of an application and after giving any notice it considers
6 necessary, the circuit court shall:

7 (1) Order indemnification if the circuit court determines
8 that the director is entitled to mandatory indemnification under
9 section eight hundred fifty-two of this article;

10 (2) Order indemnification or advance for expenses if the
11 circuit court determines that the director is entitled to indemni-
12 fication or advance for expenses pursuant to a provision
13 authorized by subsection (a), section eight hundred fifty-eight
14 of this article; or

15 (3) Order indemnification or advance for expenses if the
16 circuit court determines, in view of all the relevant circum-
17 stances, that it is fair and reasonable:

18 (A) To indemnify the director; or

19 (B) To advance expenses to the director, even if he or she
20 has not met the relevant standard of conduct set forth in
21 subsection (a), section eight hundred fifty-one of this article,
22 failed to comply with section eight hundred fifty-three of this
23 article or was adjudged liable in a proceeding referred to in
24 subdivision (1) or (2), subsection (d), section eight hundred
25 fifty-one of this article, but if he or she was adjudged so liable
26 his or her indemnification is to be limited to reasonable
27 expenses incurred in connection with the proceeding.

28 (b) If the circuit court determines that the director is entitled
29 to indemnification under subdivision (1), subsection (a) of this
30 section or to indemnification or advance for expenses under
31 subdivision (2) of said subsection, it shall also order the
32 corporation to pay the director's reasonable expenses incurred
33 in connection with obtaining circuit court-ordered indemnifica-
34 tion or advance for expenses. If the circuit court determines that
35 the director is entitled to indemnification or advance for
36 expenses under subdivision (3) of said subsection, it may also
37 order the corporation to pay the director's reasonable expenses
38 to obtain circuit court-ordered indemnification or advance for
39 expenses.

§31D-8-855. Determination and authorization of indemnification.

1 (a) A corporation may not indemnify a director under
2 section eight hundred fifty-one of this article unless authorized
3 for a specific proceeding after a determination has been made
4 that indemnification of the director is permissible because he or
5 she has met the relevant standard of conduct set forth in section
6 eight hundred fifty-one of this article.

7 (b) The determination is to be made:

8 (1) If there are two or more disinterested directors, by the
9 board of directors by a majority vote of all the disinterested
10 directors, a majority of whom constitute a quorum for this
11 purpose, or by a majority of the members of a committee of two
12 or more disinterested directors appointed by a vote;

13 (2) By special legal counsel:

14 (A) Selected in the manner prescribed in subdivision (1) of
15 this subsection; or

16 (B) If there are fewer than two disinterested directors,
17 selected by the board of directors in which selection directors
18 who do not qualify as disinterested directors may participate; or

19 (3) By the shareholders, but shares owned by or voted under
20 the control of a director who at the time does not qualify as a
21 disinterested director may not be voted on the determination.

22 (c) Authorization of indemnification is to be made in the
23 same manner as the determination that indemnification is
24 permissible, except that if there are fewer than two disinterested
25 directors or if the determination is made by special legal
26 counsel, authorization of indemnification is to be made by those
27 entitled under paragraph (B), subdivision (2), subsection (b) of
28 this section to select special legal counsel.

§31D-8-856. Indemnification of officers.

1 (a) A corporation may indemnify and advance expenses
2 under this part to an officer of the corporation who is a party to
3 a proceeding because he or she is an officer of the corporation:

4 (1) To the same extent as a director; and

5 (2) If he or she is an officer but not a director, to a further
6 extent as may be provided by the articles of incorporation, the
7 bylaws, a resolution of the board of directors or contract except
8 for:

9 (A) Liability in connection with a proceeding by or in the
10 right of the corporation other than for reasonable expenses
11 incurred in connection with the proceeding; or

12 (B) Liability arising out of conduct that constitutes:

13 (i) Receipt by him or her of a financial benefit to which he
14 or she is not entitled;

15 (ii) An intentional infliction of harm on the corporation or
16 the shareholders; or

17 (iii) An intentional violation of criminal law.

18 (b) The provisions of subdivision (2), subsection (a) of this
19 section apply to an officer who is also a director if the basis on
20 which he or she is made a party to the proceeding is an act or
21 omission solely as an officer.

22 (c) An officer of a corporation who is not a director is
23 entitled to mandatory indemnification under section eight
24 hundred fifty-two of this article and may apply to a court under
25 section eight hundred fifty-four of this article for indemnifica-
26 tion or an advance for expenses in each case to the same extent
27 to which a director may be entitled to indemnification or
28 advance for expenses under those provisions.

§31D-8-857. Insurance.

1 A corporation may purchase and maintain insurance on
2 behalf of an individual who is a director or officer of the
3 corporation, or who, while a director or officer of the corpora-
4 tion, serves at the corporation's request as a director, officer,
5 partner, trustee, employee or agent of another domestic or
6 foreign corporation, partnership, joint venture, trust, employee
7 benefit plan or other entity, against liability asserted against or
8 incurred by him or her in that capacity or arising from his or her
9 status as a director or officer, whether or not the corporation
10 would have power to indemnify or advance expenses to him or
11 her against the same liability under this part.

§31D-8-858. Variation by corporate action; application of part.

1 (a) A corporation may, by a provision in its articles of
2 incorporation or bylaws or in a resolution adopted or a contract
3 approved by its board of directors or shareholders, obligate
4 itself in advance of the act or omission giving rise to a proceed-
5 ing to provide indemnification in accordance with section eight
6 hundred fifty-one of this article or advance funds to pay for or
7 reimburse expenses in accordance with section eight hundred
8 fifty-three of this article. Any obligatory provision is deemed to
9 satisfy the requirements for authorization referred to in subsec-
10 tion (c), section eight hundred fifty-three of this article and in
11 subsection (c), section eight hundred fifty-five of this article.
12 Any provision that obligates the corporation to provide indem-
13 nification to the fullest extent permitted by law is deemed to
14 obligate the corporation to advance funds to pay for or reim-
15 burse expenses in accordance with section eight hundred fifty-
16 three of this article to the fullest extent permitted by law, unless
17 the provision specifically provides otherwise.

18 (b) Any provision pursuant to subsection (a) of this section
19 does not obligate the corporation to indemnify or advance

20 expenses to a director of a predecessor of the corporation,
21 pertaining to conduct with respect to the predecessor, unless
22 otherwise specifically provided. Any provision for indemnifica-
23 tion or advance for expenses in the articles of incorporation,
24 bylaws or a resolution of the board of directors or shareholders
25 of a predecessor of the corporation in a merger or in a contract
26 to which the predecessor is a party, existing at the time the
27 merger takes effect, is to be governed by subdivision (3),
28 subsection (a), section one thousand one hundred six, article
29 eleven of this chapter.

30 (c) A corporation may, by a provision in its articles of
31 incorporation, limit any of the rights to indemnification or
32 advance for expenses created by or pursuant to this part.

33 (d) This part does not limit a corporation's power to pay or
34 reimburse expenses incurred by a director or an officer in
35 connection with his or her appearance as a witness in a proceed-
36 ing at a time when he or she is not a party.

37 (e) This part does not limit a corporation's power to
38 indemnify, advance expenses to or provide or maintain insur-
39 ance on behalf of an employee or agent.

§31D-8-859. Exclusivity of part.

1 A corporation may provide indemnification or advance
2 expenses to a director or an officer only as permitted by this
3 part.

PART 6. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS.

§31D-8-860. Directors' conflicting interest transactions.

1 (a) No contract or transaction between a corporation and
2 one or more of its directors or officers, or between a corporation
3 and any other corporation, partnership, association or other

4 organization in which one or more of its directors or officers are
5 directors or officers, or have a financial interest, is void or
6 voidable solely for this reason or solely because the director or
7 officer is present at or participates in the meeting of the board
8 or committee thereof which authorizes the contract or transac-
9 tion or solely because any director's or officer's votes are
10 counted for the purpose, if:

11 (1) The material facts as to the director's or officer's
12 relationship or interest and as to the contract or transaction are
13 disclosed or are known to the board of directors or the commit-
14 tee and the board or committee in good faith authorizes the
15 contract or transaction by the affirmative votes of a majority of
16 the disinterested directors, even though the disinterested
17 directors be less than a quorum; or

18 (2) The material facts as to the director's or officer's
19 relationship or interest and as to the contract or transaction are
20 disclosed or are known to the members entitled to vote on the
21 contract or transaction and the contract or transaction is
22 specifically approved in good faith by vote of the members
23 entitled to vote; or

24 (3) The contract or transaction is fair as to the corporation
25 as of the time it is authorized, approved or ratified by the board
26 of directors, a committee of the board of directors or the
27 members.

28 (b) Common or interested directors may be counted in
29 determining the presence of a quorum at a meeting of the board
30 of directors or of a committee which authorizes the contract or
31 transaction.

ARTICLE 9. [RESERVED]

**ARTICLE 10. AMENDMENT OF ARTICLES OF INCORPORATION AND
BYLAWS.**

- §31D-10-1001. Authority to amend.
§31D-10-1002. Amendment before issuance of shares.
§31D-10-1003. Amendment by board of directors and shareholders.
§31D-10-1004. Voting on amendments by voting groups.
§31D-10-1005. Amendment by board of directors.
§31D-10-1006. Articles of amendment.
§31D-10-1007. Restated articles of incorporation.
§31D-10-1008. Amendment pursuant to reorganization.
§31D-10-1009. Effect of amendment.
§31D-10-1020. Amendment by board of directors or shareholders.
§31D-10-1021. Bylaw increasing quorum or voting requirement for directors.

PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

§31D-10-1001. Authority to amend.

1 (a) A corporation may amend its articles of incorporation
2 at any time to add or change a provision that is required or
3 permitted in the articles of incorporation or to delete a provision
4 not required in the articles of incorporation. Whether a provi-
5 sion is required or permitted in the articles of incorporation is
6 determined as of the effective date of the amendment.

7 (b) A shareholder of the corporation does not have a vested
8 property right resulting from any provision in the articles of
9 incorporation, including provisions relating to management,
10 control, capital structure, dividend entitlement or purpose or
11 duration of the corporation.

§31D-10-1002. Amendment before issuance of shares.

1 If a corporation has not yet issued shares, its board of
2 directors, or its incorporators if it has no board of directors, may
3 adopt one or more amendments to the corporation's articles of
4 incorporation.

§31D-10-1003. Amendment by board of directors and shareholders.

1 If a corporation has issued shares, an amendment to the
2 articles of incorporation must be adopted in the following
3 manner:

4 (1) The proposed amendment must be adopted by the board
5 of directors.

6 (2) Except as provided in sections one thousand five, one
7 thousand seven and one thousand eight of this article, after
8 adopting the proposed amendment the board of directors must
9 submit the amendment to the shareholders for their approval.
10 The board of directors must also transmit to the shareholders a
11 recommendation that the shareholders approve the amendment,
12 unless the board of directors makes a determination that
13 because of conflicts of interest or other special circumstances
14 it should not make the recommendation, in which case the
15 board of directors must transmit to the shareholders the basis
16 for that determination.

17 (3) The board of directors may condition its submission of
18 the amendment to the shareholders on any basis.

19 (4) If the amendment is required to be approved by the
20 shareholders and the approval is to be given at a meeting, the
21 corporation must notify each shareholder, whether or not
22 entitled to vote, of the meeting of shareholders at which the
23 amendment is to be submitted for approval. The notice must
24 state that the purpose, or one of the purposes, of the meeting is
25 to consider the amendment and must contain or be accompanied
26 by a copy of the amendment.

27 (5) Unless the articles of incorporation, or the board of
28 directors acting pursuant to subdivision (3) of this section,
29 requires a greater vote or a greater number of shares to be
30 present, approval of the amendment requires the approval of the
31 shareholders at a meeting at which a quorum consisting of at
32 least a majority of the votes entitled to be cast on the amend-

33 ment exists and, if any class or series of shares is entitled to
34 vote as a separate group on the amendment, except as provided
35 in subsection (c), section one thousand four of this article, the
36 approval of each separate voting group at a meeting at which a
37 quorum of the voting group consisting of at least a majority of
38 the votes entitled to be cast on the amendment by that voting
39 group exists.

§31D-10-1004. Voting on amendments by voting groups.

1 (a) If a corporation has more than one class of shares
2 outstanding, the holders of the outstanding shares of a class are
3 entitled to vote as a separate voting group, if shareholder voting
4 is otherwise required by this chapter, on a proposed amendment
5 to the articles of incorporation if the amendment would:

6 (1) Effect an exchange or reclassification of all or part of
7 the shares of the class into shares of another class;

8 (2) Effect an exchange or reclassification, or create the right
9 of exchange, of all or part of the shares of another class into
10 shares of the class;

11 (3) Change the rights, preferences or limitations of all or
12 part of the shares of the class;

13 (4) Change the shares of all or part of the class into a
14 different number of shares of the same class;

15 (5) Create a new class of shares having rights or preferences
16 with respect to distributions or to dissolution that are prior or
17 superior to the shares of the class;

18 (6) Increase the rights, preferences or number of authorized
19 shares of any class that, after giving effect to the amendment,
20 have rights or preferences with respect to distributions or to
21 dissolution that are prior or superior to the shares of the class;

22 (7) Limit or deny an existing preemptive right of all or part
23 of the shares of the class; or

24 (8) Cancel or otherwise affect rights to distributions that
25 have accumulated but not yet been authorized on all or part of
26 the shares of the class.

27 (b) If a proposed amendment would affect a series of a class
28 of shares in one or more of the ways described in subsection (a)
29 of this section, the holders of shares of that series are entitled to
30 vote as a separate voting group on the proposed amendment.

31 (c) If a proposed amendment that entitles the holders of two
32 or more classes or series of shares to vote as separate voting
33 groups under this section would affect those two or more
34 classes or series in the same or a substantially similar way, the
35 holders of shares of all the classes or series affected by the
36 proposed amendment must vote together as a single voting
37 group on the proposed amendment, unless otherwise provided
38 in the articles of incorporation or required by the board of
39 directors.

40 (d) A class or series of shares is entitled to the voting rights
41 granted by this section although the articles of incorporation
42 provide that the shares are nonvoting shares.

§31D-10-1005. Amendment by board of directors.

1 Unless the articles of incorporation provide otherwise, a
2 corporation's board of directors may adopt amendments to the
3 corporation's articles of incorporation without shareholder
4 approval:

5 (1) To extend the duration of the corporation if it was
6 incorporated at a time when limited duration was required by
7 law;

8 (2) To delete the names and addresses of the initial direc-
9 tors;

10 (3) To delete the name and address of the initial registered
11 agent or registered office, if any, if a statement of change is on
12 file with the secretary of state;

13 (4) If the corporation has only one class of shares outstand-
14 ing:

15 (A) To change each issued and unissued authorized share
16 of the class into a greater number of whole shares of that class;
17 or

18 (B) To increase the number of authorized shares of the class
19 to the extent necessary to permit the issuance of shares as a
20 share dividend;

21 (5) To change the corporate name by substituting the word
22 “corporation”, “incorporated”, “company”, “limited” or the
23 abbreviation “corp.”, “inc.”, “co.” or “ltd.” for a similar word
24 or abbreviation in the name, or by adding, deleting or changing
25 a geographical attribution for the name;

26 (6) To reflect a reduction in authorized shares, as a result of
27 the operation of subsection (b), section six hundred thirty-one,
28 article six of this chapter, when the corporation has acquired its
29 own shares and the articles of incorporation prohibit the reissue
30 of the acquired shares;

31 (7) To delete a class of shares from the articles of incorpo-
32 ration, as a result of the operation of subsection (b), section six
33 hundred thirty-one, article six of this chapter, when there are no
34 remaining shares of the class because the corporation has
35 acquired all shares of the class and the articles of incorporation
36 prohibit the reissue of the acquired shares; or

37 (8) To make any change expressly permitted by subsection
38 (d), section six hundred two, article six of this chapter to be
39 made without shareholder approval.

§31D-10-1006. Articles of amendment.

1 After an amendment to the articles of incorporation has
2 been adopted and approved in the manner required by this
3 chapter and by the articles of incorporation, the corporation
4 shall deliver to the secretary of state, for filing, articles of
5 amendment, setting forth:

6 (1) The name of the corporation;

7 (2) The text of each amendment adopted;

8 (3) If an amendment provides for an exchange, reclassifica-
9 tion or cancellation of issued shares, provisions for implement-
10 ing the amendment if not contained in the amendment itself;

11 (4) The date of each amendment's adoption; and

12 (5) If an amendment:

13 (A) Was adopted by the incorporators or board of directors
14 without shareholder approval, a statement that the amendment
15 was duly approved by the incorporators or by the board of
16 directors, as required, and that shareholder approval was not
17 required;

18 (B) Required approval by the shareholders, a statement that
19 the amendment was duly approved by the shareholders in the
20 manner required by this chapter and by the articles of incorpo-
21 ration.

§31D-10-1007. Restated articles of incorporation.

1 (a) A corporation's board of directors may restate its
2 articles of incorporation at any time, with or without share-
3 holder approval, to consolidate all amendments into a single
4 document.

5 (b) If the restated articles include one or more new amend-
6 ments that require shareholder approval, the amendments must
7 be adopted and approved as provided in section one thousand
8 three of this article.

9 (c) A corporation that restates its articles of incorporation
10 shall deliver to the secretary of state for filing articles of
11 restatement setting forth the name of the corporation and the
12 text of the restated articles of incorporation together with a
13 certificate which states that the restated articles consolidate all
14 amendments into a single document and, if a new amendment
15 is included in the restated articles, which also includes the
16 statements required under section one thousand six of this
17 article.

18 (d) Duly adopted restated articles of incorporation super-
19 sede the original articles of incorporation and all amendments
20 to it.

21 (e) The secretary of state may certify restated articles of
22 incorporation as the articles of incorporation currently in effect,
23 without including the certificate information required by
24 subsection (c) of this section.

§31D-10-1008. Amendment pursuant to reorganization.

1 (a) A corporation's articles of incorporation may be
2 amended without action by the board of directors or sharehold-
3 ers to carry out a plan of reorganization ordered or decreed by
4 a court of competent jurisdiction under the authority of federal
5 law.

6 (b) The individual or individuals designated by the court
7 shall deliver to the secretary of state for filing articles of
8 amendment setting forth:

9 (1) The name of the corporation;

10 (2) The text of each amendment approved by the court;

11 (3) The date of the court's order or decree approving the
12 articles of amendment;

13 (4) The title of the reorganization proceeding in which the
14 order or decree was entered; and

15 (5) A statement that the court had jurisdiction of the
16 proceeding under federal law.

17 (c) This section does not apply after entry of a final decree
18 in the reorganization proceeding even though the court retains
19 jurisdiction of the proceeding for limited purposes unrelated to
20 consummation of the reorganization plan.

§31D-10-1009. Effect of amendment.

1 An amendment to the articles of incorporation does not
2 affect a cause of action existing against or in favor of the
3 corporation, a proceeding to which the corporation is a party or
4 the existing rights of persons other than shareholders of the
5 corporation. An amendment changing a corporation's name
6 does not abate a proceeding brought by or against the corpora-
7 tion in its former name.

PART 2. AMENDMENT OF BYLAWS.

§31D-10-1020. Amendment by board of directors or shareholders.

1 (a) A corporation's shareholders may amend or repeal the
2 corporation's bylaws.

3 (b) A corporation's board of directors may amend or repeal
4 the corporation's bylaws, unless:

5 (1) The articles of incorporation or section one thousand
6 twenty-one of this article reserve that power exclusively to the
7 shareholders, in whole or in part; or

8 (2) The shareholders in amending, repealing or adopting a
9 bylaw expressly provide that the board of directors may not
10 amend, repeal or reinstate that bylaw.

**§31D-10-1021. Bylaw increasing quorum or voting requirement
for directors.**

1 (a) A bylaw that increases a quorum or voting requirement
2 for the board of directors may be amended or repealed:

3 (1) If adopted by the shareholders, only by the shareholders,
4 unless the bylaw otherwise provides; or

5 (2) If adopted by the board of directors, either by the
6 shareholders or by the board of directors.

7 (b) A bylaw adopted or amended by the shareholders that
8 increases a quorum or voting requirement for the board of
9 directors may provide that it can be amended or repealed only
10 by a specified vote of either the shareholders or the board of
11 directors.

12 (c) Action by the board of directors under subsection (a) of
13 this section to amend or repeal a bylaw that changes the quorum
14 or voting requirement for the board of directors must meet the
15 same quorum requirement and be adopted by the same vote
16 required to take action under the quorum and voting require-
17 ment then in effect or proposed to be adopted, whichever is
18 greater.

ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1101. Definitions.

§31D-11-1102. Merger.

§31D-11-1103. Share exchange.

§31D-11-1104. Action on a plan of merger or share exchange.

§31D-11-1105. Merger between parent and subsidiary or between subsidiaries.

§31D-11-1106. Articles of merger or share exchange.

§31D-11-1107. Effect of merger or share exchange.

§31D-11-1108. Abandonment of a merger or share exchange.

§31D-11-1101. Definitions.

1 As used in this article:

2 (a) “Interests” means the proprietary interests in an other
3 entity.

4 (b) “Merger” means a business combination pursuant to
5 section one thousand one hundred two of this article.

6 (c) “Organizational documents” means the basic document
7 or documents that create, or determine the internal governance
8 of, an other entity.

9 (d) “Other entity” means any association or legal entity,
10 other than a domestic or foreign corporation, organized to
11 conduct business, including, but not limited to, limited partner-
12 ships, general partnerships, limited liability partnerships,
13 limited liability companies, joint ventures, joint stock compa-
14 nies and business trusts.

15 (e) “Party to a merger” or “party to a share exchange”
16 means any domestic or foreign corporation or other entity that
17 will either:

18 (1) Merge under a plan of merger;

19 (2) Acquire shares or interests of another corporation or an
20 other entity in a share exchange; or

21 (3) Have all of its shares or interests or all of one or more
22 classes or series of its shares or interests acquired in a share
23 exchange.

24 (f) “Share exchange” means a business combination
25 pursuant to section one thousand one hundred three of this
26 article.

27 (g) “Survivor” in a merger means the corporation or other
28 entity into which one or more other corporations or other
29 entities are merged. A survivor of a merger may preexist the
30 merger or be created by the merger.

§31D-11-1102. Merger.

1 (a) One or more domestic corporations may merge with a
2 domestic or foreign corporation or other entity pursuant to a
3 plan of merger.

4 (b) A foreign corporation, or a domestic or foreign other
5 entity, may be a party to the merger or may be created by the
6 terms of the plan of merger, only if:

7 (1) The merger is permitted by the laws under which the
8 corporation or other entity is organized or by which it is
9 governed; and

10 (2) In effecting the merger, the corporation or other entity
11 complies with the laws under which the corporation or other
12 entity is organized or by which it is governed and with its
13 articles of incorporation or organizational documents.

14 (c) The plan of merger must include:

15 (1) The name of each corporation or other entity that will
16 merge and the name of the corporation or other entity that will
17 be the survivor of the merger;

18 (2) The terms and conditions of the merger;

19 (3) The manner and basis of converting the shares of each
20 merging corporation and interests of each merging other entity
21 into shares or other securities, interests, obligations, rights to
22 acquire shares or other securities, cash, other property or any
23 combination of the foregoing;

24 (4) The articles of incorporation of any corporation, or the
25 organizational documents of any other entity, to be created by
26 the merger, or if a new corporation or other entity is not to be
27 created by the merger, any amendments to the survivor's
28 articles of incorporation or organizational documents; and

29 (5) Any other provisions required by the laws under which
30 any party to the merger is organized or by which it is governed,
31 or by the articles of incorporation or organizational documents
32 of any party to the merger.

33 (d) The terms described in subdivisions (2) and (3),
34 subsection (c) of this section may be made dependent on facts
35 ascertainable outside the plan of merger, provided that those
36 facts are objectively ascertainable. The term "facts" includes,
37 but is not limited to, the occurrence of any event, including a
38 determination or action by any person or body, including the
39 corporation.

40 (e) The plan of merger may also include a provision that the
41 plan may be amended prior to filing the articles of merger with
42 the secretary of state: *Provided*, That if the shareholders of a
43 domestic corporation that is a party to the merger are required
44 or permitted to vote on the plan, the plan must provide that

45 subsequent to approval of the plan by the shareholders the plan
46 may not be amended to:

47 (1) Change the amount or kind of shares or other securities,
48 interests, obligations, rights to acquire shares or other securities,
49 cash or other property to be received by the shareholders of or
50 owners of interests in any party to the merger upon conversion
51 of their shares or interests under the plan;

52 (2) Change the articles of incorporation of any corporation,
53 or the organizational documents of any other entity, that will
54 survive or be created as a result of the merger, except for
55 changes permitted by section one thousand five, article ten of
56 this chapter or by comparable provisions of the laws under
57 which the foreign corporation or other entity is organized or
58 governed; or

59 (3) Change any of the other terms or conditions of the plan
60 if the change would adversely affect the shareholders in any
61 material respect.

§31D-11-1103. Share exchange.

1 (a) Through a share exchange:

2 (1) A domestic corporation may acquire all of the shares of
3 one or more classes or series of shares of another domestic or
4 foreign corporation, or all of the interests of one or more classes
5 or series of interests of a domestic or foreign other entity, in
6 exchange for shares or other securities, interests, obligations,
7 rights to acquire shares or other securities, cash, other property
8 or any combination of the foregoing, pursuant to a plan of share
9 exchange; or

10 (2) All of the shares of one or more classes or series of
11 shares of a domestic corporation may be acquired by another
12 domestic or foreign corporation or other entity, in exchange for

13 shares or other securities, interests, obligations, rights to acquire
14 shares or other securities, cash, other property or any combina-
15 tion of the foregoing, pursuant to a plan of share exchange.

16 (b) A foreign corporation, or a domestic or foreign other
17 entity, may be a party to the share exchange only if:

18 (1) The share exchange is permitted by the laws under
19 which the corporation or other entity is organized or by which
20 it is governed; and

21 (2) In effecting the share exchange, the corporation or other
22 entity complies with the laws under which the corporation or
23 other entity is organized or by which it is governed and with its
24 articles of incorporation or organizational documents.

25 (c) The plan of share exchange must include:

26 (1) The name of each corporation or other entity whose
27 shares or interests will be acquired and the name of the corpora-
28 tion or other entity that will acquire those shares or interests;

29 (2) The terms and conditions of the share exchange;

30 (3) The manner and basis of exchanging shares of a
31 corporation or interests in an other entity whose shares or
32 interests will be acquired under the share exchange into shares
33 or other securities, interests, obligations, rights to acquire shares
34 or other securities, cash, other property or any combination of
35 the foregoing; and

36 (4) Any other provisions required by the laws under which
37 any party to the share exchange is organized or by the articles
38 of incorporation or organizational documents of any party to the
39 share exchange.

40 (d) The terms described in subdivisions (2) and (3),
41 subsection (c) of this section may be made dependent on facts
42 ascertainable outside the plan of share exchange, provided that
43 those facts are objectively ascertainable. The term “facts”
44 includes, but is not limited to, the occurrence of any event,
45 including a determination or action by any person or body,
46 including the corporation.

47 (e) The plan of share exchange may also include a provision
48 that the plan may be amended prior to filing of the articles of
49 share exchange with the secretary of state: *Provided*, That if the
50 shareholders of a domestic corporation that is a party to the
51 share exchange are required or permitted to vote on the plan,
52 the plan must provide that subsequent to approval of the plan by
53 shareholders the plan may not be amended to:

54 (1) Change the amount or kind of shares or other securities,
55 interests, obligations, rights to acquire shares or other securities,
56 cash or other property to be issued by the corporation or to be
57 received by the shareholders of or owners of interests in any
58 party to the share exchange in exchange for their shares or
59 interests under the plan; or

60 (2) Change any of the terms or conditions of the plan if the
61 change would adversely affect the shareholders in any material
62 respect.

63 (f) This section does not limit the power of a domestic
64 corporation to acquire shares of another corporation or interests
65 in another entity in a transaction other than a share exchange.

§31D-11-1104. Action on a plan of merger or share exchange.

1 In the case of a domestic corporation that is a party to a
2 merger or share exchange:

3 (1) The plan of merger or share exchange must be adopted
4 by the board of directors.

5 (2) Except as provided in subdivision (7) of this section and
6 in section one thousand one hundred five of this article, after
7 adopting the plan of merger or share exchange the board of
8 directors must submit the plan to the shareholders for their
9 approval. The board of directors must also transmit to the
10 shareholders a recommendation that the shareholders approve
11 the plan, unless the board of directors determines that because
12 of conflicts of interest or other special circumstances it should
13 not make a recommendation, in which case the board of
14 directors must transmit to the shareholders the basis for that
15 determination.

16 (3) The board of directors may condition its submission of
17 the plan of merger or share exchange to the shareholders on any
18 basis.

19 (4) If the plan of merger or share exchange is required to be
20 approved by the shareholders and if the approval is to be given
21 at a meeting, the corporation must notify each shareholder,
22 whether or not entitled to vote, of the meeting of shareholders
23 at which the plan is to be submitted for approval. The notice
24 must state that the purpose, or one of the purposes, of the
25 meeting is to consider the plan and must contain or be accom-
26 panied by a copy or summary of the plan. If the corporation is
27 to be merged into an existing corporation or other entity, the
28 notice is also to include or be accompanied by a copy or
29 summary of the articles of incorporation or organizational
30 documents of that corporation or other entity. If the corporation
31 is to be merged into a corporation or other entity that is to be
32 created pursuant to the merger, the notice is to include or be
33 accompanied by a copy or a summary of the articles of incorpo-
34 ration or organizational documents of the new corporation or
35 other entity.

36 (5) Unless the articles of incorporation, or the board of
37 directors acting pursuant to subdivision (3) of this section,
38 requires a greater vote or a greater number of votes to be
39 present, approval of the plan of merger or share exchange
40 requires the approval of the shareholders at a meeting at which
41 a quorum consisting of at least a majority of the votes entitled
42 to be cast on the plan exists and, if any class or series of shares
43 is entitled to vote as a separate group on the plan of merger or
44 share exchange, the approval of each separate voting group at
45 a meeting at which a quorum of the voting group consisting of
46 at least a majority of the votes entitled to be cast on the merger
47 or share exchange by that voting group is present.

48 (6) Separate voting by voting groups is required:

49 (A) On a plan of merger, by each class or series of shares
50 that: (i) Are to be converted, pursuant to the provisions of the
51 plan of merger, into shares or other securities, interests,
52 obligations, rights to acquire shares or other securities, cash,
53 other property or any combination of the foregoing; or (ii)
54 would have a right to vote as a separate group on a provision in
55 the plan that, if contained in a proposed amendment to articles
56 of incorporation, would require action by separate voting
57 groups under section one thousand four, article ten of this
58 chapter;

59 (B) On a plan of share exchange, by each class or series of
60 shares included in the exchange, with each class or series
61 constituting a separate voting group; and

62 (C) On a plan of merger or share exchange, if the voting
63 group is entitled under the articles of incorporation to vote as a
64 voting group to approve a plan of merger or share exchange.

65 (7) Unless the articles of incorporation otherwise provide,
66 approval by the corporation's shareholders of a plan of merger
67 or share exchange is not required if:

68 (A) The corporation will survive the merger or is the
69 acquiring corporation in a share exchange;

70 (B) Except for amendments permitted by section one
71 thousand five, article ten of this chapter, its articles of incorpo-
72 ration will not be changed;

73 (C) Each shareholder of the corporation whose shares were
74 outstanding immediately before the effective date of the merger
75 or share exchange will hold the same number of shares, with
76 identical preferences, limitations and relative rights, immedi-
77 ately after the effective date of change; and

78 (D) The issuance in the merger or share exchange of shares
79 or other securities convertible into or rights exercisable for
80 shares does not require a vote under subsection (f), section six
81 hundred twenty-one, article six of this chapter.

82 (8) If as a result of a merger or share exchange one or more
83 shareholders of a domestic corporation would become subject
84 to personal liability for the obligations or liabilities of any other
85 person or entity, approval of the plan of merger requires the
86 execution, by each shareholder subject to liability, of a separate
87 written consent to become subject to personal liability.

**§31D-11-1105. Merger between parent and subsidiary or between
subsidiaries.**

1 (a) A domestic parent corporation that owns shares of a
2 domestic or foreign subsidiary corporation that carry at least
3 ninety percent of the voting power of each class and series of
4 the outstanding shares of the subsidiary that have voting power
5 may merge the subsidiary into itself or into another subsidiary,
6 or merge itself into the subsidiary, without the approval of the
7 board of directors or shareholders of the subsidiary, unless the
8 articles of incorporation of any of the corporations otherwise
9 provide, and unless, in the case of a foreign subsidiary, ap-

10 approval by the subsidiary's board of directors or shareholders is
11 required by the laws under which the subsidiary is organized.

12 (b) If under subsection (a) of this section approval of a
13 merger by the subsidiary's shareholders is not required, the
14 parent corporation shall, within ten days after the effective date
15 of the merger, notify each of the subsidiary's shareholders that
16 the merger has become effective.

17 (c) Except as provided in subsections (a) and (b) of this
18 section, a merger between a parent and a subsidiary is to be
19 governed by the provisions of this article applicable to mergers
20 generally.

§31D-11-1106. Articles of merger or share exchange.

1 (a) After a plan of merger or share exchange has been
2 adopted and approved as required by this chapter, articles of
3 merger or share exchange are to be executed on behalf of each
4 party to the merger or share exchange by any officer or other
5 duly authorized representative. The articles are to set forth:

6 (1) The names of the parties to the merger or share ex-
7 change and the date on which the merger or share exchange
8 occurred or is to be effective;

9 (2) If the articles of incorporation of the survivor of a
10 merger are amended, or if a new corporation is created as a
11 result of a merger, the amendments to the survivor's articles of
12 incorporation or the articles of incorporation of the new
13 corporation;

14 (3) If the plan of merger or share exchange required
15 approval by the shareholders of a domestic corporation that was
16 a party to the merger or share exchange, a statement that the
17 plan was duly approved by the shareholders and, if voting by
18 any separate voting group was required, by each separate voting

19 group in the manner required by this chapter and the articles of
20 incorporation;

21 (4) If the plan of merger or share exchange did not require
22 approval by the shareholders of a domestic corporation that was
23 a party to the merger or share exchange, a statement to that
24 effect; and

25 (5) As to each foreign corporation and each other entity that
26 was a party to the merger or share exchange, a statement that
27 the plan and the performance of its terms were duly authorized
28 by all action required by the laws under which the corporation
29 or other entity is organized, or by which it is governed, and by
30 its articles of incorporation or organizational documents.

31 (b) Articles of merger or share exchange are to be delivered
32 to the secretary of state for filing by the survivor of the merger
33 or the acquiring corporation in a share exchange and take effect
34 upon issuance by the secretary of state of a certificate of merger
35 to the survivor corporation.

36 (c) The secretary of state shall withhold the issuance of any
37 certificate of merger in the case where the new or surviving
38 corporation will be a foreign corporation which has not quali-
39 fied to conduct affairs or do or transact business or hold
40 property in this state until the receipt by the secretary of state of
41 a notice from the tax commissioner and bureau of employment
42 programs to the effect that all taxes due from said corporation
43 under the provisions of chapter eleven of this code, including,
44 but not limited to, taxes withheld under the provisions of
45 section seventy-one, article twenty-one, chapter eleven of this
46 code, all business and occupation taxes, motor carrier and
47 transportation privilege taxes, gasoline taxes, consumers sales
48 taxes and any and all license franchise or other excise taxes and
49 corporate net income taxes and employment security payments
50 levied or assessed against the corporation seeking to dissolve

51 have been paid or that the payment has been provided for, or
52 until the secretary of state received a notice from the tax
53 commissioner or bureau of employment programs stating that
54 the corporation in question is not subject to payment of any
55 taxes or to the making of any employment security payments or
56 assessments.

§31D-11-1107. Effect of merger or share exchange.

1 (a) When a merger takes effect:

2 (1) The corporation or other entity that is designated in the
3 plan of merger as the survivor continues or comes into exist-
4 tence, as the case may be;

5 (2) The separate existence of every corporation or other
6 entity that is merged into the survivor ceases;

7 (3) All property owned by, and every contract right
8 possessed by, each corporation or other entity that merges into
9 the survivor is vested in the survivor without reversion or
10 impairment;

11 (4) All real property located in the state owned by each
12 corporation or other entity that merges into the survivor passes
13 by operation of law and the transfer is evidenced by recording
14 a confirmation deed in each county in which the real property
15 is located. No transfer or excise taxes may be assessed for the
16 recording of the confirmation deeds;

17 (5) All liabilities of each corporation or other entity that is
18 merged into the survivor are vested in the survivor;

19 (6) The name of the survivor may, but need not be, substi-
20 tuted in any pending proceeding for the name of any party to
21 the merger whose separate existence ceased in the merger;

22 (7) The articles of incorporation or organizational docu-
23 ments of the survivor are amended to the extent provided in the
24 plan of merger;

25 (8) The articles of incorporation or organizational docu-
26 ments of a survivor that is created by the merger become
27 effective; and

28 (9) The shares of each corporation that is a party to the
29 merger, and the interests in an other entity that is a party to a
30 merger, that are to be converted under the plan of merger into
31 shares, interests, obligations, rights to acquire securities, other
32 securities, cash, other property or any combination of the
33 foregoing are converted and the former holders of the shares or
34 interests are entitled only to the rights provided to them in the
35 plan of merger or to any rights they may have under article
36 thirteen of this chapter.

37 (b) When a share exchange becomes effective, the shares of
38 each domestic corporation that are to be exchanged for shares
39 or other securities, interests, obligations, rights to acquire shares
40 or other securities, cash, other property or any combination of
41 the foregoing are entitled only to the rights provided to them in
42 the plan of share exchange or to any rights they may have under
43 article thirteen of this chapter.

44 (c) Any shareholder of a domestic corporation that is a
45 party to a merger or share exchange who, prior to the merger or
46 share exchange, was liable for the liabilities or obligations of
47 the corporation, may not be released from the liabilities or
48 obligations by reason of the merger or share exchange.

49 (d) Upon a merger becoming effective, a foreign corpora-
50 tion, or a foreign other entity, that is the survivor of the merger
51 is deemed to:

52 (1) Appoint the secretary of state as its agent for service of
53 process in a proceeding to enforce the rights of shareholders of
54 each domestic corporation that is a party to the merger who
55 exercise appraisal rights; and

56 (2) Agree that it will promptly pay the amount, if any, to
57 which the shareholders are entitled under article thirteen of this
58 chapter.

§31D-11-1108. Abandonment of a merger or share exchange.

1 (a) Unless otherwise provided in a plan of merger or share
2 exchange or in the laws under which a foreign corporation or a
3 domestic or foreign other entity that is a party to a merger or a
4 share exchange is organized or by which it is governed, after
5 the plan has been adopted and approved as required by this
6 article, and at any time before the merger or share exchange has
7 become effective, it may be abandoned by any party thereto
8 without action by the party's shareholders or owners of inter-
9 ests, in accordance with any procedures set forth in the plan of
10 merger or share exchange or, if no procedures are set forth in
11 the plan, in the manner determined by the board of directors of
12 a corporation, or the managers of an other entity, subject to any
13 contractual rights of other parties to the merger or share
14 exchange.

15 (b) If a merger or share exchange is abandoned under
16 subsection (a) of this section after articles of merger or share
17 exchange have been filed with the secretary of state but before
18 the merger or share exchange has become effective, a statement
19 that the merger or share exchange has been abandoned in
20 accordance with this section, executed on behalf of a party to
21 the merger or share exchange by an officer or other duly
22 authorized representative, is to be delivered to the secretary of
23 state for filing prior to the effective date of the merger or share
24 exchange. Upon filing, the statement is to take effect and the

25 merger or share exchange is to be deemed abandoned and may
26 not become effective.

ARTICLE 12. DISPOSITION OF ASSETS.

§31D-12-1201. Disposition of assets not requiring shareholder approval.

§31D-12-1202. Shareholder approval of certain dispositions.

§31D-12-1201. Disposition of assets not requiring shareholder approval.

1 No approval of the shareholders of a corporation is re-
2 quired, unless the articles of incorporation otherwise provide:

3 (1) To sell, lease, exchange or otherwise dispose of any or
4 all of the corporation's assets in the usual and regular course of
5 business;

6 (2) To mortgage, pledge, dedicate to the repayment of
7 indebtedness with or without recourse, or otherwise encumber
8 any or all of the corporation's assets, whether or not in the usual
9 and regular course of business;

10 (3) To transfer any or all of the corporation's assets to one
11 or more corporations or other entities all of the shares or
12 interests of which are owned by the corporation; or

13 (4) To distribute assets pro rata to the holders of one or
14 more classes or series of the corporation's shares.

§31D-12-1202. Shareholder approval of certain dispositions.

1 (a) A sale, lease, exchange or other disposition of assets,
2 other than a disposition described in section one thousand two
3 hundred one of this article, requires approval of the corpora-
4 tion's shareholders if the disposition would leave the corpora-
5 tion without a significant continuing business activity. If a
6 corporation retains a business activity that represented at least

7 twenty-five percent of total assets at the end of the most
8 recently completed fiscal year and twenty-five percent of either
9 income from continuing operations before taxes or revenues
10 from continuing operations for that fiscal year, in each case of
11 the corporation and its subsidiaries on a consolidated basis, the
12 corporation will conclusively be deemed to have retained a
13 significant continuing business activity.

14 (b) A disposition that requires approval of the shareholders
15 under subsection (a) of this section must be initiated by a
16 resolution by the board of directors authorizing the disposition.
17 After adoption of the resolution, the board of directors shall
18 submit the proposed disposition to the shareholders for their
19 approval. The board of directors shall also transmit to the
20 shareholders a recommendation that the shareholders approve
21 the proposed disposition, unless the board of directors makes a
22 determination that because of conflicts of interest or other
23 special circumstances it should not make a recommendation
24 that the shareholders approve the disposition, in which case the
25 board of directors shall transmit to the shareholders the basis
26 for that determination.

27 (c) The board of directors may condition its submission of
28 a disposition to the shareholders under subsection (b) of this
29 section on any basis.

30 (d) If a disposition is required to be approved by the
31 shareholders under subsection (a) of this section and if the
32 approval is to be given at a meeting, the corporation shall notify
33 each shareholder, whether or not entitled to vote, of the meeting
34 of shareholders at which the disposition is to be submitted for
35 approval. The notice must state that the purpose, or one of the
36 purposes, of the meeting is to consider the disposition and must
37 contain a description of the disposition, including the terms and
38 conditions of the disposition and the consideration to be
39 received by the corporation.

40 (e) Unless the articles of incorporation or the board of
41 directors acting pursuant to subsection (c) of this section
42 requires a greater vote, or a greater number of votes to be
43 present, the approval of a disposition by the shareholders
44 requires the approval of the shareholders at a meeting at which
45 a quorum consisting of at least a majority of the votes entitled
46 to be cast on the disposition exists.

47 (f) After a disposition has been approved by the sharehold-
48 ers under subsection (b) of this section, and at any time before
49 the disposition has been consummated, it may be abandoned by
50 the corporation without action by the shareholders, subject to
51 any contractual rights of other parties to the disposition.

52 (g) A disposition of assets in the course of dissolution under
53 article fourteen of this chapter is not governed by this section.

54 (h) The assets of a direct or indirect consolidated subsidiary
55 are to be deemed the assets of the parent corporation for the
56 purposes of this section.

ARTICLE 13. APPRAISAL RIGHTS.

§31D-13-1301. Definitions.

§31D-13-1302. Right to appraisal.

§31D-13-1303. Assertion of rights by nominees and beneficial owners.

§31D-13-1320. Notice of appraisal rights.

§31D-13-1321. Notice of intent to demand payment.

§31D-13-1322. Appraisal notice and form.

§31D-13-1323. Perfection of rights; right to withdraw.

§31D-13-1324. Payment.

§31D-13-1325. After-acquired shares.

§31D-13-1326. Procedure if shareholder dissatisfied with payment or offer.

§31D-13-1330. Court action.

§31D-13-1331. Court costs and counsel fees.

PART 1. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

§31D-13-1301. Definitions.

1 In this article:

2 (1) “Affiliate” means a person that directly or indirectly
3 through one or more intermediaries controls, is controlled by or
4 is under common control with another person or is a senior
5 executive. For purposes of subdivision (4), subsection (b),
6 section one thousand three hundred two of this article, a person
7 is deemed to be an affiliate of its senior executives.

8 (2) “Beneficial shareholder” means a person who is the
9 beneficial owner of shares held in a voting trust or by a nomi-
10 nee on the beneficial owner’s behalf.

11 (3) “Corporation” means the issuer of the shares held by a
12 shareholder demanding appraisal and, for matters covered in
13 sections one thousand three hundred twenty-two, one thousand
14 three hundred twenty-three, one thousand three hundred twenty-
15 four, one thousand three hundred twenty-five, one thousand
16 three hundred twenty-six, one thousand three hundred thirty and
17 one thousand three hundred thirty-one of this article, includes
18 the surviving entity in a merger.

19 (4) “Fair value” means the value of the corporation’s shares
20 determined:

21 (A) Immediately before the effectuation of the corporate
22 action to which the shareholder objects;

23 (B) Using customary and current valuation concepts and
24 techniques generally employed for similar businesses in the
25 context of the transaction requiring appraisal; and

26 (C) Without discounting for lack of marketability or
27 minority status except, if appropriate, for amendments to the
28 articles pursuant to subdivision (5), subsection (a), section one
29 thousand three hundred two of this article.

30 (5) "Interest" means interest from the effective date of the
31 corporate action until the date of payment, at the rate of interest
32 on judgments in this state on the effective date of the corporate
33 action.

34 (6) "Preferred shares" means a class or series of shares
35 whose holders have preference over any other class or series
36 with respect to distributions.

37 (7) "Record shareholder" means the person in whose name
38 shares are registered in the records of the corporation or the
39 beneficial owner of shares to the extent of the rights granted by
40 a nominee certificate on file with the corporation.

41 (8) "Senior executive" means the chief executive officer,
42 chief operating officer, chief financial officer and anyone in
43 charge of a principal business unit or function.

44 (9) "Shareholder" means both a record shareholder and a
45 beneficial shareholder.

§31D-13-1302. Right to appraisal.

1 (a) A shareholder is entitled to appraisal rights, and to
2 obtain payment of the fair value of that shareholder's shares, in
3 the event of any of the following corporate actions:

4 (1) Consummation of a merger to which the corporation is
5 a party: (A) If shareholder approval is required for the merger
6 by section one thousand one hundred four, article eleven of this
7 chapter and the shareholder is entitled to vote on the merger,
8 except that appraisal rights may not be available to any share-
9 holder of the corporation with respect to shares of any class or
10 series that remain outstanding after consummation of the
11 merger; or (B) if the corporation is a subsidiary and the merger
12 is governed by section one thousand one hundred five, article
13 eleven of this chapter;

14 (2) Consummation of a share exchange to which the
15 corporation is a party as the corporation whose shares will be
16 acquired if the shareholder is entitled to vote on the exchange,
17 except that appraisal rights may not be available to any share-
18 holder of the corporation with respect to any class or series of
19 shares of the corporation that is not exchanged;

20 (3) Consummation of a disposition of assets pursuant to
21 section one thousand two hundred two, article twelve of this
22 chapter if the shareholder is entitled to vote on the disposition;

23 (4) An amendment of the articles of incorporation with
24 respect to a class or series of shares that reduces the number of
25 shares of a class or series owned by the shareholder to a fraction
26 of a share if the corporation has the obligation or right to
27 repurchase the fractional share so created; or

28 (5) Any other amendment to the articles of incorporation,
29 merger, share exchange or disposition of assets to the extent
30 provided by the articles of incorporation, bylaws or a resolution
31 of the board of directors.

32 (b) Notwithstanding subsection (a) of this section, the
33 availability of appraisal rights under subdivisions (1), (2), (3)
34 and (4), subsection (a) of this section are limited in accordance
35 with the following provisions:

36 (1) Appraisal rights may not be available for the holders of
37 shares of any class or series of shares which is:

38 (A) Listed on the New York stock exchange or the Ameri-
39 can stock exchange or designated as a national market system
40 security on an interdealer quotation system by the national
41 association of securities dealers, inc.; or

42 (B) Not so listed or designated, but has at least two thou-
43 sand shareholders and the outstanding shares of a class or series

44 has a market value of at least twenty million dollars, exclusive
45 of the value of the shares held by its subsidiaries, senior
46 executives, directors and beneficial shareholders owning more
47 than ten percent of the shares.

48 (2) The applicability of subdivision (1), subsection (b) of
49 this section is to be determined as of:

50 (A) The record date fixed to determine the shareholders
51 entitled to receive notice of, and to vote at, the meeting of
52 shareholders to act upon the corporate action requiring appraisal
53 rights; or

54 (B) The day before the effective date of the corporate action
55 if there is no meeting of shareholders.

56 (3) Subdivision (1), subsection (b) of this section is not
57 applicable and appraisal rights are to be available pursuant to
58 subsection (a) of this section for the holders of any class or
59 series of shares who are required by the terms of the corporate
60 action requiring appraisal rights to accept for the shares
61 anything other than cash or shares of any class or any series of
62 shares of any corporation, or any other proprietary interest of
63 any other entity, that satisfies the standards set forth in subdivi-
64 sion (1), section (b) of this section at the time the corporate
65 action becomes effective.

66 (4) Subdivision (1), subsection (b) of this section is not
67 applicable and appraisal rights are to be available pursuant to
68 subsection (a) of this section for the holders of any class or
69 series of shares where any of the shares or assets of the corpora-
70 tion are being acquired or converted, whether by merger, share
71 exchange or otherwise, pursuant to the corporate action by a
72 person, or by an affiliate of a person, who: (A) Is, or at any
73 time in the one-year period immediately preceding approval by
74 the board of directors of the corporate action requiring appraisal
75 rights was, the beneficial owner of twenty percent or more of

76 the voting power of the corporation, excluding any shares
77 acquired pursuant to an offer for all shares having voting power
78 if the offer was made within one year prior to the corporate
79 action requiring appraisal rights for consideration of the same
80 kind and of a value equal to or less than that paid in connection
81 with the corporate action; or (B) for purpose of voting their
82 shares of the corporation, each member of the group formed is
83 deemed to have acquired beneficial ownership, as of the date of
84 the agreement, of all voting shares of the corporation benefi-
85 cially owned by any member of the group.

86 (c) Notwithstanding any other provision of section one
87 thousand three hundred two of this article, the articles of
88 incorporation as originally filed or any amendment to the
89 articles of incorporation may limit or eliminate appraisal rights
90 for any class or series of preferred shares, but any limitation or
91 elimination contained in an amendment to the articles of
92 incorporation that limits or eliminates appraisal rights for any
93 of the shares that are outstanding immediately prior to the
94 effective date of the amendment or that the corporation is or
95 may be required to issue or sell pursuant to any conversion,
96 exchange or other right existing immediately before the
97 effective date of the amendment does not apply to any corporate
98 action that becomes effective within one year of that date if the
99 action would otherwise afford appraisal rights.

100 (d) A shareholder entitled to appraisal rights under this
101 article may not challenge a completed corporate action for
102 which appraisal rights are available unless the corporate action:

103 (1) Was not effectuated in accordance with the applicable
104 provisions of article ten, eleven or twelve of this chapter or the
105 corporation's articles of incorporation, bylaws or board of
106 directors' resolution authorizing the corporate action; or

107 (2) Was procured as a result of fraud or material misrepre-
108 sentation.

§31D-13-1303. Assertion of rights by nominees and beneficial owners.

1 (a) A record shareholder may assert appraisal rights as to
2 fewer than all the shares registered in the record shareholder's
3 name but owned by a beneficial shareholder only if the record
4 shareholder objects with respect to all shares of the class or
5 series owned by the beneficial shareholder and notifies the
6 corporation in writing of the name and address of each benefi-
7 cial shareholder on whose behalf appraisal rights are being
8 asserted. The rights of a record shareholder who asserts
9 appraisal rights for only part of the shares held of record in the
10 record shareholder's name under this subsection are to be
11 determined as if the shares as to which the record shareholder
12 objects and the record shareholder's other shares were regis-
13 tered in the names of different record shareholders.

14 (b) A beneficial shareholder may assert appraisal rights as
15 to shares of any class or series held on behalf of the shareholder
16 only if the shareholder:

17 (1) Submits to the corporation the record shareholder's
18 written consent to the assertion of the rights no later than the
19 date referred to in paragraph (D), subdivision (2), subsection
20 (b), section one thousand three hundred twenty-two of this
21 article; and

22 (2) Does so with respect to all shares of the class or series
23 that are beneficially owned by the beneficial shareholder.

PART 2. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

§31D-13-1320. Notice of appraisal rights.

1 (a) If proposed corporate action described in subsection (a),
2 section one thousand three hundred two of this article is to be
3 submitted to a vote at a shareholders' meeting, the meeting
4 notice must state that the corporation has concluded that
5 shareholders are, are not or may be entitled to assert appraisal
6 rights under this article. If the corporation concludes that
7 appraisal rights are or may be available, a copy of this article
8 must accompany the meeting notice sent to those record
9 shareholders entitled to exercise appraisal rights.

10 (b) In a merger pursuant to section one thousand one
11 hundred five, article eleven of this chapter, the parent corpora-
12 tion must notify in writing all record shareholders of the
13 subsidiary who are entitled to assert appraisal rights that the
14 corporate action became effective. The notice must be sent
15 within ten days after the corporate action became effective and
16 include the materials described in section one thousand three
17 hundred twenty-two of this article.

§31D-13-1321. Notice of intent to demand payment.

1 (a) If proposed corporate action requiring appraisal rights
2 under section one thousand three hundred two of this article is
3 submitted to a vote at a shareholders' meeting, a shareholder
4 who wishes to assert appraisal rights with respect to any class
5 or series of shares:

6 (1) Must deliver to the corporation before the vote is taken
7 written notice of the shareholder's intent to demand payment if
8 the proposed action is effectuated; and

9 (2) Must not vote, or cause or permit to be voted, any shares
10 of the class or series in favor of the proposed action.

11 (b) A shareholder who does not satisfy the requirements of
12 subsection (a) of this section is not entitled to payment under
13 this article.

§31D-13-1322. Appraisal notice and form.

1 (a) If proposed corporate action requiring appraisal rights
2 under subsection (a), section one thousand three hundred two of
3 this article becomes effective, the corporation must deliver a
4 written appraisal notice and form required by subdivision (1),
5 subsection (b) of this section to all shareholders who satisfied
6 the requirements of section one thousand three hundred twenty-
7 one of this article. In the case of a merger under section one
8 thousand one hundred five, article eleven of this chapter, the
9 parent must deliver a written appraisal notice and form to all
10 record shareholders who may be entitled to assert appraisal
11 rights.

12 (b) The appraisal notice must be sent no earlier than the
13 date the corporate action became effective and no later than ten
14 days after that date and must:

15 (1) Supply a form that specifies the date of the first an-
16 nouncement to shareholders of the principal terms of the
17 proposed corporate action and requires the shareholder assert-
18 ing appraisal rights to certify: (A) Whether or not beneficial
19 ownership of those shares for which appraisal rights are
20 asserted was acquired before that date; and (B) that the share-
21 holder did not vote for the transaction;

22 (2) State:

23 (A) Where the form must be sent and where certificates for
24 certificated shares must be deposited and the date by which
25 those certificates must be deposited, which date may not be
26 earlier than the date for receiving the required form under this
27 subdivision;

28 (B) A date by which the corporation must receive the form
29 which date may not be fewer than forty nor more than sixty
30 days after the date the appraisal notice and form required by

31 subsection (a) of this section are sent and state that the share-
32 holder is deemed to have waived the right to demand appraisal
33 with respect to the shares unless the form is received by the
34 corporation by the specified date;

35 (C) The corporation's estimate of the fair value of the
36 shares;

37 (D) That, if requested in writing, the corporation will
38 provide, to the shareholder so requesting, within ten days after
39 the date specified in paragraph (B) of this subdivision the
40 number of shareholders who return the forms by the specified
41 date and the total number of shares owned by them; and

42 (E) The date by which the notice to withdraw under section
43 one thousand three hundred twenty-three of this article must be
44 received, which date must be within twenty days after the date
45 specified in paragraph (B) of this subdivision; and

46 (3) Be accompanied by a copy of this article.

§31D-13-1323. Perfection of rights; right to withdraw.

1 (a) A shareholder who receives notice pursuant to section
2 one thousand three hundred twenty-two of this article and who
3 wishes to exercise appraisal rights must certify on the form sent
4 by the corporation whether the beneficial owner of the shares
5 acquired beneficial ownership of the shares before the date
6 required to be set forth in the notice pursuant to subdivision (1),
7 subsection (b), section one thousand three hundred twenty-two
8 of this article. If a shareholder fails to make this certification,
9 the corporation may elect to treat the shareholder's shares as
10 after-acquired shares under section one thousand three hundred
11 twenty-five of this article. In addition, a shareholder who
12 wishes to exercise appraisal rights must execute and return the
13 form and, in the case of certificated shares, deposit the share-
14 holder's certificates in accordance with the terms of the notice

15 by the date referred to in the notice pursuant to paragraph (B),
16 subdivision (2), subsection (b), section one thousand three
17 hundred twenty-two of this article. Once a shareholder deposits
18 the shareholder's certificates or, in the case of uncertificated
19 shares, returns the executed forms, that shareholder loses all
20 rights as a shareholder unless the shareholder withdraws
21 pursuant to subsection (b) of this section.

22 (b) A shareholder who has complied with subsection (a) of
23 this section may decline to exercise appraisal rights and
24 withdraw from the appraisal process by so notifying the
25 corporation in writing by the date set forth in the appraisal
26 notice pursuant to paragraph (E), subdivision (2), subsection
27 (b), section one thousand three hundred twenty-two of this
28 article. A shareholder who fails to withdraw from the appraisal
29 process by that date may not withdraw without the corpora-
30 tion's written consent.

31 (c) A shareholder who does not execute and return the form
32 and, in the case of certificated shares, deposit the shareholder's
33 share certificates where required, each by the date set forth in
34 the notice described in subsection (b), section one thousand
35 three hundred twenty-two of this article, is not entitled to
36 payment under this article.

§31D-13-1324. Payment.

1 (a) Except as provided in section one thousand three
2 hundred twenty-five of this article, within thirty days after the
3 form required by paragraph (B), subdivision (2), subsection (b),
4 section one thousand three hundred twenty-two of this article is
5 due, the corporation shall pay in cash to those shareholders who
6 complied with subsection (a), section one thousand three
7 hundred twenty-three of this article the amount the corporation
8 estimates to be the fair value of their shares, plus interest.

9 (b) The payment to each shareholder pursuant to subsection
10 (a) of this article must be accompanied by:

11 (1) Financial statements of the corporation that issued the
12 shares to be appraised, consisting of a balance sheet as of the
13 end of a fiscal year ending not more than sixteen months before
14 the date of payment, an income statement for that year, a
15 statement of changes in shareholders' equity for that year and
16 the latest available interim financial statements, if any;

17 (2) A statement of the corporation's estimate of the fair
18 value of the shares, which estimate must equal or exceed the
19 corporation's estimate given pursuant to paragraph (C),
20 subdivision (2), subsection (b), section one thousand three
21 hundred twenty-two of this article; and

22 (3) A statement that shareholders described in subsection
23 (a) of this section have the right to demand further payment
24 under section one thousand three hundred twenty-six of this
25 article and that if any shareholder does not make a demand for
26 further payment within the time period specified, shareholder
27 is deemed to have accepted the payment in full satisfaction of
28 the corporation's obligations under this article.

§31D-13-1325. After-acquired shares.

1 (a) A corporation may elect to withhold payment required
2 by section one thousand three hundred twenty-four of this
3 article from any shareholder who did not certify that beneficial
4 ownership of all of the shareholder's shares for which appraisal
5 rights are asserted was acquired before the date set forth in the
6 appraisal notice sent pursuant to subdivision (1), subsection (b),
7 section one thousand three hundred twenty-two of this article.

8 (b) If the corporation elected to withhold payment under
9 subsection (a) of this section, it must, within thirty days after
10 the form required by paragraph (B), subdivision (2), subsection

11 (b), section one thousand three hundred twenty-two of this
12 article is due, notify all shareholders who are described in
13 subsection (a) of this section:

14 (1) Of the information required by subdivision (1), subsec-
15 tion (b), section one thousand three hundred twenty-four of this
16 article;

17 (2) Of the corporation's estimate of fair value pursuant to
18 subdivision (2), subsection (b), section one thousand three
19 hundred twenty-four of this article;

20 (3) That they may accept the corporation's estimate of fair
21 value, plus interest, in full satisfaction of their demands or
22 demand appraisal under section one thousand three hundred
23 twenty-six of this article;

24 (4) That those shareholders who wish to accept the offer
25 must notify the corporation of their acceptance of the corpora-
26 tion's offer within thirty days after receiving the offer; and

27 (5) That those shareholders who do not satisfy the require-
28 ments for demanding appraisal under section one thousand
29 three hundred twenty-six of this article are deemed to have
30 accepted the corporation's offer.

31 (c) Within ten days after receiving the shareholder's
32 acceptance pursuant to subsection (b) of this section, the
33 corporation must pay in cash the amount it offered under
34 subdivision (2), subsection (b) of this section to each share-
35 holder who agreed to accept the corporation's offer in full
36 satisfaction of the shareholder's demand.

37 (d) Within forty days after sending the notice described in
38 subsection (b) of this section, the corporation must pay in cash
39 the amount it offered to pay under subdivision (2), subsection

40 (b) of this section to each shareholder described in subdivision
41 (5), subsection (b) of this section.

§31D-13-1326. Procedure if shareholder dissatisfied with payment or offer.

1 (a) A shareholder paid pursuant to section one thousand
2 three hundred twenty-four of this article who is dissatisfied with
3 the amount of the payment must notify the corporation in
4 writing of that shareholder's estimate of the fair value of the
5 shares and demand payment of that estimate plus interest and
6 less any payment due under section one thousand three hundred
7 twenty-four of this article. A shareholder offered payment
8 under section one thousand three hundred twenty-five of this
9 article who is dissatisfied with that offer must reject the offer
10 and demand payment of the shareholder's stated estimate of the
11 fair value of the shares plus interest.

12 (b) A shareholder who fails to notify the corporation in
13 writing of that shareholder's demand to be paid the share-
14 holder's stated estimate of the fair value plus interest under
15 subsection (a) of this section within thirty days after receiving
16 the corporation's payment or offer of payment under sections
17 one thousand three hundred twenty-four or one thousand three
18 hundred twenty-five of this article, respectively, waives the
19 right to demand payment under this section and is entitled only
20 to the payment made or offered pursuant to those respective
21 sections.

PART 3. JUDICIAL APPRAISAL OF SHARES.

§31D-13-1330. Court action.

1 (a) If a shareholder makes demand for payment under
2 section one thousand three hundred twenty-six of this article
3 which remains unsettled, the corporation shall commence a
4 proceeding within sixty days after receiving the payment

5 demand and petition the court to determine the fair value of the
6 shares and accrued interest. If the corporation does not com-
7 mence the proceeding within the sixty-day period, it shall pay
8 in cash to each shareholder the amount the shareholder de-
9 manded pursuant to section one thousand three hundred twenty-
10 six of this article plus interest.

11 (b) The corporation shall make all shareholders, whether or
12 not residents of this state, whose demands remain unsettled
13 parties to the proceeding as in an action against their shares, and
14 all parties must be served with a copy of the petition. Nonresi-
15 dents may be served by registered or certified mail or by
16 publication as provided by law.

17 (c) The jurisdiction of the court in which the proceeding is
18 commenced is plenary and exclusive. The court may appoint
19 one or more persons as appraisers to receive evidence and
20 recommend a decision on the question of fair value. The
21 appraisers have the powers described in the order appointing
22 them, or in any amendment to it. The shareholders demanding
23 appraisal rights are entitled to the same discovery rights as
24 parties in other civil proceedings. There is no right to a jury
25 trial.

26 (d) Each shareholder made a party to the proceeding is
27 entitled to judgment: (1) For the amount, if any, by which the
28 court finds the fair value of the shareholder's shares, plus
29 interest, exceeds the amount paid by the corporation to the
30 shareholder for the shares; or (2) for the fair value, plus interest,
31 of the shareholder's shares for which the corporation elected to
32 withhold payment under section one thousand three hundred
33 twenty-five of this article.

§31D-13-1331. Court costs and counsel fees.

1 (a) The court in an appraisal proceeding commenced under
2 section one thousand three hundred thirty of this article shall

3 determine all costs of the proceeding, including the reasonable
4 compensation and expenses of appraisers appointed by the
5 court. The court shall assess the costs against the corporation,
6 except that the court may assess costs against all or some of the
7 shareholders demanding appraisal, in amounts the court finds
8 equitable, to the extent the court finds the shareholders acted
9 arbitrarily, vexatiously, or not in good faith with respect to the
10 rights provided by this article.

11 (b) The court in an appraisal proceeding may also assess the
12 fees and expenses of counsel and experts for the respective
13 parties, in amounts the court finds equitable:

14 (1) Against the corporation and in favor of any or all
15 shareholders demanding appraisal if the court finds the corpora-
16 tion did not substantially comply with the requirements of
17 section one thousand three hundred twenty, one thousand three
18 hundred twenty-two, one thousand three hundred twenty-four
19 or one thousand three hundred twenty-five of this article; or

20 (2) Against either the corporation or a shareholder demand-
21 ing appraisal, in favor of any other party, if the court finds that
22 the party against whom the fees and expenses are assessed acted
23 arbitrarily, vexatiously or not in good faith with respect to the
24 rights provided by this article.

25 (c) If the court in an appraisal proceeding finds that the
26 services of counsel for any shareholder were of substantial
27 benefit to other shareholders similarly situated, and that the fees
28 for those services should not be assessed against the corpora-
29 tion, the court may award to counsel reasonable fees to be paid
30 out of the amounts awarded the shareholders who were benefit-
31 ted.

32 (d) To the extent the corporation fails to make a required
33 payment pursuant to section one thousand three hundred
34 twenty-four, one thousand three hundred twenty-five, or one

35 thousand three hundred twenty-six of this article, the share-
36 holder may sue directly for the amount owed and, to the extent
37 successful, are to be entitled to recover from the corporation all
38 costs and expenses of the suit, including counsel fees.

ARTICLE 14. DISSOLUTION.

- §31D-14-1401. Dissolution by incorporators or initial directors.
- §31D-14-1402. Dissolution by board of directors and shareholders.
- §31D-14-1403. Articles of dissolution.
- §31D-14-1404. Revocation of dissolution.
- §31D-14-1405. Effect of dissolution.
- §31D-14-1406. Known claims against dissolved corporation.
- §31D-14-1407. Unknown claims against dissolved corporation.
- §31D-14-1420. Grounds for administrative dissolution.
- §31D-14-1421. Procedure for and effect of administrative dissolution.
- §31D-14-1422. Reinstatement following administrative dissolution.
- §31D-14-1423. Appeal from denial of reinstatement.
- §31D-14-1430. Grounds for judicial dissolution.
- §31D-14-1431. Procedure for judicial dissolution.
- §31D-14-1432. Receivership or custodianship.
- §31D-14-1433. Decree of dissolution.
- §31D-14-1434. Election to purchase in lieu of dissolution.
- §31D-14-1440. Deposit with state treasurer.

PART 1. VOLUNTARY DISSOLUTION.

§31D-14-1401. Dissolution by incorporators or initial directors.

1 A majority of the incorporators, or initial directors of a
2 corporation, that has not issued shares or has not commenced
3 business may dissolve the corporation by delivering to the
4 secretary of state for filing articles of dissolution that set forth:

- 5 (1) The name of the corporation;
- 6 (2) The date of its incorporation;

7 (3) Either: (A) That none of the corporation's shares has
8 been issued; or (B) that the corporation has not commenced
9 business;

10 (4) That no debt of the corporation remains unpaid;

11 (5) That the net assets of the corporation remaining after
12 winding up have been distributed to the shareholders, if shares
13 were issued; and

14 (6) That a majority of the incorporators or initial directors
15 authorized the dissolution.

§31D-14-1402. Dissolution by board of directors and shareholders.

1 (a) A corporation's board of directors may propose dissolu-
2 tion for submission to the shareholders.

3 (b) For a proposal to dissolve to be adopted:

4 (1) The board of directors must recommend dissolution to
5 the shareholders unless the board of directors determines that
6 because of conflict of interest or other special circumstances it
7 should make no recommendation and communicates the basis
8 for its determination to the shareholders; and

9 (2) The shareholders entitled to vote must approve the
10 proposal to dissolve as provided in subsection (e) of this
11 section.

12 (c) The board of directors may condition its submission of
13 the proposal for dissolution on any basis.

14 (d) The corporation shall notify each shareholder, whether
15 or not entitled to vote, of the proposed shareholders' meeting.
16 The notice must also state that the purpose, or one of the
17 purposes, of the meeting is to consider dissolving the corpora-
18 tion.

19 (e) Unless the articles of incorporation or the board of
20 directors acting pursuant to subsection (c) of this section require
21 a greater vote, a greater number of shares to be present or a vote
22 by voting groups, adoption of the proposal to dissolve requires
23 the approval of the shareholders at a meeting at which a quorum
24 consisting of at least a majority of the votes entitled to be cast
25 exists.

§31D-14-1403. Articles of dissolution.

1 (a) At any time after dissolution is authorized, the corpora-
2 tion may dissolve by delivering to the secretary of state for
3 filing articles of dissolution setting forth:

4 (1) The name of the corporation;

5 (2) The date dissolution was authorized; and

6 (3) If dissolution was approved by the shareholders, a
7 statement that the proposal to dissolve was duly approved by
8 the shareholders in the manner required by this chapter and by
9 the articles of incorporation.

10 (b) A corporation is dissolved upon the receipt by the
11 corporation of a certificate of dissolution from the secretary of
12 state.

13 (c) The secretary of state shall issue a certificate of dissolu-
14 tion to the corporation delivering articles of dissolution upon
15 receipt by the secretary of state of a notice from the tax com-
16 missioner and bureau of employment programs to the effect that
17 all taxes due from the corporation under the provisions of
18 chapter eleven of this code, including, but not limited to, taxes
19 withheld under the provisions of section seventy-one, article
20 twenty-one of chapter eleven of this code, all business and
21 occupation taxes, motor carrier and transportation privilege
22 taxes, gasoline taxes, consumers sales taxes and any and all

23 license franchise or other excise taxes and corporate net income
24 taxes, and employment security payments levied or assessed
25 against the corporation seeking to dissolve have been paid or
26 that the payment has been provided for, or until the secretary of
27 state received a notice from the tax commissioner or bureau of
28 employment programs, as the case may be, stating that the
29 corporation in question is not subject to payment of any taxes
30 or to the making of any employment security payments or
31 assessments.

§31D-14-1404. Revocation of dissolution.

1 (a) A corporation may revoke its dissolution within one
2 hundred twenty days of its effective date.

3 (b) Revocation of dissolution must be authorized in the
4 same manner as the dissolution was authorized unless that
5 authorization permitted revocation by action of the board of
6 directors alone, in which event the board of directors may
7 revoke the dissolution without shareholder action.

8 (c) After the revocation of dissolution is authorized, the
9 corporation may revoke the dissolution by delivering to the
10 secretary of state for filing articles of revocation of dissolution,
11 together with a copy of its articles of dissolution, that set forth:

12 (1) The name of the corporation;

13 (2) The effective date of the dissolution that was revoked;

14 (3) The date that the revocation of dissolution was autho-
15 rized;

16 (4) If the corporation's board of directors or incorporators
17 revoked the dissolution, a statement to that effect;

18 (5) If the corporation's board of directors revoked a
19 dissolution authorized by the shareholders, a statement that
20 revocation was permitted by action by the board of directors
21 alone pursuant to that authorization; and

22 (6) If shareholder action was required to revoke the
23 dissolution, the information required by subdivision (3),
24 subsection (a), section one thousand four hundred three of this
25 article.

26 (d) Revocation of dissolution is effective upon the effective
27 date of the articles of revocation of dissolution.

28 (e) When the revocation of dissolution is effective, it relates
29 back to and takes effect as of the effective date of the dissolu-
30 tion and the corporation resumes carrying on its business as if
31 dissolution had never occurred.

§31D-14-1405. Effect of dissolution.

1 (a) A dissolved corporation continues its corporate exist-
2 tence but may not carry on any business except those appropri-
3 ate to wind up and liquidate its business and affairs, including:

4 (1) Collecting its assets;

5 (2) Disposing of its properties that will not be distributed in
6 kind to its shareholders;

7 (3) Discharging or making provision for discharging its
8 liabilities;

9 (4) Distributing its remaining property among its sharehold-
10 ers according to their interests; and

11 (5) Doing every other act necessary to wind up and liqui-
12 date its business and affairs.

- 13 (b) Dissolution of a corporation does not:
- 14 (1) Transfer title to the corporation's property;
- 15 (2) Prevent transfer of its shares or securities, although the
16 authorization to dissolve may provide for closing the corpora-
17 tion's share transfer records;
- 18 (3) Subject its directors or officers to standards of conduct
19 different from those prescribed in article eight of this chapter;
- 20 (4) Change quorum or voting requirements for its board of
21 directors or shareholders; change provisions for selection,
22 resignation or removal of its directors or officers or both; or
23 change provisions for amending its bylaws;
- 24 (5) Prevent commencement of a proceeding by or against
25 the corporation in its corporate name;
- 26 (6) Abate or suspend a proceeding pending by or against the
27 corporation on the effective date of dissolution; or
- 28 (7) Terminate the authority of the registered agent of the
29 corporation, if any.

§31D-14-1406. Known claims against dissolved corporation.

- 1 (a) A dissolved corporation may dispose of the known
2 claims against it by following the procedure described in this
3 section.
- 4 (b) The dissolved corporation shall notify its known
5 claimants in writing of the dissolution at any time after its
6 effective date. The written notice must:
- 7 (1) Describe information that must be included in a claim;
- 8 (2) Provide a mailing address where a claim may be sent;

9 (3) State the deadline, which may not be fewer than one
10 hundred twenty days from the effective date of the written
11 notice, by which the dissolved corporation must receive the
12 claim; and

13 (4) State that the claim will be barred if not received by the
14 deadline.

15 (c) A claim against the dissolved corporation is barred:

16 (1) If a claimant who was given written notice under
17 subsection (b) of this section does not deliver the claim to the
18 dissolved corporation by the deadline; or

19 (2) If a claimant whose claim was rejected by the dissolved
20 corporation does not commence a proceeding to enforce the
21 claim within ninety days from the effective date of the rejection
22 notice.

23 (d) For purposes of this section, “claim” does not include a
24 contingent liability or a claim based on an event occurring after
25 the effective date of dissolution.

§31D-14-1407. Unknown claims against dissolved corporation.

1 (a) A dissolved corporation may also publish notice of its
2 dissolution and request that persons with claims against the
3 corporation present them in accordance with the notice.

4 (b) The notice must:

5 (1) Be published one time in a newspaper of general
6 circulation in the county where the dissolved corporation’s
7 principal office or if the corporation had no principal office in
8 this state, in any county where it transacts its business;

9 (2) Describe the information that must be included in a
10 claim and provide a mailing address where the claim may be
11 sent; and

12 (3) State that a claim against the corporation will be barred
13 unless a proceeding to enforce the claim is commenced within
14 five years after the publication of the notice.

15 (c) If the dissolved corporation publishes a newspaper
16 notice in accordance with subsection (b) of this section, the
17 claim of each of the following claimants is barred unless the
18 claimant commences a proceeding to enforce the claim against
19 the dissolved corporation within five years after the publication
20 date of the newspaper notice:

21 (1) A claimant who did not receive written notice under
22 section one thousand four hundred six of this article;

23 (2) A claimant whose claim was timely sent to the dis-
24 solved corporation but not acted on; and

25 (3) A claimant whose claim is contingent or based on an
26 event occurring after the effective date of dissolution.

27 (d) A claim may be enforced under this section:

28 (1) Against the dissolved corporation, to the extent of its
29 undistributed assets; or

30 (2) If the assets have been distributed in liquidation, against
31 a shareholder of the dissolved corporation to the extent of his or
32 her pro rata share of the claim or the corporate assets distributed
33 to him or her in liquidation, whichever is less, but a share-
34 holder's total liability for all claims under this section may not
35 exceed the total amount of assets distributed to him or her.

PART 2. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

1 The secretary of state may commence a proceeding under
2 section one thousand four hundred twenty-one of this article to
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after
5 they are due any franchise taxes or penalties imposed by this
6 chapter or other law;

7 (2) The corporation does not notify the secretary of state
8 within sixty days that its registered agent or registered office
9 has been changed, that its registered agent has resigned or that
10 its registered office has been discontinued; or

11 (3) The corporation's period of duration stated in its articles
12 of incorporation expires.

§31D-14-1421. Procedure for and effect of administrative dissolution.

1 (a) If the secretary of state determines that one or more
2 grounds exist under section one thousand four hundred twenty
3 of this article for dissolving a corporation, he or she shall serve
4 the corporation with written notice of his or her determination
5 pursuant to section five hundred four, article five of this
6 chapter.

7 (b) If the corporation does not correct each ground for
8 dissolution or demonstrate to the reasonable satisfaction of the
9 secretary of state that each ground determined by the secretary
10 of state does not exist within sixty days after service of the
11 notice is perfected under section five hundred four, article five
12 of this chapter, the secretary of state shall administratively
13 dissolve the corporation by signing a certificate of dissolution
14 that recites the ground or grounds for dissolution and its
15 effective date. The secretary of state shall file the original of the

16 certificate and serve a copy on the corporation pursuant to
17 section five hundred four, article five of this chapter.

18 (c) A corporation administratively dissolved continues its
19 corporate existence but may not carry on any business except
20 that necessary to wind up and liquidate its business and affairs
21 under section one thousand four hundred five of this article and
22 notify claimants pursuant to sections one thousand four hundred
23 six and one thousand four hundred seven of this article.

24 (d) The administrative dissolution of a corporation does not
25 terminate the authority of its registered agent.

§31D-14-1422. Reinstatement following administrative dissolution.

1 (a) A corporation administratively dissolved under section
2 one thousand four hundred twenty-one of this article may apply
3 to the secretary of state for reinstatement within two years after
4 the effective date of dissolution. The application must:

5 (1) Recite the name of the corporation and the effective
6 date of its administrative dissolution;

7 (2) State that the ground or grounds for dissolution either
8 did not exist or have been eliminated;

9 (3) State that the corporation's name satisfies the require-
10 ments of section four hundred one, article four of this chapter;
11 and

12 (4) Contain a certificate from the tax commissioner reciting
13 that all taxes owed by the corporation have been paid.

14 (b) If the secretary of state determines that the application
15 contains the information required by subsection (a) of this
16 section and that the information is correct, he or she shall

17 cancel the certificate of dissolution and prepare a certificate of
18 reinstatement that recites his or her determination and the
19 effective date of reinstatement, file the original of the certificate
20 and serve a copy on the corporation pursuant to section five
21 hundred four, article five of this chapter.

22 (c) When the reinstatement is effective, it relates back to
23 and takes effect as of the effective date of the administrative
24 dissolution and the corporation resumes carrying on its business
25 as if the administrative dissolution had never occurred.

§31D-14-1423. Appeal from denial of reinstatement.

1 (a) If the secretary of state denies a corporation's applica-
2 tion for reinstatement following administrative dissolution, he
3 or she shall serve the corporation pursuant to section five
4 hundred four, article five of this chapter with a written notice
5 that explains the reason or reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement
7 to the circuit court within thirty days after service of the notice
8 of denial is perfected. The corporation appeals by petitioning
9 the circuit court to set aside the dissolution and attaching to the
10 petition copies of the secretary of state's certificate of dissolu-
11 tion, the corporation's application for reinstatement and the
12 secretary of state's notice of denial.

13 (c) The circuit court may summarily order the secretary of
14 state to reinstate the dissolved corporation or may take other
15 action the circuit court considers appropriate.

16 (d) The circuit court's final decision may be appealed as in
17 other civil proceedings.

PART 3. JUDICIAL DISSOLUTION.

§31D-14-1430. Grounds for judicial dissolution.

1 The circuit court may dissolve a corporation:

2 (1) In a proceeding by the attorney general pursuant to
3 section one, article two, chapter fifty-three of this code if it is
4 established that:

5 (A) The corporation obtained its articles of incorporation
6 through fraud; or

7 (B) The corporation has continued to exceed or abuse the
8 authority conferred upon it by law;

9 (2) In a proceeding by a shareholder if it is established that:

10 (A) The directors are deadlocked in the management of the
11 corporate affairs, the shareholders are unable to break the
12 deadlock and irreparable injury to the corporation is threatened
13 or being suffered, or the business and affairs of the corporation
14 can no longer be conducted to the advantage of the shareholders
15 generally, because of the deadlock;

16 (B) The directors or those in control of the corporation have
17 acted, are acting or will act in a manner that is illegal, oppres-
18 sive or fraudulent;

19 (C) The shareholders are deadlocked in voting power and
20 have failed, for a period that includes at least two consecutive
21 annual meeting dates, to elect successors to directors whose
22 terms have expired; or

23 (D) The corporate assets are being misapplied or wasted;

24 (3) In a proceeding by a creditor if it is established that:

25 (A) The creditor's claim has been reduced to judgment, the
26 execution on the judgment returned unsatisfied and the corpora-
27 tion is insolvent; or

28 (B) The corporation has admitted in writing that the
29 creditor's claim is due and owing and the corporation is
30 insolvent; or

31 (4) In a proceeding by the corporation to have its voluntary
32 dissolution continued under circuit court supervision.

§31D-14-1431. Procedure for judicial dissolution.

1 (a) It is not necessary to make shareholders parties to a
2 proceeding to dissolve a corporation unless relief is sought
3 against them individually.

4 (b) A circuit court in a proceeding brought to dissolve a
5 corporation may issue injunctions, appoint a receiver or
6 custodian pendente lite with all powers and duties the circuit
7 court directs, take other action required to preserve the corpo-
8 rate assets wherever located and carry on the business of the
9 corporation until a full hearing can be held.

10 (c) Within ten days of the commencement of a proceeding
11 under subdivision (2), section one thousand four hundred thirty
12 of this article to dissolve a corporation that has no shares listed
13 on a national securities exchange or regularly traded in a market
14 maintained by one or more members of a national or affiliated
15 securities association, the corporation must send to all share-
16 holders, other than the petitioner, a notice stating that the
17 shareholders are entitled to avoid the dissolution of the corpora-
18 tion by electing to purchase the petitioner's shares under section
19 one thousand four hundred thirty-four of this article and
20 accompanied by a copy of section one thousand four hundred
21 thirty-four of this article.

§31D-14-1432. Receivership or custodianship.

1 (a) A circuit court in a judicial proceeding brought to
2 dissolve a corporation may appoint one or more receivers to

3 wind up and liquidate, or one or more custodians to manage, the
4 business and affairs of the corporation. The circuit court shall
5 hold a hearing, after notifying all parties to the proceeding and
6 any interested persons designated by the circuit court, before
7 appointing a receiver or custodian. The circuit court appointing
8 a receiver or custodian has exclusive jurisdiction over the
9 corporation and all of its property wherever located.

10 (b) The circuit court may appoint an individual or a
11 domestic or foreign corporation authorized to transact business
12 in this state as a receiver or custodian. The circuit court may
13 require the receiver or custodian to post bond, with or without
14 sureties, in an amount the circuit court directs.

15 (c) The circuit court shall describe the powers and duties of
16 the receiver or custodian in its appointing order, which may be
17 amended from time to time. Among other powers:

18 (1) The receiver: (A) May dispose of all or any part of the
19 assets of the corporation wherever located, at a public or private
20 sale, if authorized by the circuit court; and (B) may sue and
21 defend in his or her own name as receiver of the corporation in
22 all circuit courts of this state; and

23 (2) The custodian may exercise all of the powers of the
24 corporation, through or in place of its board of directors, to the
25 extent necessary to manage the affairs of the corporation in the
26 best interests of its shareholders and creditors.

27 (d) The circuit court during a receivership may redesignate
28 the receiver a custodian, and during a custodianship may
29 redesignate the custodian a receiver, if doing it is in the best
30 interests of the corporation, its shareholders and creditors.

31 (e) The court, from time to time, during the receivership or
32 custodianship may order compensation paid and expense
33 disbursements or reimbursements made to the receiver or

34 custodian and his or her counsel from the assets of the corpora-
35 tion or proceeds from the sale of the assets.

§31D-14-1433. Decree of dissolution.

1 (a) If after a hearing the circuit court determines that one or
2 more grounds for judicial dissolution described in section one
3 thousand four hundred thirty of this article exist, it may enter a
4 decree dissolving the corporation and specifying the effective
5 date of the dissolution and the clerk of the circuit court shall
6 deliver a certified copy of the decree to the secretary of state,
7 who shall file it.

8 (b) After entering the decree of dissolution, the circuit court
9 shall direct the winding-up and liquidation of the corporation's
10 business and affairs in accordance with section one thousand
11 four hundred five of this article and the notification of claim-
12 ants in accordance with sections one thousand four hundred six
13 and one thousand four hundred seven of this article.

§31D-14-1434. Election to purchase in lieu of dissolution.

1 (a) In a proceeding under subdivision (2), section one
2 thousand four hundred thirty of this article to dissolve a
3 corporation that has no shares listed on a national securities
4 exchange or regularly traded in a market maintained by one or
5 more members of a national or affiliated securities association,
6 the corporation may elect, or if it fails to elect, one or more
7 shareholders may elect, to purchase all shares owned by the
8 petitioning shareholder at the fair value of the shares. An
9 election pursuant to this section is irrevocable unless the court
10 determines that it is equitable to set aside or modify the
11 election.

12 (b) An election to purchase pursuant to this section may be
13 filed with the court at any time within ninety days after the
14 filing of the petition under subdivision (2), section one thousand

15 four hundred thirty of this article or at a later time as the court
16 in its discretion may allow. If the election to purchase is filed
17 by one or more shareholders, the corporation shall, within ten
18 days after the filing, give written notice to all shareholders other
19 than the petitioner. The notice must state the name and number
20 of shares owned by the petitioner and the name and number of
21 shares owned by each electing shareholder and must advise the
22 recipients of their right to join in the election to purchase shares
23 in accordance with this section. Shareholders who wish to
24 participate must file notice of their intention to join in the
25 purchase no later than thirty days after the effective date of the
26 notice to them. All shareholders who have filed an election or
27 notice of their intention to participate in the election to purchase
28 become parties to the proceeding and shall participate in the
29 purchase in proportion to their ownership of shares as of the
30 date the first election was filed, unless they otherwise agree or
31 the court otherwise directs. After an election has been filed by
32 the corporation or one or more shareholders, the proceeding
33 under subdivision (2), section one thousand four hundred thirty
34 of this article may not be discontinued or settled, nor may the
35 petitioning shareholder sell or otherwise dispose of his or her
36 shares, unless the court determines that it would be equitable to
37 the corporation and the shareholders, other than the petitioner,
38 to permit the discontinuance, settlement, sale or other disposi-
39 tion.

40 (c) If, within sixty days of the filing of the first election, the
41 parties reach agreement as to the fair value and terms of
42 purchase of the petitioner's shares, the court shall enter an order
43 directing the purchase of petitioner's shares upon the terms and
44 conditions agreed to by the parties.

45 (d) If the parties are unable to reach an agreement as
46 provided for in subsection (c) of this section, the court, upon
47 application of any party, shall stay the proceedings entered
48 pursuant to subdivision (2), section one thousand four hundred

49 thirty of this article and determine the fair value of the peti-
50 tioner's shares as of the day before the date on which the
51 petition under subdivision (2), section one thousand four
52 hundred thirty of this article was filed or as of another date as
53 the court deems appropriate under the circumstances.

54 (e) Upon determining the fair value of the shares, the court
55 shall enter an order directing the purchase upon terms and
56 conditions as the court deems appropriate, which may include
57 payment of the purchase price in installments, where necessary
58 in the interests of equity; provision for security to assure
59 payment of the purchase price and any additional costs, fees
60 and expenses as may have been awarded; and, if the shares are
61 to be purchased by shareholders, the allocation of shares among
62 them. In allocating petitioner's shares among holders of
63 different classes of shares, the court should attempt to preserve
64 the existing distribution of voting rights among holders of
65 different classes insofar as practicable and may direct that
66 holders of a specific class or classes may not participate in the
67 purchase. Interest may be allowed at the rate and from the date
68 determined by the court to be equitable, but if the court finds
69 that the refusal of the petitioning shareholder to accept an offer
70 of payment was arbitrary or otherwise not in good faith, no
71 interest may be allowed. If the court finds that the petitioning
72 shareholder had probable grounds for relief under paragraph (B)
73 or (D), subdivision (2), section one thousand four hundred
74 thirty of this article, it may award to the petitioning shareholder
75 reasonable fees and expenses of counsel and of any experts
76 employed by him or her.

77 (f) Upon entry of an order under subsection (c) or (e) of this
78 section, the court shall dismiss the petition to dissolve the
79 corporation under section one thousand four hundred thirty of
80 this article and the petitioning shareholder no longer has any
81 rights or status as a shareholder of the corporation, except the
82 right to receive the amounts awarded to him or her by the order

83 of the court which is enforceable in the same manner as any
84 other judgment.

85 (g) The purchase ordered pursuant to subsection (e) of this
86 section must be made within ten days after the date the order
87 becomes final unless before that time the corporation files with
88 the court a notice of its intention to adopt articles of dissolution
89 pursuant to sections one thousand four hundred two and one
90 thousand four hundred three of this article, which articles must
91 then be adopted and filed within fifty days. Upon filing of
92 articles of dissolution, the corporation is to be dissolved in
93 accordance with the provisions of sections one thousand four
94 hundred five, one thousand four hundred six and one thousand
95 four hundred seven of this article and the order entered pursuant
96 to subsection (e) of this section no longer has any force or
97 effect, except that the court may award the petitioning share-
98 holder reasonable fees and expenses in accordance with the
99 provisions of subsection (e) of this section and the petitioner
100 may continue to pursue any claims previously asserted on
101 behalf of the corporation.

102 (h) Any payment by the corporation pursuant to an order
103 under subsection (c) or (e) of this section, other than an award
104 of fees and expenses pursuant to subsection (e) of this section,
105 is subject to the provisions of section six hundred forty, article
106 six of this chapter.

PART 4. MISCELLANEOUS.

§31D-14-1440. Deposit with state treasurer.

1 Assets of a dissolved corporation that should be transferred
2 to a creditor, claimant or shareholder of the corporation who
3 cannot be found or who is not competent to receive them are to
4 be reduced to cash and deposited with the state treasurer or
5 other appropriate state official for safekeeping. When the
6 creditor, claimant or shareholder furnishes satisfactory proof of

7 entitlement to the amount deposited, the state treasurer or other
8 appropriate state official shall pay him or her or his or her
9 representative that amount.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1501. Authority to transact business and jurisdiction over foreign corporations.

§31D-15-1502. Consequences of transacting business without authority.

§31D-15-1503. Application for certificate of authority.

§31D-15-1504. Amended certificate of authority.

§31D-15-1505. Effect of certificate of authority.

§31D-15-1506. Corporate name of foreign corporation.

§31D-15-1507. Registered office and registered agent of foreign corporation.

§31D-15-1508. Change of registered office or registered agent of foreign corporation.

§31D-15-1509. Resignation of registered agent of foreign corporation.

§31D-15-1510. Service on foreign corporation.

§31D-15-1520. Withdrawal of foreign corporation.

§31D-15-1530. Grounds for revocation.

§31D-15-1531. Procedure for and effect of revocation.

§31D-15-1532. Appeal from revocation.

PART 1. CERTIFICATE OF AUTHORITY.

§31D-15-1501. Authority to transact business and jurisdiction over foreign corporations.

1 (a) A foreign corporation may not transact business in this
2 state until it obtains a certificate of authority from the secretary
3 of state.

4 (b) The following activities, among others, do not constitute
5 conducting affairs within the meaning of subsection (a) of this
6 section:

7 (1) Maintaining, defending or settling any proceeding;

8 (2) Holding meetings of the board of directors or sharehold-
9 ers or carrying on other activities concerning internal corporate
10 affairs;

11 (3) Maintaining bank accounts;

12 (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or
14 through employees or agents or otherwise, if the orders require
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages and
17 security interests in real or personal property;

18 (7) Securing or collecting debts or enforcing mortgages and
19 security interests in property securing the debts;

20 (8) Owning, without more, real or personal property;

21 (9) Conducting an isolated transaction that is completed
22 within thirty days and that is not one in the course of repeated
23 transactions of a like nature;

24 (10) Conducting affairs in interstate commerce;

25 (11) Granting funds or other gifts;

26 (12) Distributing information to its shareholders or mem-
27 bers;

28 (13) Effecting sales through independent contractors;

29 (14) The acquisition by purchase of lands secured by
30 mortgage or deeds;

31 (15) Physical inspection and appraisal of property in West
32 Virginia as security for deeds of trust, or mortgages and

33 negotiations for the purchase of loans secured by property in
34 West Virginia; and

35 (16) The management, rental, maintenance and sale or the
36 operating, maintaining, renting or otherwise dealing with
37 selling or disposing of property acquired under foreclosure sale
38 or by agreement in lieu of foreclosure sale.

39 (c) The list of activities in subsection (b) of this section is
40 not exhaustive.

41 (d) A foreign corporation is deemed to be transacting
42 business in this state if:

43 (1) The corporation makes a contract to be performed, in
44 whole or in part, by any party thereto in this state;

45 (2) The corporation commits a tort, in whole or in part, in
46 this state; or

47 (3) The corporation manufactures, sells, offers for sale or
48 supplies any product in a defective condition and that product
49 causes injury to any person or property within this state
50 notwithstanding the fact that the corporation had no agents,
51 servants or employees or contacts within this state at the time
52 of the injury.

53 (e) A foreign corporation's making of a contract, the
54 committing of a manufacture or sale, offer of sale or supply of
55 defective product as described in subsection (d) of this section
56 is deemed to be the agreement of that foreign corporation that
57 any notice or process served upon, or accepted by, the secretary
58 of state in a proceeding against that foreign corporation arising
59 from, or growing out of, contract, tort or manufacture or sale,
60 offer of sale or supply of the defective product has the same
61 legal force and validity as process duly served on that corpora-
62 tion in this state.

§31D-15-1502. Consequences of transacting business without authority.

1 (a) A foreign corporation transacting business in this state
2 without a certificate of authority may not maintain a proceeding
3 in any circuit court in this state until it obtains a certificate of
4 authority.

5 (b) The successor to a foreign corporation that transacted
6 business in this state without a certificate of authority and the
7 assignee of a cause of action arising out of that business may
8 not maintain a proceeding based on that cause of action in any
9 circuit court in this state until the foreign corporation or its
10 successor obtains a certificate of authority.

11 (c) A circuit court may stay a proceeding commenced by a
12 foreign corporation, its successor or assignee until it determines
13 whether the foreign corporation or its successor requires a
14 certificate of authority. If it so determines, the circuit court may
15 further stay the proceeding until the foreign corporation or its
16 successor obtains the certificate.

17 (d) A foreign corporation which conducts affairs or does or
18 transacts business in this state without a certificate of authority
19 is liable to this state for the years or parts of years during which
20 it conducted affairs or did or transacted business in this state
21 without a certificate of authority in an amount equal to all fees
22 and taxes which would have been imposed by this chapter, or
23 by any other provision of this code, upon the corporation had it
24 duly applied for and received a certificate of authority to
25 conduct affairs or do or transact business in this state as
26 required by this article and had filed all reports, statements or
27 returns required by this chapter or by any other chapter of this
28 code, plus all penalties imposed for failure to pay any fees and
29 taxes.

30 (e) Notwithstanding subsections (a) and (b) of this section,
31 the failure of a foreign corporation to obtain a certificate of
32 authority does not impair the validity of its corporate acts or
33 prevent it from defending any proceeding in this state.

§31D-15-1503. Application for certificate of authority.

1 (a) A foreign corporation may apply for a certificate of
2 authority to transact business in this state by delivering an
3 application to the secretary of state for filing. The application
4 must set forth:

5 (1) The name of the foreign corporation or, if its name is
6 unavailable for use in this state, a corporate name that satisfies
7 the requirements of section one thousand five hundred six of
8 this article;

9 (2) The name of the state or country under whose law it is
10 incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The mailing address of its principal office;

13 (5) The address of its registered office in this state, if any,
14 and the name of its registered agent at that office, if any;

15 (6) The names and usual business addresses of its current
16 directors and officers; and

17 (7) Purpose or purposes for transaction of business in West
18 Virginia.

19 (b) The foreign corporation shall deliver with the completed
20 application a certificate of existence, or a document of similar
21 import, duly authenticated by the secretary of state or other
22 official having custody of corporate records in the state or
23 country under whose law it is incorporated.

§31D-15-1504. Amended certificate of authority.

1 (a) A foreign corporation authorized to transact business in
2 this state must obtain an amended certificate of authority from
3 the secretary of state if it changes:

4 (1) Its corporate name;

5 (2) The period of its duration; or

6 (3) The state or country of its incorporation.

7 (b) The requirements of section one thousand five hundred
8 three of this article for obtaining an original certificate of
9 authority apply to obtaining an amended certificate under this
10 section.

§31D-15-1505. Effect of certificate of authority.

1 (a) A certificate of authority authorizes the foreign corpora-
2 tion to which it is issued to transact business in this state subject
3 to the right of the state to revoke the certificate as provided in
4 this chapter.

5 (b) A foreign corporation with a valid certificate of author-
6 ity has the same rights and has the same privileges as, and
7 except as otherwise provided by this chapter is subject to the
8 same duties, restrictions, penalties and liabilities as, a domestic
9 corporation of like character.

10 (c) This chapter does not authorize this state to regulate the
11 organization or internal affairs of a foreign corporation autho-
12 rized to transact business in this state.

§31D-15-1506. Corporate name of foreign corporation.

1 (a) If the corporate name of a foreign corporation does not
2 satisfy the requirements of section four hundred one, article

3 four of this chapter, the foreign corporation to obtain or
4 maintain a certificate of authority to transact business in this
5 state:

6 (1) May add the word “corporation”, “incorporated”,
7 “company” or “limited” or the abbreviation “corp.”, “inc.”,
8 “co.” or “ltd.” to its corporate name for use in this state; or

9 (2) May use a fictitious name to transact business in this
10 state if its real name is unavailable and it delivers to the
11 secretary of state for filing a copy of the resolution of its board
12 of directors, certified by its secretary, adopting the fictitious
13 name.

14 (b) Except as authorized by subsections (c) and (d) of this
15 section, the corporate name, including a fictitious name, of a
16 foreign corporation must be distinguishable upon the records of
17 the secretary of state from:

18 (1) The corporate name of a corporation incorporated or
19 authorized to transact business in this state;

20 (2) A corporate name reserved or registered under section
21 four hundred three or four hundred four, article four of this
22 chapter;

23 (3) The fictitious name of another foreign corporation
24 authorized to transact business in this state;

25 (4) The corporate name of a nonprofit corporation incorpo-
26 rated or authorized to transact business in this state; and

27 (5) The name of any other entity whose name is carried in
28 the records of the secretary of state.

29 (c) A foreign corporation may apply to the secretary of state
30 for authorization to use in this state the name of another

31 corporation incorporated or authorized to transact business in
32 this state that is not distinguishable upon his or her records from
33 the name applied for. The secretary of state shall authorize use
34 of the name applied for if:

35 (1) The other corporation consents to the use in writing and
36 submits an undertaking in form satisfactory to the secretary of
37 state to change the name so that it is distinguishable upon the
38 records of the secretary of state from the name applied for; or

39 (2) The applicant delivers to the secretary of state a
40 certified copy of a final judgment of a circuit court of compe-
41 tent jurisdiction establishing the applicant's right to use the
42 name applied for in this state.

43 (d) A foreign corporation may use in this state the name,
44 including the fictitious name, of another domestic or foreign
45 corporation that is used in this state if the other corporation is
46 incorporated or authorized to transact business in this state and
47 the foreign corporation:

48 (1) Has merged with the other corporation;

49 (2) Has been formed by reorganization of the other corpora-
50 tion; or

51 (3) Has acquired all or substantially all of the assets,
52 including the corporate name, of the other corporation.

53 (e) If a foreign corporation authorized to transact business
54 in this state changes its corporate name to one that does not
55 satisfy the requirements of section four hundred one, article
56 four of this chapter, it may not transact business in this state
57 under the changed name until it adopts a name satisfying the
58 requirements of section four hundred one, article four of this
59 chapter and obtains an amended certificate of authority under
60 section one thousand five hundred four of this article.

§31D-15-1507. Registered office and registered agent of foreign corporation.

1 Each foreign corporation authorized to transact business in
2 this state may continuously maintain in this state:

3 (1) A registered office that may be the same as any of its
4 places of business; and

5 (2) A registered agent who may be:

6 (A) An individual who resides in this state and whose
7 business office is identical with the registered office;

8 (B) A domestic corporation or domestic nonprofit corpora-
9 tion whose business office is identical with the registered
10 office; or

11 (C) A foreign corporation or foreign nonprofit corporation
12 authorized to transact business in this state whose business
13 office is identical with the registered office.

§31D-15-1508. Change of registered office or registered agent of foreign corporation.

1 (a) A foreign corporation authorized to transact business in
2 this state may change its registered office or registered agent by
3 delivering to the secretary of state for filing a statement of
4 change that sets forth:

5 (1) Its name;

6 (2) The mailing address of its current registered office;

7 (3) If the current registered office is to be changed, the
8 mailing address of its new registered office;

9 (4) The name of its current registered agent;

10 (5) If the current registered agent is to be changed, the
11 name of its new registered agent and the new agent's written
12 consent, either on the statement or attached to it, to the appoint-
13 ment; and

14 (6) That after the change or changes are made, the mailing
15 addresses of its registered office and the business office of its
16 registered agent will be identical.

17 (b) If a registered agent changes the mailing address of his
18 or her business office, he or she may change the mailing
19 address of the registered office of any foreign corporation for
20 which he or she is the registered agent by notifying the corpora-
21 tion in writing of the change and signing, either manually or in
22 facsimile, and delivering to the secretary of state for filing a
23 statement of change that complies with the requirements of
24 subsection (a) of this section and recites that the corporation has
25 been notified of the change.

**§31D-15-1509. Resignation of registered agent of foreign corpora-
tion.**

1 (a) The registered agent of a foreign corporation may resign
2 his or her agency appointment by signing and delivering to the
3 secretary of state for filing the original and two exact or
4 conformed copies of a statement of resignation. The statement
5 of resignation may include a statement that the registered office
6 is also discontinued.

7 (b) After filing the statement, the secretary of state shall
8 attach the filing receipt to one copy and mail the copy and
9 receipt to the registered office if not discontinued. The secretary
10 of state shall mail the other copy to the foreign corporation at
11 its principal office address shown in its most recent return
12 required pursuant to section three, article twelve-c, chapter
13 eleven of this code.

14 (c) The agency appointment is terminated, and the regis-
15 tered office discontinued if provided in the statement of
16 registration, on the thirty-first day after the date on which the
17 statement was filed.

§31D-15-1510. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation authorized
2 to transact business in this state is the corporation's agent for
3 service of process, notice or demand required or permitted by
4 law to be served on the foreign corporation.

5 (b) A foreign corporation may be served by registered or
6 certified mail, return receipt requested, addressed to the
7 secretary of the foreign corporation at its principal office shown
8 in its application for a certificate of authority or in its most
9 recent return required pursuant to section three, article twelve-c,
10 chapter eleven of this code if the foreign corporation:

11 (1) Has no registered agent or its registered agent cannot
12 with reasonable diligence be served;

13 (2) Has withdrawn from transacting business in this state
14 under section one thousand five hundred twenty of this article;
15 or

16 (3) Has had its certificate of authority revoked under
17 section one thousand five hundred thirty-one of this article.

18 (c) Service is perfected under subsection (b) of this section
19 at the earliest of:

20 (1) The date the foreign corporation receives the mail;

21 (2) The date shown on the return receipt, if signed on behalf
22 of the foreign corporation; or

23 (3) Five days after its deposit in the United States mail, as
24 evidenced by the postmark, if mailed postpaid and correctly
25 addressed.

26 (d) In addition to the methods of service on a foreign
27 corporation provided in subsections (a) and (b) of this section,
28 the secretary of state is hereby constituted the attorney-in-fact
29 for and on behalf of each foreign corporation authorized to do
30 or transact business in this state pursuant to the provisions of
31 this chapter. The secretary of state has the authority to accept
32 service of notice and process on behalf of each corporation and
33 is an agent of the corporation upon whom service of notice and
34 process may be made in this state for and upon each corpora-
35 tion. No act of a corporation appointing the secretary of state as
36 attorney-in-fact is necessary. Service of any process, notice or
37 demand on the secretary of state may be made by delivering to
38 and leaving with the secretary of state the original process,
39 notice or demand and two copies of the process, notice or
40 demand for each defendant, along with the fee required by
41 section two, article one, chapter fifty-nine of this code. Immedi-
42 ately after being served with or accepting any process or notice,
43 the secretary of state shall: (1) File in his or her office a copy of
44 the process or notice, endorsed as of the time of service or
45 acceptance; and (2) transmit one copy of the process or notice
46 by registered or certified mail, return receipt requested, to: (A)
47 The foreign corporation's registered agent; or (B) if there is no
48 registered agent, to the individual whose name and address was
49 last given to the secretary of state's office as the person to
50 whom notice and process are to be sent and if no person has
51 been named, to the principal office of the foreign corporation as
52 that address was last given to the secretary of state's office.
53 Service or acceptance of process or notice is sufficient if return
54 receipt is signed by an agent or employee of the corporation, or
55 the registered or certified mail sent by the secretary of state is
56 refused by the addressee and the registered or certified mail is
57 returned to the secretary of state, or to his or her office, showing

58 the stamp of the United States postal service that delivery has
59 been refused, and the return receipt or registered or certified
60 mail is appended to the original process or notice and filed in
61 the clerk's office of the court from which the process or notice
62 was issued. No process or notice may be served on the secretary
63 of state or accepted by him or her less than ten days before the
64 return day of the process or notice. The court may order
65 continuances as may be reasonable to afford each defendant
66 opportunity to defend the action or proceedings.

67 (e) Any foreign corporation doing or transacting business
68 in this state without having been authorized to do so pursuant
69 to the provisions of this chapter is conclusively presumed to
70 have appointed the secretary of state as its attorney-in-fact with
71 authority to accept service of notice and process on behalf of
72 the corporation and upon whom service of notice and process
73 may be made in this state for and upon the corporation in any
74 action or proceeding arising from activities described in section
75 one thousand five hundred one of this article. No act of a
76 corporation appointing the secretary of state as its attorney-in-
77 fact is necessary. Immediately after being served with or
78 accepting any process or notice, of which process or notice two
79 copies for each defendant are to be furnished to the secretary of
80 state with the original notice or process, together with the fee
81 required by section two, article one, chapter fifty-nine of this
82 code, the secretary of state shall file in his or her office a copy
83 of the process or notice, with a note endorsed of the time of
84 service or acceptance, and transmit one copy of the process or
85 notice by registered or certified mail, return receipt requested,
86 to the corporation at the address of its principal office, which
87 address shall be stated in the process or notice. The service or
88 acceptance of process or notice is sufficient if the return receipt
89 is signed by an agent or employee of the corporation, or the
90 registered or certified mail sent by the secretary of state is
91 refused by the addressee and the registered or certified mail is
92 returned to the secretary of state, or to his or her office, showing

93 thereon the stamp of the United States postal service that
94 delivery thereof has been refused and the return receipt or
95 registered or certified mail is appended to the original process
96 or notice and filed therewith in the clerk's office of the court
97 from which the process or notice was issued. No process or
98 notice may be served on the secretary of state or accepted by
99 him or her less than ten days before the return date thereof. The
100 court may order continuances as may be reasonable to afford
101 each defendant opportunity to defend the action or proceedings.

102 (f) This section does not prescribe the only means, or
103 necessarily the required means, of serving a foreign corpora-
104 tion.

PART 2. WITHDRAWAL.

§31D-15-1520. Withdrawal of foreign corporation.

1 (a) A foreign corporation authorized to transact business in
2 this state may not withdraw from this state until it obtains a
3 certificate of withdrawal from the secretary of state.

4 (b) A foreign corporation authorized to transact business in
5 this state may apply for a certificate of withdrawal by deliver-
6 ing an application to the secretary of state for filing. The
7 application must set forth:

8 (1) The name of the foreign corporation and the name of the
9 state or country under whose law it is incorporated;

10 (2) That it is not transacting business in this state and that
11 it surrenders its authority to transact business in this state;

12 (3) That it revokes the authority of its registered agent to
13 accept service on its behalf and appoints the secretary of state
14 as its agent for service of process in any proceeding based on a

15 cause of action arising during the time it was authorized to
16 transact business in this state;

17 (4) A mailing address to which the secretary of state may
18 mail a copy of any process served on him or her under subdivi-
19 sion (3) of this subsection; and

20 (5) A commitment to notify the secretary of state in the
21 future of any change in its mailing address.

22 (c) After the withdrawal of the corporation is effective,
23 service of process on the secretary of state under this section is
24 service on the foreign corporation. Upon receipt of process, the
25 secretary of state shall mail a copy of the process to the foreign
26 corporation at the mailing address set forth under subsection (b)
27 of this section.

28 (d) The secretary of state shall withhold the issuance of any
29 certificate of withdrawal until the receipt by the secretary of
30 state of a notice from the tax commissioner and bureau of
31 employment programs to the effect that all taxes due from the
32 corporation under the provisions of chapter eleven of this code,
33 including, but not limited to, taxes withheld under the provi-
34 sions of section seventy-one, article twenty-one, chapter eleven
35 of this code, all business and occupation taxes, motor carrier
36 and transportation privilege taxes, gasoline taxes, consumer
37 sales taxes and any and all license franchise or other excise
38 taxes and corporate net income taxes, and employment security
39 payments levied or assessed against the corporation seeking to
40 dissolve have been paid or that payment has been provided for,
41 or until the secretary of state received a notice from the tax
42 commissioner or bureau of employment programs, as the case
43 may be, stating that the corporation in question is not subject to
44 payment of any taxes or to the making of any employment
45 security payment, security payments or assessments.

PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31D-15-1530. Grounds for revocation.

1 The secretary of state may commence a proceeding under
2 section one thousand five hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to transact business in this state if:

5 (1) The foreign corporation does not pay within sixty days
6 after they are due any franchise taxes or penalties imposed by
7 this chapter or other law;

8 (2) The foreign corporation does not inform the secretary of
9 state under section one thousand five hundred eight or one
10 thousand five hundred nine of this article that its registered
11 agent or registered office has changed, that its registered agent
12 has resigned or that its registered office has been discontinued
13 within sixty days of the change, resignation or discontinuance;

14 (3) An incorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to
17 the secretary of state for filing; or

18 (4) The secretary of state receives a duly authenticated
19 certificate from the secretary of state or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger.

§31D-15-1531. Procedure for and effect of revocation.

1 (a) If the secretary of state determines that one or more
2 grounds exist under section one thousand five hundred thirty of
3 this article for revocation of a certificate of authority, he or she
4 shall serve the foreign corporation with written notice of his or
5 her determination pursuant to section one thousand five
6 hundred ten of this article.

7 (b) If the foreign corporation does not correct each ground
8 for revocation or demonstrate to the reasonable satisfaction of
9 the secretary of state that each ground determined by the
10 secretary of state does not exist within sixty days after service
11 of the notice is perfected pursuant to section one thousand five
12 hundred ten of this article, the secretary of state may revoke the
13 foreign corporation's certificate of authority by signing a
14 certificate of revocation that recites the ground or grounds for
15 revocation and its effective date. The secretary of state shall file
16 the original of the certificate and serve a copy on the foreign
17 corporation pursuant to section one thousand five hundred ten
18 of this article.

19 (c) The authority of a foreign corporation to transact
20 business in this state ceases on the date shown on the certificate
21 revoking its certificate of authority.

22 (d) The secretary of state's revocation of a foreign corpora-
23 tion's certificate of authority appoints the secretary of state the
24 foreign corporation's agent for service of process in any
25 proceeding based on a cause of action which arose during the
26 time the foreign corporation was authorized to transact business
27 in this state. Service of process on the secretary of state under
28 this subsection is service on the foreign corporation. Upon
29 receipt of process, the secretary of state shall mail a copy of the
30 process to the secretary of the foreign corporation at its princi-
31 pal office shown in its most recent return required pursuant to
32 section three, article twelve-c, chapter eleven of this code or in
33 any subsequent communication received from the corporation
34 stating the current mailing address of its principal office or, if
35 none are on file, in its application for a certificate of authority.

36 (e) Revocation of a foreign corporation's certificate of
37 authority does not terminate the authority of the registered
38 agent of the corporation.

§31D-15-1532. Appeal from revocation.

1 (a) A foreign corporation may appeal the secretary of
2 state's revocation of its certificate of authority to the circuit
3 court within thirty days after service of the certificate of
4 revocation is perfected pursuant to section one thousand five
5 hundred ten of this article. The foreign corporation appeals by
6 petitioning the circuit court to set aside the revocation and
7 attaching to the petition copies of its certificate of authority and
8 the secretary of state's certificate of revocation.

9 (b) The circuit court may summarily order the secretary of
10 state to reinstate the certificate of authority or may take any
11 other action the circuit court considers appropriate.

12 (c) The circuit court's final decision may be appealed as in
13 other civil proceedings.

ARTICLE 16. RECORDS AND REPORTS.

§31D-16-1601. Corporate records.

§31D-16-1602. Inspection of records by shareholders.

§31D-16-1603. Scope of inspection right.

§31D-16-1604. Court-ordered inspection.

§31D-16-1605. Inspection of records by directors.

§31D-16-1606. Exception to notice requirement.

§31D-16-1620. Financial statements for shareholders.

PART 1. RECORDS.**§31D-16-1601. Corporate records.**

1 (a) A corporation shall keep as permanent records minutes
2 of all meetings of its shareholders and board of directors, a
3 record of all actions taken by the shareholders or board of
4 directors without a meeting and a record of all actions taken by
5 a committee of the board of directors in place of the board of
6 directors on behalf of the corporation.

7 (b) A corporation shall maintain appropriate accounting
8 records.

9 (c) A corporation or its agent shall maintain a record of its
10 shareholders, in a form that permits preparation of a list of the
11 names and addresses of all shareholders, in alphabetical order
12 by class of shares showing the number and class of shares held
13 by each.

14 (d) A corporation shall maintain its records in written form
15 or in another form capable of conversion into written form
16 within a reasonable time.

17 (e) A corporation shall keep a copy of the following records
18 at its principal office:

19 (1) Its articles or restated articles of incorporation and all
20 amendments to them currently in effect;

21 (2) Its bylaws or restated bylaws and all amendments to
22 them currently in effect;

23 (3) Resolutions adopted by its board of directors creating
24 one or more classes or series of shares and fixing their relative
25 rights, preferences and limitations if shares issued pursuant to
26 those resolutions are outstanding;

27 (4) The minutes of all shareholders' meetings, and records
28 of all action taken by shareholders without a meeting, for the
29 past three years;

30 (5) All written communications to shareholders generally
31 within the past three years, including the financial statements
32 furnished for the past three years under section one thousand six
33 hundred twenty of this article; and

34 (6) A list of the names and business addresses of its current
35 directors and officers.

§31D-16-1602. Inspection of records by shareholders.

1 (a) A shareholder of a corporation is entitled to inspect,
2 during regular business hours at the corporation's principal
3 office, any of the records of the corporation described in
4 subsection (e), section one thousand six hundred one of this
5 article if he or she gives the corporation written notice of his or
6 her demand at least five business days before the date on which
7 he or she wishes to inspect.

8 (b) A shareholder of a corporation is entitled to inspect,
9 during regular business hours at a reasonable location specified
10 by the corporation, any of the following records of the corpora-
11 tion if the shareholder meets the requirements of subsection (c)
12 of this section and gives the corporation written notice of his or
13 her demand at least five business days before the date on which
14 he or she wishes to inspect and copy:

15 (1) Excerpts from minutes of any meeting of the board of
16 directors, records of any action of a committee of the board of
17 directors while acting in place of the board of directors on
18 behalf of the corporation, minutes of any meeting of the
19 shareholders and records of action taken by the shareholders or
20 board of directors without a meeting, to the extent not subject
21 to inspection under subsection (a), section one thousand six
22 hundred two of this article;

23 (2) Accounting records of the corporation; and

24 (3) The record of shareholders.

25 (c) A shareholder may inspect and copy the records
26 described in subsection (b) of this section only if:

27 (1) His or her demand is made in good faith and for a
28 proper purpose;

29 (2) He or she describes with reasonable particularity his or
30 her purpose and the records he or she desires to inspect; and

31 (3) The records are directly connected with his or her
32 purpose.

33 (d) The right of inspection granted by this section may not
34 be abolished or limited by a corporation's articles of incorpora-
35 tion or bylaws.

36 (e) This section does not affect:

37 (1) The right of a shareholder to inspect records under
38 section seven hundred twenty, article seven of this chapter or,
39 if the shareholder is in litigation with the corporation, to the
40 same extent as any other litigant; or

41 (2) The power of a circuit court, independently of this
42 chapter, to compel the production of corporate records for
43 examination.

44 (f) For purposes of this section, "shareholder" includes a
45 beneficial owner whose shares are held in a voting trust or by
46 a nominee on his or her behalf.

§31D-16-1603. Scope of inspection right.

1 (a) A shareholder's agent or attorney has the same inspec-
2 tion and copying rights as the shareholder represented.

3 (b) The right to copy records under section one thousand six
4 hundred two of this article includes, if reasonable, the right to
5 receive copies by xerographic or other means, including copies
6 through an electronic transmission if available and requested by
7 the shareholder.

8 (c) The corporation may comply at its expense with a
9 shareholder's demand to inspect the record of shareholders
10 under subdivision (3), subsection (b), section one thousand six
11 hundred two of this article by providing the shareholder with a
12 list of shareholders that was compiled no earlier than the date
13 of the shareholder's demand.

14 (d) The corporation may impose a reasonable charge,
15 covering the costs of labor and material, for copies of any
16 documents provided to the shareholder. The charge may not
17 exceed the estimated cost of production, reproduction or
18 transmission of the records.

§31D-16-1604. Court-ordered inspection.

1 (a) If a corporation does not allow a shareholder who
2 complies with subsection (a), section one thousand six hundred
3 two of this article to inspect and copy any records required by
4 that subsection to be available for inspection, the circuit court
5 may summarily order inspection and copying of the records
6 demanded at the corporation's expense upon application of the
7 shareholder.

8 (b) If a corporation does not within a reasonable time allow
9 a shareholder to inspect and copy any other record, the share-
10 holder who complies with subsections (b) and (c), section one
11 thousand six hundred two of this article may apply to the circuit
12 court for an order to permit inspection and copying of the
13 records demanded. The circuit court shall dispose of an
14 application under this subsection on an expedited basis.

15 (c) If the circuit court orders inspection and copying of the
16 records demanded, it shall also order the corporation to pay the
17 shareholder's costs, including reasonable counsel fees, incurred
18 to obtain the order unless the corporation proves that it refused
19 inspection in good faith because it had a reasonable basis for

20 doubt about the right of the shareholder to inspect the records
21 demanded.

22 (d) If the circuit court orders inspection and copying of the
23 records demanded, it may impose reasonable restrictions on the
24 use or distribution of the records by the demanding shareholder.

§31D-16-1605. Inspection of records by directors.

1 (a) A director of a corporation is entitled to inspect and
2 copy the books, records and documents of the corporation at
3 any reasonable time to the extent reasonably related to the
4 performance of the director's duties as a director, including
5 duties as a member of a committee, but not for any other
6 purpose or in any manner that would violate any duty to the
7 corporation.

8 (b) The circuit court may order inspection and copying of
9 the books, records and documents at the corporation's expense,
10 upon application of a director who has been refused inspection
11 rights, unless the corporation establishes that the director is not
12 entitled to inspection rights. The circuit court shall dispose of
13 an application under this subsection on an expedited basis.

14 (c) If an order is issued, the circuit court may include
15 provisions protecting the corporation from undue burden or
16 expense and prohibiting the director from using information
17 obtained upon exercise of the inspection rights in a manner that
18 would violate a duty to the corporation and may also order the
19 corporation to reimburse the director for the director's costs,
20 including reasonable counsel fees, incurred in connection with
21 the application.

§31D-16-1606. Exception to notice requirement.

1 (a) Whenever notice is required to be given under any
2 provision of this chapter to any shareholder, notice may not be
3 required to be given if:

4 (1) Notice of two consecutive annual meetings and all
5 notices of meetings during the period between two consecutive
6 annual meetings have been sent to the shareholder at the
7 shareholder's address as shown on the records of the corpora-
8 tion and have been returned undeliverable; or

9 (2) All, but not less than two, payments of dividends on
10 securities during a twelve-month period, or two consecutive
11 payments of dividends on securities during a period of more
12 than twelve months, have been sent to the shareholder at the
13 shareholder's address as shown on the records of the corpora-
14 tion and have been returned undeliverable.

15 (b) If any shareholder delivers to the corporation a written
16 notice setting forth the shareholder's then-current address, the
17 requirement that notice be given to the shareholder is to be
18 reinstated.

PART 2. REPORTS.**§31D-16-1620. Financial statements for shareholders.**

1 (a) Unless unanimously waived by the shareholders, a
2 corporation shall furnish its shareholders annual financial
3 statements, which may be consolidated or combined statements
4 of the corporation and one or more of its subsidiaries, as
5 appropriate, that include a balance sheet as of the end of the
6 fiscal year, an income statement for that year and a statement of
7 changes in shareholders' equity for the year unless that infor-
8 mation appears elsewhere in the financial statements. If
9 financial statements are prepared for the corporation on the

10 basis of generally accepted accounting principles, the annual
11 financial statements must also be prepared on that basis.

12 (b) If the annual financial statements are reported upon by
13 a public accountant, his or her report must accompany them. If
14 not, the statements must be accompanied by a statement of the
15 president or the person responsible for the corporation's
16 accounting records:

17 (1) Stating his or her reasonable belief whether the state-
18 ments were prepared on the basis of generally accepted ac-
19 counting principles and, if not, describing the basis of prepara-
20 tion; and

21 (2) Describing any respects in which the statements were
22 not prepared on a basis of accounting consistent with the
23 statements prepared for the preceding year.

24 (c) A corporation shall mail the annual financial statements
25 to each shareholder within one hundred twenty days after the
26 close of each fiscal year. On written request from a shareholder
27 who was not mailed the statements, the corporation shall mail
28 him or her the latest financial statements.

ARTICLE 17. TRANSITION PROVISIONS.

§31D-17-1701. Application to existing domestic corporations.

§31D-17-1702. Application to qualified foreign corporations.

§31D-17-1703. Effective date.

§31D-17-1701. Application to existing domestic corporations.

1 This chapter applies to all domestic corporations in
2 existence on its effective date that were incorporated under any
3 general statute of this state providing for incorporation of
4 corporations for profit.

§31D-17-1702. Application to qualified foreign corporations.

1 A foreign corporation authorized to transact business in this
2 state on the effective date of this chapter is subject to this
3 chapter but is not required to obtain a new certificate of
4 authority to transact business under this chapter.

§31D-17-1703. Effective date.

1 This chapter takes effect the first day of October, two
2 thousand two.

CHAPTER 26

**(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 11, 2002; in effect August 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from consumers sales and service tax sales of food and tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under section 501(c)(3) or (4) of the United States Internal Revenue Code of 1986, as amended, during fund raising activities conducted after specified date, when the purpose of the fund raising activity is to obtain revenue for functions and activities of the department or squad and revenue so raised is exempt from federal income tax and actually expended for that purpose.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption
3 set forth in this subsection may, in lieu of paying the tax
4 imposed by this article and filing a claim for refund, execute a
5 certificate of exemption, in the form required by the tax
6 commissioner, and deliver it to the vendor of the property or
7 service, in the manner required by the tax commissioner.
8 However, the tax commissioner may, by rule, specify those
9 exemptions authorized in this subsection for which exemptions
10 certificates are not required. The following sales of tangible
11 personal property and services are exempt as provided in this
12 subsection:

13 (1) Sales of gas, steam and water delivered to consumers
14 through mains or pipes and sales of electricity;

15 (2) Sales of textbooks required to be used in any of the
16 schools of this state or in any institution in this state which
17 qualifies as a nonprofit or educational institution subject to the
18 West Virginia department of education and the arts, the board
19 of trustees of the university system of West Virginia or the
20 board of directors for colleges located in this state;

21 (3) Sales of property or services to this state, its institutions
22 or subdivisions, governmental units, institutions or subdivisions
23 of other states: *Provided*, That the law of the other state
24 provides the same exemption to governmental units or subdivi-
25 sions of this state and to the United States, including agencies

26 of federal, state or local governments for distribution in public
27 welfare or relief work;

28 (4) Sales of vehicles which are titled by the division of
29 motor vehicles and which are subject to the tax imposed by
30 section four, article three, chapter seventeen-a of this code or
31 like tax;

32 (5) Sales of property or services to churches which make no
33 charge whatsoever for the services they render: *Provided*, That
34 the exemption granted in this subdivision applies only to
35 services, equipment, supplies, food for meals and materials
36 directly used or consumed by these organizations and does not
37 apply to purchases of gasoline or special fuel;

38 (6) Sales of tangible personal property or services to a
39 corporation or organization which has a current registration
40 certificate issued under article twelve of this chapter, which is
41 exempt from federal income taxes under Section 501(c)(3) or
42 (c)(4) of the Internal Revenue Code of 1986, as amended, and
43 which is:

44 (A) A church or a convention or association of churches as
45 defined in Section 170 of the Internal Revenue Code of 1986,
46 as amended;

47 (B) An elementary or secondary school which maintains a
48 regular faculty and curriculum and has a regularly enrolled
49 body of pupils or students in attendance at the place in this state
50 where its educational activities are regularly carried on;

51 (C) A corporation or organization which annually receives
52 more than one half of its support from any combination of gifts,
53 grants, direct or indirect charitable contributions or membership
54 fees;

55 (D) An organization which has no paid employees and its
56 gross income from fund raisers, less reasonable and necessary
57 expenses incurred to raise the gross income (or the tangible
58 personal property or services purchased with the net income),
59 is donated to an organization which is exempt from income
60 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue
61 Code of 1986, as amended;

62 (E) A youth organization, such as the girl scouts of the
63 United States of America, the boy scouts of America or the
64 YMCA Indian guide/princess program and the local affiliates
65 thereof, which is organized and operated exclusively for
66 charitable purposes and has as its primary purpose the
67 nonsectarian character development and citizenship training of
68 its members;

69 (F) For purposes of this subsection:

70 (i) The term “support” includes, but is not limited to:

71 (I) Gifts, grants, contributions or membership fees;

72 (II) Gross receipts from fund raisers which include receipts
73 from admissions, sales of merchandise, performance of services
74 or furnishing of facilities in any activity which is not an
75 unrelated trade or business within the meaning of Section 513
76 of the Internal Revenue Code of 1986, as amended;

77 (III) Net income from unrelated business activities, whether
78 or not the activities are carried on regularly as a trade or
79 business;

80 (IV) Gross investment income as defined in Section 509(e)
81 of the Internal Revenue Code of 1986, as amended;

82 (V) Tax revenues levied for the benefit of a corporation or
83 organization either paid to or expended on behalf of the
84 organization; and

85 (VI) The value of services or facilities (exclusive of
86 services or facilities generally furnished to the public without
87 charge) furnished by a governmental unit referred to in Section
88 170(c)(1) of the Internal Revenue Code of 1986, as amended,
89 to an organization without charge. This term does not include
90 any gain from the sale or other disposition of property which
91 would be considered as gain from the sale or exchange of a
92 capital asset, or the value of an exemption from any federal,
93 state or local tax or any similar benefit;

94 (ii) The term “charitable contribution” means a contribution
95 or gift to or for the use of a corporation or organization,
96 described in Section 170(c)(2) of the Internal Revenue Code of
97 1986, as amended; and

98 (iii) The term “membership fee” does not include any
99 amounts paid for tangible personal property or specific services
100 rendered to members by the corporation or organization;

101 (G) The exemption allowed by this --subdivision does not
102 apply to sales of gasoline or special fuel or to sales of tangible
103 personal property or services to be used or consumed in the
104 generation of unrelated business income as defined in Section
105 513 of the Internal Revenue Code of 1986, as amended. The
106 provisions of this subdivision apply to sales made after the
107 thirtieth day of June, one thousand nine hundred eighty-nine:
108 *Provided*, That the exemption granted in this subdivision
109 applies only to services, equipment, supplies and materials used
110 or consumed in the activities for which the organizations
111 qualify as tax exempt organizations under the Internal Revenue
112 Code and does not apply to purchases of gasoline or special
113 fuel;

114 (7) An isolated transaction in which any taxable service or
115 any tangible personal property is sold, transferred, offered for
116 sale or delivered by the owner of the property or by his or her
117 representative for the owner's account, the sale, transfer, offer
118 for sale or delivery not being made in the ordinary course of
119 repeated and successive transactions of like character by the
120 owner or on his or her account by the representative: *Provided,*
121 That nothing contained in this subdivision may be construed to
122 prevent an owner who sells, transfers or offers for sale tangible
123 personal property in an isolated transaction through an auction-
124 eer from availing himself or herself of the exemption provided
125 in this subdivision, regardless of where the isolated sale takes
126 place. The tax commissioner may propose a legislative rule for
127 promulgation pursuant to article three, chapter twenty-nine-a of
128 this code which he or she considers necessary for the efficient
129 administration of this exemption;

130 (8) Sales of tangible personal property or of any taxable
131 services rendered for use or consumption in connection with the
132 commercial production of an agricultural product the ultimate
133 sale of which is subject to the tax imposed by this article or
134 which would have been subject to tax under this article:
135 *Provided,* That sales of tangible personal property and services
136 to be used or consumed in the construction of or permanent
137 improvement to real property and sales of gasoline and special
138 fuel are not exempt: *Provided, however,* That nails and fencing
139 may not be considered as improvements to real property;

140 (9) Sales of tangible personal property to a person for the
141 purpose of resale in the form of tangible personal property:
142 *Provided,* That sales of gasoline and special fuel by distributors
143 and importers is taxable except when the sale is to another
144 distributor for resale: *Provided, however,* That sales of building
145 materials or building supplies or other property to any person
146 engaging in the activity of contracting, as defined in this article,
147 which is to be installed in, affixed to or incorporated by that

148 person or his or her agent into any real property, building or
149 structure is not exempt under this subdivision;

150 (10) Sales of newspapers when delivered to consumers by
151 route carriers;

152 (11) Sales of drugs dispensed upon prescription and sales
153 of insulin to consumers for medical purposes;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a
161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services:

164 (A) For purposes of this subdivision, the term “casual and
165 occasional sales not conducted in a repeated manner or in the
166 ordinary course of repetitive and successive transactions of like
167 character” means sales of tangible personal property or services
168 at fund raisers sponsored by a corporation or organization
169 which is exempt, under subdivision (6) of this subsection, from
170 payment of the tax imposed by this article on its purchases,
171 when the fund raisers are of limited duration and are held no
172 more than six times during any twelve-month period and
173 “limited duration” means no more than eighty-four consecutive
174 hours; and

175 (B) The provisions of this subdivision apply to sales made
176 after the thirtieth day of June, one thousand nine hundred
177 eighty-nine;

178 (15) Sales of property or services to a school which has
179 approval from the board of trustees of the university system of
180 West Virginia or the board of directors of the state college
181 system to award degrees, which has its principal campus in this
182 state, and which is exempt from federal and state income taxes
183 under Section 501(c)(3) of the Internal Revenue Code of 1986,
184 as amended: *Provided*, That sales of gasoline and special fuel
185 are taxable;

186 (16) Sales of mobile homes to be used by purchasers as
187 their principal year-round residence and dwelling: *Provided*,
188 That these mobile homes are subject to tax at the three-percent
189 rate;

190 (17) Sales of lottery tickets and materials by licensed
191 lottery sales agents and lottery retailers authorized by the state
192 lottery commission, under the provisions of article twenty-two,
193 chapter twenty-nine of this code;

194 (18) Leases of motor vehicles titled pursuant to the provi-
195 sions of article three, chapter seventeen-a of this code to lessees
196 for a period of thirty or more consecutive days. This exemption
197 applies to leases executed on or after the first day of July, one
198 thousand nine hundred eighty-seven, and to payments under
199 long-term leases executed before that date for months of the
200 lease beginning on or after that date;

201 (19) Notwithstanding the provisions of section eighteen of
202 this article or any other provision of this article to the contrary,
203 sales of propane to consumers for poultry house heating
204 purposes, with any seller to the consumer who may have prior
205 paid the tax in his or her price, to not pass on the same to the
206 consumer, but to make application and receive refund of the tax
207 from the tax commissioner pursuant to rules which are promul-
208 gated after being proposed for legislative approval in accor-

209 dance with chapter twenty-nine-a of this code by the tax
210 commissioner;

211 (20) Any sales of tangible personal property or services
212 purchased after the thirtieth day of September, one thousand
213 nine hundred eighty-seven, and lawfully paid for with food
214 stamps pursuant to the federal food stamp program codified in
215 7 U.S.C. §2011 et seq., as amended, or with drafts issued
216 through the West Virginia special supplement food program for
217 women, infants and children codified in 42 U.S.C. §1786;

218 (21) Sales of tickets for activities sponsored by elementary
219 and secondary schools located within this state;

220 (22) Sales of electronic data processing services and related
221 software: *Provided*, That, for the purposes of this subdivision,
222 “electronic data processing services” means: (A) The process-
223 ing of another’s data, including all processes incident to
224 processing of data such as keypunching, keystroke verification,
225 rearranging or sorting of previously documented data for the
226 purpose of data entry or automatic processing and changing the
227 medium on which data is sorted, whether these processes are
228 done by the same person or several persons; and (B) providing
229 access to computer equipment for the purpose of processing
230 data or examining or acquiring data stored in or accessible to
231 the computer equipment;

232 (23) Tuition charged for attending educational summer
233 camps;

234 (24) Dispensing of services performed by one corporation,
235 partnership or limited liability company for another corpora-
236 tion, partnership or limited liability company when the entities
237 are members of the same controlled group or are related
238 taxpayers as defined in Section 267 of the Internal Revenue
239 Code. “Control” means ownership, directly or indirectly, of
240 stock, equity interests or membership interests possessing fifty

241 percent or more of the total combined voting power of all
242 classes of the stock of a corporation, equity interests of a
243 partnership or membership interests of a limited liability
244 company entitled to vote or ownership, directly or indirectly, of
245 stock, equity interests or membership interests possessing fifty
246 percent or more of the value of the corporation, partnership or
247 limited liability company;

248 (25) Food for the following are exempt:

249 (A) Food purchased or sold by a public or private school,
250 school-sponsored student organizations or school-sponsored
251 parent-teacher associations to students enrolled in the school or
252 to employees of the school during normal school hours; but not
253 those sales of food made to the general public;

254 (B) Food purchased or sold by a public or private college or
255 university or by a student organization officially recognized by
256 the college or university to students enrolled at the college or
257 university when the sales are made on a contract basis so that
258 a fixed price is paid for consumption of food products for a
259 specific period of time without respect to the amount of food
260 product actually consumed by the particular individual contract-
261 ing for the sale and no money is paid at the time the food
262 product is served or consumed;

263 (C) Food purchased or sold by a charitable or private
264 nonprofit organization, a nonprofit organization or a govern-
265 mental agency under a program to provide food to low-income
266 persons at or below cost;

267 (D) Food sold by a charitable or private nonprofit organiza-
268 tion, a nonprofit organization or a governmental agency under
269 a program operating in West Virginia for a minimum of five
270 years to provide food at or below cost to individuals who
271 perform a minimum of two hours of community service for
272 each unit of food purchased from the organization;

273 (E) Food sold in an occasional sale by a charitable or
274 nonprofit organization, including volunteer fire departments
275 and rescue squads, if the purpose of the sale is to obtain revenue
276 for the functions and activities of the organization and the
277 revenue obtained is actually expended for that purpose;

278 (F) Food sold by any religious organization at a social or
279 other gathering conducted by it or under its auspices, if the
280 purpose in selling the food is to obtain revenue for the functions
281 and activities of the organization and the revenue obtained from
282 selling the food is actually used in carrying on those functions
283 and activities: *Provided*, That purchases made by the organiza-
284 tions are not exempt as a purchase for resale;

285 (G) Food sold after the thirty-first day of July, two thousand
286 two, by volunteer fire departments and rescue squads that are
287 exempt from federal income taxes under section 501(c)(3) or
288 (c)(4) of the Internal Revenue Code of 1986, as amended, when
289 the purpose of the sale is to obtain revenue for the functions and
290 activities of the organization and the revenue obtained is
291 exempt from federal income tax and actually expended for that
292 purpose;

293 (26) Sales of food by little leagues, midget football leagues,
294 youth football or soccer leagues, band boosters or other school
295 or athletic booster organizations supporting activities for grades
296 kindergarten through twelve and similar types of organizations,
297 including scouting groups and church youth groups, if the
298 purpose in selling the food is to obtain revenue for the functions
299 and activities of the organization and the revenues obtained
300 from selling the food is actually used in supporting or carrying
301 on functions and activities of the groups: *Provided*, That the
302 purchases made by the organizations are not exempt as a
303 purchase for resale;

304 (27) Charges for room and meals by fraternities and
305 sororities to their members: *Provided*, That the purchases made
306 by a fraternity or sorority are not exempt as a purchase for
307 resale;

308 (28) Sales of or charges for the transportation of passengers
309 in interstate commerce;

310 (29) Sales of tangible personal property or services to any
311 person which this state is prohibited from taxing under the laws
312 of the United States or under the constitution of this state;

313 (30) Sales of tangible personal property or services to any
314 person who claims exemption from the tax imposed by this
315 article or article fifteen-a of this chapter pursuant to the
316 provision of any other chapter of this code;

317 (31) Charges for the services of opening and closing a
318 burial lot;

319 (32) Sales of livestock, poultry or other farm products in
320 their original state by the producer of the livestock, poultry or
321 other farm products or a member of the producer's immediate
322 family who is not otherwise engaged in making retail sales of
323 tangible personal property; and sales of livestock sold at public
324 sales sponsored by breeders or registry associations or livestock
325 auction markets: *Provided*, That the exemptions allowed by this
326 subdivision apply to sales made on or after the first day of July,
327 one thousand nine hundred ninety, and may be claimed without
328 presenting or obtaining exemption certificates: *Provided*,
329 *however*, That the farmer shall maintain adequate records;

330 (33) Sales of motion picture films to motion picture
331 exhibitors for exhibition if the sale of tickets or the charge for
332 admission to the exhibition of the film is subject to the tax
333 imposed by this article and sales of coin-operated video arcade
334 machines or video arcade games to a person engaged in the

335 business of providing the machines to the public for a charge
336 upon which the tax imposed by this article is remitted to the tax
337 commissioner: *Provided*, That the exemption provided in this
338 subdivision applies to sales made on or after the first day of
339 July, one thousand nine hundred ninety, and may be claimed by
340 presenting to the seller a properly executed exemption certifi-
341 cate;

342 (34) Sales of aircraft repair, remodeling and maintenance
343 services when the services are to an aircraft operated by a
344 certified or licensed carrier of persons or property, or by a
345 governmental entity, or to an engine or other component part of
346 an aircraft operated by a certificated or licensed carrier of
347 persons or property, or by a governmental entity and sales of
348 tangible personal property that is permanently affixed or
349 permanently attached as a component part of an aircraft owned
350 or operated by a certificated or licensed carrier of persons or
351 property, or by a governmental entity, as part of the repair,
352 remodeling or maintenance service and sales of machinery,
353 tools or equipment, directly used or consumed exclusively in
354 the repair, remodeling or maintenance of aircraft, aircraft
355 engines or aircraft component parts, for a certificated or
356 licensed carrier of persons or property, or for a governmental
357 entity;

358 (35) Charges for memberships or services provided by
359 health and fitness organizations relating to personalized fitness
360 programs;

361 (36) Sales of services by individuals who baby-sit for a
362 profit: *Provided*, That the gross receipts of the individual from
363 the performance of baby-sitting services do not exceed five
364 thousand dollars in a taxable year;

365 (37) Sales of services after the thirtieth day of June, one
366 thousand nine hundred ninety-seven, by public libraries or by

367 libraries at academic institutions or by libraries at institutions
368 of higher learning;

369 (38) Commissions received after the thirtieth day of June,
370 one thousand nine hundred ninety-seven, by a manufacturer's
371 representative;

372 (39) Sales of primary opinion research services after the
373 thirtieth day of June, one thousand nine hundred ninety-seven,
374 when:

375 (A) The services are provided to an out-of-state client;

376 (B) The results of the service activities, including, but not
377 limited to, reports, lists of focus group recruits and compilation
378 of data are transferred to the client across state lines by mail,
379 wire or other means of interstate commerce, for use by the
380 client outside the state of West Virginia; and

381 (C) The transfer of the results of the service activities is an
382 indispensable part of the overall service.

383 For the purpose of this subdivision, the term "primary
384 opinion research" means original research in the form of
385 telephone surveys, mall intercept surveys, focus group research,
386 direct mail surveys, personal interviews and other data collec-
387 tion methods commonly used for quantitative and qualitative
388 opinion research studies;

389 (40) Sales of property or services after the thirtieth day of
390 June, one thousand nine hundred ninety-seven, to persons
391 within the state when those sales are for the purposes of the
392 production of value-added products: *Provided*, That the
393 exemption granted in this subdivision applies only to services,
394 equipment, supplies and materials directly used or consumed by
395 those persons engaged solely in the production of value-added
396 products: *Provided, however*, That this exemption may not be

397 claimed by any one purchaser for more than five consecutive
398 years, except as otherwise permitted in this section.

399 For the purpose of this subdivision, the term “value-added
400 product” means the following products derived from processing
401 a raw agricultural product, whether for human consumption or
402 for other use: For purposes of this subdivision, the following
403 enterprises qualify as processing raw agricultural products into
404 value-added products: Those engaged in the conversion of:

405 (A) Lumber into furniture, toys, collectibles and home
406 furnishings;

407 (B) Fruits into wine;

408 (C) Honey into wine;

409 (D) Wool into fabric;

410 (E) Raw hides into semifinished or finished leather prod-
411 ucts;

412 (F) Milk into cheese;

413 (G) Fruits or vegetables into a dried, canned or frozen
414 product;

415 (H) Feeder cattle into commonly accepted slaughter
416 weights;

417 (I) Aquatic animals into a dried, canned, cooked or frozen
418 product; and

419 (J) Poultry into a dried, canned, cooked or frozen product;

420 (41) After the thirtieth day of June, one thousand nine
421 hundred ninety-seven, sales of music instructional services by
422 a music teacher and artistic services or artistic performances of

423 an entertainer or performing artist pursuant to a contract with
424 the owner or operator of a retail establishment, restaurant, inn,
425 bar, tavern, sports or other entertainment facility or any other
426 business location in this state in which the public or a limited
427 portion of the public may assemble to hear or see musical
428 works or other artistic works be performed for the enjoyment of
429 the members of the public there assembled when the amount
430 paid by the owner or operator for the artistic service or artistic
431 performance does not exceed three thousand dollars: *Provided,*
432 That nothing contained herein may be construed to deprive
433 private social gatherings, weddings or other private parties from
434 asserting the exemption set forth in this subdivision. For the
435 purposes of this exemption, artistic performance or artistic
436 service means and is limited to the conscious use of creative
437 power, imagination and skill in the creation of aesthetic
438 experience for an audience present and in attendance and
439 includes, and is limited to, stage plays, musical performances,
440 poetry recitations and other readings, dance presentation,
441 circuses and similar presentations and does not include the
442 showing of any film or moving picture, gallery presentations of
443 sculptural or pictorial art, nude or strip show presentations,
444 video games, video arcades, carnival rides, radio or television
445 shows or any video or audio taped presentations or the sale or
446 leasing of video or audio tapes, airshows, or any other public
447 meeting, display or show other than those specified herein:
448 *Provided, however,* That nothing contained herein may be
449 construed to exempt the sales of tickets from the tax imposed in
450 this article. The state tax commissioner shall propose a legisla-
451 tive rule pursuant to article three, chapter twenty-nine-a of this
452 code establishing definitions and eligibility criteria for asserting
453 this exemption which is not inconsistent with the provisions set
454 forth herein: *Provided further,* That nude dancers or strippers
455 may not be considered as entertainers for the purposes of this
456 exemption;

457 (42) After the thirtieth day of June, one thousand nine
458 hundred ninety-seven, charges to a member by a membership
459 association or organization which is exempt from paying
460 federal income taxes under Section 501(c)(3) or (c)(6) of the
461 Internal Revenue Code of 1986, as amended, for membership
462 in the association or organization, including charges to mem-
463 bers for newsletters prepared by the association or organization
464 for distribution primarily to its members, charges to members
465 for continuing education seminars, workshops, conventions,
466 lectures or courses put on or sponsored by the association or
467 organization, including charges for related course materials
468 prepared by the association or organization or by the speaker or
469 speakers for use during the continuing education seminar,
470 workshop, convention, lecture or course, but not including any
471 separate charge or separately stated charge for meals, lodging,
472 entertainment or transportation taxable under this article:
473 *Provided*, That the association or organization pays the tax
474 imposed by this article on its purchases of meals, lodging,
475 entertainment or transportation taxable under this article for
476 which a separate or separately stated charge is not made. A
477 membership association or organization which is exempt from
478 paying federal income taxes under Section 501(c)(3) or (c)(6)
479 of the Internal Revenue Code of 1986, as amended, may elect
480 to pay the tax imposed under this article on the purchases for
481 which a separate charge or separately stated charge could apply
482 and not charge its members the tax imposed by this article or
483 the association or organization may avail itself of the exemption
484 set forth in subdivision (9) of this subsection relating to
485 purchases of tangible personal property for resale and then
486 collect the tax imposed by this article on those items from its
487 member;

488 (43) Sales of governmental services or governmental
489 materials after the thirtieth day of June, one thousand nine
490 hundred ninety-seven, by county assessors, county sheriffs,

491 county clerks or circuit clerks in the normal course of local
492 government operations;

493 (44) Direct or subscription sales by the division of natural
494 resources of the magazine currently entitled "Wonderful West
495 Virginia" and by the division of culture and history of the
496 magazine currently entitled "Goldenseal" and the journal
497 currently entitled "West Virginia History";

498 (45) Sales of soap to be used at car wash facilities;

499 (46) Commissions received by a travel agency from an
500 out-of-state vendor;

501 (47) The service of providing technical evaluations for
502 compliance with federal and state environmental standards
503 provided by environmental and industrial consultants who have
504 formal certification through the West Virginia department of
505 environmental protection or the West Virginia bureau for public
506 health or both. For purposes of this exemption, the service of
507 providing technical evaluations for compliance with federal and
508 state environmental standards includes those costs of tangible
509 personal property directly used in providing such services that
510 are separately billed to the purchaser of such services, and on
511 which the tax imposed by this article has previously been paid
512 by the service provider; and

513 (48) Sales of tangible personal property and services by
514 volunteer fire departments and rescue squads that are exempt
515 from federal income taxes under Section 501(c)(3) or (c)(4) of
516 the Internal Revenue Code of 1986, as amended, during fund
517 raising activities held after the thirty-first day of July, two
518 thousand two, if the sole purpose of the sale is to obtain revenue
519 for the functions and activities of the organization and the
520 revenue obtained is exempt from federal income tax and
521 actually expended for that purpose.

522 (b) *Refundable exemptions.* — Any person having a right or
523 claim to any exemption set forth in this subsection shall first
524 pay to the vendor the tax imposed by this article and then apply
525 to the tax commissioner for a refund or credit, or as provided in
526 section nine-d of this article, give to the vendor his or her West
527 Virginia direct pay permit number. The following sales of
528 tangible personal property and services are exempt from tax as
529 provided in this subsection:

530 (1) Sales of property or services to bona fide charitable
531 organizations who make no charge whatsoever for the services
532 they render: *Provided*, That the exemption granted in this
533 subdivision applies only to services, equipment, supplies, food,
534 meals and materials directly used or consumed by these
535 organizations and does not apply to purchases of gasoline or
536 special fuel;

537 (2) Sales of services, machinery, supplies and materials
538 directly used or consumed in the activities of manufacturing,
539 transportation, transmission, communication, production of
540 natural resources, gas storage, generation or production or
541 selling electric power, provision of a public utility service or the
542 operation of a utility service or the operation of a utility
543 business, in the businesses or organizations named in this
544 subdivision and does not apply to purchases of gasoline or
545 special fuel;

546 (3) Sales of property or services to nationally chartered
547 fraternal or social organizations for the sole purpose of free
548 distribution in public welfare or relief work: *Provided*, That
549 sales of gasoline and special fuel are taxable;

550 (4) Sales and services, firefighting or station house equip-
551 ment, including construction and automotive, made to any
552 volunteer fire department organized and incorporated under the

553 laws of the state of West Virginia: *Provided*, That sales of
554 gasoline and special fuel are taxable; and

555 (5) Sales of building materials or building supplies or other
556 property to an organization qualified under Section 501(c)(3) or
557 (c)(4) of the Internal Revenue Code of 1986, as amended,
558 which are to be installed in, affixed to or incorporated by the
559 organization or its agent into real property or into a building or
560 structure which is or will be used as permanent low-income
561 housing, transitional housing, an emergency homeless shelter,
562 a domestic violence shelter or an emergency children and youth
563 shelter if the shelter is owned, managed, developed or operated
564 by an organization qualified under Section 501(c)(3) or (c)(4)
565 of the Internal Revenue Code of 1986, as amended.

CHAPTER 27

**(S. B. 2001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recom-

mended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing board of accountancy to promulgate legislative rule relating to board and rules of professional conduct; authorizing commissioner of agriculture to promulgate legislative rule relating to animal disease control; authorizing commissioner of agriculture to promulgate legislative rule relating to state aid for fairs and festivals; authorizing commissioner of agriculture to promulgate legislative rule relating to schedule of charges for inspection services—fruit; authorizing commissioner of agriculture to promulgate legislative rule relating to controlled atmosphere for storage of apples; authorizing athletic commission to promulgate legislative rule relating to commission; authorizing auditor to promulgate legislative rule relating to transaction fee and rate structure; authorizing contractor licensing board to promulgate legislative rule relating to complaints; authorizing board of licensed dietitians to promulgate legislative rule relating to licensure and renewal requirements; authorizing board of licensed dietitians to promulgate legislative rule relating to code of professional ethics; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing human rights commission to promulgate legislative rule relating to waiver of rights under West Virginia human rights act; authorizing human rights commission to promulgate legislative rule relating to definition of employee under West Virginia human rights act; authorizing board of examiners of land surveyors to promulgate legislative rule relating to rules and minimum standards for practice of land surveying in West Virginia; authorizing board of examiners of land surveyors to promulgate legislative rule relating to manda-

tory continuing education for land surveyors; authorizing board of optometry to promulgate legislative rule relating to board; authorizing board of optometry to promulgate legislative rule relating to expanded prescriptive authority; authorizing board of optometry to promulgate legislative rule relating to schedule of fees; authorizing board of pharmacy to promulgate legislative rule relating to board; authorizing board of pharmacy to promulgate legislative rule relating to continuing education for licensure of pharmacists; authorizing radiologic technology board of examiners to promulgate legislative rule relating to board; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to requirements for licensure and certification; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to renewal of licensure or certification; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to requirements for registration and licensure; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to fees; authorizing secretary of state to promulgate legislative rule relating to use of electronic signatures by state agencies; authorizing secretary of state to promulgate legislative rule relating to registry requirements; authorizing secretary of state to promulgate legislative rule relating to uniform commercial code, revised article nine; repealing a secretary of state legislative rule relating to use of digital signatures, state certification authority and state repository; authorizing board of social work examiners to promulgate legislative rule relating to qualifications for licensure as social worker; authorizing board of social work examiners to promulgate legislative rule relating to fee schedule; authorizing board of examiners for speech-language pathology and audiology to promulgate legislative rule relating to licensure of speech-language pathology and audiology; and authorizing board of veterinary medicine to promulgate legislative rule relating to registration of veterinary technicians.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Board of accountancy.
- §64-9-2. Commissioner of agriculture.
- §64-9-3. Athletic commission.
- §64-9-4. Auditor.
- §64-9-5. Contractor licensing board.
- §64-9-6. Board of licensed dietitians.
- §64-9-7. Governor's committee on crime, delinquency and correction.
- §64-9-8. Human rights commission.
- §64-9-9. Board of examiners of land surveyors.
- §64-9-10. Board of optometry.
- §64-9-11. Board of pharmacy.
- §64-9-12. Radiologic technology board of examiners.
- §64-9-13. Real estate appraiser licensing and certification board.
- §64-9-14. Board of examiners of registered professional nurses.
- §64-9-15. Secretary of state.
- §64-9-16. Board of social work examiners.
- §64-9-17. Board of examiners for speech-language pathology and audiology.
- §64-9-18. Board of veterinary medicine.

§64-9-1. Board of accountancy.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of July, two thousand one, under the authority of
3 section five, article nine, chapter thirty of this code, modified
4 by the board of accountancy to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-eighth day of November, two
7 thousand one, relating to the board of accountancy (board rules
8 and rules of professional conduct, 1 CSR 1), is authorized.

§64-9-2. Commissioner of agriculture.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand one, authorized under the
3 authority of section four, article one, chapter nineteen of this
4 code, modified by the commissioner of agriculture to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the sixteenth day of August, two
7 thousand one, relating to the commissioner of agriculture
8 (animal disease control, 61 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-sixth day of July, two thousand one, authorized under
11 the authority of section eleven, article seven, chapter nineteen
12 of this code, modified by the commissioner of agriculture to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the twenty-seventh
15 day of September, two thousand one, relating to the commis-
16 sioner of agriculture (state aid for fairs and festivals, 61 CSR 3),
17 is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-fourth day of July, two thousand one, authorized under
20 the authority of section ten, article two, chapter nineteen of this
21 code, modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the sixteenth day of August, two
24 thousand one, relating to the commissioner of agriculture
25 (schedule of charges for inspection services: fruit, 61 CSR 8B),
26 is authorized.

27 (d) The legislative rule filed in the state register on the
28 twenty-fourth day of July, two thousand one, authorized under
29 the authority of section three, article five-a, chapter nineteen of
30 this code, modified by the commissioner of agriculture to meet
31 the objections of the legislative rule-making review committee
32 and refiled in the state register on the sixteenth day of August,
33 two thousand one, relating to the commissioner of agriculture

34 (controlled atmosphere storage of apples, 61 CSR 8E), is
35 authorized.

§64-9-3. Athletic commission.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of July, two thousand one, under the authority of
3 section twenty-four, article five-a, chapter twenty-nine of this
4 code, modified by the athletic commission to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the fourteenth day of January, two
7 thousand two, relating to the athletic commission (administra-
8 tive rule of the commission, 177 CSR 1), is authorized.

§64-9-4. Auditor.

1 The legislative rule filed in the state register on the twenty-
2 fourth day of July, two thousand one, authorized under the
3 authority of section ten-c, article three, chapter twelve of this
4 code, modified by the auditor to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-sixth day of September, two
7 thousand one, relating to the auditor (transaction fee and rate
8 structure, 155 CSR 4), is authorized.

§64-9-5. Contractor licensing board.

1 The legislative rule filed in the state register on the sixth
2 day of June, two thousand one, under the authority of section
3 fourteen, article eleven, chapter twenty-one of this code,
4 modified by the contractor licensing board to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the ninth day of August, two
7 thousand one, relating to the contractor licensing board (West
8 Virginia contractor licensing board - complaints, 28 CSR 3), is
9 authorized with the amendments set forth below:

10 On page 5, after subsection 6.7 by adding a new section 7,
11 to read as follows:

“§28-3-7. Alternate dispute resolution.

1 7.1 The board may on its own motion or by stipulation of
2 the parties refer any complaint to mediation: *Provided*, That
3 complaints demonstrating probable cause of the existence of
4 imminent safety and/or health hazards may not be referred to
5 mediation.

6 7.2 The board may maintain a list of mediators with
7 expertise in professional and occupational licensing matters or
8 may obtain a list of qualified mediators from the West Virginia
9 center for dispute resolution or the West Virginia state bar
10 mediator referral service. Division staff may be utilized to
11 prepare any mediation agreement.

12 7.3 A notice of the mediation must be provided to the
13 parties by certified mail at least twenty days in advance of the
14 mediation date. The notice must contain the time, date and
15 location of the mediation and the issues to be mediated.

16 7.4 The mediation is not considered a proceeding open to
17 the public and any reports and records introduced at the
18 mediation are not part of the public record. The mediator and all
19 participants in the mediation shall maintain and preserve the
20 confidentiality of all proceedings and records. The mediator
21 may not be subpoenaed or called to testify or otherwise be
22 subject to process requiring disclosure of confidential informa-
23 tion in any proceeding relating to or arising out of the complaint
24 matter mediated: *Provided*, That any confidentiality agreement
25 and any written agreement made and signed by the parties as a
26 result of the mediation may be used in any proceeding subse-
27 quently instituted to enforce the written agreement. The
28 agreement may be used in other proceedings if the parties agree
29 to the use in writing.

30 7.5 The written agreement made and signed by the parties
31 as a result of the mediation is binding and must list the issues
32 resolved, the corrective actions, if any, agreed to, with time
33 frames and any issues not resolved at the mediation.

34 7.6 A mediated agreement under the provisions of this
35 section does not waive a contractor's potential liability for
36 board disciplinary action if the board determines that the
37 contractor has violated any provision of West Virginia code
38 §21-11-1, *et seq.*, or legislative rules promulgated pursuant to
39 that article.

40 7.7 Any issues not resolved at mediation are returned to the
41 board for formal hearing pursuant to the provisions of section
42 6 of this rule.”;

43 And,

44 By renumbering the remaining section of the rule.

§64-9-6. Board of licensed dietitians.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, under the
3 authority of section four, article thirty-five, chapter thirty of this
4 code, modified by the board of licensed dietitians to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the sixteenth day of October, two
7 thousand one, relating to the board of licensed dietitians
8 (licensure and renewal requirements, 31 CSR 1), is authorized
9 with the following amendments:

10 On page three, section nine, section 9.1.6, after the words
11 “confidential communication” by inserting the words “with a
12 client or patient”; and,

13 On page three, beginning with section 9.1.7., by striking out
14 the remainder of the rule and inserting in lieu thereof the
15 following:

16 9.1.7. Demonstrated a lack of professional competence to
17 practice medical nutrition therapy or other nutrition or dietetic-
18 related services with a reasonable degree of skill and safety for
19 patients;

20 9.1.8. Been convicted of or found guilty of a crime in any
21 jurisdiction which directly relates to the practice of medical
22 nutrition therapy or other nutrition or dietetic-related services.
23 A plea of nolo contendere may be considered conviction for the
24 purposes of this rule;

25 9.1.9. Failed to report to the Board any person whom the
26 licensee knows is in violation of this rule or of provisions of
27 article thirty-five of chapter thirty of the West Virginia code;

28 9.1.10. Aided, assisted, procured or advised any unlicensed
29 person to practice as a licensed dietitian contrary to this rule or
30 provisions of article thirty-five of chapter thirty of the West
31 Virginia code;

32 9.1.11. Failed to perform any statutory or legal obligation
33 placed upon a licensed dietitian;

34 9.1.12. Made or filed a report which the licensee knows to
35 be false, or intentionally or negligently failed to file a report or
36 record required by state or federal law;

37 9.1.13. Paid or received any commission, bonus, rebate or
38 other financial incentive, or engaged in any split-fee arrange-
39 ment with any organization, agency or person, for referring
40 patients to providers of health care goods and services, includ-
41 ing, but not limited to, hospitals, nursing homes, clinical
42 laboratories, renal dialysis facilities or pharmacies;

43 9.1.14. Exercised influence on a patient or client for
44 purposes of exploiting for financial gain or engaging in sexual
45 activity;

46 9.1.15. Failed to keep written records justifying the course
47 of treatment of the patient, including, but not limited to, patient
48 histories, examination results and treatment;

49 9.1.16. Engaged in false or deceptive advertising; adver-
50 tised, practiced or attempted to practice under a name other than
51 his or her own; charged or collected any fee for any type of
52 services rendered within forty-eight (48) hours of the initial
53 visit, if the licensee advertised free consultation or treatment;

54 9.1.17. Charged an excessive or unconscionable fee. If the
55 Board finds that an excessive or unconscionable fee has been
56 charged and collected, the Board may require the licensee to
57 reduce or reimburse the fee. Factors to be considered in
58 determining the reasonableness of a fee include the following:

59 9.1.17.1. The time and effort required;

60 9.1.17.2. The novelty and difficulty of the procedure or
61 treatment;

62 9.1.17.3. The skill required to perform the procedure or
63 treatment properly;

64 9.1.17.4. Any requirements or conditions imposed by the
65 patient or circumstances;

66 9.1.17.5. The nature and length of the professional relation-
67 ship with the patient;

68 9.1.17.6. The experience, reputation and ability of the
69 licensee; and

70 9.1.17.7. The nature of the circumstances under which the
71 services are provided.”

72 (b) The legislative rule filed in the state register on the
73 twenty-seventh day of July, two thousand one, under the
74 authority of section four, article thirty-five, chapter thirty of this
75 code, modified by the board of licensed dietitians to meet the
76 objections of the legislative rule-making review committee and
77 refiled in the state register on the sixteenth day of October, two
78 thousand one, relating to the board of licensed dietitians (code
79 of professional ethics, 31 CSR 2), is authorized with the
80 following amendment:

81 On page one, section two, by striking out subsection 2.5 in
82 its entirety.

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

1 The legislative rule filed in the state register on the twenty-
2 seventh day of July, two thousand one, authorized under the
3 authority of section nine, article two-a, chapter forty-eight of
4 this code, modified by governor’s committee on crime, delin-
5 quency and correction to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the second day of October, two thousand one, relating to the
8 governor’s committee on crime, delinquency and correction
9 (protocol for law-enforcement response to domestic violence,
10 149 CSR 3), is authorized.

§64-9-8. Human rights commission.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, under the
3 authority of section eight, article eleven, chapter five of this
4 code, modified by the human rights commission to meet the
5 objections of the legislative rule-making review committee and

6 refiled in the state register on the fifteenth day of January, two
7 thousand two, relating to the human rights commission (waiver
8 of rights under the West Virginia human rights act, 77 CSR 6),
9 is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-seventh day of July, two thousand one, under the
12 authority of section eight, article eleven, chapter five of this
13 code, modified by the human rights commission to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the fifteenth day of January, two
16 thousand two, relating to the human rights commission (defini-
17 tion of employee under the West Virginia human rights act, 77
18 CSR 7), is authorized.

§64-9-9. Board of examiners of land surveyors.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, under the
3 authority of section four, article thirteen-a, chapter thirty of this
4 code, modified by the board of examiners of land surveyors to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-sixth
7 day of November, two thousand one, relating to the board of
8 examiners of land surveyors (rules and minimum standards for
9 the practice of land surveying in West Virginia, 23 CSR 1), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-seventh day of July, two thousand one, under the
13 authority of section four, article thirteen-a, chapter thirty of this
14 code, modified by the board of examiners of land surveyors to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-sixth
17 day of November, two thousand one, relating to the board of

18 examiners of land surveyors (mandatory continuing education
19 for land surveyors, 23 CSR 2), is authorized.

§64-9-10. Board of optometry.

1 (a) The legislative rule filed in the state register on the
2 eighteenth day of July, two thousand one, under the authority of
3 section three, article eight, chapter thirty of this code, modified
4 by the board of optometry to meet the objections of the legisla-
5 tive rule-making review committee and refiled in the state
6 register on the nineteenth day of November, two thousand one,
7 relating to the board of optometry (rules of the board, 14 CSR
8 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-seventh day of July, two thousand one, authorized under
11 the authority of sections two-a and two-b, article eight, chapter
12 thirty of this code, modified by the board of optometry to meet
13 the objections of the legislative rule-making review committee
14 and refiled in the state register on the seventh day of January,
15 two thousand two, relating to the board of optometry (expanded
16 prescriptive authority, 14 CSR 2), is authorized.

17 (c) The legislative rule filed in the state register on the
18 eighteenth day of July, two thousand one, authorized under the
19 authority of section three, article eight, chapter thirty of this
20 code, modified by the board of optometry to meet the objec-
21 tions of the legislative rule-making review committee and
22 refiled in the state register on the twentieth day of September,
23 two thousand one, relating to the board of optometry (schedule
24 of fees, 14 CSR 5), is authorized.

§64-9-11. Board of pharmacy.

1 (a) The legislative rule filed in the state register on the tenth
2 day of October, two thousand one, authorized under the
3 authority of section nine-a, article five, chapter thirty of this

4 code, modified by the board of pharmacy to meet the objections
5 of the legislative rule-making review committee and refiled in
6 the state register on the eleventh day of January, two thousand
7 two, relating to the board of pharmacy (rules of the board of
8 pharmacy, 15 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the tenth
10 day of October, two thousand one, authorized under the
11 authority of section nine, article five, chapter thirty of this code,
12 modified by the board of pharmacy to meet the objections of
13 the legislative rule-making review committee and refiled in the
14 state register on the eleventh day of January, two thousand two,
15 relating to the board of pharmacy (continuing education for the
16 licensure of pharmacists, 15 CSR 3), is authorized.

§64-9-12. Radiologic technology board of examiners.

1 The legislative rule filed in the state register on the twenty-
2 fourth day of July, two thousand one, under the authority of
3 section five, article twenty-three, chapter thirty of this code,
4 modified by the board of examiners of radiologic technology to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-first
7 day of August, two thousand one, relating to the board of
8 examiners of radiologic technology (rules of the board, 18 CSR
9 1), is authorized.

§64-9-13. Real estate appraiser licensing and certification board.

1 (a) The legislative rule filed in the state register on the
2 second day of July, two thousand one, under the authority of
3 section nine, article thirty-eight, chapter thirty of this code,
4 modified by the real estate appraiser licensing and certification
5 board to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 fifteenth day of August, two thousand one, relating to the real
8 estate appraiser licensing and certification board (requirements

9 for licensure and certification, 190 CSR 2), is authorized with
10 the following amendment:

11 On page twenty-nine, section 14.1, by striking out “2001”
12 and inserting in lieu thereof “2002”.

13 (b) The legislative rule filed in the state register on the
14 second day of July, two thousand one, under the authority of
15 section nine, article thirty-eight, chapter thirty of this code,
16 modified by the real estate appraiser licensing and certification
17 board to meet the objections of the legislative rule-making
18 review committee and refiled in the state register on the
19 fifteenth day of August, two thousand one, relating to the real
20 estate appraiser licensing and certification board (renewal of
21 licensure or certification, 190 CSR 3), is authorized with the
22 following amendment:

23 On page six, section 8.1, by striking out “2001” and
24 inserting in lieu thereof “2002”.

§64-9-14. Board of examiners of registered professional nurses.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, two thousand one, authorized under the
3 authority of section four, article seven, chapter thirty of this
4 code, modified by the board of examiners for registered
5 professional nurses to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-ninth day of November, two thousand one,
8 relating to the board of examiners for registered professional
9 nurses (requirements for registration and licensure, 19 CSR 3),
10 is authorized with the following amendment:

11 On page twenty-one, section 14.1.ii, following the words
12 “failed to disclose”, by striking out the words “to the board”

13 and inserting in lieu thereof the words “information when
14 required by the board concerning”.

15 (b) The legislative rule filed in the state register on the
16 twenty-seventh day of July, two thousand one, authorized under
17 the authority of section four, article seven, chapter thirty of this
18 code, relating to the board of examiners for registered profes-
19 sional nurses (fees, 19 CSR 12), is authorized.

§64-9-15. Secretary of state.

1 (a) The legislative rule filed in the state register on the
2 twenty-sixth day of July, two thousand one, authorized under
3 the authority of section three, article three, chapter thirty-nine-a
4 of this code, modified by the secretary of state to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the tenth day of October, two
7 thousand one, relating to the secretary of state (use of digital
8 signatures, state certification authority and state repository, 153
9 CSR 30), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-seventh day of July, two thousand one, authorized under
12 the authority of section four hundred two, article two, chapter
13 forty-eight of this code, modified by the secretary of state to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the second day of
16 November, two thousand one, relating to the secretary of state
17 (registry requirements, 153 CSR 32), is authorized.

18 (c) The legislative rule filed in the state register on the
19 twenty-sixth day of July, two thousand one, authorized under
20 the authority of section five hundred twenty-six, article nine,
21 chapter forty-six of this code, modified by the secretary of state
22 to meet the objections of the legislative rule-making review

23 committee and refiled in the state register on the fifteenth day
24 of January, two thousand two, relating to the secretary of state
25 (uniform commercial code, revised article nine, 153 CSR 35),
26 is authorized.

27 (d) The legislative rule effective the first day of April, one
28 thousand nine hundred ninety-nine, authorized under the
29 authority of section four, article five, chapter thirty-nine of this
30 code (use of digital signatures, state certification authority and
31 state repository, 153 CSR 31), is repealed.

§64-9-16. Board of social work examiners.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day of July, two thousand one, under the author-
3 ity of section three, article thirty, chapter thirty of this code,
4 modified by the board of social work examiners to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the eleventh day of October, two
7 thousand one, relating to the board of social work examiners
8 (qualifications for licensure as a social worker, 25 CSR 1), is
9 authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-fourth day of July, two thousand one, under the author-
12 ity of section three, article thirty, chapter thirty of this code,
13 relating to the board of social work examiners (fee schedule, 25
14 CSR 3), is authorized.

**§64-9-17. Board of examiners for speech-language pathology and
audiology.**

1 The legislative rule filed in the state register on the thirtieth
2 day of July, two thousand one, under the authority of section
3 ten, article thirty-two, chapter thirty of this code, modified by
4 the board of examiners for speech-language pathology and

5 audiology to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 fourteenth day of December, two thousand one, relating to the
8 board of examiners for speech-language pathology and audiol-
9 ogy (licensure of speech-language pathology and audiology, 29
10 CSR 1), is authorized.

§64-9-18. Board of veterinary medicine.

1 The legislative rule filed in the state register on the thirty-
2 first day of August, two thousand one, authorized under the
3 authority of section four, article ten, chapter thirty of this code,
4 modified by the board of veterinary medicine to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-sixth day of Decem-
7 ber, two thousand one, relating to the board of veterinary
8 medicine (registration of veterinary technicians, 26 CSR 3), is
9 authorized with the amendments set forth below:

10 On page two, section three, subsection 3.4, subdivision b.,
11 following the words “convicted of a felony”, by striking out the
12 words “or other crime involving moral turpitude” and inserting
13 in lieu thereof the words “offense relating to controlled
14 substances”;

15 On page two, section three, subsection 3.7, following the
16 words “office of the veterinary facility”, by striking out the
17 words “of the person to whom it is issued” and inserting in lieu
18 thereof the words “where the veterinary technician is em-
19 ployed”;

20 On page three, section three, subsection 3.10, subdivision
21 h., following the words “has an adjudication of”, by striking out
22 the word “insanity” and inserting in lieu thereof the words
23 “mental incompetency”;

24 On page five, section 3.14.1, line three, after the words
25 “such registration” by inserting the words “without examina-
26 tion”;

27 On page five, section 3.14.1, line four, after the words
28 “registration ended” by deleting the period and inserting the
29 words “by providing to the Board:

30 a. Proof of employment under the direct supervision of a
31 licensed veterinarian during each of the years not renewed.

32 b. Proof of having met the continuing education require-
33 ment of a minimum of six hours of classroom continuing
34 education in an approved program during each of the years not
35 renewed. Each year’s continuing education is to renew for the
36 subsequent year.

37 c. Payment of all delinquent fees from the last renewal date
38 to the current renewal period.”;

39 And,

40 On page 6, section 14.2, after the words “the registration
41 examinations.” by striking out the remainder of the subdivision.

CHAPTER 28

(S. B. 2002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to legislative rules of the department of environmental protection; authorizing promulgation of a legislative rule relating to surface mining and reclamation; and making a technical correction to a legislative rule relating to water quality standards and implementation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1a. Supplemental rule authorization.

1 (a) The legislative rule filed in the state register on the
2 nineteenth day of April, two thousand two, authorized under the
3 authority of section four, article three, chapter twenty-two of this
4 code, relating to the department of environmental protection
5 (surface mining and reclamation, 38 CSR 2), is authorized.

6 (b) The legislative rule filed in the state register on the
7 second day of July, two thousand one, authorized under the
8 authority of section seven-b, article eleven, chapter twenty-two
9 of this code, relating to the department of environmental
10 protection (antidegradation implementation procedures, 60 CSR
11 5), is reauthorized with the following amendment:

12 On page two, subsection 2.6 after the words "46 CSR 1-2"
 13 by adding the following words: "effective May 17, 2001".

CHAPTER 29

(S. B. 2003 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]

(Passed June 11, 2002; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section four, article seven, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the public service commission concerning property acquisitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. HEADQUARTERS.

§24-7-4. Legislative findings; authority to acquire further properties.

1 (a) The Legislature hereby finds that the public service
 2 commission should be authorized to acquire and manage further
 3 properties contiguous with its existing property at 201 Brooks
 4 street in Charleston, West Virginia, and to make improvements
 5 on the property necessary to ensure the efficient operations of
 6 the commission's business. Furthermore, the Legislature finds
 7 that the public service commission should be given the neces-

8 sary authority to enter into agreements with other entities
9 concerning financing and use of the acquisitions. The Legisla-
10 ture further finds that the commission should be allowed to pay
11 for the acquisitions using excess funds from the special
12 revenues received by the commission pursuant to section six,
13 article three of this chapter and from funds received by the use
14 of the properties.

15 (b) The public service commission may contract to acquire,
16 lease, rent, purchase, own, hold, construct, equip, maintain,
17 operate, sell, encumber and assign rights of any property, real
18 or personal, contiguous with its existing property at 201 Brooks
19 street in Charleston, West Virginia, consistent with the objec-
20 tives of the commission as set forth in this chapter.

21 (c) The public service commission may enter into contracts,
22 agreements or other undertakings with other appropriate entities
23 concerning the financing and use of property acquisitions.

24 (d) The public service commission may pay for property
25 acquisitions and related activities from excess funds obtained
26 from the commission's assessments upon utility gross revenue
27 and property as provided for in section six, article three of this
28 chapter. Furthermore, the commission may receive funds from
29 other entities through the use and management of its properties
30 and use those funds for the payment of the property acquisi-
31 tions. Any contracts, agreements or other undertakings relating
32 to property acquisitions pursuant to provisions of this section
33 shall be entered into prior to the thirty-first day of December,
34 two thousand four.

35 (e) Expenditures for any purpose set forth in this section
36 may be made only pursuant to legislative appropriation ex-
37 pressly authorizing by line item expenditure for the specific
38 purpose. Notwithstanding any provision of section eighteen,

39 article two, chapter five-a of this code to the contrary, no
40 increase in the amount of the appropriation may be authorized.

CHAPTER 30

(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reestablishing the board of licensed dietitians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-15. Continuation of board.

1 The board of licensed dietitians is reestablished pursuant to
2 the provisions of section six, article ten, chapter four of this
3 code, and shall terminate on the first day of July, two thousand
4 six, unless sooner terminated, continued or reestablished
5 pursuant to that article.

CHAPTER 31

**(S. B. 2007 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, eighteen and twenty-one, article thirteen-q of said chapter; to amend and reenact sections six, nine and eleven, article thirteen-r of said chapter; and to amend and reenact sections four, eight and ten, article thirteen-s of said chapter, all relating generally to tax credits for particular business activity; providing five percentage point increase over allowable new jobs percentage under economic opportunity credit when new business facility or expansion of existing facility is constructed under specified circumstances; requiring persons who claim economic opportunity credit, strategic research and development credit or manufacturing investment credit to report additional information pertaining to new jobs created, including types of jobs created, duration of jobs created, average wages and benefits paid to person filling new jobs; specifying transition rules for certain multiple-year business investment and jobs expansion tax credit projects; specifying notice requirements relating to claim of transition rule status; requiring that application for economic opportunity tax credit be filed with tax commissioner by prescribed date and specifying records' maintenance and retention requirements; requiring that application for strategic research and development tax credit be filed with tax commissioner by prescribed date and specifying records' maintenance and retention requirements;

requiring that application for manufacturing investment tax credit be filed with tax commissioner by prescribed date; and specifying records' maintenance and retention requirements.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that sections nine, eighteen and twenty-one, article thirteen-q of said chapter be amended and reenacted; that sections six, nine and eleven, article thirteen-r of said chapter be amended and reenacted; and that sections four, eight and ten, article thirteen-s of said chapter be amended and reenacted, all to read as follows:

Article

- 13C. Business Investment and Jobs Expansion Tax Credit.**
- 13Q. Economic Opportunity Tax Credit.**
- 13R. Strategic Research and Development Tax Credit.**
- 13S. Manufacturing Investment Tax Credit.**

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-16. Termination of credit; effective date.

1 (a) Notwithstanding any other provision of this article to the
2 contrary, no entitlement to any tax credit under this article may
3 result from, and no credit is available to any taxpayer for,
4 investment placed in service or use after the thirty-first day of
5 December, two thousand two.

6 (b) Notwithstanding the provisions of subsection (a) of this
7 section, the provisions of sections one through fifteen, inclu-
8 sive, of this article continue to apply to taxpayers that have
9 gained entitlement to the credit pursuant to the placement of
10 qualified investment into service or use prior to the first day of
11 January, two thousand three.

12 (c) *Transition rules.* -- The general rule stated in subsection
13 (a) of this section does not apply:

14 (1) To qualified investment property placed in service or
15 use prior to the first day of January, two thousand three.

16 (2) To property purchased or leased for business expansion
17 that is placed in service or use on or after the first day of
18 January, two thousand three, if at least one of the following
19 clauses applies to the property:

20 (A) The new or expanded business facility was constructed,
21 reconstructed or erected, pursuant to a written construction
22 contract executed prior to the first day of January, two thousand
23 three, as limited to the provisions of the contract as of that date
24 then binding on the taxpayer, but only to the extent the new or
25 expanded business facility is placed in service or use prior to
26 the first day of January, two thousand four;

27 (B) The new or expanded business facility is part of a
28 project described in subdivision (1), subsection (a), section
29 four-b of this article, for which the multiple year project
30 investment period had commenced, but had not yet closed on or
31 before the first day of January, two thousand three, and the new
32 or expanded business facility constitutes or includes property
33 placed in service or use prior to closure of the multiple year
34 project investment period allowed for the project that is:

35 (i) Property constructed for a multiple year project certified
36 before the first day of January, two thousand three, in accor-
37 dance with section four-b of this article: *Provided*, That only
38 that portion of the contract price attributable to that percentage
39 of the construction contract completed prior to the last day of
40 the multiple year project investment period (determined under
41 principles set forth in Section 460(b) of the Internal Revenue
42 Code of 1986, as in effect before the first day of January, two
43 thousand three), which is placed in service or use prior to the
44 last day of the multiple year project investment period allowed

45 pursuant to subdivision (1), subsection (a), section four-b of this
46 article, may be treated as property purchased for business
47 expansion under section six of this article;

48 (ii) A new or expanded business facility purchased or
49 leased for a multiple year project certified before the first day
50 of January, two thousand three, in accordance with section four-
51 b of this article; or

52 (iii) Machinery or equipment or other tangible personal
53 property purchased or leased for a multiple year project
54 certified before the first day of January, two thousand three, in
55 accordance with section four-b of this article.

56 For purposes of this paragraph, the multiple year project
57 investment period will be treated as having commenced if the
58 taxpayer has placed the qualified investment into service or use
59 in accordance with section four of this article. A multiple year
60 project period will not be treated as having commenced merely
61 as a result of the issuance of certification of a project under
62 section four-b of this article. No entitlement to any tax credit
63 under this paragraph may result from, and no credit is available
64 to any taxpayer for, investment placed in service or use after
65 closure of the multiple year project investment period for which
66 certification has been issued.

67 (C) The new or expanded business facility was purchased
68 or leased pursuant to a written contract executed prior to the
69 first day of January, two thousand three, as limited to the
70 provisions then binding on the taxpayer as of that date, but only
71 to the extent the new or expanded business facility is placed in
72 service or use prior to the first day of January, two thousand
73 four; or

74 (D) The machinery or equipment or other tangible personal
75 property purchased or leased for business expansion at a new or
76 expanded business facility was purchased or leased by the
77 taxpayer pursuant to a written contract to purchase or lease

78 identifiable tangible personal property executed before the first
79 day of January, two thousand three, as limited to the provisions
80 of the written contract then binding on the taxpayer, but only to
81 the extent the tangible personal property purchased or leased
82 under the contract is placed in service or use before the first day
83 of January, two thousand four.

84 (d) *Notice of election required.* — Any person intending to
85 claim credit under one or more of the transition rules provided
86 in subsection (c) of this section shall file written notice of his or
87 her intention with the tax commissioner on or before the thirty-
88 first day of December, two thousand two. In the case of a
89 multiparticipant project, this notice may be filed by the manag-
90 ing project participant on behalf of all participants in the
91 project. Notice is to be in a form prescribed by the tax commis-
92 sioner and all information required by the form is to be pro-
93 vided.

94 (e) *Failure to file notice.* — If any person fails to timely file
95 the notice required by subsection (d) of this section, that person
96 is precluded from claiming credit under article thirteen-c for
97 investment property placed in service or use after the thirty-first
98 day of December, two thousand two, and may claim credit
99 under article thirteen-q of this chapter to the extent credit is
100 allowable under that article. For purposes of this section, notice,
101 in proper and complete form, timely filed under section twenty-
102 one, article thirteen-q of this chapter, fulfills the filing require-
103 ment of this section if that filing addresses the same qualified
104 investment for which notice would be required under this
105 section.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-9. New jobs percentage.

§11-13Q-18. Burden of proof; application required; failure to make timely applica-
tion.

§11-13Q-21. Effective date; election; notice of claim or election under transition
rules.

§11-13Q-9. New jobs percentage.

1 (a) *In general.* — The new jobs percentage is based on the
 2 number of new jobs created in this state directly attributable to
 3 the qualified investment of the taxpayer.

4 (b) *When a job is attributable.* — An employee's position
 5 is directly attributable to the qualified investment if:

6 (1) The employee's service is performed or his or her base
 7 of operations is at the new or expanded business facility;

8 (2) The position did not exist prior to the construction,
 9 renovation, expansion or acquisition of the business facility and
 10 the making of the qualified investment; and

11 (3) But for the qualified investment, the position would not
 12 have existed.

13 (c) *Applicable percentage.* — For the purpose of subsection
 14 (a) of this section, the applicable new jobs percentage is
 15 determined under the following table:

16	If number of	The applicable
17	new jobs is at least:	percentage is:
18	20	20%
19	280	25%
20	520	30%

21 (d) *Certification of new jobs.* — With the annual return for
 22 the applicable taxes filed for the taxable year in which the
 23 qualified investment is first placed in service or use in this state,
 24 the taxpayer shall estimate and certify the number of new jobs
 25 reasonably projected to be created by it in this state within the
 26 period prescribed in subsection (f) of this section that are, or
 27 will be, directly attributable to the qualified investment of the
 28 taxpayer. For purposes of this section, "applicable taxes" means
 29 the taxes imposed by articles thirteen, twenty-one, twenty-three

30 and twenty-four of this chapter against which this credit is
31 applied.

32 (e) *Equivalency of permanent employees.* — The hours of
33 part-time employees shall be aggregated to determine the
34 number of equivalent full-time employees for the purpose of
35 this section.

36 (f) *Redetermination of new jobs percentage.* — With the
37 annual return for the applicable taxes imposed, filed for the
38 third taxable year in which the qualified investment is in service
39 or use, the taxpayer shall certify the actual number of new jobs
40 created by it in this state that are directly attributable to the
41 qualified investment of the taxpayer.

42 (1) If the actual number of jobs created would result in a
43 higher new jobs percentage, the credit allowed under this article
44 shall be redetermined and amended returns filed for the first
45 and second taxable years that the qualified investment was in
46 service or use in this state.

47 (2) If the actual number of jobs created would result in a
48 lower new jobs percentage, the credit previously allowed under
49 this article shall be redetermined and amended returns filed for
50 the first and second taxable years. In applying the amount of
51 redetermined credit allowable for the two preceding taxable
52 years, the redetermined credit shall first be applied to the extent
53 it was originally applied in the prior two years to personal
54 income taxes, then to corporation net income taxes, then to
55 business franchise taxes and, lastly, to business and occupation
56 taxes. Any additional taxes due under this chapter shall be
57 remitted with the amended returns filed with the commissioner,
58 along with interest, as provided in section seventeen, article ten
59 of this chapter, and a ten-percent penalty determined on the
60 amount of taxes due with the amended return, which may be
61 waived by the commissioner if the taxpayer shows that the
62 overclaimed amount of the new jobs percentage was due to
63 reasonable cause and not due to willful neglect.

64 (g) *Additional new jobs percentage.* — When the qualified
65 investment is twenty million dollars or more and the new or
66 expanded business facility is constructed using construction
67 laborers and mechanics who are paid an average wage equal to
68 or greater than the prevailing wage for their respective classes
69 of work determined under chapter twenty-one of this code, then,
70 if the number of full-time construction laborers and mechanics
71 working at the job site of the new or expanded business facility
72 is seventy-five or more, or if the number of hours of all
73 construction laborers and mechanics working at the job site is
74 equal to or greater than the number of hours seventy-five full-
75 time construction laborers and mechanics would have worked
76 at the job site during a twelve consecutive month period, a
77 taxpayer that is allowed a new jobs percentage determined
78 under subsection (a) of this section shall be allowed a new jobs
79 percentage that is five percentage points higher than the new
80 jobs percentage allowed under subsection (a) of this section. In
81 no event may construction laborers and mechanics be used to
82 attain or retain a subsection (a) new jobs percentage. The
83 number of full-time construction laborers and mechanics
84 working at the job site shall be determined by dividing the total
85 number of hours worked by all construction laborers and
86 mechanics on a new or expanded business facility during a
87 twelve consecutive month period by two thousand eighty hours
88 per year. A taxpayer may not claim the additional new jobs
89 percentage allowed by this section unless the taxpayer includes
90 with the certification filed under subsection (d) of this section
91 a certification signed by the general contractor or the construc-
92 tion manager certifying that construction laborers employed at
93 the job site during a consecutive twelve month period aggre-
94 gated the equivalent of at least seventy-five full-time employees
95 and the taxpayer has received from the general contractor or
96 construction manager records substantiating the certification,
97 which records shall be retained by the taxpayer for thirteen
98 years after the day the expansion to an existing business
99 facility, or the new business facility, is first placed in service or

100 use by the taxpayer. For purposes of subsection (g) of this
101 section:

102 (1) The term “construction laborers and mechanics” means
103 those workers, utilized by a contractor or subcontractor at any
104 tier, whose duties are manual or physical in nature, including
105 those workers who use tools or are performing the work of a
106 trade, as distinguished from mental or managerial and working
107 foremen who devote more than twenty percent of their time
108 during a workweek performing the duties of a laborer or
109 mechanic; and

110 (2) The term “job site” is limited to the physical place or
111 places where the construction called for in the contract will
112 remain when the work on it is completed and nearby property,
113 as described in subdivision (3) of this subsection, used by the
114 contractor or subcontractor during construction that, because of
115 proximity, can reasonably be included in the “site”.

116 (3) Except as provided in subdivision (4) of this subsection,
117 fabrication plants, mobile factories, batch plants, borrow pits,
118 job headquarters and tool yards are part of the “job site”
119 provided they are dedicated exclusively, or nearly so, to
120 performance of the contract or project and are located in
121 proximity to the actual construction location so that it would be
122 reasonable to include them.

123 (4) The term “job site” does not include permanent home
124 offices, branch offices, branch plant establishments, fabrication
125 yards or tool yards of a contractor or subcontractor whose
126 locations and continuance in operation are determined without
127 regard to the contract or subcontract for construction of a new
128 or expanded business facility.

**§11-13Q-18. Burden of proof; application required; failure to
make timely application.**

1 (a) The burden of proof is on the taxpayer to establish by
2 clear and convincing evidence that the taxpayer is entitled to the
3 benefits allowed by this article.

4 (b) *Application for credit required.* —

5 (1) *Application required.* — Notwithstanding any provision
6 of this article to the contrary, no credit is allowed or may be
7 applied under this article for any qualified investment property
8 placed in service or use until the person asserting a claim for
9 the allowance of credit under this article makes written applica-
10 tion to the commissioner for allowance of credit as provided in
11 this subsection. An application for credit shall be filed, in the
12 form prescribed by the tax commissioner, no later than the last
13 day for filing the tax returns, determined by including any
14 authorized extension of time for filing the return, required
15 under article twenty-one or twenty-four of this chapter for the
16 taxable year in which the property to which the credit relates is
17 placed in service or use and all information required by the
18 form shall be provided.

19 (2) *Failure to make timely application.* — The failure to
20 timely apply for the credit results in the forfeiture of fifty
21 percent of the annual credit allowance otherwise allowable
22 under this article. This penalty applies annually until the
23 application is filed.

**§11-13Q-21. Effective date; election; notice of claim or election
under transition rules.**

1 (a) The credit allowed by this article is allowed for quali-
2 fied investment placed in service or use on or after the first day
3 of January, two thousand three, subject to the rules contained in
4 this section.

5 (b) *Election.* — Notwithstanding the general rule stated in
6 subsection (a), the taxpayer may elect to apply the credit
7 allowed under article thirteen-c of this chapter in lieu of the

8 credit allowed by this article to property purchased or leased for
9 business expansion that is placed in service or use on or after
10 the first day of January, two thousand three, if the property
11 qualifies for credit under the transition rules set forth in
12 subdivision (2), subsection (c), section sixteen, article thirteen-c
13 of this chapter.

14 (c) *Notice of election required.* — Any person intending to
15 make the election allowed in subsection (b) of this section shall
16 file written notice of his or her intention with the tax commis-
17 sioner on or before the thirty-first day of December, two
18 thousand two. In the case of a multiparticipant project, this
19 notice may be filed by the managing project participant on
20 behalf of all participants in the project. The notice shall be in a
21 form prescribed by the tax commissioner and all information
22 required by the form shall be provided.

23 (d) *Failure to file notice.* — If any person fails to timely
24 file the notice required by subsection (c) of this section, that
25 person is precluded from claiming credit under article thirteen-c
26 of this chapter for property placed in service or use after the
27 thirty-first day of December, two thousand two, and may claim
28 credit under this article to the extent the credit is allowable
29 under this article. For purposes of this section, notice, in proper
30 and complete form, timely filed under section sixteen, article
31 thirteen-c of this chapter fulfills the filing requirement of this
32 section if that filing addresses the same qualified investment for
33 which notice would be required under this section.

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-6. Application of credit.

§11-13R-9. Identification of investment credit property.

§11-13R-11. Tax credit review and accountability.

§11-13R-6. Application of credit.

1 (a) *Credit allowed.* — Beginning in the year that the annual
2 combined qualified research and development expenditure is
3 paid or incurred, eligible taxpayers and owners of eligible
4 taxpayers described in subsections (d) and (f) of this section are
5 allowed a credit against the taxes imposed by articles twenty-
6 three, twenty-four and twenty-one of this chapter, in that order,
7 as specified in this section.

8 (b) *Business franchise tax.* — The credit is first applied to
9 reduce the taxes imposed by article twenty-three of this chapter
10 for the taxable year (determined after application of the credits
11 against tax provided in section seventeen of said article, but
12 before application of any other allowable credits against tax).

13 (c) *Corporation net income taxes.* — After application of
14 subsection (b) of this section, any unused credit is next applied
15 to reduce the taxes imposed by article twenty-four of this
16 chapter for the taxable year (determined before application of
17 allowable credits against tax).

18 (d) If the eligible taxpayer is a limited liability company,
19 small business corporation or a partnership, then any unused
20 credit (after application of subsections (b) and (c) of this
21 section) is allowed as a credit against the taxes imposed by
22 article twenty-four of this chapter on owners of the eligible
23 taxpayer on the conduit income directly derived from the
24 eligible taxpayer by its owners. Only those portions of the tax
25 imposed by article twenty-four of this chapter that are imposed
26 on income directly derived by the owner from the eligible
27 taxpayer are subject to offset by this credit.

28 (1) Small business corporations, limited liability compa-
29 nies, partnerships and other unincorporated organizations shall
30 allocate the credit allowed by this article among their members
31 in the same manner as profits and losses are allocated for the
32 taxable year.

33 (2) No credit is allowed under this article against any
34 withholding tax imposed by, or payable under, article twenty-
35 one of this chapter.

36 (e) *Personal income tax taxes.* — After application of
37 subsections (b), (c) and (d) of this section, any unused credit is
38 next applied to reduce the taxes imposed by article twenty-one
39 of this chapter for the taxable year (determined before applica-
40 tion of allowable credits against tax) of the eligible taxpayer.

41 (f) If the eligible taxpayer is a limited liability company,
42 small business corporation or a partnership, then any unused
43 credit (after application of subsections (b), (c), (d) and (e) of
44 this section) is allowed as a credit against the taxes imposed by
45 article twenty-one of this chapter on owners of the eligible
46 taxpayer on the conduit income directly derived from the
47 eligible taxpayer by its owners. Only those portions of the tax
48 imposed by article twenty-one of this chapter that are imposed
49 on income directly derived by the owner from the eligible
50 taxpayer are subject to offset by this credit.

51 (1) Small business corporations, limited liability compa-
52 nies, partnerships and other unincorporated organizations shall
53 allocate the credit allowed by this article among their members
54 in the same manner as profits and losses are allocated for the
55 taxable year.

56 (2) No credit is allowed under this article against any
57 withholding tax imposed by, or payable under, article twenty-
58 one of this chapter.

59 (g) The total amount of tax credit that may be used in any
60 taxable year by any eligible taxpayer in combination with the
61 owners of the eligible taxpayer under subsections (d) and (f) of
62 this section may not exceed two million dollars.

63 (h) *Unused credit carry forward.* — If the credit allowed
64 under this article in any taxable year exceeds the sum of the

65 taxes enumerated in subsections (b), (c), (d), (e) and (f) of this
66 section for that taxable year, the eligible taxpayer and owners
67 of eligible taxpayers described in subsections (d) and (f) of this
68 section may apply the excess as a credit against those taxes, in
69 the order and manner stated in this section, for succeeding
70 taxable years until the earlier of the following:

71 (1) The full amount of the excess credit is used; or

72 (2) The expiration of the tenth taxable year after the taxable
73 year in which the annual combined qualified research and
74 development expenditure was paid or incurred. Credit remain-
75 ing thereafter is forfeited.

76 (i) *Application for certification.* — No credit is allowed or
77 may be applied under this article until the person seeking to
78 claim the credit has filed a written application for certification
79 of the proposed research and development program or project
80 with the tax commissioner and has received certification of the
81 research and development program or project from the tax
82 commissioner pursuant to that written application. The certifi-
83 cation of the program or project must be received by the
84 eligible taxpayer from the tax commissioner prior to any credit
85 being claimed or allowed for any annual combined qualified
86 research and development expenditure for any research activity
87 or project. This application shall be filed, in the form prescribed
88 by the tax commissioner, no later than the last day for filing the
89 tax returns, determined by including any authorized extension
90 of time for filing the return, required under article twenty-one
91 or twenty-four of this chapter for the taxable year in which the
92 property to which the credit relates is placed in service or use,
93 or the qualified research and development expenses to which
94 the credit relates are incurred by the taxpayer, and all informa-
95 tion required by the form shall be provided by the taxpayer.

96 (1) In the case of owners of eligible taxpayers described in
97 subsection (d) or (f) of this section, the application for certifica-
98 tion filed under this section by the limited liability company,

99 small business corporation or partnership owned by the person
100 is considered to be filed on behalf of the owner and no separate
101 filing of the application is required of the owner.

102 (2) *Form of application.* — The application for certification
103 must be filed in the form as the tax commissioner may prescribe
104 and shall contain the information as the tax commissioner may
105 require to determine whether the project should be certified as
106 eligible for credit under this article.

107 (3) *Time period covered by certification.* — The application
108 may request certification of the research and development
109 program for one taxable year or multiple taxable years, as
110 applicable, based on the nature and character of the program or
111 project plan for the particular research and development project
112 or activity.

113 (4) *Requirements for application.* — The application shall
114 specifically set forth a written research and development
115 program plan generally describing the nature of the research
116 and development to be undertaken, the number and types of
117 jobs, if any, created by the applicant as a direct result of the
118 research and development program and the average wages and
119 benefits paid to those employees, the projected time period over
120 which the research and development shall be carried out, the
121 period of time for which the applicant seeks certification of the
122 program or project and such other information as the tax
123 commissioner may require.

124 (5) *Certification.* — The tax commissioner may issue
125 certification of a research and development program or project
126 if it appears to the tax commissioner that the applicant intends
127 to engage in a bona fide research and development activity, as
128 described in this article, and will otherwise comply with the
129 requirements of this article and all rules and requirements
130 applicable thereto.

131 (6) *Time period covered by certification.* — The tax
132 commissioner may issue certification for the period of time for
133 which the eligible taxpayer seeks certification or a different
134 period of time, within the discretion of the tax commissioner.
135 In his or her discretion, the tax commissioner may require that
136 a separate application be filed for each tax year in which
137 qualified research and development activity is to be undertaken
138 or in which qualified research and development property is to
139 be placed in service or use.

140 (7) *Failure to file.* — The failure to timely file the applica-
141 tion for certification of a research and development program or
142 project under this section results in forfeiture of one hundred
143 percent of the annual credit otherwise allowable under this
144 article. This penalty applies annually until such application is
145 filed.

146 (8) *Research and development undertaken without certifica-*
147 *tion.* — If a person has filed an application for certification of
148 a research and development program or project and has failed
149 to receive certification of the plan or program from the tax
150 commissioner, no credit is allowed under this article for the
151 research and development activity or investment relating
152 thereto.

153 (9) *Failure to comply with terms of certification.* — If a
154 person has filed an application for certification of a research
155 and development program or project and has received certifica-
156 tion of the plan or program from the tax commissioner, but fails
157 to conform to the terms of the certification, no credit is allowed
158 under this article for the research and development activity or
159 for investment in the research and development activity by the
160 eligible taxpayer. This restriction may be waived by the tax
161 commissioner upon a finding that the research and development
162 undertaken was within the requirements of this article and that
163 there was no intent to defraud the state or willful neglect in the
164 applicant's failure to conform to the terms of the certification.

165 (10) *Failure to comply with certification time restrictions.*
166 — If a person has filed an application for certification of a
167 research and development program or project and has received
168 certification of the plan or program from the tax commissioner,
169 but fails to conform to the time periods specified therein for the
170 certified research and development program or project, or fails
171 to renew the certification so as to cover ongoing or subsequent
172 research and development activity, the research and develop-
173 ment activity is out of compliance with the terms of the
174 certification and no credit is allowed under this article for, or
175 relating to, the research and development activity by any person
176 or taxpayer. This restriction may be waived by the tax commis-
177 sioner upon a finding that the research and development thus
178 undertaken was within the requirements of this article and that
179 there was no intent to defraud the state or willful neglect in the
180 applicant's failure to conform to the terms of the certification.

§11-13R-9. Identification of investment credit property.

1 (a) Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts for
3 each item of qualified research and development property:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 qualified research and development property.

12 (b) Every taxpayer who claims credit under this article shall
13 also maintain sufficient records to establish the number and

14 types of new jobs, if any, created, the wages and benefits paid
15 to employees filling the new jobs and the duration of each job.

§11-13R-11. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year thereafter,
3 the commissioner shall submit to the governor, the president of
4 the Senate and the speaker of the House of Delegates a tax
5 credit review and accountability report evaluating the cost
6 effectiveness of the credit allowed under this article during the
7 most recent three-year period for which information is avail-
8 able. The criteria to be evaluated includes, but is not limited to,
9 for each year of the three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number, type and duration of new jobs created
12 by all taxpayers claiming the credit and wages and benefits
13 paid;

14 (3) The cost of the credit;

15 (4) The cost of the credit per new job created; and

16 (5) Comparison of employment trends for the industry and
17 for taxpayers within the industry that claim the credit.

18 (b) Taxpayers claiming the credit shall provide such
19 information as the tax commissioner may require to prepare the
20 report: *Provided*, That such information shall be subject to the
21 confidentiality and disclosure provisions of sections five-d and
22 five-s, article ten of this chapter.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-4. Amount of credit allowed for manufacturing investment.

§11-13S-8. Identification of investment credit property.

§11-13S-10. Tax credit review and accountability.

§11-13S-4. Amount of credit allowed for manufacturing investment.

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers
2 and to persons described in subdivision (5), subsection (b) of
3 this section a credit against the taxes imposed by articles
4 thirteen-a, twenty-three and twenty-four of this chapter. The
5 amount of credit shall be determined as hereinafter provided in
6 this section.

7 (b) *Amount of credit allowable.* — The amount of allowable
8 credit under this article is equal to five percent of the qualified
9 manufacturing investment (as determined in section five of this
10 article), and shall reduce the severance tax, imposed under
11 article thirteen-a of this chapter, the business franchise tax
12 imposed under article twenty-three of this chapter and the
13 corporation net income tax imposed under article twenty-four
14 of this chapter, in that order, subject to the following conditions
15 and limitations:

16 (1) The amount of credit allowable is applied over a ten-
17 year period, at the rate of one-tenth thereof per taxable year,
18 beginning with the taxable year in which the property purchased
19 for manufacturing investment is first placed in service or use in
20 this state;

21 (2) *Severance tax.* — The credit is applied to reduce the
22 severance tax imposed under article thirteen-a of this chapter
23 (determined before application of the credit allowed by section
24 three, article twelve-b of this chapter and before any other
25 allowable credits against tax and before application of the
26 annual exemption allowed by section ten, article thirteen-a of
27 this chapter). The amount of annual credit allowed may not
28 reduce the severance tax, imposed under article thirteen-a of
29 this chapter, below fifty percent of the amount which would be
30 imposed for such taxable year in the absence of this credit
31 against tax. When in any taxable year the taxpayer is entitled to
32 claim credit under this article and article thirteen-d of this

33 chapter, the total amount of all credits allowable for the taxable
34 year may not reduce the amount of the severance tax, imposed
35 under article thirteen-a of this chapter, below fifty percent of
36 the amount which would be imposed for such taxable year
37 (determined before application of the credit allowed by section
38 three, article twelve-b of this chapter and before any other
39 allowable credits against tax and before application of the
40 annual exemption allowed by section ten, article thirteen-a of
41 this chapter);

42 (3) *Business franchise tax.* — After application of subdivi-
43 sion (2) of this subsection, any unused credit is next applied to
44 reduce the business franchise tax imposed under article twenty-
45 three of this chapter (determined after application of the credits
46 against tax provided in section seventeen, article twenty-three
47 of this chapter, but before application of any other allowable
48 credits against tax). The amount of annual credit allowed will
49 not reduce the business franchise tax, imposed under article
50 twenty-three of this chapter, below fifty percent of the amount
51 which would be imposed for such taxable year in the absence
52 of this credit against tax. When in any taxable year the taxpayer
53 is entitled to claim credit under this article and article thirteen-d
54 of this chapter, the total amount of all credits allowable for the
55 taxable year will not reduce the amount of the business fran-
56 chise tax, imposed under article twenty-three of this chapter,
57 below fifty percent of the amount which would be imposed for
58 the taxable year (determined after application of the credits
59 against tax provided in section seventeen, article twenty-three
60 of this chapter, but before application of any other allowable
61 credits against tax);

62 (4) *Corporation net income tax.* — After application of
63 subdivision (3) of this subsection, any unused credit is next
64 applied to reduce the corporation net income tax imposed under
65 article twenty-four of this chapter (determined before applica-
66 tion of any other allowable credits against tax). The amount of
67 annual credit allowed will not reduce corporation net income

68 tax, imposed under article twenty-four of this chapter, below
69 fifty percent of the amount which would be imposed for such
70 taxable year in the absence of this credit against tax. When in
71 any taxable year the taxpayer is entitled to claim credit under
72 this article and article thirteen-d of this chapter, the total
73 amount of all credits allowable for the taxable year may not
74 reduce the amount of the corporation net income tax, imposed
75 under article twenty-four of this chapter, below fifty percent of
76 the amount which would be imposed for the taxable year
77 (determined before application of any other allowable credits
78 against tax);

79 (5) *Pass-through entities.* –

80 (A) If the eligible taxpayer is a limited liability company,
81 small business corporation or a partnership, then any unused
82 credit (after application of subdivisions (2), (3) and (4) of this
83 subsection) is allowed as a credit against the taxes imposed by
84 article twenty-four of this chapter on owners of the eligible
85 taxpayer on the conduit income directly derived from the
86 eligible taxpayer by its owners. Only those portions of the tax
87 imposed by article twenty-four of this chapter that are imposed
88 on income directly derived by the owner from the eligible
89 taxpayer are subject to offset by this credit.

90 (B) The amount of annual credit allowed will not reduce
91 corporation net income tax, imposed under article twenty-four
92 of this chapter, below fifty percent of the amount which would
93 be imposed on the conduit income directly derived from the
94 eligible taxpayer by each owner for such taxable year in the
95 absence of this credit against the taxes (determined before
96 application of any other allowable credits against tax).

97 (C) When in any taxable year the taxpayer is entitled to
98 claim credit under this article and article thirteen-d of this
99 chapter, the total amount of all credits allowable for the taxable
100 year will not reduce the corporation net income tax imposed on
101 the conduit income directly derived from the eligible taxpayer

102 by each owner below fifty percent of the amount that would be
103 imposed for such taxable year on the conduit income (deter-
104 mined before application of any other allowable credits against
105 tax);

106 (6) Small business corporations, limited liability compa-
107 nies, partnerships and other unincorporated organizations shall
108 allocate any unused credit (after application of subdivisions (2),
109 (3) and (4) of this subsection) among their members in the same
110 manner as profits and losses are allocated for the taxable year;
111 and

112 (7) No credit is allowed under this article against any tax
113 imposed by article twenty-one of this chapter.

114 (c) No carryover to a subsequent taxable year or carryback
115 to a prior taxable year is allowed for the amount of any unused
116 portion of any annual credit allowance. Such unused credit is
117 forfeited.

118 (d) *Application for credit required.* –

119 (1) *Application required.* — Notwithstanding any provision
120 of this article to the contrary, no credit is allowed or may be
121 applied under this article for any qualified investment property
122 placed in service or use until the person claiming the credit
123 makes written application to the tax commissioner for allow-
124 ance of credit as provided in this section. This application shall
125 be in the form prescribed by the tax commissioner and shall
126 provide the number and type of jobs created, if any, by the
127 manufacturing investment, the average wage rates and benefits
128 paid to employees filling the new jobs and any other informa-
129 tion the tax commissioner may require. This application shall
130 be filed with the tax commissioner no later than the last day for
131 filing the annual return, determined by including any authorized
132 extension of time for filing the return, required under article
133 twenty-one or twenty-four of this chapter for the taxable year

134 in which the property to which the credit relates is placed in
135 service or use.

136 (2) *Failure to file.* — The failure to timely apply the
137 application for credit under this section results in forfeiture of
138 fifty percent of the annual credit allowance otherwise allowable
139 under this article. This penalty applies annually until such
140 application is filed.

§11-13S-8. Identification of investment credit property.

1 (a) Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts for
3 each item of property purchased for manufacturing investment:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 property purchased for manufacturing investment.

12 (b) Every taxpayer who claims credit under this article shall
13 also maintain sufficient records to establish the number and
14 types of new jobs, if any, created, the wages and benefits paid
15 to employees filling the new jobs and the duration of each job.

§11-13S-10. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year thereafter,
3 the commissioner shall submit to the governor, the president of

4 the Senate and the speaker of the House of Delegates a tax
5 credit review and accountability report evaluating the cost
6 effectiveness of the credit allowed under this article during the
7 most recent three-year period for which information is avail-
8 able. The criteria to be evaluated includes, but is not limited to,
9 for each year of the three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number, type and duration of new jobs created
12 by all taxpayers claiming the credit and the wages and benefits
13 paid;

14 (3) The cost of the credit;

15 (4) The cost of the credit per new job created; and

16 (5) Comparison of employment trends for the industry and
17 for taxpayers within the industry that claim the credit.

18 (b) Taxpayers claiming the credit shall provide the informa-
19 tion as the tax commissioner may require to prepare the report:
20 *Provided*, That the information is subject to the confidentiality
21 and disclosure provisions of sections five-d and five-s, article
22 ten of this chapter.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIFTH EXTRAORDINARY SESSION, 2001

CHAPTER 1

**(H. B. 501 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to a new item of appropriation designated to the department of transportation - state rail authority, fund 8733, fiscal year 2002, organization 0804, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for an existing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the "Budget Bill," be supplemented and amended by adding to Title II, section six thereof the following:

1 TITLE II — APPROPRIATIONS.

2 Section 6. Appropriations of federal funds.

3 DEPARTMENT OF TRANSPORTATION

4 284a—State Rail Authority

5 (WV Code Chapter 29)

6 Fund 8733 FY 2002 Org 0804

7		Act-	
8		ivity	Federal
			Funds
9	1	Unclassified - Total	096 \$ 287,047

10 The purpose of this supplementary appropriation bill is to
11 establish this account in the budget act for fiscal year ending the
12 thirtieth day of June, two thousand two, by providing a new
13 item of appropriation to appropriate federal funds in the amount
14 of two hundred eighty-seven thousand forty-seven dollars to
15 unclassified - total for expenditure during fiscal year two
16 thousand two.

CHAPTER 2

**(H. B. 502 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 10, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated September 10, 2001, setting forth therein the cash balance as of July 1, 2001; and further included the estimate of revenues for the fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0131, fiscal year 2002, organization 1400, be amended and increased in the line items as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 12—Department of Agriculture

5 (WV Code Chapter 19)

6 Fund 0131 FY 2002 Org 1400

			General
			Revenue
		Act-	Funds
		ivity	
10	1	Personal Services	001 \$ 30,000
11	4	Employee Benefits	010 15,000

12 The purpose of this supplementary appropriation bill is to
 13 supplement this account in the budget act for the fiscal year
 14 ending the thirtieth day of June, two thousand two, by increas-
 15 ing the existing item of appropriation for personal services by
 16 thirty thousand dollars; and by increasing the existing item of
 17 appropriation for employee benefits by fifteen thousand dollars,
 18 for expenditure during the fiscal year two thousand two.



CHAPTER 3

(H. B. 512 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]

 [Passed September 19, 2001; in effect from passage. Approved by the Governor.]

4

Civil Contingent Fund

5

(WV Code Chapter 5)

6

Fund 0105 FY 2002 Org 0100

7

General

8

Act-

Revenue

9

ivity

Fund

10

1 Civil Contingent Fund -Total

11

Surplus (R) 238 \$ 1,500,000

12

13

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17

18

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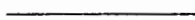
20

The purpose of this bill is to expire the sum of one million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, fund 0105, fiscal year 2002, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding one million five hundred thousand dollars to the appropriation for civil contingent fund - total - surplus for expenditure during the fiscal year two thousand two.



CHAPTER 4

**(H. B. 506 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**



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



AN ACT to amend and reenact section two, article three, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the joint commission on economic development; increasing the membership of the commission; and

requiring that one member appointed from each house represent health.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY:
A VISION SHARED.**

§5B-3-2. Creation of the joint commission on economic development.

1 (a) The joint commission on economic development is
2 hereby established. The commission shall be composed of not
3 more than twenty-four members as follows:

4 (1) The chairs of the Senate and House of Delegates finance
5 committees;

6 (2) The chairs of the Senate and House of Delegates
7 judiciary committees;

8 (3) The chairs of the Senate and House of Delegates
9 education committees;

10 (4) Not more than nine additional members of the Senate
11 appointed by the president of the Senate, with at least one
12 member representing health; and

13 (5) Not more than nine additional members of the House of
14 Delegates appointed by the speaker of the House of Delegates,
15 with at least one member representing health.

16 (b) Any vacancies occurring in the membership of the
17 commission shall be filled in the same manner as the original

18 appointment for the position being vacated. The vacancy shall
19 not affect the power of the remaining members to perform the
20 duties of the commission.

21 (c) The commission may explore how West Virginia can:

22 (1) Invest in systems that build workforce skills and
23 promote lifelong learning to ensure a competitive workforce;

24 (2) Enhance the infrastructure, communications and
25 transportation needed to support the knowledge-based indus-
26 tries and electronic commerce;

27 (3) Reorganize government to deliver services more
28 efficiently, using technology, privatization and partnerships
29 with the private sector;

30 (4) Align state tax systems to meet the demands of the
31 twenty-first century economy;

32 (5) Develop more uniform regulatory and tax systems to
33 reduce complexity, eliminate market distortions and better
34 protect consumers;

35 (6) Support entrepreneurs by streamlining business regula-
36 tions, providing timely decisions and assisting firms in their
37 search for venture capital;

38 (7) Promote university policies that encourage research and
39 development and build intellectual infrastructure;

40 (8) Address quality-of-life concerns to attract new busi-
41 nesses and workers; and

42 (9) Accomplish the goals set forth in this article and any
43 other goal related to economic development or workforce
44 investment that the commission considers important.

45 (d) The commission may propose legislation necessary to
46 accomplish its goals.

CHAPTER 5

**(S. B. 5007 — By Senators Wooton, Burnette, Caldwell, Hunter,
Kessler, Minard, Oliverio, Redd, Ross, Rowe,
Snyder, Deem and Facemyer)**

[Passed September 19, 2001; in effect from passage. Approved by the Governor.]

AN ACT to repeal article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article five, chapter three of said code; to amend and reenact section three, article ten of said chapter; to amend and reenact section twelve, article five, chapter sixteen of said code; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code; to amend and reenact sections four hundred one and four hundred four, article two of said chapter; to amend and reenact section one hundred one, article four of said chapter; to amend and reenact sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter; to amend and reenact section two hundred three, article seven of said chapter; to amend and reenact sections

one hundred two and one hundred five, article eight of said chapter; to amend and reenact sections one hundred four, two hundred two, four hundred three and six hundred three, article nine of said chapter; to amend and reenact sections one hundred five and one hundred six, article eleven of said chapter; to amend and reenact sections one hundred one, two hundred two, two hundred four, two hundred five, seven hundred one, nine hundred one and nine hundred two, article thirteen of said chapter; to amend and reenact sections one hundred one, one hundred six, two hundred four, four hundred two, four hundred five, five hundred one and eight hundred two, article fourteen of said chapter; to amend and reenact sections two hundred five, two hundred seven and two hundred eight, article fifteen of said chapter; to amend and reenact sections one hundred one, one hundred two and three hundred five, article sixteen of said chapter; to amend and reenact sections one hundred eight, one hundred eleven, one hundred fourteen, one hundred twenty-three and one hundred twenty-six, article eighteen of said chapter; to amend and reenact section one hundred two, article twenty of said chapter; to amend and reenact sections one hundred one and one hundred three, article twenty-four of said chapter; to amend and reenact sections two hundred four, two hundred five, two hundred nine, three hundred four, four hundred two, four hundred three, five hundred one, five hundred five, five hundred eight and five hundred ten, article twenty-seven of said chapter; to amend and reenact article two-a, chapter fifty-one of said code; to amend and reenact section one-a, article nine of said chapter; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine of said code, all relating generally to creating a family court system.

Be it enacted by the Legislature of West Virginia:

That article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article five, chapter three of said code be

amended and reenacted; that section three, article ten of said chapter be amended and reenacted; that section twelve, article five, chapter sixteen of said code be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code be amended and reenacted; that sections four hundred one and four hundred four, article two of said chapter be amended and reenacted; that section one hundred one, article four of said chapter be amended and reenacted; that sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter be amended and reenacted; that section two hundred three, article seven of said chapter be amended and reenacted; that sections one hundred two and one hundred five, article eight of said chapter be amended and reenacted; that sections one hundred four, two hundred two, four hundred three and six hundred three, article nine of said chapter be amended and reenacted; that sections one hundred five and one hundred six, article eleven of said chapter be amended and reenacted; that sections one hundred one, two hundred two, two hundred four, two hundred five, seven hundred one, nine hundred one and nine hundred two, article thirteen of said chapter be amended and reenacted; that sections one hundred one, one hundred six, two hundred four, four hundred two, four hundred five, five hundred one and eight hundred two, article fourteen of said chapter be amended and reenacted; that sections two hundred five, two hundred seven and two hundred eight, article fifteen of said chapter be amended and reenacted; that sections one hundred one, one hundred two and three hundred five, article sixteen of said chapter be amended and reenacted; that sections one hundred eight, one hundred eleven, one hundred fourteen, one hundred twenty-three and one

hundred twenty-six, article eighteen of said chapter be amended and reenacted; that section one hundred two, article twenty of said chapter be amended and reenacted; that sections one hundred one and one hundred three, article twenty-four of said chapter be amended and reenacted; that sections two hundred four, two hundred five, two hundred nine, three hundred four, four hundred two, four hundred three, five hundred one, five hundred five, five hundred eight and five hundred ten, article twenty-seven of said chapter be amended and reenacted; that article two-a, chapter fifty-one of said code be amended and reenacted; that section one-a, article nine of said chapter be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 3. Elections.
- 16. Public Health.
- 17B. Motor Vehicle Driver's Licenses.
- 42. Descent and Distribution.
- 48. Domestic Relations.
- 51. Courts and Their Officers.
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 3. ELECTIONS.

Article

- 5. Primary Elections and Nominating Procedures.
- 10. Filling Vacancies.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination for
 2 or election to office in any primary election shall, at the time of
 3 filing the certificate of announcement as required in this article,
 4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice
 6 president of the United States, for United States senator, for

7 member of the United States House of Representatives, for
8 governor and for all other state elective offices shall pay a fee
9 equivalent to one percent of the annual salary of the office for
10 which the candidate announces;

11 (b) A candidate for the office of judge of a circuit court and
12 judge of a family court shall pay a fee equivalent to one percent
13 of the total annual salary of the office for which the candidate
14 announces;

15 (c) A candidate for member of the House of Delegates shall
16 pay a fee of one-half percent of the total annual salary of the
17 office and a candidate for state senator shall pay a fee of one
18 percent of the total annual salary of the office;

19 (d) A candidate for sheriff, prosecuting attorney, circuit
20 clerk, county clerk, assessor, member of the county commission
21 and magistrate shall pay a fee equivalent to one percent of the
22 annual salary of the office for which the candidate announces.
23 A candidate for county board of education shall pay a fee of
24 twenty-five dollars. A candidate for any other county office
25 shall pay a fee of ten dollars;

26 (e) Delegates to the national convention of any political
27 party shall pay the following filing fees:

28 A candidate for delegate-at-large shall pay a fee of twenty
29 dollars; and a candidate for delegate from a congressional
30 district shall pay a fee of ten dollars;

31 (f) Candidates for members of political executive commit-
32 tees and other political committees shall pay the following
33 filing fees:

34 A candidate for member of a state executive committee of
35 any political party shall pay a fee of twenty dollars; a candidate
36 for member of a county executive committee of any political
37 party shall pay a fee of ten dollars; and a candidate for member

38 of a congressional, senatorial or delegate district committee of
39 any political party shall pay a fee of five dollars.

40 Candidates filing for an office to be filled by the voters of
41 one county shall pay the filing fee to the clerk of the circuit
42 court and candidates filing for an office to be filled by the
43 voters of more than one county shall pay the filing fee to the
44 secretary of state at the time of filing their certificates of
45 announcement and no certificate of announcement shall be
46 received until the filing fee is paid.

47 All moneys received by such clerk from such fees shall be
48 credited to the general county fund. Moneys received by the
49 secretary of state from fees paid by candidates for offices to be
50 filled by all the voters of the state shall be deposited in a special
51 fund for that purpose and shall be apportioned and paid by him
52 to the several counties on the basis of population and that
53 received from candidates from a district or judicial circuit of
54 more than one county shall be apportioned to the counties
55 comprising the district or judicial circuit in like manner. When
56 such moneys are received by sheriffs, it shall be credited to the
57 general county fund.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators and judges.

1 Any vacancy occurring in the office of secretary of state,
2 auditor, treasurer, attorney general, commissioner of agricul-
3 ture, United States senator, judge of the supreme court of
4 appeals or in any office created or made elective to be filled by
5 the voters of the entire state, judge of a circuit court or judge of
6 a family court is filled by the governor of the state by appoint-
7 ment. If the unexpired term of a judge of the supreme court of
8 appeals, a judge of the circuit court or judge of a family court
9 is for less than two years or if the unexpired term of any other
10 office named in this section is for a period of less than two

11 years and six months, the appointment to fill the vacancy is for
12 the unexpired term. If the unexpired term of any office is for a
13 longer period than above specified, the appointment is until a
14 successor to the office has timely filed a certificate of candi-
15 dacy, has been nominated at the primary election next following
16 such timely filing and has thereafter been elected and qualified
17 to fill the unexpired term. Proclamation of any election to fill an
18 unexpired term is made by the governor of the state and, in the
19 case of an office to be filled by the voters of the entire state,
20 must be published prior to the election as a Class II-0 legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code and the publication area for
23 the publication is each county of the state. If the election is to
24 fill a vacancy in the office of judge of a circuit court or judge of
25 a family court, the proclamation must be published prior to the
26 election as a Class II-0 legal advertisement in compliance with
27 the provisions of article three, chapter fifty-nine of this code
28 and the publication area for such publication is each county in
29 the judicial or family court circuit.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of pater- nity.

1 (a) A certificate of birth for each live birth which occurs in
2 this state shall be filed with the local registrar of the district in
3 which the birth occurs within seven days after the birth and
4 shall be registered by the registrar if it has been completed and
5 filed in accordance with this section. When a birth occurs in a
6 moving conveyance, a birth certificate shall be filed in the
7 district in which the child is first removed from the conveyance.
8 When a birth occurs in a district other than where the mother
9 resides, a birth certificate shall be filed in the district in which
10 the child is born and in the district in which the mother resides.

11 (b) When a birth occurs in an institution, the person in
12 charge of the institution or his or her designated representative
13 shall obtain the personal data, prepare the certificate, secure the
14 signatures required for the certificate and file it with the local
15 registrar. The physician in attendance shall certify to the facts
16 of birth and provide the medical information required for the
17 certificate within five days after the birth.

18 (c) When a birth occurs outside an institution, the certificate
19 shall be prepared and filed by one of the following in the
20 indicated order of priority:

21 (1) The physician in attendance at or immediately after the
22 birth or in the absence of such a person;

23 (2) Any other person in attendance at or immediately after
24 the birth or in the absence of such a person; or

25 (3) The father, the mother or, in the absence of the father
26 and the inability of the mother, the person in charge of the
27 premises where the birth occurred.

28 (d) Either of the parents of the child shall sign the certifi-
29 cate of live birth to attest to the accuracy of the personal data
30 entered thereon, in time to permit its filing within the seven
31 days prescribed above.

32 (e) In order that each county may have a complete record of
33 the births occurring in said county, the local registrar shall
34 transmit each month to the county clerk of his or her county the
35 copies of the certificates of all births occurring in said county,
36 from which copies the clerk shall compile a record of such
37 births and shall enter the same in a systematic and orderly way
38 in a well-bound register of births, which said register shall be
39 a public record: *Provided*, That such copies and register shall
40 not state that any child was either legitimate or illegitimate. The
41 form of said register of births shall be prescribed by the state
42 registrar of vital statistics.

43 (f) In addition to the personal data furnished for the
44 certificate of birth issued for a live birth in accordance with the
45 provisions of this section, a person whose name is to appear on
46 such certificate of birth as a parent shall contemporaneously
47 furnish to the person preparing and filing the certificate of birth
48 the social security account number (or numbers, if the parent
49 has more than one such number) issued to the parent. A record
50 of the social security number or numbers shall be filed with the
51 local registrar of the district in which the birth occurs within
52 seven days after such birth and the local registrar shall transmit
53 such number or numbers to the state registrar of vital statistics
54 in the same manner as other personal data is transmitted to the
55 state registrar.

56 (g) If the mother was married either at the time of concep-
57 tion or birth, the name of the husband shall be entered on the
58 certificate as the father of the child unless paternity has been
59 determined otherwise by a court of competent jurisdiction
60 pursuant to the provisions of article twenty-four, chapter forty-
61 eight of this code or other applicable law, in which case the
62 name of the father as determined by the court shall be entered.

63 (h) If the mother was not married either at the time of
64 conception or birth, the name of the father shall not be entered
65 on the certificate of birth without the written consent of the
66 mother and of the person to be named as the father unless a
67 determination of paternity has been made by a court of compe-
68 tent jurisdiction pursuant to the provisions of article twenty-
69 four, chapter forty-eight of this code or other applicable law, in
70 which case the name of the father as determined by the court
71 shall be entered.

72 (i) A written, notarized acknowledgment of both the man
73 and the woman that the man is the father of a named child
74 legally establishes the man as the father of the child for all
75 purposes and child support may be established pursuant to the
76 provisions of chapter forty-eight of this code.

77 (1) The written acknowledgment shall include filing
78 instructions, the parties' social security numbers and addresses
79 and a statement, given orally and in writing, of the alternatives
80 to, the legal consequences of and the rights and obligations of
81 acknowledging paternity, including, but not limited to, the duty
82 to support a child. If either of the parents is a minor, the
83 statement shall include an explanation of any rights that may be
84 afforded due to the minority status.

85 (2) The failure or refusal to include all information required
86 by subdivision (1) of this subsection shall not affect the validity
87 of the written acknowledgment, in the absence of a finding by
88 a court of competent jurisdiction that the acknowledgment was
89 obtained by fraud, duress or material mistake of fact, as
90 provided in subdivision (4) of this subsection.

91 (3) The original written acknowledgment should be filed
92 with the state registrar of vital statistics. Upon receipt of any
93 acknowledgment executed pursuant to this section, the registrar
94 shall forward the copy of the acknowledgment to the bureau for
95 child support enforcement and the parents, if the address of the
96 parents is known to the registrar. If a birth certificate for the
97 child has been previously issued which is incorrect or incom-
98 plete, a new birth certificate shall be issued.

99 (4) An acknowledgment executed under the provisions of
100 this subsection may be rescinded as follows:

101 (A) The parent wishing to rescind the acknowledgment
102 shall file with the clerk of the circuit court of the county in
103 which the child resides a verified complaint stating the name of
104 the child, the name of the other parent, the date of the birth of
105 the child, the date of the signing of the affidavit and a statement
106 that he or she wishes to rescind the acknowledgment of the
107 paternity. If the complaint is filed more than sixty days from the
108 date of execution or the date of an administrative or judicial
109 proceeding relating to the child in which the signatory is a

110 party, the complaint shall include specific allegations concern-
111 ing the elements of fraud, duress or material mistake of fact.

112 (B) The complaint shall be served upon the other parent as
113 provided in rule 4 of the West Virginia rules of civil procedure.

114 (C) The family court judge shall hold a hearing within sixty
115 days of the service of process upon the other parent. If the
116 complaint was filed within sixty days of the date the acknowl-
117 edgment of paternity was executed, the court shall order the
118 acknowledgment to be rescinded without any requirement of a
119 showing of fraud, duress or material mistake of fact. If the
120 complaint was filed more than sixty days from the date of
121 execution or the date of an administrative or judicial proceeding
122 relating to the child in which the signatory is a party, the court
123 may only set aside the acknowledgment upon a finding, by clear
124 and convincing evidence, that the acknowledgment was
125 executed under circumstances of fraud, duress or material
126 mistake of fact. The circuit clerk shall forward a copy of any
127 order entered pursuant to this proceeding to the state registrar
128 of vital statistics by certified mail.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

1 (a) The division upon issuing a driver's license shall have
2 authority whenever good cause appears to impose restrictions
3 suitable to the licensee's driving ability with respect to the type
4 of or special mechanical control devices required on a motor
5 vehicle which the licensee may operate or such other restric-
6 tions applicable to the licensee as the division may determine
7 to be appropriate to assure the safe operation of a motor vehicle
8 by the licensee.

9 (b) The division shall issue a restricted license to a person
10 who has failed to pay overdue child support or comply with

11 subpoenas or warrants relating to paternity or child support
12 proceedings if a court orders restrictions of the person's license
13 as provided in article fifteen, chapter forty-eight of this code.

14 (c) The division may either issue a special restricted license
15 or may set forth such restrictions upon the usual license form.

16 (d) The division may upon receiving satisfactory evidence
17 of any violation of the restrictions of such license suspend or
18 revoke the same but the licensee shall be entitled to a hearing
19 as upon a suspension or revocation under this chapter.

20 (e) It is a misdemeanor for any person to operate a motor
21 vehicle in any manner in violation of the restrictions imposed
22 in a restricted license issued to such person.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of
2 inheriting and transmitting inheritance on the part of their
3 mother and father.

4 (b) Prior to the death of the father, paternity shall be
5 established by:

6 (1) Acknowledgment that he is the child's father;

7 (2) Adjudication on the merits pursuant to the provisions of
8 article twenty-four, chapter forty-eight of this code; or

9 (3) By order of a court of competent jurisdiction issued in
10 another state.

11 (c) After the death of the father, paternity shall be estab-
12 lished if, after a hearing on the merits, the court shall find, by
13 clear and convincing evidence, that the man is the father of the
14 child. The civil action shall be filed in the family court of the

15 county where the administration of the decedent's estate has
16 been filed or could be filed:

17 (1) Within six months of the date of the final order of the
18 county commission admitting the decedent's will to probate or
19 commencing intestate administration of the estate; or

20 (2) If none of the above apply, within six months from the
21 date of decedent's death.

22 (d) Any putative child who at the time of the decedent's
23 death is under the age of eighteen years, a convict or a mentally
24 incapacitated person may file such civil action within six
25 months after he or she becomes of age or the disability ceases.

26 (e) The provisions of this section do not apply where the
27 putative child has been lawfully adopted by another man and
28 stands to inherit property or assets through his adopted father.

29 (f) The provisions of this section do not apply where the
30 father or putative father has expressly disinherited the child in
31 a provision of his will.

CHAPTER 48. DOMESTIC RELATIONS.

Article

1. General Provisions; Definitions.
2. Marriage.
4. Separate Maintenance.
5. Divorce.
7. Equitable Distribution of Property.
8. Spousal Support.
9. Allocation of Custodial Responsibility and Decision-making Responsibility of Children.
11. Support of Children.
13. Guidelines for Child Support Awards.
14. Remedies for the Enforcement of Support Obligations.
15. Enforcement of Support Order Through Action Against License.
16. Uniform Interstate Family Support Act.
18. Bureau for Child Support Enforcement.
20. Uniform Child Custody Jurisdiction and Enforcement Act.
24. Establishment of Paternity.
27. Prevention and Treatment of Domestic Violence.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-202. Adjusted gross income defined.

§48-1-205. Attributed income defined.

§48-1-216. Court defined.

§48-1-217. Court of competent jurisdiction defined.

§48-1-221. Divorce defined.

§48-1-225. Extraordinary medical expenses defined.

§48-1-226. Family court judge defined.

§48-1-303. Confidentiality of domestic relations court files.

§48-1-304. Proceedings in contempt.

§48-1-305. Suit money, counsel fees and costs.

PART 2. DEFINITIONS.**§48-1-202. Adjusted gross income defined.**

1 (a) “Adjusted gross income” means gross income less the
2 payment of previously ordered child support, spousal support
3 or separate maintenance.

4 (b) A further deduction from gross income for additional
5 dependents may be allowed by the court if the parent has legal
6 dependents other than those for whom support is being deter-
7 mined. An adjustment may be used in the establishment of a
8 child support order or in a review of a child support order.
9 However, in cases where a modification is sought, the adjust-
10 ment should not be used to the extent that it results in a support
11 amount lower than the previously existing order for the children
12 who are the subject of the modification. The court may elect to
13 use the following adjustment because it allots equitable shares
14 of support to all of the support obligor’s legal dependents.
15 Using the income of the support obligor only, determine the
16 basic child support obligation (from the table of basic child
17 support obligations in section 13-301 of this chapter) for the
18 number of additional legal dependents living with the support
19 obligor. Multiply this figure by 0.75 and subtract this amount
20 from the support obligor’s gross income.

21 (c) As used in this section, the term “legal dependents”
22 means:

23 (1) Minor natural or adopted children who live with the
24 parent; and

25 (2) Natural or adopted adult children who are totally
26 incapacitated because of physical or emotional disabilities and
27 for whom the parent owes a duty of support.

§48-1-205. Attributed income defined.

1 (a) “Attributed income” means income not actually earned
2 by a parent but which may be attributed to the parent because
3 he or she is unemployed, is not working full time or is working
4 below full-earning capacity or has nonperforming or
5 underperforming assets. Income may be attributed to a parent
6 if the court evaluates the parent’s earning capacity in the local
7 economy (giving consideration to relevant evidence that
8 pertains to the parent’s work history, qualifications, education
9 and physical or mental condition) and determines that the
10 parent is unemployed, is not working full time or is working
11 below full-earning capacity. Income may also be attributed to
12 a parent if the court finds that the obligor has nonperforming or
13 underperforming assets.

14 (b) If an obligor: (1) Voluntarily leaves employment or
15 voluntarily alters his or her pattern of employment so as to be
16 unemployed, underemployed or employed below full-earning
17 capacity; (2) is able to work and is available for full-time work
18 for which he or she is fitted by prior training or experience; and
19 (3) is not seeking employment in the manner that a reasonably
20 prudent person in his or her circumstances would do, then an
21 alternative method for the court to determine gross income is to
22 attribute to the person an earning capacity based on his or her
23 previous income. If the obligor’s work history, qualifications,
24 education or physical or mental condition cannot be deter-

25 mined, or if there is an inadequate record of the obligor's
26 previous income, the court may, as a minimum, base attributed
27 income on full-time employment (at forty hours per week) at
28 the federal minimum wage in effect at the time the support
29 obligation is established.

30 (c) Income shall not be attributed to an obligor who is
31 unemployed or underemployed or is otherwise working below
32 full-earning capacity if any of the following conditions exist:

33 (1) The parent is providing care required by the children to
34 whom the parties owe a joint legal responsibility for support
35 and such children are of preschool age or are handicapped or
36 otherwise in a situation requiring particular care by the parent;

37 (2) The parent is pursuing a plan of economic
38 self-improvement which will result, within a reasonable time,
39 in an economic benefit to the children to whom the support
40 obligation is owed, including, but not limited to,
41 self-employment or education: *Provided*, That if the parent is
42 involved in an educational program, the court shall ascertain
43 that the person is making substantial progress toward comple-
44 tion of the program;

45 (3) The parent is, for valid medical reasons, earning an
46 income in an amount less than previously earned; or

47 (4) The court makes a written finding that other circum-
48 stances exist which would make the attribution of income
49 inequitable: *Provided*, That in such case, the court may de-
50 crease the amount of attributed income to an extent required to
51 remove such inequity.

52 (d) The court may attribute income to a parent's
53 nonperforming or under-performing assets, other than the
54 parent's primary residence. Assets may be considered to be
55 nonperforming or under-performing to the extent that they do

56 not produce income at a rate equivalent to the current six-month
57 certificate of deposit rate or such other rate that the court
58 determines is reasonable.

§48-1-216. Court defined.

1 "Court" means a family court of this state unless the context
2 in which such term is used clearly indicates that reference to
3 some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

1 "Court of competent jurisdiction" means a circuit court or
2 family court within this state or a court or administrative
3 agency of another state having jurisdiction and due legal
4 authority to deal with the subject matter of the establishment
5 and enforcement of support obligations. Whenever in this
6 chapter reference is made to an order of a court of competent
7 jurisdiction, or similar wording, such language shall be inter-
8 preted so as to include orders of an administrative agency
9 entered in a state where enforceable orders may by law be
10 properly made and entered by such administrative agency.

§48-1-221. Divorce defined.

1 "Divorce" means the judicial termination of a marriage
2 contract. The termination of a marriage contract must be based
3 on misconduct or other statutory cause arising after the mar-
4 riage. A divorce is established by the order of a family court or
5 circuit court that changes the status of a husband and wife from
6 a state of marriage to that of single persons.

§48-1-225. Extraordinary medical expenses defined.

1 "Extraordinary medical expenses" means uninsured medical
2 expenses in excess of two hundred fifty dollars per year per
3 child which are recurring and can reasonably be predicted by

4 the court at the time of establishment or modification of a child
5 support order. Such expenses shall include, but not be limited
6 to, insurance copayments and deductibles, reasonable costs for
7 necessary orthodontia, dental treatment, asthma treatments,
8 physical therapy, vision therapy and eye care and any uninsured
9 chronic health problem.

§48-1-226. Family court judge defined.

1 "Family court judge" means a family court judge appointed
2 or elected and authorized to hear certain domestic relations
3 actions as provided in article two-a, chapter fifty-one of this
4 code.

PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.

§48-1-303. Confidentiality of domestic relations court files.

1 (a) All orders in domestic relations actions entered in the
2 civil order books by circuit clerks are public records.

3 (b) Upon the filing of a domestic relations action, all
4 pleadings, exhibits or other documents, other than orders, that
5 are contained in the court file are confidential and not open for
6 public inspection either during the pendency of the case or after
7 the case is closed.

8 (c) When sensitive information has been disclosed during
9 a hearing or in pleadings, evidence or documents filed in the
10 record, the court may, sua sponte or upon motion of a party,
11 order such information sealed in the court file. Sealed docu-
12 ments or court files can only be opened by order of a circuit or
13 family court judge.

14 (d) The parties, their designees, their attorneys, a duly
15 appointed guardian ad litem or any other person who has

16 standing to seek modification or enforcement of a support order
17 has the right to examine and copy any document in a confidential
18 tial court file that has not been sealed by court order. Upon
19 motion and for good cause shown, the court may permit a
20 person who is not a party to the action to examine and copy any
21 documents that are necessary to further the interests of justice.

22 (e) The clerk of the circuit court shall keep a written log of
23 all persons who examine confidential documents as provided
24 for in this section. Every person who examines confidential
25 documents shall first sign the clerk's written log, except for a
26 circuit judge or family court judge before whom the case is
27 pending, or court personnel acting within the scope of their
28 duties. The clerk shall record the time and date of every
29 examination of confidential documents. The log must be
30 retained by the clerk and must be available upon request for
31 inspection by the circuit judge or the family court judge.

§48-1-304. Proceedings in contempt.

1 (a) Upon a verified petition for contempt, notice of hearing
2 and hearing, if the petition alleges criminal contempt or the
3 court informs the parties that the matter will be treated and tried
4 as a criminal contempt, the matter shall be tried in the circuit
5 court before a jury, unless the party charged with contempt
6 shall knowingly and intelligently waive the right to a jury trial
7 with the consent of the court and the other party. If the jury, or
8 the circuit court sitting without a jury, shall find the defendant
9 in contempt for willfully failing to comply with an order of the
10 court made pursuant to the provisions of article three, four, five,
11 eight, nine, eleven, twelve, fourteen or fifteen of this chapter, as
12 charged in the petition, the court may find the person to be in
13 criminal contempt and may commit such person to the county
14 jail for a determinate period not to exceed six months.

15 (b) If trial is had under the provisions of subsection (a) of
16 this section and the court elects to treat a finding of criminal
17 contempt as a civil contempt and the matter is not tried before
18 a jury and the court finds the defendant in contempt for
19 willfully failing to comply with an order of the court made
20 pursuant to the provisions of article three, four, five, eight, nine,
21 eleven, twelve, fourteen or fifteen of this chapter, and if the
22 court further finds the person has the ability to purge himself of
23 contempt, the court shall afford the contemnor a reasonable
24 time and method whereby he may purge himself of contempt.
25 If the contemnor fails or refuses to purge himself of contempt,
26 the court may confine the contemnor to the county jail for an
27 indeterminate period not to exceed six months or until such
28 time as the contemnor has purged himself, whichever shall first
29 occur. If the petition alleges civil contempt, the matter shall be
30 heard by the family court. The family court has the same power
31 and authority as the circuit court under the provisions of this
32 section for criminal contempt proceedings which the circuit
33 court elects to treat as civil contempt.

34 (c) In the case of a charge of contempt based upon the
35 failure of the defendant to pay alimony, child support or
36 separate maintenance, if the court or jury finds that the defen-
37 dant did not pay because he was financially unable to pay, the
38 defendant may not be imprisoned on charges of contempt of
39 court.

40 (d) Regardless of whether the court or jury finds the
41 defendant to be in contempt, if the court shall find that a party
42 is in arrears in the payment of alimony, child support or
43 separate maintenance ordered to be paid under the provisions of
44 this chapter, the court shall enter judgment for such arrearage
45 and award interest on such arrearage from the due date of each
46 unpaid installment. Following any hearing wherein the court
47 finds that a party is in arrears in the payment of alimony, child
48 support or separate maintenance, the court may, if sufficient

49 assets exist, require security to ensure the timely payment of
50 future installments.

51 (e) At any time during a contempt proceeding the court may
52 enter an order to attach forthwith the body of, and take into
53 custody, any person who refuses or fails to respond to the
54 lawful process of the court or to comply with an order of the
55 court. Such order of attachment shall require the person to be
56 brought forthwith before the court or the judge thereof in any
57 county in which the court may then be sitting.

§48-1-305. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other
7 party to prosecute or defend the action. An order for temporary
8 relief awarding attorney's fees and court costs may be modified
9 at any time during the pendency of the action, as the exigencies
10 of the case or equity and justice may require, including, but not
11 limited to, a modification which would require full or partial
12 repayment of fees and costs by a party to the action to whom or
13 on whose behalf payment of such fees and costs was previously
14 ordered. If an appeal is taken or an intention to appeal is stated,
15 the court may further order either party to pay attorney's fees
16 and costs on appeal.

17 (c) When it appears to the court that a party has incurred
18 attorney fees and costs unnecessarily because the opposing
19 party has asserted unfounded claims or defenses for vexatious,
20 wanton or oppressive purposes, thereby delaying or diverting
21 attention from valid claims or defenses asserted in good faith,
22 the court may order the offending party, or his or her attorney,

23 or both, to pay reasonable attorney fees and costs to the other
24 party.

ARTICLE 2. MARRIAGE.

§48-2-401. Persons authorized to perform marriages.

§48-2-404. Ritual for ceremony of marriage by a judge or justice.

Part 4. Marriage Ceremony.

§48-2-401. Persons authorized to perform marriages.

1 A religious representative who has complied with the
2 provisions of section 2-402, a family court judge, a circuit judge
3 or a justice of the supreme court of appeals, is authorized to
4 celebrate the rites of marriage in any county of this state.
5 Celebration or solemnization of a marriage means the perfor-
6 mance of the formal act or ceremony by which a man and
7 woman contract marriage and assume the status of husband and
8 wife.

9 For purposes of this chapter, the term “religious representa-
10 tive” means a minister, priest or rabbi and includes, without
11 being limited to, a leader or representative of a generally
12 recognized spiritual assembly, church or religious organization
13 which does not formally designate or recognize persons as
14 ministers, priests or rabbis.

§48-2-404. Ritual for ceremony of marriage by a judge or justice.

1 The ritual for the ceremony of marriages by a family court
2 judge, a circuit judge or a justice of the supreme court of
3 appeals may be as follows: At the time appointed, the persons
4 to be married, being qualified according to the law of the state
5 of West Virginia, standing together facing the judge, the man
6 at the judge’s left hand and the woman at the right, the judge
7 shall say:

8 "We are gathered here, in the presence of these witnesses,
9 to join together this man and this woman in matrimony. It is not
10 to be entered into unadvisedly but discreetly, sincerely and in
11 dedication of life."

12 (Then shall the judge say to the man, using his christian
13 name:)

14 "N., wilt thou have this woman to be thy wedded wife, to
15 live together in the bonds of matrimony? Wilt thou love her,
16 comfort her, honor and keep her in sickness and in health?"

17 (Then the man shall answer:)

18 "I will."

19 (Then the judge shall say to the woman, using her christian
20 name:)

21 "N., wilt thou have this man to be thy wedded husband, to
22 live together in the bonds of matrimony? Wilt thou love him,
23 comfort him, honor and keep him in sickness and health?"

24 (The woman shall answer:)

25 "I will."

26 (Then may the judge say:)

27 "Who giveth this woman to be married to this man?"

28 (The father of the woman, or whoever giveth her in
29 marriage, shall answer:)

30 "I do."

31 (Then the judge shall ask the man to say after him:)

32 “I, N., take thee, N., to be my wedded wife, to have and to
33 hold, from this day forward, for better, for worse, for richer, for
34 poorer, in sickness and in health, to love and to cherish, as long
35 as life shall last, and thereto I pledge thee my faith.”

36 (Then the judge shall ask the woman to repeat after him:)

37 “I, N., take thee, N., to be my wedded husband, to have and
38 to hold, from this day forward, for better, for worse, for richer,
39 for poorer, in sickness and in health, to love and to cherish, as
40 long as life shall last, and thereto I pledge thee my faith.”

41 (Then, if there be a ring, the judge shall say:)

42 “The wedding ring is an outward and visible
43 sign—signifying unto all, the uniting of this man and this
44 woman in matrimony.”

45 (The judge then shall deliver the ring to the man to put on
46 the third finger of the woman’s left hand. The man shall say
47 after the judge:)

48 “In token and pledge of the vow between us made, with this
49 ring, I thee wed.”

50 (Then, if there be a second ring, the judge shall deliver it to
51 the woman to put upon the third finger of the man’s left hand;
52 and the woman shall say after the judge:)

53 “In token and pledge of the vow between us made, with this
54 ring, I thee wed.”

55 (Then shall the judge say:)

56 “Forasmuch as N. and N. have consented together in
57 wedlock, and have witnessed the same each to the other and
58 before these witnesses and thereto have pledged their faith each
59 to the other, and have declared the same by giving (and

60 receiving) a ring, by virtue of the authority vested in me as
61 judge of this court, I pronounce that they are husband and wife
62 together.”

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

1 An action for separate maintenance may be brought in the
2 family court of any county where an action for divorce between
3 the parties could be brought. An action for separate mainte-
4 nance may be brought whether or not a divorce is prayed for.

ARTICLE 5. DIVORCE.

§48-5-102. Subject matter jurisdiction.

§48-5-103. Jurisdiction of parties; service of process.

§48-5-107. Parties to a divorce action.

§48-5-201. Grounds for divorce; irreconcilable differences.

§48-5-402. Petition for divorce.

§48-5-403. Answer to petition.

§48-5-604. Use and occupancy of marital home.

§48-5-605. Use and possession of motor vehicles.

§48-5-611. Suit money, counsel fees and costs.

§48-5-702. Revision of order enjoining abuse.

PART 1. GENERAL PROVISIONS.

§48-5-102. Subject matter jurisdiction.

1 (a) The Legislature hereby finds and declares that it has the
2 authority to establish, by general law, the jurisdiction of circuit
3 courts and family courts over domestic relations matters.

4 (b) The circuit courts and family courts of this state, by act
5 of the Legislature, are vested with concurrent jurisdiction over
6 the subject matter of divorce. Generally, a family court has the
7 right and authority to adjudicate actions for divorce and the
8 power to carry its judgment and order into execution. Circuit

9 courts have limited jurisdiction in divorce actions, as provided
10 in section two, article two-a, chapter fifty-one of this code and
11 as otherwise specifically provided in this chapter. Jurisdiction
12 of the subject matter of divorce embraces the power to deter-
13 mine every issue or controverted question in an action for
14 divorce, according to the court's view of the law and the
15 evidence.

§48-5-103. Jurisdiction of parties; service of process.

1 (a) In an action for divorce, it is immaterial where the
2 marriage was celebrated, where the parties were domiciled at
3 the time the grounds for divorce arose or where the marital
4 offense was committed. If one or both of the parties is domi-
5 ciled in this state at the time the action is commenced, the
6 circuit courts and family courts of this state have jurisdiction to
7 grant a divorce for any grounds fixed by law in this state,
8 without any reference to the law of the place where the mar-
9 riage occurred or where the marital offense was committed.

10 (b) A judgment order may be entered upon service of
11 process in the manner specified in the rules of civil procedure
12 for the service of process upon individuals.

§48-5-107. Parties to a divorce action.

1 (a) Either or both of the parties to a marriage may initiate
2 an action for divorce.

3 (b) A spouse who is under the age of majority has standing
4 in a divorce action to sue, answer or plead by a next friend.

5 (c) An incompetent or insane person shall sue, answer or
6 plead by his or her committee. If a person has not been adjudi-
7 cated incompetent or insane and has not been divested of the
8 power to act on his or her own behalf, it is presumed that the
9 person has the capacity to bring the action or be made a party

10 respondent. This presumption may be rebutted by evidence
11 which shows that the person cannot reasonably understand the
12 nature and purpose of the action and the effect of his or her acts
13 with reference to the action.

14 (d) The appointment of a guardian ad litem for a minor, an
15 incompetent or an insane party is not required unless specifi-
16 cally ordered by the judge hearing the action.

17 (e) Anyone charged as a particeps criminis shall be made a
18 party to a divorce action, upon his or her application to the
19 court, subject to such terms and conditions as the court may
20 prescribe.

21 (f) In a divorce action where the interests of the minor
22 children of the parties are or may be substantially different from
23 those of either or both of the parents and the best interests of the
24 children may be in conflict with the desires of either or both
25 parents, the court may make the children parties respondent and
26 appoint a guardian ad litem to advocate and protect their rights
27 and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

1 The court may order a divorce if the complaint alleges that
2 irreconcilable differences exist between the parties and an
3 answer is filed admitting that allegation. A complaint alleging
4 irreconcilable differences shall set forth the names of any
5 dependent children of either or both of the parties. A divorce on
6 this ground does not require corroboration of the irreconcilable
7 differences or of the issues of jurisdiction or venue. The court
8 may approve, modify or reject any agreement of the parties and
9 make orders concerning spousal support, custodial responsibil-
10 ity, child support, visitation rights or property interests.

PART 4. PRACTICE AND PROCEDURE.

§48-5-402. Petition for divorce.

1 (a) An action for divorce is instituted by a verified petition
2 and the formal style and the caption for all pleadings is “In Re
3 the marriage of _____ and _____”. The parties shall be
4 identified in all pleadings as “petitioner” and “respondent”.

5 (b) The petition must set forth the ground or grounds for
6 divorce. It is not necessary to allege the facts constituting a
7 ground relied on and a petition or counter-petition is sufficient
8 if a ground for divorce is alleged in the language of the statute
9 as set forth in this article. The court has the discretionary
10 authority to grant a motion to require a more definite and
11 certain statement, set forth in ordinary and concise language,
12 alleging facts and not conclusions of law.

13 (c) If the jurisdiction of the court to grant a divorce depends
14 upon the existence of certain facts, including, but not limited to,
15 facts showing domicil or domicil for a certain length of time,
16 the petition must allege those facts. It is not necessary that
17 allegations showing requisite domicil be in the language of the
18 statute, but they should conform substantially thereto so that
19 everything material to the fact of requisite domicil can be
20 ascertained therefrom.

21 (d) A petition shall not be taken for confessed and whether
22 the respondent answers or not, the case shall be tried and heard
23 independently of the admissions of either party in the pleadings
24 or otherwise. No judgment order shall be granted on the
25 uncorroborated testimony of the parties or either of them,
26 except for a proceeding in which the grounds for divorce are
27 irreconcilable differences.

28 (e) The supreme court of appeals shall develop and provide
29 forms for petitions filed pursuant to this section and for answers

30 filed pursuant to section 5-403. The forms shall be made
31 available for distribution in the offices of the clerks of the
32 circuit courts and in the offices of the secretary-clerks to the
33 family court judges.

§48-5-403. Answer to petition.

1 (a) The responsive pleading to a petition for divorce is
2 denominated an answer. The form and requisites for an answer
3 to a petition for divorce are governed by the rules of civil
4 procedure.

5 (b) Except as provided in subsection (c) of this section, an
6 allegedly guilty party who relies upon an affirmative defense
7 must assert such defense by both pleadings and proof. Affirma-
8 tive defenses include, but are not limited to, condonation,
9 connivance, collusion, recrimination, insanity and lapse of time.

10 (c) In an action in which a party seeks a divorce based on
11 an allegation that the parties have lived separate and apart in
12 separate places of abode without any cohabitation and without
13 interruption for one year, the affirmative defenses, including,
14 but not limited to, condonation, connivance, collusion, recrimi-
15 nation, insanity and lapse of time, shall not be raised.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-604. Use and occupancy of marital home.

1 (a) The court may award the exclusive use and occupancy
2 of the marital home to a party. An order granting use and
3 occupancy of the marital home shall include the use of any
4 necessary household goods, furniture and furnishings. The order
5 shall establish a definite period for the use and occupancy,
6 ending at a specific time set forth in the order, subject to
7 modification upon the petition of either party.

8 (b) Generally, an award of the exclusive use and occupancy
9 of the marital home is appropriate when necessary to accommo-
10 date rearing minor children of the parties. Otherwise, the court
11 may award exclusive use and occupancy only in extraordinary
12 cases supported by specific findings set forth in the order that
13 grants relief.

14 (c) An order awarding the exclusive use and occupancy of
15 the marital home may also require payments to third parties for
16 home loan installments, land contract payments, rent, property
17 taxes and insurance coverage. When requiring third-party
18 payments, the court shall reduce them to a fixed monetary
19 amount set forth in the order. The court shall specify whether
20 third-party payments or portions of payments are spousal
21 support, child support, a partial distribution of marital property
22 or an allocation of marital debt. Unless the court identifies
23 third-party payments as child support payments or as install-
24 ment payments for the distribution of marital property, then
25 such payments are spousal support. If the court does not
26 identify the payments and the parties have waived any right to
27 receive spousal support, the court may identify the payments
28 upon motion by any party.

29 (d) This section is not intended to abrogate a contract
30 between either party and a third party or affect the rights and
31 liabilities of either party or a third party under the terms of a
32 contract.

§48-5-605. Use and possession of motor vehicles.

1 (a) The court may award the exclusive use and possession
2 of a motor vehicle or vehicles to either of the parties.

3 (b) The court may require payments to third parties in the
4 form of automobile loan installments or insurance coverage, if
5 coverage is available at reasonable rates. When requiring
6 third-party payments, the court shall reduce them to a fixed

7 monetary amount set forth in the order. The court shall specify
8 whether third-party payments or portions of payments are
9 spousal support or installment payments for the distribution of
10 marital property.

11 (c) This section is not intended to abrogate a contract
12 between either party and a third party or affect the rights and
13 liabilities of either party or a third party under the terms of a
14 contract.

§48-5-611. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires,
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other
7 party to prosecute or defend the action. An order for temporary
8 relief awarding attorney's fees and court costs may be modified
9 at any time during the pendency of the action, as the exigencies
10 of the case or equity and justice may require, including, but not
11 limited to, a modification which would require full or partial
12 repayment of fees and costs by a party to the action to whom or
13 on whose behalf payment of such fees and costs was previously
14 ordered. If an appeal be taken or an intention to appeal be
15 stated, the court may further order either party to pay attorney
16 fees and costs on appeal.

17 (c) When it appears to the court that a party has incurred
18 attorney's fees and costs unnecessarily because the opposing
19 party has asserted unfounded claims or defenses for vexatious,
20 wanton or oppressive purposes, thereby delaying or diverting
21 attention from valid claims or defenses asserted in good faith,
22 the court may order the offending party, or his or her attorney,

23 or both, to pay reasonable attorney's fees and costs to the other
24 party.

§48-5-702. Revision of order enjoining abuse.

1 After entering an order enjoining abuse in accordance with
2 the provisions of section 5-509, the court may, from time to
3 time afterward, upon motion of either of the parties and upon
4 proper service, revise the order and enter a new order concern-
5 ing the same as the circumstances of the parties and the benefit
6 of children may require.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-203. Forms for disclosure of assets.

1 The supreme court of appeals shall prepare and make
2 available a standard form for the disclosure of assets and
3 liabilities required by this part. The clerk of the circuit court
4 and the secretary-clerk of the family court shall make these
5 forms available to all parties in any divorce action or other
6 action involving child support. All disclosure required by this
7 part shall be on a form that substantially complies with the form
8 promulgated by the supreme court of appeals. The form used
9 shall contain a statement in conspicuous print that complete
10 disclosure of assets and liabilities is required by law and
11 deliberate failure to provide complete disclosure as ordered by
12 the court constitutes false swearing.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-102. Jurisdiction to award spousal support.

§48-8-105. Rehabilitative spousal support.

§48-8-102. Jurisdiction to award spousal support.

1 The family courts and circuit courts, as provided in this
2 chapter, have jurisdiction to award spousal support. A court
3 may provide for the maintenance of a spouse during the
4 pendency of an appeal to the circuit court or to the supreme
5 court of appeals.

§48-8-105. Rehabilitative spousal support.

1 (a) The court may award rehabilitative spousal support for
2 a limited period of time to allow the recipient spouse, through
3 reasonable efforts, to become gainfully employed. When
4 awarding rehabilitative spousal support, the court shall make
5 specific findings of fact to explain the basis for the award,
6 giving due consideration to the factors set forth in section 8-103
7 of this article. An award of rehabilitative spousal support is
8 appropriate when the dependent spouse evidences a potential
9 for self-support that could be developed through rehabilitation,
10 training or academic study.

11 (b) The court may modify an award of rehabilitative
12 spousal support if a substantial change in the circumstances
13 under which rehabilitative spousal support was granted war-
14 rants terminating, extending or modifying the award or replac-
15 ing it with an award of permanent spousal support. In determin-
16 ing whether a substantial change of circumstances exists which
17 would warrant a modification of a rehabilitative spousal support
18 award, the court may consider a reassessment of the dependent
19 spouse's potential work skills and the availability of a relevant
20 job market, the dependent spouse's age, health and skills, the
21 dependent spouse's ability or inability to meet the terms of the
22 rehabilitative plan and other relevant factors as provided for in
23 section 8-103 of this article.

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND
DECISION-MAKING RESPONSIBILITY OF CHILDREN.**

§48-9-104. Parent education classes.

§48-9-202. Court-ordered services.

§48-9-403. Relocation of a parent.

§48-9-603. Effect of enactment; operative dates.

PART 1. SCOPE; OBJECTIVES; PARTIES AND
PARENT EDUCATION CLASSES.

§48-9-104. Parent education classes.

1 (a) The family court shall, by order, and with the approval
2 of the supreme court of appeals, designate an organization or
3 agency to establish and operate education programs designed
4 for parents who have filed an action for divorce, paternity,
5 support, separate maintenance or other custody proceeding and
6 who have minor children. The education programs shall be
7 designed to instruct and educate parents about the effects of
8 divorce and custody disputes on their children and to teach
9 parents ways to help their children and minimize their trauma.

10 (b) The family court shall issue an order requiring parties
11 to an action for divorce involving a minor child or children to
12 attend parent education classes established pursuant to subsec-
13 tion (a) of this section unless the court determines that atten-
14 dance is not appropriate or necessary based on the conduct or
15 circumstances of the parties. The court may, by order, establish
16 sanctions for failure to attend. The court may also order parties
17 to an action involving paternity, separate maintenance or
18 modification of a divorce decree to attend such classes.

19 (c) The family court may require that each person attending
20 a parent education class pay a fee, not to exceed twenty-five
21 dollars, to the clerk of the circuit court to defray the cost of
22 materials and of hiring teachers: *Provided*, That where it is
23 determined that a party is indigent and unable to pay for such
24 classes, the court shall waive the payment of the fee for such
25 party. The clerk of the circuit court shall, on or before the tenth
26 day of each month, transmit all fees collected under this

27 subsection to the state treasurer for deposit in the state treasury
28 to the credit of special revenue fund to be known as the "parent
29 education fund" which is hereby created. All moneys collected
30 and received under this subsection and paid into the state
31 treasury and credited to the parent education fund shall be used
32 by the administrative office of the supreme court of appeals
33 solely for reimbursing the provider of parent education classes
34 for the costs of materials and of providing such classes. Such
35 moneys shall not be treated by the auditor and treasurer as part
36 of the general revenue of the state.

37 (d) The administrative office of the supreme court of
38 appeals shall submit a report to the joint committee on govern-
39 ment and finance summarizing the effectiveness of any program
40 of parent education no later than two years from the initiation
41 of the program.

PART 2. PARENTING PLANS.

§48-9-202. Court-ordered services.

1 (a)(1) The court shall inform the parents, or require them to
2 be informed, about:

3 (A) How to prepare a parenting plan;

4 (B) The impact of family dissolution on children and how
5 the needs of children facing family dissolution can best be
6 addressed;

7 (C) The impact of domestic abuse on children and resources
8 for addressing domestic abuse; and

9 (D) Mediation or other nonjudicial procedures designed to
10 help them achieve an agreement.

11 (2) The court shall require the parents to attend parent
12 education classes.

13 (3) If parents are unable to resolve issues and agree to a
14 parenting plan, the court shall require mediation unless applica-
15 tion of the procedural rules promulgated pursuant to the
16 provisions of subsection (b) of this section indicates that
17 mediation is inappropriate in the particular case.

18 (b) The supreme court of appeals shall make and promul-
19 gate rules that will provide for premediation screening proce-
20 dures to determine whether domestic violence, child abuse or
21 neglect, acts or threats of duress or coercion, substance abuse,
22 mental illness or other such elements would adversely affect the
23 safety of a party, the ability of a party to meaningfully partici-
24 pate in the mediation or the capacity of a party to freely and
25 voluntarily consent to any proposed agreement reached as a
26 result of the mediation. Such rules shall authorize a family court
27 judge to consider alternatives to mediation which may aid the
28 parties in establishing a parenting plan. Such rules shall not
29 establish a per se bar to mediation if domestic violence, child
30 abuse or neglect, acts or threats of duress or coercion, substance
31 abuse, mental illness or other such elements exist, but may be
32 the basis for the court, in its discretion, not to order services
33 under subsection (a) of this section or not to require a parent to
34 have face-to-face meetings with the other parent.

35 (c) A mediator shall not make a recommendation to the
36 court and may not reveal information that either parent has
37 disclosed during mediation under a reasonable expectation of
38 confidentiality, except that a mediator may reveal to the court
39 credible information that he or she has received concerning
40 domestic violence or child abuse.

41 (d) Mediation services authorized under subsection (a) of
42 this section shall be ordered at an hourly cost that is reasonable

43 in light of the financial circumstances of each parent, assessed
44 on a uniform sliding scale. Where one parent's ability to pay for
45 such services is significantly greater than the other, the court
46 may order that parent to pay some or all of the expenses of the
47 other. State revenues shall not be used to defray the costs for
48 the services of a mediator: *Provided*, That the supreme court of
49 appeals may use a portion of its budget to pay administrative
50 costs associated with establishing and operating mediation
51 programs: *Provided, however*, That grants and gifts to the state
52 that may be used to fund mediation are not to be considered as
53 state revenues for purposes of this subsection.

54 (e) The supreme court of appeals shall establish standards
55 for the qualification and training of mediators.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial
2 change in the circumstances under subsection 9-401(a) of the
3 child only when it significantly impairs either parent's ability
4 to exercise responsibilities that the parent has been exercising.

5 (b) Unless otherwise ordered by the court, a parent who has
6 responsibility under a parenting plan who changes, or intends
7 to change, residences for more than ninety days must give a
8 minimum of sixty days' advance notice, or the most notice
9 practicable under the circumstances, to any other parent with
10 responsibility under the same parenting plan. Notice shall
11 include:

12 (1) The relocation date;

13 (2) The address of the intended new residence;

14 (3) The specific reasons for the proposed relocation;

15 (4) A proposal for how custodial responsibility shall be
16 modified, in light of the intended move; and

17 (5) Information for the other parent as to how he or she may
18 respond to the proposed relocation or modification of custodial
19 responsibility.

20 Failure to comply with the notice requirements of this
21 section without good cause may be a factor in the determination
22 of whether the relocation is in good faith under subsection (d)
23 of this section and is a basis for an award of reasonable ex-
24 penses and reasonable attorney's fees to another parent that are
25 attributable to such failure.

26 The supreme court of appeals shall make available through
27 the offices of the circuit clerks and the secretary-clerks of the
28 family courts a form notice that complies with the provisions of
29 this subsection. The supreme court of appeals shall promulgate
30 procedural rules that provide for an expedited hearing process
31 to resolve issues arising from a relocation or proposed reloca-
32 tion.

33 (c) When changed circumstances are shown under subsec-
34 tion (a) of this section, the court shall, if practical, revise the
35 parenting plan so as to both accommodate the relocation and
36 maintain the same proportion of custodial responsibility being
37 exercised by each of the parents. In making such revision, the
38 court may consider the additional costs that a relocation
39 imposes upon the respective parties for transportation and
40 communication, and may equitably allocate such costs between
41 the parties.

42 (d) When the relocation constituting changed circumstances
43 under subsection (a) of this section renders it impractical to
44 maintain the same proportion of custodial responsibility as that
45 being exercised by each parent, the court shall modify the

46 parenting plan in accordance with the child's best interests and
47 in accordance with the following principles:

48 (1) A parent who has been exercising a significant majority
49 of the custodial responsibility for the child should be allowed
50 to relocate with the child so long as that parent shows that the
51 relocation is in good faith for a legitimate purpose and to a
52 location that is reasonable in light of the purpose. The percent-
53 age of custodial responsibility that constitutes a significant
54 majority of custodial responsibility is seventy percent or more.
55 A relocation is for a legitimate purpose if it is to be close to
56 significant family or other support networks, for significant
57 health reasons, to protect the safety of the child or another
58 member of the child's household from significant risk of harm,
59 to pursue a significant employment or educational opportunity
60 or to be with one's spouse who is established, or who is
61 pursuing a significant employment or educational opportunity,
62 in another location. The relocating parent has the burden of
63 proving of the legitimacy of any other purpose. A move with a
64 legitimate purpose is reasonable unless its purpose is shown to
65 be substantially achievable without moving or by moving to a
66 location that is substantially less disruptive of the other parent's
67 relationship to the child.

68 (2) If a relocation of the parent is in good faith for legiti-
69 mate purpose and to a location that is reasonable in light of the
70 purpose and if neither has been exercising a significant majority
71 of custodial responsibility for the child, the court shall reallo-
72 cate custodial responsibility based on the best interest of the
73 child, taking into account all relevant factors including the
74 effects of the relocation on the child.

75 (3) If a parent does not establish that the purpose for that
76 parent's relocation is in good faith for a legitimate purpose into
77 a location that is reasonable in light of the purpose, the court
78 may modify the parenting plan in accordance with the child's

79 best interests and the effects of the relocation on the child.
80 Among the modifications the court may consider is a realloca-
81 tion of primary custodial responsibility, effective if and when
82 the relocation occurs, but such a reallocation shall not be
83 ordered if the relocating parent demonstrates that the child's
84 best interests would be served by the relocation.

85 (4) The court shall attempt to minimize impairment to a
86 parent-child relationship caused by a parent's relocation
87 through alternative arrangements for the exercise of custodial
88 responsibility appropriate to the parents' resources and circum-
89 stances and the developmental level of the child.

90 (e) In determining the proportion of caretaking functions
91 each parent previously performed for the child under the
92 parenting plan before relocation, the court may not consider a
93 division of functions arising from any arrangements made after
94 a relocation but before a modification hearing on the issues
95 related to relocation.

96 (f) In determining the effect of the relocation or proposed
97 relocation on a child, any interviewing or questioning of the
98 child shall be conducted in accordance with the provisions of
99 rule 17 of the rules of practice and procedure for family law as
100 promulgated by the supreme court of appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-603. Effect of enactment; operative dates.

1 (a) The enactment of this article, formerly enacted as article
2 eleven of this chapter during the second extraordinary session
3 of the Legislature, one thousand nine hundred ninety-nine, is
4 prospective in operation unless otherwise expressly indicated.

5 (b) The provisions of section 9-202, insofar as they provide
6 for parent education and mediation, became operative on the

7 first day of January, two thousand. Until that date, parent
8 education and mediation with regard to custody issues were
9 discretionary unless made mandatory under a particular
10 program or pilot project by rule or direction of the supreme
11 court of appeals or a circuit court.

12 (c) The provisions of this article that authorize the court, in
13 the absence of an agreement of the parents, to order an alloca-
14 tion of custodial responsibility and an allocation of significant
15 decision-making responsibility became operative on the first
16 day of January, two thousand, at which time the primary
17 caretaker doctrine was replaced with a system that allocates
18 custodial and decision-making responsibility to the parents in
19 accordance with this article. Any order entered prior to the first
20 day of January, two thousand, based on the primary caretaker
21 doctrine remains in full force and effect until modified by a
22 court of competent jurisdiction.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-105. Modification of child support order.

§48-11-106. Expedited process for modification.

§48-11-105. Modification of child support order.

1 (a) The court may modify a child support order, for the
2 benefit of the child, when a motion is made that alleges a
3 change in the circumstances of a parent or another proper
4 person or persons. A motion for modification of a child support
5 order may be brought by a custodial parent or any other lawful
6 custodian or guardian of the child, by a parent or other person
7 obligated to pay child support for the child or by the bureau for
8 child support enforcement of the department of health and
9 human resources of this state.

10 (b) The provisions of the order may be modified if there is
11 a substantial change in circumstances. If application of the

12 guideline would result in a new order that is more than fifteen
13 percent different, then the circumstances are considered a
14 substantial change.

15 (c) An order that modifies the amount of child support to be
16 paid shall conform to the support guidelines set forth in article
17 13-101, *et seq.*, of this chapter unless the court disregards the
18 guidelines or adjusts the award as provided for in section 13-
19 702.

20 (d) The supreme court of appeals shall make available to
21 the courts a standard form for a petition for modification of an
22 order for support, which form will allege that the existing order
23 should be altered or revised because of a loss or change of
24 employment or other substantial change affecting income or
25 that the amount of support required to be paid is not within
26 fifteen percent of the child support guidelines. The clerk of the
27 circuit court and the secretary-clerk of the family court shall
28 make the forms available to persons desiring to represent
29 themselves in filing a motion for modification of the support
30 award.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child support
2 order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss of
5 employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment or reemployment; or

8 (3) Other such change in employment status.

9 (b) The party seeking the recalculation of support and
10 modification of the support order shall file a description of the
11 decrease or increase in income and an explanation of the cause
12 of the decrease or increase on a standardized form to be
13 provided by the secretary-clerk or other employee of the family
14 court. The standardized form shall be verified by the filing
15 party. Any available documentary evidence shall be filed with
16 the standardized form. Based upon the filing and information
17 available in the case record, the amount of support shall be
18 tentatively recalculated.

19 (c) The secretary-clerk shall serve a notice of the filing, a
20 copy of the standardized form and the support calculations upon
21 the other party by certified mail, return receipt requested, with
22 delivery restricted to the addressee, in accordance with rule
23 4(d)(1)(D) of the West Virginia rules of civil procedure. The
24 secretary-clerk shall also mail a copy, by first-class mail, to the
25 local office of the bureau for child support enforcement for the
26 county in which the family court is located in the same manner
27 as original process under rule 4(d) of the rules of civil proce-
28 dure.

29 (d) The notice shall fix a date fourteen days from the date
30 of mailing and inform the party that unless the recalculation is
31 contested and a hearing request is made on or before the date
32 fixed, the proposed modification will be made effective. If the
33 filing is contested, the proposed modification shall be set for
34 hearing; otherwise, the court shall enter an order for a judgment
35 by default. Either party may move to set aside a judgment by
36 default, pursuant to the provisions of rule 55 or rule 60(b) of the
37 rules of civil procedure.

38 (e) If an obligor uses the provisions of this section to
39 expeditiously reduce his or her child support obligation, the
40 order that effected the reduction shall also require the obligor
41 to notify the obligee of reemployment, new employment or

42 other such change in employment status that results in an
43 increase in income. If an obligee uses the provisions of this
44 section to expeditiously increase his or her child support
45 obligation, the order that effected the increase shall also require
46 the obligee to notify the obligor of reemployment, new employ-
47 ment or other such change in employment status that results in
48 an increase in income of the obligee.

49 (f) The supreme court of appeals shall develop the standard-
50 ized form required by this section.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.

§48-13-202. Application of expenses and credits in determining child support.

§48-13-204. Use of worksheets.

§48-13-205. Present income as monthly amounts.

§48-13-701. Rebuttable presumption that child support award is correct.

§48-13-901. Tax exemption for child due support.

§48-13-902. Investment of child support.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.

1 This article establishes guidelines for child support award
2 amounts so as to ensure greater uniformity by those persons
3 who make child support recommendations and enter child
4 support orders and to increase predictability for parents,
5 children and other persons who are directly affected by child
6 support orders. There is a rebuttable presumption, in any
7 proceeding before a court for the award of child support, that
8 the amount of the award which would result from the applica-
9 tion of these guidelines is the correct amount of child support
10 to be awarded.

PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-202. Application of expenses and credits in determining child support.

1 In determining the total child support obligation, the court
2 shall:

3 (1) Add to the basic child support obligation any
4 unreimbursed child health care expenses, work-related child
5 care expenses and any other extraordinary expenses agreed to
6 by the parents or ordered by the court; and

7 (2) Subtract any extraordinary credits agreed to by the
8 parents or ordered by the court.

§48-13-204. Use of worksheets.

1 The calculation of the amount awarded by the support
2 order requires the use of one of two worksheets which must be
3 completed for each case. Worksheet A is used for a basic shared
4 parenting arrangement. Worksheet B is used for an extended
5 shared parenting arrangement.

§48-13-205. Present income as monthly amounts.

1 To the extent practicable, all information relating to income
2 shall be presented to the court based on monthly amounts. For
3 example, when a party is paid wages weekly, the pay should be
4 multiplied by fifty-two and divided by twelve to arrive at a
5 correct monthly amount. If the court deems appropriate, such
6 information may be presented in such other forms as the court
7 directs.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.

1 The guidelines in child support awards apply as a rebuttable
2 presumption to all child support orders established or modified
3 in West Virginia. The guidelines must be applied to all actions
4 in which child support is being determined including temporary
5 orders, interstate (URESAs and UIFSAs), domestic violence,
6 foster care, divorce, nondissolution, public assistance,
7 nonpublic assistance and support decrees arising despite
8 nonmarriage of the parties. The guidelines must be used by the
9 court as the basis for reviewing adequacy of child support levels
10 in uncontested cases as well as contested hearings.

PART 9. MISCELLANEOUS PROVISIONS RELATING
TO CHILD SUPPORT ORDERS.

§48-13-901. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income tax
3 purposes to the payee parent except in cases of extended shared
4 parenting. In extended shared parenting cases, these rights shall
5 be allocated between the parties in proportion to their adjusted
6 gross incomes for child support calculations. In a situation
7 where allocation would be of no tax benefit to a party, the court
8 need make no allocation to that party. However, the tax
9 exemptions for the minor child or children should be granted to
10 the payor parent only if the total of the payee parent's income
11 and child support is greater when the exemption is awarded to
12 the payor parent.

§48-13-902. Investment of child support.

1 (a) The court has the discretion, in appropriate cases, to
2 direct that a portion of child support be placed in trust and
3 invested for future educational or other needs of the child. The
4 court may order such investment when all of the child's
5 day-to-day needs are being met such that, with due consider-

6 ation of the age of the child, the child is living as well as his or
7 her parents.

8 (b) If the amount of child support ordered per child exceeds
9 the sum of two thousand dollars per month, the court is required
10 to make a finding, in writing, as to whether investments shall be
11 made as provided for in subsection (a) of this section.

12 (c) A trustee named by the court shall use the judgment and
13 care under the circumstances then prevailing that persons of
14 prudence, discretion and intelligence exercise in the manage-
15 ment of their own affairs, not in regard to speculation but in
16 regard to the permanent disposition of their funds, considering
17 the probable income as well as the probable safety of their
18 capital. A trustee shall be governed by the provisions of the
19 uniform prudent investor act as set forth in article six-c, chapter
20 forty-four of this code. The court may prescribe the powers of
21 the trustee and provide for the management and control of the
22 trust. Upon petition of a party or the child's guardian or next
23 friend and upon a showing of good cause, the court may order
24 the release of funds in the trust from time to time.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-101. When action may be brought for child support order.

§48-14-106. Modification of support order.

§48-14-204. Execution and notice.

§48-14-402. Commencement of withholding from income without further court action.

§48-14-405. Information required in notice to obligor.

§48-14-501. Commencement of contempt action.

§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

PART 1. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-101. When action may be brought for child support order.

1 An action may be brought in family court to obtain an order
2 for the support of a minor child when:

3 (1) The child has a parent and child relationship with an
4 obligor;

5 (2) The obligor is not meeting an obligation to support the
6 child;

7 (3) An enforceable order for the support of the child by the
8 obligor has not been entered by a court of competent jurisdic-
9 tion; and

10 (4) There is no pending action for divorce, separate
11 maintenance or annulment in which the obligation of support
12 owing from the obligor to the child is at issue.

§48-14-106. Modification of support order.

1 (a) At any time after the entry of an order for support, the
2 court may, upon the verified petition of an obligee or the
3 obligor, revise or alter such order and make a new order as the
4 altered circumstances or needs of a child, an obligee or the
5 obligor may render necessary to meet the ends of justice.

6 (b) The supreme court of appeals shall make available to
7 the family courts a standard form for a petition for modification
8 of an order for support, which form will allege that the existing
9 order should be altered or revised because of a loss or change
10 of employment or other substantial change affecting income, or
11 that the amount of support required to be paid is not within
12 fifteen percent of the child support guidelines. The clerk of the
13 circuit court and the secretary-clerk of the family court shall
14 make such forms available to persons desiring to petition the
15 court pro se for a modification of the support award.

PART 2. LIENS AGAINST PERSONAL
PROPERTY FOR OVERDUE SUPPORT.

§48-14-204. Execution and notice.

1 (a) Upon receipt of the affidavit, the clerk shall issue a writ
2 of execution, suggestion or suggestee execution and shall mail
3 a copy of the affidavit and a notice of the filing of the affidavit
4 to the obligor at his or her last known address. If the bureau for
5 child support enforcement is not acting on behalf of the obligee
6 in filing the affidavit, the clerk shall forward a copy of the
7 affidavit and the notice of the filing to the bureau for child
8 support enforcement.

9 (b) The notice provided for in subsection (a) of this section
10 must inform the obligor that if he or she desires to contest the
11 affidavit on the grounds that the amount claimed to be in arrears
12 is incorrect or that a writ of execution, suggestion or suggestee
13 execution is not proper because of mistakes of fact, he or she
14 must, within fourteen days of the date of the notice: (1) Inform
15 the bureau for child support enforcement in writing of the
16 reasons why the affidavit is contested and request a meeting
17 with the bureau for child support enforcement; or (2) where a
18 court of this state has jurisdiction over the parties, obtain a date
19 for a hearing before the court and mail written notice of such
20 hearing to the obligee and to the bureau for child support
21 enforcement on a form prescribed by the administrative office
22 of the supreme court of appeals and made available through the
23 office of the clerk of the circuit court.

24 (c) Upon being informed by an obligor that he or she
25 desires to contest the affidavit, the bureau for child support
26 enforcement shall inform the court of such fact, and the court
27 shall require the obligor to give security, post a bond or give
28 some other guarantee to secure payment of overdue support.

PART 4. WITHHOLDING FROM INCOME OF
AMOUNTS PAYABLE AS SUPPORT.

**§48-14-402. Commencement of withholding from income without
further court action.**

1 (a) Except as otherwise provided in section 14-403, a
2 support order as described in section 14-401 must contain or
3 must be deemed to contain language requiring automatic
4 income withholding for both current support and for any
5 arrearages to commence without further court action on the date
6 the support order is entered.

7 (b) The supreme court of appeals shall make available to
8 the family courts standard language to be included in all such
9 orders, so as to conform such orders to the applicable require-
10 ments of state and federal law regarding the withholding from
11 income of amounts payable as support.

§48-14-405. Information required in notice to obligor.

1 When income withholding is required, the bureau for child
2 support enforcement shall send by first-class mail or electronic
3 means to the obligor notice that withholding has commenced.
4 The notice shall inform the obligor of the following:

5 (1) The amount owed;

6 (2) That a withholding from the obligor's income of
7 amounts payable as support has commenced;

8 (3) That the amount withheld will be equal to the amount
9 required under the terms of the current support order, plus
10 amounts for any outstanding arrearage;

11 (4) The definition of "gross income" as defined in section
12 1-228 of this chapter;

13 (5) That the withholding will apply to the obligor's present
14 source of income and to any future source of income and,
15 therefore, no other notice of withholding will be sent to the
16 obligor. A copy of any new or modified withholding notice will
17 be sent to the obligor at approximately the same time the
18 original is sent to the source of income;

19 (6) That any action by the obligor to purposefully minimize
20 his or her income will result in the enforcement of support
21 being based upon potential and not just actual earnings;

22 (7) That payment of the arrearage after the date of the
23 notice is not a bar to such withholding;

24 (8) That the obligor may request a review of the withhold-
25 ing by written request to the bureau for child support enforce-
26 ment when the obligor has information showing an error in the
27 current or overdue support amount or a mistake as to the
28 identity of the obligor;

29 (9) That a mistake of fact exists only when there is an error
30 in the amount of current or overdue support claimed in the
31 notice or there is a mistake as to the identity of the obligor;

32 (10) That matters such as lack of visitation, inappropriate-
33 ness of the support award or changed financial circumstances
34 of the obligee or the obligor will not be considered at any
35 hearing held pursuant to the withholding, but may be raised by
36 the filing of a separate petition in family court;

37 (11) That if the obligor desires to contest the withholding,
38 the obligor may petition the family court for a resolution; and

39 (12) That while the withholding is being contested through
40 the court, the income withholding may not be stayed but may be
41 modified.

PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.

§48-14-501. Commencement of contempt action.

1 In addition to or in lieu of the other remedies provided by
2 this article for the enforcement of support orders, the bureau for
3 child support enforcement may commence a civil or criminal
4 contempt proceeding in accordance with the provisions of
5 section 1-304 against an obligor who is alleged to have willfully
6 failed or refused to comply with the order of a court of compe-
7 tent jurisdiction requiring the payment of support. Such
8 proceeding shall be instituted by filing a petition for an order to
9 show cause why the obligor should not be held in contempt.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

**§48-14-802. Notice of increase in monthly payments to satisfy
overdue support.**

1 Notice of the increase shall be sent to the obligor at the time
2 such increase is implemented. If the obligor disagrees with the
3 increase in payments, he or she may file, within thirty days of
4 the date of the notice, a motion with the court for a determina-
5 tion of whether there should be an increase in monthly pay-
6 ments and the amount of that increase, if any.

**ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION
AGAINST LICENSE.**

§48-15-205. Form of notice of action against a license.

§48-15-207. Failure to act in response to notice; entry of order.

§48-15-208. Request and petition for hearing.

PART 2. ACTION AGAINST LICENSE.

§48-15-205. Form of notice of action against a license.

1 The notice shall be substantially in the following form:

NOTICE OF ACTION AGAINST LICENSE		
Name and address:	Date:	Case No:
	Social Security No:	
	Family Court of County, West Virginia	
<p>Section 1.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support and that the amount you owe equals six months' child support or more. The amount you owe is calculated to be \$ _____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be \$ _____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.</p>		

Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

- I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of \$
- I want to pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of \$
- I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.
- I am requesting a hearing before the family court judge to contest an action against my licenses. Please serve me with any petition filed and provide me with notice of the time and place of the hearing.

Signed ✕ _____ Date: _____

Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the _____ day of _____, _____. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Family Court without further notice to you. Mail this form to the following address:

§48-15-207. Failure to act in response to notice; entry of order.

1 If the person fails to take one of the actions described in
2 section 15-206 within thirty days of the date of the notice and
3 there is proof that service on the person was effective, the
4 bureau for child support enforcement shall file a certification
5 with the court setting forth the person's noncompliance with the
6 support order or failure to comply with a subpoena or warrant
7 and the person's failure to respond to the written notice of the
8 potential action against his or her license. If the court is
9 satisfied that service of the notice on the person was effective
10 as set forth in this section, it shall, without need for further due
11 process or hearing, enter an order suspending or restricting any
12 licenses held by the person. Upon the entry of the order, the
13 bureau for child support enforcement shall forward a copy to
14 the person and to any appropriate agencies responsible for the
15 issuance of a license.

§48-15-208. Request and petition for hearing.

1 If the person requests a hearing, the bureau for child
2 support enforcement shall file a petition for a hearing before the
3 family court. The hearing shall occur within forty-two days of
4 the receipt of the person's request. If, prior to the hearing, the
5 person pays the full amount of the child support arrearage or
6 medical support arrearage or provides health insurance as
7 ordered, the action against a license shall be terminated. No

8 action against a license shall be initiated if the bureau for child
9 support enforcement has received notice that the person has
10 pending a motion to modify the child support order if that
11 motion was filed prior to the date that the notice of the action
12 against the license was sent by the bureau for child support
13 enforcement. The court shall consider the bureau for child
14 support enforcement's petition to deny, refuse to renew,
15 suspend or restrict a license in accordance with section 15-209.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

§48-16-101. Definitions.

§48-16-102. Tribunals of state.

§48-16-305. Duties and powers of responding tribunal.

PART 1. GENERAL PROVISIONS.

§48-16-101. Definitions.

1 As used in this article:

2 (1) "Child" means an individual, whether over or under the
3 age of majority, who is or is alleged to be owed a duty of
4 support by the individual's parent or who is or is alleged to be
5 the beneficiary of a support order directed to the parent.

6 (2) "Child support order" means a support order for a child,
7 including a child who has attained the age of majority under the
8 law of the issuing state.

9 (3) "Duty of support" means an obligation imposed or
10 imposable by law to provide support for a child, spouse or
11 former spouse, including an unsatisfied obligation to provide
12 support.

13 (4) "Home state" means the state in which a child lived with
14 a parent or a person acting as parent for at least six consecutive
15 months immediately preceding the time of filing of a petition or

16 comparable pleading for support and, if a child is less than six
17 months old, the state in which the child lived from birth with
18 any of them. A period of temporary absence of any of them is
19 counted as part of the six-month or other period.

20 (5) "Income" includes earnings or other periodic
21 entitlements to money from any source and any other property
22 subject to withholding for support under the law of this state.

23 (6) "Income-withholding order" means an order or other
24 legal process directed to an obligor's source of income as
25 defined by section 1-240 of this chapter to withhold support
26 from the income of the obligor.

27 (7) "Initiating state" means a state from which a proceeding
28 is forwarded or in which a proceeding is filed for forwarding to
29 a responding state under this article or a law or procedure
30 substantially similar to this article, the uniform reciprocal
31 enforcement of support act or the revised uniform reciprocal
32 enforcement of support act.

33 (8) "Initiating tribunal" means the authorized tribunal in an
34 initiating state.

35 (9) "Issuing state" means the state in which a tribunal issues
36 a support order or renders a judgment determining parentage.

37 (10) "Issuing tribunal" means the tribunal that issues a
38 support order or renders a judgment determining parentage.

39 (11) "Law" includes decisional and statutory law and rules
40 having the force of law.

41 (12) "Obligee" means: (i) An individual to whom a duty of
42 support is or is alleged to be owed or in whose favor a support
43 order has been issued or a judgment determining parentage has
44 been rendered; (ii) a state or political subdivision to which the

45 rights under a duty of support or support order have been
46 assigned or which has independent claims based on financial
47 assistance provided to an individual obligee; or (iii) an individ-
48 ual seeking a judgment determining parentage of the individ-
49 ual's child.

50 (13) "Obligor" means an individual or the estate of a
51 decedent: (i) Who owes or is alleged to owe a duty of support;
52 (ii) who is alleged but has not been adjudicated to be a parent
53 of a child; or (iii) who is liable under a support order.

54 (14) "Register" means to record a support order or judg-
55 ment determining parentage in the registry of foreign support
56 orders.

57 (15) "Registering tribunal" means a tribunal in which a
58 support order is registered.

59 (16) "Responding state" means a state in which a proceed-
60 ing is filed or to which a proceeding is forwarded for filing
61 from an initiating state under this article or a law or procedure
62 substantially similar to this article, the uniform reciprocal
63 enforcement of support act or the revised uniform reciprocal
64 enforcement of support act.

65 (17) "Responding tribunal" means the authorized tribunal
66 in a responding state.

67 (18) "Spousal support order" means a support order for a
68 spouse or former spouse of the obligor.

69 (19) "State" means a state of the United States, the District
70 of Columbia, Puerto Rico, the United States Virgin Islands or
71 any territory or insular possession subject to the jurisdiction of
72 the United States. The term includes: (i) An Indian tribe; or (ii)
73 a foreign jurisdiction that has enacted a law or established
74 procedures for issuance and enforcement of support orders

75 which are substantially similar to the procedures under this
76 article, the uniform reciprocal enforcement of support act or the
77 revised uniform reciprocal enforcement of support act.

78 (20) "Support enforcement agency" means a public official
79 or agency authorized to seek: (i) Enforcement of support orders
80 or laws relating to the duty of support; (ii) establishment or
81 modification of child support; (iii) determination of parentage;
82 or (iv) to locate obligors or their assets.

83 (21) "Support order" means a judgment, decree or order,
84 whether temporary, final or subject to modification, for the
85 benefit of a child, a spouse or a former spouse which provides
86 for monetary support, health care, arrearages or reimbursement
87 and may include related costs and fees, interest, income
88 withholding, attorney's fees and other relief.

89 (22) "Tribunal" means a court, administrative agency or
90 quasi-judicial entity authorized to establish, enforce or modify
91 support orders or to determine parentage.

§48-16-102. Tribunals of state.

1 The family court is the tribunal of this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribunal or
3 directly pursuant to subsection (c), section 16-301 (proceedings
4 under this article), the clerk of the court shall cause the petition
5 or pleading to be filed and notify the petitioner where and when
6 it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the
9 following: (1) Issue or enforce a support order, modify a child
10 support order or render a judgment to determine parentage; (2)
11 order an obligor to comply with a support order, specifying the
12 amount and the manner of compliance; (3) order income
13 withholding; (4) determine the amount of any arrearages and
14 specify a method of payment; (5) enforce orders by civil
15 contempt; (6) set aside property for satisfaction of the support
16 order; (7) place liens and order execution on the obligor's
17 property; (8) order an obligor to keep the tribunal informed of
18 the obligor's current residential address, telephone number,
19 employer, address of employment and telephone number at the
20 place of employment; (9) issue a capias for an obligor who has
21 failed after proper notice to appear at a hearing ordered by the
22 tribunal and enter the capias in any local and state computer
23 systems for criminal warrants; (10) order the obligor to seek
24 appropriate employment by specified methods; (11) award
25 reasonable attorney's fees and other fees and costs; and (12)
26 grant any other available remedy.

27 (c) A responding tribunal of this state shall include in a
28 support order issued under this article, or in the documents
29 accompanying the order, the calculations on which the support
30 order is based.

31 (d) A responding tribunal of this state may not condition the
32 payment of a support order issued under this article upon
33 compliance by a party with provisions for visitation.

34 (e) If a responding tribunal of this state issues an order
35 under this article, the tribunal shall send a copy of the order to
36 the petitioner and the respondent and to the initiating tribunal,
37 if any.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-108. Fees.

§48-18-111. Establishment of parent locator service.

§48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

§48-18-123. Subpoenas.

§48-18-126. Review and adjustment of child support orders.

§48-18-108. Fees.

1 (a) When the bureau for child support enforcement provides
2 child support collection services either to a public assistance
3 recipient or to a party who does not receive public assistance,
4 the bureau for child support enforcement shall, upon written
5 notice to the obligor, charge a monthly collection fee equivalent
6 to the full monthly cost of the services, in addition to the
7 amount of child support which was ordered by the court. The
8 fee shall be deposited in the child support enforcement fund.
9 The service fee assessed may not exceed ten percent of the
10 monthly court-ordered child support and may not be assessed
11 against any obligor who is current in payment of the monthly
12 court-ordered child support payments: *Provided*, That this fee
13 may not be assessed when the obligor is also a recipient of
14 public assistance.

15 (b) Except for those persons applying for services provided
16 by the bureau for child support enforcement who are applying
17 for or receiving public assistance from the division of human
18 services or persons for whom fees are waived pursuant to a
19 legislative rule promulgated pursuant to this section, all
20 applicants shall pay an application fee of twenty-five dollars.

21 (c) Fees imposed by state and federal tax agencies for
22 collection of overdue support shall be imposed on the person
23 for whom these services are provided. Upon written notice to

24 the obligee, the bureau for child support enforcement shall
25 assess a fee of twenty-five dollars to any person not receiving
26 public assistance for each successful federal tax interception.
27 The fee shall be withheld prior to the assistance for each
28 successful federal tax interception. The fee shall be withheld
29 prior to the release of the funds received from each interception
30 and deposited in the child support enforcement fund established
31 pursuant to section 18-107.

32 (d) In any action brought by the bureau for child support
33 enforcement, the court shall order that the obligor shall pay
34 attorney fees for the services of the attorney representing the
35 bureau for child support enforcement in an amount calculated
36 at a rate similar to the rate paid to court-appointed attorneys
37 paid pursuant to section thirteen-a, article twenty-one, chapter
38 twenty-nine of this code and all court costs associated with the
39 action: *Provided*, That no such award shall be made when the
40 court finds that the award of attorney's fees would create a
41 substantial financial hardship on the obligor or when the obligor
42 is a recipient of public assistance. Further, the bureau for child
43 support enforcement may not collect such fees until the obligor
44 is current in the payment of child support. No court may order
45 the bureau for child support enforcement to pay attorney's fees
46 to any party in any action brought pursuant to this chapter.

47 (e) This section shall not apply to the extent it is inconsis-
48 tent with the requirements of federal law for receiving funds for
49 the program under Title IV-A and Title IV-D of the Social
50 Security Act, United States Code, article three, Title 42,
51 Sections 601 to 613 and United States Code, Title 42, Sections
52 651 to 662.

53 (f) The commission shall, by legislative rule promulgated
54 pursuant to chapter twenty-nine-a of this code, describe the
55 circumstances under which fees charged by the bureau for child
56 support enforcement may be modified or waived and such rule

57 shall provide for the waiver of any fee, in whole or in part,
58 when such fee would otherwise be required to be paid under the
59 provisions of this chapter. Further, such rule shall initially be
60 promulgated as an emergency rule pursuant to section fifteen,
61 article three, chapter twenty-nine-a of this code.

§48-18-111. Establishment of parent locator service.

1 (a) The bureau for child support enforcement shall establish
2 a parent locator service to locate individuals for the purposes of
3 establishing parentage and of establishing, modifying or
4 enforcing child support obligations utilizing all sources of
5 information and available records and the parent locator service
6 in the federal department of health and human services. For
7 purposes of obtaining information from the parent locator
8 service, any person, agency or entity providing services to the
9 bureau for child support enforcement pursuant to a contract that
10 includes a provision to ensure that the confidentiality of
11 information is maintained shall be deemed to be an agent of the
12 bureau for child support enforcement.

13 (b) Upon entering into an agreement with the secretary of
14 the federal department of health and human services for the use
15 of that department's parent locator service, the bureau for child
16 support enforcement shall accept and transmit to the secretary
17 of the federal department of health and human services requests
18 from authorized persons for information with regard to the
19 whereabouts of a noncustodial obligor to be furnished by such
20 federal parent locator service. For purposes of this subsection,
21 "authorized persons" means: (1) An attorney or agent of the
22 bureau for child support enforcement; (2) a family or circuit
23 court judge or any agent thereof; or (3) a resident parent, legal
24 guardian, attorney or agent for a child. The bureau for child
25 support enforcement shall charge a reasonable fee sufficient to
26 cover the costs to the state and to the federal department of
27 health and human services incurred by reason of such requests

28 and shall transfer to that department, from time to time, so
29 much of the fees collected as are attributable to the costs
30 incurred by that department.

31 (c) The information obtained by the bureau for child
32 support enforcement from the federal parent locator service
33 shall be used for, but not limited to, the following purposes:

34 (1) Establishing parentage and establishing, setting the
35 amount of, modifying or enforcing child support obligations;

36 (2) Obtaining and transmitting information to any family or
37 circuit court or agent thereof or to an attorney or employee of
38 the United States or of any state responsible for enforcing any
39 federal or state law with respect to the unlawful taking or
40 restraint of a child or making or enforcing a child custody or
41 visitation determination.

42 (d) The bureau for child support enforcement may request
43 from the federal parent locator service information:

44 (1) About, or which will facilitate the discovery of informa-
45 tion about, the location of any individual: (A) Who is under an
46 obligation to pay child support; (B) against whom such an
47 obligation is sought; or (C) to whom such an obligation is
48 owed, including the individual's social security number, or
49 numbers, most recent address and the name, address and
50 employer identification number of the individual's employer;

51 (2) Concerning the individual's wages or other income
52 from, and benefits of, employment, including rights to or
53 enrollment in group health care coverage; and

54 (3) Concerning the type, status, location and amount of any
55 assets of, or debts owed by or to, any such individual.

56 (e) The family court shall have jurisdiction to hear and
57 determine, upon a petition by an authorized person as defined
58 in subsection (b) of this section, whether the release of informa-
59 tion from the federal parent locator service to that person could
60 be harmful to the custodial parent or the child.

**§48-18-114. Amounts collected as support to be disbursed to
person having custody; procedure for redirecting
disbursement of payments where physical custody
transferred to a person other than the custodial
parent.**

1 (a) Where physical custody of the child has been transferred
2 from the custodial parent to another person, the bureau for child
3 support enforcement may redirect disbursement of support
4 payments to such other person, on behalf of the child, in the
5 following circumstances:

6 (1) Where the noncustodial parent has physical custody of
7 the child, excluding visitation, upon filing with the bureau for
8 child support enforcement:

9 (A) An affidavit attesting that the noncustodial parent has
10 obtained physical custody of the child, describing the circum-
11 stances under which the transfer of physical custody took place
12 and stating that he or she anticipates that his or her physical
13 custody of the child will continue for the foreseeable future; and

14 (B) Documentary proof that the noncustodial parent has
15 instituted proceedings in court for a modification of legal
16 custody or a certified copy of the custodial parent's death
17 certificate.

18 (2) Where a person other than the custodial or noncustodial
19 parent has physical custody of the child, excluding visitation,
20 filing with the bureau for child support enforcement:

21 (A) An affidavit attesting that the person has obtained
22 physical custody of the child, describing the circumstances
23 under which the transfer of physical custody took place and
24 stating that he or she anticipates that his or her physical custody
25 of the child will continue for the foreseeable future; and

26 (B) Documentary proof that the person claiming physical
27 custody is currently the person responsible for the child by
28 producing at least one of the following:

29 (i) School records demonstrating that school authorities
30 consider the person claiming physical custody the adult
31 responsible for the child;

32 (ii) Medical records demonstrating that the person claiming
33 physical custody is empowered to make medical decisions on
34 behalf of the child;

35 (iii) Documents from another public assistance agency
36 showing that the person claiming physical custody is currently
37 receiving other public assistance on behalf of the child;

38 (iv) A notarized statement from the custodial parent
39 attesting to the fact that he or she has transferred physical
40 custody to the person;

41 (v) A verifiable order of a court of competent jurisdiction
42 transferring physical or legal custody to the person;

43 (vi) Documentation that the person claiming physical
44 custody has filed a petition in court to be appointed the child's
45 guardian;

46 (vii) Documentation that the child, if over the age of
47 fourteen, has instituted proceedings in court to have the person
48 claiming physical custody nominated as his or her guardian; or

49 (viii) Any other official documents of a federal, state or
50 local agency or governing body demonstrating that the person
51 currently has physical custody of the child and has taken action
52 indicating that he or she anticipates such physical custody to
53 continue in the foreseeable future.

54 (b) The bureau for child support enforcement shall mail, by
55 first-class mail, a copy of the affidavit and supporting docu-
56 mentary evidence required under subsection (a) of this section
57 to the circuit court which issued the support order being
58 enforced by and to the parties to the order, at their last known
59 addresses, together with a written notice stating that any party
60 has ten days to object to the redirection of support payments by
61 filing an affidavit and evidence showing that the person seeking
62 redirection of the payments does not have physical custody of
63 the child. If no objection is received by the bureau for child
64 support enforcement by the end of the ten-day period, the
65 bureau may order payments redirected to the person claiming
66 physical custody for the benefit of the child. If a responsive
67 affidavit and supporting evidence is filed within the ten-day
68 period and, in the opinion of the bureau for child support
69 enforcement, either disproves the claim of the person seeking
70 redirection of support payments or raises a genuine issue of fact
71 as to whether the person has actual physical custody of the
72 child, the bureau for child support enforcement shall continue
73 to forward support payments to the custodial parent. Any
74 person who disagrees with the determination of the bureau for
75 child support enforcement may petition the court for modifica-
76 tion of the child support order.

77 (c) Any person who files a false affidavit pursuant to this
78 section shall be guilty of false swearing and, upon conviction
79 thereof, shall be punished as provided by law for such offense.

§48-18-123. Subpoenas.

1 In order to obtain financial and medical insurance or other
2 information pursuant to the establishment, enforcement and
3 modification provisions set forth in this chapter, the bureau for
4 child support enforcement or any out-of-state agency adminis-
5 tering a program under Title IV-D of the Social Security Act
6 may serve, by certified mail or personal service, an administra-
7 tive subpoena on any person, corporation, partnership, financial
8 institution, labor organization or state agency for an appearance
9 or for production of financial or medical insurance or other
10 information. In case of disobedience to the subpoena, the
11 bureau for child support enforcement may invoke the aid of any
12 family court in requiring the appearance or production of
13 records and financial documents. The bureau for child support
14 enforcement may assess a civil penalty of no more than one
15 hundred dollars for the failure of any person, corporation,
16 financial institution, labor organization or state agency to
17 comply with requirements of this section.

§48-18-126. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources, the
3 bureau for child support enforcement shall have the right to
4 request an administrative review of the child support award in
5 the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or from
8 the completion of the previous administrative review, which-
9 ever is later, the bureau for child support enforcement shall
10 conduct a review to determine whether the amount of the child
11 support award in such order varies from the amount of child
12 support that would be awarded at the time of the review
13 pursuant to the guidelines for child support awards contained in
14 article 13-101, *et seq.* If the amount of the child support award
15 under the existing order differs by ten percent or more from the

16 amount that would be awarded in accordance with the child
17 support guidelines, the bureau for child support enforcement
18 shall file with the family court a motion for modification of the
19 child support order. If the amount of the child support award
20 under the existing order differs by less than ten percent from the
21 amount that would be awarded in accordance with the child
22 support guidelines, the bureau for child support enforcement
23 may, if it determines that such action is in the best interest of
24 the child or otherwise appropriate, file with the family court a
25 motion for modification of the child support order.

26 (2) Where the request for review of a child support award
27 is received less than thirty-six months after the date of the entry
28 of the order or from the completion of the previous administra-
29 tive review, the bureau for child support enforcement shall
30 undertake a review of the case only where it is alleged that there
31 has been a substantial change in circumstances. If the bureau
32 for child support enforcement determines that there has been a
33 substantial change in circumstances and if it is in the best
34 interests of the child, the bureau shall file with the family court
35 a motion for modification of the child support order in accor-
36 dance with the guidelines for child support awards contained in
37 article 13-101, *et seq.*, of this chapter.

38 (b) The bureau for child support enforcement shall notify
39 both parents at least once every three years of their right to
40 request a review of a child support order. The notice may be
41 included in any order granting or modifying a child support
42 award. The bureau for child support enforcement shall give
43 each parent at least thirty days' notice before commencing any
44 review and shall further notify each parent, upon completion of
45 a review, of the results of the review, whether of a proposal to
46 move for modification or of a proposal that there should be no
47 change.

48 (c) When the result of the review is a proposal to move for
49 modification of the child support order, each parent shall be
50 given thirty days' notice of the hearing on the motion, the
51 notice to be directed to the last known address of each party by
52 first-class mail. When the result of the review is a proposal that
53 there be no change, any parent disagreeing with that proposal
54 may, within thirty days of the notice of the results of the review,
55 file with the court a motion for modification setting forth in full
56 the grounds therefor.

57 (d) For the purposes of this section, a "substantial change
58 in circumstances" includes, but is not limited to, a changed
59 financial condition, a temporary or permanent change in
60 physical custody of the child which the court has not ordered,
61 increased need of the child or other financial conditions.
62 "Changed financial conditions" means increases or decreases in
63 the resources available to either party from any source.
64 Changed financial conditions includes, but is not limited to, the
65 application for or receipt of any form of public assistance
66 payments, unemployment compensation and workers' compen-
67 sation or a fifteen percent or more variance from the amount of
68 the existing order and the amount of child support that would be
69 awarded according to the child support guidelines.

ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND EN- FORCEMENT ACT.

PART 1. GENERAL PROVISIONS.

§48-20-102. Definitions.

1 (a) "Abandoned" means left without provision for reason-
2 able and necessary care or supervision.

3 (b) "Child" means an individual who has not attained
4 eighteen years of age.

5 (c) "Child custody determination" means a judgment,
6 decree or other order of a court providing for the legal custody,
7 physical custody or visitation with respect to a child. The term
8 includes a permanent, temporary, initial and modification order.
9 The term does not include an order relating to child support or
10 other monetary obligation of an individual.

11 (d) "Child custody proceeding" means a proceeding in
12 which legal custody, physical custody or visitation with respect
13 to a child is an issue. The term includes a proceeding for
14 divorce, separation, neglect, abuse, dependency, guardianship,
15 paternity, termination of parental rights and protection from
16 domestic violence in which the issue may appear. The term
17 does not include a proceeding involving juvenile delinquency,
18 contractual emancipation or enforcement under part 20-301, *et*
19 *seq.*

20 (e) "Commencement" means the filing of the first pleading
21 in a proceeding.

22 (f) "Court" means an entity authorized under the law of a
23 state to establish, enforce or modify a child custody determina-
24 tion. Reference to a court of West Virginia means the family
25 court.

26 (g) "Home state" means the state in which a child lived with
27 a parent or a person acting as a parent for at least six consecu-
28 tive months immediately before the commencement of a child
29 custody proceeding. In the case of a child less than six months
30 of age, the term means the state in which the child lived from
31 birth with any of the persons mentioned. A period of temporary
32 absence of any of the mentioned persons is part of the period.

33 (h) "Initial determination" means the first child custody
34 determination concerning a particular child.

35 (i) "Issuing court" means the court that makes a child
36 custody determination for which enforcement is sought under
37 this chapter.

38 (j) "Issuing state" means the state in which a child custody
39 determination is made.

40 (k) "Modification" means a child custody determination
41 that changes, replaces, supersedes or is otherwise made after a
42 previous determination concerning the same child, whether or
43 not it is made by the court that made the previous determina-
44 tion.

45 (l) "Person" means an individual; corporation; business
46 trust; estate; trust; partnership; limited liability company;
47 association; joint venture; government, governmental subdivi-
48 sion, agency or instrumentality; public corporation; or any other
49 legal or commercial entity.

50 (m) "Person acting as a parent" means a person, other than
51 a parent, who:

52 (1) Has physical custody of the child or has had physical
53 custody for a period of six consecutive months, including any
54 temporary absence, within one year immediately before the
55 commencement of a child custody proceeding; and

56 (2) Has been awarded legal custody by a court or claims a
57 right to legal custody under the law of this state.

58 (n) "Physical custody" means the physical care and supervi-
59 sion of a child.

60 (o) "State" means a state of the United States, the District
61 of Columbia, Puerto Rico, the United States Virgin Islands or
62 any territory or insular possession subject to the jurisdiction of
63 the United States.

64 (p) "Tribe" means an Indian tribe or band or Alaskan Native
65 village which is recognized by federal law or formally acknowl-
66 edged by a state.

67 (q) "Warrant" means an order issued by a court authorizing
68 law-enforcement officers to take physical custody of a child.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

§48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and to
2 obtain an order of support for the child may be instituted, by
3 verified complaint, in the family court of the county where the
4 child resides: *Provided*, That if such venue creates a hardship
5 for the parties, or either of them, or if judicial economy
6 requires, the court may transfer the action to the county where
7 either of the parties resides.

8 (b) A "paternity proceeding" is a summary proceeding,
9 equitable in nature and within the domestic relations jurisdic-
10 tion of the courts, wherein a family court upon the petition of
11 the state or another proper party may intervene to determine and
12 protect the respective personal rights of a child for whom
13 paternity has not been lawfully established, of the mother of the
14 child and of the putative father of the child. The parties to a
15 paternity proceeding are not entitled to a trial by jury.

16 (c) The sufficiency of the statement of the material allega-
17 tions in the complaint set forth as grounds for relief and the
18 grant or denial of the relief prayed for in a particular case shall
19 rest in the sound discretion of the court, to be exercised by the
20 court according to the circumstances and exigencies of the case,
21 having due regard for precedent and the provisions of the
22 statutory law of this state.

23 (d) A decree or order made and entered by a court in a
24 paternity proceeding shall include a determination of the filial
25 relationship, if any, which exists between a child and his or her
26 putative father, and, if such relationship is established, shall
27 resolve dependent claims arising from family rights and
28 obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any of the
30 following persons:

31 (1) An unmarried woman with physical or legal custody of
32 a child to whom she gave birth;

33 (2) A married woman with physical or legal custody of a
34 child to whom she gave birth, if the complaint alleges that:

35 (A) The married woman lived separate and apart from her
36 husband preceding the birth of the child;

37 (B) The married woman did not cohabit with her husband
38 at any time during such separation and that such separation has
39 continued without interruption; and

40 (C) The respondent, rather than her husband, is the father
41 of the child;

42 (3) The state of West Virginia, including the bureau for
43 child support enforcement;

44 (4) Any person who is not the mother of the child but who
45 has physical or legal custody of the child;

46 (5) The guardian or committee of the child;

47 (6) The next friend of the child when the child is a minor;

48 (7) By the child in his or her own right at any time after the
49 child's eighteenth birthday but prior to the child's twenty-first
50 birthday; or

51 (8) A man who believes he is the father of a child born out
52 of wedlock when there has been no prior judicial determination
53 of paternity.

54 (f) Blood or tissue samples taken pursuant to the provisions
55 of this article may be ordered to be taken in such locations as
56 may be convenient for the parties so long as the integrity of the
57 chain of custody of the samples can be preserved.

58 (g) A person who has sexual intercourse in this state
59 submits to the jurisdiction of the courts of this state for a
60 proceeding brought under this article with respect to a child
61 who may have been conceived by that act of intercourse.
62 Service of process may be perfected according to the rules of
63 civil procedure.

64 (h) When the person against whom the proceeding is
65 brought has failed to plead or otherwise defend the action after
66 proper service has been obtained, judgment by default shall be
67 issued by the court as provided by the rules of civil procedure.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

1 (a) Prior to the commencement of an action for the estab-
2 lishment of paternity, the bureau for child support enforcement
3 may order the mother, her child and the man to submit to
4 genetic tests to aid in proving or disproving paternity. The
5 bureau may order the tests upon the request, supported by a
6 sworn statement, of any person entitled to petition the court for
7 a determination of paternity as provided in section one of this
8 article. If the request is made by a party alleging paternity, the
9 statement shall set forth facts establishing a reasonable possibil-

10 ity or requisite sexual contact between the parties. If the request
11 is made by a party denying paternity, the statement may set
12 forth facts establishing a reasonable possibility of the nonexis-
13 tence of sexual contact between the parties or other facts
14 supporting a denial of paternity. If genetic testing is not
15 performed pursuant to an order of the bureau for child support
16 enforcement, the court may, on its own motion or shall upon the
17 motion of any party, order such tests. A request or motion may
18 be made upon ten days' written notice to the mother and alleged
19 father without the necessity of filing a complaint. When the
20 tests are ordered, the court or the bureau shall direct that the
21 inherited characteristics, including, but not limited to, blood
22 types, be determined by appropriate testing procedures at a
23 hospital, independent medical institution or independent
24 medical laboratory duly licensed under the laws of this state or
25 any other state and an expert qualified as an examiner of
26 genetic markers shall analyze, interpret and report on the results
27 to the court or to the bureau for child support enforcement. The
28 results shall be considered as follows:

29 (1) Blood or tissue test results which exclude the man as the
30 father of the child are admissible and shall be clear and con-
31 vincing evidence of nonpaternity and, if a complaint has been
32 filed, the court shall, upon considering such evidence, dismiss
33 the action.

34 (2) Blood or tissue test results which show a statistical
35 probability of paternity of less than ninety-eight percent are
36 admissible and shall be weighed along with other evidence of
37 the respondent's paternity.

38 (3) Undisputed blood or tissue test results which show a
39 statistical probability of paternity of more than ninety-eight
40 percent shall, when filed, legally establish the man as the father
41 of the child for all purposes and child support may be estab-
42 lished pursuant to the provisions of this chapter.

43 (4) When a party desires to challenge the results of the
44 blood or tissue tests or the expert's analysis of inherited
45 characteristics, he or she shall file a written protest with the
46 family court or with the bureau for child support enforcement,
47 if appropriate, within thirty days of the filing of such test results
48 and serve a copy of such protest upon the other party. The
49 written protest shall be filed at least thirty days prior to any
50 hearing involving the test results. The court or the bureau for
51 child support enforcement, upon reasonable request of a party,
52 shall order that additional tests be made by the same laboratory
53 or another laboratory within thirty days of the entry of the
54 order, at the expense of the party requesting additional testing.
55 Costs shall be paid in advance of the testing. When the results
56 of the blood or tissue tests or the expert's analysis which show
57 a statistical probability of paternity of more than ninety-eight
58 percent are confirmed by the additional testing, then the results
59 are admissible evidence which is clear and convincing evidence
60 of paternity. The admission of the evidence creates a presump-
61 tion that the man tested is the father.

62 (b) Documentation of the chain of custody of the blood or
63 tissue specimens is competent evidence to establish the chain of
64 custody. A verified expert's report shall be admitted at trial
65 unless a challenge to the testing procedures or a challenge to the
66 results of test analysis has been made before trial. The costs and
67 expenses of making the tests shall be paid by the parties in
68 proportions and at times determined by the court.

69 (c) Except as provided in subsection (d) of this section,
70 when a blood test is ordered pursuant to this section, the
71 moving party shall initially bear all costs associated with the
72 blood test unless that party is determined by the court to be
73 financially unable to pay those costs. This determination shall
74 be made following the filing of an affidavit pursuant to section
75 one, article two, chapter fifty-nine of this code. When the court
76 finds that the moving party is unable to bear that cost, the cost

77 shall be borne by the state of West Virginia. Following the
78 finding that a person is the father based on the results of a blood
79 test ordered pursuant to this section, the court shall order that
80 the father be ordered to reimburse the moving party for the
81 costs of the blood tests unless the court determines, based upon
82 the factors set forth in this section, that the father is financially
83 unable to pay those costs.

84 (d) When a blood test is ordered by the bureau for child
85 support enforcement, the bureau shall initially bear all costs
86 subject to recoupment from the alleged father if paternity is
87 established.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-204. Family or household members defined.

§48-27-205. Final hearing defined.

§48-27-209. Protective order defined.

§48-27-304. Commencement of proceeding.

§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

§48-27-403. Emergency protective orders of court; hearings; persons present.

§48-27-501. Issuance of protective order; modification of order.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

§48-27-508. Costs to be paid to family court fund.

§48-27-510. Appeals.

PART 2. DEFINITIONS.

§48-27-204. Family or household members defined.

1 "Family or household members" means persons who:

2 (1) Are or were married to each other;

3 (2) Are or were living together as spouses;

4 (3) Are or were sexual or intimate partners;

- 5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a business
7 or social context does not establish a dating relationship;
- 8 (5) Are or were residing together in the same household;
- 9 (6) Have a child in common regardless of whether they
10 have ever married or lived together;
- 11 (7) Have the following relationships to another person:
- 12 (A) Parent;
- 13 (B) Stepparent;
- 14 (C) Brother or sister;
- 15 (D) Half-brother or half-sister;
- 16 (E) Stepbrother or stepsister;
- 17 (F) Stepfather-in-law or stepmother-in-law;
- 18 (G) Child or stepchild;
- 19 (H) Daughter-in-law or son-in-law;
- 20 (I) Stepdaughter-in-law or stepson-in-law;
- 21 (J) Grandparent;
- 22 (K) Stepgrandparent;
- 23 (L) Aunt, aunt-in-law or stepaunt;
- 24 (M) Uncle, uncle-in-law or stepuncle;
- 25 (N) Niece or nephew;

26 (O) First or second cousin; or

27 (8) Have the relationships set forth in paragraphs (A)
28 through (O), inclusive, subdivision (7) of this section to a
29 family or household member, as defined in subdivisions (1)
30 through (6), inclusive, of this section.

§48-27-205. Final hearing defined.

1 “Final hearing” means the hearing before a family court
2 judge following the entry of an order by a magistrate as a result
3 of the emergency hearing.

§48-27-209. Protective order defined.

1 “Protective order” means an emergency protective order
2 entered by a magistrate as a result of the emergency hearing or
3 a protective order entered by a family court judge upon final
4 hearing.

PART 3. PROCEDURE.

§48-27-304. Commencement of proceeding.

1 (a) An action under this article is commenced by the filing
2 of a verified petition in the magistrate court.

3 (b) No person shall be refused the right to file a petition
4 under the provisions of this article. No person shall be denied
5 relief under the provisions of this article if she or he presents
6 facts sufficient under the provisions of this article for the relief
7 sought.

8 (c) Husband and wife are competent witnesses in domestic
9 violence proceedings and cannot refuse to testify on the
10 grounds of the privileged nature of their communications.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

1 (a) The provisions of this section apply where a temporary
2 order has been entered by a family court in an action for
3 divorce, annulment or separate maintenance, notwithstanding
4 the provisions of subsection 27-401(c) of this article.

5 (b) A person who is a party to an action for divorce,
6 annulment or separate maintenance in which a temporary order
7 has been entered pursuant to section 5-501 of this chapter may
8 petition the magistrate court for a temporary emergency
9 protective order pursuant to this section for any violation of the
10 provisions of this article occurring after the date of entry of the
11 temporary order pursuant to section 5-501 of this chapter.

12 (c) The only relief that a magistrate may award pursuant to
13 this section is a temporary emergency protective order:

14 (1) Directing the respondent to refrain from abusing the
15 petitioner or minor children, or both;

16 (2) Ordering the respondent to refrain from entering the
17 school, business or place of employment of the petitioner or
18 household members or family members for the purpose of
19 violating the protective order; and

20 (3) Ordering the respondent to refrain from contacting,
21 telephoning, communicating with, harassing or verbally abusing
22 the petitioner.

23 (d) A temporary emergency protective order may modify an
24 award of custody or visitation only upon a showing, by clear
25 and convincing evidence, of the respondent's abuse of a child,
26 as abuse is defined in section 27-202 of this article. An order of

27 modification shall clearly state which party has custody and
28 describe why custody or visitation arrangements were modified.

29 (e) (1) The magistrate shall forthwith transmit a copy of any
30 temporary emergency protective order, together with a copy of
31 the petition, by mail or by facsimile machine to the family court
32 in which the action is pending and to law-enforcement agencies.
33 The family court shall set a hearing on the matter to be held no
34 later than ten days following the entry of the order by magis-
35 trate. The family court shall give notice of the hearing date,
36 time and place to the parties and shall advise them of their
37 opportunity to appear and participate in a hearing to determine
38 whether the order entered by the magistrate should be extended
39 by the family court to a date certain or should be vacated. The
40 notice shall also provide that a party's failure to appear may
41 result in the entry of an order extending the order entered by the
42 magistrate to a date certain or vacating the order of the magis-
43 trate. Subsequent to the hearing, the family court shall forthwith
44 enter an order and cause the same to be served on the parties
45 and transmitted by mail or by facsimile machine to the issuing
46 magistrate. The magistrate court clerk shall forward a copy of
47 the family court order to law-enforcement agencies.

48 (2) If no temporary order has been entered in the pending
49 action for divorce, annulment or separate maintenance, the
50 family court shall forthwith return the order with such explana-
51 tion to the issuing magistrate. The magistrate who issued the
52 order shall vacate the order, noting thereon the reason for
53 termination. The magistrate court clerk shall transmit a copy of
54 the vacated order to the parties and law-enforcement agencies.

55 (f) Notwithstanding any other provision of this code, if the
56 family court extends the temporary emergency protective order
57 entered by the magistrate or if, pursuant to the provisions of
58 section 5-509, the family court enters a protective order as
59 temporary relief in an action for divorce, the family court order

60 shall be treated and enforced as a protective order issued under
61 the provisions of this article.

**§48-27-403. Emergency protective orders of court; hearings;
persons present.**

1 (a) Upon the filing of a verified petition under this article,
2 the magistrate court may enter an emergency protective order
3 as it may deem necessary to protect the petitioner or minor
4 children from domestic violence and, upon good cause shown,
5 may do so ex parte without the necessity of bond being given
6 by the petitioner. Clear and convincing evidence of immediate
7 and present danger of abuse to the petitioner or minor children
8 shall constitute good cause for the issuance of an emergency
9 protective order pursuant to this section. If the respondent is not
10 present at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the efforts
12 which have been made to give notice to the respondent or just
13 cause why notice should not be required. Copies of medical
14 reports or records may be admitted into evidence to the same
15 extent as though the original thereof. The custodian of such
16 records shall not be required to be present to authenticate such
17 records for any proceeding held pursuant to this subsection. If
18 the magistrate court determines to enter an emergency protec-
19 tive order, the order shall prohibit the respondent from possess-
20 ing firearms.

21 (b) Following the proceeding, the magistrate court shall
22 order a copy of the petition to be served immediately upon the
23 respondent, together with a copy of any emergency protective
24 order entered pursuant to the proceedings, a notice of the final
25 hearing before the family court and a statement of the right of
26 the respondent to appear and participate in the final hearing, as
27 provided in subsection (d) of this section. Copies of any order
28 entered under the provisions of this section, a notice of the final
29 hearing before the family court and a statement of the right of

30 the petitioner to appear and participate in the final hearing, as
31 provided in subsection (d) of this section, shall also be deliv-
32 ered to the petitioner. Copies of any order entered shall also be
33 delivered to any law-enforcement agency having jurisdiction to
34 enforce the order, including municipal police, the county
35 sheriff's office and local office of the state police, within
36 twenty-four hours of the entry of the order. An emergency
37 protective order is effective until modified by order of the
38 family court upon hearing as provided in subsection (d) of this
39 section. The order is in full force and effect in every county in
40 this state.

41 (c) Subsequent to the entry of the emergency protective
42 order, service on the respondent and the delivery to the peti-
43 tioner and law-enforcement officers, the court file shall be
44 transferred to the office of the clerk of the circuit court for use
45 by the family court.

46 (d) The family court shall schedule a final hearing on each
47 petition in which an emergency protective order has been
48 entered by a magistrate. The hearing shall be scheduled not
49 later than ten days following the entry of the order by the
50 magistrate. The notice of the final hearing shall be served on the
51 respondent and delivered to the petitioner, as provided in
52 subsection (b) of this section, and must set forth the hearing
53 date, time and place and include a statement of the right of the
54 parties to appear and participate in the final hearing. The notice
55 must also provide that the petitioner's failure to appear will
56 result in a dismissal of the petition and that the respondent's
57 failure to appear may result in the entry of a protective order
58 against him or her for a period of ninety or one hundred eighty
59 days, as determined by the court. The notice must also include
60 the name, mailing address, physical location and telephone
61 number of the family court having jurisdiction over the pro-
62 ceedings. To facilitate the preparation of the notice of final
63 hearing required by the provisions of this subsection, the family

64 court must provide the magistrate court with a day and time in
65 which final hearings may be scheduled before the family court
66 within the time required by law.

67 (e) Upon final hearing the petitioner must prove, by a
68 preponderance of the evidence, the allegation of domestic
69 violence or that he or she reported or witnessed domestic
70 violence against another and has, as a result, been abused,
71 threatened, harassed or has been the subject of other actions to
72 attempt to intimidate him or her, or such petition shall be
73 dismissed by the family court. If the respondent has not been
74 served with notice of the emergency protective order, the
75 hearing may be continued to permit service to be effected. The
76 failure to obtain service upon the respondent does not constitute
77 a basis to dismiss the petition. Copies of medical reports may
78 be admitted into evidence to the same extent as though the
79 original thereof, upon proper authentication, by the custodian
80 of such records.

81 (f) No person requested by a party to be present during a
82 hearing held under the provisions of this article shall be
83 precluded from being present unless such person is to be a
84 witness in the proceeding and a motion for sequestration has
85 been made and such motion has been granted. A person found
86 by the court to be disruptive may be precluded from being
87 present.

88 (g) Upon hearing, the family court may dismiss the petition
89 or enter a protective order for a period of ninety days or, in the
90 discretion of the court, for a period of one hundred eighty days.
91 The hearing may be continued on motion of the respondent, at
92 the convenience of the court. Otherwise, the hearing may be
93 continued by the court no more than seven days. If a hearing is
94 continued, the family court may modify the emergency protec-
95 tive order as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-501. Issuance of protective order; modification of order.

1 (a) Upon final hearing, the court shall enter a protective
2 order if it finds, after hearing the evidence, that the petitioner
3 has proved the allegations of domestic violence by a preponder-
4 ance of the evidence. If the respondent is present at the hearing
5 and elects not to contest the allegations of domestic violence or
6 does not contest the relief sought, the petitioner is not required
7 to produce evidence and prove the allegations of domestic
8 violence and the court may directly address the issues of the
9 relief requested.

10 (b) The court may modify the terms of a protective order at
11 any time upon subsequent petition filed by any party.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided in subsection 27-401(d) of
2 this article, a protective order, entered by the family court
3 pursuant to this article, is effective for either ninety days or one
4 hundred eighty days, in the discretion of the court. If the court
5 enters an order for a period of ninety days, upon receipt of a
6 written request from the petitioner prior to the expiration of the
7 ninety-day period, the family court shall extend its order for an
8 additional ninety-day period.

9 (b) To be effective, a written request to extend an order
10 from ninety days to one hundred eighty days must be submitted
11 to the court prior to the expiration of the original ninety-day
12 period. A notice of the extension shall be sent by the clerk of
13 the court to the respondent by first-class mail, addressed to the
14 last known address of the respondent as indicated by the court
15 file. The extension of time is effective upon mailing of the
16 notice.

17 (c) Certified copies of any order entered or extension notice
18 made under the provisions of this section shall be served upon
19 the respondent by first class mail, addressed to the last known
20 address of the respondent as indicated by the court file, and
21 delivered to the petitioner and any law-enforcement agency
22 having jurisdiction to enforce the order, including the city
23 police, the county sheriff's office or local office of the West
24 Virginia state police within twenty-four hours of the entry of
25 the order. The protective order shall be in full force and effect
26 in every county of this state.

27 (d) The family court may modify the terms of a protective
28 order upon motion of either party.

29 (e) The clerk of the circuit court shall cause a copy of any
30 protective order entered by the family court pursuant to the
31 provisions of this article or pursuant to the provisions of chapter
32 forty-eight of this code to be forwarded to the appropriate
33 federal agency for registration of domestic violence offenders
34 as required by federal law.

§48-27-508. Costs to be paid to family court fund.

1 Any person against whom a protective order is issued shall
2 be assessed costs of twenty-five dollars. Such costs shall be
3 paid to the family court fund established pursuant to section
4 twenty-two, article two-a, chapter fifty-one of this code.

§48-27-510. Appeals.

1 (a) A petitioner who has been denied an emergency
2 protective order may file a petition for appeal of the denial,
3 within five days of the denial, to the family court.

4 (b) Any party to a protective order entered upon final
5 hearing may file a petition for appeal, within ten days of the
6 entry of the order in family court, to the circuit court. The order

7 shall remain in effect pending an appeal unless stayed by order
8 of the family court sua sponte or upon motion of a party, or by
9 order of the circuit court upon motion of a party. No bond shall
10 be required for any appeal under this section.

11 (c) A petition for appeal filed pursuant to this section shall
12 be heard by the court within ten days from the filing of the
13 petition.

14 (d) The standard of review of findings of fact made by the
15 family court is clearly erroneous and the standard of review of
16 application of the law to the facts is an abuse of discretion
17 standard.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article

2A. Family Courts.

9. Retirement System for Judges of Courts of Record.

ARTICLE 2A. FAMILY COURTS.

- §51-2A-1. Family courts established.
- §51-2A-2. Family court jurisdiction; exceptions; limitations.
- §51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.
- §51-2A-4. Qualifications of family court judges.
- §51-2A-5. Term of office of family court judge; initial appointment; elections.
- §51-2A-6. Compensation and expenses of family court judges and their staffs.
- §51-2A-7. Powers; administrative and judicial functions of family court judge.
- §51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.
- §51-2A-9. Contempt powers of family court judge.
- §51-2A-10. Motion for reconsideration of family court order.
- §51-2A-11. Petition for appeal.
- §51-2A-12. Stay of proceedings pending appeal.
- §51-2A-13. Motion to dismiss appeal.
- §51-2A-14. Review by circuit court; record; standard of review; temporary order upon remand.
- §51-2A-15. Review by supreme court of appeals; assistance for pro se appellants.
- §51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

- §51-2A-17. Disciplinary proceedings for family court judges.
§51-2A-18. Vacancy in the office of family court judge.
§51-2A-19. Temporary assignment of family court judges.
§51-2A-20. County commissions required to furnish offices for the family court judges.
§51-2A-21. Budget of the family court.
§51-2A-22. Family court fund.
§51-2A-23. Operative dates; terminology.

§51-2A-1. Family courts established.

1 There is hereby created in each county in this state a family
2 court to be designated as "The Family Court of
3 _____ County, West Virginia".

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate mainte-
4 nance brought under the provisions of article three, four or five,
5 chapter forty-eight of this code, except as provided in subsec-
6 tions (b) and (c) of this section;

7 (2) All actions to obtain orders of support brought under the
8 provisions of part one, article fourteen, chapter forty-eight of
9 this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of this
12 code, and any dependent claims related to such actions regard-
13 ing child support, parenting plans or other allocation of custo-
14 dial responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under the
16 provisions of article ten, chapter forty-eight of this code;

17 (5) All actions for the interstate enforcement of family
18 support brought under article sixteen, chapter forty-eight of this
19 code and for the interstate enforcement of child custody brought
20 under the provisions of article twenty, chapter forty-eight of
21 this code;

22 (6) All actions for the establishment of a parenting plan or
23 other allocation of custodial responsibility or decision-making
24 responsibility for a child, including actions brought under the
25 uniform child custody jurisdiction and enforcement act, as
26 provided in article twenty, chapter forty-eight of this code;

27 (7) All petitions for writs of habeas corpus wherein the
28 issue contested is custodial responsibility for a child;

29 (8) All motions for temporary relief affecting parenting
30 plans or other allocation of custodial responsibility or decision-
31 making responsibility for a child, child support, spousal support
32 or domestic violence;

33 (9) All motions for modification of an order providing for
34 a parenting plan or other allocation of custodial responsibility
35 or decision-making responsibility for a child or for child
36 support or spousal support;

37 (10) All actions brought, including civil contempt proceed-
38 ings, to enforce an order of spousal or child support or to
39 enforce an order for a parenting plan or other allocation of
40 custodial responsibility or decision-making responsibility for a
41 child;

42 (11) All actions brought by an obligor to contest the
43 enforcement of an order of support through the withholding
44 from income of amounts payable as support or to contest an
45 affidavit of accrued support, filed with the circuit clerk, which
46 seeks to collect an arrearage; and

47 (12) All final hearings in domestic violence proceedings.

48 (b) If an action for divorce, annulment or separate mainte-
49 nance does not require the establishment of a parenting plan or
50 other allocation of custodial responsibility or decision-making
51 responsibility for a child and does not require an award or any
52 payment of child support, the circuit court has concurrent
53 jurisdiction with the family court over the action if, at the time
54 of the filing of the action, the parties also file a written property
55 settlement agreement executed by both parties.

56 (c) If an action for divorce, annulment or separate mainte-
57 nance is pending and a petition is filed pursuant to the provi-
58 sions of article six, chapter forty-nine of this code alleging
59 abuse or neglect of a child by either of the parties to the
60 divorce, annulment or separate maintenance action, the orders
61 of the circuit court in which the abuse or neglect petition is filed
62 shall supercede and take precedence over an order of the family
63 court respecting the allocation of custodial and decision-making
64 responsibility for the child between the parents. If no order for
65 the allocation of custodial and decision-making responsibility
66 for the child between the parents has been entered by the family
67 court in the pending action for divorce, annulment or separate
68 maintenance, the family court shall stay any further proceedings
69 concerning the allocation of custodial and decision-making
70 responsibility for the child between the parents and defer to the
71 orders of the circuit court in the abuse or neglect proceedings.

72 (d) A family court is a court of limited jurisdiction. A
73 family court is a court of record only for the purpose of
74 exercising jurisdiction in the matters for which the jurisdiction
75 of the family court is specifically authorized in this section and
76 in chapter forty-eight of this code. A family court may not
77 exercise the powers given courts of record in section one,
78 article five, chapter fifty-one of this code or exercise any other
79 powers provided for courts of record in this code unless

80 specifically authorized by the Legislature. A family court judge
81 is not a “judge of any court of record” or a “judge of a court of
82 record” as the terms are defined and used in article nine of this
83 chapter.

**§51-2A-3. Number of family court judges; assignment of family
court judges by family court circuits.**

1 (a) A total of thirty-five family court judges shall serve
2 throughout the state.

3 (b) The state is divided into twenty-six family court circuits
4 with the family court judges allocated as follows:

5 (1) The counties of Brooke, Hancock and Ohio constitute
6 the first family court circuit and have two family court judges;

7 (2) The counties of Marshall, Wetzel and Tyler constitute
8 the second family court circuit and have one family court judge;

9 (3) The counties of Pleasants, Ritchie, Wood and Wirt
10 constitute the third family court circuit and have two family
11 court judges;

12 (4) The counties of Doddridge, Roane, Calhoun and Gilmer
13 constitute the fourth family court circuit and have one family
14 court judge;

15 (5) The counties of Mason and Jackson constitute the fifth
16 family court circuit and have one family court judge;

17 (6) The county of Cabell constitutes the sixth family court
18 circuit and has two family court judges;

19 (7) The county of Wayne constitutes the seventh family
20 court circuit and has one family court judge;

21 (8) The county of Mingo constitutes the eighth family court
22 circuit and has one family court judge;

23 (9) The county of Logan constitutes the ninth family court
24 circuit and has one family court judge;

25 (10) The counties of Lincoln and Boone constitute the tenth
26 family court circuit and have one family court judge;

27 (11) The county of Kanawha constitutes the eleventh family
28 court circuit and has four family court judges;

29 (12) The counties of McDowell and Mercer constitute the
30 twelfth family court circuit and have two family court judges;

31 (13) The counties of Raleigh and Wyoming constitute the
32 thirteenth family court circuit and have two family court judges;

33 (14) The counties of Fayette and Summers constitute the
34 fourteenth family court circuit and have one family court judge;

35 (15) The counties of Greenbrier and Monroe constitute the
36 fifteenth family court circuit and have one family court judge;

37 (16) The counties of Clay, Nicholas and Webster constitute
38 the sixteenth family court circuit and have one family court
39 judge;

40 (17) The counties of Braxton, Lewis and Upshur constitute
41 the seventeenth family court circuit and have one family court
42 judge;

43 (18) The county of Harrison constitutes the eighteenth
44 family court circuit and has one family court judge;

45 (19) The county of Marion constitutes the nineteenth family
46 court circuit and has one family court judge;

47 (20) The county of Monongalia constitutes the twentieth
48 family court circuit and has one family court judge;

49 (21) The counties of Barbour, Preston and Taylor constitute
50 the twenty-first family court circuit and have one family court
51 judge;

52 (22) The counties of Grant, Tucker and Randolph constitute
53 the twenty-second family court circuit and have one family
54 court judge;

55 (23) The counties of Mineral, Hampshire and Morgan
56 constitute the twenty-third family court circuit and have one
57 family court judge;

58 (24) The counties of Berkeley and Jefferson constitute the
59 twenty-fourth family court circuit and have two family court
60 judges;

61 (25) The counties of Hardy, Pendleton and Pocahontas
62 constitute the twenty-fifth family court circuit and have one
63 family court judge; and

64 (26) The county of Putnam constitutes the twenty-sixth
65 family court circuit and has one family court judge.

66 (c) The Legislature has the authority and may determine to
67 realign the family court circuits and has the authority and may
68 determine to increase or decrease the number of family court
69 judges within a family court circuit, from time to time. Any
70 person appointed or elected to the office of family court judge
71 acknowledges the authority of the Legislature to realign family
72 court circuits and the authority of the Legislature to increase or
73 decrease the number of family court judges within a family
74 court circuit.

§51-2A-4. Qualifications of family court judges.

1 (a) A family court judge must be a resident of this state, a
2 member in good standing of the West Virginia state bar,
3 admitted to practice law in this state for at least five years prior
4 to election, and must, at the time he or she takes office, and
5 thereafter during his or her continuance in office, reside in the
6 family court circuit for which he or she is a judge.

7 (b) A family court judge may not engage in any other
8 business, occupation or employment inconsistent with the
9 expeditious, proper and impartial performance of his or her
10 duties as a judicial officer. A family court judge is not permit-
11 ted to engage in the outside practice of law and shall devote full
12 time to his or her duties as a judicial officer.

13 (c) The supreme court of appeals may establish require-
14 ments for family court judges to attend and complete courses of
15 instruction and continuing educational instruction in principles
16 of family law and procedure.

17 (d) A person's acceptance of the office of family court
18 judge pursuant to appointment or election constitutes the
19 person's consent, agreement and election during the term of
20 office not to become a member of the judges retirement system
21 solely by reason of or based upon service as a family court
22 judge and an acknowledgment by the person of the sole
23 authority of the Legislature to determine the eligibility of
24 family court judges to participate in a retirement system.
25 Notwithstanding any other provision of law to the contrary,
26 upon final judicial determination that a person, individually or
27 as a member of a class, is eligible for participation in the judges
28 retirement system solely by reason of or based upon service as
29 a family court judge, no additional persons except as may be
30 provided for in this subsection may be admitted to the judges
31 retirement system existing upon the effective date of the final
32 judicial determination. A circuit judge or justice of the supreme
33 court of appeals who is a member of the existing judges

34 retirement system whose employment continues beyond the
35 final judicial determination shall continue to contribute to and
36 participate in the existing judges retirement system without a
37 change in plan provisions or benefits. Any person who was
38 previously a member of the judges retirement system and who
39 later returns to participating employment as a circuit judge or
40 justice of the supreme court of appeals after the final judicial
41 determination has the right to elect to return to the existing
42 judges retirement system and participate during the judge's or
43 justice's term or terms of office.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

1 (a) Before the first day of December, two thousand one,
2 family court judges shall be appointed by the governor to serve
3 in the family court circuits as provided for in section three of
4 this article. The initial term of office for the family court judges
5 first appointed shall commence on the first day of January, two
6 thousand two, and end on the thirty-first day of December, two
7 thousand two.

8 (b) Beginning with the primary and general elections to be
9 conducted in the year two thousand two, family court judges
10 shall be elected. In family court circuits having two or more
11 family court judges there shall be, for election purposes,
12 numbered divisions corresponding to the number of family
13 court judges in each area. Each family court judge shall be
14 elected at large by the entire family court circuit. In each
15 numbered division of a family court circuit, the candidates for
16 nomination or election shall be voted upon and the votes cast
17 for the candidates in each division shall be tallied separately
18 from the votes cast for candidates in other numbered divisions
19 within the family court circuit. The candidate or candidates
20 receiving the highest number of the votes cast within a num-

21 bered division shall be nominated or elected, as the case may
22 be.

23 (c) The term of office for all family court judges elected in
24 two thousand two shall be for six years, commencing on the
25 first day of January, two thousand three, and ending on the
26 thirty-first day of December, two thousand eight. Subsequent
27 terms of office for family court judges elected thereafter shall
28 be for eight years.

**§51-2A-6. Compensation and expenses of family court judges and
their staffs.**

1 (a) Until the thirty-first day of December, two thousand
2 two, a family court judge is entitled to receive as compensation
3 for his or her services an annual salary of sixty thousand
4 dollars. Beginning the first day of January, two thousand three,
5 a family court judge is entitled to receive as compensation for
6 his or her services an annual salary of sixty-two thousand five
7 hundred dollars.

8 (b) The secretary-clerk of the family court judge is ap-
9 pointed by the family court judge and serves at his or her will
10 and pleasure. The secretary-clerk of the family court judge is
11 entitled to receive an annual salary of twenty-two thousand
12 three hundred eight dollars. In addition, beginning the first day
13 of October, one thousand nine hundred ninety-nine, any
14 secretary-clerk who was employed by a family law master on
15 the twentieth day of May, one thousand nine hundred ninety-
16 nine, and who was so employed for at least two years prior to
17 such date, is entitled to receive an additional five hundred
18 dollars per year up to ten years of such prior employment, as
19 provided in the prior enactment of section eight of this article
20 during the second extraordinary session of the Legislature in the
21 year one thousand nine hundred ninety-nine. Further, the
22 secretary-clerk will receive such percentage or proportional

23 salary increases as may be provided for by general law for other
24 public employees and is entitled to receive the annual incre-
25 mental salary increase as provided for in article five, chapter
26 five of this code.

27 (c) The family court judge may employ not more than one
28 family case coordinator who serves at his or her will and
29 pleasure. The annual salary of the family case coordinator of
30 the family court judge shall be established by the administrative
31 director of the supreme court of appeals but may not exceed
32 thirty-five thousand dollars. The family case coordinator will
33 receive such percentage or proportional salary increases as may
34 be provided for by general law for other public employees and
35 is entitled to receive the annual incremental salary increase as
36 provided for in article five, chapter five of this code.

37 (d) The sheriff or his or her designated deputy shall serve
38 as a bailiff for a family court judge. The sheriff of each county
39 shall serve or designate persons to serve so as to assure that a
40 bailiff is available when a family court judge determines the
41 same is necessary for the orderly and efficient conduct of the
42 business of the family court.

43 (e) Disbursement of salaries for family court judges and
44 members of their staffs are made by or pursuant to the order of
45 the director of the administrative office of the supreme court of
46 appeals.

47 (f) Family court judges and members of their staffs are
48 allowed their actual and necessary expenses incurred in the
49 performance of their duties. The expenses and compensation
50 will be determined and paid by the director of the administra-
51 tive office of the supreme court of appeals under such guide-
52 lines as he or she may prescribe, as approved by the supreme
53 court of appeals.

54 (g) Notwithstanding any other provision of law, family
55 court judges are not eligible to participate in the retirement
56 system for judges under the provisions of article nine of this
57 chapter.

**§51-2A-7. Powers; administrative and judicial functions of family
court judge.**

1 (a) The family court judge will exercise any power or
2 authority provided for in this article, in chapter forty-eight of
3 this code or as otherwise provided by general law. Additionally,
4 the family court judge has the authority to:

5 (1) Manage the business before them;

6 (2) Summon witnesses and compel their attendance in
7 court;

8 (3) Exercise reasonable control over discovery;

9 (4) Compel and supervise the production of evidence;

10 (5) Discipline attorneys;

11 (6) Prevent abuse of process; and

12 (7) Correct errors in a record.

13 (b) The family court judge has responsibility for the
14 supervision and administration of the family court. A family
15 court judge may promulgate local administrative rules govern-
16 ing the conduct and administration of the family court. In
17 family court circuits with more than one family court judge, all
18 family court judges must agree to the rules. If all of the family
19 court judges in a family court circuit cannot agree, the chief
20 judge of each circuit court in the counties in which the family
21 court circuit is located shall promulgate the local administrative
22 rules. If the chief judges of the circuit courts cannot agree, the

23 supreme court of appeals may promulgate the local administra-
24 tive rules. Local administrative rules are subordinate and
25 subject to the rules of the supreme court of appeals or the orders
26 of the chief justice. Rules promulgated by the family or circuit
27 court are made by order entered upon the order book of the
28 circuit court and are effective when filed with the clerk of the
29 supreme court of appeals.

30 (c) Prior to the two thousand three regular session of the
31 Legislature and annually thereafter, the supreme court of
32 appeals shall report to the Legislature on the caseload in each
33 family court circuit and shall recommend changes to the
34 management of the family court as the supreme court of appeals
35 deems warranted or necessary to improve the family court.

36 (d) The supreme court of appeals shall promulgate a
37 procedural rule to establish time-keeping requirements for
38 family court judges, family case coordinators and secretary-
39 clerks of family court judges so as to assure the maximum
40 funding of incentive payments, grants and other funding
41 sources available to the state for the processing of cases filed
42 for the location of absent parents, the establishment of paternity
43 and the establishment, modification and enforcement of child
44 support orders.

**§51-2A-8. Rules of practice and procedure; applicability of rules
of evidence; record of hearings; duties of clerk of
circuit court.**

1 (a) Pleading, practice and procedure in matters before a
2 family court judge are governed by rules of practice and
3 procedure for family law promulgated by the supreme court of
4 appeals.

5 (b) The West Virginia rules of evidence apply to proceed-
6 ings before a family court judge.

7 (c) Hearings before a family court shall be recorded
8 electronically. A magnetic tape or other electronic recording
9 medium on which a hearing is recorded shall be indexed and
10 securely preserved by the secretary-clerk of the family court
11 judge and shall not be placed in the case file in the office of the
12 circuit clerk: *Provided*, That upon the request of the family
13 court judge, the magnetic tapes or other electronic recording
14 media shall be stored by the clerk of the circuit court. When
15 requested by either of the parties, a family court judge shall
16 provide a duplicate copy of the tape or other electronic record-
17 ing medium of each hearing held. For evidentiary purposes, a
18 duplicate of such electronic recording prepared by the secre-
19 tary-clerk shall be a "writing" or "recording" as those terms are
20 defined in rule 1001 of the West Virginia rules of evidence and
21 unless the duplicate is shown not to reflect the contents accu-
22 rately, it shall be treated as an original in the same manner that
23 data stored in a computer or similar data is regarded as an
24 "original" under such rule. The party requesting the copy shall
25 pay an amount equal to the actual cost of the tape or other
26 medium or the sum of five dollars, whichever is greater. Unless
27 otherwise ordered by the court, the preparation of a transcript
28 and the payment of the cost thereof shall be the responsibility
29 of the party requesting the transcript.

30 (d) The recording of the hearing or the transcript of
31 testimony, as the case may be, and the exhibits, together with
32 all documents filed in the proceeding, constitute the exclusive
33 record and, on payment of lawfully prescribed costs, shall be
34 made available to the parties.

35 (e) In any proceeding in which a party has filed an affidavit
36 that he or she is financially unable to pay the fees and costs, the
37 family court judge shall determine whether either party is
38 financially able to pay the fees and costs based on the informa-
39 tion set forth in the affidavit or on any evidence submitted at
40 the hearing. If a family court judge determines that either party

41 is financially able to pay the fees and costs, the family court
42 judge shall assess the payment of such fees and costs accord-
43 ingly as part of an order. The provisions of this subsection do
44 not alter or diminish the provisions of section one, article two,
45 chapter fifty-nine of this code.

46 (f) The clerks of the circuit court shall have, within the
47 scope of the jurisdiction of family courts, all the duties and
48 powers prescribed by law that clerks exercise on behalf of
49 circuit courts: *Provided*, That a family court judge may not
50 require the presence or attendance of a circuit clerk or deputy
51 circuit clerk at any hearing before the family court.

§51-2A-9. Contempt powers of family court judge.

1 (a) In addition to the powers of contempt established in
2 chapter forty-eight of this code, a family court judge may:

3 (1) Sanction persons through civil contempt proceedings
4 when necessary to preserve and enforce the rights of private
5 parties or to administer remedies granted by the court;

6 (2) Regulate all proceedings in a hearing before the family
7 court judge; and

8 (3) Punish direct contempts that are committed in the
9 presence of the court or that obstruct, disrupt or corrupt the
10 proceedings of the court.

11 (b) A family court judge may enforce compliance with his
12 or her lawful orders with remedial or coercive sanctions
13 designed to compensate a complainant for losses sustained and
14 to coerce obedience for the benefit of the complainant. Sanc-
15 tions must give the contemnor an opportunity to purge himself
16 or herself. In selecting sanctions, the court must use the least
17 possible power adequate to the end proposed. A person who
18 lacks the present ability to comply with the order of the court

19 may not be confined for a civil contempt. Sanctions may
20 include, but are not limited to, seizure or impoundment of
21 property to secure compliance with a prior order. Ancillary
22 relief may provide for an award of attorney's fees.

§51-2A-10. Motion for reconsideration of family court order.

1 (a) Any party may file a motion for reconsideration of a
2 temporary or final order of the family court for the following
3 reasons: (1) Mistake, inadvertence, surprise, excusable neglect
4 or unavoidable cause; (2) newly discovered evidence which by
5 due diligence could not have been available at the time the
6 matter was submitted to the court for decision; (3) fraud,
7 misrepresentation or other misconduct of an adverse party; (4)
8 clerical or other technical deficiencies contained in the order;
9 or (5) any other reason justifying relief from the operation of
10 the order.

11 (b) A motion for reconsideration must be filed with the
12 clerk of the circuit court within a reasonable time and for
13 reasons set forth in subdivisions (1), (2) or (3), subsection (a) of
14 this section, not more than one year after the order was entered
15 and served on the other party in accordance with rule 5 of the
16 rules of civil procedure. The family court must enter an order
17 ruling on the motion within thirty days of the date of the filing
18 of the motion.

§51-2A-11. Petition for appeal.

1 (a) Within thirty days following the entry of a final order of
2 a family court judge or the entry of a final order of any senior
3 status circuit judge, circuit judge or other judicial officer
4 appointed to serve pursuant to the provisions of section
5 nineteen of this article, any party may file a petition for appeal
6 with the circuit court. No appeal may be had under the provi-
7 sions of this article from any order of a family court judge or

8 from any order of another judicial officer temporarily serving
9 as a family court judge other than a final order.

10 (b) A petition for appeal of a final order of the family court
11 shall be filed in the office of the clerk of the circuit court. At the
12 time of filing the petition, a copy of the petition for appeal must
13 be served on all parties to the proceeding in the same manner as
14 pleadings subsequent to an original complaint are served under
15 rule 5 of the rules of civil procedure.

16 (c) The circuit judge may require, or a party may choose to
17 submit with the petition for appeal, a brief in support of the
18 petition.

19 (d) A respondent shall have fifteen days after the filing of
20 a petition to file a reply to the petition for appeal. The reply
21 must be served on all parties to the proceeding in the same
22 manner required for service of the petition. The circuit judge
23 may require, or a party may choose to submit with the reply, a
24 brief in opposition to the petition.

25 (e) In addition to the reply, the respondent may file a cross-
26 petition to the petition for appeal within fifteen days after the
27 filing of the petition. The respondent to the cross-petition shall
28 have fifteen days after the filing of the cross-petition to file a
29 reply. The cross-petition and any reply must be served in the
30 same manner required for service of the original petition. The
31 circuit judge may require or either party may choose to submit
32 a brief on the cross-petition.

33 (f) The supreme court of appeals shall develop and provide
34 forms for appeals filed pursuant to this section. The forms shall
35 be made available for distribution in the offices of the clerks of
36 the circuit courts and in the offices of the secretary-clerks to the
37 family court judges.

38 (g) The supreme court of appeals shall promulgate a
39 supervisory rule setting forth educational requirements in
40 domestic relations matters for circuit court judges.

41 (h) An appeal from the final order of any judicial officer
42 assigned or appointed pursuant to the provisions of section
43 nineteen of this article shall be perfected and treated in all
44 respects as an appeal from an order of the family court. The
45 terms “family court” or “family court judge” as provided in this
46 section and in sections twelve, thirteen, fourteen and fifteen of
47 this article mean the judicial officer who entered the final order
48 which is the subject of an appeal.

§51-2A-12. Stay of proceedings pending appeal.

1 (a) Any person desiring to file a petition for appeal from a
2 final order of the family court may file a motion for a stay of
3 proceedings to the family court in which the order was entered.
4 The motion for a stay shall be filed with the clerk of the circuit
5 court and served on the respondent in accordance with rule 5 of
6 the rules of civil procedure. The family court may, sua sponte,
7 order a stay of all or part of a final order pending appeal.
8 Subject to the provisions of subsection (c) of this section, the
9 family court may order a stay for the period of time allowed for
10 the filing of a petition for appeal to the circuit court or for any
11 additional period of time pending disposition of the appeal. If
12 the circuit court refuses to consider the petition for appeal, the
13 stay is vacated.

14 (b) If the family court judge denies a motion for a stay of
15 the proceedings pending appeal, or if the relief afforded is not
16 acceptable, the person desiring to file the petition for appeal
17 may file a motion for a stay of the proceedings to the circuit
18 court. The motion for stay shall be filed with the clerk of the
19 circuit court and served upon the other party in accordance with
20 rule five of the rules of civil procedure. Subject to the provi-

21 sions of subsection (c) of this section, the circuit court may
22 order a stay for the period of time allowed for the filing of a
23 petition for appeal to the circuit court or for any additional
24 period of time pending disposition of the appeal. If the circuit
25 court refuses to consider the petition for appeal, the stay is
26 vacated.

27 (c) An order granting a motion for a stay under the provi-
28 sions of this section may not include a stay of an award for the
29 payment of spousal support or child support pending the appeal,
30 except that an award of past-due child support may be stayed
31 pending an appeal.

§51-2A-13. Motion to dismiss appeal.

1 At any time following the filing of a petition for appeal of
2 a final order of a family court, either party may move the circuit
3 court to dismiss the appeal on any of the following grounds: (1)
4 A joint agreement of the parties to the dismissal; (2) failure to
5 properly perfect the appeal; (3) failure to obey an order of the
6 family court or circuit court; (4) lack of an appealable order; or
7 (5) lack of jurisdiction. Such motion shall be filed with the
8 clerk of the circuit court and served on the respondent in
9 accordance with rule 5 of the rules of civil procedure. No oral
10 argument shall be held on such motion unless requested by the
11 court.

**§51-2A-14. Review by circuit court; record; standard of review;
temporary order upon remand.**

1 (a) The circuit court may refuse to consider the petition for
2 appeal, may affirm or reverse the order, may affirm or reverse
3 the order in part or may remand the case with instructions for
4 further hearing before the family court judge.

5 (b) In considering a petition for appeal, the circuit court
6 may only consider the record as provided in subsection (d),

7 section eight of this article. The circuit court shall review the
8 findings of fact made by the family court judge under the
9 clearly erroneous standard and shall review the application of
10 law to the facts under an abuse of discretion standard.

11 (c) If the circuit court agrees to consider a petition for
12 appeal, the court shall provide the parties an opportunity to
13 appear for oral argument, upon the request of either party or in
14 the discretion of the court. The provisions of this subsection are
15 effective until the adoption of rules by the supreme court of
16 appeals governing the appellate procedures of family courts.

17 (d) If the proceeding is remanded to the family court, the
18 circuit court must enter appropriate temporary orders for a
19 parenting plan or other allocation of custodial responsibility or
20 decision-making responsibility for a child, child support,
21 spousal support or such other temporary relief as the circum-
22 stances of the parties may require.

23 (e) The circuit court must enter an order ruling on a petition
24 for appeal within sixty days from the last day a reply to the
25 petition for appeal could have been filed. If the circuit court
26 does not enter the order within the sixty-day period or does not,
27 within the sixty-day period, enter an order stating just cause
28 why the order has not been timely entered, the circuit clerk shall
29 send a written notice to the parties that unless the parties both
30 file an objection within fourteen days of the date of the notice,
31 the appeal will be transferred to the supreme court of appeals as
32 provided in section fifteen of this article due to the failure of the
33 circuit court to timely enter an order. The appeal shall be
34 transferred without the necessity of the filing of any petition or
35 further document by the petitioner.

**§51-2A-15. Review by supreme court of appeals; assistance for
pro se appellants.**

1 (a) If both of the parties file, either jointly or separately,
2 within fourteen days following the entry of the final order of a
3 family court judge, a notice of intent to file an appeal from the
4 final order of the family court directly to the supreme court of
5 appeals and to waive their right to file a petition for appeal with
6 the circuit court, the petition for appeal of the final order of the
7 family court may be filed with the supreme court of appeals in
8 accordance with the provisions of article five, chapter fifty-
9 eight of this code and the rules of appellate procedure, except
10 that the standard of review for any such appeal is the same as
11 set forth in subsection (b), section fourteen of this article.

12 (b) If a circuit court judge refuses to consider a petition for
13 appeal or if a party is adversely affected by the order entered by
14 the circuit court upon review of the final order of the family
15 court, the party may seek review of the order of the circuit court
16 by the supreme court of appeals. If a petition for appeal to the
17 circuit court is transferred to the supreme court of appeals
18 pursuant to the provisions of subsection (d), section fourteen of
19 this article, the petition for appeal filed in the circuit court will
20 be considered as a petition for appeal to the supreme court of
21 appeals. The supreme court of appeals has jurisdiction to hear
22 and entertain an appeal from an order of a circuit court or the
23 transfer of an appeal to the supreme court of appeals as pro-
24 vided in this article in the same manner provided for civil
25 appeals in article five, chapter fifty-eight of this code and in the
26 rules of appellate procedure, except that the standard of review
27 for any such appeal is the same as set forth in subsection (b),
28 section fourteen of this article.

29 (c) The supreme court of appeals shall promulgate rules to
30 assist pro se litigants in the filing and processing of family court
31 appeals to the circuit court and to the supreme court. Such rules
32 may address, but are not limited to, expedited means of
33 transcribing family court records, use of asynchronous data
34 communication network or other alternate forms of transmis-

35 sion for conducting appellate hearings, alternate requirements
36 for the number of copies to be provided to the supreme court of
37 appeals and other appropriate measures which will provide
38 meaningful appellate access to the courts pursuant to section
39 seventeen, article III of the West Virginia constitution.

**§51-2A-16. Expiration of appellate procedures; exceptions;
report requirements.**

1 (a) The provisions of sections eleven, twelve, thirteen,
2 fourteen and fifteen of this article shall expire and be of no
3 force and effect after the thirtieth day of June, two thousand
4 five, except as otherwise provided by subsection (b) of this
5 section.

6 (b) Appeals that are pending before a circuit court or the
7 supreme court of appeals on the thirtieth day of June, two
8 thousand five, but not decided before the first day of July, two
9 thousand five, shall proceed to resolution in accordance with
10 the provisions of sections eleven, twelve, thirteen, fourteen and
11 fifteen of this article, notwithstanding the provisions of subsec-
12 tion (a) of this section that provide for the expiration of those
13 sections. The supreme court of appeals shall, by rule, provide
14 procedures for those appeals that are remanded but not con-
15 cluded prior to the first day of July, two thousand five, in the
16 event that the appeals process set forth in sections eleven,
17 twelve, thirteen, fourteen and fifteen of this article is substan-
18 tially altered as of the first day of July, two thousand five.

19 (c) Prior to the two thousand three regular session of the
20 Legislature and annually thereafter, the supreme court of
21 appeals shall report to the joint committee on government and
22 finance the number of appeals from final orders of the family
23 court filed in the various circuit courts and in the supreme court
24 of appeals, the number of pro se appeals filed, the subject
25 matter of the appeals, the time periods in which appeals are

26 concluded, the number of cases remanded upon appeal and such
27 other detailed information so as to enable the Legislature to
28 study the appellate procedures for family court matters and to
29 consider the possible necessity and feasibility of creating an
30 intermediate appellate court or other system of appellate
31 procedure.

§51-2A-17. Disciplinary proceedings for family court judges.

1 A family court judge may be censured, temporarily
2 suspended or retired as provided for in section eight, article
3 VIII of the West Virginia constitution. A family court judge
4 may be removed from office only by impeachment in accor-
5 dance with the provisions of section nine, article IV of the West
6 Virginia constitution.

§51-2A-18. Vacancy in the office of family court judge.

1 If a vacancy occurs in the office of family court judge, the
2 governor shall fill the vacancy by appointment as provided in
3 section three, article ten, chapter three of this code.

§51-2A-19. Temporary assignment of family court judges.

1 (a) Upon the occurrence of a vacancy in the office of family
2 court judge, the disqualification of a family court judge or the
3 inability of a family court judge to attend to his or her duties
4 because of illness, temporary absence or any other reason, the
5 chief justice of the supreme court of appeals may assign the
6 family court judge of any other family court circuit, or any
7 senior status circuit judge or circuit judge of any judicial circuit,
8 to hear and determine any and all matters then or thereafter
9 pending in the family court to which the family court judge is
10 assigned. While so assigned, the family court judge, senior
11 status circuit judge or circuit judge has all of the powers of the
12 regularly elected family court judge of the family court circuit.

13 (b) When, in the discretion of the chief justice of the
14 supreme court of appeals, the urgency or volume of cases in a
15 family court circuit so requires, the chief justice may assign a
16 senior status circuit judge, a circuit judge of any judicial circuit
17 or a family court judge of any family court division to serve
18 temporarily in a family court circuit. When a senior status
19 circuit judge or other circuit judge is so assigned, he or she has
20 all of the powers of a regularly elected family court judge.

21 (c) The chief justice of the supreme court of appeals may
22 appoint a person who has previously served as a family law
23 master or family court judge to serve as a temporary family
24 court judge as disqualification, recusal, vacation, illness or the
25 ends of justice may dictate.

26 (d) The supreme court of appeals shall promulgate a
27 supervisory rule setting forth educational requirements for
28 persons assigned to serve temporarily as family court judges
29 pursuant to the provision of this section.

**§51-2A-20. County commissions required to furnish offices for
the family court judges.**

1 Each county commission of this state has a duty to provide
2 premises for the family court which are adequate for the
3 conduct of the duties required of the court under the provisions
4 of this article and of chapter forty-eight of this code and which
5 conform to standards established by rules promulgated by the
6 supreme court of appeals. The administrative office of the
7 supreme court of appeals shall pay to the county commission a
8 reasonable amount as rent for the premises furnished by the
9 county commission to the family court and his or her staff
10 pursuant to the provisions of this section.

§51-2A-21. Budget of the family court.

1 The budget for the payment of the salaries and benefits of
2 the family court judges and clerical and secretarial assistants
3 shall be included in the appropriation for the supreme court of
4 appeals. The family court administration fund, heretofore
5 created as the family law master administration fund, is
6 continued as a special account in the state treasury. The fund
7 shall operate as a special fund administered by the state auditor
8 which shall be appropriated by line item by the Legislature for
9 payment of administrative expenses of family courts. All
10 agencies or entities receiving federal matching funds for the
11 services of family court judges and their staff, including, but
12 not limited to, the commissioner of the bureau for child support
13 enforcement and the secretary of the department of health and
14 human resources, shall enter into an agreement with the
15 administrative office of the supreme court of appeals whereby
16 all federal matching funds paid to and received by said agencies
17 or entities for the activities by family court judges and the
18 program staff shall be paid into the family court administration
19 fund. Said agreement shall provide for advance payments into
20 the fund by such agencies, from available federal funds
21 pursuant to Title IV-D of the Social Security Act and in
22 accordance with federal regulations.

§51-2A-22. Family court fund.

1 The office and the clerks of the circuit courts shall, on or
2 before the tenth day of each month, transmit all amounts
3 directed to be paid to the family court fund under any provision
4 of this code to the state treasurer for deposit in the state treasury
5 to the credit of a special revenue fund known as the “family
6 court fund” and created by prior enactment of former section
7 twenty-three, article four, chapter forty-eight-a of this code. All
8 moneys paid into the state treasury and credited to the “family
9 court fund” shall be used by the administrative office of the
10 supreme court of appeals solely for paying the costs associated
11 with the duties imposed upon the family courts under the

12 provisions of this article or under chapter forty-eight of this
13 code which require activities by the family court judges or
14 members of their staff which are not subject to being matched
15 with federal funds or subject to reimbursement by the federal
16 government. Such moneys shall not be treated by the auditor
17 and treasurer as part of the general revenue of the state.
18 Expenditures from the fund shall be for the purposes set forth
19 in this section and are not authorized from collections but are to
20 be made only in accordance with appropriation by the Legisla-
21 ture and in accordance with the provisions of article three,
22 chapter twelve of this code and upon the fulfillment of the
23 provisions set forth in article two, chapter five-a of this code:
24 *Provided*, That for the fiscal year ending the thirtieth day of
25 June, two thousand two, expenditures are authorized from
26 collections rather than pursuant to an appropriation by the
27 Legislature.

§51-2A-23. Operative dates; terminology.

1 (a) Except as provided in subsection (b) of this section, the
2 provisions of Enrolled Senate Bill No. 5007, passed during the
3 fifth extraordinary session of the Legislature, two thousand one,
4 become operable on the first day of January, two thousand two.
5 It is intended that the family law master system in existence on
6 the first day of July, two thousand one, will continue to function
7 under the prior enactment of this article, notwithstanding the
8 passage of Enrolled Senate Bill No. 5007, until the first day of
9 January, two thousand two, when the existing family law master
10 system is replaced with the system of family court judges
11 provided for in this article.

12 (b) Notwithstanding the provisions of subsection (a) of this
13 section, the provisions of section five of this article providing
14 for the initial appointment of family judges by the governor
15 become operable on the first day of October, two thousand one.

16 (c) After the effective date of this article, whenever the
17 terms "master", "law master" or "family law master" appear in
18 this code, the terms shall have the same meaning as "family
19 court judge".

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF
RECORD.**

§51-9-1a. Definitions.

1 (a) As used in this article, the term "judge", "judge of any
2 court of record" or "judge of any court of record of this state"
3 shall mean, refer to and include judges of the several circuit
4 courts and justices of the supreme court of appeals. For
5 purposes of this article, such terms do not mean, refer to or
6 include family court judges.

7 (b) "Beneficiary" means any person, except a member, who
8 is entitled to an annuity or other benefit payable by the retire-
9 ment system.

10 (c) "Board" means the consolidated public retirement board
11 created pursuant to article ten-d, chapter five of this code.

12 (d) "Internal Revenue Code" means the Internal Revenue
13 Code of 1986, as amended.

14 (e) "Member" means a judge participating in this system.

15 (f) "Plan year" means the twelve-month period commenc-
16 ing on the first day of July of any designated year and ending
17 the following thirtieth day of June.

18 (g) "Required beginning date" means the first day of April
19 of the calendar year following the later of: (a) The calendar year
20 in which the member attains age seventy and one-half; or (b)
21 the calendar year in which the member retires or otherwise
22 separates from covered employment.

23 (h) "Retirement system" or "system" means the judges
24 retirement system created and established by this article.
25 Notwithstanding any other provision of law to the contrary, the
26 provisions of this article are applicable only to circuit judges
27 and justices of the supreme court of appeals in the manner
28 specified in this article. No service as a family court judge may
29 be construed to qualify a person to participate in the judges
30 retirement system or used in any manner as credit toward
31 eligibility for retirement benefits under the judges retirement
32 system.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§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 amounts
2 equaling filing fees received for the institution of actions for
3 divorce, separate maintenance and annulment as prescribed in
4 subsection (b) of this section, for each civil action instituted
5 under the rules of civil procedure, any statutory summary
6 proceeding, any extraordinary remedy, the docketing of civil
7 appeals or any other action, cause, suit or proceeding in the
8 circuit court, the clerk of the court shall, at the end of each
9 month, pay into the funds or accounts described in this subsection
10 an amount equal to the amount set forth in this subsection
11 of every filing fee received for instituting the action as follows:

12 (1) Into the regional jail and correctional facility authority
13 fund in the state treasury established pursuant to the provisions
14 of section ten, article twenty, chapter thirty-one of this code, the
15 amount of sixty dollars; and

16 (2) Into the court security fund in the state treasury estab-
17 lished pursuant to the provisions of section fourteen, article
18 three, chapter fifty-one of this code, the amount of five dollars.

19 (b) For each action for divorce, separate maintenance or
20 annulment instituted in the circuit court, the clerk of the court
21 shall, at the end of each month, report to the supreme court of
22 appeals the number of actions filed by persons unable to pay
23 and pay into the funds or accounts in this subsection an amount
24 equal to the amount set forth in this subsection of every filing
25 fee received for instituting the divorce action as follows:

26 (1) Into the regional jail and correctional facility authority
27 fund in the state treasury established pursuant to the provisions
28 of section ten, article twenty, chapter thirty-one of this code, the
29 amount of ten dollars;

30 (2) Into the special revenue account of the state treasury,
31 established pursuant to section six hundred four, article two,
32 chapter forty-eight of this code, an amount of thirty dollars;

33 (3) Into the family court fund established under section
34 twenty-two, article two-a, chapter fifty-one of this code, an
35 amount of seventy dollars; and

36 (4) Into the court security fund in the state treasury,
37 established pursuant to the provisions of section fourteen,
38 article three, chapter fifty-one of this code, the amount of five
39 dollars.

40 (c) Notwithstanding any provision of subsection (a) or (b)
41 of this section to the contrary, the clerk of the court shall, at the
42 end of each month, pay into the family court fund established
43 under section twenty-two, article two-a, chapter fifty-one of this
44 code an amount equal to the amount of every fee received for
45 petitioning for the modification of an order involving child
46 custody, child visitation, child support or spousal support as

47 determined by subdivision (3), subsection (a), section eleven of
48 this article and for petitioning for an expedited modification of
49 a child support order as provided in subdivision (4), subsection
50 (a), section eleven of this article.

51 (d) The clerk of the court from which a protective order is
52 issued shall, at the end of each month, pay into the family court
53 fund established under section twenty-two, article two-a,
54 chapter fifty-one of this code an amount equal to every fee
55 received pursuant to the provisions of section five hundred
56 eight, article twenty-seven, chapter forty-eight of this code.

57 (e) The clerk of each circuit court shall, at the end of each
58 month, pay into the regional jail and correctional facility
59 authority fund in the state treasury an amount equal to forty
60 dollars of every fee for service received in any criminal case
61 against any respondent convicted in such court and shall pay an
62 amount equal to five dollars of every such fee into the court
63 security fund in the state treasury established pursuant to the
64 provisions of section fourteen, article three, chapter fifty-one of
65 this code.



CHAPTER 6

(S. B. 5002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-a,
chapter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to amend and reenact
sections five hundred four and one thousand nine hundred one,

article twenty-two-b of said chapter, all relating to state lotteries; restoring language which allows coin or token payouts from racetrack video lottery terminals and which was inadvertently and unintentionally deleted when section six, article twenty-two-a, chapter twenty-nine of said code of the racetrack video lottery act was amended and reenacted earlier this year; eliminating prohibition that limited video lottery retailers may not also be licensed under the state lottery act; and eliminating effective date references in section one thousand nine hundred one, article twenty-two-b, chapter twenty-nine of said code of the limited video lottery act.

Be it enacted by the Legislature of West Virginia:

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

Article

22A. Racetrack Video Lottery.

22B. Limited Video Lottery.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

- 1 (a) The commission may approve video lottery terminals
- 2 and in doing so shall take into account advancements in
- 3 computer technology, competition from nearby states and the
- 4 preservation of jobs in the West Virginia pari-mutuel racing

5 industry. In approving video lottery terminals licensed for
6 placement in this state, the commission shall ensure that the
7 terminals meet the following hardware specifications:

8 (1) Electrical and mechanical parts and design principles
9 may not subject a player to physical hazards or injury.

10 (2) A surge protector shall be installed on the electrical
11 power supply line to each video lottery terminal. A battery or
12 equivalent power back-up for the electronic meters shall be
13 capable of maintaining accuracy of all accounting records and
14 terminal status reports for a period of one hundred eighty days
15 after power is disconnected from the terminal. The power back-
16 up device shall be located within the locked logic board
17 compartment of the video lottery terminal.

18 (3) An on/off switch which controls the electrical current
19 used in the operation of the terminal shall be located in an
20 accessible place within the interior of the video lottery terminal.

21 (4) The operation of each video lottery terminal may not be
22 adversely affected by any static discharge or other electromag-
23 netic interference.

24 (5) A minimum of one electronic or mechanical coin
25 acceptor or other means accurately and efficiently to establish
26 credits shall be installed on each video lottery terminal. Each
27 video lottery terminal may also contain bill acceptors for one or
28 more of the following: One dollar bills, five dollar bills, ten
29 dollar bills and twenty dollar bills. All coin and bill acceptors
30 shall be approved by the commission prior to use on any video
31 lottery terminal in this state.

32 (6) Access to the interior of a video lottery terminal shall be
33 controlled through a series of locks and seals.

34 (7) The main logic boards and all erasable programmable
35 read-only memory chips (EPROMS) are considered to be
36 owned by the commission and shall be located in a separate
37 locked and sealed area within the video lottery terminal.

38 (8) The cash compartment shall be located in a separate
39 locked area within or attached to the video lottery terminal.

40 (9) No hardware switches, jumpers, wire posts or any other
41 means of manipulation may be installed which alter the pay
42 tables or payout percentages in the operation of a game.
43 Hardware switches on a video lottery terminal to control the
44 terminal's graphic routines, speed of play, sound and other
45 purely cosmetic features may be approved by the commission.

46 (10) Each video lottery terminal shall contain a single
47 printing mechanism capable of printing an original ticket and
48 retaining an exact legible copy within the video lottery terminal
49 or other means of capturing and retaining an electronic copy of
50 the ticket data as approved by the commission: *Provided*, That
51 such printing mechanism is optional on any video lottery
52 terminal which is designed and equipped exclusively for coin
53 or token payouts. The following information shall be recorded
54 on the ticket when credits accrued on a video lottery terminal
55 are redeemed for cash:

56 (i) The number of credits accrued;

57 (ii) Value of the credits in dollars and cents displayed in
58 both numeric and written form;

59 (iii) Time of day and date;

60 (iv) Validation number; and

61 (v) Any other information required by the commission.

62 (11) A permanently installed and affixed identification
63 plate shall appear on the exterior of each video lottery terminal
64 and the following information shall be on the plate:

65 (i) Manufacturer of the video lottery terminal;

66 (ii) Serial number of the terminal; and

67 (iii) Model number of the terminal.

68 (12) The rules of play for each game shall be displayed on
69 the video lottery terminal face or screen. The commission may
70 reject any rules of play which are incomplete, confusing,
71 misleading or inconsistent with game rules approved by the
72 commission. For each video lottery game there shall be a
73 display detailing the credits awarded for the occurrence of each
74 possible winning combination of numbers or symbols. A video
75 lottery terminal may allow up to five dollars to be wagered on
76 a single game. All information required by this subdivision
77 shall be displayed under glass or another transparent substance.
78 No stickers or other removable devices shall be placed on the
79 video lottery terminal screen or face without the prior approval
80 of the commission.

81 (13) Communication equipment and devices shall be
82 installed to enable each video lottery terminal to communicate
83 with the commission's central computer system by use of a
84 communications protocol provided by the commission to each
85 permitted manufacturer, which protocol shall include informa-
86 tion retrieval and terminal activation and disable programs, and
87 the commission may require each licensed racetrack to pay the
88 cost of a central site computer as a part of the licensing require-
89 ment.

90 (14) All video lottery terminals shall have a security system
91 which temporarily disables the gaming function of the terminal
92 while opened.

93 (b) Each video lottery terminal shall have a random number
94 generator to determine randomly the occurrence of each
95 specific symbol or number used in video lottery games. A
96 selection process is random if it meets the following statistical
97 criteria:

98 (1) *Chi-square test.* — Each symbol or number shall satisfy
99 the ninety-nine percent confidence level using the standard chi-
100 square statistical analysis of the difference between the ex-
101 pected result and the observed result.

102 (2) *Runs test.* — Each symbol or number may not produce
103 a significant statistic with regard to producing patterns of
104 occurrences. Each symbol or number is random if it meets the
105 ninety-nine percent confidence level with regard to the "runs
106 test" for the existence of recurring patterns within a set of data.

107 (3) *Correlation test.* — Each pair of symbols or numbers is
108 random if it meets the ninety-nine percent confidence level
109 using standard correlation analysis to determine whether each
110 symbol or number is independently chosen without regard to
111 another symbol or number within a single game play.

112 (4) *Serial correlation test.* — Each symbol or number is
113 random if it meets the ninety-nine percent confidence level
114 using standard serial correlation analysis to determine whether
115 each symbol or number is independently chosen without
116 reference to the same symbol or number in a previous game.

117 (c) Each video lottery terminal shall meet the following
118 maximum and minimum theoretical percentage payout during
119 the expected lifetime of the terminal:

120 (1) Video lottery games shall pay out no less than eighty
121 percent and no more than ninety-five percent of the amount
122 wagered. The theoretical payout percentage will be determined
123 using standard methods of probability theory.

124 (2) Manufacturers must file a request and receive approval
125 from the commission prior to manufacturing for placement in
126 this state video lottery terminals programmed for a payout
127 greater than ninety-two percent of the amount wagered.
128 Commission approval shall be obtained prior to applying for
129 testing of the high payout terminals.

130 (3) Each terminal shall have a probability greater than one
131 in seventeen million of obtaining the maximum payout for each
132 play.

133 (d) Each video lottery terminal shall be capable of continu-
134 ing the current game with all current game features after a video
135 lottery terminal malfunction is cleared. If a video lottery
136 terminal is rendered totally inoperable during game play, the
137 current wager and all credits appearing on the video lottery
138 terminal screen prior to the malfunction shall be returned to the
139 player.

140 (e) Each video lottery terminal shall at all times maintain
141 electronic accounting regardless of whether the terminal is
142 being supplied with electrical power. Each meter shall be
143 capable of maintaining a total of no less than eight digits in
144 length for each type of data required. The electronic meters
145 shall record the following information:

146 (1) Number of coins inserted by players or the coin equiva-
147 lent if a bill acceptor is being used or tokens or vouchers are
148 used;

149 (2) Number of credits wagered;

150 (3) Number of total credits, coins and tokens won;

151 (4) Number of credits paid out by a printed ticket;

152 (5) Number of coins or tokens won, if applicable;

- 153 (6) Number of times the logic area was accessed;
- 154 (7) Number of times the cash door was accessed;
- 155 (8) Number of credits wagered in the current game;
- 156 (9) Number of credits won in the last complete video lottery
157 game; and
- 158 (10) Number of cumulative credits representing money
159 inserted by a player and credits for video lottery games won but
160 not collected.
- 161 (f) No video lottery terminal may have any mechanism
162 which allows the electronic accounting meters to clear automat-
163 ically. Electronic accounting meters may not be cleared without
164 the prior approval of the commission. Both before and after any
165 electronic accounting meter is cleared, all meter readings shall
166 be recorded in the presence of a commission employee.
- 167 (g) The primary responsibility for the control and regulation
168 of any video lottery games and video lottery terminals operated
169 pursuant to this article rests with the commission.
- 170 (h) The commission shall, directly or through a contract
171 with a third-party vendor other than the video lottery licensee,
172 maintain a central site system of monitoring the lottery termi-
173 nals utilizing an on-line or dial-up inquiry. The central site
174 system shall be capable of monitoring the operation of each
175 video lottery game or video lottery terminal operating pursuant
176 to this article and, at the direction of the director, immediately
177 disable and cause not to operate any video lottery game and
178 video lottery terminal. As provided in this section, the commis-
179 sion may require the licensed racetrack to pay the cost of a
180 central site computer as part of the licensing requirement.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.

§29-22B-1901. Effect of this article on certain taxes.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.

1 No limited video lottery retailer's license or license renewal
2 may be granted unless the lottery commission has determined
3 that, in addition to the general requirements set forth in section
4 22B-502, the applicant satisfies all of the following qualifica-
5 tions:

6 (1)(A) If the applicant is an individual, the applicant has
7 been a citizen of the United States and a resident of this state
8 for the four-year period immediately preceding the application;

9 (B) If the applicant is a corporation, partnership or other
10 business entity, the chief executive officer and the majority of
11 the officers, directors, members and partners (to the extent each
12 of these groups exists with respect to a particular business
13 organization), both in number and percentage of ownership
14 interest, have been citizens of the United States and residents of
15 this state for the four-year period immediately preceding the
16 application;

17 (2) The applicant has disclosed to the lottery commission
18 the identity of each person who has control of the applicant, as
19 control is described in section 22B-507;

20 (3) The applicant holds either: (A) A valid license issued
21 under article 60-7-1, *et seq.*, of this code to operate a private
22 club; (B) a valid Class A license issued under article 11-16-1,
23 *et seq.*, of this code to operate a business where nonintoxicating
24 beer is sold for consumption on the premises; or (C) both
25 licenses;

26 (4) The applicant has demonstrated the training, education,
27 business ability and experience necessary to establish, operate
28 and maintain the business for which the license application is
29 made;

30 (5) The applicant has secured any necessary financing for
31 the business for which the license application is made and the
32 financing: (A) Is from a source that meets the qualifications of
33 this section; and (B) is adequate to support the successful
34 performance of the duties and responsibilities of the licensee;

35 (6) The applicant has disclosed all financing or refinancing
36 arrangements for placement on the applicant's premises of
37 video lottery terminals and associated equipment in the degree
38 of detail requested by the lottery commission;

39 (7) The applicant has filed with the lottery commission a
40 copy of any current or proposed agreement between the
41 applicant and a licensed operator for the placement on the
42 applicant's premises of video lottery terminals;

43 (8) The applicant has filed with the lottery commission a
44 copy of any current or proposed agreement between the
45 applicant and a licensed operator or other person for the
46 servicing and maintenance of video lottery terminals by
47 licensed service technicians; and

48 (9) The applicant does not hold any other license under this
49 article, article 19-23-1, *et seq.*, of this code or articles 22A or 25
50 of this chapter except that an applicant may also be licensed as
51 a service technician.

PART XIX. MISCELLANEOUS PROVISIONS.

§29-22B-1901. Effect of this article on certain taxes.

1 (a) Notwithstanding any provision of this code to the
2 contrary, persons who hold a current operator's license or a
3 current limited video lottery retailer's license issued under this
4 article shall be exempt from paying the taxes imposed by
5 articles 11-15-1, *et seq.*, and 11-15A-1, *et seq.*, of this code on
6 their purchases of video lottery terminals and video lottery
7 games.

8 (b) Notwithstanding any provision of this code to the
9 contrary, the consideration paid by a patron of a restricted
10 access adult-only facility to play video lottery games shall be
11 exempt from the tax imposed by article 11-15-1, *et seq.*, of this
12 code.

13 (c) Notwithstanding the provisions of section 8-13-4 of this
14 code to the contrary, municipalities may not impose the license
15 fees imposed by this article on manufacturers, operators,
16 limited video lottery retailers and service technicians. Muni-
17 cipalities may continue to impose any other license fees they are
18 allowed to impose under this code.

19 (d) Notwithstanding any provision of this code to the
20 contrary, municipalities may not impose the municipal business
21 and occupation taxes imposed pursuant to section 8-13-5 of this
22 code or an amusement tax imposed pursuant to section 8-13-6
23 of this code on the income of a permittee of video lottery
24 terminals from income derived directly from activities con-
25 ducted pursuant to the provisions of this article.

26 (e) Notwithstanding any provision of this code to the
27 contrary, municipalities may not impose the municipal business
28 and occupation taxes imposed pursuant to section 8-13-5 of this
29 code on payments a limited video lottery retailer receives from
30 an operator of video lottery terminals for activities conducted
31 pursuant to the provisions of this article.

CHAPTER 7

(S. B. 5001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the property tax year for which the refundable personal income tax credit is first allowable for certain property taxes paid on a homestead by low-income senior citizens and permanently and totally disabled persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first ten thousand dollars of taxable assessed value of a homestead in this state.

1 (a) *Allowance of credit.* — A low-income person who is
2 allowed a twenty thousand dollar homestead exemption from
3 the assessed value of his or her homestead for ad valorem
4 property tax purposes, as provided in section three, article six-b
5 of this chapter, shall be allowed a refundable credit against the
6 taxes imposed by this article equal to the amount of ad valorem

7 property taxes paid on up to the first ten thousand dollars of
8 taxable assessed value of the homestead for property tax years
9 that begin on or after the first day of January, two thousand
10 three.

11 (b) *Terms defined.* -- For purposes of this section:

12 (1) "Low income" means federal adjusted gross income for
13 the taxable year that is one hundred fifty percent or less of the
14 federal poverty guideline for the year in which property tax was
15 paid, based upon the number of individuals in the family unit
16 residing in the homestead, as determined annually by the United
17 States secretary of health and human services.

18 (2) "Taxes paid" means the aggregate of regular levies,
19 excess levies and bond levies extended against not more than
20 ten thousand dollars of the taxable assessed value of a home-
21 stead that are paid during the calendar year determined after
22 application of any discount for early payment of taxes but
23 before application of any penalty or interest for late payment of
24 property taxes for a property tax year that begins on or after the
25 first day of January, two thousand three.

26 (c) *Legislative rule.* -- The tax commissioner shall propose
27 a legislative rule for promulgation as provided in article three,
28 chapter twenty-nine-a of this code to explain and implement
29 this section.

30 (d) *Confidentiality.* -- The tax commissioner shall utilize
31 property tax information in the statewide electronic data
32 processing system network to the extent necessary for the
33 purpose of administering this section, notwithstanding any
34 provision of this code to the contrary.

CHAPTER 8

**(S. B. 5003 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and twelve, article three of said chapter, all relating to surface coal mining and reclamation; creating a special reclamation fund advisory council; providing for eight members of the council; authorizing the governor to appoint five members with the advice and consent of the Senate; providing for six-year terms for the appointed members; providing that the secretary of the department of environmental protection will serve as an ex officio, nonvoting member; establishing the requirements of appointed members; authorizing payment of compensation and expenses of members; requiring the council to meet a minimum of twice a year; establishing the study requirements and responsibilities of the council; requiring the council to report to the governor and the Legislature annually; establishing issues the reports must address; correcting nomenclature; removing the twenty-five percent limitation on funds available for water treatment; clarifying applicable minimum and maximum bond requirements; clarifying that abandoned mining sites that qualify for federal reclamation funds do not qualify for certain state funds; increasing the per ton of coal mined special reclamation tax from three cents per ton to fourteen cents per ton beginning the first day of January, two thousand two; providing that the fourteen cents per ton will be reduced to seven cents per ton after thirty-nine months; providing

that the tax may be adjusted by the Legislature based on recommendation of the council; prohibiting reduction of tax if the special reclamation fund does not have sufficient capital to meet the reclamation needs; removing requirement that reclamation-related liabilities must exceed accrued amount in reclamation fund before reclamation fund tax is collected; recognizing the need for federal approval of certain modifications to the reclamation program; and removing rule-making and reporting provisions which are no longer applicable.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen; and that sections eleven and twelve, article three of said chapter be amended and reenacted, all to read as follows:

Article

1. Division of Environmental Protection.

3. Surface Coal Mining and Reclamation Act.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-17. Special reclamation fund advisory council.

1 (a) There is hereby created within the department of
2 environmental protection a special reclamation fund advisory
3 council. The council's purpose is to ensure the effective,
4 efficient and financially stable operation of the special reclama-
5 tion fund. The special reclamation advisory council shall
6 consist of eight members, including the secretary of the
7 department of environmental protection or his or her designee,
8 the treasurer of the state of West Virginia or his or her designee,
9 the director of the national mine land reclamation center at
10 West Virginia university and five members to be appointed by
11 the governor with the advice and consent of the Senate.

12 (b) Each appointed member of the council shall be selected
13 based on his or her ability to serve on the council and effectuate
14 its purposes. The governor shall appoint, from a list of three
15 names submitted by the major trade association representing the
16 coal industry regulated under article three of this chapter, a
17 member to represent the interests of the industry. The governor
18 shall appoint, from a list of three names submitted by organiza-
19 tions advocating environmental protection, one member to
20 represent the interest of environmental protection organizations.
21 The governor shall appoint, from a list of four names submitted
22 by the coal mining industry and the organizations advocating
23 environmental protection, one member who, by training and
24 profession, is an actuary or an economist. The governor shall
25 appoint, from a list of three names submitted by the united mine
26 workers of America, one member to represent the interests of
27 coal miners. The governor shall appoint a member to represent
28 the interests of the general public.

29 (c) The terms of all members shall begin on the first day of
30 July, two thousand two. The secretary shall be an ex officio,
31 nonvoting member and serve as chairperson of the council. The
32 terms of the governor's appointees shall be for six years.
33 Appointees may be reappointed to serve on the council. The
34 terms of the appointed members first taking office are to be
35 expired as designated by the governor at the time of the
36 nomination, two at the end of the second year, two at the end of
37 the fourth year and one at the end of the sixth year. As the
38 original appointments expire, each subsequent appointment will
39 be for a full six-year term. Any appointed member whose term
40 has expired shall serve until a successor has been duly ap-
41 pointed and qualified. Any person appointed to fill a vacancy is
42 to serve only for the unexpired term.

43 (d) Appointed members of the council shall be paid the
44 same compensation and expense reimbursement as is provided
45 for members of the Legislature pursuant to sections six and

46 eight, article two-a, chapter four of this code. Council members
47 who are state employees or officials shall be reimbursed for
48 expenses in accordance with the applicable agency's policy.

49 (e) The council shall meet at the call of the chairperson or
50 his or her designee, but not less than once every six months.
51 The secretary shall provide funds for necessary administrative
52 and technical services for the council from the special reclama-
53 tion fund.

54 (f) The council shall, at a minimum:

55 (1) Study the effectiveness, efficiency and financial
56 stability of the special reclamation fund with an emphasis on
57 development of a financial process that ensures long-term
58 stability of the special reclamation program;

59 (2) Identify and define problems associated with the special
60 reclamation fund, including, but not limited to, the enforcement
61 of federal and state law, regulation and rules pertaining to
62 contemporaneous reclamation;

63 (3) Evaluate bond forfeiture collection, reclamation efforts
64 at bond forfeiture sites and compliance with approved reclama-
65 tion plans as well as any modifications;

66 (4) Provide a forum for a full and fair discussion of issues
67 relating to the special reclamation fund;

68 (5) Contract with a qualified actuary who shall make a
69 determination as to the special reclamation fund's fiscal
70 soundness. This determination shall be completed on the thirty-
71 first day of December, two thousand four, and every four years
72 thereafter. The review is to include an evaluation of the present
73 and prospective assets and liabilities of the special reclamation
74 fund; and

75 (6) Study and recommend to the Legislature alternative
76 approaches to the current funding scheme of the special
77 reclamation fund, considering revisions which will assure future
78 proper reclamation of all mine sites and continued financial
79 viability of the state's coal industry.

80 (g) On or before the first day of January, two thousand
81 three, and every year thereafter, the council shall submit to the
82 Legislature and the governor a report on the adequacy of the
83 special reclamation tax and the fiscal condition of the special
84 reclamation fund. The report shall, at a minimum, contain:

85 (1) A recommendation as to whether or not any adjustments
86 to the special reclamation tax should be made considering the
87 cost, timeliness and adequacy of bond forfeiture reclamation,
88 including water treatment;

89 (2) A discussion of the council's required study issues as
90 set forth in subsection (f) of this section; and

91 (3) The availability of federal abandoned mine lands funds
92 for West Virginia reclamation projects.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article but before a permit has been
3 issued, each operator shall furnish a penal bond, on a form to be
4 prescribed and furnished by the secretary, payable to the state
5 of West Virginia and conditioned upon the operator faithfully

6 performing all of the requirements of this article and of the
7 permit. The penal amount of the bond shall be not less than one
8 thousand dollars nor more than five thousand dollars for each
9 acre or fraction thereof: *Provided*, That the minimum amount
10 of bond furnished for any type of reclamation bonding shall be
11 ten thousand dollars. The bond shall cover: (1) The entire
12 permit area; or (2) that increment of land within the permit area
13 upon which the operator will initiate and conduct surface
14 mining and reclamation operations within the initial term of the
15 permit. If the operator chooses to use incremental bonding, as
16 succeeding increments of surface mining and reclamation
17 operations are to be initiated and conducted within the permit
18 area, the operator shall file with the secretary an additional
19 bond or bonds to cover the increments in accordance with this
20 section: *Provided, however*, That once the operator has chosen
21 to proceed with bonding either the entire permit area or with
22 incremental bonding, the operator shall continue bonding in that
23 manner for the term of the permit.

24 (b) The period of liability for bond coverage begins with
25 issuance of a permit and continues for the full term of the
26 permit plus any additional period necessary to achieve compli-
27 ance with the requirements in the reclamation plan of the
28 permit.

29 (c) (1) The form of the bond shall be approved by the
30 secretary and may include, at the option of the operator, surety
31 bonding, collateral bonding (including cash and securities),
32 establishment of an escrow account, self-bonding or a combina-
33 tion of these methods. If collateral bonding is used, the operator
34 may elect to deposit cash or collateral securities or certificates
35 as follows: Bonds of the United States or its possessions, of the
36 federal land bank or of the homeowners' loan corporation; full
37 faith and credit general obligation bonds of the state of West
38 Virginia or other states, and of any county, district or municipi-
39 pality of the state of West Virginia or other states; or certifi-

40 cates of deposit in a bank in this state, which certificates shall
41 be in favor of the department. The cash deposit or market value
42 of such securities or certificates shall be equal to or greater than
43 the penal sum of the bond. The secretary shall, upon receipt of
44 any deposit of cash, securities or certificates, promptly place the
45 same with the treasurer of the state of West Virginia whose
46 duty it is to receive and hold the same in the name of the state
47 in trust for the purpose for which the deposit is made when the
48 permit is issued. The operator making the deposit is entitled,
49 from time to time, to receive from the state treasurer, upon the
50 written approval of the secretary, the whole or any portion of
51 any cash, securities or certificates so deposited, upon depositing
52 with him or her in lieu thereof cash or other securities or
53 certificates of the classes herein specified having value equal to
54 or greater than the sum of the bond.

55 (2) The secretary may approve an alternative bonding
56 system if it will: (1) Reasonably assure that sufficient funds will
57 be available to complete the reclamation, restoration and
58 abatement provisions for all permit areas which may be in
59 default at any time; and (2) provide a substantial economic
60 incentive for the permittee to comply with all reclamation
61 provisions.

62 (d) The secretary may accept the bond of the applicant itself
63 without separate surety when the applicant demonstrates to the
64 satisfaction of the secretary the existence of a suitable agent to
65 receive service of process and a history of financial solvency
66 and continuous operation sufficient for authorization to
67 self-insure.

68 (e) It is unlawful for the owner of surface or mineral rights
69 to interfere with the present operator in the discharge of the
70 operator's obligations to the state for the reclamation of lands
71 disturbed by the operator.

72 (f) All bond releases shall be accomplished in accordance
73 with the provisions of section twenty-three of this article.

74 (g) The special reclamation fund previously created is
75 continued. The moneys accrued in the fund, including interest,
76 are reserved solely and exclusively for the purposes set forth in
77 this section and section seventeen, article one of this chapter.
78 The fund shall be administered by the secretary who is autho-
79 rized to expend the moneys in the fund for the reclamation and
80 rehabilitation of lands which were subjected to permitted
81 surface mining operations and abandoned after the third day of
82 August, one thousand nine hundred seventy-seven, where the
83 amount of the bond posted and forfeited on the land is less than
84 the actual cost of reclamation, and where the land is not eligible
85 for abandoned mine land reclamation funds under article two of
86 this chapter. The secretary shall develop a long-range planning
87 process for selection and prioritization of sites to be reclaimed
88 so as to avoid inordinate short-term obligations of the assets in
89 the fund of such magnitude that the solvency of the fund is
90 jeopardized. The secretary may use the special reclamation fund
91 for the purpose of designing, constructing and maintaining
92 water treatment systems when they are required for a complete
93 reclamation of the affected lands described in this subsection.
94 The secretary may also expend an amount not to exceed ten
95 percent of the total annual assets in the fund to implement and
96 administer the provisions of this article and, as they apply to the
97 surface mine board, articles one and four, chapter twenty-two-b
98 of this code.

99 (h) Prior to the first day of January, two thousand two,
100 every person conducting coal surface mining operations shall
101 contribute into the fund a sum equal to three cents per ton of
102 clean coal mined. For tax periods commencing on and after the
103 first day of January, two thousand two, every person conducting
104 coal surface mining shall contribute into the fund as follows:
105 (1) For a period not to exceed thirty-nine months, seven cents

106 per ton of clean coal mined; and (2) an additional seven cents
107 per ton of clean coal mined. The tax shall be levied upon each
108 ton of clean coal severed or clean coal obtained from refuse pile
109 and slurry pond recovery or clean coal from other mining
110 methods extracting a combination of coal and waste material as
111 part of a fuel supply on or after the first day of January, two
112 thousand two. The additional seven-cent tax shall be reviewed
113 and, if necessary, adjusted annually by the Legislature upon
114 recommendation of the council pursuant to the provisions of
115 section seventeen, article one of this chapter: *Provided*, That the
116 tax may not be reduced until the special reclamation fund has
117 sufficient moneys to meet the reclamation responsibilities of the
118 state established in this section.

119 (i) This special reclamation tax shall be collected by the
120 state tax commissioner in the same manner, at the same time
121 and upon the same tonnage as the minimum severance tax
122 imposed by article twelve-b, chapter eleven of this code is
123 collected: *Provided*, That under no circumstance shall the
124 special reclamation tax be construed to be an increase in either
125 the minimum severance tax imposed by said article or the
126 severance tax imposed by article thirteen of said chapter.

127 (j) Every person liable for payment of the special reclama-
128 tion tax shall pay the amount due without notice or demand for
129 payment.

130 (k) The tax commissioner shall provide to the secretary a
131 quarterly listing of all persons known to be delinquent in
132 payment of the special reclamation tax. The secretary may take
133 the delinquencies into account in making determinations on the
134 issuance, renewal or revision of any permit.

135 (l) The tax commissioner shall deposit the fees collected
136 with the treasurer of the state of West Virginia to the credit of
137 the special reclamation fund. The moneys in the fund shall be

138 placed by the treasurer in an interest-bearing account with the
139 interest being returned to the fund on an annual basis.

140 (m) At the beginning of each quarter, the secretary shall
141 advise the state tax commissioner and the governor of the
142 assets, excluding payments, expenditures and liabilities, in the
143 fund.

143 (n) To the extent that this section modifies any powers,
144 duties, functions and responsibilities of the department that may
145 require approval of one or more federal agencies or officials in
146 order to avoid disruption of the federal-state relationship
147 involved in the implementation of the federal Surface Mining
148 Control and Reclamation Act, 30 U. S. C. §1270 by the state,
149 the modifications will become effective upon the approval of
150 the modifications by the appropriate federal agency or official.

**§22-3-12. Site-specific bonding; legislative rule; contents of
legislative rule; legislative intent.**

1 (a) Notwithstanding the provisions of section eleven of this
2 article, the secretary may establish and implement a
3 site-specific bonding system in accordance with the provisions
4 of this section.

5 (b) A legislative rule proposed or promulgated pursuant to
6 this section must provide, at a minimum, for the following:

7 (1) The penal amount of a bond shall be not less than one
8 thousand dollars nor more than five thousand dollars per acre
9 or fraction thereof.

10 (2) Every bond, subject to the limitations of subdivision (1)
11 of this subsection, shall reflect the relative potential cost of
12 reclamation associated with the activities proposed to be
13 permitted, which would not otherwise be reflected by bonds
14 calculated by merely applying a specific dollar amount per acre
15 for the permit.

16 (3) Every bond, subject to the provisions of subdivision (1)
17 of this subsection, shall also reflect an analysis under the
18 legislative rule of various factors, as applicable, which affect
19 the cost of reclamation, including, but not limited to: (A) The
20 general category of mining, whether surface or underground;
21 (B) mining techniques and methods proposed to be utilized; (C)
22 support facilities, fixtures, improvements and equipment; (D)
23 topography and geology; and (E) the potential for degrading or
24 improving water quality.

25 (c) A legislative rule proposed or promulgated pursuant to
26 the provisions of this section may, in addition to the require-
27 ments of subsection (b) of this section, provide for a consider-
28 ation of other factors determined to be relevant by the secretary.
29 For example, the rule may provide for the following:

30 (1) A consideration as to whether the bond relates to a new
31 permit application, a renewal of an existing permit, an applica-
32 tion for an incidental boundary revision or the reactivation of an
33 inactive permit;

34 (2) A consideration of factors which may result in environ-
35 mental enhancement, as in a case where remining may improve
36 water quality or reduce or eliminate existing highwalls, or a
37 permitted operation may create or improve wetlands; or

38 (3) An analysis of various factors related to the specific
39 permit applicant, including, but not limited to: (A) The prior
40 mining experience of the applicant with the activities sought to
41 be permitted; and (B) the history of the applicant as it relates to
42 prior compliance with statutory and regulatory requirements
43 designed to protect, maintain or enhance the environment in this
44 or any other state.

45 (d) It is the intent of the Legislature that a legislative rule
46 proposed or promulgated pursuant to the provisions of this
47 section shall be constructed so that when the findings of fact by

48 the division of environmental protection with respect to the
49 proposed mining activity and the particular permit applicant
50 coincide with the particular factors or criteria to be considered
51 and analyzed under the rule, the rule will direct a conclusion as
52 to the amount of the bond to be required, subject to rebuttal and
53 refutation of the findings by the applicant. To the extent
54 practicable, the rule shall limit subjectivity and discretion by
55 the secretary and the division in fixing the amount of the bond.

CHAPTER 9

(H. B. 510 — By Delegates Staton, Givens, Mezzatesta, Pino,
Warner, Trump and Smirl)

[Passed September 19, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the composition of congressional districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

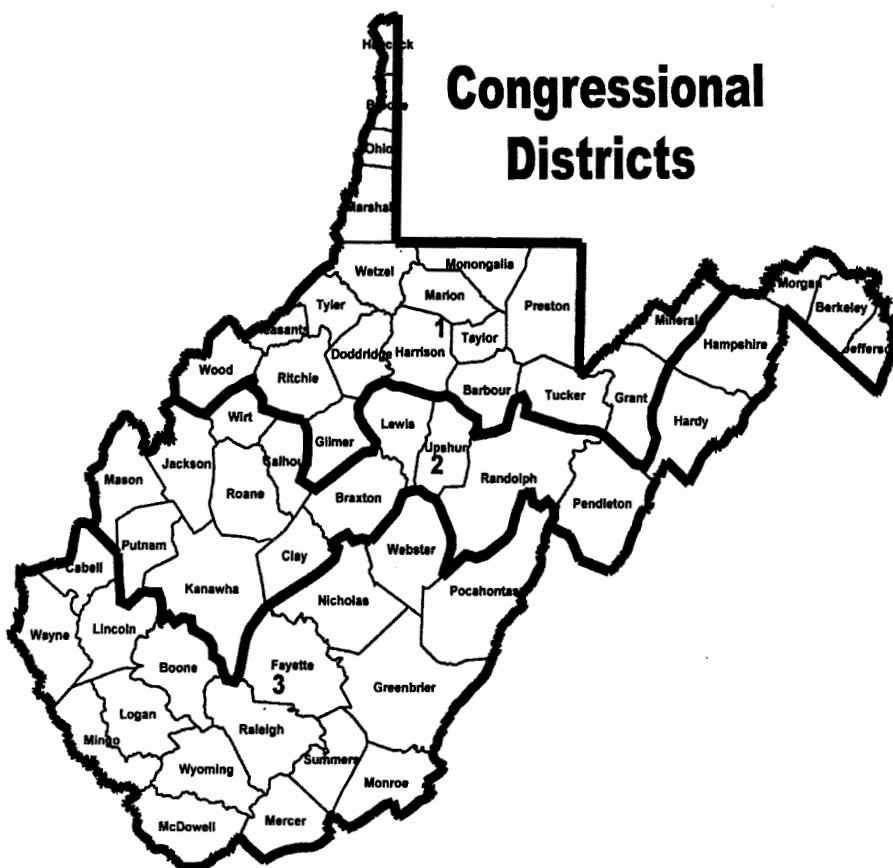
§1-2-3. Congressional districts.

1 The number of members to which the state is entitled in the
2 House of Representatives of the Congress of the United States
3 are apportioned among the counties of the state, arranged into
4 three congressional districts, numbered as follows:

5 First District: Barbour, Brooke, Doddridge, Gilmer, Grant,
 6 Hancock, Harrison, Marion, Marshall, Mineral, Monongalia,
 7 Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel
 8 and Wood.

9 Second District: Berkeley, Braxton, Calhoun, Clay,
 10 Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis,
 11 Mason, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur
 12 and Wirt.

13 Third District: Boone, Cabell, Fayette, Greenbrier, Lincoln,
 14 Logan, McDowell, Mercer, Mingo, Monroe, Nicholas,
 15 Pocahontas, Raleigh, Summers, Wayne, Webster and Wyo-
 16 ming.



CHAPTER 10

(H. B. 511 —By Mr. Speaker, Mr. Kiss, and Delegates Staton, Varner, Pino, Givens, Doyle and Stalnaker)

[Passed September 19, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and two-b, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to apportionment of membership of the Senate; apportionment of membership of the House of Delegates; requiring all actions necessary and related to such apportionment; and defining terms.

Be it enacted by the Legislature of West Virginia:

That sections one, two and two-b, article two, chapter 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 2. APPORTIONMENT OF REPRESENTATION.

- §1-2-1. Senatorial districts.
- §1-2-2. Apportionment of membership of House of Delegates.
- §1-2-2b. Precinct boundary changes.

§1-2-1. Senatorial districts.

- 1 (a) This section shall be known and may be cited as the
- 2 “Senate Redistricting Act of 2001”.

- 3 (b) As used in this section:

- 4 (1) “County” means the territory comprising a county of
- 5 this state as such county existed on the first day of January, two

6 thousand, notwithstanding any boundary changes thereof made
7 subsequent thereto;

8 (2) "Block" and "voting district" mean those geographic
9 areas as defined by the bureau of the census of the United States
10 department of commerce for the taking of the two thousand
11 census of population and described on census maps prepared by
12 the bureau of the census. Such maps are, at the time of this
13 enactment, maintained by the bureau of the census and filed in
14 the office of legislative services;

15 (3) "Incumbent senator" means a senator elected at the
16 general election held in the year two thousand or at any general
17 election thereafter, with an unexpired term of at least two years
18 in duration.

19 (c) The Legislature recognizes that in dividing the state into
20 senatorial districts, the Legislature is bound not only by the
21 United States constitution but also by the West Virginia
22 constitution; that in any instance where the West Virginia
23 constitution conflicts with the United States constitution, the
24 United States constitution must govern and control, as recog-
25 nized in section one, article one of the West Virginia constitu-
26 tion; that the United States constitution, as interpreted by the
27 United States supreme court and other federal courts, requires
28 state legislatures to be apportioned so as to achieve equality of
29 population as near as is practicable, population disparities being
30 permissible where justified by rational state policies; and that
31 the West Virginia constitution requires two senators to be
32 elected from each senatorial district for terms of four years
33 each, one such senator being elected every two years, with one
34 half of the senators being elected biennially, and requires
35 senatorial districts to be compact, formed of contiguous
36 territory and bounded by county lines. The Legislature finds
37 and declares that it is not possible to divide the state into
38 senatorial districts so as to achieve equality of population as

39 near as is practicable as required by the United States supreme
40 court and other federal courts and at the same time adhere to all
41 of these provisions of the West Virginia constitution; but that,
42 in an effort to adhere as closely as possible to all of these
43 provisions of the West Virginia constitution, the Legislature, in
44 dividing the state into senatorial districts, as described and
45 constituted in subsection (d) of this section, has:

46 (1) Adhered to the equality of population concept, while at
47 the same time recognizing that from the formation of this state
48 in the year one thousand eight hundred sixty-three, each
49 constitution of West Virginia and the statutes enacted by the
50 Legislature have recognized political subdivision lines and
51 many functions, policies and programs of government have
52 been implemented along political subdivision lines;

53 (2) Made the senatorial districts as compact as possible,
54 consistent with the equality of population concept;

55 (3) Formed the senatorial districts of "contiguous territory"
56 as that term has been construed and applied by the West
57 Virginia supreme court of appeals;

58 (4) Deviated from the long-established state policy,
59 recognized in subdivision (1) above, by crossing county lines
60 only when necessary to ensure that all senatorial districts were
61 formed of contiguous territory or when adherence to county
62 lines produced unacceptable population inequalities and only to
63 the extent necessary in order to maintain contiguity of territory
64 and to achieve acceptable equality of population; and

65 (5) Also taken into account in crossing county lines, to the
66 extent feasible, the community of interests of the people
67 involved.

68 (d) The Senate shall be composed of thirty-four senators,
69 one senator to be elected at the general election to be held in the

70 year two thousand two, and biennially thereafter for a four-year
71 term from each of the senatorial districts hereinafter in this
72 subsection described and constituted as follows:

73 (1) The counties of Brooke, Hancock and voting districts 1,
74 4, 5, 10, 11, 12, 13, 14, 16, 20, 23, 24, 28, 29, 31, 36, 49, 77,
75 103, 104, 107, 108, 113, 115, 116, 119, 120, 122, 124, 125, 127,
76 128, 129, 130, 131, 135, 137, 141, 143, 146, 148, 158, 161 of
77 Ohio shall constitute the first senatorial district;

78 (2) The counties of Calhoun, Doddridge, Marshall, Ritchie,
79 Tyler, Wetzel and voting districts 59, 66, 67, 68, 69, 70, 72, 74,
80 78 of Marion and voting districts 40, 41, 42, 44, 47, 51, 52, 53,
81 54, 55, 58, 67, block: 0113001033, 68, block: 0113002014 of
82 Monongalia and voting districts 60, 64, 69, 100, 102 of Ohio
83 shall constitute the second senatorial district;

84 (3) The counties of Pleasants, Wirt, Wood and voting
85 districts 4, 5, 7, 10, 15, 16, 22, blocks: 9629003000,
86 9629003002, 9629003003, 9629003005, 9629003006,
87 9629003014, 9629003015, 9629003016, 9629003017,
88 9629003018, 9629003019, 9629003020, 9629003022,
89 9629003025, 9629003029, 9629003030, 9629003031,
90 9629003032, 9629003033, 9629003034, 9629003035,
91 9629003036, 9629003037, 9629003038, 9629003039,
92 9629003040, 9629003999, 9629004000, 9629004001,
93 9629004002, 9629004003, 9629004004, 9629004005,
94 9629004006, 9629004007, 9629004008, 9629004009,
95 9629004010, 9629004014, 9629004015, 9629004016,
96 9631001012, 25, 28, 29, 30, 32 of Roane shall constitute the
97 third senatorial district;

98 (4) The counties of Jackson, Mason, Putnam and voting
99 districts 1, 11, 12, 18, 19, 20, 21, 22, blocks: 9629001071,
100 9629003007, 9629003008, 9629003009, 9629003010,
101 9629003011, 9629003012, 9629003023, 9629003024,

102 9629003046, 9629003048, 9629003057, 9629003058,
103 9629003059, 9630004018, 9630004019, 9630004020,
104 9630004021, 9630004040, 9630004042, 23 of Roane
105 shall constitute the fourth senatorial district;

106 (5) The county of Cabell and voting districts 11, 12, blocks:
107 0203001000, 0203001011, 0203002001, 0203002041,
108 0203006000, 0203006002, 0203006003, 0203006004,
109 0203006005, 0203006006, 0203006007, 0203006008,
110 0203006009, 0203006010, 0203006011, 0203006012,
111 0203006013, 0203006021, 0203006024, 0203006033,
112 0203006034, 0203006040, 0203006041, 0203006042,
113 0203006043, 0203006044, 0203006045, 0203006046,
114 0203006048, 0203006049, 0203006050, 0203006051,
115 0203006052, 0203006053, 0203006054, 0203006055,
116 0203006056, 0203006057, 0203006063, 0203006064,
117 0203006998, 0203006999, 16, blocks: 0204001009,
118 0204001013, 56, 59, 60, 61, 62, blocks: 0052002000,
119 0052002001, 0052002002, 0052002010, 0052002011,
120 0052002012, 0052002032, 0201002002, 0201002003,
121 0201002011 and 63 of Wayne shall constitute the fifth senatorial
122 district;

123 (6) The counties of McDowell and voting districts 2, 3, 4,
124 5, 42, 46, 49, 51, 52, 53, 54, 55, 57, blocks: 9509001025,
125 9509001026, 9511002003, 9511002004, 9511002005,
126 9511002024, 9511002025, 58, 60, 61, 62, 66, 67, 68, 69, 71, 72,
127 79, 96 of Mercer, Mingo and voting districts 1, 3, 5, 6, 12,
128 blocks: 0203001001, 0203006001, 0203006997,
129 13, 14, 16, blocks: 0203002026, 0203002027, 0203002028,
130 0203002029, 0203002030, 0203002031, 0203002032,
131 0203002040, 0203002996, 0203003006, 0204001010,
132 0204001011, 0204001012, 0204001014, 0204001015,
133 0204001016, 0204001017, 0204001034, 0204001054,
134 0204001055, 0204001056, 0204001057, 0204001058,
135 0204001059, 0204001060, 0204001061, 0204001062,

136 0204001996, 17, 18, 20, 21, 31, 34, 36, 37, 38, 62, blocks:
137 0201002000, 0201002001, 0201002004, 0201002005,
138 0201002006, 0201002007, 0201002008, 0201002009,
139 0201002010, 0201002012, 0201002013, 0201002014,
140 0201002015, 0201002016, 0201002018, 0204003008,
141 0204003009, 0204003010, 0204003011, 0204003012,
142 0204003013, 0204003014, 0204003015, 0204003016,
143 0204003017, 0204003021 of Wayne and voting districts 5, 10,
144 11, 23, 24 and 25 of Wyoming shall constitute the sixth
145 senatorial district;

146 (7) The counties of Boone, Lincoln, Logan and voting
147 districts 19, 22, 30, 41, 42, 45, 48, 49, 50, 51, 52, 53, 54 and 57
148 of Wayne shall constitute the seventh senatorial district;

149 (8) The county of Kanawha shall constitute the eighth
150 senatorial district;

151 (9) The county of Raleigh and voting districts 1, 2, 4, 6, 7,
152 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32,
153 33, 34, 36, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48 and 99 of
154 Wyoming shall constitute the ninth senatorial district;

155 (10) The counties of Monroe, Summers, Greenbrier, voting
156 districts 68 and 72 of Fayette, voting districts 1, 14, 15, 20, 27,
157 28, 30, 31, 32, 33, 34, 36, 37, 38, 44, 47, 48, 56, 57, blocks:
158 9511002006, 9511002007, 9511002008, 9511002009,
159 9511002010, 9511002011, 9511002012, 9511002013,
160 9511002014, 9511002015, 9511002016, 9511002017,
161 9511002018, 9511002019, 9511002020, 9511002021,
162 9511002022, 9511002023, 9511002026, 9511002027,
163 9511002028, 9511003003, 9511003004, 9511003005,
164 9511003007, 9511003008, 9511003009, 9511003010,
165 9511003011, 9511003012, 9511003013, 9511003014,
166 9511003015, 9511003016, 9511003017, 9511003018,
167 9511003019, 9511003020, 9511003021, 59, 64, 65, 73, 74, 77,

168 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95 and 98 of Mercer
169 shall constitute the tenth senatorial district;

170 (11) The counties of Clay, Nicholas, Webster, voting
171 districts 1, 4, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 23, 24,
172 26, 28, 29, 31, 32, 37, 38, 41, 42, 45, 46, 47, 51, 52, 53, 55, 56,
173 58, 59, 60, 65, 67, 74 of Fayette and voting districts 4, 6, 7, 8,
174 9, 12, 13, 14, 15, 16, 18, 19, 20, 25, 27, 35, 38, 42, 44 and 47 of
175 Upshur shall constitute the eleventh senatorial district;

176 (12) The counties of Braxton, Gilmer, Harrison and Lewis
177 shall constitute the twelfth senatorial district;

178 (13) The voting districts 1, 2, 5, 6, 7, 13, 16, 18, 20, 27, 28,
179 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 47, 48, 50,
180 51, 52, 53, 55, 56, 57, 58, 61, 62, 82, 83, 86, 87, 88, 89, 90, 92,
181 96, 98, 100, 101, 102, 104, 112, 113, 114, 115, 116, 117, 118,
182 120, 121, 122, 123, 124 and 125 of Marion and voting district
183 1, blocks: 0110001008, 0110001019, 0110001020,
184 0110001021, 0110001022, 0110001023, 0110001024,
185 0110001025, 0110001027, 0110001029, 0110001030,
186 0110001031, 0110001032, 0110001033, 0110001034,
187 0110001999, 0110002005, 0110002007, 0110002008,
188 0110002009, 0110002041, 0110002048, 0110002049,
189 0110002050, 0110002051, 0110002052, 0110002053,
190 0110002054, 0110002999, 0110003003, 0110003004,
191 0110003009, 0110003011, 0110003012, 0110003018,
192 0110003019, 0110003999, voting districts 2, 3, 4, 5, 6, 7, 8, 9,
193 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28,
194 29, 30, 31, 32, 35, 36A, 36B, 39, 46, 48, 49, 56, 64, 67, blocks:
195 0113001008, 0113001009, 0113001010, 0113001011,
196 0113001012, 0113001013, 0113001014, 0113001015,
197 0113001016, 0113001017, 0113001018, 0113001019,
198 0113001020, 0113001021, 0113001022, 0113001023,
199 0113001024, 0113001025, 0113001026, 0113001027,
200 0113001028, 0113001029, 0113001030, 0113001032,

201 0113001034, 0113001035, 0113001036, 0113001999,
 202 0113003013, 0113003014, 0113003015, 0113003016,
 203 0113003017, 0113003018, 0113003019, 0113003020,
 204 0113003021, 0113003022, 0113003024, 0113003025,
 205 0113003026, 0113003027, 0113003028, 0113003029,
 206 68, blocks: 0113001000, 0113001001, 0113001002,
 207 0113001003, 0113001004, 0113001005, 0113001031,
 208 0113002002, 0113002003, 0113002004, 0113002005,
 209 0113002006, 0113002007, 0113002008, 0113002009,
 210 0113002010, 0113002011, 0113002012, 0113002013,
 211 0113002015, 0113002016, 0113002017, 0113002018,
 212 0113002019, 0113002020, 0113002021, 0113002022,
 213 0113002023, 0113002024, 0113002025, 69, 70, 71, 72,
 214 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, blocks:
 215 0109022036, 0109022048, 0110002040, 0110002044,
 216 0110003000, 0110003005, 86, 87, 88, 90, 91 and 92 of
 217 Monongalia shall constitute the thirteenth senatorial district;

218 (14) The counties of Mineral, Preston, Taylor, Tucker,
 219 Barbour and voting districts 8, 9, 10, 14 and 15 of Grant and
 220 voting district 1, blocks: 0110002042, 0110002045,
 221 0110002047, 0110003007, 0110003008, 0110003010,
 222 0110003013, 0110003017, 0110003020, 0110003998, 33, 34,
 223 37, 38, 59, 60, 61, 62, 63, 85, blocks: 0109022035,
 224 0109022037, 0109022047, 0109022062, 0109022064,
 225 0109022065, 0110002043, 0110002046, 0110003001,
 226 0110003002, 0110003006, 0110003014, 0110003015,
 227 0110003016, 0110003021, 0110003022, 0110003023,
 228 0110003024, 0110003025, 0110003026, 0110003027,
 229 0110003028, 0110003029, 0110003996, 0110003997,
 230 0118022007, 0118025003, 0118025006, 0118025007
 231 and 0118025008 of Monongalia shall constitute the fourteenth
 232 senatorial district;

233 (15) The counties of Hampshire, Hardy, Morgan,
 234 Pendleton, Pocahontas, Randolph and voting district 22, blocks:

235 9712006072, 9712006073, 9712006074, 9712006075,
 236 9719002004, 9719002006, 43, blocks: 9718003004,
 237 9718003010, 9718003011, 9718003012, 9718003013,
 238 9718003014, 9718003015, 9718003016, 9718003017,
 239 9718003021, 9718003022, 9718003023, 9718003024,
 240 9718003025, 9718003026, 9718003027, 9718003028,
 241 9718003029, 9718003030, 9718003031, 45, 46, blocks:
 242 9712006065, 9712006070, 9712006071, 9718001036,
 243 9718001037, 9718001038, 9718001039, 9718001040,
 244 9718001043, 9718001050, 9718001051, 47, 51, blocks:
 245 9721003018, 9721003019, 9721003020, 9721003021,
 246 9721003022, 9721003023, 9721003024, 9721003025,
 247 9721003026, 9721003027, 9721003028 and 9721003029,
 248 of Berkeley, voting districts 1, 2, 3, 4, 5, 6, 7, 11, 12 and 13 of
 249 Grant and voting districts 33 and 39 of Upshur shall constitute
 250 the fifteenth senatorial district;

251 (16) The counties of Jefferson and voting districts 1, 2, 5,
 252 6, 7, 8, 9, 10, 11, 14, 15, 15A, 16, 17, 18, 19, 20, 21, 22, blocks:
 253 9712006076, 9712006077, 9716003005, 9716003006,
 254 9717004012, 9719001010, 9719001011, 9719001012,
 255 9719001013, 9719001014, 9719001015, 9719001016,
 256 9719001017, 9719001018, 9719001019, 9719001020,
 257 9719002000, 9719002001, 9719002003, 9719002007,
 258 9719002008, 9719003024, 9719003025, 23, 24, 25, 25A, 26,
 259 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,
 260 blocks: 9718003000, 9718003006, 9718003007,
 261 9718003008, 9718003009, 9718003018, 9718003019,
 262 9718003020, 44, 46, blocks: 9718001044, 9718001045,
 263 9718001046, 9718001047, 9718001048, 9718001049,
 264 9718001052, 9718001053, 9718001054, 9718001055,
 265 9718003001, 9718003002, 9718003003, 48, 49, 50, 51,
 266 blocks: 9721003013, 9721003015, 9721003016,
 267 9721004015, 9721004016, 9721004018, 9721004019,
 268 9721004020, 9721004021, 9721004022, 9721004023,
 269 9721004024, 9721004025, 9721004026, 9721005009,

270 9721005012, 9721005019 and 9721005022 of Berkeley
271 shall constitute the sixteenth senatorial district; and

272 (17) The county of Kanawha shall constitute the seven-
273 teenth senatorial district.

274 (e) The West Virginia constitution further provides, in
275 section four, article VI thereof, that where a senatorial district
276 is composed of more than one county, both senators for such
277 district shall not be chosen from the same county, a residency
278 dispersal provision which is clear with respect to senatorial
279 districts which follow county lines, as required by such consti-
280 tution, but which is not clear in application with respect to
281 senatorial districts which cross county lines. However, in an
282 effort to adhere as closely as possible to the West Virginia
283 constitution in this regard, the following additional provisions,
284 in furtherance of the rationale of such residency dispersal
285 provision and to give meaning and effect thereto, are hereby
286 established:

287 (1) With respect to a senatorial district which is composed
288 of one or more whole counties and one or more parts of another
289 county or counties, no more than one senator shall be chosen
290 from the same county or part of a county to represent such
291 senatorial district;

292 (2) With respect to a senatorial district which does not
293 contain any whole county but only parts of two or more
294 counties, no more than one senator shall be chosen from the
295 same part to represent such senatorial district; and

296 (3) With respect to superimposed senatorial districts which
297 contain only one whole county, all senators shall be chosen
298 from such county to represent such senatorial districts.

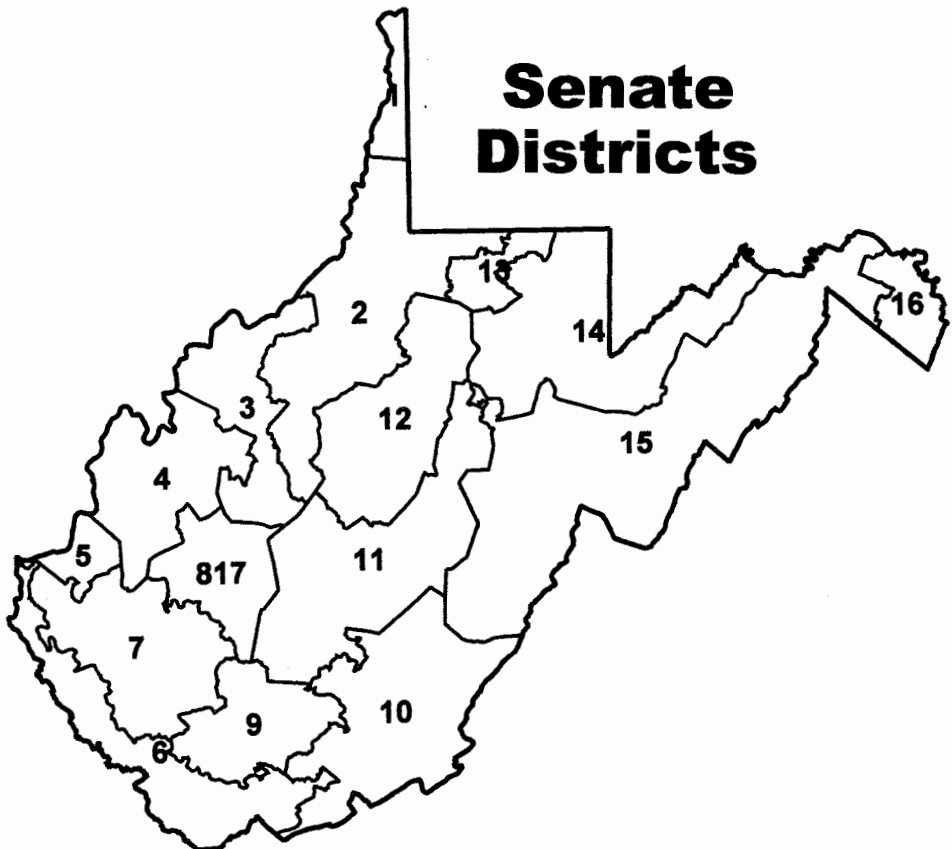
299 (f) Candidates for the Senate shall be nominated as pro-
300 vided in section four, article five, chapter three of this code,

301 except that such candidates shall be nominated in accordance
302 with the residency dispersal provisions specified in section four,
303 article VI of the West Virginia constitution and the additional
304 residency dispersal provisions specified in subsection (e) of this
305 section. Candidates for the Senate shall also be elected in
306 accordance with the residency dispersal provisions specified in
307 said section and the additional residency dispersal provisions
308 specified in subsection (e) of this section. In furtherance of the
309 foregoing provisions of this subsection, no person may file a
310 certificate of candidacy for election from a senatorial district
311 described and constituted in subsection (d) of this section if he
312 or she resides in the same county and the same such senatorial
313 district wherein also resides an incumbent senator, whether the
314 senatorial district wherein such incumbent senator resides was
315 described and constituted by chapter eighty-five, acts of the
316 Legislature, one thousand nine hundred ninety-three, or was
317 described and constituted in subsection (d) of this section or its
318 immediately prior enactment. Any vacancy in a nomination
319 shall be filled, any appointment to fill a vacancy in the Senate
320 shall be made and any candidates in an election to fill a vacancy
321 in the Senate shall be chosen so as to be consistent with the
322 residency dispersal provisions specified in section four, article
323 VI of the West Virginia constitution and the additional resi-
324 dency dispersal provisions specified in subsection (e) of this
325 section.

326 (g) Regardless of the changes in senatorial district bound-
327 aries made by the provisions of subsection (d) of this section,
328 all senators elected at the general election held in the year one
329 thousand nine hundred ninety-eight and at the general election
330 held in the year two thousand shall continue to hold their seats
331 as members of the Senate for the term, and as representatives of
332 the senatorial district, for which each thereof, respectively, was
333 elected. Any appointment made or election held to fill a
334 vacancy in the Senate shall be for the remainder of the term and

335 as a representative of the senatorial district, for which the
336 vacating senator was elected or appointed, and any such
337 election shall be held in the district as the same was described
338 and constituted at the time the vacating senator was elected or
339 appointed.

340 (h) The secretary of state may promulgate rules and
341 regulations to implement the provisions of this section, includ-
342 ing emergency rules and regulations promulgated pursuant to
343 the provisions of section five, article three, chapter twenty-nine-
344 a of this code.



§1-2-2. Apportionment of membership of House of Delegates.

1 (a) As used in this section:

2 (1) "County" means the territory comprising a county of
3 this state as it existed on the first day of January, two thousand,
4 notwithstanding any boundary changes made subsequent
5 thereto;

6 (2) "Block" and "voting district" mean those geographic
7 areas as defined by the bureau of the census of the United States
8 department of commerce for the taking of the two thousand
9 census of population and described on census maps prepared by
10 the bureau of the census. The maps are, at the time of the
11 reenactment of this section in the year two thousand one,
12 maintained by the bureau of the census and filed with the joint
13 committee on government and finance.

14 (b) The House of Delegates is composed of one hundred
15 members elected from the delegate districts described in this
16 subsection:

17 (1) The first delegate district is entitled to two delegates and
18 consists of:

19 (A) Voting districts 26 and 34 of Brooke County; and

20 (B) All of Hancock County.

21 (2) The second delegate district is entitled to two delegates
22 and consists of:

23 (A) Voting districts 1, 4, 5, 6, 11, 13, 14, 15, 16, 17, 20A,
24 20B, 21A, 21B, 23A, 23B, 23C, 23D, 24, 25, 28, 31, 32A, 32B,
25 33, 35A, 35B and 36 of Brooke County; and

26 (B) The following areas of Ohio County:

27 (i) Voting districts 12, 13, 135, 137, 141, 146, 158, 161;

28 (ii) Blocks 0021001054, 0021001056, 0021001057,
29 0021001058, 0021001059, 0021001060, 0021001061,
30 0021001062, 0021001063, 0021001064, 0021001065,
31 0021001066, 0021001067, 0021001068, 0021001069,
32 0021001070, 0021001071 and 0021001073 of voting district
33 143; and

34 (iii) Blocks 0020001000, 0020001001, 0020001006,
35 0020001007, 0020001008, 0020001010, 0020001015,
36 0020001047, 0020001048 and 0020001049 of voting district
37 16.

38 (3) The third delegate district is entitled to two delegates
39 and consists of the following areas of Ohio County:

40 (A) Voting districts 1, 4, 5, 10, 11, 14, 20, 23, 24, 28, 29,
41 31, 36, 49, 60, 64, 69, 77, 100, 103, 104, 107, 108, 113, 115,
42 116, 119, 120, 122, 124, 125, 127, 128, 129, 130, 131 and 148;

43 (B) Blocks 0020001002, 0020001003, 0020001004,
44 0020001005, 0020001009, 0020001011, 0020001012,
45 0020001013, 0020001014, 0020001016, 0020001019,
46 0020001020, 0020001021, 0020001022, 0020001023,
47 0020001024, 0020001025, 0020001026, 0020001027,
48 0020001028, 0020001029, 0020001030, 0020001031,
49 0020001032, 0020001033, 0020001035, 0020003020,
50 0020003021, 0020003022, 0020003023, 0020003025 and
51 0020004013 of voting district 16; and

52 (C) Blocks 0018001005, 0018001006, 0020001017,
53 0020001037, 0020001038, 0020001041, 0020001043,
54 0021001017, 0021001050, 0021001051, 0021001052,
55 0021001053, 0021001055, 0021001072, 0021001074,
56 0021001075, 0021001076 and 0021001077 of voting district
57 143.

58 (4) The fourth delegate district is entitled to two delegates
59 and consists of:

60 (A) All of Marshall County; and

61 (B) Voting district 102 of Ohio County.

62 (5) The fifth delegate district is entitled to one delegate and
63 consists of:

64 (A) Voting districts 40 and 42 of Monongalia County; and

65 (B) Voting districts 4, 5, 10, 15, 16, 18, 21, 24, 27, 29, 33,
66 36, 39, 40, 42, 43, 44, 45, 46, 48 and 50 of Wetzel County.

67 (6) The sixth delegate district is entitled to one delegate and
68 consists of:

69 (A) All of Doddridge County;

70 (B) All of Tyler County; and

71 (C) Voting district 38 of Wetzel County.

72 (7) The seventh delegate district is entitled to one delegate
73 and consists of:

74 (A) All of Pleasants County; and

75 (B) All of Ritchie County.

76 (8) The eighth delegate district is entitled to one delegate
77 and consists of the following areas of Wood County:

78 (A) Voting districts 36C, 37A, 37D, 47, 48, 49, 50, 51, 51A,
79 52, 53, 54, 56, 56A, 60, and 61;

80 (B) Blocks 0001001000, 0001001003, 0101022022,
81 0101022023, 0101022025, 0101022026 and 0106013029 of
82 voting district 40; and

83 (C) Block 0104001030 of voting district 40A.

84 (9) The ninth delegate district is entitled to one delegate and
85 consists of:

86 (A) All of Wirt County; and

87 (B) The following areas of Wood County:

88 (i) Voting districts 27, 38, 57, 57A, 58, 81, 82, 84, 85, 86,
89 and 87; and

90 (ii) Block 0108003029 of voting district 67.

91 (10) The tenth delegate district is entitled to three delegates
92 and consists of the following areas of Wood County:

93 (A) Voting districts 1, 7, 8, 10, 13, 15, 16, 17, 19, 23, 24,
94 26, 29, 30, 31, 32, 33, 34A, 35, 35A, 36, 36A, 36B, 37, 37B, 41,
95 42, 42A, 43, 43A, 44, 44A, 45, 45A, 46, 46A, 46B, 49A, 62, 63,
96 63A, 63B, 64, 66, 67A, 67B, 69, 70A, 71, 72, 73, 74, 74A, 74B,
97 74C, 75, 77, 78, 78A and 79;

98 (B) Blocks 0101021014, 0101021015, 0101021016,
99 0101021017, 0101021018, 0101021019, 0101022005,
100 0101022006, 0101022007 and 0101022024 of voting district
101 40;

102 (C) Blocks 0001002000, 0001002003, 0001002005,
103 0001002006, 0001002009, 0001002010, 0001002011,
104 0001002012, 0001002013, 0001002014, 0001002015,
105 0001002016, 0002002001, 0002002002, 0002002003,
106 0002002015, 0002002999, 0101021012, 0101022011,
107 0101022012, 0101022013, 0101022014, 0101022015,

108 0101022016, 0101022017, 0101022018, 0101022019,
109 0101022020, 0101022021, 0104001031, 0104001032,
110 0104001033, 0104001036, 0104001998, 0104002029,
111 0104002034, 0105012019, 0105012020, 0105012021,
112 0105012023, 0105012028, 0105012029, 0105012999,
113 0105021026, 0105021030, 0105021031, 0105022000,
114 0105022031, 0105022032, 0105022033, 0105022034,
115 0105022035, 0105022036, 0105022039, 0105022040,
116 0105022041, 0105022042, 0105022043, 0105022044,
117 0105022049, 0105022061, 0105022062, 0105022069,
118 0105022070, 0105022071, 0105022072, 0105022073,
119 0105022074, 0105022077, 0105022078, 0105022080,
120 0105022081, 0105022082, 0105022083, 0105022084,
121 0105022085 and 0105022086 of voting district 40A; and

122 (D) Blocks 0107023004, 0107023005, 0107023006,
123 0107023016, 0107023017, 0107023018, 0107023019,
124 0107023020, 0107023021, 0107023022, 0109011002,
125 0109011003, 0109011004, 0109011005, 0109011006,
126 0109011007, 0109011008, 0109011009, 0109011010,
127 0109011011, 0109011012, 0109011013, 0109011014,
128 0109011015 and 0109011016 of voting district 67.

129 (11) The eleventh delegate district is entitled to one
130 delegate and consists of:

131 (A) Voting districts 37, 38, 39, 40 and 43 of Jackson
132 County; and

133 (B) All of Roane County.

134 (12) The twelfth delegate district is entitled to one delegate
135 and consists of the following areas of Jackson County:

136 (A) Voting districts 1, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17,
137 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33 and 42.

138 (13) The thirteenth delegate district is entitled to two
139 delegates and consists of:

140 (A) Voting districts 7, 8, 13, 14, 15, 30 and 32 of Jackson
141 County;

142 (B) Voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14,
143 15, 16, 18 and 39 of Mason County; and

144 (C) The following areas of Putnam County:

145 (i) Voting districts 1, 2, 4, 15, 16, 17, 18, 19, 21, 22, 23, 34,
146 35, 36, 37, 38 and 40; and

147 (ii) Blocks 0204001017, 0204001018, 0204001019,
148 0204001020, 0204001023, 0204001024, 0204001025,
149 0204001026, 0204001027, 0204001028, 0204001029,
150 0204001030, 0204001031, 0204001032, 0204001033,
151 0204001034, 0204001035, 0204001036, 0204002000,
152 0204002001, 0204002002, 0204002052, 0204002053,
153 0204002054, 0204002055, 0204002999, 0204003000,
154 0204003001, 0204003002, 0204003003, 0204003004,
155 0204003005, 0204004000, 0204004001, 0204004002,
156 0204004003, 0204004004, 0204004005, 0204004006,
157 0204004007, 0204004008, 0204004009, 0204004010,
158 0204004011, 0204004012, 0204004013, 0204004014,
159 0204004015, 0204004016, 0204004017, 0204004018,
160 0204004019, 0204004020, 0204004021, 0204004022,
161 0204004023, 0204004024, 0204004025, 0204004026,
162 0204004027, 0204004028, 0204004997, 0204004998,
163 0204004999, 0206011998, 0206031000, 0206031001,
164 0206031003, 0206031004, 0206031005, 0206031050,
165 0206031051, 0206031052, 0206031053, 0206031054,
166 0206031995, 0206031996, 0206031997, 0206031998,
167 0206031999 of voting district 28.

168 (14) The fourteenth delegate district is entitled to two
169 delegates and consists of:

170 (A) Voting districts 13, 19, 20, 21, 22, 23, 24, 25, 26, 27,
171 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Mason County;
172 and

173 (B) The following areas of Putnam County:

174 (i) Voting district 25, 26, 27, 29, 30, 31, 32, 33, 41 and 42;
175 and

176 (ii) Blocks 0206011000, 0206011001, 0206011002,
177 0206011003, 0206011004, 0206011005, 0206011006,
178 0206011007, 0206011008, 0206011009, 0206011010,
179 0206011011, 0206011012, 0206011019, 0206011020,
180 0206011021, 0206011022, 0206011023 and 0206011999 of
181 voting district 28.

182 (15) The fifteenth delegate district is entitled to three
183 delegates and consists of:

184 (A) The following areas of Cabell County:

185 (i) Voting districts 7, 10, 11, 12, 13, 16, 17, 19, 20, 21, 22,
186 23, 24, 25, 26, 27, 28, 32, 33, 34, 54, 55, 56, 57, 58, 59, 62, 63,
187 64, 65 and 66;

188 (ii) Blocks 0012001005, 0012001006, 0012001007,
189 0012001010, 0012001011, 0012002003, 0012002004,
190 0012002005, 0012002006 and 0013002002 of voting district 8;

191 (iii) Blocks 0015001024, 0015001025, 0015001026,
192 0015002003, 0015002004, 0015002005, 0015002025,
193 0015002026, 0015002027, 0015002028, 0020001006,
194 0020001007, 0020001008 and 0020001018 of voting district
195 18;

196 (iv) Block 0106004017 of voting district 52;

197 (v) Blocks 0103003001, 0103003002, 0103003003,
198 0103003004, 0103003005, 0103003006, 0103003007,
199 0103003008, 0103003009, 0103003010, 0103003013,
200 0103003014, 0103003015, 0103003016, 0103003017,
201 0103003018, 0103003019, 0103003993, 0103003994,
202 0103003996, 0103003997, 0103003998, 0103003999,
203 0104004016, 0104004048, 0104004049, 0104004054,
204 0104004994, 0104004995, 0104004997, 0106004018,
205 0106004019, 0106004036, 0107001031, 0107001032,
206 0107001033, 0107001034, 0107001035, 0107001036
207 and 0107001037 of voting district 53; and

208 (vi) Blocks 0106004016, 0107001021, 0107001022,
209 0107001023, 0107001024, 0107001025, 0107001026,
210 0107001027, 0107001028, 0107001029, 0107001030,
211 0107001038, 0107001039, 0107001040, 0107001041,
212 0107001042 and 0107001043 of voting district 60; and

213 (B) Voting districts 1, 2, 3, 4 and 5 of Lincoln County.

214 (16) The sixteenth delegate district is entitled to three
215 delegates and consists of:

216 (A) The following areas of Cabell County:

217 (i) Voting districts 1, 1A, 2, 3, 4, 5, 6, 9, 14, 29, 31, 35, 36,
218 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 61;

219 (ii) Blocks 0008002007, 0008002008, 0008002009,
220 0008002010, 0008002011, 0008002012, 0008002013,
221 0008002016, 0008002017, 0012001002, 0012001003,
222 0012001004 and 0012002000 of voting district 8;

223 (iii) Blocks 0020002014 and 0020002017 of voting district
224 18;

225 (iv) Blocks 0104003000, 0104003001, 0104003002,
226 0104003016, 0104003017, 0104003019, 0104003020,
227 0104003021, 0104003022, 0104004004, 0104004005,
228 0104004007, 0104004008, 0104004009, 0104004010,
229 0104004011, 0104004012, 0104004013, 0104004014,
230 0104004015, 0104004018, 0104004019, 0104004020,
231 0104004996, 0104004999, 0104005000, 0104005001,
232 0104005002, 0104005003, 0104005006, 0104005007,
233 0104005008, 0104005009, 0104005010, 0104005011,
234 0104005012, 0106003015, 0106003016, 0106003017,
235 0106003018, 0106004022, 0106004023, 0106004031,
236 0106004032, 0106004033 and 0106004034 of voting district
237 52;

238 (v) Blocks 0103003011, 0103003012, 0103003020,
239 0103003990, 0103003991, 0103003992, 0103003995,
240 0104004000, 0104004001, 0104004002, 0104004003,
241 0104004006, 0104004017, 0104004021, 0104004022,
242 0104004023, 0104004024, 0104004025, 0104004026,
243 0104004027, 0104004038, 0104004050, 0104004051,
244 0104004052, 0104004053, 0104004055, 0104004056,
245 0104004990, 0104004991, 0104004992, 0104004993,
246 0104004998, 0104005004, 0104005005, 0104005021,
247 0106004020, 0106004021, 0106004035, 0106004037,
248 0106004038 and 0106004039 of voting district 53; and

249 (vi) Blocks 0105003000, 0105003001, 0105003002,
250 0105003003, 0105003004, 0105003005, 0105003006,
251 0105003007, 0105003008, 0105003009, 0105003010,
252 0105003011, 0105003013, 0105003014, 0105003015,
253 0105003016, 0105003017, 0106003002, 0106003003,
254 0106003004, 0106003005, 0106003006, 0106003007,
255 0106003008, 0106003009, 0106003010, 0106003011,
256 0106003012, 0106003013, 0106003014, 0106003019,
257 0106004001, 0106004002, 0106004003, 0106004004,
258 0106004005, 0106004006, 0106004007, 0106004008,

3002

REDISTRICTING

[Ch. 10

259 0106004009, 0106004010, 0106004011, 0106004012,
260 0106004013, 0106004014, 0106004015, 0106004024,
261 0106004025, 0106004026, 0106004027 and 0106004028
262 of voting district 60; and

263 (B) The following areas of Wayne County:

264 (i) Voting districts 59, 60, 61 and 63;

265 (ii) Blocks 0051001021, 0052002022, 0052002033,
266 0052002034, 0052002035, 0052002037, 0052002038,
267 0052002040, 0052002041, 0052002042, 0052002043,
268 0201001000, 0201001001, 0201001002, 0201001003,
269 0201001004, 0201001005, 0201001006, 0201001007,
270 0201001008, 0201001009, 0201001010, 0201001011,
271 0201002017, 201002019 and 201002025 of voting district
272 56; and

273 (iii) Blocks 0052002000, 0052002001, 0052002002,
274 0052002010, 0052002011, 0052002012, 0052002032,
275 0201002002, 0201002003 and 0201002011 of voting district
276 62.

277 (17) The seventeenth delegate district is entitled to two
278 delegates and consists of the following areas of Wayne County:

279 (A) Voting districts 1, 3, 5, 6, 11, 12, 13, 14, 16, 17, 18, 19,
280 20, 21, 22, 30, 31, 36, 41, 42, 45, 48, 49, 50, 51, 52, 53, 54 and
281 57; and

282 (B) Blocks 0052002045, 0201002020, 0201002024,
283 0201002026, 0201002027, 0201002028, 0201002029,
284 0201002030 and 0204001998 of voting district 56.

285 (C) Blocks 0201002000, 0201002001, 0201002004,
286 0201002005, 0201002006, 0201002007, 0201002008,
287 0201002009, 0201002010, 0201002012, 0201002013,

288 0201002014, 0201002015, 0201002016, 0201002018,
289 0204003008, 0204003009, 0204003010, 0204003011,
290 0204003012, 0204003013, 0204003014, 0204003015,
291 0204003016, 0204003017 and 0204003021 of voting district
292 62.

293 (18) The eighteenth delegate district is entitled to one
294 delegate and consists of the following areas of Boone County:

295 (A) Voting districts 12, 13, 14, 15, 16, 19, 22, 23, 25, 30,
296 31, 32, 33, 35, 36, 38, 40, 41, 45, 46, 48, 49, 50, 52 and 53;

297 (B) Blocks 9583001074 and 9583001076 of voting district
298 1;

299 (C) Block 9583001073 of voting district 11; and

300 (D) Blocks 9584001026, 9584001027, 9584001028,
301 9584001030, 9584001031, 9584001032, 9584001033,
302 9584001034, 9584001035 and 9584001036 of voting district 7.

303 (19) The nineteenth delegate district is entitled to four
304 delegates. Not more than three delegates may be nominated,
305 elected or appointed who are residents of any single county
306 within the district. The district consists of:

307 (A) The following areas of Boone County:

308 (i) Voting districts 2, 3, 4, 5, 9, 17 and 18;

309 (ii) Blocks 9583001054, 9583001055, 9583001056,
310 9583001057, 9583001058, 9583001061, 9583001062,
311 9583001075, 9583001077, 9583001078, 9583001079,
312 9583001080, 9583001081, 9583001083, 9583002000,
313 9583002001, 9583002002, 9583002003, 9583002004,
314 9583002005, 9583002020, 9583002021, 9583002022,

315 9583002023, 9583002024, 9583002025, 9583002026 and
316 9583002027 of voting district 1;

317 (iii) Blocks 9583001063 and 9583001064 of voting district
318 11; and

319 (iv) Blocks 9584001037, 9584001038, 9584001078,
320 9584001079, 9584001080, 9584001081, 9584001082,
321 9584001083, 9584001084, 9588001000, 9588001001,
322 9588001002, 9588001003, 9588001004, 9588001005,
323 9588001006, 9588001007, 9588001008, 9588001009,
324 9588001023, 9588001024, 9588001025, 9588001026,
325 9588001027, 9588001028, 9588001029, 9588001030,
326 9588001031, 9588002020, 9588002021, 9588002024,
327 9588002036, 9588002037, 9588002038 and 9588002039 of
328 voting district 7;

329 (B) Voting districts 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 20,
330 21, 22, 23, 24, 25, 26, 28, 29, 31, 32 and 33 of Lincoln County;

331 (C) All of Logan County; and

332 (D) Voting districts 6, 7, 8, 9, 10 and 13 of Putnam County.

333 (20) The twentieth delegate district is entitled to one
334 delegate and consists of:

335 (A) Voting districts 1, 3, 5, 6, 7, 9, 22, 23, 26, 27, 28, 41,
336 43, 44, 45, 46, 47 and 48 of Mingo County; and

337 (B) Voting districts 34, 37 and 38 of Wayne County.

338 (21) The twenty-first delegate district is entitled to one
339 delegate and consists of:

340 (A) The following areas of McDowell County:

341 (i) Voting districts 104, 111, 112, 113 and 114;

342 (ii) Blocks 9538004031, 9538004032, 9538004033,
343 9538004034, 9538004038, 9538004039, 9538004049,
344 9538004050, 9538004055, 9538004056, 9538004071,
345 9539001000, 9539001001, 9539001016, 9539001017,
346 9539001018, 9539001019, 9539001020, 9539001026,
347 9539001027, 9539001028, 9539001029, 9539001030,
348 9539001031, 9539001032, 9539001033, 9539001034,
349 9539001035, 9539001036, 9539001037, 9539001038,
350 9539001039 and 9539001042 of voting district 107;

351 (iii) Block 9540004006 of voting district 116; and

352 (B) Voting districts 30, 50, 51, 54, 55, 56, 57, 59, 72, 73,
353 74, 75, 76 and 77 of Mingo County.

354 (22) The twenty-second delegate district is entitled to two
355 delegates and consists of:

356 (A) The following areas of McDowell County:

357 (i) Voting districts 21, 102, 103, 105 and 109;

358 (ii) Blocks 9538004035, 9538004036, 9538004037,
359 9538004046, 9538004047, 9538004048, 9538004067 and
360 9538004068 of voting district 107; and

361 (iii) Blocks 9540004005, 9541003002, 9541003003,
362 9541004002, 9541004006, 9541004007, 9541004008,
363 9541004009, 9541004010, 9541004011, 9541004012,
364 9541004013, 9541004029, 9541004030, 9541006034,
365 9541006035, 9541006036, 9541006037, 9541006038,
366 9541006039 and 9541006040 of voting district 116;

367 (B) Voting districts 3, 42, 46, 49, 51, 55, 60, 69 and 96 of
368 Mercer County; and

369 (C) All of Wyoming County.

370 (23) The twenty-third delegate district is entitled to one
371 delegate and consists of the following areas of McDowell
372 County:

373 (A) Voting districts 1, 6, 11, 14, 17, 20, 23, 26, 28, 32, 34,
374 40, 50, 58, 60, 63, 66, 72, 73, 76, 78, 81, 84, 85, 86, 87, 91, 93,
375 98 and 100.

376 (24) The twenty-fourth delegate district is entitled to one
377 delegate and consists of the following areas of Mercer County:

378 (A) Voting districts 2, 4, 5, 14, 15, 20, 27, 28, 30, 31, 32,
379 33, 34, 36, 37, 38, 61, 66, 67, 68 and 79; and

380 (B) Block 9522001006 of voting district 1.

381 (25) The twenty-fifth delegate district is entitled to two
382 delegates and consists of the following areas of Mercer County:

383 (A) Voting districts 44, 47, 48, 52, 53, 54, 56, 57, 58, 59,
384 62, 64, 65, 71, 72, 73, 74, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87,
385 88, 89, 95 and 98; and

386 (B) Blocks 9519001039, 9519001040, 9519001041,
387 9522001000, 9522001002, 9522001008, 9522003000,
388 9522003001, 9522004001, 9522004002, 9522004003,
389 9522004005, 9522004006, 9522004007, 9522004008,
390 9522004009, 9522004010, 9522004011, 9522004012,
391 9522004013, 9522004014, 9522004015, 9522004016,
392 9522004021, 9522004026, 9522004027, 9522004028,
393 9522004029, 9522004030, 9522004031, 9522004032,
394 9522004033, 9522004034, 9522004035, 9522004036,
395 9522004037, 9522004038, 9522004039, 9522004049,
396 9522004050, 9522004051, 9522004052, 9522004053,
397 9523001003, 9523001004, 9523001005, 9523001006,
398 9523001007, 9523001008, 9523001009, 9523001010,
399 9523001011, 9523001012, 9523001013, 9523001014,

400 9523001015, 9523001016, 9523001017, 9523001018,
401 9523001019, 9523001020, 9523001021, 9523001022,
402 9523001023, 9523001024, 9523001025, 9523001026,
403 9523001027, 9523001028, 9523001029, 9523001030,
404 9523001059, 9523001063, 9523001064, 9523001065,
405 9523001066, 9523001067, 9523001068, 9523001069,
406 9523001070, 9523001071, 9524003029, 9524003030,
407 9524003033, 9524003034, 9524003035, 9524003036,
408 9524003037, 9524003038, 9524003039, 9524003040,
409 9524003041, 9524003042, 9524003043, 9524003044,
410 9524003045, 9524003046, 9524003056, 9524003057,
411 9524003058, 9524003059, 9524003060 and 9524003061
412 of voting district 1.

413 (26) The twenty-six delegate district is entitled to one
414 delegate and consists of:

415 (A) All of Monroe County; and

416 (B) The following areas of Summers County:

417 (i) Voting district 32;

418 (ii) Blocks 9506002072, 9506002073, 9506002074,
419 9506002076, 9506002077, 9506002078, 9506002079,
420 9506002080, 9506002081, 9506002082, 9506002083,
421 9506002084, 9506002085, 9506002086, 9506002087,
422 9506002088, 9506002089, 9506004011, 9506004016,
423 9506004017, 9506004018, 9506004019, 9506004020,
424 9506004021, 9506004022, 9506004023, 9506004024,
425 9506004025, 9506004026, 9506004037, 9506004042,
426 9506004043, 9506004044, 9506004045, 9506004046,
427 9506004047, 9506004048, 9506004049, 9506004050,
428 9506004051, 9506004052, 9506004053, 9506004054,
429 9506004055, 9506004056, 9506004057, 9506004058,
430 9506004059, 9506004060, 9506004061, 9506004995,
431 9506004996 and 9507002028 of voting district 1; and

432 (iii) Blocks 9505002082, 9506001024, 9506001025,
433 9506001026, 9506001027, 9506001028, 9506001029,
434 9506001038, 9506001039, 9506001040, 9506001041,
435 9506001042, 9506001043, 9506002017, 9506002018,
436 9506002019, 9506002020, 9506002022, 9506002023,
437 9506002024, 9506002029, 9506002030, 9506002042,
438 9506002043, 9506002044, 9506002052, 9506002053,
439 9506002054, 9506002055, 9506002056, 9506002057,
440 9506002058, 9506002059, 9506002060, 9506002061,
441 9506002062, 9506002063, 9506002064, 9506002065,
442 9506002066, 9506002067, 9506002068, 9506002069,
443 9506002070, 9506002071, 9506002075, 9506002090,
444 9506002091, 9506002096, 9506002106, 9506002107,
445 9506002108, 9506002109, 9506002110, 9506002994,
446 9506002997, 9506002998, 9506003000, 9506003039,
447 9506003040, 9506003041, 9506003042, 9506003043,
448 9506004000, 9506004001, 9506004002, 9506004003,
449 9506004027, 9506004028, 9506004029, 9506004030,
450 9506004031, 9506004032, 9506004038 and 9506004999
451 of voting district 30.

452 (27) The twenty-seventh delegate district is entitled to five
453 delegates. Not more than four delegates may be nominated,
454 elected or appointed who are residents of any single county
455 within the district. The district consists of:

456 (A) All of Raleigh County; and

457 (B) The following areas of Summers County:

458 (i) Voting districts 4, 7, 9, 10, 11, 12, 13, 15, 17, 22, 23, 26
459 and 27;

460 (ii) Blocks 9506004010, 9506004012, 9506004013,
461 9506004997, 9507002027, 9507002029 and 9507002997 of
462 voting district 1; and

463 (iii) Block 9506003004 of voting district 30.

464 (28) The twenty-eighth delegate district is entitled to two
465 delegates and consists of all of Greenbrier County.

466 (29) The twenty-ninth delegate district is entitled to three
467 delegates and consists of:

468 (A) Voting districts 12, 29, 30, 33 and 36 of Clay County;

469 (B) All of Fayette County; and

470 (C) Voting district 25 of Nicholas County.

471 (30) The thirtieth delegate district is entitled to seven
472 delegates and consists of the following areas of Kanawha
473 County:

474 (A) Voting districts 103, 105, 106, 108, 110, 111, 112, 113,
475 114, 115, 116, 117, 118, 119, 120, 131, 133, 134, 136, 138, 140,
476 142, 145, 147, 148, 149, 150, 151, 152, 153, 154, 158, 160, 161,
477 162, 163, 164, 165, 166, 175, 177, 202, 205, 208, 209, 213, 217,
478 223, 224, 226, 227, 228, 232, 233, 234, 238, 239, 240, 241, 244,
479 246, 247, 250, 252, 253, 254, 257, 258, 260, 275, 276, 277, 278,
480 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291,
481 292, 293, 294, 295, 296, 302, 304, 305, 307, 308, 309, 310, 311,
482 317, 321, 326, 329, 332, 333, 337, 340, 347, 357, 366, 375, 376,
483 378, 379, 401, 403, 404, 408, 410, 414, 415, 416, 417, 425, 426,
484 427 and 435;

485 (B) Blocks 0011005001, 0011005002, 0011005011,
486 0114011018, 0114011019, 0114011020, 0114011021,
487 0114011022, 0114011024, 0114011025, 0114011026,
488 0114011027, 0114011028, 0114011030, 0114011031,
489 0114011032, 0114011033, 0114011034, 0114012007,
490 0114012009, 0114012011, 0114012012, 0114012013,
491 0114012023, 0114012025, 0114012026, 0114012027,

3010

REDISTRICTING

[Ch. 10

492 0114012028, 0114021026, 0114021027, 0115001000,
493 0115001001, 0115001002, 0115001003, 0115001004,
494 0115001005, 0115001006, 0115001007, 0115001008,
495 0115001009, 0115001010, 0115001011, 0115001012,
496 0115001013 and 0115001014 of voting district 123; and

497 (C) Blocks 0113011027, 0113011028, 0113011029,
498 0113012027, 0113012028, 0113012029 and 0113012030 of
499 voting district 436.

500 (31) The thirty-first delegate district is entitled to one
501 delegate and consists of the following areas of Kanawha
502 County:

503 (A) Voting districts 167, 168, 169, 170, 171, 172, 174, 178,
504 179, 297, 298, 299, 402, 405, 406, 407, 411, 412 and 413; and

505 (B) Blocks 0011005007, 0011005008, 0011005009,
506 0011005010 and 0114011023 of voting district 123.

507 (32) The thirty-second delegate district is entitled to three
508 delegates and consists of the following areas of Kanawha
509 County:

510 (A) Voting districts 349, 350, 351, 352, 353, 354, 355, 358,
511 359, 360, 361, 362, 364, 365, 368, 370, 371, 373, 374, 418, 419,
512 420, 421, 422, 423, 424, 428, 429, 431, 432, 433, 434, 437, 438,
513 439, 440 and 441; and

514 (B) Blocks 0011002000, 0011003000, 0011003001,
515 0011003002, 0011003003, 0011003999, 0113011001,
516 0113011002, 0113011003, 0113011004, 0113011005,
517 0113011006, 0113011007, 0113011008, 0113011009,
518 0113011010, 0113011011, 0113011012, 0113011013,
519 0113011014, 0113011015, 0113011016, 0113011017,
520 0113011018, 0113011019, 0113011020, 0113011021,
521 0113011022, 0113011023, 0113011024, 0113011025,

522 0113011026, 0113011030, 0113011031, 0113011032,
523 0113011033, 0113012000, 0113012001, 0113012002,
524 0113012003, 0113012004, 0113012005, 0113012006,
525 0113012007, 0113012008, 0113012009, 0113012010,
526 0113012011, 0113012012, 0113012013, 0113012014,
527 0113012015, 0113012016, 0113012017, 0113012018,
528 0113012019, 0113012020, 0113012021, 0113012022,
529 0113012023, 0113012024, 0113012025, 0113012026,
530 0113012033, 0113012998, 0113012999, 0113013028,
531 0113013029, 0113013030, 0113013031, 0113013044,
532 0113024013, 0113024014, 0113024015, 0113024016,
533 0113024017, 0113024018, 0113024019, 0113024020,
534 0113024021, 0113024022, 0113024023, 0113024024,
535 0113024025 and 0113024997 of voting district 436.

536 (33) The thirty-third delegate district is entitled to one
537 delegate and consists of:

538 (A) All of Calhoun County;

539 (B) Voting districts 1, 4, 15, 16, 17, 24, 25, and 37 of Clay
540 County; and

541 (C) The following areas of Gilmer County:

542 (i) Voting districts 1, 6, 12, 13, 27 and 31;

543 (ii) Blocks 9677003011 and 9677003012 of voting district
544 17; and

545 (iii) Blocks 9677002095, 9677002096, 9677002097,
546 9677002099, 9677002100, 9677002101, 9677002102,
547 9677002103, 9677002104, 9677002105, 9677002106,
548 9677002107, 9677002108, 9677002109, 9677002110,
549 9677002111, 9677003038, 9678001002, 9678001003,
550 9678001004, 9678001005, 9678001006, 9678001023,
551 9678002002, 9678002003, 9678002004, 9678002005,

552 9678002008, 9678002009, 9678002010, 9678002011,
553 9678002019, 9678002020, 9678003003 and 9678003023
554 of voting district 24.

555 (34) The thirty-fourth delegate district is entitled to one
556 delegate and consists of:

557 (A) All of Braxton County; and

558 (B) The following areas of Gilmer County:

559 (i) Voting districts 5, 16, 18 and 20;

560 (ii) Blocks 9677003013, 9677003014, 9677003015,
561 9677003016, 9677003017, 9677003018, 9677003019,
562 9677003020, 9677003021, 9677003022, 9677003023,
563 9677003024, 9677003025, 9677003026, 9677003027,
564 9677003028, 9677003029, 9677003030, 9677003031,
565 9677003032, 9677003033, 9677003034, 9677003035,
566 9677003036, 9677003037, 9677003039, 9677003040,
567 9677003041, 9677003042, 9677003043, 9677003044,
568 9677003045, 9677003046, 9677003047, 9677003048,
569 9677003049, 9677003050, 9677003051, 9677003052,
570 9677003053, 9677003054, 9677003055, 9677003056,
571 9677003057, 9677003058, 9677003059, 9677004000,
572 9677004001, 9677004003, 9677004009, 9677004010,
573 9677004011, 9677004012, 9677004013, 9677004014,
574 9677004015, 9677004016, 9677004017, 9677004018,
575 9677004019, 9677004020, 9677004021, 9677004025,
576 9677004026, 9677004029, 9677004031, 9677004032,
577 9678002041, 9678002042, 9678002043 and 9678002044
578 of voting district 17; and

579 (iii) Blocks 9678002017, 9678002022 and 9678003000 of
580 voting district 24.

581 (35) The thirty-fifth delegate district is entitled to one
582 delegate and consists of voting districts 13, 14, 15, 16, 18, 19,
583 20, 21, 23, 27, 28, 29, 30, 31, 32, 33 and 35 of Nicholas County.

584 (36) The thirty-sixth delegate district is entitled to one
585 delegate and consists of:

586 (A) Voting districts 1, 2, 3, 5, 7, 8, 9 and 17 of Nicholas
587 County; and

588 (B) All of Webster County.

589 (37) The thirty-seventh delegate district is entitled to two
590 delegates and consists of:

591 (A) All of Pocahontas County; and

592 (B) All of Randolph County.

593 (38) The thirty-eighth delegate district is entitled to one
594 delegate and consists of:

595 (A) All of Lewis County; and

596 (B) Voting districts 4 and 7 of Upshur County.

597 (39) The thirty-ninth delegate district is entitled to one
598 delegate and consists of voting districts 6, 8, 9, 12, 13, 14, 15,
599 16, 18, 19, 20, 25, 27, 35, 42, 44 and 47 of Upshur County.

600 (40) The fortieth delegate district is entitled to one delegate
601 and consists of:

602 (A) All of Barbour County; and

603 (B) Voting districts 33, 38 and 39 of Upshur County.

604 (41) The forty-first delegate district is entitled to four
605 delegates and consists of:

606 (A) All of Harrison County; and

607 (B) The following areas of Marion County:

608 (i) Voting district 41;

609 (ii) Blocks 0212003009, 0212003010, 0212003011,
610 0212003019, 0212003020, 0212003021 and 0212003022 of
611 voting district 40; and

612 (iii) Blocks 0212001051, 0212001052 and 0212001055 of
613 voting district 42.

614 (42) The forty-second delegate district is entitled to one
615 delegate and consists of:

616 (A) Voting district 125 of Marion County;

617 (B) Voting district 62 of Monongalia County; and

618 (C) All of Taylor County.

619 (43) The forty-third delegate district is entitled to three
620 delegates and consists of:

621 (A) The following areas of Marion County:

622 (i) Voting districts 1, 2, 5, 6, 7, 13, 16, 18, 20, 27, 28, 29,
623 30, 31, 32, 33, 34, 35, 36, 43, 44, 45, 47, 48, 50, 51, 52, 53, 55,
624 56, 57, 58, 59, 61, 62, 66, 67, 68, 69, 70, 72, 74, 78, 82, 83, 86,
625 87, 88, 89, 90, 92, 96, 98, 100, 101, 102, 104, 112, 113, 114,
626 115, 116, 117, 118, 120, 121, 122, 123 and 124;

627 (ii) Blocks 0212002000, 0212002001, 0212002002,
628 0212002003, 0212002004, 0212002005, 0212002006,

629 0212002007, 0212002008, 0212002026, 0212002027,
630 0212002028, 0212002029, 0212002030, 0212002999,
631 0212003000, 0212003001, 0212003002, 0212003003,
632 0212003004, 0212003005, 0212003006, 0212003007,
633 0212003008, 0212003012, 0212003013, 0212003014,
634 0212003015, 0212003016, 0212003017, 0212003018,
635 0212003997, 0212003998 and 0212003999 of voting district
636 40; and

637 (iii) Blocks 0211001009, 0211001010, 0211001011,
638 0211001012, 0211001015, 0211001016, 0211001019,
639 0211001020, 0211001021, 0211002001, 0211002006,
640 0211002007, 0211002012, 0211003016, 0211003995,
641 0212001002, 0212001003, 0212001004, 0212001007,
642 0212001010, 0212001011, 0212001012, 0212001038,
643 0212001039, 0212001040, 0212001041, 0212001046,
644 0212001050, 0212001053, 0212001054, 0212001058,
645 0212001085 and 0212001997 of voting district 42; and

646 (B) Voting districts 59, 64 and 67 of Monongalia County.

647 (44) The forty-fourth delegate district is entitled to four
648 delegates and consists of voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9,
649 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28,
650 29, 30, 31, 32, 33, 34, 35, 36A, 36B, 37, 38, 39, 41, 44, 46, 47,
651 48, 49, 51, 52, 53, 54, 55, 56, 58, 60, 61, 63, 68, 69, 70, 71, 72,
652 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90,
653 91 and 92 of Monongalia County.

654 (45) The forty-fifth delegate district is entitled to one
655 delegate and consists of the following areas of Preston County:

656 (A) Voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
657 14, 15, 16, 17 and 25;

658 (B) Blocks 9643001067, 9643001068, 9643001069,
659 9644001022, 9644001023, 9644001024, 9644001025,

660 9644002000, 9644002001, 9644002002, 9644002003,
661 9644002004, 9644002005, 9644002006, 9644002007,
662 9644002008, 9644002009, 9644002024, 9644002025,
663 9644002026, 9644002027, 9644002028, 9644002029,
664 9644002030, 9644002031, 9644002032, 9644002091,
665 9644002092, 9644002093, 9644002094, 9644002095,
666 9644002096, 9644002097, 9644002098, 9644002099,
667 9644002100, 9644002101, 9644002102, 9644002103,
668 9644002104, 9644002105, 9644002106 and 9644002107
669 of voting district 22; and

670 (C) Block 9645002014 of voting district 26.

671 (46) The forty-sixth delegate district is entitled to one
672 delegate and consists of:

673 (A) The following areas of Preston County:

674 (i) Voting districts 11A, 18, 19, 20, 21, 23, 24, 27, 28, 29,
675 30, 31, 32 and 33;

676 (ii) Blocks 9643001060, 9643001063, 9643001064,
677 9643001065, 9643001066, 9644002010, 9644002011,
678 9644002012, 9644002013, 9644002014, 9644002015,
679 9644002016, 9644002017, 9644002018, 9644002019,
680 9644002020, 9644002021, 9644002022, 9644002023,
681 9644002033, 9644002034, 9644002035, 9644002036,
682 9644002037, 9644002038, 9644002045, 9644002053,
683 9644002054, 9644002055, 9644002082, 9644002083,
684 9644002084, 9644002085, 9644002086, 9644002088,
685 9644002089, 9644002090, 9644003011, 9644003012,
686 9644003013, 9644003014, 9644003015, 9644003016,
687 9644003017, 9644003018, 9644003019, 9644003020,
688 9644003021, 9644003022, 9644003023, 9644003036,
689 9644003040, 9644003041, 9644003042, 9644003043,
690 9644003044, 9644003045, 9644003049, 9644003050,

691 9644003051, 9644003052, 9644003076, 9644003081 and
692 9644003082 of voting district 22; and

693 (iii) Blocks 9644003000, 9644003001, 9644003002,
694 9644003003, 9644003004, 9644003005, 9644003006,
695 9645002000, 9645002002, 9645002003, 9645002012,
696 9645002013, 9645002018, 9645002019, 9645002020,
697 9645002021, 9645002022, 9645002023, 9645002025,
698 9645002026, 9645002027, 9645002028, 9645002029,
699 9645002030, 9645002031, 9645002032, 9645002033,
700 9645002034, 9645002035, 9645002036, 9645002039,
701 9645002040, 9645002041, 9645002042, 9645002043,
702 9645002044, 9645002045, 9645002046, 9645002047,
703 9645002048, 9645002049, 9645002050, 9645002051,
704 9645002052 and 9645002053 of voting district 26; and

705 (B) All of Tucker County.

706 (47) The forty-seventh delegate district is entitled to one
707 delegate and consists of:

708 (A) All of Hardy County; and

709 (B) Voting districts 1, 2, 5, 6, 7, 8, 9, 11 and 12 of
710 Pendleton County.

711 (48) The forty-eighth delegate district is entitled to one
712 delegate and consists of:

713 (A) All of Grant County;

714 (B) Voting districts 3, 6, 8, 27, 28, 29, 30, 33, 34 and 35 of
715 Mineral County; and

716 (C) Voting districts 3, 13, 14 and 15 of Pendleton County.

717 (49) The forty-ninth delegate district is entitled to one
718 delegate and consists of voting districts 1, 2, 4, 5, 10, 11, 12, 13,

719 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 31 of
720 Mineral County.

721 (50) The fiftieth delegate district is entitled to one delegate
722 and consists of:

723 (A) Voting districts 9, 11, 12, 14, 15, 16, 17, 19, 20, 22, 23,
724 24, 25, 26 and 28 of Hampshire County; and

725 (B) Voting districts 7, 9 and 32 of Mineral County.

726 (51) The fifty-first delegate district is entitled to one
727 delegate and consists of:

728 (A) Voting districts 2, 4, 6, 7 and 21 of Hampshire County;
729 and

730 (B) Voting districts 1, 2, 4, 5, 6, 7, 8, 13, 18 and 23 of
731 Morgan County.

732 (52) The fifty-second delegate district is entitled to one
733 delegate and consists of:

734 (A) The following areas of Berkeley County:

735 (i) Voting districts 39, 40, 41, 42, 46 and 48;

736 (ii) Blocks 9711002000, 9711002001, 9711002002,
737 9711002003, 9711002004, 9711002005, 9711002006,
738 9711002007, 9711002008, 9711002009, 9711002010,
739 9711002011, 9711002012, 9711002013, 9711002037,
740 9711002038, 9711002039, 9711002040 and 9711002041
741 of voting district 19; and

742 (iii) Blocks 9711003003, 9711003004, 9711003005,
743 9711003006, 9711003007, 9711003008, 9711003009,
744 9711003010, 9711003011, 9711003012, 9711003013,
745 9711003014, 9711003015, 9711003016, 9711003017,

746 9711003018, 9711003019, 9711003022, 9711003029,
747 9711003030, 9711003031 and 9711003034 of voting district
748 21;

749 (iv) Blocks 9712006066, 9718001015, 9718001016,
750 9718001017, 9718001028, 9718001029, 9718001030,
751 9718001031, 9718001033, 9718001034, 9718001035,
752 9718001056, 9718001057, 9718002004, 9718002005
753 and 9718002006 of voting district 45; and

754 (B) Voting districts 21, 24 and 25 of Morgan County.

755 (53) The fifty-third delegate district is entitled to one
756 delegate and consists of the following areas of Berkeley
757 County:

758 (A) Voting districts 29, 32, 33, 34, 36, 37, 43, 47 and 51;
759 and

760 (B) Blocks 9718002000, 9718002001, 9718002002,
761 9718002003, 9718002029, 9718002030, 9718002034,
762 9718002035, 9718002036, 9718002038, 9718002039,
763 9718002040, 9718002041, 9718002042, 9718002043,
764 9718002046, 9718002050, 9718002051, 9718002052,
765 9718002053, 9718002054, 9718002055, 9718002056,
766 9718002059, 9718002061, 9718002062, 9718002068,
767 9718002069, 9718002070 and 9718003005 of voting district
768 45.

769 (54) The fifty-fourth delegate district is entitled to one
770 delegate and consists of the following areas of Berkeley
771 County:

772 (A) Voting districts 1, 2, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15A,
773 17, 38 and 44;

774 (B) Blocks 9714002011 and 9714002019 of voting district
775 16;

776 (C) Blocks 9712006076, 9712006077, 9716003005 and
777 9716003006 of voting district 22;

778 (D) Blocks 9715004037, 9717007001, 9717007002,
779 9717007011, 9717007016, 9717007017, 9720002016,
780 9720002018, 9720002030, 9720002031, 9720002033
781 and 9720002040 of voting district 24; and

782 (E) Blocks 9714003013, 9714003016 and 9715002001 of
783 voting district 28.

784 (55) The fifty-fifth delegate district is entitled to one
785 delegate and consists of the following areas of Berkeley
786 County:

787 (A) Voting districts 18, 20, 23, 26, 27 and 49;

788 (B) Blocks 9713002053, 9713002054, 9713002055,
789 9713002056, 9713002065, 9714002000, 9714002001,
790 9714002002, 9714002003, 9714002004, 9714002005,
791 9714002006, 9714002007, 9714002008, 9714002009,
792 9714002010, 9714002012, 9714002013, 9714002014,
793 9714002015, 9714002016, 9714002017, 9714002018,
794 9714002020, 9714002021, 9714002035 and 9714002036
795 of voting district 16;

796 (C) Blocks 9711001000, 9711001001, 9711001002,
797 9711001003, 9711001004, 9711001005, 9711001006,
798 9711001007, 9711001008, 9711001009, 9711001010,
799 9711001011, 9711001012, 9711001017, 9711001018,
800 9711001019, 9711001020, 9711001021, 9711001022,
801 9711001023, 9711001024, 9711001025, 9711001026
802 and 9711002042 of voting district 19;

803 (D) Blocks 9711003000, 9711003001, 9711003002,
804 9711003020, 9711003021, 9711003023, 9711003024,
805 9711003025, 9711003026, 9711003027, 9711003028,
806 9713002000, 9713002001 and 9713002004 of voting district
807 21;

808 (E) Blocks 9720001000, 9720001001, 9720001002,
809 9720001003, 9720001004, 9720001005, 9720001006,
810 9720001007, 9720001008, 9720001009, 9720001010,
811 9720001011, 9720001012, 9720001013, 9720001014,
812 9720001049, 9720001050, 9720002000, 9720002001,
813 9720002002, 9720002003, 9720002004, 9720002005,
814 9720002006, 9720002009, 9720002010, 9720002011
815 and 9720002012 of voting district 24; and

816 (F) Blocks 9713001031, 9713001032, 9713001033,
817 9713001034, 9713001035, 9713001036, 9713001037,
818 9713001038, 9713001039, 9713001040, 9713001041,
819 9713001042, 9713001043, 9713001044, 9713001051,
820 9713001052, 9713001053, 9713001054, 9713001055,
821 9714003000, 9714003001, 9714003002, 9714003003,
822 9714003004, 9714003005, 9714003006, 9714003007,
823 9714003008, 9714003009, 9714003010, 9714003011,
824 9714003012, 9714003014, 9714003015, 9714003017,
825 9714003018, 9714003019, 9714003020, 9714003021,
826 9714003022, 9714003023, 9714003024, 9715002000,
827 9715002032, 9715002033, 9715002034, 9715002035,
828 9715003028, 9720002054 and 9720002055 of voting district
829 28.

830 (56) The fifty-sixth delegate district is entitled to one
831 delegate and consists of:

832 (A) The following areas of Berkeley County:

833 (i) Voting districts 25, 25A, 31, 35 and 50;

834 (ii) Blocks 9712006072, 9712006073, 9712006074,
835 9712006075, 9717004012, 9719001010, 9719001011,
836 9719001012, 9719001013, 9719001014, 9719001015,
837 9719001016, 9719001017, 9719001018, 9719001019,
838 9719001020, 9719002000, 9719002001, 9719002003,
839 9719002004, 9719002006, 9719002007, 9719002008,
840 9719003024 and 9719003025 of voting district 22; and

841 (iii) Blocks 9715004027, 9715004028, 9715004030,
842 9715004031, 9715004032, 9715004033, 9715004034,
843 9715004035, 9717007007, 9717007018, 9717007023,
844 9717007024, 9717007025, 9717007026, 9717007027,
845 9719001000, 9719001001, 9719001002, 9719001003,
846 9719001004, 9719001005, 9719001006, 9719001007,
847 9719001008, 9719001009, 9719001021, 9719001022,
848 9719001023, 9720001015, 9720001016, 9720001017,
849 9720001018, 9720001019, 9720001020, 9720001021,
850 9720001022, 9720001048, 9720002007, 9720002008,
851 9720002017, 9720002019, 9720002024, 9720002025,
852 9720002026, 9720002027, 9720002034, 9720002035,
853 9720002036, 9720002037, 9720002038, 9720002039,
854 9720002041, 9720002042, 9720002043, 9720002044,
855 9720002045, 9720002046, 9720002047, 9720002048,
856 9720002049, 9720002050, 9720002051 and 9720002052
857 of voting district 24; and

858 (B) Voting districts 22, 25, 26 and 28 of Jefferson County.

859 (57) The fifty-seventh delegate district is entitled to one
860 delegate and consists of the following areas of Jefferson
861 County:

862 (A) Voting districts 13, 14, 15, 27, 31, 32, 33, 34 and 35;

863 (B) Blocks 9722002035, 9722002036, 9722002037,
864 9722002038, 9722002039, 9722002040, 9722002041,
865 9722002042, 9722002043, 9722002044, 9722002045,

866 9722002046, 9722002049, 9722002050, 9722002051,
 867 9722002052, 9722002053, 9722002054, 9722002055,
 868 9722002056, 9722002057, 9722002058, 9722002059,
 869 9722002060, 9722002061, 9722002062, 9722002063,
 870 9722002064, 9722004042, 9722004043, 9722004044,
 871 9722004045, 9722004046, 9722004047, 9722004048,
 872 9724001000, 9724001001, 9724001002, 9724001003,
 873 9724001004, 9724001006, 9724001007, 9724001013,
 874 9724001014, 9724001015, 9724001016, 9724001019,
 875 9724001037, 9724001039, 9724001040, 9724001041,
 876 9724001042, 9724001043, 9724001044, 9724001045,
 877 9724001046, 9724001047, 9726002014, 9726002015,
 878 9726002016, 9726002017, 9726002018, 9726002019,
 879 9726002020, 9726002021 and 9726002022 of voting district
 880 12; and

881 (C) Blocks 9727001000, 9727001001, 9727001002,
 882 9727001003, 9727001004, 9727001005, 9727001006,
 883 9727001007, 9727001008, 9727001009, 9727001010,
 884 9727001011, 9727001012, 9727001013, 9727001014,
 885 9727001015, 9727001016, 9727001017, 9727001018,
 886 9727001019, 9727001020, 9727001021, 9727001022,
 887 9727001023, 9727001024, 9727001025, 9727001026,
 888 9727001027, 9727001028, 9727001029, 9727001030,
 889 9727001031, 9727001032, 9727001033, 9727001034,
 890 9727001035, 9727001036, 9727001037, 9727001038,
 891 9727001039, 9727001040, 9727001041, 9727001042,
 892 9727001043, 9727001044, 9727001045, 9727001046,
 893 9727001047, 9727001997, 9727002000, 9727002001,
 894 9727002002, 9727002003, 9727002004, 9727002005,
 895 9727002006, 9727002007, 9727002008, 9727002009,
 896 9727002010, 9727002011, 9727002012, 9727002013,
 897 9727002014, 9727002015, 9727002016, 9727002017,
 898 9727002018, 9727002019, 9727002020, 9727002021,
 899 9727002022, 9727002023, 9727002024, 9727002025,

3024

REDISTRICTING

[Ch. 10

900 9727002026, 9727002027, 9727002028, 9727002029,
901 9727002030, 9727002031, 9727002032, 9727002033,
902 9727002034, 9727002035, 9727002036, 9727002037,
903 9727002038, 9727002039, 9727002040, 9727002041,
904 9727002042, 9727002043, 9727002044, 9727002045,
905 9727002047, 9727002048, 9727002049, 9727002050,
906 9727002053 and 9727002999 of voting district 17.

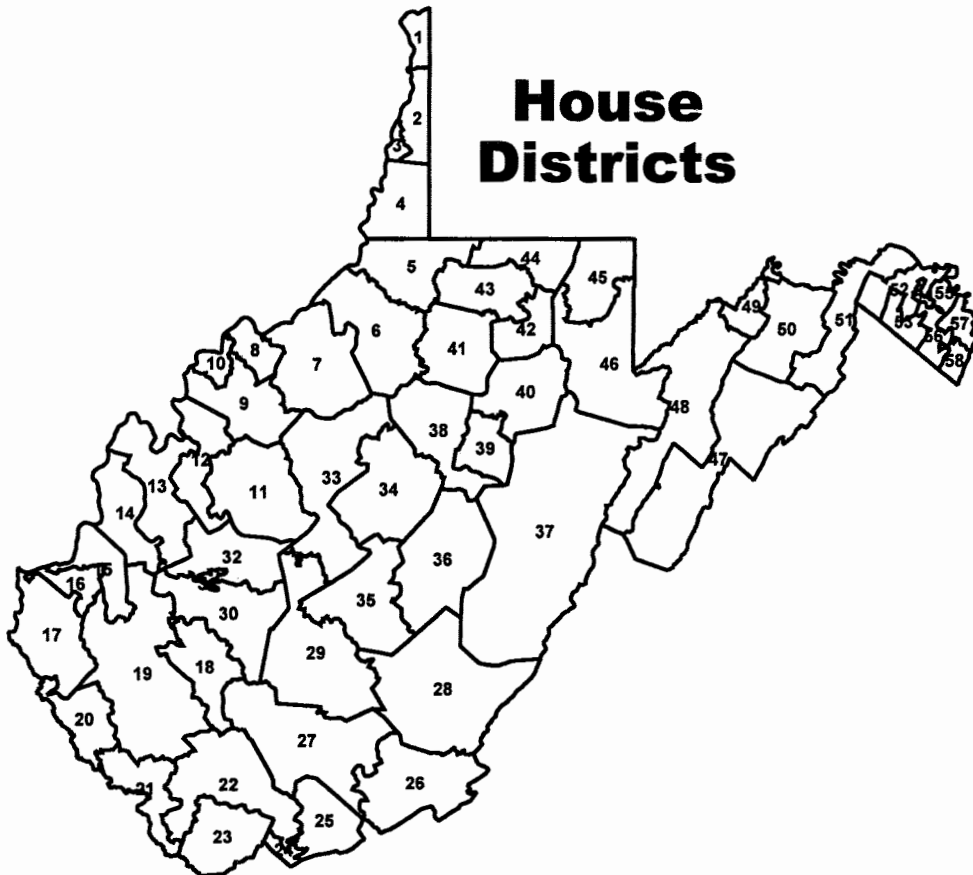
907 (58) The fifty-eighth delegate district is entitled to one
908 delegate and consists of the following areas of Jefferson
909 County:

910 (A) Voting districts 2, 3, 4, 6, 7, 16, 20, 21 and 23;

911 (B) Block 9724001020 of voting district 12; and

912 (C) Blocks 9727001048, 9727002046, 9727002051,
913 9727002052, 9727002054, 9727002055, 9727002056,
914 9727003000, 9727003001, 9727003002, 9727003003,
915 9727003004, 9727003005, 9727003006, 9727003007,
916 9727003008, 9727003009, 9727003010, 9727003011,
917 9727003012 and 9727003999 of voting district 17.

918 (c) Regardless of the changes in delegate district boundaries
919 made by the provisions of subsection (b) of this section, the
920 delegates elected at the general election held in the year two
921 thousand continue to hold their offices as members of the
922 House of Delegates for the term, and as representatives of the
923 county or delegate district, for which each was elected. Any
924 appointment made prior to the first day of December, two
925 thousand one, to fill a vacancy in the office of a member of the
926 House of Delegates shall be made for the remainder of the term,
927 and as representative of the county or delegate district, for
928 which the vacating delegate was elected or appointed.



§1-2-2b. Precinct boundary changes.

- 1 (a) If an election precinct of this state includes territory
- 2 contained in more than one senatorial or delegate district, as
- 3 such senatorial districts are established by section one of this
- 4 article, and as such delegate districts are established by section
- 5 two of this article, it is the duty of the county commission of the
- 6 county in which the precinct is located, prior to the fifteenth day
- 7 of March, two thousand two, to alter the boundary lines of its

8 election precincts so that no precinct contains territory included
9 in more than one senatorial or delegate district.

10 (b) Every county commission shall, prior to the fifteenth
11 day of March, two thousand two, alter the boundary lines of its
12 election precincts so that the geographical boundaries of the
13 precincts are consistent with the voting districts geographically
14 defined by the bureau of the census of the United States
15 department of commerce for the taking of the two thousand
16 census of population and described on census maps prepared by
17 the bureau of the census. The maps are, at the time of the
18 reenactment of this section in the year two thousand one,
19 maintained by the bureau of the census and filed with the joint
20 committee on government and finance. A voting district may
21 contain more than one election precinct if:

22 (1) The geographical boundaries of the election precincts
23 when combined are identical to the geographical boundaries of
24 the voting district; and

25 (2) The election precinct lines are established so that no
26 precinct contains territory included in more than one senatorial
27 district or in more than one delegate district, consistent with
28 subsection (a) of this section.

29 (c) The joint committee on government and finance may
30 provide assistance to county commissions in altering the
31 boundary lines in compliance with this section. The joint
32 committee may further assist county commissions in drawing
33 other county boundaries and magisterial districts, if requested
34 by the county commission.

35 (d) The provisions of this section govern and control
36 notwithstanding any conflicting provision of section seven,
37 article one, chapter three of this code.

CHAPTER 11

**(S. B. 5006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

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

AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-e, article thirteen-a of said chapter, all relating to privilege taxes imposed on production of coal from waste and residue of prior mining activity and coal-based synthetic fuel; making technical corrections in act passed the thirteenth day of April, two thousand one, and providing for certain changes to be retroactive; imposing annual privilege tax on activity of manufacturing synthetic fuel from coal and expiring tax as of specified date; creating funds for deposit of taxes collected; dedicating portion of tax collected for deposit in mining and reclamation operations fund, the synthetic fuel-producing counties grant fund and the synthetic fuel-nonproducing counties fund, with any additional collections to be deposited in general revenue fund; creating synthetic fuel-producing counties grant program; providing method for distributing certain synthetic fuel tax collections to counties in which synthetic fuel-manufacturing facilities are located and requiring county commissions to use distributions for economic development and infrastructure improvements; setting forth definitions; providing for distribution of certain synthetic fuel tax collections to counties other than counties in which synthetic fuel-manufacturing facilities are located and requiring these county commissions to use distributions for payment of regional jail and correctional authority and county jail expenses and then for any

lawful purpose; providing for development office to administer synthetic fuel-producing counties grant program and specifying authority of director; providing methodology for distribution of moneys or encumbrance of funds out of synthetic fuel-producing counties grant fund; authorizing promulgation of emergency regulations by tax commissioner; authorizing promulgation of emergency rules and legislative, interpretive and procedural rules by director of development office; dedicating and providing for distribution of sixty thousand dollars per fiscal year to development office for administration of synthetic fuel-producing counties grant program; specifying requirements and criteria for reallocation and repooling of funds in synthetic fuel-producing counties grant fund; specifying treatment of encumbered funds in synthetic fuel-producing counties grant fund; clarifying imposition of privilege tax on activity of extracting and processing material from waste and residue of prior coal mining activity to produce coal for sale, profit or commercial use; exempting producers who are electrical cogeneration plants from the tax; providing that waste coal tax is in lieu of annual privilege tax imposed on severance of coal under section three of the severance and business privilege tax act, the additional tax on severance, extraction and production of coal imposed by section six of said act and the minimum severance tax imposed by section three of the minimum severance tax act; dedicating waste coal tax collections to waste coal-producing counties for use in economic development and infrastructure improvements; providing for distribution of net tax collected to waste coal-producing counties by state treasurer by separate check based on production tonnage in county for the preceding year; and requiring office of chief inspector to annually determine that county commission expenditures of moneys distributed from synthetic fuel-producing counties grant fund, synthetic fuel-nonproducing counties fund and waste coal-producing counties fund are in compliance with requirements specified by Legislature in general law.

Be it enacted by the Legislature of West Virginia:

That section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three-e, article thirteen-a of said chapter be amended and reenacted, all to read as follows:

Article

13. Business and Occupation Tax.

13A. Severance Taxes.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia development office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

1 (a) *Rate and measure of tax.* — There is hereby imposed an
 2 annual tax, in accordance with section two of this article, upon
 3 every person engaging or continuing within this state in the
 4 business of manufacturing or producing synthetic fuel from coal
 5 for sale, profit or commercial use, either directly or through the
 6 activity of others, in whole or in part, and the amount of the tax
 7 shall be equal to fifty cents per ton of synthetic fuel manufac-
 8 tured or produced for sale, profit or commercial use during the
 9 taxable year. When a fraction of a ton is included in the
 10 measure of tax, the rate of tax as to that fraction of a ton shall
 11 be proportional. The measure of tax is the total number of tons
 12 of synthetic fuel product manufactured or produced in this state
 13 during the taxable year for sale, profit or commercial use
 14 regardless of the place of sale or the fact that deliveries may be

15 made to points outside this state. Liability for payment of this
16 tax shall accrue when the synthetic fuel product is sold by the
17 manufacturer or producer, determined by when the producer or
18 manufacturer recognizes gross receipts for federal income tax
19 purposes. When there is no sale of the synthetic fuel product,
20 liability for tax shall accrue when the synthetic fuel product is
21 shipped from the manufacturing facility for commercial use,
22 whether by the taxpayer or by a related party, except as
23 otherwise provided in legislative rules promulgated by the tax
24 commissioner as provided in article three, chapter twenty-nine-
25 a of this code.

26 (b) *Definitions.* — For purposes of this section:

27 (1) “Fiscal year” means the fiscal year of this state.

28 (2) “Fuel” means material that produces usable heat or
29 power upon combustion.

30 (3) “Fuel manufactured or produced from coal” means
31 liquid, gaseous or solid fuels produced from coal, including, but
32 not limited to, such fuels when used as feedstocks.

33 (4) “Office of chief inspector” means the state auditor as ex
34 officio chief inspector and supervisor of local government
35 offices in accordance with section eleven, article nine, chapter
36 six of this code.

37 (5) “Provisional share” means the portion of the synthetic
38 fuel-producing counties grant fund that is available for possible
39 distribution to each synthetic fuel-producing county. The
40 amount of each county’s provisional share is derived by
41 dividing the share computation base by the number of synthetic
42 fuel-producing counties in this state during the fiscal year. The
43 share computation base is the sum of: (A) Net revenues
44 deposited in the synthetic fuel-producing counties grant fund
45 for the fiscal year; and (B) any amounts repooled for the fiscal

46 year into the synthetic fuel-producing counties grant fund under
47 this section; less (C) the amount dedicated and allotted to the
48 director of the development office under this section for
49 administration of the synthetic fuel-producing counties grant
50 program. A county shall be counted as a synthetic fuel-producing
51 county only if a synthetic fuel-manufacturing plant actively
52 produced synthetic fuel in the county for at least one hundred
53 eighty days during the fiscal year.

54 (6) "Synthetic fuel manufactured or produced from coal" or
55 "synthetic fuel" means and includes, but is not limited to, any
56 fuel that is made or formed into a briquette, fragment, sheet,
57 flake or other solid form by combining a binder or binding
58 substance with coal dust, coal fines, crushed coal, pulverized
59 coal, stoker fines, waste coal, coal or material derived from
60 slurry ponds, coal or material derived from gob piles or any
61 combination of the aforementioned materials without regard to
62 whether any federal tax credit is, or would have been, available
63 for or with relation to the production of such fuel. The term
64 "synthetic fuel manufactured or produced from coal" or
65 "synthetic fuel" also means, but is not limited to, fuel manufac-
66 tured or produced from coal for which credit is allowable for
67 federal income tax purposes under section twenty-nine of the
68 United States Internal Revenue Code, as in effect on the first
69 day of January, two thousand one, or for which credit would
70 have been allowable if the synthetic fuel was produced from a
71 facility, or expansion of a facility, that meets the requirement of
72 section twenty-nine of the Internal Revenue Code or would
73 have met the requirements on the first day of January, two
74 thousand one, notwithstanding that such facility or expansion
75 of a facility may have been placed in service either prior to or
76 subsequent to the first day of January, two thousand one.
77 "Synthetic fuel" does not include coke or coke gas.

78 (7) "Synthetic fuel-producing county" means a county of
79 this state in which a synthetic fuel-manufacturing plant is

80 physically located that actively produces synthetic fuel for at
81 least one hundred eighty days during the fiscal year. For
82 purposes of determining whether a county is a synthetic fuel-
83 producing county, the location of the synthetic fuel-manufactur-
84 ing company headquarters, the state of incorporation or
85 organization of the company or the location of any managerial
86 office or facility or other office or facility of the company, other
87 than the synthetic fuel-manufacturing plant, and the physical
88 location where the coal or other material used in synthetic fuel
89 manufacturing is extracted from the earth shall not be determi-
90 native of the designation of a county as a synthetic fuel-
91 producing county.

92 (8) “Synthetic fuel-nonproducing county” means any
93 county of this state other than a synthetic fuel-producing
94 county.

95 (9) “Ton” means two thousand pounds.

96 (10) “Director of the development office” or “director”
97 means the director of the West Virginia development office
98 created and continued under article two, chapter five-b of this
99 code.

100 (c) *Credits not allowed against tax.* — When determining
101 the amount of tax due under this section, no credit shall be
102 allowed under section three-c or three-d of this article or under
103 any other article of this chapter or any other chapter of this code
104 unless it is expressly provided that the credit applies to the
105 business and occupation tax on the privilege of manufacturing
106 or producing synthetic fuel.

107 (d) *Emergency rule authorized.* — The tax commissioner
108 may, in the commissioner’s discretion, promulgate an emer-
109 gency rule as provided in article three, chapter twenty-nine-a of
110 this code that clarifies, explains or implements the provisions
111 of this section.

112 (e) *Dedication and distribution of proceeds, creation of*
113 *funds.* --

114 (1) The first four million dollars of the net amount of tax
115 collected during each fiscal year for exercise of the privilege
116 taxed under this section shall be deposited into the "Mining and
117 Reclamation Operations Fund" created in the state treasury by
118 section thirty-two, article three, chapter twenty-two of this
119 code.

120 (2) There is hereby created a fund in the state treasury
121 entitled the "synthetic fuel-producing counties grant fund"
122 which shall be a revolving fund that shall carry over each fiscal
123 year. The net amount of tax collected for exercise of the
124 privilege taxed under this section in excess of the first four
125 million dollars during each fiscal year, not to exceed two
126 million sixty thousand dollars, shall be deposited in the
127 synthetic fuel-producing counties grant fund. Moneys in the
128 synthetic fuel-producing counties grant fund in excess of
129 moneys allocated to the director of the development office shall
130 be dedicated to and distributed among the synthetic fuel-
131 producing counties under the synthetic fuel-producing counties
132 grant program as provided in this section. The county commis-
133 sion of a synthetic fuel-producing county shall use ninety
134 percent of the funds distributed to the county out of the syn-
135 thetic fuel-producing counties grant fund for infrastructure
136 improvement and ten percent of the funds distributed to the
137 county out of the synthetic fuel-producing counties grant fund
138 for economic development.

139 (3) There is hereby created in the state treasury a fund
140 entitled the "synthetic fuel-nonproducing counties fund" which
141 shall be a revolving fund that shall carry over each fiscal year.
142 The net amount of tax collected for exercise of the privilege
143 taxed under this section in excess of the first six million sixty
144 thousand dollars during each fiscal year, not to exceed two

145 million dollars, shall be deposited in the synthetic fuel-
146 nonproducing counties fund and equally divided and distributed
147 among the synthetic fuel-nonproducing counties. The county
148 commission of a synthetic fuel-nonproducing county shall first
149 use such moneys for regional jail and correctional authority and
150 county jail expenses, and shall use any remainder for such
151 lawful public purposes as the county commission may pre-
152 scribe.

153 (4) The net amount of the tax collected in excess of eight
154 million sixty thousand dollars during each fiscal year shall be
155 dedicated to the general revenue fund.

156 (5) The office of chief inspector shall annually determine
157 that a county's expenditures of moneys distributed under this
158 section is in compliance with the requirements of this section.

159 (6) For purposes of this subsection, "net amount of tax
160 collected" means the gross amount of tax collected under this
161 section less allowed refunds and credits.

162 (f) *Administration of the synthetic fuel-producing counties*
163 *grant program.* —

164 (1) The director of the development office is hereby
165 authorized and empowered to administer the distribution of
166 moneys in the synthetic fuel-producing counties grant fund.

167 (A) On or before the plan submission due date prescribed
168 by the director of the development office, the county commis-
169 sion of each synthetic fuel-producing county may annually, or
170 with such frequency as may be prescribed by the director of the
171 development office, submit a plan to the director of the devel-
172 opment office for use of the county's provisional share of the
173 synthetic fuel-producing counties grant fund.

174 (B) A grant of moneys out of the synthetic fuel-producing
175 counties grant fund shall only be distributed to a synthetic fuel-
176 producing county or encumbered for the use of a synthetic fuel-
177 producing county after approval by the director of the develop-
178 ment office of the plan for use of the county's provisional share
179 of the fund, submitted to the director of the development office
180 by the county commission. The director of the development
181 office shall approve the synthetic fuel-producing county's plan
182 for use if the plan for use reasonably conforms to the require-
183 ments of this section and the rules promulgated with relation
184 thereto.

185 (C) If the county's plan is approved, the director of the
186 development office may authorize a grant of money out of the
187 synthetic fuel-producing counties grant fund to the county to be
188 used by the county as specified in the approved plan for use.

189 (D) The director of the development office may authorize
190 distribution of any amount encumbered for the use of the
191 county and carried over from a prior period in accordance with
192 applicable plans for use previously approved.

193 (E) The director of the development office may authorize
194 encumbrances for any synthetic fuel-producing county of
195 moneys in the synthetic fuel-producing counties grant fund, up
196 to the amount of the county's provisional share for the fiscal
197 year, for one or more qualified uses specified in the county's
198 plan for use if the county's approved plan for use of the moneys
199 sets forth a qualified use for the county's provisional share over
200 a period of several fiscal years or a qualified use of the moneys
201 calling for accumulation and distribution to the county in one
202 or more subsequent fiscal years. Encumbered funds may carry
203 over to succeeding fiscal years and may be used to accumulate
204 reserves over a period of time for use by the county.

205 (F) In no case may an amount distributed to a synthetic
206 fuel-producing county exceed the amount of a county's
207 provisional share for the fiscal year plus the amount of moneys
208 encumbered in the fund for the use of the particular county and
209 carried over from a prior period.

210 (2) The director of the development office may approve
211 distributions of a county's provisional share of the synthetic
212 fuel-producing counties grant fund for use as the county's share
213 for state or federal matching funds programs so long as, in the
214 aggregate, ninety percent of the funds distributed to the county
215 out of the synthetic fuel-producing counties grant fund are used
216 for infrastructure improvement and ten percent of the funds
217 distributed to the county out of the synthetic fuel-producing
218 counties grant fund are used for economic development:
219 *Provided*, That no county may use any amount distributed out
220 of the synthetic fuel-producing counties grant fund as money to
221 be matched under the funds matching program authorized by
222 subsection (b), section three, article two, chapter five-b of this
223 code.

224 (3) *Repooling.* --

225 (A) Any synthetic fuel-producing county that has failed to
226 have its plan, or amended and resubmitted plan or plans,
227 approved by the director of the development office for a period
228 of eighteen months immediately subsequent to the initial plan
229 submission date shall lose its entitlement to the provisional
230 share of revenues deposited in the fund and attributable to the
231 fiscal year to which that plan relates and the provisional share
232 that would have been attributable to that county for that fiscal
233 year shall be pooled with all other receipts in the synthetic fuel-
234 producing counties grant fund attributable to revenues for the
235 fiscal year during which the eighteen-month period ends and
236 shall then be reallocated equally to all synthetic fuel-producing
237 counties as part of the provisional share of each, as if the

238 repooled moneys were tax revenues deposited into the fund
239 during the fiscal year in which the eighteen-month period
240 ended. For purposes of this subsection, the “initial plan submis-
241 sion date” means the earlier of: (i) The required submission
242 date, as prescribed by the director of the development office, for
243 the initial plan for use of the county’s provisional share of the
244 synthetic fuel-producing counties grant fund for the fiscal year,
245 with such extensions of time to file as may be authorized under
246 rules promulgated by the director of the development office; or
247 (ii) the actual date of submission of the initial plan for the fiscal
248 year. For purposes of this subsection, the term “initial plan”
249 means the first plan for use that was submitted, or that should
250 have been submitted, by a county for the fiscal year, before the
251 submission of any amended, revised or resubmitted plan by the
252 county for that fiscal year.

253 (B) Any synthetic fuel-producing county which fails to
254 timely submit a plan for use of its provisional share of the
255 synthetic fuel-producing counties grant fund, with such
256 extensions of time to file as may be authorized under rules
257 promulgated by the director of the development office, shall
258 lose its entitlement to its provisional share of revenues depos-
259 ited in the fund and attributable to that fiscal year and the
260 provisional share that would have been attributable to that
261 county for that year shall be pooled with all other receipts in the
262 synthetic fuel-producing counties grant fund attributable to
263 revenues for the fiscal year and shall be reallocated equally
264 among the remaining synthetic fuel-producing counties other
265 than the county or counties that have failed to timely file the
266 plan for use and shall be made available for distribution to those
267 remaining counties, as part of their provisional share for the
268 fiscal year.

269 (C) Funds encumbered pursuant to approval of the director
270 of the development office under this subsection shall not be
271 subject to repooling: *Provided*, That if the director of the

272 development office determines that moneys previously distrib-
273 uted to a county out of the synthetic fuel-producing counties
274 grant fund have not been used as required under the approved
275 plan for the county or determines that previously distributed
276 moneys derived from encumbered funds have not been used for
277 the qualified purpose for which the encumbrance was originally
278 approved or if there appears to be a reasonable probability that
279 encumbered funds will not be used for that qualified purpose,
280 the director of the development office may revoke the encum-
281 brance of any funds of that synthetic fuel-producing county
282 remaining in the fund and repool the funds so encumbered for
283 reallocation to all synthetic fuel-producing counties. The
284 director of the development office may, in the director's
285 discretion, give the county an opportunity to cure the
286 nonqualified use of moneys derived from the synthetic fuel-
287 producing counties grant fund or to submit an alternative plan
288 for use of the encumbered funds which may be approved by the
289 director if that plan complies with the requirements of this
290 section.

291 (g) *Promulgation of rules by the director of the develop-*
292 *ment office authorized.* — The director of the development
293 office, in his or her discretion, may promulgate an emergency
294 rule as provided in article three, chapter twenty-nine-a of this
295 code that clarifies, explains or implements the synthetic fuel-
296 producing counties grant program, distribution of moneys out
297 of or encumbrance of moneys in the synthetic fuel-producing
298 counties grant fund. The director of the development office is
299 hereby granted continuing authority to promulgate in accor-
300 dance with article three, chapter twenty-nine-a of this code such
301 interpretive, legislative or procedural rules, or any combination
302 thereof, for administration of the synthetic fuel-producing
303 counties grant program as the director of the development
304 office may find necessary and appropriate. The director of the
305 development office may prescribe criteria for qualification

306 under the infrastructure improvement use requirement and the
307 economic development requirement of this section.

308 (h) There is hereby dedicated and allocated to the West
309 Virginia development office sixty thousand dollars annually for
310 administration of the synthetic fuel-producing counties grant
311 program under this section. Sixty thousand dollars shall be paid
312 out of the synthetic fuel-producing counties grant fund to the
313 director of the development office each fiscal year for adminis-
314 tration of the synthetic fuel-producing counties grant program.

315 (i) *Effective date.* --

316 (1) This section as enacted in the year two thousand took
317 effect upon enactment. The measure of tax shall include all
318 synthetic fuel sold or shipped after the first day of January, two
319 thousand one, regardless of when the synthetic fuel was
320 manufactured or produced in this state.

321 (2) Amendments to this section enacted during the fifth
322 extraordinary session of the Legislature in the year two thou-
323 sand one shall have retroactive effect to the first day of January,
324 two thousand one, and the measure of tax shall include all
325 synthetic fuel sold or shipped after the first day of January, two
326 thousand one, regardless of when the synthetic fuel was
327 manufactured or produced in this state.

328 (j) *Expiration date.* — The tax imposed in this section shall
329 expire and become void and of no effect for synthetic fuels
330 produced after the thirtieth day of June, two thousand seven.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

1 (a) The Legislature hereby finds and declares the following:

2 (1) That some mining operations in this state process coal
3 to create a saleable clean coal product.

4 (2) That the by-product, waste or residue created from
5 processing coal is commonly deposited in what are known as
6 refuse or gob piles.

7 (3) That, as a result of technological developments and
8 other factors, the material contained in some refuse or gob piles
9 located in this state can be recovered and further processed to
10 produce saleable clean coal.

11 (4) That, under the existing laws of this state, coal produced
12 from processing material contained in refuse, gob piles, slurry
13 ponds, pond fines or other sources of waste coal would be
14 subject to the annual privilege tax imposed on the severance of
15 coal pursuant to section three of this article and the minimum
16 severance tax imposed by section three, article twelve-b of this
17 chapter.

18 Based on the foregoing findings, the Legislature concludes
19 that an incentive to extracting and recovering material con-
20 tained in refuse, gob piles and other sources of waste coal
21 located in this state and subsequently processing, washing and
22 preparing this material to produce coal should be implemented
23 to encourage the production of this coal from refuse or gob
24 piles located in this state.

25 (b) *Imposition of tax.* -- In lieu of: (i) The annual privilege
26 tax imposed on the severance of coal imposed by section three
27 of this article; (ii) the additional tax on severance, extraction
28 and production of coal imposed by section six of this article;
29 and (iii) the minimum severance tax imposed by section three,
30 article twelve-b of this chapter for the privilege of engaging or
31 continuing within this state in the business of extracting and
32 recovering material from a refuse, gob pile or other sources of
33 waste coal and subsequently processing, washing and preparing

34 this extracted or recovered material to produce coal for sale,
35 profit or commercial use, there is hereby levied and shall be
36 collected from every person exercising that privilege an annual
37 privilege tax.

38 (c) *Rate and measure of tax.* -- The tax imposed in subsec-
39 tion (b) of this section shall be two and one-half percent of the
40 gross value of the coal so produced, as shown by the gross
41 proceeds derived from the sale thereof by the producer, except
42 as otherwise provided in this article.

43 (d) *Tax in addition to other taxes.* -- The tax imposed by
44 this section applies to all persons extracting and recovering
45 material from refuse, gob piles or other sources of waste coal
46 located in this state and subsequently processing, washing and
47 preparing this extracted and recovered material to produce coal
48 for sale, profit or commercial use and shall be in addition to all
49 other taxes imposed by law: *Provided*, That the tax imposed by
50 this section is in lieu of the tax imposed by sections three and
51 six of this article and section three, article twelve-b of this
52 chapter.

53 (e) *Exemption.* -- The tax imposed in subsection (b) of this
54 section shall not apply to any electrical power cogeneration
55 plant burning material from its wholly owned refuse or gob
56 pile.

57 (f) *Dedication of taxes collected, creation of fund.* --

58 (1) There is hereby created in the state treasury a fund
59 entitled the "waste coal-producing counties fund" which shall
60 be a revolving fund that shall carry over each fiscal year. The
61 taxes collected under the provisions of this section shall be
62 deposited in the waste coal-producing counties fund and are
63 hereby dedicated to the county commissions of the counties in
64 which the refuse, gob piles or other sources of waste coal are
65 located, from which taxable waste coal production has occurred

66 during the year, for use in economic development and infra-
67 structure improvements: *Provided*, That the county shall use
68 ninety percent of the funds for infrastructure improvement and
69 ten percent of the funds for economic development.

70 (2) Moneys in the waste coal-producing counties fund shall
71 be distributed by the state treasurer annually to the counties in
72 which the refuse, gob piles or other sources of waste coal are
73 located, from which taxable waste coal production has occurred
74 during the year, in an amount prorated to the number of tons of
75 taxable waste coal produced in each such county during the
76 preceding year. The distribution shall be paid separate from any
77 other payment of moneys to the county by the treasurer. For
78 purposes of this subdivision, the term "ton" means two thou-
79 sand pounds.

80 (3) The office of chief inspector shall annually determine
81 that counties' expenditures of moneys distributed under this
82 section is in compliance with the requirements of this section.

CHAPTER 12

(H. B. 507 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

AN ACT to amend article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to authorizing the tourism commission use of the tourism promotion fund to support the 2001 World Rafting Champion-

ships in Fayette, Nicholas and Raleigh counties which will be held in the month of September, two thousand one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12a. Tourism fund support of 2001 World Rafting Championships in Fayette, Nicholas and Raleigh counties.

1 Notwithstanding the provisions of section twelve of this
2 article, the tourism commission may expend moneys from the
3 tourism promotion fund in the amount necessary and up to but
4 not exceeding four hundred thousand dollars to support the
5 2001 World Rafting Championships in Fayette, Nicholas and
6 Raleigh counties which will be held in the month of September,
7 two thousand one. Any requirements for matching grants under
8 the rules promulgated pursuant to section twelve of this article
9 shall not apply to this section.

10 The provisions of this section shall expire on the thirty-first
11 day of December, two thousand one.

LEGISLATURE OF WEST VIRGINIA

ACTS

SIXTH EXTRAORDINARY SESSION, 2001

CHAPTER 1

**(H. B. 609 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed October 22, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 8736, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8736, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by one million seventy-seven thousand one hundred thirty dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6 Appropriations of federal funds.

3 EXECUTIVE

4 259—*Department of Agriculture*

5 (WV Code Chapter 19)

6 Fund 8736 FY 2002 Org 1400

7		Act-	Federal
8		ivity	Funds
9	1	Unclassified - Total	096 \$ 1,077,130

10 The purpose of this supplementary appropriation bill is to
 11 supplement this account in the budget act for the fiscal year
 12 ending the thirtieth day of June, two thousand two, by increas-
 13 ing the existing appropriation for unclassified - total by one
 14 million seventy-seven thousand one hundred thirty dollars for
 15 expenditure during fiscal year two thousand two.



CHAPTER 2

**(H. B. 610 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed October 22, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the division of natural resources, fund 8707, fiscal year 2002, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8707, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by eight hundred twenty-five thousand dollars as follows:

- 1 **TITLE II — APPROPRIATIONS.**
- 2 **Sec. 6 Appropriations of federal funds.**
- 3 **BUREAU OF COMMERCE**

4

293—Division of Natural Resources

5

(WV Code Chapter 20)

6

Fund 8707 FY 2002 Org 0310

7

Act-

Federal

8

ivity

Funds

9

1 Unclassified - Total

096

\$ 825,000

10

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified - total by eight hundred twenty-five thousand dollars for expenditure during fiscal year two thousand two.



CHAPTER 3

**(H. B. 611 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**



[Passed October 22, 2001; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the division of forestry, fund 8703, fiscal year 2002, organization 0305, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8703, fiscal year 2002, organization 0305, be supplemented and amended by increasing the total appropriation by one hundred thirty-two thousand dollars as follows:

1	TITLE II — APPROPRIATIONS.		
2	Sec. 6 Appropriations of federal funds.		
3	BUREAU OF COMMERCE		
4	<i>289—Division of Forestry</i>		
5	(WV Code Chapter 19)		
6	Fund <u>8703</u> FY <u>2002</u> Org <u>0305</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified - Total	096 \$ 132,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for the fiscal year
12 ending the thirtieth day of June, two thousand two, by increas-
13 ing the existing appropriation for unclassified - total by one
14 hundred thirty-two thousand dollars for expenditure during
15 fiscal year two thousand two.

CHAPTER 4

**(H. B. 612 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of commerce, West Virginia development office, fund 8705, fiscal year 2002, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8705, fiscal year 2002, organization 0307, be supplemented and amended to read as follows:

- 1 **TITLE II — APPROPRIATIONS.**
- 2 **Sec. 6 Appropriations of federal funds.**
- 3 **BUREAU OF COMMERCE**
- 4 *291—West Virginia Development Office*

5

(WV Code Chapter 5B)

6

Fund 8705 FY 2002 Org 0307

7

Act-**Federal**

8

ivity**Funds**

9

1

Unclassified

099

\$ 7,304,130

10

2

Governor's Workforce Investment

11

Office

499

10,031,000

12

Total

\$ 17,335,130

13

14

15

16

17

18

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by creating a new item of appropriation in the amount of ten million thirty-one thousand dollars for expenditure during fiscal year two thousand two.

CHAPTER 5

**(H. B. 613 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed October 22, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of military affairs and public safety, West Virginia state police, fund 8741, fiscal year 2002, organization 0612, all supplementing and amending the appropri-

ation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8741, fiscal year 2002, organization 0612, be supplemented and amended by increasing the total appropriation by one hundred fifty-one thousand six hundred forty-eight dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6 Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 281—*West Virginia State Police*

6 (WV Code Chapter 15)

7 Fund 8741 FY 2002 Org 0612

8	9	10	1	Unclassified - Total	Act- ivity	Federal Funds
					096	\$ 151,648

11 The purpose of this supplementary appropriation bill is to
 12 supplement this account in the budget act for the fiscal year
 13 ending the thirtieth day of June, two thousand two, by increas-
 14 ing the existing appropriation for unclassified - total by one
 15 hundred fifty-one thousand six hundred forty-eight dollars for
 16 expenditure during fiscal year two thousand two.

CHAPTER 6

**(H. B. 614 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the division of protective services, fund 0585, fiscal year 2002, organization 0622, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated October 21, 2001, setting forth therein the cash balance as of July 1, 2001; and further included the estimate of revenues for the fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0585, fiscal year 2002, organization 0622, be amended and increased in the line items as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 68—*Division of Protective Services*

6 (WV Code Chapter 15)

7 Fund 0585 FY 2002 Org 0622

8 9 10		Act- ivity	General Revenue Funds
11	1 Unclassified	099	\$ 818,960

12 The purpose of this supplementary appropriation bill is to
13 supplement this account in the budget act for the fiscal year
14 ending the thirtieth day of June, two thousand two, by increas-
15 ing the existing item of appropriation for unclassified by eight
16 hundred eighteen thousand nine hundred sixty dollars, for
17 expenditure during the fiscal year two thousand two.



CHAPTER 7

(H. B. 615 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth

day of June, two thousand two, in the amount of fifty-four thousand dollars from the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211, and in the amount of seventy-one thousand dollars from the state building commission, fund 2241, fiscal year 2002, organization 0211, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the division of protective services, fund 0585, fiscal year 2002, organization 0622.

WHEREAS, The Legislature finds that the account balances in the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211 and the state building commission, fund 2241, fiscal year 2002, organization 0211 exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211 be decreased by expiring the amount of fifty-four thousand dollars and the state building commission, fund 2241, fiscal year 2002, organization 0211, be decreased by expiring the amount of seventy-one thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0585, fiscal year 2002, organization 0622, be supplemented and amended by increasing the total appropriation by one hundred twenty-five thousand dollars as follows:

1 **TITLE II — APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **68—*Division of Protective Services***

4 **(WV Code Chapter 15)**

5 Fund 0585 FY 2002 Org 0622

6			General
7		Act-	Revenue
8		ivity	Fund

9	1	Unclassified - Surplus	097	\$ 125,000
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10 The purpose of this bill is to expire the sum of fifty-four
 11 thousand dollars from the parking lots operating fund, fund
 12 2240, fiscal year 2002, organization 0211 and seventy-one
 13 thousand dollars from the state building commission, fund
 14 2241, fiscal year 2002, organization 0211, and to supplement
 15 the division of protective services, fund 0585, fiscal year 2002,
 16 organization 0622, in the budget act for the fiscal year ending
 17 the thirtieth day of June, two thousand two, by adding one
 18 hundred twenty-five thousand dollars to the appropriation for
 19 unclassified - surplus for expenditure during the fiscal year two
 20 thousand two.



CHAPTER 8

**(H. B. 618 — By Delegates Michael, Doyle, Leach, Mezzatesta,
 Warner, Boggs and Stalnaker)**

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to a new fund in the department of adminis-
 tration - board of risk and insurance management — medical
 liability fund, fund 2368, fiscal year 2002, organization 0218, for
 the fiscal year ending the thirtieth day of June, two thousand two,
 in the amount of five hundred thousand dollars from the depart-

ment of administration — board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand
3 two, to the department of administration — board of risk and
4 insurance management — premium tax savings fund, fund
5 2367, fiscal year 2002, organization 0218, be decreased by
6 expiring the amount of five hundred thousand dollars to a new
7 fund, department of administration — board of risk and
8 insurance management — medical liability fund, fund 2368,
9 fiscal year 2002, organization 0218, during the fiscal year two
10 thousand two.

11 The purpose of this bill is to expire the sum of five hundred
12 thousand dollars from the board of risk and insurance manage-
13 ment — premium tax savings fund, fund 2367, fiscal year 2002,
14 organization 0218, to a new fund, in the department of adminis-
15 tration — board of risk and insurance management — medical
16 liability fund, fund 2368, fiscal year 2002, organization 0218,
17 for the fiscal year ending the thirtieth day of June, two thousand
18 two, to be available for expenditure during the fiscal year two
19 thousand two.

CHAPTER 9

(S. B. 6016 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, in the department of tax and revenue, racing commission - general administration, fund 7305, fiscal year 2002, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue, racing commission - general administration, fund 7305, fiscal year 2002, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, fund 7305, fiscal year 2002, organization 0707, be supplemented and amended by increasing the total appropriation by fifty-seven thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF TAX AND REVENUE**

4 *174—Racing Commission—*

5 *General Administration*

6 (WV Code Chapter 19)

7 Fund 7305 FY 2002 Org 0707

8			Act-	Other
9			ivity	Funds
10	1	Personal Services	001	\$ 50,000
11	3	Employee Benefits	010	7,000

12 The purpose of this supplementary appropriation bill is to
13 supplement this fund in the budget act for the fiscal year ending
14 the thirtieth day of June, two thousand two, by adding fifty
15 thousand dollars to the existing appropriation for personal
16 services and seven thousand dollars to the existing appropria-
17 tion for employee benefits for expenditure during the fiscal year
18 two thousand two.



CHAPTER 10

**(S. B. 6017 — By Senators Craigo, Anderson, Bailey, Boley, Bowman,
Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale,
Prezioso, Sharpe, Sprouse and Unger)**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining

unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of military affairs and public safety, office of emergency services, fund 8727, fiscal year 2002, organization 0606, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8727, fiscal year 2002, organization 0606, be supplemented and amended by increasing the total appropriation by seventy-six thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6 Appropriations of federal funds.**

3 **DEPARTMENT OF MILITARY AFFAIRS**
4 **AND PUBLIC SAFETY**

5 *279—Office of Emergency Services*

6 (WV Code Chapter 15)

7 Fund 8727 FY 2002 Org 0606

8	9		Act- ivity	Federal Funds
10	1	Unclassified - Total	096	\$ 76,000

11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for the fiscal year
13 ending the thirtieth day of June, two thousand two, by increasing
14 the existing appropriation for unclassified - total by seventy-six
15 thousand dollars for expenditure during the fiscal year two
16 thousand two.

CHAPTER 11

**(S. B. 6018 — By Senators Craigo, Anderson, Bailey, Boley, Bowman,
Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale,
Prezioso, Sharpe, Sprouse and Unger)**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the department of tax and revenue, lottery commission, revenue and transfers fund, fund 7202, organization 0705, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one hundred three thousand eight hundred four dollars and forty-one cents from the department 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 - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, and making a supplementary appropriation of lottery net profits from the balance of moneys remaining as an unappropriated balance in lottery net profits to the higher education policy commission - lottery education - higher education policy commission - control account, fund 4925, fiscal year 2002, organization 0441, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The Legislature finds that the account balance in the department 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 - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, exceeds that which is necessary for the purpose for which the account was established; and

WHEREAS, By the provisions of this legislation, there now remains an unappropriated balance in lottery net profits which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department 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 - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, be decreased by expiring the amount of one hundred three thousand eight hundred four dollars and forty-one cents to the department of tax and revenue, lottery commission, revenue and transfers fund, fund 7202, fiscal year 2002, organization 0705, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 4925, fiscal year 2002, organization 0441, be supplemented and amended by increasing the total appropriation by one hundred three thousand eight hundred four dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 4. Appropriations from lottery net profits.**
- 3 *247—Higher Education Policy Commission—*
- 4 *Lottery Education—*

5 *Higher Education Policy Commission—*

6 *Control Account*

7 (WV Code Chapters 18B and 18C)

8 Fund 4925 FY 2002 Org 0441

9 10		Act- ivity	Lottery Funds
11	15 HEAPS Grant Program	867	\$ 103,804

12 The purpose of this bill is to expire the sum of one hundred
13 three thousand eight hundred four dollars and forty-one cents
14 from the department of education and the arts - board of
15 trustees of the university system of West Virginia and board of
16 directors of the state college system - central office - control
17 account - lottery education fund, fund 4057, fiscal year 2001,
18 organization 0452, activity 867, to the balance of the depart-
19 ment of tax and revenue, lottery commission - revenue and
20 transfers fund, fund 7202, organization 0705, for the fiscal year
21 ending the thirtieth day of June, two thousand two, to be
22 available for expenditure during the fiscal year two thousand
23 two, and to supplement the higher education policy commission
24 - lottery education - higher education policy commission -
25 control account, fund 4925, fiscal year 2002, organization 0441,
26 in the budget act for the fiscal year ending the thirtieth day of
27 June, two thousand two, by increasing the existing appropria-
28 tion for HEAPS Grant Program by one hundred three thousand
29 eight hundred four dollars for expenditure during fiscal year
30 two thousand two.

CHAPTER 12

(S. B. 6019 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - division of environmental protection - special reclamation fund, fund 3321, fiscal year 2002, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of environment - division of environmental protection - special reclamation fund, fund 3321, fiscal year 2002, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3321, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by nine million five hundred ninety-six thousand seven hundred nine dollars in the line items as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3

BUREAU OF ENVIRONMENT

4

205—Division of Environmental Protection—

5

Special Reclamation Fund

6

(WV Code Chapter 22A)

7

Fund 3321 FY 2002 Org 0313

8

Act-**Other**

9

ivity**Funds**

10	1	Personal Services	001	\$ 525,612
11	3	Employee Benefits	010	162,939
12	4	Unclassified	099	8,908,158

13 The purpose of this supplementary appropriation bill is to
 14 supplement this fund in the budget act for the fiscal year ending
 15 the thirtieth day of June, two thousand two, by increasing the
 16 existing appropriation for personal services by five hundred
 17 twenty-five thousand six hundred twelve dollars, employee
 18 benefits by one hundred sixty-two thousand nine hundred
 19 thirty-nine dollars and unclassified by eight million nine
 20 hundred eight thousand one hundred fifty-eight dollars for
 21 expenditure during the fiscal year two thousand two for the
 22 reclamation of bond forfeited permits and water treatment costs.

CHAPTER 13

**(S. B. 6020 — By Senators Craig, Anderson, Bailey, Boley, Bowman,
 Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale,
 Prezioso, Sharpe, Sprouse and Unger)**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - solid waste management board, fund 3288, fiscal year 2002, organization 0312, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of environment - solid waste management board, fund 3288, fiscal year 2002, organization 0312, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3288, fiscal year 2002, organization 0312, be supplemented and amended by increasing the total appropriation by four hundred eighty thousand dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	BUREAU OF ENVIRONMENT		
4	<i>204—Solid Waste Management Board</i>		
5	(WV Code Chapter 20)		
6	Fund <u>3288</u> FY <u>2002</u> Org <u>0312</u>		
7		Act-	Other
8		ivity	Funds
9	4	Unclassified	099 \$ 480,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this fund in the budget act for the fiscal year ending
12 the thirtieth day of June, two thousand two, by increasing the
13 existing appropriation for unclassified by four hundred eighty
14 thousand dollars for expenditure during the fiscal year two
15 thousand two.

CHAPTER 14

**(S. B. 6021 — By Senators Craigo, Anderson, Bailey, Boley, Bowman,
Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale,
Prezioso, Sharpe, Sprouse and Unger)**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of environment - division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3324, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by seven million six hundred fifty-one thousand four hundred fifty-three dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF ENVIRONMENT**

4 *208—Division of Environmental Protection—*

5 *Mining and Reclamation Operations Fund*

6 (WV Code Chapter 22)

7 Fund 3324 FY 2002 Org 0313

8	9	Act-	Other
10	11	ivity	Funds
10 1	Personal Services	001	\$ 4,113,290
11 2	Annual Increment	004	37,000
12 3	Employee Benefits	010	1,294,801
13 4	Unclassified	099	2,206,362

14 The purpose of this supplementary appropriation bill is to
 15 supplement this fund in the budget act for the fiscal year ending
 16 the thirtieth day of June, two thousand two, by increasing the
 17 existing appropriation for personal services by four million one
 18 hundred thirteen thousand two hundred ninety dollars, annual
 19 increment by thirty-seven thousand dollars, employee benefits
 20 by one million two hundred ninety-four thousand eight hundred
 21 one dollars and unclassified by two million two hundred six
 22 thousand three hundred sixty-two dollars for expenditure during
 23 the fiscal year two thousand two.

CHAPTER 15

(S. B. 6022 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - division of environmental protection - solid waste reclamation and environmental response fund, fund 3332, fiscal year 2002, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of environment - division of environmental protection - solid waste reclamation and environmental response fund, fund 3332, fiscal year 2002, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3332, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by four hundred seven thousand dollars in the line items as follows:

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF ENVIRONMENT**

4 *211—Division of Environmental Protection—*

5 *Solid Waste Reclamation and Environmental Response Fund*

6 (WV Code Chapter 20)

7 Fund 3332 FY 2002 Org 0313

8			Act-	Other
9			ivity	Funds
10	1	Personal Services	001	\$ 46,080
11	2	Employee Benefits	010	13,920
12	4	Unclassified	099	347,000

13 The purpose of this supplementary appropriation bill is to
14 supplement this fund in the budget act for the fiscal year ending
15 the thirtieth day of June, two thousand two, by increasing the
16 existing appropriation for personal services by forty-six
17 thousand eighty dollars, employee benefits by thirteen thousand
18 nine hundred twenty dollars and unclassified by three hundred
19 forty-seven thousand dollars for expenditure during the fiscal
20 year two thousand two.



CHAPTER 16

**(S. B. 6023 — By Senators Craigo, Anderson, Bailey, Boley, Bowman,
Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale,
Prezioso, Sharpe, Sprouse and Unger)**

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the auditor's office - national white collar crime center, fund 8807, fiscal year 2002, organization 1200, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8807, fiscal year 2002, organization 1200, be supplemented and amended by increasing the total appropriation by four million two hundred fifty-seven thousand three hundred seventy-five dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal funds.**
- 3 **EXECUTIVE**
- 4 *258—Auditor's Office—*
- 5 *National White Collar Crime Center*
- 6 (WV Code Chapter 12)
- 7 Fund 8807 FY 2002 Org 1200

8			Act-		Federal
9			ivity		Funds
10	1	Unclassified-Total	096		\$ 4,257,375

11 The purpose of this supplementary appropriation bill is to
 12 supplement this account in the budget act for the fiscal year
 13 ending the thirtieth day of June, two thousand two, by increas-
 14 ing the existing appropriation for unclassified-total by four
 15 million two hundred fifty-seven thousand three hundred
 16 seventy-five dollars for expenditure during the fiscal year two
 17 thousand two.



CHAPTER 17

**(H. B. 608 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six-b, article fifteen, chapter thirty-one of said code; to amend and reenact section two, article twenty of said chapter; and to amend and reenact section fourteen, article three, chapter thirty-three of said code, all relating generally to the improvement, construction, acquisition, leasing and permanent financing of regional jail facilities, correctional facilities, juvenile facilities and state police facilities; authorizing the superintendent of state police to provide for facilities necessary or useful for the effective operation of the West Virginia state police; providing legislative findings and declarations; authorizing the economic development authority to

issue certain bonds; providing purposes for expenditure of bond proceeds; providing limitations on maturity dates and total amount of bonds issued; providing for allocation, priority and conditions of expenditure of bond proceeds; authorizing the economic development authority to lease certain facilities; providing definitions of certain juvenile facilities; removing certain provisions relating to the establishment, funding and administration of a debt service fund and the lien on its funding source; and providing for the transfer of certain income tax fund amounts as appropriated by the Legislature.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six-b, article fifteen, chapter thirty-one of said code be amended and reenacted; that section two, article twenty of said chapter be amended and reenacted; and that section fourteen, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

- 15. **Public Safety.**
- 31. **Corporations.**
- 33. **Insurance.**

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

- 1 (a) The standard uniform to be used by the West Virginia
- 2 state police after the effective date of this article shall be as

3 follows: Forestry green blouse with West Virginia state police
4 emblem on sleeve; black shoulder strap, one-inch black stripe
5 around sleeve, four inches from end of sleeve; forestry green
6 breeches with one-inch black stripe down the side; trousers
7 (slacks) with one-inch black stripe down the side for officers
8 and clerks regularly enlisted in the state police; forestry green
9 shirts with West Virginia state police emblem on sleeve; black
10 shoulder straps; forestry green mackinaw with West Virginia
11 state police emblem on sleeve; black shoulder straps; one-inch
12 black stripe around sleeve four inches from end of sleeve;
13 campaign hat of olive drab color; black Sam Browne belt with
14 holster; black leggings and shoes; the officer's uniform will
15 have one and one-quarter inch black stripe around the sleeve of
16 blouse and mackinaw four inches from end of sleeve
17 circumposed with one-half inch gold braid, also black collars on
18 blouse, with two silver shoulder bars for captains, one silver
19 shoulder bar for first lieutenant, one gold shoulder bar for
20 second lieutenant. For noncommissioned officers the uniform
21 blouse and shirt will have thereon black chevrons of the
22 appropriate rank.

23 (b) The superintendent shall establish the weapons and
24 enforcement equipment which shall be authorized for use by
25 members of the state police, and shall provide for periodic
26 inspection of such weapons and equipment. He shall provide for
27 the discipline of members using other than authorized weapons
28 and enforcement equipment.

29 (c) The superintendent shall provide the members of the
30 state police with suitable arms and weapons, and, when he
31 deems it necessary, with suitably equipped automobiles,
32 motorcycles, watercraft, airplanes and other means of convey-
33 ance, to be used by the West Virginia state police, the governor,
34 and other officers and executives in the discretion of the
35 governor, in times of flood, disaster and other emergencies, for
36 traffic study and control, criminal and safety work, and in other

37 matters of official business. He shall also provide the standard
38 uniforms for all members of the state police, for officers,
39 noncommissioned officers and troopers herein provided for. All
40 uniforms and all arms, weapons and other property furnished
41 the members of the state police by the state of West Virginia
42 shall be and remain the property of the state.

43 (d) The superintendent is authorized to purchase and
44 maintain on behalf of members group life insurance not to
45 exceed the amount of five thousand dollars on behalf of each
46 member.

47 (e) The superintendent is authorized to contract and furnish
48 at state police expense medical and hospital services for
49 treatment of illness or injury of a member which shall be
50 determined by the superintendent to have been incurred by such
51 member while engaged in the performance of duty and from
52 causes beyond control of such members. Notwithstanding any
53 other provision of this code, the superintendent shall have the
54 right of subrogation in any civil action or settlement brought by
55 or on behalf of a member in relation to any act by another
56 which results in the illness, injury or death of a member. To this
57 end, the superintendent is hereby authorized to initiate such an
58 action on behalf of the state police in order to recover the costs
59 incurred in providing medical and hospital services for the
60 treatment of a member resulting from injury or illness originat-
61 ing in the performance of official duties. This subsection shall
62 not affect the power of a court to apply ordinary equitable
63 defenses to the right of subrogation.

64 The superintendent is further empowered to consult with
65 the commissioner of the bureau of employment programs in an
66 effort to defray the cost of medical and hospital services. In no
67 case will the compensation rendered to health care providers for
68 medical and hospital services exceed the then current rate

69 schedule in use by the bureau of employment programs,
70 workers' compensation division.

71 Third-party reimbursements received by the superintendent
72 after the expiration of the fiscal year in which the injury, illness
73 or death occurred will be deposited to a nonexpiring special
74 revenue account. Funds deposited to this account may be used
75 solely for defraying the costs of medical or hospital services
76 rendered to any sworn members as a direct result of an illness,
77 injury or death resulting from the performance of official
78 duties.

79 (f) The superintendent shall establish and maintain local
80 headquarters at such places in West Virginia as are in his
81 judgment suitable and proper to render the West Virginia state
82 police most efficient for the purpose of preserving the peace,
83 protecting property, preventing crime, apprehending criminals
84 and carrying into effect all other provisions of this article. The
85 superintendent shall provide, by acquisition, lease or otherwise,
86 for local headquarters, for housing and quarters for the accom-
87 modation of the members of the West Virginia state police, and
88 for any other facilities necessary or useful for the effective
89 operation of the West Virginia state police, and shall provide all
90 equipment and supplies necessary for the members of the West
91 Virginia state police to perform their duties.

CHAPTER 31. CORPORATIONS.

Article

15. West Virginia Economic Development Authority.
20. West Virginia Regional Jail and Correctional Facility Authority.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6b. Special power of authority to issue bonds or notes to repay and refinance capital investment of investment management board in regional jail and correctional facility authority; authorizing issuance of bonds to finance regional jail facilities, correctional facilities, juvenile facilities and state police facilities.

1 (a) The Legislature finds and declares that the supreme
2 court of appeals has determined and ordered that the constitu-
3 tion of this state imposes a duty on behalf of the state to make
4 significant improvements in the jail and correctional facility
5 system, including the duty to make capital improvements to
6 facilities and to pay for the cost of those improvements; that
7 many of the existing facilities used by the West Virginia state
8 police, including those facilities identified in section ten, article
9 two, chapter fifteen of this code, are in need of significant
10 capital improvement or replacement, and that in some cases the
11 acquisition and construction of additional state police facilities
12 is needed; that the acquisition and construction of the capital
13 improvements identified in this subsection require that the cost
14 of the facilities be financed over time; that section fifty-one,
15 article six of the constitution prohibits the Legislature amending
16 the budget bill so as to create a deficit; that the enacting of new
17 taxes, or the diversion of revenues from other essential depart-
18 ments and functions of government, in order to support capital
19 improvements in regional jail facilities, correctional facilities,
20 juvenile facilities and state police facilities is not in the interests
21 of the people of the state represented in the Legislature, and is
22 specifically rejected by the Legislature in its exercise of its
23 legitimate constitutional powers; that there have been previ-
24 ously funded certain regional jail facilities and correctional
25 facilities through funds available for investment through the
26 West Virginia investment management board, the proceeds of

27 which have and are being used by the regional jail and correc-
28 tional facility authority to finance the cost of capital improve-
29 ments to regional jail facilities and correctional facilities, the
30 repayment of such investment being made from transfers to the
31 regional jail and correctional facility investment fund estab-
32 lished under section twenty-one, article six, chapter twelve of
33 this code, from funds on deposit in the insurance tax fund
34 established under subsection (b), section fourteen, article three,
35 chapter thirty-three of this code, such transfers undertaken in
36 the manner set forth in subsection (c), section fourteen, article
37 three, chapter thirty-three of this code; that the rate of return
38 being paid under subsection (b), section twenty-one, article six,
39 chapter twelve for the investment is subject to annual adjust-
40 ment and theretofore subject to the volatility of the financial
41 markets and it is anticipated that the rate of return paid on such
42 investment will be in excess of the interest rate that would be
43 payable with respect to bonds issued under this article to repay
44 the investment, to make the capital improvements identified in
45 this subsection, and to acquire or construct certain regional jail
46 facilities, correctional facilities, juvenile facilities and state
47 police facilities.

48 (b) To provide for: (1) The repayment of all or a portion of
49 the investment; (2) the financing of capital improvements to
50 regional jail facilities, correctional facilities, juvenile facilities
51 and state police facilities; (3) the financing of the acquisition of
52 certain existing regional jail facilities, correctional facilities,
53 juvenile facilities and state police facilities; (4) the financing of
54 the acquisition and construction of new regional jail facilities,
55 correctional facilities, juvenile facilities and state police
56 facilities; and (5) the payment of the costs of issuance of the
57 bonds, bonds of the authority may be issued in accordance with
58 the provisions of this article. Any bonds issued pursuant to the
59 provisions of this section shall mature at a time or times not

60 exceeding twenty-five years from their respective dates. In no
61 event may the outstanding principal amount of the bonds
62 exceed a total amount that would require annual debt service
63 payments in excess of sixteen million dollars.

64 (c) (1) The proceeds from the sale of the bonds shall be
65 allocated and expended for the following purposes in the
66 following order of priority:

67 (A) For the costs of issuance of the bonds;

68 (B) For payment of the return of the investment made
69 pursuant to section twenty-one, article six, chapter twelve of
70 this code;

71 (C) For the costs of the projects included in the letter
72 submitted by the regional jail and correctional facility authority
73 to the joint committee on government and finance dated the
74 first day of April, two thousand one, pursuant to the amendment
75 and reenactment of section twenty-one, article six, chapter
76 twelve of this code in chapter sixty-six, acts of the Legislature,
77 regular session, two thousand one: *Provided*, That the letter
78 shall not be construed to prioritize any project or projects which
79 are included in the letter;

80 (D) For the costs of completion of any other capital
81 improvement projects for regional jail facilities, correctional
82 facilities or juvenile facilities that may be determined by the
83 regional jail and correctional facility authority, subject to the
84 provisions of subdivision (2) of this subsection. Prior to the
85 expenditure of any funds for these additional projects, the
86 regional jail and correctional facility authority shall certify to
87 the joint committee on government and finance a separate list
88 of the additional projects to be funded from the bond proceeds.
89 This certified list may not thereafter be altered or amended
90 other than by legislative enactment; and

91 (E) For the costs of capital improvements to or the acquisi-
92 tion or construction of state police facilities: *Provided*, That no
93 proceeds of the bonds may be expended for a state police
94 facility purpose unless and until the Legislature by concurrent
95 resolution has approved the purpose and amount of each project
96 for which proceeds from the issuance of the bonds have been
97 allocated under this subsection.

98 (2) From the balance of the proceeds of the bonds remain-
99 ing after meeting the requirements of paragraphs (A) and (B),
100 subdivision (1) of this subsection, an amount not less than
101 eighty million dollars shall be allocated for expenditure for the
102 purposes set forth in paragraphs (C) and (D), subdivision (1) of
103 this subsection. In the event the regional jail and correctional
104 facility authority determines that an amount less than eighty
105 million dollars is necessary for those purposes, the difference
106 may be allocated for expenditure for the purposes and subject
107 to the conditions set forth in paragraph (E), subdivision (1) of
108 this subsection.

109 (d) The economic development authority may lease
110 facilities acquired or constructed pursuant to the provisions of
111 this section to the department of administration.

112 (e) For purposes of this section, the terms “regional jail
113 facilities”, “correctional facilities” and “juvenile facilities” have
114 the meanings set forth in section two, article twenty of this
115 chapter.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used in
2 this article:

3 (a) “Adjacent regional juvenile detention facility” means a
4 facility constructed or maintained on property owned or
5 controlled by the regional jail authority and designed: (1) For
6 the short term preadjudicatory detention of juveniles, for the
7 confinement of juveniles who are awaiting transportation to or
8 placement at another juvenile detention facility or juvenile
9 correctional facility or who are awaiting trial as an adult
10 pursuant to section ten, article five, chapter forty-nine of this
11 code; or (2) for the court-ordered, short term placement of
12 juveniles in a facility that is characterized by programmatic
13 intervention and by staff restrictions of the movements and
14 activities of juveniles placed there, that limits the juveniles’
15 access to the surrounding community and that is not character-
16 ized by construction fixtures designed to physically restrict the
17 movements and activities of juveniles.

18 (b) “Authority” or “West Virginia Regional Jail Authority”
19 means the West Virginia regional jail and correctional facility
20 authority created by this article.

21 (c) “Board” means the governing body of the authority.

22 (d) “Bonds” means bonds of the authority issued under this
23 article.

24 (e) “Cost of construction or renovation of a local jail
25 facility, regional jail facility or juvenile facility” means the cost
26 of all lands, water areas, property rights and easements,
27 financing charges, interest prior to and during construction and
28 for a period not exceeding six months following the completion
29 of construction, equipment, engineering and legal services,
30 plans, specifications and surveys, estimates of costs and other
31 expenses necessary or incidental to determining the feasibility
32 or practicability of any project, together with any other ex-
33 penses necessary or incidental to the financing and the con-

34 construction or renovation of the facilities and the placing of the
35 facilities in operation.

36 (f) "County" means any county of this state.

37 (g) "Federal agency" means the United States of America
38 and any department, corporation, agency or instrumentality
39 created, designated or established by the United States of
40 America.

41 (h) "Fund" or "funds" means a regional jail and correctional
42 facility authority fund provided in section ten of this article,
43 including those accounts that may be established by the
44 authority for accurate accounting of the expenditure of public
45 funds by that agency.

46 (i) "Government" means state and federal government, and
47 any political subdivision, agency or instrumentality of the state
48 or federal government, corporate or otherwise.

49 (j) "Inmate" means any adult person properly committed to
50 a local or regional jail facility or a correctional facility.

51 (k) "Local jail facility" means any county facility for the
52 confinement, custody, supervision or control of adult persons
53 convicted of misdemeanors, awaiting trial or awaiting transpor-
54 tation to a state correctional facility.

55 (l) "Municipality" means any city, town or village in this
56 state.

57 (m) "Notes" means any notes as defined in section one
58 hundred four, article three, chapter forty-six of this code issued
59 under this article by the authority.

60 (n) "Correctional facility" means any correctional facility,
61 penitentiary or other correctional institution operated by the
62 division of corrections for the incarceration of adults.

63 (o) "Regional jail facility" or "regional jail" means any
64 facility operated by the authority and used jointly by two or
65 more counties for the confinement, custody, supervision or
66 control of adult persons convicted of misdemeanors or awaiting
67 trial or awaiting transportation to a state correctional facility.

68 (p) "Revenues" means all fees, charges, moneys, profits,
69 payments of principal of, or interest on, loans and other
70 investments, grants, contributions and all other income received
71 by the authority.

72 (q) "Security interest" means an interest in the loan
73 portfolio of the authority which is secured by an underlying
74 loan or loans and is evidenced by a note issued by the authority.

75 (r) "Work farm" has the same meaning as that term is used
76 in section twelve, article eight, chapter seven of this code
77 authorizing work farms for individual counties.

78 (s) "Juvenile detention facility" or "juvenile detention
79 center" means a facility operated by the division of juvenile
80 services: (1) For the short term preadjudicatory detention of
81 juveniles, for the confinement of juveniles who are awaiting
82 transportation to or placement at another juvenile detention
83 facility or juvenile correctional facility or who are awaiting trial
84 as an adult pursuant to section ten, article five, chapter forty-
85 nine of this code; or (2) for the court-ordered, short term
86 placement of juveniles in a facility that is characterized by
87 programmatic intervention and by staff restrictions of the
88 movements and activities of juveniles placed there, that limits
89 the juveniles' access to the surrounding community and that is
90 not characterized by construction fixtures designed to physi-
91 cally restrict the movements and activities of juveniles.

92 (t) "Juvenile correctional facility" means a facility operated
93 by the division of juvenile services: (1) For the

94 postdispositional confinement of juveniles adjudicated of
95 offenses that would be criminal offenses if committed by an
96 adult; or (2) for the court-ordered placement of juveniles in a
97 facility that is characterized by programmatic intervention and
98 by staff restrictions of the movements and activities of juveniles
99 placed there, that limits the juveniles' access to the surrounding
100 community and that is not characterized by construction
101 fixtures designed to physically restrict the movements and
102 activities of juveniles.

103 (u) "Juvenile facility" means an adjacent regional juvenile
104 detention facility, a juvenile detention facility, a juvenile
105 detention center or a juvenile correctional facility.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

1 (a) Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day of
3 March, each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the commis-
5 sioner. The insurer shall also, on or before the first day of
6 March of each year subject to the provisions of section
7 fourteen-c of this article, under the oath of its president or
8 secretary, make a premium tax return for the previous calendar
9 year, on a form prescribed by the commissioner showing the
10 gross amount of direct premiums, whether designated as a
11 premium or by some other name, collected and received by it
12 during the previous calendar year on policies covering risks
13 resident, located or to be performed in this state and compute
14 the amount of premium tax chargeable to it in accordance with
15 the provisions of this article, deducting the amount of quarterly

16 payments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium, and also
22 includes any additional tax due under section fourteen-a of this
23 article. All taxes received by the commissioner shall be paid
24 into the insurance tax fund created in subsection (b) of this
25 section.

26 (b) There is created in the state treasury a special revenue
27 fund, administered by the treasurer, designated the "insurance
28 tax fund." This fund is not part of the general revenue fund of
29 the state. It consists of all amounts deposited in the fund
30 pursuant to subsection (a) of this section, sections fifteen and
31 seventeen of this article, any appropriations to the fund, all
32 interest earned from investment of the fund and any gifts, grants
33 or contributions received by the fund.

34 (c) The treasurer shall dedicate and transfer from the
35 insurance tax fund to the regional jail and correctional facility
36 investment fund created under the provisions of section twenty-
37 one, article six, chapter twelve of this code, on or before the
38 tenth day of each month, an amount equal to one twelfth of the
39 projected annual investment earnings to be paid and the capital
40 invested to be returned, as certified to the treasurer by the
41 investment management board: *Provided*, That the amount
42 dedicated and transferred may not exceed twenty million dollars
43 in any fiscal year. In the event there are insufficient funds
44 available in any month to transfer the amount required pursuant
45 to this subsection to the regional jail and correctional facility
46 investment fund, the deficiency shall be added to the amount
47 transferred in the next succeeding month in which revenues are
48 available to transfer the deficiency. Each month a lien on the

49 revenues generated from the insurance premium tax, the
50 annuity tax and the minimum tax, provided in this section and
51 sections fifteen and seventeen of this article, up to a maximum
52 amount equal to one twelfth of the projected annual principal
53 and return is granted to the investment management board to
54 secure the investment made with the regional jail and correc-
55 tional facility authority pursuant to section twenty, article six,
56 chapter twelve of this code. The treasurer shall, no later than the
57 last business day of each month, transfer amounts the treasurer
58 determines are not necessary for making refunds under this
59 article to meet the requirements of subsection (d), section
60 twenty-one, article six, chapter twelve of this code, to the credit
61 of the general revenue fund. Commencing on the first day of the
62 month following the month in which the investment created
63 under the provisions of section twenty-one, article six, chapter
64 twelve of this code, is returned to the investment management
65 board, the treasurer shall transfer all amounts deposited in the
66 insurance tax fund as appropriated by the Legislature.



CHAPTER 18

**(S. B. 6024 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

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

AN ACT to repeal sections nine hundred one and nine hundred two, article thirteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter five, acts of the Legislature, fifth extraordinary session, two thousand one; to amend and reenact sections eight hundred one and eight hundred two of said article; to amend article

fourteen of said chapter by adding thereto a new section, designated section one hundred six; and to amend and reenact section six, article two-a, chapter fifty-one of said code as contained in said acts, all relating to making technical revisions to the law creating a family court system; repealing misnumbered sections; revising archaic terminology in miscellaneous provisions relating to child support orders; declaring that section one hundred six, article fourteen, chapter forty-eight, as enacted by chapter five, acts of the Legislature, fifth extraordinary session, two thousand one, shall be deemed and constituted as a new section; and adjusting the salary levels of secretary-clerks and family case coordinators of family court judges consistent with current levels based on annual adjustments.

Be it enacted by the Legislature of West Virginia:

That sections nine hundred one and nine hundred two, article thirteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter five, acts of the Legislature, fifth extraordinary session, two thousand one, be repealed; that sections eight hundred one and eight hundred two of said article be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section one hundred six; and that section six, article two-a, chapter fifty-one of said code as contained in said acts be amended and reenacted, all to read as follows:

Chapter

- 48. Domestic Relations.**
- 51. Courts and Their Officers.**

CHAPTER 48. DOMESTIC RELATIONS.

Article

- 13. Guidelines for Child Support Awards.**
- 14. Remedies for the Enforcement of Support Obligations.**

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.**PART VIII. MISCELLANEOUS PROVISIONS RELATING TO CHILD
SUPPORT ORDERS.**

§48-13-801. Tax exemption for child due support.

§48-13-802. Investment of child support.

§48-13-801. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income tax
3 purposes to the payee parent except in cases of extended shared
4 parenting. In extended shared parenting cases, these rights shall
5 be allocated between the parties in proportion to their adjusted
6 gross incomes for child support calculations. In a situation
7 where allocation would be of no tax benefit to a party, the court
8 need make no allocation to that party. However, the tax
9 exemptions for the minor child or children should be granted to
10 the payor parent only if the total of the payee parent's income
11 and child support is greater when the exemption is awarded to
12 the payor parent.

§48-13-802. Investment of child support.

1 (a) The court has the discretion, in appropriate cases, to
2 direct that a portion of child support be placed in trust and
3 invested for future educational or other needs of the child. The
4 court may order such investment when all of the child's day-to-
5 day needs are being met such that, with due consideration of the
6 age of the child, the child is living as well as his or her parents.

7 (b) If the amount of child support ordered per child exceeds
8 the sum of two thousand dollars per month, the court is required
9 to make a finding, in writing, as to whether investments shall be
10 made as provided for in subsection (a) of this section.

11 (c) A trustee named by the court shall use the judgment and
12 care under the circumstances then prevailing that persons of
13 prudence, discretion and intelligence exercise in the manage-
14 ment of their own affairs, not in regard to speculation but in
15 regard to the permanent disposition of their funds, considering
16 the probable income as well as the probable safety of their
17 capital. A trustee shall be governed by the provisions of the
18 uniform prudent investor act as set forth in article six-c, chapter
19 forty-four of this code. The court may prescribe the powers of
20 the trustee and provide for the management and control of the
21 trust. Upon petition of a party or the child's guardian or next
22 friend and upon a showing of good cause, the court may order
23 the release of funds in the trust from time to time.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART I. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-106. Modification of support order.

1 (a) At any time after the entry of an order for support, the
2 court may, upon the verified petition of an obligee or the
3 obligor, revise or alter such order and make a new order as the
4 altered circumstances or needs of a child, an obligee or the
5 obligor may render necessary to meet the ends of justice.

6 (b) The supreme court of appeals shall make available to
7 the family courts a standard form for a petition for modification
8 of an order for support, which form will allege that the existing
9 order should be altered or revised because of a loss or change
10 of employment or other substantial change affecting income or
11 that the amount of support required to be paid is not within
12 fifteen percent of the child support guidelines. The clerk of the
13 circuit court and the secretary-clerk of the family court shall

14 make such forms available to persons desiring to petition the
15 court pro se for a modification of the support award.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1 (a) Until the thirty-first day of December, two thousand
2 two, a family court judge is entitled to receive as compensation
3 for his or her services an annual salary of sixty thousand
4 dollars. Beginning the first day of January, two thousand three,
5 a family court judge is entitled to receive as compensation for
6 his or her services an annual salary of sixty-two thousand five
7 hundred dollars.

8 (b) The secretary-clerk of the family court judge is ap-
9 pointed by the family court judge and serves at his or her will
10 and pleasure. The secretary-clerk of the family court judge is
11 entitled to receive an annual salary of twenty-five thousand
12 three hundred thirty-two dollars. In addition, any person
13 employed as a secretary-clerk to a family law master on the
14 effective date of the enactment of this section during the sixth
15 extraordinary session of the Legislature in the year two thou-
16 sand one who is receiving an additional five hundred dollars per
17 year up to ten years of a certain period of prior employment
18 under the provisions of the prior enactment of section eight of
19 this article during the second extraordinary session of the
20 Legislature in the year one thousand nine hundred ninety-nine
21 shall continue to receive such additional amount. Further, the
22 secretary-clerk will receive such percentage or proportional
23 salary increases as may be provided for by general law for other
24 public employees and is entitled to receive the annual incre-
25 mental salary increase as provided for in article five, chapter
26 five of this code.

27 (c) The family court judge may employ not more than one
28 family case coordinator who serves at his or her will and
29 pleasure. The annual salary of the family case coordinator of
30 the family court judge shall be established by the administrative
31 director of the supreme court of appeals but may not exceed
32 thirty-six thousand sixty dollars. The family case coordinator
33 will receive such percentage or proportional salary increases as
34 may be provided for by general law for other public employees
35 and is entitled to receive the annual incremental salary increase
36 as provided for in article five, chapter five of this code.

37 (d) The sheriff or his or her designated deputy shall serve
38 as a bailiff for a family court judge. The sheriff of each county
39 shall serve or designate persons to serve so as to assure that a
40 bailiff is available when a family court judge determines the
41 same is necessary for the orderly and efficient conduct of the
42 business of the family court.

43 (e) Disbursement of salaries for family court judges and
44 members of their staffs are made by or pursuant to the order of
45 the director of the administrative office of the supreme court of
46 appeals.

47 (f) Family court judges and members of their staffs are
48 allowed their actual and necessary expenses incurred in the
49 performance of their duties. The expenses and compensation
50 will be determined and paid by the director of the administra-
51 tive office of the supreme court of appeals under such guide-
52 lines as he or she may prescribe, as approved by the supreme
53 court of appeals.

54 (g) Notwithstanding any other provision of law, family
55 court judges are not eligible to participate in the retirement
56 system for judges under the provisions of article nine of this
57 chapter.

CHAPTER 19

**(H. B. 601 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-p; to amend and reenact sections two, three and five, article twelve, chapter twenty-nine of said code; to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend chapter thirty-three of said code by adding thereto two new articles, designated articles twenty-e and twenty-f; to amend and reenact sections five, six, ten and eleven, article seven-b, chapter fifty-five of said code; to further amend said article by adding thereto four new sections, designated sections six-a, six-b, six-c and six-d; to amend and reenact section eleven, article six, chapter fifty-six of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating to medical professional liability generally; providing certain tax credits for certain health care providers; setting forth legislative findings and purpose; defining terms; creating tax credit and providing eligibility therefor; establishing amount of credit; providing for the forfeiture of excess credit; providing for the application of the tax credit; requiring annual schedule; effect of credit on estimated taxes; providing for the computation and application of credit; authorizing tax commissioner to promulgate legislative rules; providing for the construction of article; establishing burden of proof; relating to claiming the credit; establishing effective date for credit; providing for termination of tax credit; modifying

definitions; continuing, reestablishing and reconstituting board of risk and insurance management; establishing qualifications, terms and compensation of members of the board; clarifying and expanding powers and duties of board; increasing salary of executive director; authorizing the board to employ certain employees, including legal counsel; eliminating requirement for attorney general's knowledge and consent to settlements and releases; making technical revisions; providing that board of risk and insurance management shall administer the optional medical liability insurance programs; establishing duties and reporting requirements of the board; establishing procedure for approval of board financial plans; providing rule-making authority; providing for the establishment and operation of medical professional liability insurance programs for certain physicians through the board of risk and insurance management as an alternative to commercial coverage for malpractice claims when comparable commercial coverage is not available; setting short title and legislative findings; defining terms; establishing a state medical malpractice advisory panel; establishing qualifications, terms and compensation of panel members; providing for the organization and reporting requirements of the panel; establishing medical professional liability insurance programs, including a preferred medical liability insurance program and a high-risk medical liability insurance program and exceptions to participation; establishing criteria for eligibility to participate in program; specifying powers and duties of the board of risk and insurance management relating to medical malpractice insurance; establishing special revenue account in state treasury for deposit of collected premiums and for expenditure and investment of funds in the account; providing for payment of start-up operating expenses of the program and a pool from which claims may be paid and for amounts so paid to be reimbursed from collected premiums; authorizing the board to establish procedures for payment of claims; requiring certain documentation for payment of a medical malpractice settlement or judgment; exempting

specific claim reserve information from disclosure under freedom of information act; authorizing board to post supersedeas bond when it appeals a medical malpractice judgment against a health care provider; specifying effective date; allowing policies written after the effective date to be retroactive to the effective date; providing for the establishment and operation of a medical professional liability insurance joint underwriting association; providing short title, legislative findings and stating intent and purpose; defining terms; creating medical professional liability insurance joint underwriting association and providing for the state board of risk and insurance management to exercise the powers of the association temporarily; creating a board of directors; qualifications and compensation of board members; specifying powers and duties of the association; providing for an interim plan of operation to be administered by the state board of risk and insurance management; providing for a final plan of operation to be administered by the board of directors; specifying the duties and powers of the insurance commissioner; establishing eligibility requirements for policyholders; providing for issuance of policies and guidelines for setting rates and premiums; creating a special revenue account in state treasury for deposit of initial capital, surplus and collected premiums, and for expenditure and investment of funds in the account; providing for assumption of assets and administrative control by the board of directors and a pool from which claims may be paid; clarifying premium tax liability of association; absolving state from responsibility for obligations of association; establishing methods by which a deficit in the association's accounts may be recouped and reimbursed; requiring the commissioner to report to the board of directors when any member insurer's authority to transact insurance in this state has been terminated; providing that the association is subject to examination and regulation by the commissioner; requiring the association to submit to the commissioner an annual statement; providing that the association is immune from suit; specifying operative date; allowing policies

written after the operative date to be retroactive to the effective date; authorizing the formation of a physicians mutual insurance company; setting forth a short title; establishing legislative findings and purpose; defining terms; authorizing the creation of a company; establishing the requirements and limitations of a company; establishing the immunity of the state from all debts, claims, obligations and liabilities of a company; providing for governance and organization of a company; providing for the management and administration of a company; providing for the funding of the initial policyholders' surplus; authorizing a one-time assessment against physicians to assist in funding the initial capital surplus; providing for licensure application and approval of the commissioner; setting forth the authority of the commissioner; authorizing the company to issue certain policies of insurance; providing for the transfer of policies from the state board of risk and insurance management; authorizing risk management practices; providing for the controlling law, liberal construction and severability of this article; providing for medical professional liability actions; eliminating certain third party causes of action against insurers; prescribing time when health care provider may file certain causes of action against insurer; establishing certain prerequisites for filing an action against a health care provider and providing exceptions; providing for pre-litigation mediation upon request of health care provider; providing for the tolling of the statute of limitations; establishing confidentiality of certain documents; providing parties with access to medical records and establishing procedures therefor; providing for an expedited resolution of cases against health care providers; requiring court to convene a mandatory status conference; providing for mandatory mediation; establishing trial date; authorizing court to order a summary jury trial upon joint motion; when counsel and parties are subject to sanctions; authorizing court to direct payment of costs in certain instances; establishing summary jury trial procedures; providing for a twelve-member jury and allowing a verdict to be rendered by nine-member jury;

establishing operative date of revisions; establishing severability and nonseverability of certain provisions; and increasing the filing fee for medical professional liability actions and providing for the disposition thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 11. Taxation.
- 29. Miscellaneous Boards and Officers.
- 33. Insurance.
- 55. Actions, Suits and Arbitration; Judicial Sale.
- 56. Pleading and Practice.
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 13P. TAX CREDIT FOR MEDICAL LIABILITY INSURANCE PREMIUMS.

- §11-13P-1. Legislative finding and purpose.
- §11-13P-2. Definitions.
- §11-13P-3. Eligibility for tax credits; creation of the credit.
- §11-13P-4. Amount of credit allowed.
- §11-13P-5. Excess credit forfeited.
- §11-13P-6. Application of credit; schedules; estimated taxes.
- §11-13P-7. Computation and application of credit.
- §11-13P-8. Legislative rules.
- §11-13P-9. Construction of article; burden of proof.
- §11-13P-10. Effective date.
- §11-13P-11. Termination of tax credit.

§11-13P-1. Legislative finding and purpose.

1 The Legislature finds that the retention of physicians
2 practicing in this state is in the public interest and promotes the
3 general welfare of the people of this state. The Legislature
4 further finds that the promotion of stable and affordable
5 medical malpractice liability insurance premium rates will
6 induce retention of physicians practicing in this state.

7 In order to effectively decrease the cost of medical liability
8 insurance premiums paid in this state on physicians' services,
9 there is hereby provided a tax credit for certain medical liability
10 insurance premiums paid.

§11-13P-2. Definitions.

1 (a) *General.* – When used in this article, or in the adminis-
2 tration of this article, terms defined in subsection (b) of this
3 section have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by the context in
5 which the term is used.

6 (b) *Terms defined.* –

7 (1) “Adjusted annual medical liability premium” means
8 statewide average of medical liability insurance premiums by
9 specialty and subspecialty groups directly paid by eligible

10 taxpayers in those speciality and subspecialty groups during the
11 taxable year to cover physicians' services performed during the
12 year reduced by the sum of ten thousand dollars.

13 (2) "Eligible taxpayer" means any person subject to tax
14 under section sixteen, article twenty-seven of this chapter or a
15 physician who is a partner, member, shareholder or employee
16 of an eligible taxpayer.

17 (3) "Person" means and includes any natural person,
18 corporation, limited liability company, trust or partnership.

19 (4) "Physicians' services" means health care providers
20 services taxable under section sixteen, article twenty-seven of
21 this chapter performed in this state by physicians licensed by
22 the state board of medicine or the state board of osteopathic
23 medicine.

24 (5) "Statewide average medical liability insurance premi-
25 ums" are the average of premiums for each specialty and
26 subspecialty group as determined by the state insurance
27 commission.

§11-13P-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit
2 against the tax payable under section sixteen, article twenty-
3 seven of this chapter. The amount of this credit shall be
4 determined and applied as provided in this article.

§11-13P-4. Amount of credit allowed.

1 The amount of annual credit allowable under this article to
2 an eligible taxpayer shall be equal to ten percent of the adjusted
3 annual medical liability insurance premium for the taxpayer's
4 specialty or subspecialty group or ten percent of the taxpayer's
5 actual annual medical liability insurance premium, whichever

6 is less: *Provided*, That no credit shall be allowed for any
7 medical liability insurance premium paid on behalf of an
8 eligible taxpayer employed by the state, its agencies or subdivi-
9 sions or an eligible taxpayer organization pursuant to coverage
10 provided under article twelve, chapter twenty-nine of this code.

§11-13P-5. Excess credit forfeited.

1 If after application of the credit against tax under this
2 article, any credit remains for the taxable year, the amount
3 remaining and not used is forfeited. Unused credit may not be
4 carried back to any prior taxable year and shall not carry
5 forward to any subsequent taxable year.

§11-13P-6. Application of credit; schedules; estimated taxes.

1 (a) The credit allowed under this article shall be applied
2 against the tax payable under section sixteen, article twenty-
3 seven of this chapter.

4 (b) To assert this credit against tax, the eligible taxpayer
5 shall prepare and file with its annual tax return filed under
6 article twenty-seven of this chapter, and for information
7 purposes, a schedule showing the amount paid for medical
8 liability coverage for the taxable year, the amount of credit
9 allowed under this article, the taxes against which the credit is
10 being applied and other information that the tax commissioner
11 may require. This annual schedule shall set forth the informa-
12 tion and be in the form prescribed by the tax commissioner.

13 (c) An eligible taxpayer may consider the amount of credit
14 allowed under this article when determining the eligible
15 taxpayer's liability under article twenty-seven of this chapter
16 for periodic payments of estimated tax for the taxable year, in
17 accordance with the procedures and requirements prescribed by
18 the tax commissioner. The annual total tax liability and total tax
19 credit allowed under this article are subject to adjustment and

20 reconciliation pursuant to the filing of the annual schedule
21 required by subsection (b) of this section.

§11-13P-7. Computation and application of credit.

1 (a) *Credit resulting from premiums directly paid by persons*
2 *who pay the tax imposed by section sixteen, article twenty-seven*
3 *of this chapter.* - The annual credit allowable under this article
4 for eligible taxpayers other than payors described in subsection
5 (b) of this section, shall be applied as a credit against the
6 eligible taxpayer's state tax liability determined under section
7 sixteen, article twenty-seven of this chapter, determined after
8 application of all other allowable credits and exemptions.

9 (b) *Credit for premiums directly paid by partners, members*
10 *or shareholders of partnerships, limited liability companies, or*
11 *corporations for or on behalf of such organizations; application*
12 *of credit.* -

13 (1) *Qualification for credit.*

14 (A) For purposes of this section the term "eligible taxpayer
15 organization" means a partnership, limited liability company,
16 or corporation that is an eligible taxpayer.

17 (B) For purposes of this section the term "payor" means a
18 natural person who is a partner, member, shareholder or owner,
19 in whole or in part, of an eligible taxpayer organization and
20 who pays medical liability insurance premiums for or on behalf
21 of the eligible taxpayer organization.

22 (C) Medical liability insurance premiums paid by a payor
23 (as defined in this section) qualify for tax credit under this
24 article, provided that such payments are made to insure against
25 medical liabilities arising out of or resulting from physicians'
26 services provided by a physician while practicing in service to
27 or under the organizational identity of an eligible taxpayer

28 organization or as an employee of such eligible taxpayer
29 organization where such insurance covers the medical liability
30 of:

31 (i) The eligible taxpayer organization; or

32 (ii) One or more physicians practicing in service to or under
33 the organizational identity of the eligible taxpayer organization
34 or as an employee of the eligible taxpayer organization; or

35 (iii) Any combination thereof.

36 (2) *Application of credit by the payor against health care*
37 *provider tax on physician's services.* - The annual credit
38 allowable shall be applied to reduce the tax liability directly
39 payable by the payor under section sixteen, article twenty-seven
40 of this chapter, determined after application of all other
41 allowable credits and exemptions.

42 (3) *Application of credit by the eligible taxpayer organiza-*
43 *tion against health care provider tax on physician's services.* -
44 After application of this credit as provided in subdivision (2) of
45 this subsection, remaining annual credit shall then be applied to
46 reduce the tax liability directly payable by the eligible taxpayer
47 organization under section sixteen, article twenty-seven of this
48 chapter, determined after application of all other allowable
49 credits and exemptions.

50 (4) *Apportionment among multiple eligible taxpayer*
51 *organizations.* - Where a payor described in subdivision (1) of
52 this subsection pays medical liability insurance premiums for
53 and provides services to or under the organizational identity of
54 two or more eligible taxpayer organizations described in this
55 section or as an employee of two or more such eligible taxpayer
56 organizations, the tax credit shall, for purposes of subdivision
57 (3) of this subsection, be allocated among such eligible taxpayer
58 organizations in proportion to the medical liability insurance

59 premiums paid directly by the payor during the taxable year to
60 cover physicians' services during such year for, or on behalf of,
61 each eligible taxpayer organization. In no event may the total
62 credit claimed by all eligible taxpayers and eligible taxpayer
63 organizations exceed the credit which would be allowable if the
64 payor had paid all such medical liability insurance premiums
65 for or on behalf of one eligible taxpayer organization, and if all
66 physician's services had been performed for, or under the
67 organizational identity of, or by employees of, one eligible
68 taxpayer organization.

§11-13P-8. Legislative rules.

1 The tax commissioner shall propose for promulgation
2 pursuant to the provisions of article three, chapter twenty-nine-a
3 of this code such rules as may be necessary to carry out the
4 purposes of this article.

§11-13P-9. Construction of article; burden of proof.

1 The provisions of this article shall be reasonably construed.
2 The burden of proof is on the person claiming the credit
3 allowed by this article to establish by clear and convincing
4 evidence that the person is entitled to the amount of credit
5 asserted for the taxable year.

§11-13P-10. Effective date.

1 This article shall be effective for taxable years beginning
2 after the thirty-first day of December, two thousand one:
3 *Providing*, That the assertion of the credit by an eligible
4 taxpayer shall not be allowed prior to the first day of July, two
5 thousand two.

§11-13P-11. Termination of tax credit.

1 No credit shall be allowed under this article for any taxable
 2 year ending after the thirty-first day of December, two thousand
 3 four.

**CHAPTER 29. MISCELLANEOUS BOARDS
 AND OFFICERS.**

Article

12. State Insurance.

**12B. West Virginia Health Care Provider Professional Liability Insurance
 Availability Act.**

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.

§29-12-3. State board of risk and insurance management; creation, composition,
 qualifications, and compensation.

§29-12-5. Powers and duties of board.

§29-12-2. Definitions.

1 As used in this article, unless the context otherwise clearly
 2 requires:

3 (a) "Board" means the state board of risk and insurance
 4 management.

5 (b) "Company" means and includes corporations, associa-
 6 tions, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and bonding
 8 services available for protection and indemnification of the
 9 state and its officials, employees, properties, activities and
 10 responsibilities against loss or damage or liability, including
 11 fire, marine, casualty, and surety insurance.

12 (d) "Insurance company" means all insurers or insurance
 13 carriers, including, but not limited to, stock insurance compa-
 14 nies, mutual insurance companies, reciprocal and interinsurance

15 exchanges, and all other types of insurers and insurance
16 carriers, including life, accident, health, fidelity, indemnity,
17 casualty, hospitalization and other types and kinds of insurance
18 companies, organizations and associations, but excepting and
19 excluding workers' compensation coverage.

20 (e) "State property activities" and "state responsibilities"
21 means and includes all operations, boards, commission, works,
22 projects and functions of the state, its properties, officials,
23 agents and employees which, within the scope and in the course
24 of governmental employment, may be subject to liability, loss,
25 damage, risks and hazards recognized to be and normally
26 included within insurance and bond coverages. "State property
27 activities" includes ambulances, as defined in section three,
28 article four-c, chapter sixteen of this code.

29 (f) "State property" means all property belonging to the
30 state of West Virginia and any boards or commissions thereof
31 wherever situated and which is the subject of risk or reasonably
32 considered to be subject to loss or damage or liability by any
33 single occurrence of any event insured against. "State property"
34 includes ambulances, as defined in section three, article four-c,
35 chapter sixteen of this code.

**§29-12-3. State board of risk and insurance management; cre-
ation, composition, qualifications, and compensa-
tion.**

1 (a) (1) The "state board of insurance of West Virginia" is
2 hereby reestablished, reconstituted and continued as the state
3 board of risk and insurance management. The board shall be
4 composed of five members. One member shall be the vice
5 chancellor of health sciences of the West Virginia higher
6 education policy commission. The remaining four members
7 shall be appointed by the governor with the advice and consent
8 of the Senate. One member shall be appointed by the governor

9 from a list of three eligible persons submitted to the governor
10 by the president of the Senate, and one member shall be
11 appointed by the governor from a list of three eligible persons
12 submitted to the governor by the speaker of the House of
13 Delegates. Each member shall be a resident of West Virginia
14 and shall have experience in one or more of the following areas:
15 law, accounting, business, insurance or actuarial science.

16 (2) Initial appointment of the members other than the vice
17 chancellor for health sciences shall be for the following terms:

18 One member shall be appointed for a term ending the
19 thirtieth day of June, two thousand three;

20 One member shall be appointed for a term ending the
21 thirtieth day of June, two thousand four;

22 One member shall be appointed for a term ending the
23 thirtieth day of June, two thousand five; and

24 One member shall be appointed for a term ending the
25 thirtieth day of June, two thousand six.

26 (3) Except for appointments to fill vacancies, each subse-
27 quent appointment shall be for a term ending the thirtieth day
28 of June of the fourth year following the year the preceding term
29 expired. In the event a vacancy occurs it shall be filled by
30 appointment for the unexpired term. A member whose term has
31 expired shall continue in office until a successor has been duly
32 appointed and qualified. No member of the board may be
33 removed from office by the governor except for official
34 misconduct, incompetency, neglect of duty, or gross immoral-
35 ity.

36 (4) Members of the board appointed prior to the
37 reenactment of this article during the sixth extraordinary

38 session of the Legislature, two thousand one, shall serve until
39 the fifteenth day of December, two thousand one.

40 (b) The insurance commissioner of West Virginia shall
41 serve as secretary of the board without vote and shall make
42 available to the board the information, facilities and services of
43 the office of the state insurance commissioner.

44 (c) The members of the board shall receive from the
45 executive director of the board the same compensation autho-
46 rized by law for members of the Legislature for the interim
47 duties for each day, or portion thereof, the member is engaged
48 in the discharge of official duties. All board members shall be
49 reimbursed for their actual and necessary expenses incurred in
50 the discharge of official duties, except that mileage shall be
51 reimbursed at the same rate as that authorized for members of
52 the Legislature.

53 (d) Notwithstanding any provision of this section to the
54 contrary, the board is subject to the provisions of section twelve
55 of this article.

§29-12-5. Powers and duties of board.

1 (a) The board shall have general supervision and control
2 over the insurance of all state property, activities and responsi-
3 bilities, including the acquisition and cancellation thereof;
4 determination of amount and kind of coverage, including, but
5 not limited to, deductible forms of insurance coverage, inspec-
6 tions or examinations relating thereto, reinsurance, and any and
7 all matters, factors and considerations entering into negotiations
8 for advantageous rates on and coverage of all such state
9 property, activities and responsibilities. The board shall have
10 the authority to employ an executive director for an annual
11 salary of seventy thousand dollars and such other employees,
12 including legal counsel, as may be necessary to carry out its
13 duties. The legal counsel may represent the board before any

14 judicial or administrative tribunal and perform such other duties
15 as may be requested by the board. Any policy of insurance
16 purchased or contracted for by the board shall provide that the
17 insurer shall be barred and estopped from relying upon the
18 constitutional immunity of the state of West Virginia against
19 claims or suits: *Provided*, That nothing herein shall bar the
20 insurer of political subdivisions from relying upon any statutory
21 immunity granted such political subdivisions against claims or
22 suits. The board may enter into any contracts necessary to the
23 execution of the powers granted to it by this article. It shall
24 endeavor to secure the maximum of protection against loss,
25 damage or liability to state property and on account of state
26 activities and responsibilities by proper and adequate insurance
27 coverage through the introduction and employment of sound
28 and accepted methods of protection and principles of insurance.
29 It is empowered and directed to make a complete survey of all
30 presently owned and subsequently acquired state property
31 subject to insurance coverage by any form of insurance, which
32 survey shall include and reflect inspections, appraisals, expo-
33 sures, fire hazards, construction, and any other objectives or
34 factors affecting or which might affect the insurance protection
35 and coverage required. It shall keep itself currently informed on
36 new and continuing state activities and responsibilities within
37 the insurance coverage herein contemplated. The board shall
38 work closely in cooperation with the state fire marshal's office
39 in applying the rules of that office insofar as the appropriations
40 and other factors peculiar to state property will permit. The
41 board is given power and authority to make rules governing its
42 functions and operations and the procurement of state insur-
43 ance.

44 The board is hereby authorized and empowered to negotiate
45 and effect settlement of any and all insurance claims arising on
46 or incident to losses of and damages to state properties,
47 activities and responsibilities hereunder and shall have authority
48 to execute and deliver proper releases of all such claims when

49 settled. The board may adopt rules and procedures for handling,
50 negotiating and settlement of all such claims. Any discussion
51 or consideration of the financial or personal information of an
52 insured may be held by the board in executive session closed to
53 the public, notwithstanding the provisions of article nine-a,
54 chapter six of this code.

55 (b) If requested by a political subdivision or by a charitable
56 or public service organization, the board is authorized to
57 provide property and liability insurance to the political subdivi-
58 sions or such organizations to insure their property, activities
59 and responsibilities. Such board is authorized to enter into any
60 necessary contract of insurance to further the intent of this
61 subsection.

62 The property insurance provided by the board, pursuant to
63 this subsection, may also include insurance on property leased
64 to or loaned to the political subdivision or such organization
65 which is required to be insured under a written agreement.

66 The cost of this insurance, as determined by the board, shall
67 be paid by the political subdivision or the organization and may
68 include administrative expenses. All funds received by the
69 board, (including, but not limited to, state agency premiums,
70 mine subsidence premiums, and political subdivision premi-
71 ums) shall be deposited with the West Virginia investment
72 management board with the interest income and returns on
73 investment a proper credit to such property insurance trust fund
74 or liability insurance trust fund, as applicable.

75 “Political subdivision” as used in this subsection shall have
76 the same meaning as in section three, article twelve-a of this
77 chapter.

78 Charitable or public service organization as used in this
79 subsection means a bona fide, not for profit, tax-exempt,
80 benevolent, educational, philanthropic, humane, patriotic, civic,

81 religious, eleemosynary, incorporated or unincorporated
82 association or organization or a rescue unit or other similar
83 volunteer community service organization or association, but
84 does not include any nonprofit association or organization,
85 whether incorporated or not, which is organized primarily for
86 the purposes of influencing legislation or supporting or promot-
87 ing the campaign of any candidate for public office.

88 (c) (1) The board shall have general supervision and control
89 over the optional medical liability insurance programs provid-
90 ing coverage to health care providers as authorized by the
91 provisions of article twelve-b of this chapter. The board is
92 hereby granted and may exercise all powers necessary or
93 appropriate to carry out and effectuate the purposes of this
94 article.

95 (2) The board shall:

96 (A) Administer the preferred medical liability program and
97 the high risk medical liability program and exercise and
98 perform other powers, duties and functions specified in this
99 article;

100 (B) Obtain and implement, at least annually, from an
101 independent outside source, such as a medical liability actuary
102 or a rating organization experienced with the medical liability
103 line of insurance, written rating plans for the preferred medical
104 liability program and high risk medical liability program on
105 which premiums shall be based;

106 (C) Prepare and annually review written underwriting
107 criteria for the preferred medical liability program and the high
108 risk medical liability program. The board may utilize review
109 panels, including but not limited to, the same specialty review
110 panels to assist in establishing criteria;

111 (D) Prepare and publish, before each regular session of the
112 Legislature, separate summaries for the preferred medical
113 liability program and high risk medical liability program
114 activity during the preceding fiscal year, each summary to
115 include, but not be limited to, an audited financial statement
116 which shall follow the accounting practices and procedures
117 prescribed by the national association of insurance commission-
118 ers procedures manual, as amended, and which shall include a
119 balance sheet, income statement and cash flow statement, an
120 actuarial opinion addressing adequacy of reserves, the highest
121 and lowest premiums assessed, the number of claims filed with
122 the program by provider type, the number of judgments and
123 amounts paid from the program, the number of settlements and
124 amounts paid from the program and the number of dismissals
125 without payment;

126 (E) Determine and annually review the claims history debit
127 or surcharge for the high risk medical liability program;

128 (F) Determine and annually review the criteria for transfer
129 from the preferred medical liability program to the high risk
130 medical liability program;

131 (G) Determine and annually review the role of independent
132 agents, the amount of commission, if any, to be paid therefor,
133 and agent appointment criteria;

134 (H) Study and annually evaluate the operation of the
135 preferred medical liability program and the high risk medical
136 liability program, and make recommendations to the Legisla-
137 ture, as may be appropriate, to ensure their viability, including
138 but not limited to, recommendations for civil justice reform
139 with an associated cost-benefit analysis, recommendations on
140 the feasibility and desirability of a plan which would require all
141 health care providers in the state to participate with an associ-
142 ated cost-benefit analysis, recommendations on additional

143 funding of other state run insurance plans with an associated
144 cost-benefit analysis and recommendations on the desirability
145 of ceasing to offer a state plan with an associated analysis of a
146 potential transfer to the private sector with a cost-benefit
147 analysis, including impact on premiums;

148 (I) Establish a five-year financial plan to ensure an adequate
149 premium base to cover the long tail nature of the claims-made
150 coverage provided by the preferred medical liability program
151 and the high risk medical liability program. The plan shall be
152 designed to meet the program's estimated total financial
153 requirements, taking into account all revenues projected to be
154 made available to the program, and apportioning necessary
155 costs equitably among participating classes of health care
156 providers. For these purposes, the board shall:

157 (i) Retain the services of an impartial, professional actuary,
158 with demonstrated experience in analysis of large group
159 malpractice plans, to estimate the total financial requirements
160 of the program for each fiscal year and to review and render
161 written professional opinions as to financial plans proposed by
162 the board. The actuary shall also assist in the development of
163 alternative financing options and perform any other services
164 requested by the board or the executive director. All reasonable
165 fees and expenses for actuarial services shall be paid by the
166 board. Any financial plan or modifications to a financial plan
167 approved or proposed by the board pursuant to this section shall
168 be submitted to and reviewed by the actuary and may not be
169 finally approved and submitted to the governor and to the
170 Legislature without the actuary's written professional opinion
171 that the plan may be reasonably expected to generate sufficient
172 revenues to meet all estimated program and administrative
173 costs, including incurred but not reported claims, for the fiscal
174 year for which the plan is proposed. The actuary's opinion for

175 any fiscal year shall include a requirement for establishment of
176 a reserve fund;

177 (ii) Submit its final, approved five-year financial plan, after
178 obtaining the necessary actuary's opinion, to the governor and
179 to the Legislature no later than the first day of January preced-
180 ing the fiscal year. The financial plan for a fiscal year becomes
181 effective and shall be implemented by the executive director on
182 the first day of July of the fiscal year. In addition to each final,
183 approved financial plan required under this section, the board
184 shall also simultaneously submit an audited financial statement
185 which shall follow the accounting practices and procedures
186 prescribed by the national association of insurance commission-
187 ers procedures manual, as amended, and which shall include
188 allowances for incurred but not reported claims: *Provided*, That
189 the financial statement and the accrual-based financial plan
190 restatement shall not affect the approved financial plan. The
191 provisions of chapter twenty-nine-a of this code shall not apply
192 to the preparation, approval and implementation of the financial
193 plans required by this section;

194 (iii) Submit to the governor and the Legislature a prospec-
195 tive five-year financial plan beginning on the first day of
196 January, two thousand three, and every year thereafter, for the
197 programs established by the provisions of article twelve-b of
198 this chapter. Factors that the board shall consider include, but
199 shall not be limited to, the trends for the program and the
200 industry; claims history, number and category of participants in
201 each program; settlements and claims payments; and judicial
202 results;

203 (iv) Obtain annually, certification from participants that
204 they have made a diligent search for comparable coverage in
205 the voluntary insurance market and have been unable to obtain
206 the same;

207 (J) Meet on at least a quarterly basis to review implementa-
208 tion of its current financial plan in light of the actual experience
209 of the medical liability programs established in article twelve-b
210 of this chapter. The board shall review actual costs incurred,
211 any revised cost estimates provided by the actuary, expendi-
212 tures and any other factors affecting the fiscal stability of the
213 plan and may make any additional modifications to the plan
214 necessary to ensure that the total financial requirements of these
215 programs for the current fiscal year are met;

216 (K) To analyze the benefit of and necessity for excess
217 verdict liability coverage;

218 (L) Consider purchasing reinsurance, in the amounts as it
219 may from time to time determine is appropriate, and the cost
220 thereof shall be considered to be an operating expense of the
221 board;

222 (M) Make available to participants, optional extended
223 reporting coverage or tail coverage: *Provided*, That, at least five
224 working days prior to offering such coverage to a participant or
225 participants, the board shall notify the president of the Senate
226 and the speaker of the House of Delegates in writing of its
227 intention to do so, and such notice shall include the terms and
228 conditions of the coverage proposed;

229 (N) Review and approve, reject or modify rules that are
230 proposed by the executive director to implement, clarify or
231 explain administration of the preferred medical liability
232 program and the high risk medical liability program. Notwith-
233 standing any provisions in this code to the contrary, rules
234 promulgated pursuant to this paragraph are not subject to the
235 provisions of sections nine through sixteen, article three,
236 chapter twenty-nine-a of this code. The board shall comply with
237 the remaining provisions of article three and shall hold hearings
238 or receive public comments before promulgating any proposed

239 rule filed with the secretary of state: *Provided*, That the initial
240 rules proposed by the executive director and promulgated by
241 the board shall become effective upon approval by the board
242 notwithstanding any provision of this code;

243 (O) Enter into settlements and structured settlement
244 agreements whenever appropriate. The policy may not require
245 as a condition precedent to settlement or compromise of any
246 claim the consent or acquiescence of the policy holder. The
247 board may own or assign any annuity purchased by the board to
248 a company licensed to do business in the state;

249 (P) Refuse to provide insurance coverage for individual
250 physicians whose prior loss experience or current professional
251 training and capability are such that the physician represents an
252 unacceptable risk of loss if coverage is provided.

253 (Q) Terminate coverage for nonpayment of premiums upon
254 written notice of the termination forwarded to the health care
255 provider not less than thirty days prior to termination of
256 coverage;

257 (R) Assign coverage or transfer all insurance obligations
258 and/or risks of existing or in-force contracts of insurance to a
259 third party medical professional liability insurance carrier with
260 the comparable coverage conditions as determined by the
261 board. Any transfer of obligation or risk shall effect a novation
262 of the transferred contract of insurance and if the terms of the
263 assumption reinsurance agreement extinguish all liability of the
264 board and the state of West Virginia such extinguishment shall
265 be absolute as to any and all parties; and

266 (S) Meet and consult with and consider recommendations
267 from the medical malpractice advisory panel established by the
268 provisions of article twelve-b of this chapter.

269 (d) If, after the first day of September, two thousand two,
270 the board has assigned coverages or transferred all insurance
271 obligations and/or risks of existing or in-force contracts of
272 insurance to a third party medical professional liability insur-
273 ance carrier, and the board otherwise has no covered partici-
274 pants, then the board shall not thereafter offer or provide
275 professional liability insurance to any health care provider
276 pursuant to the provisions of subsection (c) of this section or the
277 provisions of article twelve-b of this chapter unless the Legisla-
278 ture adopts a concurrent resolution authorizing the board to
279 reestablish medical liability insurance programs.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

- §29-12B-1. Short title.
- §29-12B-2. Legislative findings.
- §29-12B-3. Definitions.
- §29-12B-4. State medical malpractice advisory panel; creation, composition, duties and compensation.
- §29-12B-5. Organization, meetings, records and reports of panel.
- §29-12B-6. Health care provider professional liability insurance programs.
- §29-12B-7. Eligibility criteria for participation in health care provider professional liability insurance programs.
- §29-12B-8. Preferred professional liability insurance program.
- §29-12B-9. High risk professional liability insurance program.
- §29-12B-10. Deposit, expenditure and investment of premiums.
- §29-12B-11. Payments for settlement or judgment.
- §29-12B-12. Information exempt from disclosure.
- §29-12B-13. Appeal bond.
- §29-12B-14. Effective date.

§29-12B-1. Short title.

- 1 This article may be cited as the “West Virginia Health Care
- 2 Provider Professional Liability Insurance Availability Act.”

§29-12B-2. Legislative findings.

1 The Legislature finds and declares that there is a need for
2 the state of West Virginia to assist in making professional
3 liability insurance available for certain necessary health care
4 providers in West Virginia to assure that quality medical care
5 is available for the citizens of the state.

§29-12B-3. Definitions.

1 As used in this article, the following terms have the
2 meanings set forth herein:

3 (a) "Board" means the state board of risk and insurance
4 management.

5 (b) "Health care provider" means:

6 (1) A person licensed by the West Virginia board of
7 medicine to practice medicine in this state;

8 (2) A person licensed by the West Virginia board of
9 osteopathy to practice medicine in this state;

10 (3) A podiatrist licensed by the West Virginia board of
11 medicine;

12 (4) An optometrist licensed by the West Virginia board of
13 optometry;

14 (5) A pharmacist licensed by the West Virginia board of
15 pharmacy;

16 (6) A registered nurse holding an advanced practice
17 announcement from the West Virginia board of examiners for
18 registered professional nurses;

19 (7) A physician's assistant licensed by either the West
20 Virginia board of medicine or the West Virginia board of
21 osteopathy;

22 (8) A dentist licensed by the West Virginia board of dental
23 examiners;

24 (9) A physical therapist licensed by the West Virginia board
25 of physical therapy;

26 (10) A chiropractor licensed by the West Virginia board of
27 chiropractic;

28 (11) A professional limited liability company or medical
29 corporation certified by the state board of medicine;

30 (12) An association, partnership or other entity organized
31 for the purpose of rendering professional services by persons
32 who are health care providers;

33 (13) A hospital, medical clinic, psychiatric hospital or other
34 medical facility authorized by law to provide professional
35 medical services; and

36 (14) Such other health care provider as the board may from
37 time to time approve, and for whom an adequate rate can be
38 established.

39 "Health care provider" does not include any provider of
40 professional medical services that has medical malpractice
41 insurance pursuant to article twelve of this chapter.

42 (b) "Sexual acts" means that sexual conduct which consti-
43 tutes a criminal or tortious act under the laws of West Virginia.

44 (c) "Prior acts" coverage means coverage for claims arising
45 out of the providing of medical services, including medical
46 treatment, which are first reported to the board during the
47 effective policy period, but which occurred on or after the
48 retroactive date reported in the policy declarations.

49 (d) "High risk" means the probability of loss is greater than
50 average based on criteria specified in this article and established
51 by the board.

52 (e) "Retroactive date" means the date designated in the
53 policy declarations, before which coverage is not applicable.

54 (f) "Tail coverage" or "extended reporting coverage" is
55 coverage that protects the health care provider against all claims
56 arising from professional services performed while the claims-
57 made policy was in effect and included in the policy but
58 reported after the termination of the policy.

**§29-12B-4. State medical malpractice advisory panel; creation,
composition, duties and compensation.**

1 (a) (1) There is hereby created, under the direction and
2 control of the board, the medical malpractice advisory panel.
3 The panel shall be composed of seven members appointed by
4 the governor with the advice and consent of the Senate. Each
5 member shall be a resident of West Virginia. No more than
6 three members may reside in the same congressional district, no
7 more than two members may reside in the same county, and no
8 more than four members may belong to the same political party.

9 (2) Initial appointment of the members shall be for the
10 following terms:

11 One member shall be appointed for a term ending the
12 thirtieth day of June, two thousand two;

13 Two members shall be appointed for a term ending the
14 thirtieth day of June, two thousand three;

15 Two members shall be appointed for a term ending the
16 thirtieth day of June, two thousand four; and

17 Two members shall be appointed for a term ending the
18 thirtieth day of June, two thousand five.

19 (3) Except for appointments to fill vacancies, each subse-
20 quent appointment shall be for a term ending the thirtieth day
21 of June of the fourth year following the year the preceding term
22 expired. In the event a vacancy occurs it shall be filled by
23 appointment for the unexpired term. A member whose term has
24 expired shall continue in office until a successor has been duly
25 appointed and qualified. No member of the panel may be
26 removed from office by the governor except for official
27 misconduct, incompetency, neglect of duty, or gross immoral-
28 ity.

29 (4) The panel shall consist of the following:

30 (A) A physician licensed in this state by the state board of
31 medicine recommended from a list of three candidates from a
32 specialty area and three candidates from a non-specialty area
33 submitted by the state medical association;

34 (B) A physician licensed by the state board of osteopathy
35 recommended from a list of three candidates submitted by the
36 state society of osteopathic medicine;

37 (C) A physician licensed by the state board of medicine
38 from a specialty area recommended from the list of three
39 candidates submitted by the West Virginia academy of family
40 practitioners;

41 (D) A chief executive officer or chief financial officer of a
42 hospital recommended from a list of three submitted by the
43 state hospital association;

44 (E) One consumer or consumer representative;

45 (F) One person with training or experience in underwriting;
46 and

47 (G) A person with training or experience in insurance
48 industry management.

49 (b) The members of the panel shall receive from the
50 executive director of the board the same compensation autho-
51 rized by law for members of the Legislature for their interim
52 duties for each day, or portion thereof, the member is engaged
53 in the discharge of official duties. All panel members shall be
54 reimbursed for their actual and necessary expenses incurred in
55 the discharge of official duties, except that mileage shall be
56 reimbursed at the same rate as that authorized for members of
57 the Legislature.

58 (c) The panel shall advise the board with regard to those
59 duties imposed on the board by the provisions of this article and
60 the provisions of subsection (c), section five, article twelve of
61 this chapter relating to medical professional liability insurance.

§29-12B-5. Organization, meetings, records and reports of panel.

1 (a) The panel shall select one of its members as chairman
2 and shall meet in the office of the board upon the call of the
3 board. The panel shall keep records of all of its proceedings
4 which shall be public and open to inspection: *Provided*, That
5 any discussion or consideration of the financial or personal
6 information of an insured may be held by the panel in executive
7 session closed to the public, notwithstanding the provisions of
8 article nine-a, chapter six of this code. The panel shall exercise
9 and perform the duties prescribed by this article.

10 (b) The panel shall report in writing to the board and the
11 legislative auditor on or before the thirty-first day of August of
12 each year. Such report shall contain a summary of the panel's
13 proceedings during the preceding fiscal year.

§29-12B-6. Health care provider professional liability insurance programs.

1 (a) There is hereby established through the board of risk
2 and insurance management optional insurance for health care
3 providers consisting of a preferred professional liability
4 insurance program and a high risk professional liability
5 insurance program.

6 (b) Each of the programs described in subsection (a) of this
7 section shall provide claims-made coverage for any covered act
8 or omission resulting in injury or death arising out of medical
9 professional liability as defined in subsection (d), section two,
10 article seven-b, chapter fifty-five of this code.

11 (c) Each of the programs described in subsection (a) of this
12 section shall offer optional prior acts coverage from and after
13 a retroactive date established by the policy declarations. The
14 premium for prior acts coverage may be based upon a five-year
15 maturity schedule depending on the years of prior acts expo-
16 sure, as more specifically set forth in a written rating manual
17 approved by the board.

18 (d) Each of the programs described in subsection (a) of this
19 section shall further provide an option to purchase an extended
20 reporting endorsement or tail coverage.

21 (e) Each of the programs described in subsection (a) of this
22 section shall offer limits for each health care provider in the
23 amount of one million dollars per claim, including repeated
24 exposure to the same event or series of events, and all deriva-
25 tive claims, and three million dollars in the annual aggregate.
26 Health care providers have the option to purchase higher limits
27 of up to two million dollars per claim, including repeated
28 exposure to the same event or series of events, and all deriva-
29 tive claims, and up to four million dollars in the annual aggre-
30 gate. In addition, hospitals covered by the plan shall have

31 available limits of three million dollars per claim, including
32 repeated exposure to the same event or series of events, and all
33 derivative claims, and five million dollars in the annual
34 aggregate. Installment payment plans as established in the
35 rating manual shall be available to all participants.

36 (f) Each of the programs described in subsection (a) of this
37 section shall cover any act or omission resulting in injury or
38 death arising out of medical professional liability as defined in
39 subsection (d), section two, article seven-b, chapter fifty-five of
40 this code. The board shall exclude from coverage sexual acts as
41 defined in subdivision (e), section three of this article, and shall
42 have the authority to exclude other acts or omission from
43 coverage.

44 (g) Each of the programs described in subsection (a) of this
45 section shall apply to damages, except punitive damages, for
46 medical professional liability as defined in subsection (d),
47 section two, article seven-b, chapter fifty-five of this code.

48 (h) The board may, but is not required, to obtain excess
49 verdict liability coverage for the programs described in subsec-
50 tion (a) of this section.

51 (i) Each of the programs shall be liable to the extent of the
52 limits purchased by the health care provider as set forth in
53 subsection (e) of this section. In the event that a claimant and a
54 health care provider are willing to settle within those limits
55 purchased by the health care provider, but the board refuses or
56 declines to settle, and the ultimate verdict is in excess of the
57 purchased limits, the board shall not be liable for the portion of
58 the verdict in excess of the coverage provided in subsection (e)
59 of this section unless the board acts in bad faith, with actual
60 malice, in declining or refusing to settle: *Provided*, That if the
61 board has in effect applicable excess verdict liability insurance,
62 the health care provider shall not be required to prove that the

63 board acted with actual malice in declining or refusing to settle
64 in order to be indemnified for that portion of the verdict in
65 excess of the limits of the purchased policy and within the
66 limits of the excess liability coverage. Notwithstanding any
67 provision of this code to the contrary, the board shall not be
68 liable for any verdict in excess of the combined limit of the
69 purchased policy and any applicable excess liability coverage
70 unless the board acts in bad faith with actual malice.

71 (j) Rates for each of the programs described in subsection
72 (a) of this section may not be excessive, inadequate or unfairly
73 discriminatory: *Provided*, That the rates charged for the
74 preferred professional liability insurance program shall not be
75 less than the highest approved comparable base rate for a
76 licensed carrier providing five percent of the malpractice
77 insurance coverage in this state for the previous calendar year
78 on file with the insurance commissioner: *Provided, however*,
79 That if there is only one licensed carrier providing five percent
80 or more of the malpractice insurance coverage in the state
81 offering comparable coverage, the board shall have discretion
82 to disregard the approved comparable base rate of the licensed
83 carrier.

84 (k) The premiums for each of the programs described in
85 subsection (a) of this section are subject to premium taxes
86 imposed by article three, chapter thirty-three of this code,
87 assessments pursuant to the West Virginia insurance guaranty
88 association act set forth in article twenty-six, chapter
89 thirty-three of this code, and any other assessment against
90 premiums.

91 (l) Nothing in this article shall be construed to preclude a
92 health care provider from obtaining professional liability
93 insurance coverage for claims in excess of the coverage made
94 available by the provisions of this article.

§29-12B-7. Eligibility criteria for participation in health care provider professional liability insurance programs.

1 (a) Only those health care providers unable to obtain
2 medical professional liability insurance because it is not
3 available through the voluntary insurance market from insurers
4 licensed to transact insurance in West Virginia at rates ap-
5 proved by the commissioner are eligible to obtain coverage
6 pursuant to the provisions of this article: *Provided*, That any
7 health care provider who can obtain medical professional
8 liability insurance only pursuant to a “consent to” or “guide A”
9 rate agreement is eligible to obtain coverage. Any health care
10 provider who has medical professional liability insurance
11 pursuant to the provisions of article twelve, chapter twenty-nine
12 of this code is not eligible to obtain insurance pursuant to the
13 provisions of this article.

14 (b) In addition to other eligibility criteria for participation
15 in the health care provider professional liability insurance
16 program established by the provisions of this article or criteria
17 imposed by the board, every participant in the programs shall:

18 (1) Maintain a policy of not excluding patients whose
19 health care coverage is provided through the West Virginia
20 public employees insurance plan, the West Virginia children’s
21 health insurance program, West Virginia medicaid or the West
22 Virginia worker’s compensation fund based solely on the fact
23 that the person’s health care coverage is provided by any of the
24 aforementioned entities;

25 (2) Annually participate, at his or her own expense, in a risk
26 management program approved by the board relating to risk
27 management; and

28 (3) Agree in writing to the board's authority to assign his or
29 her policy, individually or collectively, to a third party if the
30 third party coverage is comparable, as determined by the board.

§29-12B-8. Preferred professional liability insurance program.

1 (a) Eligibility to participate in the preferred professional
2 liability insurance program shall be determined by underwriting
3 criteria approved by the board and set forth in a written
4 underwriting manual, and shall be subject to rates approved by
5 the board and set forth in a written rating manual. Participation
6 in the preferred professional liability insurance program shall
7 not be limited based on geographic location or specialty, but
8 may be limited based upon indemnity loss history, number of
9 patient exposures, refusal to participate in risk management/loss
10 control programs or any other grounds the board may approve,
11 as set forth in a written underwriting manual. The board shall
12 periodically review its underwriting manual and make any
13 changes it considers necessary or appropriate.

14 (b) Qualification for participation in the preferred profes-
15 sional liability insurance program shall be reviewed each year,
16 and any participant may be transferred to the high risk profes-
17 sional liability insurance program, as set forth in the written
18 underwriting manual approved by the board.

§29-12B-9. High risk professional liability insurance program.

1 (a) The rate charged participants in the high risk profes-
2 sional liability insurance program may be higher than those
3 established and approved by the board for participants in the
4 preferred professional insurance program as set forth in a
5 written rating manual. Risks may be refused coverage under
6 criteria approved by the board, as set forth in its underwriting
7 manual. The board of risk and insurance management shall
8 periodically review its underwriting manual and make any
9 changes it deems necessary or appropriate.

10 (b) If a majority of the board determines that a health care
11 provider covered by one of the programs created by this article
12 presents an extreme risk because of the number of claims filed
13 against him or her or the outcome of such claims, said board
14 may, after notice and a hearing in accordance with the provi-
15 sions of the West Virginia administrative procedures act,
16 chapter twenty-nine-a of this code, terminate coverage for all
17 claims against that health care provider. Coverage shall
18 terminate thirty days after the board's decision. Upon termina-
19 tion of coverage under this subsection, the board shall notify the
20 licensing or disciplinary board having jurisdiction over the
21 health care provider of said provider's name and of the reasons
22 for termination of the coverage.

23 (c) The board may terminate coverage for a health care
24 provider's failure to pay premiums by providing written notice
25 of such termination by first-class mail no less than thirty days
26 prior to termination of coverage.

§29-12B-10. Deposit, expenditure and investment of premiums.

1 (a) The premiums charged and collected by the board under
2 this article shall be deposited into a special revenue account
3 hereby created in the state treasury known as the "Medical
4 Liability Fund", and shall not be part of the general revenues of
5 the state. Disbursements from the special revenue fund shall be
6 upon requisition of the executive director and in accordance
7 with the provisions of chapter five-a of this code. Disburse-
8 ments shall pay operating expenses of the board attributed to
9 these programs and the board's share of any judgments or
10 settlements of medical malpractice claims. Funds shall be
11 invested with the consolidated fund managed by the West
12 Virginia investment management board and interest earned
13 shall be used for purposes of this article.

14 (b) Start-up operating expenses of the medical liability
15 fund, not to exceed five hundred thousand dollars, may be
16 transferred to the medical liability fund pursuant to an appropri-
17 ation by the Legislature from any special revenue funds
18 available. The medical liability fund shall reimburse the board
19 within twenty-four months of the date of the transfer.

20 (c) For purposes of establishing a pool from which settle-
21 ments and judgments may be paid, a portion of the initial
22 capitalization of the pool may be provided by the Legislature in
23 an amount, upon terms and conditions, and from sources as may
24 be determined by the Legislature in its sole discretion.

§29-12B-11. Payments for settlement or judgment.

1 All payments made in satisfaction of any settlement or
2 judgment shall be in accordance with the procedures established
3 by the board. No settlement or judgment may be paid until there
4 is recorded in the office of the executive director: (1) A
5 certified copy of a final judgment against a health care provider
6 insured by either of the medical liability programs created
7 pursuant to this article, or a certified copy of an order approving
8 settlement in a summary proceeding; or (2) appropriate settle-
9 ment documentation to include a written settlement determina-
10 tion issued by or on behalf of the board.

§29-12B-12. Information exempt from disclosure.

1 Any specific claim reserve information is exempt from
2 public disclosure under the freedom of information act set forth
3 in article one, chapter twenty-nine-b of this code.

§29-12B-13. Appeal bond.

1 In the event of a judgment against a health care provider
2 from which the health care provider or the board wishes to
3 appeal, the board is not liable for more than its share of the

- 4 coverage and, as to that portion, a supersedeas bond signed by
5 the board's administrator or his or her designee, shall suffice
6 without further surety or other security.

§29-12B-14. Effective date.

- 1 The provisions of this article are effective from passage.
2 Any policies written under this article may have an effective
3 date retroactive to the effective date of this article.

CHAPTER 33. INSURANCE.

Article

20E. West Virginia Medical Professional Liability Insurance Joint Underwriting Association Act.

20F. Physicians' Mutual Insurance Company.

**ARTICLE 20E. WEST VIRGINIA MEDICAL PROFESSIONAL LIABILITY
INSURANCE JOINT UNDERWRITING ASSOCIATION
ACT.**

- §33-20E-1. Short title.
§33-20E-2. Legislative findings.
§33-20E-3. Intent and purpose.
§33-20E-4. Definitions.
§33-20E-5. Joint underwriting association.
§33-20E-6. Board of directors.
§33-20E-7. Association's powers and duties.
§33-20E-8. State board of risk and insurance management to exercise board of directors' powers temporarily; interim plan of operation.
§33-20E-9. Final plan of operation.
§33-20E-10. Duties and powers of commissioner.
§33-20E-11. Eligibility for coverage.
§33-20E-12. Issuance of policy.
§33-20E-13. Rates; initial filing; basis for rates and premiums.
§33-20E-14. The Medical Professional Liability Insurance Fund; capitalization; transfer of assets and liabilities to board of directors.
§33-20E-15. Deposit of funds; investments; premium tax liability; state not responsible for liabilities or expenses of association.
§33-20E-16. Deficit; recoupment; assessments; reimbursement of members.

§33-20E-17. Commissioner to report to board termination of authority to transact insurance.

§33-20E-18. Examination of association.

§33-20E-19. Annual statements.

§33-20E-20. Immunity.

§33-20E-21. Operative date.

§33-20E-1. Short title.

1 This article may be cited as the “West Virginia Medical
2 Professional Liability Insurance Joint Underwriting Association
3 Act”.

§33-20E-2. Legislative findings.

1 The Legislature finds and declares:

2 (a) That recent developments in the voluntary insurance
3 market have made it impossible for certain West Virginia health
4 care providers to obtain professional liability insurance cover-
5 age from insurers licensed to transact insurance in this state;

6 (b) That the unavailability of such insurance will have a
7 deleterious effect on the quality and availability of public health
8 programs and services to the citizens of this state;

9 (c) That it is in the best interests of the citizens of this state
10 to preserve the quality and availability of public health pro-
11 grams and services; and

12 (d) That the establishment and funding of a joint underwrit-
13 ing association will make available medical professional
14 liability insurance to health care providers, thus preserving
15 public health programs and services for the citizens of this state.

§33-20E-3. Intent and purpose.

1 The purpose of this article is to create a mechanism to
2 provide medical professional liability insurance to health care

3 providers who are unable to secure such coverage at approved
4 rates through the voluntary market, in order to preserve public
5 health programs and services for the citizens of this state.

§33-20E-4. Definitions.

1 As used in this article, the following terms have the
2 meanings set forth below:

3 (a) "Association" means the joint underwriting association
4 created by this article.

5 (b) "Board" means the board of directors established
6 pursuant to section six of this article.

7 (c) "Commissioner" means the insurance commissioner of
8 West Virginia.

9 (d) "Health care provider" means a person, partnership,
10 corporation, facility or institution licensed by, or certified in,
11 this state or another state, to provide health care or professional
12 health care services, including, but not limited to, a physician,
13 osteopathic physician, hospital, dentist, registered or licensed
14 practical nurse, optometrist, podiatrist, chiropractor, physical
15 therapist, or psychologist.

16 (e) "Medical professional liability insurance", commonly
17 known as "medical malpractice insurance", means insurance
18 coverage for any claim for damage or loss against a health care
19 provider arising out of the death or injury of any person
20 proximately caused by negligence in the rendering, or the
21 failure to render, professional services by a health care pro-
22 vider.

23 (f) "Member insurer" means every insurer authorized to
24 write and engaged in writing, within this state, casualty
25 insurance, as defined in section ten, article one of this chapter.

26 (g) "Net direct written premiums" means, for purposes of
27 this article, direct gross premiums written in this state on
28 casualty insurance policies, less return premiums thereon, but
29 does not include premiums on contracts between insurers or
30 reinsurers.

31 (h) "State board" means the state board of risk and insur-
32 ance management.

§33-20E-5. Joint underwriting association.

1 (a) There is hereby created a nonprofit unincorporated legal
2 entity to be known as the West Virginia medical professional
3 liability insurance joint underwriting association composed of
4 member insurers. Every insurer authorized to write and engaged
5 in writing, within this state, casualty insurance, on a direct
6 basis, is and shall remain a member insurer, as a condition of its
7 authority to transact insurance in this state.

8 (b) Each member insurer shall participate in the association
9 in the proportion that its net direct written premiums during the
10 preceding calendar year, as reported in the annual statements
11 and other reports filed by the member with the commissioner,
12 bear to the aggregate net direct premiums written in this state
13 by all members of the association.

14 (c) The association shall perform its functions under a plan
15 of operation approved by the commissioner under section nine
16 of this article.

§33-20E-6. Board of directors.

1 (a) The administrative powers of the association shall be
2 vested in a board of directors, which shall consist of nine
3 persons serving terms established in the plan of operation.
4 Seven of the board members shall be representatives of the
5 member insurers and shall be appointed by the commissioner,

6 with consideration given to whether all member insurers are
7 fairly represented. One member shall be a health care provider,
8 and another shall be a citizen, both appointed by the governor
9 with the advice and consent of the Senate.

10 (b) The citizen and health care provider members of the
11 board shall receive the same compensation authorized by law
12 for members of the Legislature for their interim duties for each
13 day, or portion thereof, the member is engaged in the discharge
14 of official duties. All board members shall be reimbursed for
15 their actual and necessary expenses incurred in the discharge of
16 official duties, except that mileage shall be reimbursed at the
17 same rate as that authorized for members of the Legislature. All
18 payments for compensation and expenses shall be made from
19 the assets of the association.

§33-20E-7. Association's powers and duties.

1 (a) The association has, for purposes of this article and to
2 the extent approved by the commissioner, the general powers
3 and authority granted under the laws of this state to insurers
4 licensed to transact insurance as defined in article one, chapter
5 thirty-three of this code.

6 (b) The association may take any necessary action to make
7 medical professional liability insurance available including, but
8 not limited to:

9 (1) Assessing member insurers amounts necessary to pay
10 the obligations of the association, administration expenses, the
11 cost of examinations and other expenses authorized under this
12 article.

13 (2) Establishing underwriting standards and criteria.

14 (3) Requiring an eligible health care provider to purchase
15 an extended reporting endorsement, if available, from his or her

16 previous primary medical professional liability carrier with
17 respect to claims arising during previous policy periods.

18 (4) Entering into such contracts as are necessary or proper
19 to carry out the provisions and purposes of this article, includ-
20 ing contracts authorizing competent third parties with experi-
21 ence with joint underwriting associations or the medical
22 professional liability line of insurance to administer the plan of
23 operation, issue policies, oversee risk management, oversee
24 investment management, set rates, underwrite risk or process
25 claims or any combination thereof. Any such third-party
26 contract must be approved by the commissioner. The provisions
27 of article three, chapter five-a of this code, relating to purchas-
28 ing procedures, do not apply to any contracts or agreements
29 executed by or on behalf of the association under this subsec-
30 tion.

31 (5) Suing, including taking legal action necessary to recover
32 any assessments for, on behalf of, or against member insurers.

33 (6) Investigating claims brought against the association and
34 adjusting, compromising, defending, settling, and paying
35 covered claims, to the extent of the association's obligation, and
36 denying all other claims.

37 (7) Classifying risks as may be applicable and equitable.

38 (8) Establishing actuarially sound rates, rate classifications
39 and rating adjustments, subject to approval by the commis-
40 sioner.

41 (9) Purchasing reinsurance in an amount as it may from
42 time to time consider appropriate.

43 (10) Issuing and marketing policies of insurance providing
44 coverage required by this article in its own name.

45 (11) Investing, reinvesting and administering all funds and
46 moneys held by the association.

47 (12) Establishing accounts and funds, including a reserve
48 fund, to effectuate the purposes of this article.

49 (13) Developing, effectuating and promulgating any loss
50 prevention programs aimed at the best interests of the associa-
51 tion and the insured public.

**§33-20E-8. State board of risk and insurance management to
exercise board of directors' powers temporarily;
interim plan of operation.**

1 (a) Prior to the commissioner's approval of the final plan of
2 operation in accordance with section nine of this article, the
3 administrative powers of the association will be exercised by
4 the state board of risk and insurance management.

5 (b) The state board shall submit to the commissioner an
6 interim plan of operation consistent with the provisions of this
7 article, to become effective and operative upon approval in
8 writing by the commissioner.

9 (c) If the state board fails to submit a suitable interim plan
10 of operation within thirty days, the commissioner shall adopt an
11 interim plan which shall continue in force until superceded by
12 a final plan of operation, submitted by the board and approved
13 by the commissioner in accordance with section nine of this
14 article.

15 (d) The interim plan of operation shall provide for eco-
16 nomic, fair, and nondiscriminatory administration and for the
17 prompt and efficient provision of professional liability insur-
18 ance, and shall:

19 (1) Establish actuarially sound rates and premiums;

20 (2) Establish procedures for handling assets of the associa-
21 tion;

22 (3) Establish procedures by which claims may be filed with
23 the association and acceptable forms for filing claims;

24 (4) Establish procedures for records to be kept of all
25 financial transactions of the association;

26 (5) Establish a procedure by which any member insurer or
27 policyholder aggrieved by a final action or decision of the state
28 board or the board of directors may appeal to the commissioner
29 within thirty days after the action or decision; and

30 (6) Contain additional provisions necessary or proper for
31 the execution of the powers and duties of the association.

32 (e) The interim plan may also provide for:

33 (1) Assessments of members to defray losses and expenses;

34 (2) Creation and administration of a reserve fund;

35 (3) Commission arrangements;

36 (4) Reasonable and objective underwriting standards; and

37 (5) Purchase and cession of reinsurance.

38 (f) A health care provider is not eligible to obtain coverage
39 under the interim plan if he or she refuses, on a regular basis, to
40 accept patients solely because their health care coverage is
41 provided pursuant to the West Virginia public employees
42 insurance act, the West Virginia children's health program,
43 West Virginia medicaid, or the West Virginia workers' com-
44 pensation fund.

45 (g) All member insurers shall comply with the interim plan
46 of operation.

§33-20E-9. Final plan of operation.

1 (a) Once the commissioner has approved the selection of
2 the initial board members, the board shall, within thirty days,
3 submit to the commissioner a final plan of operation consistent
4 with the provisions of this article.

5 (b) If the board fails to submit a suitable final plan of
6 operation within the time provided in subsection (a) of this
7 section, the commissioner shall adopt a final plan of operation
8 as necessary or advisable to effectuate the provisions of this
9 article.

10 (c) The board shall not assume administrative control of the
11 association until the commissioner approves the final plan of
12 operation.

13 (d) In addition to the matters specified in subsection (d) of
14 section eight of this article to be included in the interim plan of
15 operation, the final plan of operation shall:

16 (1) Establish procedures for the transfer of all assets and
17 liabilities of the association from the state board to the board of
18 directors created by section six of this article.

19 (2) Establish the terms of office of the board of directors.

20 (3) Establish regular places and times for meetings of the
21 board of directors.

22 (4) Establish procedures for records to be kept of all
23 financial transactions of the association, its agents, and the
24 board.

25 (5) Establish procedures for assessments of member
26 insurers to defray losses and expenses;

27 (6) Establish reasonable and objective underwriting
28 standards;

29 (7) Establish actuarially sound rates and premiums;

30 (8) Contain such additional provisions as are necessary or
31 proper for the execution of the powers and duties of the
32 association.

33 (e) All member insurers shall comply with the final plan of
34 operation.

35 (f) Amendments to the plan of operation may be made by
36 the commissioner or by the board of directors with the approval
37 of the commissioner.

§33-20E-10. Duties and powers of commissioner.

1 (a) The commissioner shall, upon request of the board,
2 provide the association with a statement of the net direct written
3 premiums of each member insurer.

4 (b) The commissioner may suspend or revoke, after notice
5 and hearing, the certificate of authority to transact insurance in
6 this state of any member insurer which fails to comply with the
7 plan of operation or fails to pay an assessment when due.

8 (c) Any final order of the commissioner under this article
9 shall be subject to judicial review as provided by section
10 fourteen, article two of this chapter.

§33-20E-11. Eligibility for coverage.

1 (a) Only those health care providers who are unable to
2 obtain medical professional liability insurance because it is not

3 available through the voluntary insurance market from insurers
4 licensed to transact insurance in West Virginia at rates ap-
5 proved by the commissioner are eligible to obtain coverage
6 through the association: *Provided*, That any health care pro-
7 vider who can obtain medical professional liability insurance
8 only pursuant to a “consent to” or “guide A” rate agreement
9 will remain eligible to obtain coverage through the association.
10 Any health care provider who has medical professional liability
11 insurance pursuant to article twelve of chapter twenty-nine of
12 this code is not eligible to obtain insurance through the associa-
13 tion.

14 (b) The commissioner shall designate, based upon market
15 conditions, the categories of health care providers who are
16 eligible to obtain coverage from the association.

§33-20E-12. Issuance of policy.

1 (a) If an eligible applicant meets the underwriting standards
2 and other requirements and conditions of the association as set
3 forth in the approved plan of operation and there is no unpaid,
4 uncontested premium, charge or assessment due from the
5 applicant for any prior insurance of the same kind, the associa-
6 tion, upon receipt of the premium, charge or assessment or a
7 portion thereof as prescribed by the plan of operation, shall
8 cause to be issued a policy of medical professional liability
9 insurance.

10 (b) The policy may not require as a condition precedent to
11 settlement or compromise of any claim the consent or acquies-
12 cence of the policyholder.

§33-20E-13. Rates; initial filing; basis for rates and premiums.

1 (a) The rates, rating plans, rating rules and rating classifica-
2 tions applicable to insurance written by the association are
3 subject to the provisions of article twenty-b of this chapter.

4 Policy forms applicable to insurance written by the association
5 must conform to the requirements of the provisions of section
6 eight, article six of this chapter.

7 (b) Within such time as the commissioner shall direct, the
8 association shall submit an initial filing, in proper form, of
9 policy forms, classifications, rates, rating plans, and rating rules
10 applicable to medical professional liability insurance. Rates
11 approved by the state board pursuant to section eight of this
12 article shall remain in effect until the association's initial filing
13 is approved.

14 (c) In the event the commissioner disapproves the initial
15 filing, in whole or in part, the association shall amend the filing,
16 in whole or in part, in accordance with the direction of the
17 commissioner.

18 (d) Initial rates and premiums are to be set in consideration
19 of the past and prospective loss and expense experience for
20 insurers writing medical professional liability insurance within
21 this state.

22 (e) After the initial year of operation, the board shall obtain
23 and implement, at least annually, from an independent outside
24 source, such as a medical liability actuary or a rating organiza-
25 tion experienced with the medical liability line of insurance,
26 written rating plans upon which premiums shall be based. The
27 resultant premium rates must be arrived at on an actuarially
28 sound basis and must be calculated to be self-supporting.

29 (f) The rates and premiums charged for insurance policies
30 issued pursuant to this article shall not be deemed excessive
31 because they contain an amount reasonably calculated to recoup
32 a deficit of the association pursuant to section sixteen of this
33 article.

§33-20E-14. The Medical Professional Liability Insurance Fund; capitalization; transfer of assets and liabilities to board of directors.

1 (a) There is hereby established a special revenue fund, to be
2 known as the “medical professional liability insurance fund,”
3 into which any initial capital, surplus or premiums or assess-
4 ments charged and collected by the state board under the
5 provisions of the interim plan shall be deposited.

6 (b) A portion of the association’s initial capital and surplus
7 may be provided by the Legislature, in an amount, upon terms
8 and conditions, and from sources as may be determined by the
9 Legislature in its sole discretion.

10 (c) Upon approval of the final plan of operation by the
11 commissioner, the state board shall transfer the assets and
12 liabilities of the association to the board of directors.

§33-20E-15. Deposit of funds; investments; premium tax liability; state not responsible for liabilities or expenses of association.

1 (a) The board shall deposit all sums transferred from the
2 state board into an account of the association as specified in the
3 final plan of operation.

4 (b) The board may invest sums from the association’s
5 account. Any interest earned on investments or any profit
6 generated by collection of premiums or other means shall be
7 returned to the association’s account for the purpose of imple-
8 menting this article.

9 (c) The association is liable for premium taxes to the same
10 extent and in the same manner as a licensed insurer engaged in
11 transacting insurance in this state.

12 (d) The state is not responsible for any costs, expenses,
13 liabilities, judgments, or other obligations of the association.

§33-20E-16. Deficit; recoupment; assessments; reimbursement of members.

1 (a) A deficit sustained by the association in any one
2 calendar year may be recouped, pursuant to the plan of opera-
3 tion then in effect, by one or more of the following procedures:

4 (1) A contribution from a reserve fund, if any, until the
5 same is exhausted;

6 (2) An assessment upon the member insurers;

7 (3) A prospective rate increase.

8 (b) In the event the board opts to assess the member
9 insurers, each member shall be responsible for the proportion
10 of the deficit its net direct written premiums for the preceding
11 year bear to the aggregate net direct premiums written by all
12 members in the preceding calendar year. Net direct written
13 premiums subject to the provisions of article twenty-a of this
14 chapter shall not be considered in determining a member
15 insurer's proportional share of the deficit. A member insurer
16 may not be assessed in any year an amount greater than two
17 percent of its net direct written premiums for the preceding
18 calendar year.

19 (c) The assessment of a member insurer may be ordered
20 deferred, in whole or in part, upon application by the insurer if
21 the commissioner determines that payment of the assessment
22 may render the insurer insolvent or in danger of insolvency or
23 otherwise seriously impair the financial stability of the member
24 insurer.

25 (d) After the deficit which necessitated the assessment has
26 been recouped, each member insurer shall be entitled to
27 reimbursement of any assessment through a credit against the
28 premium taxes imposed by sections fourteen and fourteen-a,
29 article three of this chapter, in equal amounts per year for three
30 successive years following the assessment. At the option of the
31 member insurer, the premium tax credit may be taken over an
32 additional number of years. The tax credit established under this
33 subsection shall be applicable only to general revenue funds.

34 (e) A member insurer may not impose a policy surcharge on
35 any policyholder of the member insurer for any assessment paid
36 by the member insurer pursuant to subsection (b) of this section
37 or otherwise refer to the assessment paid by the member insurer
38 in any billing statement or notice provided to any policyholder
39 of the member insurer. Nothing in this section shall prohibit a
40 member insurer from treating any assessment payments as an
41 expense of the member insurer for all purposes.

**§33-20E-17. Commissioner to report to board termination of
authority to transact insurance.**

1 If the authority of a member to transact insurance in this
2 state terminates for any reason, the commissioner shall notify
3 the board.

§33-20E-18. Examination of association.

1 The association shall be subject to examination and
2 regulation by the commissioner.

§33-20E-19. Annual statements.

1 The association shall file in the office of the commissioner,
2 on or before the thirtieth day of March of each year, a statement
3 containing information with respect to its transactions, condi-
4 tion, operations, and affairs during the preceding calendar year.

5 The commissioner shall prescribe the matters and information
6 to be contained in and the form of the annual statement. The
7 commissioner may, at any time, require the association to
8 furnish additional information with respect to its transactions,
9 condition, or any matter connected therewith considered to be
10 material and of assistance in evaluating the scope, operation,
11 and experience of the association.

§33-20E-20. Immunity.

1 There shall be no liability on the part of and no cause of
2 action of any nature shall arise against any member insurer, the
3 association, the board, the commissioner or their agents or
4 employees for any action taken by them in the exercise and
5 performance of their powers and duties under this article or for
6 any statements made in good faith by them in any reports or
7 communications, concerning risks insured or to be insured by
8 the association, or at any administrative hearings conducted in
9 connection therewith.

§33-20E-21. Operative date.

1 The provisions of this article may only become operable
2 upon the passage of a resolution by the Legislature. Any
3 policies written under this article may have an effective date
4 retroactive to the operative date.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-1. Short title.

§33-20F-2. Findings and purpose.

§33-20F-3. Definitions.

§33-20F-4. Authorization for creation of company; requirements and limitations.

§33-20F-5. Governance and organization.

§33-20F-6. Management and administration of a company.

§33-20F-7. Initial capital and surplus; special assessment.

§33-20F-8. Application for license; authority of commissioner.

§33-20F-9. Kinds of coverage authorized; transfer of policies from the state board of risk and insurance management; risk management practices authorized.

§33-20F-10. Controlling law.

§33-20F-11. Liberal construction.

§33-20F-12. Severability.

§33-20F-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 “Physicians’ Mutual Insurance Company Act”.

§33-20F-2. Findings and purpose.

- 1 (a) The Legislature finds that:

- 2 (1) There is a nationwide crisis in the field of medical
- 3 liability insurance;

- 4 (2) Similar crises have occurred at least three times during
- 5 the past three decades;

- 6 (3) Physicians in West Virginia find it increasingly diffi-
- 7 cult, if not impossible, to obtain medical liability insurance
- 8 either because coverage is unavailable or unaffordable;

- 9 (4) The difficulty or impossibility in obtaining medical
- 10 liability insurance may result in many qualified physicians
- 11 leaving the state;

- 12 (5) Access to health care is of utmost importance to the
- 13 citizens of West Virginia;

- 14 (6) A mechanism is needed to remedy this recurring
- 15 medical liability crisis; and

- 16 (7) A physicians’ mutual insurance company or a similar
- 17 entity has proven to be a successful mechanism in other states

18 for helping physicians secure insurance and for stabilizing the
19 insurance market.

20 (b) The purpose of this article is to create a mechanism for
21 the formation of a physicians' mutual insurance company that
22 will provide:

23 (1) A means for physicians to obtain medical professional
24 liability insurance that is available and affordable; and

25 (2) Compensation to persons who suffer injuries as a result
26 of medical professional liability as defined in subsection (d),
27 section two, article seven-b, chapter fifty-five of this code.

§33-20F-3. Definitions.

1 For purposes of this article, the term:

2 (a) "Board of medicine" means the West Virginia board of
3 medicine as provided in section five, article three, chapter thirty
4 of this code.

5 (b) "Board of osteopathy" means the West Virginia board
6 of osteopathy as provided in section three, article fourteen,
7 chapter thirty of this code.

8 (c) "Commissioner" means the insurance commissioner of
9 West Virginia as provided in section one, article two, chapter
10 thirty-three of this code.

11 (d) "Company" means any physicians' mutual insurance
12 company created pursuant to the terms of this article.

13 (e) "Physician" means an individual who is licensed by the
14 board of medicine or the board of osteopathy to practice
15 medicine or podiatry in West Virginia.

§33-20F-4. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a company is
2 hereby authorized to be created as a domestic, private,
3 nonstock, nonprofit corporation. As an incentive for its cre-
4 ation, any company that meets the requirements set forth in this
5 article may be eligible for funds from the Legislature in
6 accordance with the provisions of section seven of this article.
7 A company must remain for the duration of its existence a
8 domestic mutual insurance company owned by its policyholders
9 and may not be converted into a stock corporation, a for-profit
10 corporation or any other entity not owned by its policyholders.

11 (b) For the duration of its existence, a company is not and
12 may not be considered a department, unit, agency, or instru-
13 mentality of the state for any purpose. All debts, claims,
14 obligations, and liabilities of a company, whenever incurred,
15 shall be the debts, claims, obligations, and liabilities of the
16 company only and not of the state or of any department, unit,
17 agency, instrumentality, officer, or employee of the state.

18 (c) The moneys of a company are not and may not be
19 considered part of the general revenue fund of the state. The
20 debts, claims, obligations, and liabilities of a company are not
21 and may not be considered a debt of the state or a pledge of the
22 credit of the state.

23 (d) A company is not subject to provisions of article nine-a,
24 chapter six of this code or the provisions of article one, chapter
25 twenty-nine-b of this code.

§33-20F-5. Governance and organization.

1 (a) A company is to be governed by a board of directors
2 consisting of eleven directors, as follows:

3 (1) At least, but not more than, four directors who are
4 physicians licensed by the board of medicine or the board of
5 osteopathy and who represent the various physician organiza-
6 tions within the state;

7 (2) Three directors who have substantial experience as an
8 officer or employee of a company in the insurance industry;

9 (3) At least two directors who are officers and employees
10 of the company and are responsible for the daily management
11 of the company; and

12 (4) Two directors with general knowledge and experience
13 in business management.

14 (b) In addition to the eleven directors required by subsec-
15 tion (a) of this section, the bylaws of a company may provide
16 for the addition of at least two directors who represent an entity
17 or institution which lends or otherwise provides funds to the
18 company.

19 (c) Relating to the directors provided for in subsection (a)
20 of this section and to the extent possible, the directors are to
21 reside in different geographical areas of the state. The number
22 of such directors from any one congressional district in the state
23 may not exceed the number of directors from any other con-
24 gressional district in the state by more than two.

25 (d) The directors and officers of a company are to be
26 chosen in accordance with the articles of incorporation and
27 bylaws of the company. The initial directors shall serve for the
28 following terms: (1) Three for four year terms; (2) three for
29 three year terms; (3) three for two year terms; and (4) two for
30 one year terms. Thereafter, the directors shall serve staggered
31 terms of four years. If additional directors are added to the
32 board as provided in subsection (b) of this section, the initial
33 term for those directors is four years. No director chosen

34 pursuant to subsection (a) of this section may serve more than
35 two consecutive terms.

36 (e) The incorporators are to prepare and file articles of
37 incorporation and bylaws in accordance with the provisions of
38 this article and the provisions of chapters thirty-one and thirty-
39 three of this code.

§33-20F-6. Management and administration of a company.

1 (a) If the board of directors determines that the affairs of a
2 company may be administered suitably and efficiently, the
3 company may enter into a contract with a licensed insurer,
4 licensed health service plan, insurance service organization,
5 third party administrator, insurance brokerage firm or other firm
6 or company with suitable qualifications and experience to
7 administer some or all of the affairs of the company, subject to
8 the continuing direction of the board of directors as required by
9 the articles of incorporation and bylaws of the company, and
10 the contract.

11 (b) The company shall file a true copy of the contract with
12 the commissioner as provided in section twenty-one, article five
13 of this chapter.

§33-20F-7. Initial capital and surplus; special assessment.

1 (a) A portion of the initial capital and surplus of a company
2 may be provided by direction of the Legislature, in an amount,
3 upon terms and conditions, and from sources as may be
4 determined by the Legislature in its sole discretion.

5 (b) In the event that a portion of the initial capital and
6 surplus of a company is provided by direction of the Legislature
7 pursuant to subsection (a) of this section, a special one time
8 assessment for the privilege of practicing in West Virginia may
9 be assessed on every physician licensed by the board of

10 medicine and every physician licensed by the board of osteopa-
11 thy to practice medicine in this state. The executive director of
12 the medical licensing board shall establish the amount of the
13 assessment, in consultation with the board of directors of the
14 company or their designee. The amount of the assessment may
15 not exceed one thousand dollars. The assessment is to be
16 assessed and collected by the board of medicine and the board
17 of osteopathy, on forms as the board of medicine and the board
18 of osteopathy may prescribe.

19 (c) If the special assessment is collected pursuant to
20 subsection (b) of this section, the Legislature hereby dedicates
21 the entire proceeds of the special assessment to the company.
22 The board of medicine and the board of osteopathy shall
23 promptly pay over to the company all amounts collected
24 pursuant to this section.

§33-20F-8. Application for license; authority of commissioner.

1 (a) As soon as practical, a company desiring to do business
2 pursuant to the provisions of this article shall file its corporate
3 charter and bylaws with the commissioner and apply for a
4 license to transact insurance in this state. Notwithstanding any
5 other provision of this code, the commissioner must act on the
6 documents within fifteen days of the filing by a company.

7 (b) In recognition of the medical liability insurance crisis in
8 this state at the time of enactment of this article, and the critical
9 need to expedite the initial operation of a company, the Legisla-
10 ture hereby authorizes the commissioner to review the docu-
11 mentation submitted by a company and to determine the initial
12 capital and surplus requirements of a company, notwithstanding
13 the provisions of section five-b, article three of this chapter.
14 The commissioner has the sole discretion to determine the
15 capital and surplus funds of a company and to monitor the
16 economic viability of the company during its initial operation

17 and duration on not less than a monthly basis. A company shall
18 furnish the commissioner with all information and cooperate in
19 all respects as may be necessary for the commissioner to
20 perform the duties set forth in this section and in other provi-
21 sions of this chapter.

22 (c) Subject to the provisions of subsection (d) of this
23 section, the commissioner may waive other requirements
24 imposed on mutual insurance companies by the provisions of
25 this chapter as the commissioner determines is necessary to
26 enable a company to begin insuring physicians in this state at
27 the earliest possible date.

28 (d) Within thirty-six months of the date of the issuance of
29 its license to transact insurance, a company must comply with
30 the capital and surplus requirements set forth in section five-b,
31 article three of this chapter and with all other requirements
32 imposed upon mutual insurance companies by the provisions of
33 this chapter.

**§33-20F-9. Kinds of coverage authorized; transfer of policies
from the state board of risk and insurance man-
agement; risk management practices authorized.**

1 (a) Upon approval by the commissioner for a license to
2 transact insurance in this state, a company may issue
3 nonassessable policies of malpractice insurance, as defined in
4 subdivision (9), subsection (e), section ten, article one of this
5 chapter, insuring a physician. Additionally, a company may
6 issue other types of casualty or liability insurance as may be
7 approved by the commissioner.

8 (b) A company must accept the transfer of medical mal-
9 practice insurance obligations and risks of existing or in force
10 contracts of insurance on physicians from the state board of risk
11 and insurance. Subject to approval by the commissioner, a
12 company may impose reasonable terms and conditions upon

13 any transfer from the state board of risk and insurance manage-
14 ment, but the terms and conditions may not be designed or
15 construed to prohibit or unduly restrict such transfers.

16 (c) A company shall make policies of insurance available
17 to physicians in this state, regardless of practice type or
18 specialty. Policies issued by a company to each class of
19 physicians are to be essentially uniform in terms and conditions
20 of coverage.

21 (d) Notwithstanding the provisions of subsections (b) or (c)
22 of this section, a company may:

23 (1) Establish reasonable classifications of physicians,
24 insured activities, and exposures based on a good faith determi-
25 nation of relative exposures and hazards among classifications;

26 (2) Vary the limits, coverages, exclusions, conditions, and
27 loss-sharing provisions among classifications;

28 (3) Establish, for an individual physician within a classifi-
29 cation, reasonable variations in the terms of coverage, including
30 rates, deductibles and loss-sharing provisions, based on the
31 insured's prior loss experience and current professional training
32 and capability; and

33 (4) Refuse to provide insurance coverage for individual
34 physicians whose prior loss experience or current professional
35 training and capability are such that the physician represents an
36 unacceptable risk of loss if coverage is provided.

37 (e) A company shall establish reasonable risk management
38 and continuing education requirements which policyholders
39 must meet in order to be and remain eligible for coverage.

§33-20F-10. Controlling law.

1 To the extent applicable, and when not in conflict with the
2 provisions of this article, the provisions of chapters thirty-one
3 and thirty-three of this code apply to any company created
4 pursuant to the provisions of this article. If a provision of this
5 article and another provision of this code are in conflict, the
6 provision of this article controls.

§33-20F-11. Liberal construction.

1 This article is enacted to address a situation critical to the
2 citizens of the State of West Virginia by providing a mechanism
3 for the speedy and deliberate creation of a company to begin
4 offering medical liability insurance to physicians in this state at
5 the earliest possible date, and to accomplish this purpose, this
6 article must be liberally construed.

§33-20F-12. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity may
3 not affect other provisions or applications of this article and to
4 this end, the provisions of this article are declared to be
5 severable.

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

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

§55-7B-6a. Access to medical records.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

§55-7B-6c. Summary jury trial.

§55-7B-6d. Twelve-member jury trial.

§55-7B-10. Effective date; applicability of provisions.

§55-7B-11. Severability.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims.

1 (a) In any medical professional liability action against a
2 health care provider, no specific dollar amount or figure may be
3 included in the complaint, but the complaint may include a
4 statement reciting that the minimum jurisdictional amount
5 established for filing the action is satisfied. However, any party
6 defendant may at any time request a written statement setting
7 forth the nature and amount of damages being sought. The
8 request shall be served upon the plaintiff who shall serve a
9 responsive statement as to the damages sought within thirty
10 days thereafter. If no response is served within the thirty days,
11 the party defendant requesting the statement may petition the
12 court in which the action is pending to order the plaintiff to
13 serve a responsive statement.

14 (b) Notwithstanding any other provision of law, absent
15 privity of contract, no plaintiff who files a medical professional
16 liability action against a health care provider may file an
17 independent cause of action against any insurer of the health
18 care provider alleging the insurer has violated the provisions of
19 subdivision (9), section four, article eleven, chapter thirty-three
20 of this code. Insofar as the provisions of section three, article
21 eleven, chapter thirty-three of this code prohibit the conduct
22 defined in subdivision (9), section four, article eleven, chapter
23 thirty-three of this code, no plaintiff who files a medical
24 professional liability action against a health care provider may
25 file an independent cause of action against any insurer of the
26 health care provider alleging the insurer has violated the
27 provisions of said section three.

28 (c) No health care provider may file a cause of action
29 against his or her insurer alleging the insurer has violated the

30 provisions of subdivision (9), section four, article eleven,
31 chapter thirty-three of this code until the jury has rendered a
32 verdict in the underlying medical professional liability action or
33 the case has otherwise been dismissed, resolved or disposed of.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

1 (a) Notwithstanding any other provision of this code, no
2 person may file a medical professional liability action against
3 any health care provider without complying with the provisions
4 of this section.

5 (b) At least thirty days prior to the filing of a medical
6 professional liability action against a health care provider, the
7 claimant shall serve by certified mail, return receipt requested,
8 a notice of claim. The notice of claim shall include a statement
9 of the theory or theories of liability upon which a cause of
10 action may be based, together with a screening certificate of
11 merit. The certificate of merit shall be executed under oath by
12 a health care provider qualified as an expert under the West
13 Virginia rules of evidence and shall state with particularity: (1)
14 the expert's familiarity with the applicable standard of care in
15 issue; (2) the expert's qualifications; (3) the expert's opinion as
16 to how the applicable standard of care was breached; and (4) the
17 expert's opinion as to how the breach of the applicable standard
18 of care resulted in injury or death. A separate screening
19 certificate of merit must be provided for each health care
20 provider against whom a claim is asserted. The person signing
21 the screening certificate shall have no financial interest in the
22 underlying claim, but may participate as an expert witness in
23 any judicial proceeding. Nothing in this subsection may be
24 construed to limit the application of rule fifteen of the rules of
25 civil procedure.

26 (c) Notwithstanding any provision of this code, if a claim-
27 ant or if represented by counsel, the claimant's counsel,
28 believes that no screening certificate of merit is necessary
29 because the cause of action is based upon a well-established
30 legal theory of liability which does not require expert testimony
31 supporting a breach of the applicable standard of care, the
32 claimant or if represented by counsel, the claimant's counsel,
33 shall file a statement specifically setting forth the basis of the
34 alleged liability of the health care provider in lieu of a screening
35 certificate of merit.

36 (d) If a claimant or his or her counsel has insufficient time
37 to obtain a screening certificate of merit prior to the expiration
38 of the applicable statute of limitations, the claimant shall
39 comply with the provisions of subsection (b) of this section
40 except that the claimant or his or her counsel shall furnish the
41 health care provider with a statement of intent to provide a
42 screening certificate of merit within sixty days of the date the
43 health care provider receives the notice of claim.

44 (e) Any health care provider who receives a notice of claim
45 pursuant to the provisions of this section must respond, in
46 writing, to the claimant within thirty days of receipt of the
47 claim or within thirty days of receipt of the certificate of merit
48 if the claimant is proceeding pursuant to the provisions of
49 subsection (d) of this section.

50 (f) Upon receipt of the notice of claim or of the screening
51 certificate, if the claimant is proceeding pursuant to the
52 provisions of subsection (d) of this section, the health care
53 provider is entitled to pre-litigation mediation before a qualified
54 mediator upon written demand to the claimant.

55 (g) If the health care provider demands mediation pursuant
56 to the provisions of subsection (f) of this section, the mediation
57 shall be concluded within forty-five days of the date of the

58 written demand. The mediation shall otherwise be conducted
59 pursuant to rule 25 of the trial court rules, unless portions of the
60 rule are clearly not applicable to a mediation conducted prior to
61 the filing of a complaint or unless the supreme court of appeals
62 promulgates rules governing mediation prior to the filing of a
63 complaint. If mediation is conducted, the claimant may depose
64 the health care provider before mediation or take the testimony
65 of the health care provider during the mediation.

66 (h) The failure of a health care provider to timely respond
67 to a notice of claim, in the absence of good cause shown,
68 constitutes a waiver of the right to request pre-litigation
69 mediation. Except as otherwise provided in this subsection, any
70 statute of limitations applicable to a cause of action against a
71 health care provider upon whom notice was served for alleged
72 medical professional liability shall be tolled from the date of the
73 mailing of a notice of claim to thirty days following receipt of
74 a response to the notice of claim, thirty days from the date a
75 response to the notice of claim would be due, or thirty days
76 from the receipt by the claimant of written notice from the
77 mediator that the mediation has not resulted in a settlement of
78 the alleged claim and that mediation is concluded, whichever
79 last occurs. If a claimant has sent a notice of claim relating to
80 any injury or death to more than one health care provider, any
81 one of whom has demanded mediation, then the statute of
82 limitations shall be tolled with respect to, and only with respect
83 to, those health care providers to whom the claimant sent a
84 notice of claim to thirty days from the receipt of the claimant of
85 written notice from the mediator that the mediation has not
86 resulted in a settlement of the alleged claim and that mediation
87 is concluded.

88 (i) Notwithstanding any other provision of this code, a
89 notice of claim, a health care provider's response to any notice
90 claim, a certificate of merit and the results of any mediation
91 conducted pursuant to the provisions of this section are confi-

92 dental and are not admissible as evidence in any court proceed-
93 ing unless the court, upon hearing, determines that failure to
94 disclose the contents would cause a miscarriage of justice.

§55-7B-6a. Access to medical records.

1 (a) Within thirty days of the filing of an answer by a
2 defendant in a medical professional liability action or, if there
3 are multiple defendants, within thirty days following the filing
4 of the last answer, the plaintiff shall provide each defendant and
5 each defendant shall provide the plaintiff with access, as if a
6 request had been made for production of documents pursuant to
7 rule 34 of the rules of civil procedure, to all medical records
8 pertaining to the alleged act or acts of medical professional
9 liability which: (1) Are reasonably related to the plaintiff's
10 claim; and (2) are in the party's control. The plaintiff shall also
11 provide releases for such other medical records known to the
12 plaintiff but not under his or her control but which relate to the
13 plaintiff's claim. If the action is one alleging wrongful death,
14 the records shall be for the deceased except inasmuch as the
15 plaintiff alleges injury to himself or herself.

16 (b) Upon receipt and review of the records referred to in
17 subsection (a) of this section, any party may make a written
18 request to any other party for medical records of the plaintiff or
19 the deceased related to his or her medical care and which are
20 reasonably related to the plaintiff's claim. Such request shall be
21 specific as to the type of record requested and shall be accom-
22 panied by a brief statement as to why its disclosure would be
23 relevant to preparation of a claim or of a defense. The party
24 receiving the request shall provide access to any such records
25 under his or her control or a release for medical records for such
26 records not under his or her control unless the party receiving
27 the request believes that the records requested are not reason-
28 ably related to the claim.

29 (c) If a party receives a request for existing records he or
30 she believes are not reasonably related to the claim, he or she
31 shall provide written notice to the requesting party of the
32 existence of such records and schedule a hearing before the
33 court to determine whether access should be provided.

34 (d) If a party has reasonable cause to believe that medical
35 records reasonably related to the claim of medical negligence
36 exist and access have not been provided or a release has not
37 been provided therefor, he or she shall give written notice
38 thereof to the party upon whom the request is made, and if said
39 records are not received within fourteen days of the written
40 notice, obtain a hearing on the matter before the court.

41 (e) In the event a hearing is required pursuant to the
42 provisions of subsection (c) or (d) of this section, the court at
43 the conclusion thereof shall make a finding as to the reasonable-
44 ness of the parties' request for or refusal to provide records and
45 may assess costs pursuant to the rules of civil procedure.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

1 (a) In each professional liability action filed against a health
2 care provider, the court shall convene a mandatory status
3 conference within sixty days after the appearance of the
4 defendant. It shall be the duty of the defendant to schedule the
5 conference with the court upon proper notice to the plaintiff.

6 (b) During the status conference the parties shall inform the
7 court as to the status of the action, the identification of con-
8 tested facts and issues, the progress of discovery and the time
9 necessary to complete discovery. The plaintiff shall advise the
10 court whether the plaintiff intends to proceed without an expert,
11 whether the expert who signed the screening certificate of merit
12 will testify upon trial or whether additional experts will be
13 offered by plaintiff. The court shall determine whether the

14 plaintiff may proceed without an expert or otherwise establish
15 dates for the disclosure of expert witnesses by both the plaintiff
16 and all defendants. The court shall also order the parties to
17 participate in mandatory mediation. The mediation shall be
18 conducted pursuant to the provisions of trial court rule 25.

19 (c) Absent an order expressly setting forth reasons why the
20 interests of justice would otherwise be served, the court shall
21 enter a scheduling order which sets a trial date within twenty-
22 four months from the date the defendant made an appearance,
23 or if there is more than one defendant, twenty-four months from
24 the date the last defendant makes an appearance in the proceed-
25 ing. The trial date shall be adhered to unless, for good cause
26 shown, the court enters an order continuing the trial date.

27 (d) The court may order a summary jury trial of the case if
28 all parties represent a case is ready for trial and jointly move the
29 court for a summary jury trial, as provided in section six-c of
30 this article.

31 (e) Counsel and parties are subject to sanctions for failures
32 and lack of preparation specified in rule 16(f) of the rules of
33 civil procedure respecting pretrial conferences or orders and are
34 subject to the payment of reasonable expenses, including
35 attorneys fees, for failure to participate in good faith in the
36 development and submission of a proposed discovery plan as
37 required by the rules of civil procedure.

38 (f) In the event that the court determines prior to trial that
39 either party is presenting or relying upon a frivolous or dilatory
40 claim or defense, for which there is no reasonable basis in fact
41 or at law, the court may direct in any final judgment the
42 payment to the prevailing party of reasonable litigation ex-
43 penses, including deposition and subpoena expenses, travel
44 expenses incurred by the party, and such other expenses

45 necessary to the maintenance of the action, excluding attorney's
46 fees and expenses.

§55-7B-6c. Summary jury trial.

1 (a) The court must determine the date of the summary jury
2 trial, the length of presentations by counsel, and the length of
3 deliberations by the jury, so that the proceeding can be com-
4 pleted in no more than one day.

5 (b) Unless the court orders otherwise, the parties or
6 representatives of the parties must be present at the summary
7 jury trial.

8 (c) The trial shall be conducted before a six-member jury
9 selected from the regular jury panel. The court shall conduct a
10 brief voir dire of the panel, and each party may exercise two
11 challenges. No alternate jurors will be impaneled.

12 (d) All evidence shall be presented by the attorneys for the
13 parties. The attorneys may summarize, quote from, and
14 comment on pleadings, depositions, or other discovery requests
15 and responses, exhibits and statements of potential witnesses.
16 No potential testimony of a witness may be referred to unless
17 the reference is based on: (i) The product of discovery proce-
18 dures; (ii) a written sworn statement of the witness; or (iii) an
19 affidavit of counsel stating that although an affidavit of the
20 witness is not available and cannot be obtained by the exercise
21 of reasonable diligence, the witness would be called at trial and
22 counsel has been told the substance of the testimony of the
23 witness. The substance of the witness' testimony must also be
24 included in the affidavit of counsel.

25 (e) Unless the court orders otherwise, presentations shall be
26 limited to one hour for each party. In the case of multiple
27 parties represented by separate counsel, the court shall make a
28 reasonable adjustment of the time allowed.

29 (f) Opposing counsel may object during the course of a
30 presentation if the presentation violates the provisions of
31 subsection (d) of this section or goes beyond the limits of
32 propriety in statements as to evidence or other comments.

33 (g) Following the presentations by counsel, the court shall
34 give an abbreviated set of instructions to the jury on the
35 applicable law. The jury will be encouraged to return a verdict
36 that represents a unanimous verdict of the jurors. If after a
37 reasonable time a unanimous verdict is not possible, the jury
38 shall be directed to return a special verdict consisting of an
39 anonymous statement of each juror's finding on liability and
40 damages. Following the verdict, the court may invite, but may
41 not require, the jurors to informally discuss the case with the
42 attorneys and the parties.

43 (h) Unless the court orders otherwise, the proceedings will
44 not be recorded. However, a party may arrange for recording at
45 its own expense. Statements in briefs or summaries submitted
46 in connection with the summary jury trial and statements by
47 counsel at trial are not admissible in any evidentiary proceed-
48 ing. The summary jury trial verdict is not admissible in any
49 evidentiary proceeding.

50 (i) Within thirty days following the jury verdict, each party
51 must file a notice setting forth whether the party intends to
52 accept the summary jury trial verdict or whether the party
53 rejects the summary jury trial verdict and desires to proceed to
54 trial. If all parties accept the summary jury trial verdict, the
55 verdict will be deemed a final determination on the merits and
56 judgment may be entered on the verdict by the court. If a
57 verdict is rendered upon the subsequent trial of the case which
58 is not more than twenty percent more favorable to a party who
59 rejected the summary jury trial verdict and indicated a desire to
60 proceed to trial, the rejecting party is liable for the costs
61 incurred by the other party or parties subsequent to the sum-

62 mary jury trial, in a similar manner as is provided in rule 68(c)
63 of the rules of civil procedure when a claimant rejects an offer
64 of judgment, and is liable for attorneys' fees incurred after the
65 summary jury trial.

§55-7B-6d. Twelve-member jury trial.

1 Notwithstanding any other provision of this code, the jury
2 in any trial of an action for medical professional liability shall
3 consist of twelve members. The judge shall instruct the jury that
4 they should endeavor to reach a unanimous verdict but, if they
5 cannot reach a unanimous verdict, they may return a majority
6 verdict of nine of the twelve members of the jury. The judge
7 shall accept and record any verdict reached by nine members of
8 the jury. The verdict shall bear the signatures of all jurors who
9 have concurred in the verdict. The verdict shall be announced
10 in open court, either by the jury foreperson or by any of the
11 jurors concurring in the verdict. After a verdict has been
12 returned and before the jury has been discharged, the jury shall
13 be polled at the request of any party or upon the court's own
14 motion. The poll shall be conducted by the clerk of the court
15 asking each juror individually whether the verdict announced is
16 such juror's verdict. If, upon the poll, a majority of nine
17 members of the jury has not concurred in the verdict, the jury
18 may be directed to retire for further deliberations or the jury
19 may be discharged.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall be
3 effective at the same time that the provisions of Enrolled Senate
4 Bill 714, enacted during the regular session, 1986, become
5 effective, and the provisions of said House Bill 149 shall be
6 deemed to amend the provisions of Enrolled Senate Bill 714.
7 The provisions of this article shall not apply to injuries which

8 occur before the effective date of this said Enrolled Senate Bill
9 714.

10 (b) The amendments to this article as provided in House
11 Bill 601, enacted during the sixth extraordinary session of the
12 Legislature, two thousand one, apply to all causes of action
13 alleging medical professional liability which are filed on or
14 after the first day of March, two thousand two.

§55-7B-11. Severability.

1 (a) If any provision of this article as enacted during the first
2 extraordinary session of the Legislature, 1986, in House Bill
3 149, or as enacted during the regular session of the Legislature,
4 1986, in Senate Bill 714, or the application thereof to any
5 person or circumstance is held invalid, such invalidity shall not
6 affect other provisions or applications of this article, and to this
7 end, the provisions of this article are declared to be severable.

8 (b) If any provision of the amendments to section five of
9 this article, any provision of new section six-d of this article or
10 any provision of the amendments to section eleven, article six,
11 chapter fifty-six of this code as provided in House Bill 601,
12 enacted during the sixth extraordinary session of the Legisla-
13 ture, two thousand one, is held invalid, or the application
14 thereof to any person is held invalid, then, notwithstanding any
15 other provision of law, every other provision of said House Bill
16 601 shall be deemed invalid and of no further force and effect.

17 (c) If any provision of the amendments to sections six or ten
18 of this article or any provision of new sections six-a, six-b or
19 six-c of this article as provided in House Bill 601, enacted
20 during the sixth extraordinary session of the Legislature, two
21 thousand one, is held invalid, such invalidity shall not affect
22 other provisions or applications of this article, and to this end,
23 such provisions are deemed severable.

CHAPTER 56. PLEADING AND PRACTICE.**ARTICLE 6. TRIAL.****§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain, medical professional liability and criminal trials.**

1 (a) The court, in an action at law, if neither party requires
2 a jury, or if the defendant has failed to appear and the plaintiff
3 does not require a jury, shall ascertain the amount the plaintiff
4 is entitled to recover in the action, if any, and render judgment
5 accordingly. In any case, in which a trial by jury would be
6 otherwise proper, the parties or their counsel, by consent
7 entered of record, may waive the right to have a jury, and
8 thereupon the whole matter of law and fact shall be heard and
9 determined, and judgment given by the court. Absent such
10 waiver, in any civil trial a jury shall consist of six members and
11 in any criminal trial a jury shall consist of twelve members.

12 (b) The provisions of this section do not apply to any
13 proceeding had pursuant to article two, chapter fifty-four of this
14 code, the provisions of which apply to all cases involving the
15 taking of property for a public use.

16 (c) The provisions of this section providing for a six
17 member jury trial do not apply to any proceeding had pursuant
18 to article seven-b, chapter fifty-five of this code, the provisions
19 of which apply to all cases involving a medical professional
20 liability action.

**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 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 collect for
2 services rendered as such clerk the following fees, and such
3 fees shall be paid in advance by the parties for whom such
4 services are to be rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any extraordi-
7 nary remedy, the docketing of civil appeals, or any other action,
8 cause, suit or proceeding, eighty-five dollars;

9 (2) Beginning on and after the first day of January, two
10 thousand two, for instituting an action for medical professional
11 liability, two hundred fifty dollars;

12 (3) Beginning on and after the first day of July, one
13 thousand nine hundred ninety-nine, for instituting an action for
14 divorce, separate maintenance or annulment, one hundred
15 thirty-five dollars;

16 (4) For petitioning for the modification of an order involv-
17 ing child custody, child visitation, child support or spousal
18 support, eighty-five dollars; and

19 (5) For petitioning for an expedited modification of a child
20 support order, thirty-five dollars.

21 (b) In addition to the foregoing fees, the following fees
22 shall likewise be charged and collected:

23 (1) For preparing an abstract of judgment, five dollars;

24 (2) For any transcript, copy or paper made by the clerk for
25 use in any other court or otherwise to go out of the office, for
26 each page, fifty cents;

27 (3) For action on suggestion, ten dollars;

28 (4) For issuing an execution, ten dollars;

29 (5) For issuing or renewing a suggestee execution, includ-
30 ing copies, postage, registered or certified mail fees and the fee
31 provided by section four, article five-a, chapter thirty-eight of
32 this code, three dollars;

33 (6) For vacation or modification of a suggestee execution,
34 one dollar;

35 (7) For docketing and issuing an execution on a transcript
36 of judgment from magistrate's court, three dollars;

37 (8) For arranging the papers in a certified question, writ of
38 error, appeal or removal to any other court, five dollars;

39 (9) For postage and express and for sending or receiving
40 decrees, orders or records, by mail or express, three times the
41 amount of the postage or express charges;

42 (10) For each subpoena, on the part of either plaintiff or
43 defendant, to be paid by the party requesting the same, fifty
44 cents; and

45 (11) For additional service (plaintiff or appellant) where
46 any case remains on the docket longer than three years, for each
47 additional year or part year, twenty dollars.

48 (c) The clerk shall tax the following fees for services in any
49 criminal case against any defendant convicted in such court:

50 (1) In the case of any misdemeanor, fifty-five dollars; and

51 (2) In the case of any felony, sixty-five dollars.

52 (d) No such clerk shall be required to handle or accept for
53 disbursement any fees, cost or amounts, of any other officer or
54 party not payable into the county treasury, except it be on order
55 of the court or in compliance with the provisions of law
56 governing such fees, costs or accounts.

**§59-1-28a. Disposition of filing fees in civil actions and fees for
services in criminal cases.**

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in subsec-
7 tion (b) of this section, for each civil action instituted under the
8 rules of civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals, or any
10 other action, cause, suit or proceeding in the circuit court, the
11 clerk of the court shall, at the end of each month, pay into the
12 funds or accounts described in this subsection an amount equal
13 to the amount set forth in this subsection of every filing fee
14 received for instituting the action as follows:

15 (1) Into the regional jail and correctional facility authority
16 fund in the state treasury established pursuant to the provisions
17 of section ten, article twenty, chapter thirty-one of this code, the
18 amount of sixty dollars; and

19 (2) Into the court security fund in the state treasury estab-
20 lished pursuant to the provisions of section fourteen, article
21 three, chapter fifty-one of this code, the amount of five dollars.

22 (b) For each action for divorce, separate maintenance or
23 annulment instituted in the circuit court, the clerk of the court

24 shall, at the end of each month, report to the supreme court of
25 appeals, the number of actions filed by persons unable to pay,
26 and pay into the funds or accounts in this subsection an amount
27 equal to the amount set forth in this subsection of every filing
28 fee received for instituting the divorce action as follows:

29 (1) Into the regional jail and correctional facility authority
30 fund in the state treasury established pursuant to the provisions
31 of section ten, article twenty, chapter thirty-one of this code, the
32 amount of ten dollars;

33 (2) Into the special revenue account of the state treasury,
34 established pursuant to section six hundred four, article two,
35 chapter forty-eight of this code, an amount of thirty dollars;

36 (3) Into the family court fund established under section
37 twenty-two, article two-a, chapter fifty-one of this code, an
38 amount of seventy 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 five
42 dollars.

43 (c) Notwithstanding any provision of subsection (a) or (b)
44 of this section to the contrary, the clerk of the court shall, at the
45 end of each month, pay into the family court fund established
46 under section twenty-two, article two-a, chapter fifty-one of this
47 code an amount equal to the amount of every fee received for
48 petitioning for the modification of an order involving child
49 custody, child visitation, child support or spousal support as
50 determined by subdivision (3), subsection (a), section eleven of
51 this article and for petitioning for an expedited modification of
52 a child support order as provided in subdivision (4), subsection
53 (a), section eleven of this article.

54 (d) The clerk of the court from which a protective order is
55 issued shall, at the end of each month, pay into the family court
56 fund established under section twenty-two, article two-a,
57 chapter fifty-one of this code an amount equal to every fee
58 received pursuant to the provisions of section five hundred
59 eight, article twenty-seven, chapter forty-eight of this code.

60 (e) The clerk of each circuit court shall, at the end of each
61 month, pay into the regional jail and correctional facility
62 authority fund in the state treasury an amount equal to forty
63 dollars of every fee for service received in any criminal case
64 against any respondent convicted in such court and shall pay an
65 amount equal to five dollars of every such fee into the court
66 security fund in the state treasury established pursuant to the
67 provisions of section fourteen, article three, chapter fifty-one of
68 this code.

69 (f) Beginning the first day of January, two thousand two,
70 the clerk of the circuit court shall, at the end of each month, pay
71 into the medical liability fund established under article twelve-
72 b, chapter twenty-nine of this code an amount equal to one
73 hundred sixty-five dollars of every filing fee received for
74 instituting a medical professional liability action.



CHAPTER 20

**(Com. Sub. for S. B. 6014 — By Senators Tomblin, Mr. President, and
Sprouse)**

[By Request of the Executive]

[Passed November 6, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three and four, article twenty-c of said chapter, all relating to medical malpractice liability insurance; modifying factors considered for establishing insurance rates; creating a prohibition for the use of certain nonapproved rates; prohibiting insurers from requiring execution of certain rate endorsements and creating exceptions thereto; extending waiting period for certain filings; modifying methodology for determining when subsequent reporting violations occur; expanding entities required to report claims made against health care providers; extending the time frame to report certain claims; adding information relating to certain claims which must be reported to the insurance commissioner; modifying the method that insurance commissioner may assess and dispose of civil penalties; removing a reason an insurer may use to cancel an existing insurance policy; and extending date of notice required of an insurer for nonrenewal of an insurance policy or contract.

Be it enacted by the Legislature of West Virginia:

That sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three and four, article twenty-c of said chapter be amended and reenacted, all to read as follows:

Article

20B. Rates and Malpractice Insurance Policies.

20C. Cancellation and Nonrenewal of Malpractice Insurance Policies.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-2. Ratemaking.

§33-20B-3. Rate filings.

§33-20B-6. Rate review and reporting.

§33-20B-8. Insurers required to report results of civil actions against physicians or podiatrists; penalties for failure to report; notice and hearing.

§33-20B-2. Ratemaking.

1 Any and all modifications of rates shall be made in accor-
2 dance with the following provisions:

3 (a) Due consideration shall be given to the past and
4 prospective loss experience within and outside this state.

5 (b) Due consideration shall be given to catastrophe hazards,
6 if any, to a reasonable margin for underwriting profit and
7 contingencies, to dividends, savings or unabsorbed premium
8 deposits allowed or returned by insurers to their policyholders,
9 members or subscribers and actual past expenses and demon-
10 strable prospective or projected expenses applicable to this
11 state.

12 (c) Rates shall not be excessive, inadequate or unfairly
13 discriminatory.

14 (d) Risks may not be grouped by territorial areas for the
15 establishment of rates and minimum premiums.

16 (e) An insurer may use guide "A" rates and other
17 nonapproved rates, also known as "consent to rates": *Provided,*
18 That the insurer shall, prior to entering into an agreement with
19 an individual provider or any health care entity, submit guide
20 "A" rates and other nonapproved rates to the commissioner for
21 review and approval: *Provided, however,* That the commis-
22 sioner shall propose legislative rules for promulgation in
23 accordance with the provisions of article three, chapter twenty-
24 nine-a of this code, which set forth the standards and procedure
25 for reviewing and approving guide "A" rates and other
26 nonapproved rates. No insurer may require execution of a
27 consent to rate endorsement for the purpose of offering to issue

28 or issuing a contract or coverage to an insured or continuing an
29 existing contract or coverage at a rate in excess of that provided
30 by a filing otherwise applicable.

31 (f) Except to the extent necessary to meet the provisions of
32 subdivision (c) of this section, uniformity among insurers, in
33 any matters within the scope of this section, is neither required
34 nor prohibited.

35 (g) Rates made in accordance with this section may be used
36 subject to the provisions of this article.

§33-20B-3. Rate filings.

1 (a) Every filing for malpractice insurance made pursuant to
2 subsection (a), section four, article twenty of this chapter shall
3 state the proposed effective date of the filing, the character and
4 extent of the coverage contemplated and information in support
5 of the filing. The information furnished in support of a filing
6 shall include: (i) The experience or judgment of the insurer or
7 rating organization making the filing; (ii) its interpretation of
8 any statistical data the filing relies upon; (iii) the experience of
9 other insurers or rating organizations; and (iv) any other
10 relevant factors required by the commissioner. When a filing is
11 not accompanied by the information required by this section
12 upon which the insurer supports the filing, the commissioner
13 shall require the insurer to furnish the information and, in that
14 event, the waiting period prescribed by subsection (b) of this
15 section shall commence as of the date the information is
16 furnished.

17 A filing and any supporting information shall be open to
18 public inspection as soon as the filing is received by the
19 commissioner. Any interested party may file a brief with the
20 commissioner supporting his or her position concerning the
21 filing. Any person or organization may file with the commis-

22 sioner a signed statement declaring and supporting his or her or
23 its position concerning the filing. Upon receipt of any such
24 statement prior to the effective date of the filing, the commis-
25 sioner shall mail or deliver a copy of the statement to the filer,
26 which may file a reply. This section is not applicable to any
27 memorandum or statement of any kind by any employee of the
28 commissioner.

29 (b) Every filing shall be on file for a waiting period of
30 ninety days before it becomes effective. The commissioner may
31 extend the waiting period for an additional period not to exceed
32 thirty days if he or she gives written notice within the waiting
33 period to the insurer or rating organization which made the
34 filing that he or she needs the additional time for the consider-
35 ation of the filing. Upon written application by the insurer or
36 rating organization, the commissioner may authorize a filing
37 which he or she has reviewed to become effective before the
38 expiration of the waiting period or any extension of the waiting
39 period. A filing shall be deemed to meet the requirements of
40 this article unless disapproved by the commissioner within the
41 waiting period or any extension thereof.

42 (c) No insurer shall make or issue a contract or policy of
43 malpractice insurance except in accordance with the filings
44 which are in effect for the insurer as provided in this article.

§33-20B-6. Rate review and reporting.

1 (a) The commissioner shall review annually the rules, rates
2 and rating plans filed and in effect for each insurer providing
3 five percent or more of the malpractice insurance coverage in
4 this state in the preceding calendar year to determine whether
5 the filings continue to meet the requirements of this article and
6 whether the filings are unfair or inappropriate given the loss
7 experience in this state in the preceding year.

8 The commissioner shall promulgate legislative rules
9 pursuant to article three, chapter twenty-nine-a of this code
10 establishing procedures for the fair and appropriate evaluation
11 and determination of the past loss experience and prospective
12 or projected loss experience of insurers within and outside this
13 state, actual past expenses incurred in this state and demonstra-
14 ble prospective or projected expenses applicable to this state.

15 (b) The commissioner shall promulgate legislative rules
16 pursuant to article three, chapter twenty-nine-a of this code
17 establishing procedures whereby each insurer providing five
18 percent or more of the malpractice insurance coverage in this
19 state annually shall submit to the commissioner the following
20 information:

21 (1) The number of claims filed per category;

22 (2) The number of civil actions filed;

23 (3) The number of civil actions compromised or settled;

24 (4) The number of verdicts in civil actions;

25 (5) The number of civil actions appealed;

26 (6) The number of civil actions dismissed;

27 (7) The total dollar amount paid in claims compromised or
28 settled;

29 (8) The total dollar amount paid pursuant to verdicts in civil
30 actions;

31 (9) The number of claims closed without payment and the
32 amount held in reserve for all such claims;

33 (10) The total dollar amount expended for loss adjustment
34 expenses, commissions and brokerage expenses;

35 (11) The total dollar amount expended in defense and
36 litigation of claims;

37 (12) The total dollar amount held in reserve for anticipated
38 claims;

39 (13) Net profit or loss;

40 (14) Investment and other income on net realized capital
41 gains and loss reserves and unearned premiums; and

42 (15) The number of malpractice insurance policies canceled
43 for reasons other than nonpayment of premiums.

44 The commissioner shall establish, in the rules, methods of
45 allocating investment and other income among capital gains,
46 loss reserves, unearned premiums and other assets if an insurer
47 does not separately account for and allocate that income.

48 Any insurer who fails to submit any information to the
49 commissioner, as required by this subsection, in accordance
50 with the rules promulgated under this subsection, shall be fined
51 ten thousand dollars for each of the first five failures and shall
52 be fined one hundred thousand dollars for the sixth and each
53 subsequent failure.

54 (c) The commissioner shall report annually, during the
55 month of November, to the joint standing committee on the
56 judiciary the following information pertaining to each insurer
57 providing five percent or more of the malpractice insurance
58 coverage in this state:

59 (1) The loss experience within the state during the preced-
60 ing calendar year;

61 (2) The rules, rates and rating plans in effect on the date of
62 the report;

63 (3) The investment portfolio, including reserves, and the
64 annual rate of return on the investment portfolio; and

65 (4) The information submitted to the commissioner
66 pursuant to the rules promulgated by authority of subsection (b)
67 of this section.

**§33-20B-8. Insurers required to report results of civil actions
against physicians or podiatrists; penalties for
failure to report; notice and hearing.**

1 (a) Every insurer issuing, or issuing for delivery in this
2 state, a professional liability policy or providing professional
3 liability insurance to health care providers, including, but not
4 limited to, physicians, osteopathic physicians or surgeons,
5 podiatrists or chiropractors, hospitals, medical clinics, profes-
6 sional limited liability companies, medical corporations or
7 partnerships in this state shall submit to the commissioner,
8 within sixty days from the date of entry of any judgment or
9 dismissal without payment, the date a release is executed in
10 connection with a settlement or the date a file is closed on any
11 claim in which a law suit has not been filed involving the
12 insured, the following information:

13 (1) The date of any judgment, dismissal or settlement;

14 (2) Whether any appeal has been taken on the judgment
15 and, if so, by which party;

16 (3) The amount of any settlement or judgment against the
17 insured;

18 (4) Whether the claim was the subject of mediation;

19 (5) Whether any settlement of a claim was made in a lump
20 sum payment, a structured settlement or a combination of the
21 two; and

22 (6) Any other information required by the commissioner.

23 For purposes of this section, "claim" means a third-party
24 request for indemnification.

25 (b) If there is any additional resolution, including appellate
26 decision or other subsequent action, the insurer shall file a
27 supplemental report to the commissioner.

28 (c) The West Virginia insurance guaranty association
29 created pursuant to article twenty-six of this chapter and the
30 state board of risk and insurance management created pursuant
31 to article twelve, chapter twenty-nine of this code are subject to
32 the reporting requirements of subsection (a) of this section.

33 (d) Any insurer or entity that fails to report any information
34 required to be reported under this section is subject to a civil
35 money penalty to be imposed by the insurance commissioner.
36 Upon a determination of the commissioner that there is proba-
37 ble cause to believe that any insurer or entity has failed or
38 refused to make a report required by this section, the commis-
39 sioner shall provide written notice to the alleged violator stating
40 the nature of the alleged violation. Upon written request of the
41 alleged violator within thirty days of the date of the commis-
42 sioner's written notice, the commissioner shall notify the
43 alleged violator of the time and place of a hearing at which the
44 alleged violator may appear to show good cause why a civil
45 penalty should not be imposed. The hearing shall be conducted
46 in accordance with the provisions of article five, chapter
47 twenty-nine-a of this code.

48 (e) If the commissioner determines that a violation of this
49 section has occurred, the commissioner shall assess a civil
50 penalty of not less than one thousand dollars nor more than ten
51 thousand dollars per violation. Anyone so assessed shall be
52 notified of the assessment in writing and the notice shall specify
53 the reasons for the assessment. If the alleged violator requests
54 a hearing, as provided in subsection (d) of this section, the
55 commissioner may not make his or her determination of

56 violation and assessment until the conclusion of the hearing.
57 The amount of penalty collected shall be deposited in the
58 general revenue fund.

59 (f) If any violator fails to pay the amount of the penalty
60 assessment to the commissioner within thirty days after
61 issuance of notice of the penalty assessment, the commissioner
62 may institute a civil action in the circuit court of Kanawha
63 County to recover the amount of the assessment. In any civil
64 action, the court's review of the commissioner's action shall be
65 conducted in accordance with the provisions of section four,
66 article five, chapter twenty-nine-a of this code.

67 (g) No person or entity may be held liable in any civil
68 action with respect to any report made pursuant to this section
69 if the report was made without knowledge of any falsity of the
70 information contained in the report.

ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MALPRACTICE INSURANCE POLICIES.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

§33-20C-3. Insurer to specify reasons for cancellation.

§33-20C-4. Notice period for cancellation; ninety-day notice required for nonrenewal.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing malpractice insurance in this state may cancel the
3 policy, except for one or more of the following reasons:

4 (a) The named insured fails to discharge any of his or her
5 obligations to pay premiums for the policy or any installment
6 of the policy within a reasonable time of the due date;

7 (b) The policy was obtained through material misrepresenta-
8 tion;

9 (c) The insured violates any of the material terms and
10 conditions of the policy; or

11 (d) Reinsurance is unavailable. The insurer shall supply
12 sufficient proof of the unavailability to the commissioner.

13 (e) Any purported cancellation of a policy providing
14 malpractice insurance attempted in contravention of this section
15 is void.

§33-20C-3. Insurer to specify reasons for cancellation.

1 In every instance in which a policy or contract of malprac-
2 tice insurance is canceled by the insurer, the insurer or its duly
3 authorized agent shall cite within the written notice of the
4 action the allowable reason in section two of this article for
5 which the action was taken and shall state with specificity the
6 circumstances giving rise to the allowable reason cited. The
7 notice of the action shall further state that the insured has a
8 right to request a hearing, pursuant to section five of this article,
9 within thirty days.

**§33-20C-4. Notice period for cancellation; ninety-day notice
required for nonrenewal.**

1 (a) No insurer shall fail to renew a policy or contract
2 providing malpractice insurance unless written notice of the
3 nonrenewal is forwarded to the insured by certified mail, return
4 receipt requested, not less than ninety days prior to the expira-
5 tion date of the policy.

6 (b) No insurer shall cancel a policy or contract providing
7 malpractice insurance during the term of the policy unless
8 written notice of the cancellation is forwarded to the insured by
9 certified mail, return receipt requested, not more than thirty
10 days after the reason for the cancellation, as provided in section
11 two of this article, arose or occurred or the insurer learned that

12 it arose or occurred and not less than thirty days prior to the
13 effective cancellation date.

CHAPTER 21

(H. B. 604 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed October 26, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the leave of absence term for public officials and employees for drills, parades, active duty and other military obligations.

Be it enacted by the Legislature of West Virginia:

That section one, article one-f, 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 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, active duty, etc.

1 (a) All officers and employees of the state, or subdivisions
2 or municipalities thereof, who shall be members of the national
3 guard or armed forces reserves, shall be entitled to military
4 leave of absence from their respective offices or employments
5 without loss of pay, status or efficiency rating, on the days
6 during which they are ordered, by properly designated author-
7 ity, to be engaged in drills, parades or other duty, during
8 business hours, field training or active service of the state, for

9 a maximum period of thirty working days in any one calendar
10 year.

11 (b) Effective the eleventh day of September, two thousand
12 one, all officers and employees of the state, or subdivisions or
13 municipalities thereof, who are ordered or called to active duty
14 by the properly designated federal authority shall be entitled to
15 military leave of absence from their respective offices or
16 employments without loss of pay, status or efficiency rating for
17 a maximum period of thirty working days for a single call to
18 active duty: *Provided*, That an officer or employee of the state,
19 or subdivisions or municipalities called to active duty who has
20 not used all or some portion of the thirty working days of
21 military leave of absence granted by subsection (a) shall be
22 entitled to add the number of unused days from that calendar
23 year to the thirty working days granted by this subsection, up to
24 a maximum of sixty days for a single call to active duty:
25 *Provided, however*, That none of the unused days of military
26 leave of absence granted by subsection (a) may be carried over
27 and used in the next calendar year.

28 (c) The term "without loss of pay" means that the officer or
29 employee shall continue to receive his or her normal salary or
30 compensation, notwithstanding the fact that such officer or
31 employee may have received other compensation from federal
32 or state sources during the same period.

CHAPTER 22

(H. B. 605 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-e, relating to exempting from West Virginia personal income tax active duty military pay received for period of time a member of national guard or armed forces reserves is called to active duty pursuant to Executive Order of President of the United States for duty in "operation enduring freedom" or domestic security duty; and providing for such exemption to be retroactive.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12e. Additional modification reducing federal adjusted gross income.

1 For taxable years beginning after the thirty-first day of
2 December, two thousand, in addition to amounts authorized to
3 be subtracted from federal adjusted gross income pursuant to
4 subsection (c), section twelve of this article, active duty military
5 pay received for the period of time an individual is on active
6 duty as a member of the national guard or armed forces reserves
7 called to active duty pursuant to an Executive Order of the
8 President of the United States for duty in "operation enduring
9 freedom" or for domestic security duty is an authorized
10 modification reducing federal adjusted gross income, but only
11 to the extent the active duty military pay is included in federal
12 adjusted gross income for the taxable year in which it is
13 received.

CHAPTER 23

(Com. Sub. for S. B. 6002 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article six, 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 a new section, designated section twenty-four, all relating to acts which threaten public safety; prohibiting threats of terrorist acts; prohibiting conveying false information concerning a terrorist act; prohibiting using hoax substances or devices to commit a terrorist act; providing penalties; requiring restitution and reimbursement; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article six, 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 a new section, designated section twenty-four, all to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

- §61-6-17. False reports concerning bombs or other explosive devices; penalties.
- §61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

1 (a) Any person who imparts or conveys or causes to be
2 imparted or conveyed any false information, knowing or having
3 reasonable cause to believe the information to be false, concern-
4 ing the presence of any bomb or other explosive device in, at,
5 on, near, under or against any dwelling house, structure,
6 improvement, building, bridge, motor vehicle, vessel, boat,
7 railroad car, airplane or other place or concerning an attempt or
8 alleged attempt being made or to be made to so place or
9 explode any bomb or other explosive device is guilty of a
10 felony and, upon conviction thereof, shall be fined not less than
11 one hundred dollars nor more than two thousand dollars or
12 confined in a state correctional facility for not less than one
13 year nor more than three years, or both.

14 (b) If any person violates any provision of this section and
15 the violation directly causes economic harm as defined in
16 subsection (d) of this section, in addition to any other penalty,
17 the circuit court may order the offender to pay the victim or
18 victims restitution, in accordance with the provisions of article
19 eleven-a of this chapter, for economic loss caused by the
20 violation in an amount not to exceed the economic harm
21 suffered. Nothing in this section may be construed to limit the
22 circuit court's authority to order restitution pursuant to other
23 provisions of this code.

24 (c) Notwithstanding any provision of this section to the
25 contrary, any person violating the provisions of subsection (a)
26 of this section whose violation of the subsection results in
27 another suffering serious bodily injury is guilty of a felony and,
28 upon conviction thereof, shall be confined in a state correctional
29 facility for not less than one year nor more than five years or
30 fined not more than ten thousand dollars, or both. Each injury
31 resulting from a violation of subsection (a) of this section
32 constitutes a separate offense.

33 (d) As used in this section, “economic harm” means all
34 direct, incidental and consequential pecuniary harm suffered by
35 a victim as a result of criminal conduct. Economic harm
36 includes, but is not limited to, the following:

37 (1) All wages, salaries or other compensation lost as a result
38 of the criminal conduct;

39 (2) The cost of all wages, salaries or other compensation
40 paid to employees for time those employees are prevented from
41 working as a result of the criminal conduct;

42 (3) The cost of all wages, salaries or other compensation
43 paid to employees for time those employees spent in reacting to
44 the results of the criminal conduct; or

45 (4) The overhead costs incurred for the time that a business
46 is shut down as a result of the criminal conduct.

**§61-6-24. Threats of terrorist acts, conveying false information
concerning terrorist acts and committing terrorist
hoaxes prohibited; penalties.**

1 (a) As used in this section:

2 (1) “Economic harm” means all direct, incidental and
3 consequential pecuniary harm suffered by a victim as a result
4 of criminal conduct. Economic harm includes, but is not limited
5 to, the following:

6 (A) All wages, salaries or other compensation lost as a
7 result of the criminal conduct;

8 (B) The cost of all wages, salaries or other compensation
9 paid to employees for time those employees are prevented from
10 working as a result of the criminal conduct;

11 (C) The cost of all wages, salaries or other compensation
12 paid to employees for time those employees spent in reacting to
13 the results of the criminal conduct; or

14 (D) The overhead costs incurred for the time that a business
15 is shut down as a result of the criminal conduct.

16 (2) "Hoax substance or device" means any substance or
17 device that is shaped, sized, colored, marked, imprinted,
18 numbered, labeled, packaged, distributed, priced or delivered so
19 as to cause a reasonable person to believe that the substance or
20 device is of a nature which is capable of causing serious bodily
21 injury or damage to property or the environment.

22 (3) "Terrorist act" means an act that is:

23 (A) Likely to result in serious bodily injury or damage to
24 property or the environment; and

25 (B) Intended to:

26 (i) Intimidate or coerce the civilian population;

27 (ii) Influence the policy of a branch or level of government
28 by intimidation or coercion;

29 (iii) Affect the conduct of a branch or level of government
30 by intimidation or coercion; or

31 (iv) Retaliate against a branch or level of government for a
32 policy or conduct of the government.

33 (b) Any person who knowingly and willfully threatens to
34 commit a terrorist act, without the intent to commit the act, is
35 guilty of a felony and, upon conviction thereof, shall be fined
36 not less than five thousand dollars nor more than twenty-five
37 thousand dollars or confined in a state correctional facility for
38 not less than one year nor more than three years, or both.

39 (c) Any person who knowingly and willfully conveys false
40 information knowing the information to be false concerning an
41 attempt or alleged attempt being made or to be made of a
42 terrorist act is guilty of a felony and, upon conviction thereof,
43 shall be fined not less than five thousand dollars nor more than
44 twenty-five thousand dollars or confined in a state correctional
45 facility for not less than one year nor more than three years, or
46 both.

47 (d) Any person who uses a hoax substance or device with
48 the specific intent to commit a terrorist act is guilty of a felony
49 and, upon conviction thereof, shall be fined not less than ten
50 thousand dollars nor more than fifty thousand dollars or
51 confined in a state correctional facility for not less than one
52 year nor more than five years, or both.

53 (e) The court shall order any person convicted of an offense
54 under this section to pay the victim restitution in an amount not
55 to exceed the total amount of any economic harm suffered.

56 (f) The court shall order any person convicted of an offense
57 under this section to reimburse the state or any subdivision of
58 the state for any expenses incurred by the state or the subdivi-
59 sion incident to its response to a violation of this section.

60 (g) The conviction of any person under the provisions of
61 this section does not preclude or otherwise limit any civil
62 proceedings arising from the same act.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2002

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2012	83	4070	89	4296	77
2062	229	4083	324	4298	292
2372	313	4095	112	4299	282
2374	107	4098	241	4305	303
2465	323	4099	280	4309	222
2730	169	4100	287	4310	148
2808	191	4115	70	4314	190
2899	69	4116	66	4315	144
2966	71	4119	193	4318	90
2983	100	4121	295	4319	106
2986	146	4122	298	4320	296
3017	161	4123	155	4321	284
3034	255	4124	236	4322	119
3065	97	4136	249	4331	6
3076	103	4149	110	4335	10
3142	63	4152	2	4339	99
3181	186	4163	198	4346	243
4005	104	4172	197	4354	41
4010	196	4205	199	4362	122
4012	251	4219	203	4366	81
4016	207	4255	300	4367	117
4017	309	4256	278	4368	290
4021	258	4258	1	4370	12
4022	109	4268	192	4379	39
4039	168	4273	102	4388	224
4044	96	4275	239	4393	44
4046	135	4277	240	4402	47
4054	121	4278	11	4407	188
4060	268	4289	194	4409	57

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2002**HOUSE BILLS****Page Two**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
4413	48	4494	75	4579	114
4417	244	4497	180	4580	84
4419	68	4504	137	4581	170
4423	163	4507	242	4582	31
4426	43	4509	154	4619	272
4428	111	4510	281	4658	262
4429	52	4511	259	4661	127
4430	49	4530	78	4662	274
4437	231	4534	129	4663	45
4446	62	4540	223	4666	164
4449	138	4541	29	4669	171
4450	141	4543	42	4670	174
4454	294	4551	140	4672	32
4465	182	4553	321	4674	33
4469	179	4558	206	4675	34
4484	265	4560	30	4677	35
4490	147	4566	131	4678	36

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2002**SENATE BILLS**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
3	79	237	5	423	115
4	120	238	283	425	87
32	116	239	297	428	320
35	221	240	299	429	189
48	235	241	277	431	315
57	93	243	238	435	136
61	94	244	301	438	216
78	167	245	310	445	55
91	234	247	105	447	7
97	92	253	14	450	185
100	13	254	15	453	245
104	143	256	217	458	184
105	209	263	65	459	175
111	271	267	80	461	173
114	314	278	220	465	72
115	246	279	266	468	275
123	134	282	40	469	288
140	311	285	308	470	289
156	219	289	64	471	273
163	130	290	304	472	276
164	269	305	202	473	279
171	325	339	200	474	142
177	108	345	61	475	319
179	208	351	291	479	177
180	145	352	293	484	317
196	132	353	285	485	318
207	118	354	286	488	149
211	82	397	201	497	316
215	50	407	204	501	38
216	159	409	252	506	178
217	123	413	254	509	16
219	4	417	8	510	17
226	133	420	165	511	18

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2002**SENATE BILLS****Page Two**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
512	19	598	205	698	58
513	91	601	225	701	46
516	183	608	261	702	20
519	85	609	139	703	21
524	88	610	95	704	22
530	9	613	98	705	23
532	125	615	264	706	24
533	124	620	53	707	25
534	126	631	211	709	128
536	162	638	215	711	76
541	212	639	247	712	232
543	210	647	172	713	312
547	37	648	270	717	54
550	151	649	152	719	59
553	73	651	306	721	227
554	195	652	263	722	230
555	237	658	158	723	157
560	187	661	305	724	233
561	253	662	326	725	213
563	113	664	218	727	156
565	74	667	3	731	307
566	257	672	160	733	51
568	153	679	226	736	260
574	101	682	322	737	256
576	228	686	60	738	250
578	302	690	267	740	86
583	181	692	67	742	150
584	56	695	214	744	26
592	248	697	166	745	27
593	176			746	28

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2002

House Bills = 4 Digits

Senate Bills = 2, 3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	4258	35	4677	69	2899
2	4152	36	4678	70	4115
3	667	37	547	71	2966
4	219	38	501	72	465
5	237	39	4379	73	553
6	4331	40	282	74	565
7	447	41	4354	75	4494
8	417	42	4543	76	711
9	530	43	4426	77	4296
10	4335	44	4393	78	4530
11	4278	45	4663	79	3
12	4370	46	701	80	267
13	100	47	4402	81	4366
14	253	48	4413	82	211
15	254	49	4430	83	2012
16	509	50	215	84	4580
17	510	51	733	85	519
18	511	52	4429	86	740
19	512	53	620	87	425
20	702	54	717	88	524
21	703	55	445	89	4070
22	704	56	584	90	4318
23	705	57	4409	91	513
24	706	58	698	92	97
25	707	59	719	93	57
26	744	60	686	94	61
27	745	61	345	95	610
28	746	62	4446	96	4044
29	4541	63	3142	97	3065
30	4560	64	289	98	613
31	4582	65	263	99	4339
32	4672	66	4116	100	2983
33	4674	67	692	101	574
34	4675	68	4419	102	4273

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
103	3076	144	4315	185	450
104	4005	145	180	186	3181
105	247	146	2986	187	560
106	4319	147	4490	188	4407
107	2374	148	4310	189	429
108	177	149	488	190	4314
109	4022	150	742	191	2808
110	4149	151	550	192	4268
111	4428	152	649	193	4119
112	4095	153	568	194	4289
113	563	154	4509	195	554
114	4579	155	4123	196	4010
115	423	156	727	197	4172
116	32	157	723	198	4163
117	4367	158	658	199	4205
118	207	159	216	200	339
119	4322	160	672	201	397
120	4	161	3017	202	305
121	4054	162	536	203	4219
122	4362	163	4423	204	407
123	217	164	4666	205	598
124	533	165	420	206	4558
125	532	166	697	207	4016
126	534	167	78	208	179
127	4661	168	4039	209	105
128	709	169	2730	210	543
129	4534	170	4581	211	631
130	163	171	4669	212	541
131	4566	172	647	213	725
132	196	173	461	214	695
133	226	174	4670	215	638
134	123	175	459	216	438
135	4046	176	593	217	256
136	435	177	479	218	664
137	4504	178	506	219	156
138	4449	179	4469	220	278
139	609	180	4497	221	35
140	4551	181	583	222	4309
141	4450	182	4465	223	4540
142	474	183	516	224	4388
143	104	184	458	225	601

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
226	679	260	736	293	352
227	721	261	608	294	4454
228	576	262	4658	295	4121
229	2062	263	652	296	4320
230	722	264	615	297	239
231	4437	265	4484	298	4122
232	712	266	279	299	240
233	724	267	690	300	4255
234	91	268	4060	301	244
235	48	269	164	302	578
236	4124	270	648	303	4305
237	555	271	111	304	290
238	243	272	4619	305	661
239	4275	273	471	306	651
240	4277	274	4662	307	731
241	4098	275	468	308	285
242	4507	276	472	309	4017
243	4346	277	241	310	245
244	4417	278	4256	311	140
245	453	279	473	312	713
246	115	280	4099	313	2372
247	639	281	4510	314	114
248	592	282	4299	315	431
249	4136	283	238	316	497
250	738	284	4321	317	484
251	4012	285	353	318	485
252	409	286	354	319	475
253	561	287	4100	320	428
254	413	288	469	321	4553
255	3034	289	470	322	682
256	737	290	4368	323	2465
257	566	291	351	324	4083
258	4021	292	4298	325	171
259	4511			326	662

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2002

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter
1001	1	1005	5
1002	2	1006	6
1003	3	1008	7
1004	4	1009	8

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2002

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.
1	1001	5	1005
2	1002	6	1006
3	1003	7	1008
4	1004	8	1009

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2002**HOUSE BILLS**

Bill No.	Chapter	Bill No.	Chapter
203	26	204	30

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter
2001	27	2017	11
2002	28	2018	12
2003	29	2019	13
2004	25	2020	14
2006	1	2021	15
2007	31	2022	16
2008	2	2023	17
2009	3	2024	18
2010	4	2025	19
2011	5	2026	20
2012	6	2028	21
2013	7	2029	22
2014	8	2031	23
2015	9	2032	24
2016	10		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2002

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	2006	11	2017	22	2029
2	2008	12	2018	23	2031
3	2009	13	2019	24	2032
4	2010	14	2020	25	2004
5	2011	15	2021	26	203
6	2012	16	2022	27	2001
7	2013	17	2023	28	2002
8	2014	18	2024	29	2003
9	2015	19	2025	30	204
10	2016	20	2026	31	2007
		21	2028		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Fifth Extraordinary Session, 2001

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter
501	1	510	9
502	2	511	10
506	4	512	3
507	12		

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter
5001	7	5006	11
5002	6	5007	5
5003	8		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Fifth Extraordinary Session, 2001

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.
1	501	7	5001
2	502	8	5003
3	512	9	510
4	506	10	511
5	5007	11	5006
6	5002	12	507

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Sixth Extraordinary Session, 2001

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
601	19	609	1	613	5
604	21	610	2	614	6
605	22	611	3	615	7
608	17	612	4	618	8

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
6002	23	6018	11	6021	14
6014	20	6019	12	6022	15
6016	9	6020	13	6023	16
6017	10			6024	18

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Sixth Extraordinary Session, 2001

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	609	9	6016	16	6023
2	610	10	6017	17	608
3	611	11	6018	18	6024
4	612	12	6019	19	601
5	613	13	6020	20	6014
6	614	14	6021	21	604
7	615	15	6022	22	605
8	618			23	6002

INDEX
REGULAR SESSION, 2002

	Ch.	Page
ACTIONS AND SUITS:		
Contracts		
Actions	1	2
Makers, drawers, endorsers, acceptors, assignors, absolute guarantors	1	2
Money		
Payment		
Affidavit	1	2
Calculation	1	3
Conditions	1	2
State agencies		
Actions, suits, proceedings		
Article		
Construction	3	11
Purpose	3	10
Complaint	3	8
Copy	3	9
Definitions	3	7
Findings	3	6
Procedures		
Answer	3	10
Attorney General		
Service	3	9
Pending action	3	10
Preliminary	3	8
Worthless checks		
Written demand		
Affidavit	2	5
Certificate of mailing	2	5
ADDRESSING AND MAPPING BOARD:		
Legislative rules		
Proposal		
Deadline	4	12
Proposals		
Requests	4	11
Deadline	4	11

	Ch.	Page
ADMINISTRATION:		
Federal funds		
Receipt and expenditure		
Changes		
Secretary		
Approval	5	13
Reports		
Governor	5	14
Preparation	5	15
AGRICULTURE:		
Conservation districts		
Article		
Definitions	8	30
Legislative determination	8	27
Policy	8	29
State conservation committee		
Continuation	8	35
Title	8	27
Creation	8	35
Discontinuance	8	57
Flood control projects		
Borrowing of money	8	57
Contracts	8	57
Improvement works		
Expenditure of money	8	55
Levy	8	56
Governmental division		
Cooperation assurance	8	56
Powers	8	45
Supervisors		
Election	8	43
Land-use regulations		
Board of adjustment	8	52
Observance		
Authority of supervisors	8	50
Powers and duties	8	45
Additional	8	46
Qualifications and terms	8	44

	Ch.	Page
AGRICULTURE—(Continued):		
Farmland Protection Programs		
Funding	6	18
Farmland Preservation Fees Fund	6	21
Real estate		
Title transfer		
Additional tax	6	20
Industrial Hemp Development Act		
Definitions	7	22
Industrial hemp		
Agricultural crop	7	23
Legislative rules	7	25
Licensing	7	23
Fees		
Disposition	7	25
Notification	7	24
Marijuana		
Possession or cultivation		
Defense	7	25, 26
Purpose	7	22
Short title	7	22
West Virginia Agricultural Land Protection Authority		
Board of trustees	6	16
Compensation, expenses	6	18
Composition	6	17
Oath	6	18
Terms	6	17
ALCOHOL:		
Nonintoxicating beer		
Distributors		
Electronic transfer		
Payment	9	62
Wine		
Distributors		
Electronic transfer		
Payment	9	67
AMATEUR RADIO ANTENNAS:		
Regulation or placement		
County ordinance or order		
Federal Communications Commission		
Compliance with	10	68

	Ch.	Page
AMATEUR RADIO ANTENNAS—(Continued):		
Municipal ordinance or order		
Federal Communications Commission		
Compliance with	10	68
Historic buildings, structures, etc.		
Protection and preservation	10	69
AMUSEMENT RIDE SAFETY:		
Amusement Rides and Amusement Attractions Act		
Amusement rides		
Operation		
Intoxicated persons		
Penalty		
Civil		
Criminal		
Minimum age		
Permits		
Revocation, suspension		
Violations		
Definitions		
State Fire Marshal		
Continuing authority		
ANATOMICAL GIFT ACT:		
Anatomical gifts		
Revocation		
Person other than donor		
Revocation not permitted		
APPROPRIATIONS:		
Budget Bill		
Index to, by accounts		
Supplemental		
Agriculture, Donated Food Fund		
Alcohol Beverage Control		
Cable Television Advisory Board		
Expiring amount		
Children's Health Insurance		
Consolidated Medical Service Fund		
Culture and History		
Health		
Highways		
Human Services		

	Ch.	Page
APPROPRIATIONS—(Continued):		
Insurance Commission Fund		
Expiring amount	22	255
Lottery Education Fund Interest Earnings	35	274
Medicine, Board of	36	276
Motor Vehicles	17	248
National and Community Service, Commission	18	249
Public Employees Insurance Reserve Fund	33	271
Public Service Commission		
Expiring amount	23	256
Risk and Insurance Management, Board		
Expiring amount	24, 31	257, 268
Senior Services, Bureau	14	242
Special Audit and Investigative Unit	34	272
Treasurer's Office, Abandoned Property Claims		
Expiring amount	32	269
Veterans' Affairs	19	251
ARMED FORCES:		
West Virginia National Guard		
Members of rank		
Monthly administrative allowance	37	277
AUDITOR:		
Computer Donation Program		
Authority		
Expanding	64	447
Rulemaking	64	448
Delinquent and nonentered lands		
Deputy commissioners	38	279
BANKS AND BANKING:		
Bank directors		
Meetings		
Frequency	42	314
Branch banks		
Permissive closing	41	312
Commissioner of Banking		
Jurisdiction	40	303
Powers, duties	40	304, 306
Lending and Credit Rate Board		
Revolving fund		
Abolishment	44	319
Special revenue account	44	324

	Ch.	Page
BANKS AND BANKING—(Continued):		
National banks		
Conversion	43	316
State banks		
Incorporation		
Filing	43	318
National banks		
Conversion	43	316
Effect	43	317
Procedure	43	317
WV Residential Mortgage Lender, Broker and Servicer Act		
Definitions	39	282
General provisions	39	282
Lender, broker or loan originator		
Licenses	39	285
Applications	39	287
Requirements	29	287, 288
Exemptions	39	285
Expiration	39	293
Fee	39	288, 289
Form	39	292
Issuance	39	291
Refusal	39	291
Reinstatement	39	302
Suspension, revocation	39	301
Grounds	39	301, 302
Records and reports	39	300
Analysis	39	300
Examinations	39	300
Loans		
Lien documents	39	297
Limitations	39	297
Points, fees, charges		
Maximum	39	294
Prepayment		
Rebate	39	294
Primary		
Prohibitions	39	297
Subordinate mortgage		
Interest rate		
Maximum	39	294
Prohibitions	39	297

INDEX

3207

	Ch.	Page
BEER:		
Nonintoxicating beer		
Distributors		
Electronic transfer		
Payment	9	62
BILLS ENACTED:		
Regular Session, 2002		
Chapter and Bill Numbers		3193
House Bills		3189
Senate Bills		3191
First Extraordinary Session, 2002		
Chapter and Bill Numbers		3196
Senate Bills		3196
Second Extraordinary Session, 2002		
Chapter and Bill Numbers		3198
House Bills		3197
Senate Bills		3197
Fifth Extraordinary Session, 2001		
Chapter and Bill Numbers		3199
House Bills		3199
Senate Bills		3199
Sixth Extraordinary Session, 2001		
Chapter and Bill Numbers		3200
House Bills		3200
Senate Bills		3200
CAPITAL COMPANY ACT:		
Tax credits		
Reductions	45	325
CASS:		
Town of		
Historical integrity		
Preservation	46	329
CEMETERIES:		
Graves		
Disturbance		
Privately owned lands		
Improvement, construction, development		
Procedures	47	332
Remedy	47	332

	Ch.	Page
CHARITABLE ORGANIZATIONS:		
Registration		
Certain persons, organizations		
Exemption	48	338
Fee	48	334
CHILD LABOR:		
Article governing		
Enforcement	49	349
Rules	49	350
Violations	49	349
Penalties	49	349
Children		
Eighteen years of age		
Certain occupations		
Employment	49	341
Determination	49	343
Prohibitions	49	343
Fourteen years of age		
Employment	49	341
Labor		
Hours and days		
Limitation	49	346
Work permit		
Age certificate	49	346
Revocation	49	346
Blanket	49	348
Contents	49	345
Forms	49	345
Issuance	49	344
Revocation	49	345
Supervision permits	49	347
CHILD WELFARE:		
Children		
Care of		
Applicants, other persons		
Fingerprinting	165	1453
Foster care		
Neglected, abused children		
Disposition	55	370
Foster care review	55	376
Courts		
Reports to	55	378

	Ch.	Page
CHILD WELFARE—(Continued):		
Termination		
Parental rights		
Termination	51	360
Foster homes		
Removal		
Criteria and procedure	51	359
Judicial proceedings		
Health care professional services		
Payment	166	1455
Juvenile delinquents		
Court records		
Access		
Division of Juvenile Services	52	363
Examination, diagnosis, classification	53	367
Custody		
Period	53	368
Juvenile services		
Facilities		
Placement	54	369
Medicaid reimbursable drugs		
Pharmaceutical manufacturers		
Rebates		
Negotiations	164	1452
Neglected, abused		
Disposition	55	370
Foster care review	55	376
Courts		
Reports to	55	378
Foster care		
Neglected, abused children		
Disposition	55	370
Foster care review	55	376
Courts		
Reports to	55	378
Termination		
Parental rights		
Termination	51	360
Minor Settlement Proceedings Reform Act	50	350-358

	Ch.	Page
CLAIMS:		
Corrections, Division of	57	405
Various agencies	56	379
COAL:		
Coalfield Community Development Office		
Community assets		
Needed		
Determining, developing	58	410
Land, infrastructure needs		
Securing	58	411
Powers and duties	58	408
Rulemaking	58	414
Coal Heritage Highway Authority		
Board		
Appointment	60	424
Bylaw	60	425
Executive director		
Appointment	60	425
Powers, duties	60	425
Expenses	60	426
Powers	60	425
Quorum	60	425
Terms	60	424
Coal Heritage Highway Authority Fund		
Annual report	60	432
Establishment	60	431
Expenditures	60	432
Creation	60	423
Definitions	60	423
Insurance policies	60	431
Land use		
Liability		
Horsemen		
Exemption	60	431
Limitation	60	429
Legislative findings	60	422
Powers	60	426
Taxation		
Exemption	60	431

	Ch.	Page
COAL—(Continued):		
National Coal Heritage Area Authority		
Board		
Appointment	59	416
Bylaws	59	419
Executive director	59	418
Members		
Appointment	59	416
Expenses	59	418
Terms	59	417
Officers	59	418
Powers	59	418
Quorum	59	418
Creation	59	416
Definitions	59	416
Legal obligations		
Continuation	59	421
Powers	59	419

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
1	2	2b	SB163	1191
1	2	1	HB4423	1447
2	2	1a	HB4423	1449
3	1	9	HB4566	1192
3	1	29	SB196	1198
3	1	30	SB196	1201
3	1	34	SB196	1205
3	1C*		SB226	1254
3	2	7	SB196	1211
3	2	19	SB196	1212
3	3	2a	SB196	1215
3	3	3	SB196	1217
3	3	4	SB196	1220
3	3	7	SB196	1223
3	3	8	SB196	1224
3	3	11	SB196	1227

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
3	4	10	SB196	1228
3	4	20	SB196	1230
3	4A	3	SB196	1230
3	4A	19a	SB196	1232
3	4A	21	SB196	1233
3	5	13	SB196	1237
3	6	2	SB196	1241
3	6	4a	SB196	1247
3	6	6	SB196	1249
3	7	6	SB196	1251
3	8	4a	SB196	1252
4	8	1	SB471	2171
4	8	6*	SB471	2172
4	10	4	HB4662	2173
4	10	4a	HB4662	2174
4	10	5	HB4662	2174
4	10	5a	HB4662	2176
4	10	5b	HB4662	2176
5	1	9	HB4115	614
5	5	2	SB115	1999
5	5	5*	SB639	2001
5	10	2	SB608	2044
5	10	14	HB4658	2091
5	10	21	SB652	2115
5	10	22c	HB4658	2097
5	10	27c	SB608	2050
5	10	27d*	SB608	2052
5	10	48	HB4658	2105
5	10A	8	SB615	2118
5	10B	2	SB608	2054
5	10D	7	SB608	2055

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
5	15	2	HB2465	2493
5	15	3	HB2465	2493
5	15	4	HB2465	2493
5	15	5	HB2465	2495
5	15	6	HB2465	2495
5	15	7	HB2465	2496
5	15	8	HB2465	2496
5	16	2	SB592	2004
5	16	3	HB4136	2008
5	16	7	HB4039	1458
5	16	7c*	HB2730	1473
5	16	27	HB4136	2009
5	26	5	SB247	926
5	26	9*	SB247	927
5A	2	14a	SB738	2010
5A	2	23	SB237	13
5A	3	57	SB468	2179
5A	4	5	SB724	1904
5A	8	15	SB472	2180
5A	8	15a*	SB472	2185
5B	2A	5	SB698	408
5B	2A	8	SB698	410
5B	2A	9	SB698	411
5B	2A	12	SB698	414
5B	2B*		HB4083	2497
5E	1	8	HB4663	325
5E	1	22*	HB4005	771
6	3	1a	HB4314	1646
6	7	1	HB4012	2012
6	7	2a	SB690	2129
6	9	8	SB409	2013

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
6B	2	11	SB241	2186
6B	3	2	HB4016	1766
6B	3	3	HB4016	1767
6B	3	3a*	HB4016	1768
6B	3	4	HB4016	1768
6B	3	9	HB4016	1771
7	1	3d	SB180	1298
7	1	3ii*	HB3142	434
7	1	3jj*	SB104	1293
7	1	3kk*	SB3	649
7	1	13*	HB4335	68
7	4	2	SB267	650
7	5	16	HB4366	652
7	7	1	SB211	655
7	7	4	SB211	656
7	7	7a*	HB2012	670
7	8	12	HB2966	620
7	11B		SB244	2217
7	14	17c	HB4060	2134
7	14D	2a	SB608	2056
7	14D	9c	SB608	2057
7	14D	9d*	SB608	2059
7	14D	24	HB2808	1648
8	5	13	SB196	1253
8	10	2	HB4309	1862
8	10	2a	HB4580	672
8	10	2b	HB4580	673
8	12	5	HB3142	435
8	12	5c*	SB104	1295
8	12	5d*	HB4335	68
8	13	23	SB554	1661

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
8	13B*		HB4005	771
8	15	8c*	HB2986	1299
8	15	22	HB4490	1301
8	15	24	HB4540	1864
8	15A*		HB4490	1302
8	22	20	HB4388	1866
8	22	20a*	SB601	1870
8	23	3	SB679	1873
8	23	6	SB679	1875
8	23	8	SB679	1875
8	24	48	SB171	2508
8	24	74a	HB4331	16
8	24	81	HB4331	18
8	24	85*	HB4331	20
9	2	1a	HB4256	2187
9	5	15	HB4666	1451
9A	1	2	SB473	2188
9A	1	2a*	SB473	2188
9A	1	4	SB428	2480
10	5	2	HB4099	2189
10	5	6*	HB4099	2191
11	1	1a*	HB4010	1672
11	1C	14	SB578	2267
11	10	4	HB4305	2271
11	10	5d	SB290	2307
11	10	5s	HB4005	796
11	10	8	HB4305	2272
11	10	9	HB4305	2274
11	10	9a	HB4305	2275
11	10	10	HB4305	2277
11	10	10a*	HB4305	2279

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	10	11a*	HB4005	800
11	10	14	HB4305	2280
11	10	17	HB4305	2285
11	10	23*	HB4305	2288
11	10	24*	HB4305	2289
11	10A*		HB4305	2289
11	11	2	SB661	2318
11	11	7	SB661	2324
11	12C	3	HB4558	1740
11	13A	3	SB651	2330
11	13A	3a	SB731	2333
11	13C	16*	HB4005	802
11	13D	10*	HB4005	805
11	13J	3	HB4437	1886
11	13J	12	HB4437	1898
11	13N	4	HB4005	806
11	13Q*		HB4005	807
11	13R*		HB4005	854
11	13S*		HB4005	875
11	15	9	SB285	2335
11	15	9b*	HB4005	889
11	15	9c*	HB4005	893
11	15	9f*	HB4005	893
11	15	9g*	HB4017	2354
11	15B*		SB245	2356
11	16	18	SB530	61
11	21	8h*	HB4005	894
11	21	9	SB140	2363
11	21	12	SB713	2365
11	21	93	HB2372	2372
11	23	7	HB4005	895

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	23	24a	HB4005	898
11	24	3	SB114	2373
11	24	22a	HB4005	899
11A	3	26	HB4366	653
11A	3	34	SB501	279
12	1A		SB561	2016
12	3	10d	SB413	2023
12	3	10f*	HB3034	2024
12	3	11	SB737	2026
12	4	16*	SB566	2028
12	4B	1	SB289	446
12	4B	2	SB289	447
12	4B	3	SB289	448
12	6	9e	HB4005	902
12	6	20	HB4510	2191
12	8	4	HB4021	2030
12	8	5	HB4021	2033
15	1B	17	SB547	277
15	2	5	SB164	2135
15	2	25a*	SB608	2061
15	2	46	SB608	2061
15	2A	2	SB608	2064
15	2A	6c	SB608	2065
15	2A	6d*	SB608	2067
15	2A	12	SB111	2143
15	2B	6	SB524	687
15	2D	2	HB4299	2192
15	2D	3	HB4511	2036
15	2D	6*	HB4299	2193
15	11	2	SB91	1906
16	1	9a	SB568	1368

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
16	1A	2	HB4509	1372
16	1A	3	HB4509	1372
16	1B	3	HB4553	2482
16	4C	19	HB4070	690
16	5K	6*	SB727	1378
16	5L	7	HB4123	1374
16	5Q	1	HB3181	1625
16	5Q	2	HB3181	1625
16	5Q	3*	HB3181	1627
16	13A	1c	HB4619	2147
16	13A	2	HB4619	2149
16	13A	3	HB4619	2154
16	13A	5	HB4619	2158
16	13A	7	HB4619	2159
16	13A	8	HB4619	2161
16	13A	9	HB4619	2163
16	13A	14	HB4619	2168
16	13A	18a	HB4619	2169
16	13A	24	HB4619	2170
16	19	2	HB4370	73
16	29A	7	HB4553	2483
16	29F*		SB723	1380
16	30	3	SB658	1383
16	30	4	SB658	1389
16	30	5	SB658	1397
16	30	6	SB658	1398
16	30	7	SB658	1400
16	30	8	SB658	1401
16	30	10	SB658	1405
16	30	13	SB658	1406
16	30	22	SB658	1408

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
16	30	25*	SB658	1409
16	30C	3	SB658	1410
16	30C	5	SB658	1412
16	30C	6	SB658	1413
16	30C	7	SB658	1416
16	30C	11	SB658	1416
16	30C	13	SB658	1417
16	35	4a*	SB216	1418
16	40*		SB672	1420
16	41*		HB3017	1428
17	2A	1	SB238	2194
17	2A	1a*	SB238	2195
17	2A	8	SB279	2122
17A	3	4	SB105	1778
17A	3	14	SB543	1787
17A	3	23	SB631	1808
17A	4A	3	SB541	1812
17A	4A	4	SB541	1813
17A	6	5	SB725	1816
17A	6	5a*	SB695	1819
17A	6C	1	SB725	1817
17B	2	1	SB638	1821
17B	2	6	SB638	1825
17B	2	6	SB638	1825
17B	2A*		SB438	1827
17B	3	3a	HB4580	674
17C	1	2	SB682	2489
17C	1	3	SB682	2489
17C	1	30	SB682	2490
17C	1	65*	SB682	2490
17C	1	66*	SB682	2490

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
17C	2	3	SB256	1830
17C	5	8	HB3076	764
17C	10A*		SB682	2490
17C	12	3	SB664	1834
17C	13	6	SB156	1845
17C	14	9a*	SB278	1857
17C	16	5	SB35	1859
17C	16	6	SB35	1860
17E	1	4	SB664	1836
17E	1	12	SB664	1836
17E	1	13	SB664	1839
18	2	5a	HB4319	1031
18	2	5e*	HB4319	1031
18	2	5f*	HB2374	1097
18	2	23a	HB4319	1032
18	2	26	HB4319	1034
18	2	35*	SB177	1099
18	2	36*	HB4022	1102
18	2E	3e*	SB247	928
18	2E	5	HB4319	1043
18	2E	5c*	HB4319	1066
18	2E	9	HB4319	1068
18	2I	1	HB4319	1071
18	2I	3	HB4319	1072
18	2I	4	HB4319	1073
18	5	13	SB247	932
18	5	13a	HB4149	1105
18	5	15	SB247	938
18	5	16	HB4428	1109
18	5	18	SB247	938
18	5	18b	HB4319	1074
18	5	18e*	SB247	940

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
18	5	22	SB247	941
18	5	44*	SB247	944
18	5	45*	SB247	953
18	5A	5	SB247	959
18	5A	6	HB4095	1114
18	6	3	SB563	1115
18	7A	3	SB608	2069
18	7A	13a	HB4579	1117
18	7A	17	HB4658	2109
18	7A	26	HB4484	2119
18	7A	28c	SB608	2073
18	7A	28d*	SB608	2076
18	7A	38*	SB423	1119
18	7B	2	SB608	2077
18	7B	11a*	SB608	2080
18	7B	13b	SB608	2082
18	9A	5	SB247	963
18	9A	5b*	SB247	965
18	9D	19*	SB247	965
18	9E	3	SB32	1121
18	10L	8	HB4367	1125
18	20	1d*	HB4319	1075
18	28	7*	SB247	967
18A	1	1	SB4	1149
18A	2	2	SB247	968
18A	2	6a*	HB4022	1104
18A	2	12	HB4319	1076
18A	3	1	HB4319	1080
18A	3	2c	HB4319	1083
18A	3	3a	HB4054	1163
18A	3	6	SB247	972
18A	3	9	SB247	972

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
18A	3A	1	HB4319	1088
18A	3A	2	HB4319	1092
18A	3A	2b	HB4319	1094
18A	4	2	SB247	974
18A	4	3	SB247	977
18A	4	5	SB247	979
18A	4	7a	SB247	982
18A	4	8	SB247	990
18A	4	8a	SB247	1006
18A	4	8b	SB247	1015
18A	4	14a*	SB247	1021
18A	4	16	SB247	1022
18A	4	20*	HB4054	1165
18A	5	1a	SB4	1152
18B	1A	5	HB4362	1168
18B	2A	4	HB4322	1137
18B	2A	5*	HB4362	1174
18B	12	2	HB4322	1143
18B	12	4	HB4322	1144
18B	12	10*	HB4322	1145
18B	14	10*	SB217	1175
18B	17	4	SB533	1177
18B	17	5*	SB532	1179
18B	17	6*	SB534	1180
18B	18*		SB207	1127
18C	1	4*	HB4661	1181
18C	3	3	SB709	1182
18C	5	8*	SB207	1133
18C	8*		HB4534	1186
19	1	4d*	HB4331	21
19	1B	4	SB431	2376

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
19	1B	6	SB431	2377
19	1B	7	SB431	2379
19	1B	12a*	SB431	2381
19	12E*		SB447	22
19	21A	1	SB417	27
19	21A	2	SB417	27
19	21A	3	SB417	30
19	21A	4	SB417	32
19	21A	4a*	SB417	35
19	21A	5	SB417	35
19	21A	6	SB417	43
19	21A	7	SB417	44
19	21A	8	SB417	45
19	21A	10	SB417	50
19	21A	11	SB417	52
19	21A	13a	SB417	55
19	21A	13b	SB417	56
19	21A	13c	SB417	57
19	21A	14	SB417	57
19	23	30	HB4321	2195
19	24	1	SB550	1355
20	1	3	SB353	2197
20	1	21*	SB353	2197
20	1A	9*	SB354	2198
20	2	6a*	HB4315	1297
20	2	23f*	HB4100	2199
20	2	28	SB721	1876
20	2	43	SB576	1881
20	2	46j	HB2062	1882
20	2	46m	SB722	1884
20	3	6	HB4310	1306
20	5	20*	SB353	2197

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
20	5	21*	SB701	329
20	7	1a	SB648	2140
20	7	1c	SB648	2141
21	1	5	SB469	2200
21	1B		SB560	1628
21	3C	1	HB4046	1262
21	3C	2	HB4046	1263
21	3C	5	HB4046	1265
21	3C	8	HB4046	1265
21	5E	6	SB639	2002
21	6	1	HB4430	341
21	6	2	HB4430	341
21	6	3	HB4430	344
21	6	4	HB4430	345
21	6	5	HB4430	345
21	6	7	HB4430	346
21	6	8	HB4430	347
21	6	8a	HB4430	348
21	6	9	HB4430	349
21	6	10	HB4430	349
21	6	11	HB4430	350
21	9	2	HB4407	1632
21	9	3	HB4407	1634
21	9	10	HB4407	1635
21	9	13*	HB4407	1636
21	10	2	HB4278	70
21	10	12a*	HB4278	71
21	10	14	HB4278	71
21	10	15	HB4278	72
21	10	16*	HB4278	72
21	10	17*	HB4278	72

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
21	10	18*	HB4278	73
21	11	7	SB429	1637
21	11	8	SB429	1638
21	11	10	SB429	1638
21	11	13	SB429	1639
21	11	14	SB429	1641
21	11	19	SB470	2201
21A	1A	17	SB497	2384
21A	1A	28	SB497	2389
21A	2	9	HB4368	2202
22	1	7a	SB351	2203
22	6	23	SB712	1899
22	11	10	HB4504	1269
22	11	29*	HB4449	1272
22	14		HB2883	712
22	15	15	SB609	1274
22	15	22*	HB4551	1280
22	18	22	HB4450	1282
22A	1	21	SB179	1773
22C	1	4	SB690	2132
22C	9	3	SB712	1902
24	6	13*	SB435	1267
24	7	4*	SB736	2039
24E	1	7	SB219	11
25	1	2	HB4298	2204
25	1	3a	SB465	622
25	1	3b	SB553	625
27	5	1	SB536	1434
27	5	2	SB536	1437
27	5	3	SB536	1444
28	3	1b*	SB78	1457

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
28	5B	14	SB565	628
29	2	4	SB352	2205
29	2	10*	SB352	2206
29	3	12	SB488	1308
29	3	12b	SB488	1315
29	3	16a	SB488	1319
29	3A	4	HB4070	691
29	3C*		SB123	1257
29	12	2	HB4581	1483
29	12	5	HB4581	1484
29	12B	6	HB4581	1493
29	12B	10	HB4581	1496
29	18	24	HB4454	2207
29	19	5	HB4413	334
29	19	6	HB4413	338
29	20	1	HB4121	2208
29	20	7*	HB4121	2209
29	21	3	HB4320	2210
29	21	3a*	HB4320	2211
29	22	9a	HB4553	2486
29	22	10	SB649	1364
29	22	18	HB4005	907
29	22	18a	HB4005	913
29	27*		SB719	415
29	28*		SB686	422
29A	3B	9	HB4319	1095
30	1	6	HB4124	1913
30	1	7	HB4124	1915
30	1	8	HB4124	1915
30	1	8a*	HB4124	1918
30	1	8b*	HB4124	1918

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
30	1	11	HB4124	1919
30	1	13	HB4124	1920
30	3	10	SB555	1921
30	3	14	SB243	1926
30	3A	1	HB4275	1944
30	3A	2	HB4275	1946
30	3C	4*	SB243	1943
30	5	7c*	HB4277	1948
30	6		SB742	1322
30	7	17	HB4098	1952
30	7A	12	SB239	2212
30	12	15	HB4122	2212
30	21	3	HB4507	1953
30	23	5	HB4346	1955
30	23	6	HB4346	1956
30	29	3	SB256	1831
30	29	5	HB4268	1651
30	29	6	HB4119	1657
30	29	10*	HB4289	1658
30	32	15	HB4417	1959
30	32	22	SB240	2213
30	40*		SB453	1962
31	17	1	HB4379	282
31	17	2	HB4379	285
31	17	4	HB4379	287
31	17	5	HB4379	291
31	17	6	HB4379	292
31	17	7	HB4379	292
31	17	8	HB4379	294
31	17	11	HB4379	300
31	17	12	HB4379	301

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
31	20	5e*	HB4494	630
31A	2	4	SB282	303
31A	2	4b*	HB4010	1673
31A	4	8	HB4543	314
31A	4	40	HB4354	312
31A	4A*		HB4426	316
31B	2	202	HB4558	1742
31B	10	1002	HB4558	1742
31E*			HB2899	472
32	2	201	SB475	2451
32	2	202	SB475	2454
32	2	204	SB475	2457
32	4	401	SB475	2469
32	4	406	SB475	2476
32	4	407	SB475	2477
33	2	9	HB4669	1498
33	3	15	SB647	1513
33	5	32	SB461	1514
33	6	30	HB4670	1516
33	6	31c	SB459	1519
33	6	33	SB593	1522
33	6	34	SB479	1523
33	8A*		SB506	1525
33	11	4	HB4469	1544
33	12		HB4497	1554
33	12C*		HB4497	1603
33	15	4g*	HB2730	1475
33	16	2	SB583	1613
33	16	3a	HB4039	1461
33	16	3p*	HB2730	1476
33	20B	4	HB4465	1615

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
33	20D	1	SB516	1618
33	20D	3	SB516	1618
33	22	2	SB506	1535
33	24	4	SB506	1537
33	24	7g*	HB2730	1478
33	25A	2	HB4039	1465
33	25A	8f*	HB2730	1480
33	25A	23a*	SB458	1620
33	25A	24	SB506	1539
33	25D	26	SB506	1541
33	43	6	SB450	1621
37	13	1a*	HB4402	332
37	13	7	HB4402	332
38	1A	8	HB4558	1744
38	2	7	SB407	1727
38	2	8	SB407	1727
38	2	9	SB407	1729
38	2	10	SB407	1730
38	2	11	SB407	1730
38	2	12	SB407	1732
38	2	13	SB407	1733
38	10	4	SB598	1735
42	6		SB484	2393
44	1	14	SB474	1285
			SB661	2326
44	1	14a*	SB474	1287
44	2	1	SB474	1290
44	4	12	SB474	1292
44	10	14	SB215	351
46	9	525	HB4558	1744
46A	4	112	SB263	448

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
46A	6J*		HB4116	450
47A	1	1	HB4393	319
47A	1	2	HB4393	324
48	1	302	SB574	733
48	1	307	SB574	734
48	11	103	SB574	741
48	12	111	SB574	743
48	12	118*	SB574	743
48	14	401	SB574	744
48	14	406	SB574	745
48	14	407	SB574	746
48	14	801	SB574	748
48	16		SB485	2406
48	18	101	HB4255	2214
48	18	125	SB574	749
48	18	132	SB574	752
48	18	134*	HB4255	2215
48	24	101	SB574	755
48	24	103	SB574	758
48	27	204	HB4273	761
48	27	312*	HB4273	763
49	2	14	SB733	359
49	2B	8	SB420	1453
49	5	13	HB4429	363
49	5	13a	SB620	367
49	5E	2	SB717	369
49	6	5	SB445	370
49	6	8	SB445	376
49	7	33*	SB697	1455
50	1	3	SB519	680
50	3	2a	HB4580	675

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
50	4	2a*	SB740	682
51	9	1a	SB608	2084
51	9	12c	SB608	2085
51	9	12d*	SB608	2087
55	8	7	HB4258	2
55	16	1	HB4152	4
55	17*		SB667	6
56	3	31	HB4558	1747
56	3	33	HB4558	1751
			SB425	683
59	1	2	HB4558	1755
59	3	1	SB554	1663
59	3	2	SB554	1665
59	3	3	SB554	1667
59	3	4	SB554	1670
60	8	22	SB530	66
60A	2	206	SB692	455
60A	2	208	SB692	460
60A	4	407	HB4318	693
60A	4	410*	HB4419	466
60A	9	1	HB4419	466
60A	9	2	HB4419	466
60A	9	3	HB4419	467
60A	9	4	HB4419	468
60A	9	5	HB4419	469
60A	9	6	HB4419	470
60A	9	7	HB4419	470
61	3B	5*	SB513	695
61	3C	14a*	SB97	697
61	6	1b	SB57	699
61	6	19	SB57	700

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
61	7	2	SB4	1159
61	7	6	SB48	1909
61	10	15	SB61	702
61	11	8	SB610	705
61	11	9	HB4044	706
61	12	9	SB742	1353
62	5	10	SB711	632
62	10	9	HB4115	618
62	11A	1	HB4296	642
62	11B	7	HB3065	708
62	11B	12	SB613	709
62	11C	2	SB711	633
62	11C	3	SB711	634
62	11C	4	SB711	636
62	11C	6	SB711	638
62	11C	7	SB711	641
62	12	6	SB48	1911
62	12	19	HB4530	646
62	12	25*	HB4339	710
64	1	1	HB4172	1674
64	2		HB4172	1675
64	3		HB4163	1680
64	5		HB4205	1702
64	6		SB339	1706
64	7		SB397	1708
64	8		SB305	1713
64	10		HB4219	1716

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
5B	2A	7	SB698	408
11	13H*		HB4005	766

*Indicates new chapter, article or section

CODE REPEALED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	23	24	HB4005	766
11	24	22	HB4005	766
12	8	15	HB4021	2030
18	22A*		SB207	1126
18	22E*		SB207	1126
18	31*		HB4322	1136
20	2	46h	SB576	1880
21	6	6	HB4430	340
21	13	5	HB4005	766
28	5	32	SB345	432
29	12	5c	HB4581	1482
30	29A*		HB4490	1301
33	1	22	SB583	1613
33	16E*		HB4446	433
44	1	13a	SB474	1283
44	10	15	SB215	350
47	12*		SB453	1961
56	10	4	SB215	350
			Ch.	Page

CODE REPEALED (STATUTORY):

Insurance policies, certificates

 Limited benefits accident and sickness

 Repeal of article

	62	433
--	----	-----

Moundsville

 Inmates

 Burial

 Prohibition

 Repeal of section

	61	433
--	----	-----

COMMERCIAL AND RESIDENTIAL RESIDENCES:

Factory-built home rental communities

 Factory-built homes

 Numeric addresses

 Municipalities

 Assignment by

	63	444
--	----	-----

 Posting required

	63	435
--	----	-----

*Indicates new chapter, article or section

	Ch.	Page
COMPUTERS:		
Computer Donation Program		
Eligible recipients		
Expanding	64	447
Implementation		
Auditor		
Authority		
Expanding	64	447
Rulemaking	64	448
Harassment		
Criminal offense		
Establishment	92	697
CONSUMER PROTECTION:		
Emergencies and natural disasters		
Consumers		
Taking unfair advantage	66	450
Definitions	66	451
Notification		
System established	66	454
Unfair pricing practices, deceptive acts		
Penalties	66	454
Preemption	66	454
Prohibition	66	452
Enforcement	66	454
Remedies	66	454
Supervised lenders, industrial loan companies		
Terms		
Clarifying construction	65	448
CONTROLLED SUBSTANCES:		
Controlled Substances Monitoring Act		
Establishment	68	467
Legislative rules		
Promulgation	68	470
Purpose	68	467
Reporting	68	467
Information	68	468
Confidentiality	68	469
Required	68	468
Civil liability		
Exemption	68	470
Criminal penalties	68	470

	Ch.	Page
CONTROLLED SUBSTANCES—(Continued):		
Retention		
Period	68	470
Short title	68	466
Practitioners		
Withholding information		
Prohibited act	68	466
Schedule II	67	455
Schedule III	67	460
Dronabinol		
Rescheduled from Schedule II	67	464
Ketamine		
Adding	67	463
CORPORATIONS:		
West Virginia Nonprofit Corporation Act		
General revision	69	472-613
CORRECTIONS:		
Community Corrections Act		
Community corrections fund		
Felony convictions		
Mandatory cost		
Assessment	76	633
Special revenue account	76	636
Community corrections program		
Supervision, participation fee	76	641
Community corrections subcommittee	76	633
Duties	76	634
County work farms		
County inmates		
Correctional officers, home incarceration supervisors		
Supervision by	71	621
Inmates		
Inmate funds		
Holding requirement		
Removal	72	622
Inmate benefit funds		
Inmate telephone system		
Expenses related	73	627
Magistrate courts		
Arraignments		
Video	86	682

	Ch.	Page
CORRECTIONS—(Continued):		
Prison industries account		
Expenditures		
Wages due inmates		
Payment	74	628
Telephone calls		
Monitoring	75	630
Work release		
Dependent support		
Certain earnings		
Person designated	77	644
Probation and parole		
Parole		
Violation		
Felony, new		
Revocation hearing		
Precluding need	78	648
Technical, nonfelonious		
Intermediate sanctions	78	646
Warrants		
Fugitive from justice		
Correctional officers		
Application by	70	615
State facilities, regional jails		
Correctional officers	70	619
COUNTIES:		
Budget expenditures		
Limit	83	670
County officials		
Additional duties	82	655
Budget expenditures		
Limit	83	670
Compensation	82	656
Effective date	82	666
Financial statements		
Preparation, publication, disposition	81	652
Prosecuting attorneys		
Investigators		
Other employment	80	650

	Ch.	Page
COUNTIES—(Continued):		
Public safety		
Hazards		
Elimination		
County commissions		
Ordinance		
Enactment	79	649
Taxes, property		
Certificate of redemption	81	653
COURTS AND THEIR OFFICERS:		
Magistrate courts		
Appearance		
Failure		
Driver's license		
Suspension	84	677
Arraignments		
Video	86	682
Fines		
Payment		
Failure		
Driver's license		
Suspension	84	674
Time extension	84	676
Incarcerated persons		
Arraignments		
Video	86	682
Magistrates		
Salaries		
Increase	85	681
Effective date	85	681
Municipal courts		
Appearance		
Failure		
Driver's license		
Suspension	84	672
Fines		
Payment		
Failure		
Driver's license		
Suspension	84	672
Time extension	84	672

	Ch.	Page
COURTS AND THEIR OFFICERS—(Continued):		
Nonresident persons		
Plaintiff		
Bond		
Filing	87, 206	683, 1751
CRIMES AND THEIR PUNISHMENT:		
Contracts		
Pecuniary interest		
Exceptions	94	703
Driving under the influence		
Serious traffic offenses		
Blood alcohol		
Chemical test		
Interpretation and use	103	764
Drug offenses		
Probation		
Court costs		
Assessment	90	694
Emergency personnel		
Traffic control		
Directions		
Failure to obey	89	691
Felony convictions		
DNA samples	88	687
Firefighters		
Traffic control		
Directions		
Failure to obey	89	690
Harassment		
Computer		
Criminal offense	92	697
Life imprisonment		
Offenses punishable		
Attempts to commit		
Penalty	95	705
Petit larceny		
Statute of limitation	96	706
State capitol		
Prohibited acts	93	701
State government property		
Disorderly conduct	93	699

	Ch.	Page
CRIMES AND THEIR PUNISHMENT—(Continued):		
Governmental processes		
Disruption		
Criminal offense	93	700
Trespass		
Criminal offense	91	695
CRIMINAL PROCEDURE:		
Home incarceration		
Fees		
Payment to sheriff	97	708
Parolees		
Supervision		
Circuit court	98	709
Parole Supervision Benefit Fund		
Creation	99	710
DAM CONTROL AND SAFETY:		
General revision	100	712
DISASTERS:		
Consumers		
Taking unfair advantage	66	450
Definitions	66	451
Emergency personnel		
Traffic control		
Directions		
Failure to obey	89	691
Emergency telephone systems		
Local calls		
Confidentiality	136	1267
Emergency vehicles, authorized		
Stationary		
Motor vehicle drivers		
Precautions	220	1857
Notification		
System established	66	454
Unfair pricing practices, deceptive acts		
Penalties	66	454
Preemption	66	454
Prohibition	66	452
Enforcement	66	454
Remedies	66	454

	Ch.	Page
DOMESTIC RELATIONS:		
Child support		
Age eighteen		
Support beyond	101	741
Bureau for Child Support Enforcement		
Employment, income		
Information		
Requests	101	752
Reporting	101	749
Collection agencies		
Collection by	101	734
Interest payment		
Obligation		
Calculation	101	733
Medical support		
Medical insurance coverage		
Compliance		
Failure of employer	101	743
National medical support notice		
Service		
Employer's duties	101	743
Orders		
Income		
Withholding	101	744
Source		
Notice	101	745
Contents	101	746
Overdue		
Monthly payments		
Increase	101	748
Paternity		
Establishment		
Medical testing procedures	101	758
Proceedings	101	755
Spousal support		
Collection agencies		
Collection by	101	734
Domestic violence		
Family, household members		
Definition	102	761
Subpoena duces tecum	102	763

INDEX

3241

	Ch.	Page
DNA ANALYSIS:		
Felony convictions		
Samples required		
Analysis	88	687
DUI:		
Serious traffic offenses		
Blood alcohol		
Chemical test		
Interpretation and use	103	764
ECONOMIC DEVELOPMENT:		
Business franchise tax		
Agricultural products		
Value-added		
Tax credit	104	898
Exemptions	104	895
Capital Company Act		
Capital companies		
Decertification	104	771
Corporation net income tax		
Agricultural products		
Value-added		
Tax credit	104	899
Downtown Redevelopment District Act		
Definitions	104	772
Downtown redevelopment districts		
Abolishment	104	787
Hearing	104	787
Authorization	104	773
Legislative	104	780
Creation		
Hearing		
Notice	104	776
Ordinance	104	780
Amendment	104	786
Dissolution	104	787
Hearing	104	787
District board		
Appointment	104	783
Duties	104	783

	Ch.	Page
ECONOMIC DEVELOPMENT—(Continued):		
Excise tax		
Special district		
Authorization	104	784
Fund		
Establishment	104	779
Modification	104	785
Hearing	104	786
Projects		
Approval		
Application to committee	104	777
Financing		
Bonds	104	788
Legal investments	104	795
Redemption	104	793
Refunding	104	794
Sale		
Proceeds		
Use	104	794
Security	104	790
Taxation		
Exemption	104	796
Redevelopment expenditures	104	774
Legislative findings	104	772
Purpose	104	772
Short title	104	772
Economic Opportunity Tax Credit Act		
Definitions	104	808
Interpretation, construction	104	848
Severability	104	849
Short title	104	808
Tax credits		
Amount allowed	104	821
Annual credit allowance		
Application	104	826
Burden of proof	104	849
Business expansion		
Qualified investment	104	832
New jobs percentage	104	835
Transfer	104	846
Certified projects	104	825

INDEX

3243

	Ch.	Page
ECONOMIC DEVELOPMENT—(Continued):		
Corporate headquarters		
Relocation	104	822
Credit entitlements		
Business eligible	104	850
Effective date	104	852
Investment credit property		
Identification	104	847
Records		
Failure to keep	104	848
Recapture	104	844
Redetermination	104	843
Review and accountability	105	851
Small business	104	837
Unused		
Forfeiture	104	842
Environmental standards compliance		
Services and materials		
Tax exemption	104	893
Investment Management Board		
Industrial development		
Loans	104	902
Availability of funds	104	902
Legislative findings	104	902
Lottery Act		
State Excess Lottery Revenue Fund	104	913
State Lottery Fund	104	907
Manufacturing Investment Tax Credit Act		
Definitions	104	876
Legislative findings	104	876
Purpose	104	876
Qualified manufacturing investment	104	883
Credit allowed		
Amount	104	879
Tax credits		
Credit allowed		
Redetermination	104	885
Qualified manufacturing investment	104	883
Property		
Purchase		
Records		
Failure to keep	104	887

ECONOMIC DEVELOPMENT—(Continued):

Transfer	104	886
Review and accountability	104	888
Unused		
Forfeiture	104	885
Personal income tax		
Rehabilitated building investment		
Tax credit	104	894
Research and development		
Consumers and sales and service tax		
Personal property and services		
Purchases		
Exemption	104	889
Strategic Research and Development Tax Credit Act		
Definitions	104	855
Effective date	104	875
Legislative findings	104	854
Purpose	104	854
Qualified research and development		
Credit property		
Identification	104	873
Records		
Failure to keep	104	874
Expenditure	104	860
Expenses	104	862
Investment		
Transfer	104	873
Short title	104	854
Tax credit		
Amount allowed	104	866
Redetermination	104	872
Application	104	866
Investment credit property		
Identification	104	873
Review and accountability	104	874
Unused		
Forfeiture	104	872
Taxation		
Business investment and jobs expansion		
Termination of credit	104	802
Effective date	104	804
New steel manufacturing	104	806
Various		
Termination	104	805
Exception	104	805

INDEX

3245

	Ch.	Page
ECONOMIC DEVELOPMENT—(Continued):		
Special district excise tax		
Administration	104	800
Commission authorized	104	802
Sales and services		
Tax exemption	104	893
Tax credits		
Economic opportunity		
<i>See</i> “Economic Opportunity Tax Credit Act” within Economic Development		
Taxpayer information		
Confidentiality		
Exceptions	104	797
Disclosure	104	796
EDUCATION:		
Air Quality in New Schools Act	116	1121
Alternative education		
Definition	120	1151
College students		
Credit cards		
Regulation	123	1175
Comprehensive high schools	105	965
County boards of education		
Authority generally	105	932
Early childhood education	105	944
Kindergarten programs	105	938
School calendar	105	953
School nurse		
Council	105	944
Employment	105	942
Qualifications	105	942
Schools		
Closing or consolidation	110	1105
Curriculum teams	112	1113
Faculty senates	105	959
Students		
Admissible		
Age	105	938
Dress codes		
Implementation		
Procedure	108	1099
Medical, dental inspection	105	941

	Ch.	Page
EDUCATION—(Continued):		
Suspended, expelled		
Enrollment	105	938
Teacher-pupil ratio		
Study of limits	105	940
Transfer	111	1110
Dangerous student		
Definition	120	1151
Dress codes		
Implementation		
Procedure	108	1099
Driver education		
Motorcycle awareness	113	1115
Educational facilities		
Deadly weapons, controlled substances		
Definition	120	1159
Possession	120	1152
Expulsion or suspension	120	1154
Teachers, other personnel		
Students		
Assaults, batteries	120	1152
Eminent Scholars Endowment Trust Fund Act		
Definition	118	1128
Eminent scholars		
Endowment	118	1133
Selection	118	1132
Executive budget		
Eminent scholars program	118	1132
Preparation	118	1132
Governing boards		
Powers and duties	118	1128
Higher education policy commission		
Duties	118	1131
Legislative findings	118	1127
Trust fund		
Administration	118	1129
Establishment	118	1128
Other funds		
Transfer of monies	118	1133
Financial assistance		
Commuting students		
Eligibility	127	1181
WV Financial Aid Coordinating Council	129	1186

	Ch.	Page
EDUCATION—(Continued):		
General revision	106	1024
Governor’s Cabinet on Children and Families		
Certain services		
Prohibition	105	927
Children and families		
Funding, budgetary needs	105	926
Governors, Institutional Boards of		
Powers and duties	119	1137
Health Sciences Scholarship Program	128	1182
Higher education		
College students		
Credit cards		
Regulation	123	1175
Institutions		
Research and development	119	1143
Higher Education Grant Program		
Adult Part-Time Student Grant Program		
Rules authorized	126	1180
Temporary program		
Coordination	118	1133
Higher Education Policy Commission		
Performance indicators rule	124	1178
Powers and duties	122	1168
Report card	124	1178
Parochial schools		
Required assessment		
Waiver	105	967
PROMISE Scholarship Program		
Rules authorized	125	1179
Ron Yost Personal Assistance Services Act		
Continuation	117	1125
School personnel		
Principals, assistant principals		
Salary increments		
State minimum	105	977
Professional personnel		
Employment, promotion, transfer	105	982
Positions		
Increase		
Foundation allowance	105	965
Seniority	105	983

	Ch.	Page
EDUCATION—(Continued):		
Salary equity	105	979
Service personnel		
Class titles	105	993
County		
Staff development councils	105	972
Employment term	105	990
Foundation allowance	105	963
Positions		
Increase		
Foundation allowance	105	965
Released time	109	1104
Salaries		
Class title, pay grade	105	1008
Minimum monthly	105	1006
Seniority rights	105	1015
Teachers		
Certificates		
Revocation		
Grounds	105	972
Contracts	105	968
Failure to perform	105	970
Daily planning periods		
Legislative study	105	1021
Dismissal		
Lack of need	105	969
Employment	105	968
Extracurricular assignments	105	1022
Retired		
Resumption of service	114	1117
Salaries		
Minimum	105	974
Substitute		
Days worked		
Calculation	115	1119
Student learning ability		
Programs		
Funding	109	1101
Student social security numbers		
Use		
Restriction	107	1097

	Ch.	Page
EDUCATION—(Continued):		
Teachers		
Certificates		
Revocation		
Grounds	105	972
Contracts	105	968
Failure to perform	105	970
Daily planning periods		
Legislative study	105	1021
Dismissal		
Lack of need	105	969
Employment	105	968
Extracurricular assignments	105	1022
Retired		
Resumption of service	114	1117
Salaries		
Minimum	105	974
Shortage areas		
Additional endorsement		
Tuition funds		
Reimbursement	121	1163
Substitute		
Days worked		
Calculation	115	1119
Uniforms		
Implementation		
Procedure	108	1099
WV Science Education Enhancement Initiative Grant Program		
Creation	105	928
Legislative findings	105	928
Purpose	105	928
ELECTIONS:		
Accessible Voting Technology Act	133	1254
Executive committees		
Membership		
Secretary of State		
Filing	131	1192
Precinct boundary		
Changes	130	1191
Statutory revision		
General	132	1198

	Ch.	Page
ELECTRICAL INSPECTORS:		
Certification	134	1257
ELEVATOR SAFETY:		
New elevators		
Division of Labor		
Inspection by	135	1262
EMERGENCIES AND DISASTERS:		
Consumers		
Taking unfair advantage	66	450
Definitions	66	451
Emergency personnel		
Traffic control		
Directions		
Failure to obey	89	691
Emergency telephone systems		
Local calls		
Confidentiality	136	1267
Emergency vehicles, authorized		
Stationary		
Motor vehicle drivers		
Precautions	220	1857
Notification		
System established	66	454
Unfair pricing practices, deceptive acts		
Penalties	66	454
Preemption	66	454
Prohibition	66	452
Enforcement	66	454
Remedies	66	454
EMERGENCY SERVICES:		
Emergency telephone systems		
Local calls		
Confidentiality	136	1267
EMPLOYEES:		
<i>See</i> PUBLIC EMPLOYEES.		
ENVIRONMENTAL PROTECTION:		
Hazardous waste generator fee	141	1282
Service coal mining operations		
Permit fee		
Statutory	137	1271
Sludge management	140	1280

	Ch.	Page
ENVIRONMENTAL PROTECTION—(Continued):		
Solid Waste Management Act		
Sludge management	140	1280
Violations and penalties	139	1273
Waters		
Pollutants		
Accidental discharges, spills		
Emergency response		
Reimbursement of costs	138	1272
ESTATES AND TRUSTS:		
Administration generally	142	1284
EXOTIC ENTERTAINMENT:		
Businesses		
Restricting location	143	1295
FIREARMS:		
Concealed handguns		
Carrying	144	1297
FIREFIGHTING AND PREVENTION:		
Emergency situations		
Traffic control		
Directions		
Failure to obey	89	691
Fire marshal, deputies, assistants, others		
Powers and duties	149	1308
Lighted materials		
Discarding		
Penalties increased	148	1306
Professional firefighters	147	1301
Property owners		
Fire service fees	145	1298
Volunteer fire departments		
Equipment		
Donation	146	1299
FOSTER CARE:		
Foster homes		
Removal		
Criteria and procedure	51	359
Neglected, abused children		
Disposition	55	370
Foster care review	55	376
Courts		
Reports to	55	378

	Ch.	Page
FOSTER CARE—(Continued):		
Termination		
Parental rights		
Termination	51	360
FUNERAL SERVICES:		
Embalmers, funeral directors, crematories		
General statutory revision	150	1323
Human remains		
Proper disposal	150	1322
GAMING ACTIVITIES:		
Live dog racing		
Including in compact	151	1355
Lottery sales agents		
Commissions		
Increase	152	1364
HEALTH:		
Birth-to-Three Fund		
Creation	156	1378
Do-Not-Resuscitate Act	158	1410
Health Care Decisions Act	158	1383
Health care practitioners		
Uniform credentialing	154	1372
Lead poisoning		
Children		
Screening	159	1418
Mental hygiene proceedings		
General provisions	162	1433
Oral Health Improvement Act		
Establishment	161	1428
Public water systems		
Evaluations	153	1368
Regional long-term care ombudsman		
Education, training requirements	155	1374
Statewide Birth Defects Information System		
Establishment	160	1420
Uninsured, underinsured persons		
Health coverage		
Pilot program	157	1380
HOLIDAYS:		
Susan B. Anthony Day		
Holiday designation	163	1447

INDEX

3253

	Ch.	Page
HUMAN SERVICES:		
Children		
Care of		
Applicants, other persons		
Fingerprinting	165	1453
Judicial proceedings		
Health care professional services		
Payment	166	1455
Medicaid reimbursable drugs		
Pharmaceutical manufacturers		
Rebates		
Negotiations	164	1452
INDUSTRIAL HOME FOR YOUTH:		
Criminal or civil actions		
Venue	167	1457
INSURANCE:		
Broadnax	174	1516
Domestic insurers		
Principal place of business		
Definition	173	1514
Group accident and sickness		
Generally	181	1613
Health maintenance organization		
Contracts		
Violations		
Civil penalty	184	1620
Insurance commissioner		
Examiners		
Hiring	171	1498
Used car guides	176	1522
Insurance companies		
Domestic		
Clearing corporations		
Use	178	1526
Federal reserve book-entry system		
Use	178	1528
Insurance producers and solicitors		
NAIC Producer Licensing Model Act	180	1554
Life insurers		
Annuities		
Tax	172	1513

	Ch.	Page
INSURANCE—(Continued):		
Mastectomy surgery		
Inpatient care		
Insurance coverage	169	1473
Medicaid coverage		
Obstetricians		
Repeal of section	170	1483
Medical malpractice		
Amortized payment default		
Partial limits		
Plan submission	183	1618
Policies		
Rate filings		
Waiting period	182	1615
Mental health benefit coverage	168	1458
NAIC Producer Licensing Model Act	180	1554
Policies		
Construction	174	1516
Form and rate filing		
Fees	177	1523
Medical malpractice		
Rate filings		
Waiting period	182	1615
Motor vehicle		
Substandard risk	175	1519
Premium taxes		
Quarterly payments	185	1621
Unfair trade practices		
Consumer's financial and health information		
Violation	179	1544
JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND:		
Clarifying legislation	186	1625
LABOR:		
Alien workers		
Reporting	187	1628
Contractor Licensing Board		
Licenses issued	189	1637
Manufactured Housing Construction and		
Safety Standards Board		
Continuation	188	1634
Members		
Compensation	188	1635

INDEX

3255

	Ch.	Page
LAW ENFORCEMENT:		
Deputy Sheriff's Retirement System		
Participants	191	1648
Firearms		
Reserve officers		
Carrying by		
Prohibition	190	1646
Racial profiling		
Prohibitions	194	1658
Training and certification		
Law-enforcement officers		
Armed forces, national guard, reserves		
Active duty		
Waiver	193	1656
Conditional employment		
Training academy		
Application	192	1651
LEGAL ADVERTISING:		
Publication requirements		
Modification	195	1661, 1663
Rates	195	1667
LEGAL SERVICES:		
Commissioner of Banking		
Legal counsel		
Employment	196	1673
Tax commissioner		
Legal counsel		
Employment	196	1672
LEGISLATIVE RULES:		
Administration, Department of	197	1675
Development Office	203	1716
Economic Development Authority	203	1716
Environmental Protection	198	1680
Fire Commission	200	1706
Health and Human Resources	199	1702
Highways	202	1713
Insurance Commissioner	201	1710
Labor	203	1721
Lottery Commissioner	201	1710
Manufactured Housing Construction and		
Safety Standards Board	203	1722

	Ch.	Page
LEGISLATIVE RULES—(Continued):		
Motor Vehicles	202	1714
Natural Resources	203	1722
Protective Services	200	1706
State Police	200	1706
State Rail Authority	202	1714
Tax Commissioner	201	1708
LIENS:		
Bankruptcy proceedings		
Property		
Exemption	205	1735
Improved property		
Perfection of lien		
Increasing time	204	1727
LIMITED LIABILITY COMPANIES:		
Articles of organization		
Fees	206	1740
Foreign limited liability companies		
Certificate of authority	206	1742
LOBBYIST ACTIVITIES:		
Regulation	207	1765
MINES AND MINING:		
Miners' health and safety		
Violations		
Penalties	208	1773
MOTOR VEHICLES:		
Automobile titling privilege tax		
Senior service organizations		
Exemption	209	1778
Dealers		
Out-of-state dealers		
Vehicle shows		
Participation	214	1819
Used vehicle dealers		
New vehicles		
Purchase and sale	213	1817
Drivers		
Deaf, hard of hearing, handicapped, disabled		
Classification	215	1823

	Ch.	Page
MOTOR VEHICLES—(Continued):		
Driving under the influence		
Serious traffic offenses		
Blood alcohol		
Chemical test		
Interpretation and use	103	764
Emergency vehicles, authorized		
Stationary		
Motor vehicle drivers		
Precautions	220	1857
Firearms		
Weighing crews		
Possession	217	1830
Inspections		
Fees		
Increase	221	1859
Liens and encumbrances		
Certificate	212	1812
Military Selective Service Act		
Compliance	216	1828
Railroad crossings		
Vehicles		
Stopping or slowing		
Commercial vehicles		
Operators		
Violations		
Disqualification	218	1839
Requirement	218	1834
Registration plates		
Special		
Authorizing	210	1787
County sheriff, deputies	211	1808
Mobility impaired persons	219	1845
Used motor vehicles		
Dealers		
New vehicles		
Purchase and sale	213	1817
Weighing crews		
Firearms		
Possession	217	1830

	Ch.	Page
MUNICIPALITIES:		
Fire departments		
Paid		
Political activities	223	1864
Intergovernmental relations		
General provisions	226	1872
Municipal court judge		
Municipal court clerk		
Service by	222	1862
Pension and Relief Funds		
Municipal Police and Firemen's		
Actuarial soundness	224	1866
Actuarial valuations	225	1871
Actuary		
Hiring	225	1870
NATURAL RESOURCES:		
Hunting and fishing		
State of Ohio		
Reciprocal agreements	227	1876
Licenses		
Hunting, fishing and trapping		
Class E nonresident	228	1881
Junior sportsman's		
Class XJ	230	1884
Muzzle-loading deer		
Class V resident	229	1882
Class VV nonresident	229	1882
NEIGHBORHOOD INVESTMENT PROGRAM:		
Neighborhood Investment Program Act		
Reauthorization	231	1886
OIL AND GAS WELLS:		
Plugging		
Filing of plats	232	1899
PARKING:		
Property		
State-owned or leased		
Regulation on	233	1904
PROBATION OFFICERS:		
Firearms		
Training in use	235	1909

	Ch.	Page
PROBATION OFFICERS—(Continued):		
Probation officers, correctional employees		
Funeral expenses		
Payment	234	1906
PROFESSIONS AND OCCUPATIONS:		
End-of-life pain management		
Guidelines	239	1934
Pharmacist recovery networks		
Formation	240	1948
Physicians and podiatrists		
Professional discipline	238	1926
Professional licenses		
Applicants		
Discrimination		
Prohibition	236	1913
Medicine and surgery, podiatry	237	1921
Radiologic Technology		
Board of Examiners	243	1955
Real Estate License Act		
Creation	245	1962
Registered professional nurses		
Board of Examiners		
Continuation	241	1952
School psychologists		
Practice	242	1953
Speech-Language Pathologists and Audiologists		
License renewal	244	1959
PROSECUTING ATTORNEYS:		
Investigators		
Other employment	80	650
PUBLIC EMPLOYEES:		
Compensation		
New employees		
Payment in arrears	251	2012
Public Employees Insurance Act		
Plan		
Definition	248	2006
Public Employees Insurance Agency		
Composition	249	2008
Continuation	249	2009
Public Employees Insurance Reserve Fund		
Permissible appropriation	250	2010

	Ch.	Page
PUBLIC EMPLOYEES—(Continued):		
Public retirement systems		
General provisions	261	2043
Internal Revenue Code		
Definition	261	2050
Public employees retirement systems		
Deferred annuity	263	2115
General provisions	262	2091
Retirement benefits		
Disqualification	264	2118
State employees		
Gender-Based Pay Equity		
Salary adjustment	247	2001
Incremental salary increases		
Service cap		
Elimination	246	1999
PUBLIC MONEYS:		
Auditor's Office		
Securities Division		
Transfer of funds	252	2013
Commodities received		
Receiving report	255	2024
Excess funds, specified		
Transfer	257	2028
Pension Liability Redemption Act		
Issuance of bonds		
Judicial determination		
Constitutional		
Requirement repealed	258	2030
Purchasing Card Administration Fund		
Deposits	254	2023
Small Business Linked Deposit Program	253	2016
Visitors and employees		
Moving expenses		
Payment	256	2027
Travel expenses		
Payment	256	2026
PUBLIC SAFETY:		
Protective Services, Division of		
Director		
Powers, duties, requirements	259	2036
Members		
Certification	259	2036

INDEX

3261

	Ch.	Page
PUBLIC SERVICE COMMISSION:		
Powers generally	260	2039
RETIREMENT:		
Deputy Sheriff's Retirement System		
Participants	191	1648
Public retirement systems		
General provisions	261	2043
Internal Revenue Code		
Definition	261	2050
Public employees retirement systems		
Deferred annuity	263	2115
General provisions	262	2091
Retirement benefits		
Disqualification	264	2118
Teachers retirement systems		
Annuities		
Death of spouse		
Joint annuitant	265	2119
General provisions	262	2109
ROADS AND HIGHWAYS:		
Family restrooms		
Establishment	266	2122
SALARIES:		
Conservation officers		
Salary increase	270	2140
Deputy sheriffs		
Salary increments		
Sixteen-year cap		
Removal	268	2134
Racing Commission		
Board members		
Salary increase	267	2131
State Police personnel		
Annual base salary		
Increase	269	2135
Water Development Authority		
Board members		
Salary increase	267	2133

	Ch.	Page
STATE POLICE:		
State Police personnel		
Annual base salary		
Increase	269	2135
Surviving spouse		
Benefits		
Increase	271	2143
STORMWATER SYSTEMS:		
Public service districts		
Stormwater management program		
Establishment	272	2148
Stormwater system		
Establishment	272	2147
SUNSET:		
Agency termination dates		
Performance evaluations	274	2173
Continuation of agencies or entities of government:		
Architects, Board of	298	2212
Bureau of Employment Programs		
Authority of Commissioner to administer	290	2202
Capitol Building Commission	273	2171
Child Support Enforcement	300	2214
Contractor Licensing Board	289	2201
Corrections, Division of	292	2204
Educational Broadcasting Authority	280	2189
Ethics Commission	277	2185
Health and Human Resources, Department of	278	2186
Highways, Division of	283	2193
Investment Management Board	281	2191
Labor, Division of	288	2200
Licensed Practical Nurses	297	2211
Natural Resources, Division of	285	2197
Parks Section	285	2197
Protective Services, Division of	282	2192
Public Defender Services	296	2210
Public Employees Insurance Agency	249	2009
Public Land Corporation	286	2198
Purchasing Division	275	2178
Racing Commission	284	2195
Records Management and Preservation Board	276	2179
Registered professional nurses		
Board of Examiners	241	1952

	Ch.	Page
SUNSET—(Continued):		
Ron Yost Personal Assistance Services Act	117	1125
Speech-Language Pathology and Audiology	299	2213
State Geological and Economic Survey	293	2205
State Rail Authority	294	2207
Veterans' Council	279	2187
Water Resources, Office of	291	2203
Whitewater Commission	287	2199
Women's Commission	295	2208
TAXATION:		
Community care services		
Provider tax		
Elimination	306	2330
Corporation Net Income Tax Act		
Terms	314	2373
Delinquent land		
Taxes		
Property		
Certificate of redemption	81	653
Environmental technical testing laboratories		
Consumers sales, service tax		
Exemption	308	2335
Estates		
Nonprobate inventory	305	2324
Taxes		
Definitions	305	2318
Geological and Economic Survey		
Tax Commissioner		
Confidential information	302	2267
Income tax refunds		
Moneys reserved for		
Management	313	2372
Local, municipal governments		
Tax information		
Confidentiality, nondisclosure	304	2307
Military retirement		
Personal income tax		
Exemption	312	2365
Oil and gas production		
Reporting	307	2333
Personal Income Tax Act		
Terms	311	2363

	Ch.	Page
TAXATION—(Continued):		
Sales Tax Holiday		
Creation	309	2354
Simplified Sales & Use Tax Administration Act	310	2356
Tax appeals		
Office created	303	2289
Duties	303	2295
Tax Increment Financing Act		
General revision	301	2217
Tax Tribunal		
Creation	303	2270
TEACHERS:		
Certificates		
Revocation		
Grounds	105	972
Contracts	105	968
Failure to perform	105	970
Daily planning periods		
Legislative study	105	1021
Dismissal		
Lack of need	105	969
Employment	105	968
Extracurricular assignments	105	1022
Retired		
Resumption of service	114	1117
Salaries		
Minimum	105	974
Substitute		
Days worked		
Calculation	115	1119
Teachers retirement systems		
Annuities		
Death of spouse		
Joint annuitant	265	2119
General provisions	262	2109
TIMBERING:		
Timbering operations		
Licensure	315	2375
UNEMPLOYMENT COMPENSATION:		
Eligibility benefits	316	2383

INDEX

3265

UNIFORM DISCLOSURE OF PROPERTY INTEREST ACT:

General revision 317 2393

UNIFORM INTERSTATE FAMILY SUPPORT ACT:

General revision 318 2406

UNIFORM SECURITIES ACT:

General revision 319 2451

VETERANS:

Veterans' Council

Duties and functions 320 2480

Veterans nursing home

Architectural and associated costs

Revenue account 321 2482

WHEELCHAIRS:

Electric personal assistive mobility device

Definition 322 2490

Motorized wheelchair

Definition 322 2490

WHITE CANE LAW:

Public facilities

Guide or support dogs, trainers

Access rights and privileges 323 2492

WINE:

Distributors

Electronic transfer

Payment 9 67

WIRT COUNTY:

County levy

Time extension 326 2510

WORKFORCE INVESTMENT:

West Virginia Workforce Investment Act 324 2497

ZONING:

Zoning ordinance elections

Authorization 325 2507

ACTS
FIRST EXTRAORDINARY SESSION, 2002

	Ch.	Page		
APPROPRIATIONS:				
Administration	3	2553		
Agriculture	2, 3	2514, 2551		
Attorney General	3	2552		
Board of Pharmacy	1	2511		
Development Office	3	2524		
Emergency Services	2	2516		
Health	2	2515		
Health and Human Resources	3	2523		
Natural Resources	4, 5	2525, 2527, 2529		
State Police	2, 6	2517, 2530		
State Rail Authority	2	2518		
Tax	2	2518		
CODE AMENDED:				
Ch.	Art.	Sec.	Bill No.	Page
11	21	9	SB1008	2532
11	24	3	SB1009	2534
				Ch. Page
TAXATION:				
Corporation Net Income Tax Act				
	Terms		8	2534
Personal Income Tax Act				
	Terms		7	2532

ACTS
SECOND EXTRAORDINARY SESSION, 2002

	Ch.	Page
APPROPRIATIONS:		
Agriculture	3,4, 11	2543, 2545, 2561
Budget Bill, Ch. 13, Acts, 2002	24	2582
Coal Mine Health and Safety	6	2550
Corrections	7	2552
Employment Programs	23	2581
Governor's Office	2, 5, 21	2541, 2547, 2577
Higher Education Policy Commission	9	2555
Human Services	1	2538
Insurance Commissioner	16	2569
Labor	20	2575
Miners' Health, Safety and Training	22	2579
Natural Resources	13, 14, 15	2565, 2567, 2568
Racing Commissioner	17, 18	2571, 2572
Registered Professional Nurses	19	2574
Tax and Revenue	8, 12	2554, 2562
Tax Appeals	10	2559

BUSINESS CORPORATION ACT:

Establishing	25	2586
--------------------	----	------

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
11	13C	16	SB2007	2808
11	13Q	9	SB2007	2812
11	13Q	18	SB2007	2815
11	13Q	21	SB2007	2816
11	13R	6	SB2007	2817
11	13R	9	SB2007	2823
11	13R	11	SB2007	2824
11	13S	4	SB2007	2825
11	13S	8	SB2007	2829
11	13S	10	SB2007	2829
11	15	9	HB203	2766

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
24	7	4	SB2003	2804
30	35	15	HB204	2806
31D*			SB2004	2586
64	3	1a*	SB2002	2803
64	9		SB2001	2787

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
31	1*		SB2004	2584

Ch. Page

FIREFIGHTING AND PREVENTION:

Volunteer fire departments, rescue squads				
Fundraising activities				
Tax exemption	26			2766

LEGISLATIVE RULES:

Environmental Protection	28			2803
Miscellaneous agencies	27			2787

PUBLIC SERVICE COMMISSION:

Property acquisitions				
Authority	29			2804

SUNSET:

Dietitians	30			2806
------------------	----	--	--	------

TAXATION:

Particular business activity				
Tax credits	31			208

*Indicates new chapter, article or section

ACTS
FIFTH EXTRAORDINARY SESSION, 2001

				Ch.	Page
APPROPRIATIONS:					
Agriculture				2	2834
Governor's Office				3	2835
State Rail Authority				1	2832
CODE AMENDED:					
Ch.	Art.	Sec.	Bill No.		
1	2	1	HB511		2981
1	2	2	HB511		2993
1	2	2b	HB511		3025
1	2	3	HB510		2979
3	5	8	SB5007		2842
3	10	3	SB5007		2844
5B	2	12a*	HB507		3043
5B	3	2	HB506		2837
11	13	2f	SB5006		3029
11	13A	3e	SB5006		3039
11	21	21	SB5001		2966
16	5	12	SB5007		2845
17B	2	10	SB5007		2849
22	1	17*	SB5003		2969
22	3	11	SB5003		2972
22	3	12	SB5003		2977
29	22A	6	SB5002		2956
29	22B	504	SB5002		2963
29	22B	1901	SB5002		2964
42	1	5	SB5007		2850
48	1	202	SB5007		2852
48	1	205	SB5007		2853
48	1	216	SB5007		2855
48	1	217	SB5007		2855

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
48	1	221	SB5007	2855
48	1	225	SB5007	2855
48	1	226	SB5007	2856
48	1	303	SB5007	2856
48	1	304	SB5007	2857
48	1	305	SB5007	2859
48	2	401	SB5007	2860
48	2	404	SB5007	2860
48	4	101	SB5007	2863
48	5	102	SB5007	2863
48	5	103	SB5007	2864
48	5	107	SB5007	2864
48	5	201	SB5007	2865
48	5	402	SB5007	2866
48	5	403	SB5007	2867
48	5	604	SB5007	2867
48	5	605	SB5007	2868
48	5	611	SB5007	2869
48	5	702	SB5007	2870
48	7	203	SB5007	2870
48	8	102	SB5007	2870
48	8	105	SB5007	2871
48	9	104	SB5007	2872
48	9	202	SB5007	2873
48	9	403	SB5007	2875
48	9	603	SB5007	2878
48	11	105	SB5007	2879
48	11	106	SB5007	2880
48	13	101	SB5007	2882
48	13	202	SB5007	2883
48	13	204	SB5007	2883

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
48	13	205	SB5007	2883
48	13	701	SB5007	2883
48	13	901	SB5007	2884
48	13	902	SB5007	2884
48	14	101	SB5007	2885
48	14	106	SB5007	2886
48	14	204	SB5007	2887
48	14	402	SB5007	2888
48	14	405	SB5007	2888
48	14	501	SB5007	2890
48	14	802	SB5007	2890
48	15	205	SB5007	2890
48	15	207	SB5007	2893
48	15	208	SB5007	2893
48	16	101	SB5007	2894
48	16	102	SB5007	2897
48	16	305	SB5007	2897
48	18	108	SB5007	2899
48	18	111	SB5007	2901
48	18	114	SB5007	2903
48	18	123	SB5007	2905
48	18	126	SB5007	2906
48	20	102	SB5007	2908
48	24	101	SB5007	2911
48	24	103	SB5007	2913
48	27	204	SB5007	2916
48	27	205	SB5007	2918
48	27	209	SB5007	2918
48	27	304	SB5007	2918
48	27	402	SB5007	2919
48	27	403	SB5007	2921

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
48	27	501	SB5007	2924
48	27	505	SB5007	2924
48	27	508	SB5007	2925
48	27	510	SB5007	2925
51	2A		SB5007	2926
59	1	28a	SB5007	2953

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
48	30*		SB5007	2839

Ch.	Page
------------	-------------

ECONOMIC DEVELOPMENT:

Joint Commission on Economic Development	4	2837
--	---	------

FAMILY COURT SYSTEM:

Creating	5	2842-2955
----------------	---	-----------

GAMING ACTIVITIES:

Lottery statutes		
Technical corrections	6	2956

HOMESTEAD EXEMPTION:

Property tax year	7	2966
-------------------------	---	------

RECLAMATION FUND ADVISORY COUNCIL:

Creation, general provisions	8	2969
------------------------------------	---	------

REDISTRICTING:

Congressional districts	9	2979
Map	9	2980
House of Delegates	10	2993
Map	10	3025
Senate	10	2981
Map	10	2992

SYNTHETIC FUEL:

Production		
Privilege taxes	11	3029

TOURISM:

2001 World Rafting Championships		
Tourism Promotion Fund	12	3043

ACTS
SIXTH EXTRAORDINARY SESSION, 2001

	Ch.	Page
APPROPRIATIONS:		
Agriculture	1	3045
Board of Risk and Insurance Management	8	3056
Development Office	4	3050
Emergency Services	10	3060
Forestry	3	3049
Higher Education Policy Commission	11	3062
Mining and Reclamation Operations Fund	14	3068
National White Collar Crime Center	16	3071
Natural Resources	2	3047
Protective Services	6, 7	3054, 3055
Racing Commission	9	3059
Special Reclamation Fund	12	3065
Solid Waste Management Board	13	3066
Solid Waste Reclamation and Environmental Response Fund	15	3070
State Police	5	3052

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
11	13P*		HB601	3097
11	21	12e*	HB605	3182
15	1F	1	HB604	3180
15	2	10	HB608	3073
29	12	2	HB601	3103
29	12	3	HB601	3104
29	12	5	HB601	3106
29	12B*		HB601	3115
31	15	6b	HB608	3077
31	20	2	HB608	3080
33	3	14	HB608	3084
33	20B	2	SB6014	3171
33	20B	3	SB6014	3172
33	20B	6	SB6014	3173
33	20B	8	SB6014	3176

*Indicates new chapter, article or section

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
33	20C	2	SB6014	3178
33	20C	3	SB6014	3179
33	20C	4	SB6014	3179
33	20E*		HB601	3128
33	20F*		HB601	3143
48	13	801	SB6024	3088
48	13	802	SB6024	3088
48	14	106*	SB6024	3089
51	2A	6	SB6024	3090
55	7B	5	HB601	3153
55	7B	6	HB601	3154
55	7B	6a*	HB601	3157
55	7B	6b*	HB601	3158
55	7B	6c*	HB601	3160
55	7B	6d*	HB601	3162
55	7B	10	HB601	3162
55	7B	11	HB601	3163
56	6	11	HB601	3164
59	1	11	HB601	3165
59	1	28a	HB601	3167
61	6	17	SB6002	3183
61	6	24*	SB6002	3185

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
48	13	901	SB6024	3086
48	13	902	SB6024	3086

Ch. Page

CORRECTIONAL FACILITIES:

Regional jail, juvenile detention, corrections, State Police facilities		
Acquisition	17	3073

*Indicates new chapter, article or section

INDEX

3275

	Ch.	Page
FAMILY COURT SYSTEM:		
Technical revisions, salary adjustments	18	3087
MEDICAL MALPRACTICE:		
Malpractice liability insurance		
General provisions	20	3169
Medical Professional Liability Insurance Programs		
Establishment, operations	19	3092
MILITARY LEAVE OF ABSENCE:		
Public officials, employees		
Military obligations		
Leave of absence	21	3180
TAXATION:		
Domestic security duty		
National Guard, reserve forces		
Personal income tax exemption	22	3182
Operation Enduring Freedom		
National Guard, reserve forces		
Personal income tax exemption	22	3182
TERRORIST ACTS:		
Terrorist threats	23	3183
Criminal penalties	23	3185